

Geopolitics, Energy Security and 'Soft-Shoe Diplomacy' in the South China Sea

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*The prevailing human aspiration is peace, not war; dialogue,
not confrontation; and, understanding, not estrangement.*

Gen. Liang Guanglie, 2011 Shangri-La Dialogue
Singapore, 5 June 2011

ABSTRACT

A key component to ensuring regional political stability in the South China Sea is the Declaration of the Code of Conduct of the Parties, issued by the Association of Southeast Asian Nations and China in 2002. Territorial disputes in Asia are gaining greater saliency and occurring more frequently. Disputes in the South China Sea appear to be growing in intensity and even bringing naval forces into contact with each other. Ruffling of feathers by one party to the agreement prompts immediate reactions by other littoral States. An analysis of events during 2011 and 2012 are offered in this study which appraises the performance of delicate diplomacy against military posturing settings matched with energy demand as reported in the electronic and print media and the utterances of State actors in the Proceedings of the Shangri-La Dialogue of early June 2011 and an ASEAN Ministerial Meeting of mid 2012. Previous summits produced not just policy statements but policy initiatives; not just talk of consultation but plans for improved cooperation. However, it is the actions of three claimant States in the South China Sea during 2011 and 2012 that raised concerns not only for the regional neighbours but also for the international community. This study presents an analysis of events, a summary of the Shangri-La Dialogue and concludes that China's status quo policy is centred on remaining assertive in upholding its claims to the islands and resources of the South China Sea while at the same time, rhetorically adopting a stance in favour of solving the territorial conflict according to international law.

Keywords: Code of Conduct; energy security; charm offensive; overlapping maritime claims; transparency; and, Article 121.

INTRODUCTION

The littoral States of the South China Sea are Brunei, China, Indonesia, Malaysia, The Philippines, Singapore, Taiwan and Vietnam. [These popular short form names of the countries are used throughout this discussion]. (See Figure 1) Each of these States is a stakeholder in the management of this semi-enclosed sea and thus possesses rights to the marine biotic and mineral resources therein and as such, obligations to ensure that the marine environment is preserved and protected, and the coastal zone habitat is not harmed. Cambodia and Thailand are marginal states in the context of this topic and Laos is a land-locked nation. The States named above, with the exception of China and Taiwan, are members of the Association of Southeast Asian Nations (ASEAN).

Since the early-1990s, the South China Sea (SCS) has been the scene and source of politico-economic-military disputes among several of the region's littoral states (Brunei, Malaysia, The Philippines, Vietnam) as well as China and Taiwan, with the United States, Japan, Australia and India as maritime powers professing a vested interest in freedom of navigation within the semi-enclosed sea and in an area of potential exploration and exploitation of the seabed's hydrocarbon reserves.

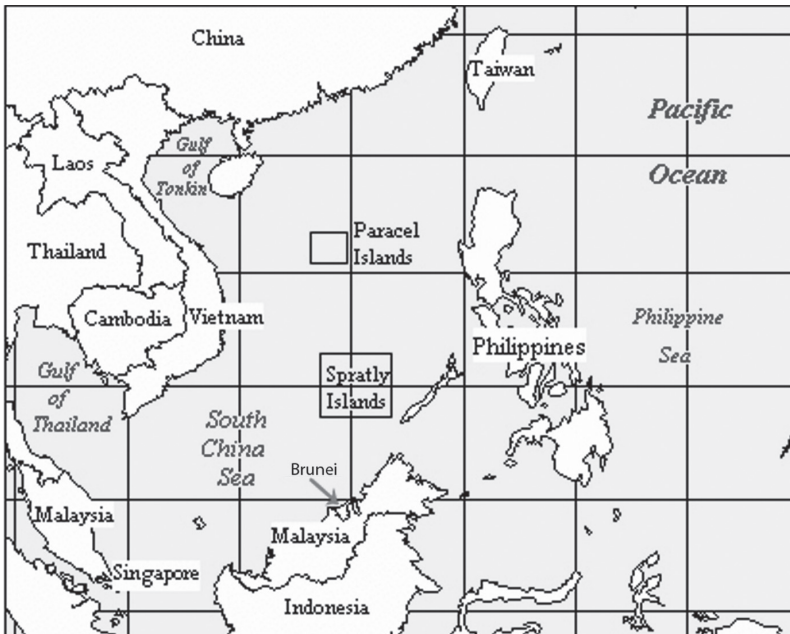


Figure 1: Littoral states of the South China Sea, the Parcel and Spratly Groups.

Source: <http://www.eia.doe.gov/countries/regions-topics.cfm?fips=SCS#scsti>

Moreover, all nations that trade within or outside East Asia – Japan, South Korea, Hong Kong, Taiwan, some Latin American and European countries and importers from the Middle East and China itself – all have an interest in regional peace and stability, and freedom of navigation and overflight with respect to the South China Sea.

The Governments of the Member States of ASEAN and the Government of the People's Republic of China, on 4 November 2002, signed in Cambodia, the *Declaration on the Code of Conduct of Parties in the South China Sea* (the Code) which stipulated that:

1. The Parties **reaffirm** their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are **committed** to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties **reaffirm** their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned **to undertake** to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties **undertake to exercise** self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

*Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to **build trust and confidence** between and among them. [Emphasis added]*

The Code is a promise to formalise an instrument which minimises the risk that disputes between fishermen or other users within the South China Sea, for example, commercial companies engaged in exploration for hydrocarbon reserves, or those undertaking marine scientific research, might escalate into conflict. The practicalities of the Code has not emerged; however, optimists allude to the restraint that claimant States have demonstrated since 2002 in occupying uninhabited islands or specks of rocks in reef complexes although they have been energetically fortifying those marine features within the Spratly Group where they already have a presence. The roles of geography, international law and diplomacy and international relations must be considered when discussion of energy security is raised.

Developments in the South China Sea in the period from January 2011 to early October 2012 offer a brief background of the issues, concerns and challenges,

especially since July 2011, when the *Guidelines to Implement the Declaration on Conduct of Parties* were adopted, until the onset of the stand-off at Scarborough Shoal in early 2012 and thereafter. The confrontation between China and The Philippines at Scarborough Shoal and Sino-Vietnamese relations during the first half of 2012 demonstrate the rationale for collective action and an effective Code to be implemented. A chronology of events during the first ten months of 2012, depicted in the Annexe below, best illustrates the complex nature of the disputes.

The flare of tensions between China and Vietnam after a relative period of calm over a few years reared its ugly head when China responded to Vietnam's initiation of military surveillance flights over the Spratly Islands and adoption of a Law of the Sea in five ways, namely: (1) China upgraded the administrative status of Sansha City; (2) China offered oil exploration leases in Vietnam's perceived Exclusive Economic Zone; (3) China announced the commencement of combat-ready naval patrols; (4) China dispatched about thirty fishing vessels with an escort ship into disputed waters in the Spratly Islands; and, (5) China established a military garrison on Woody Island which comprise the Paracel Archipelago. Two contradictory flows are underway and China's employment of new economic, commercial and military tactics to bolster its claims to the South China Sea will naturally intensify the China-United States strategic rivalry which has made negotiating a binding Code of Conduct more difficult.

In July 2011, China and ASEAN member states adopted the *Guidelines to Implement the Declaration on Conduct of Parties*. Over the course of the year, ASEAN and Chinese senior officials discussed the implementation of the DOC. The adoption of the Guidelines led ASEAN to successfully revive discussions on a Code of Conduct in the South China Sea. The key principles for the ASEAN COC were approved at the 45th ASEAN Ministerial Meeting (AMM) in July 2012. These positive developments were suddenly interrupted when a fierce internal ASEAN clash erupted at the 45th AMM between Cambodia, as ASEAN Chair, and The Philippines and Vietnam (and other members), over how to characterise renewed Chinese assertiveness in the South China Sea.

The failure of ASEAN Foreign Ministers to issue a joint communiqué at the conclusion of the 45th AMM led to immediate public recriminations. On the morning of the last day, immediately after a special meeting failed to reach an eleventh hour compromise, The Philippines issued a statement taking 'strong exception' to the decision by the ASEAN Chair not to issue a joint communiqué. The Chair, in turn, accused The Philippines of 'hijacking' the AMM and implied that the joint communiqué had become hostage to a bilateral issue. In a breach of ASEAN protocol, it was alleged that the Chair had shown the joint communiqué to the delegation from China, who stated that the statement was unacceptable unless reference to the South China Sea was removed from the text.

The establishment of a strong Code of Conduct and its successful implementation are a significant challenge for the region. But the situation also provides a great

opportunity. ASEAN unity has its back against the rocks – no pun intended, and China’s preferred image of a ‘peaceful’ rise is also at stake. The parties could demonstrate to the world that they can resolve their problems by themselves – without involving outside powers or mechanisms. Not only would this preserve at least a semblance of ASEAN centrality in regional security management but it would also be some proof of China’s ‘good intentions’ towards its neighbours. What was needed in October 2012 and beyond is a regional solution to a regional problem, at a high diplomatic level without any grandstanding – a soft-shoe diplomacy.

GEOPOLITICS, INTERNATIONAL LAW AND ENERGY SECURITY

The significance of the insular marine features in the South China Sea was brought to the fore during the first six months of 2011 as evident in electronic and print media and numerous international and regional fora. Some of these natural marine formations may, in accordance with international law, be eligible for extended maritime jurisdictional zones, hence, the scramble to attain sovereignty over insular features of the Spratly Group. The significance of Article 121 is that it brings into argument the value of insular features based on the definition employed. The question then raised is; what claim to an extended maritime zone, including that of a legal as against natural continental shelf might that feature be entitled to.

Part VIII of the 1982 UN Law of the Sea Convention’s (the Convention) Article 121 on the Regime of Islands states:

1. *An island is a naturally formed area of land, surrounded by water, which is above water at high tide.*
2. *Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.*
3. *Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*

Paragraph 3 of Article 121 has brought about much debate relating to its interpretation especially in that the terms “rock”, “human habitation” and “economic life of their own” are not defined in the Convention.

With respect to resources in the exclusive economic and continental shelf zones, the regime of islands has quite an impact. An island which can maintain human habitation or an economic life of its own has the right to establish maritime jurisdictional zones under the provisions of the 1982 Convention: territorial sea (Art. 3), contiguous zone (Art. 33), Exclusive Economic Zone (EEZ) (Arts. 55, 57), and continental shelf (Art. 76). A distinction must be made for rocks which cannot maintain human habitation or economic life of their own, they **do not** have an EEZ or a continental shelf; however, on the condition that they are above water at high tide (Art. 121:1) they may have a territorial sea and a contiguous zone (Art. 121:3). This corresponds to the criteria for determining the baseline of the territorial sea (Art. 7:4).

The growing assertiveness of the Chinese military and competing territorial claims have kept the South China Sea dispute to the forefront of regional security concerns for many decades. Geopolitical reality, in part, sparked by the need to access hydrocarbon reserves and hence, ensuring energy security and military tensions have heightened dramatically during the period January to June 2011, in the South China Sea.¹ The Spratly Archipelago (Nansha) is claimed in whole or in part by Brunei, China, Malaysia, The Philippines, Taiwan and Vietnam. The Paracel Archipelago is administered by China; however, its sovereignty status is challenged by Vietnam. In 1974, China occupied the Paracel Islands, seizing them from Vietnam. China calls the Paracel Islands the Xisha Islands and they are governed as part of China's nearby Hainan Island province.² China claims sovereignty to the disputed islands of the South China Sea on historical grounds as the first State to discover and administer the islands of the South China Sea and the sea surrounding these islands. China has actually gone so far as to incorporate the disputed islands of the South China Sea as its own national territory. In the 1990s, China enacted three territorial laws where four disputed island groups in the South China Sea are included as Chinese territory.³

China, Taiwan, The Philippines and Vietnam have each escalated their rhetoric regarding the contested perceived hydrocarbon reserves in the substratum of the South China Sea in the vicinity of the Spratly Islands; have undertaken reclamation works; established military outposts; and, deployed troops and equipment to the region.⁴ Figure 2 offers an illustration of the geopolitical reality – the approximate spatial extent of claims by each of the littoral States and areas of prospective hydrocarbon reserves – of the South China Sea which is a semi-enclosed sea. The lines delineated as 'maritime boundaries' must be treated with caution.

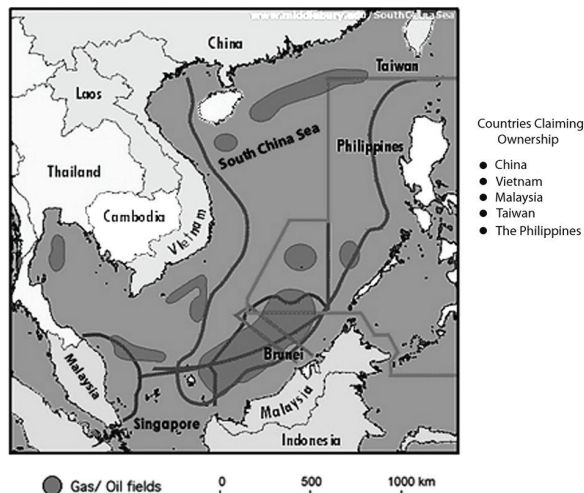


Figure 2: Littoral states of the South China Sea and their respective claims
 Source: <http://www.eia.doe.gov/countries/regions-topics.cfm?fips=SCS#scsti>

Article 122 defines, and Article 123 articulates, in Part IX, of the 1982 Convention, the obligations of States bordering an enclosed or semi-enclosed sea to cooperate with each other in the exercise of their rights and in the performance of their duties under the provisions of the said article which includes the coordination in the management, conservation, exploration and exploitation of the living resources of the sea and preservation and protection of the marine environment.⁵ Diplomats of the regional States are generally in accord with these sentiments. The interpretations they put towards these provisions may vary. The littoral States are duty-bound to coordinate their scientific research policies and undertake, where appropriate, joint programmes of scientific research in the area; and, to invite other interested States or international organisations to cooperate with them. Part IX is an essential quality of the 1982 Convention.

Perhaps with Part IX of the Convention as a stimulus and being acutely aware of the perceived threat that China posed through its policies relating to the islands and the semi-enclosed sea, ASEAN Foreign Ministers at their 29th AMM (ASEAN Ministers' Meeting), in July 1996, endorsed the concept of a code of conduct for long-term political stability in the South China Sea. Following numerous working drafts of the code and consultation with and input by China, there was generally consensus that the parties would refrain from action which would complicate or magnify the disputes in the South China Sea.⁶

Foreign Ministers of China and ASEAN met on 24 and 25 January 2011, in Kunming, China, where they attempted to forge a more binding agreement to maintain peace and stability in the disputed South China Sea. The two-day meeting was called by Chinese Foreign Minister Yang Jiechi, to coincide with the 20th anniversary celebration of the bilateral cooperation between China and ASEAN.⁷

On 8 May 2011, Indonesia's President, Mr. B. Yudhoyono opined that all ASEAN leaders believed that it was about time that they should have something that binds all nations that are claiming vast areas of the South China Sea, so that everything can be handled properly without creating undesirable conflicts. ASEAN's Code of Conduct of 2002 was yet to translate into more concrete rules.⁸

President Benigno Aquino III of The Philippines also pushed for the adoption of the guidelines for the implementation of the Declaration on the Code of Conduct on the South China Sea at the 18th Leaders' Summit of ASEAN. Guidelines would assist the regional States to move towards a more formal and binding code of conduct on the South China Sea where several countries are disputing ownership of the perceived hydrocarbon resource-rich sea and argued that a set of guidelines would also help accelerate exploration projects in the area.⁹

The exploration and exploitation of hydrocarbon reserves in the South China Sea in marine areas within and outside national marine jurisdiction, however defined, is presently

hampered by disputes over the sovereignty of islands, rocks and cays that speckle the surface of the South China Sea. For example, in early 2008, Exxon Mobil relinquished a prospective offshore concession in the South China Sea granted to it by Vietnam because of disguised threats from China, which also claims the area. Thus, furtherance of the provisions of Article 123 can only be effective if diplomatic relations are handled with due care.

Energy security relies on many geopolitical factors. Among the major uncertainties that could push oil prices above or below current (late 2012) forecast are: continued unrest in oil-producing countries and its potential impact on supply; decisions by key OPEC-member countries regarding their production in response to the global increase in oil demand; the rate of economic growth, both domestically and globally; fiscal issues facing national and sub-national governments; and, China's efforts to address concerns regarding its growth and inflation rates.¹⁰ The substratum of the seabed in the vicinity of the Spratly archipelago allegedly holds substantial hydrocarbon reserves; perhaps this is the spark to fire a geopolitical flame: the scramble to explore and exploit the potential hydrocarbon reserves, to attract economic investments and military attention to the South China Sea basin.¹¹

THE SPARK OF 23 MARCH 2011

Forum Energy Plc is a United Kingdom-based gas and oil exploration and production company with a portfolio of projects in The Philippines. It was established in April 2005 through the consolidation of the Philippine Oil, Gas and Coal assets of FEC Resources, Inc. of Canada and Sterling Energy Plc of the UK into one corporate entity.¹² The Group's assets consist of:

- 70 per cent interest in GSEC 101 (Reed Bank), an offshore licence which contains the *Sampaguita* Gas Field as well as several oil and gas leads. (See Figure 3)
- 66.7 per cent interest in SC 40 (Cebu), a service contract which contains the onshore Libertad Gas Field and Maya discovery and several other prospects including onshore Jibitnil Island and offshore Central Tañon; and
- 100 per cent holdings in Forum Energy Philippines Corporation, a company with varying interests in nine offshore fields west of The Philippines including the producing Galoc field currently producing around 8,000 mmbbls per day, in which Forum holds a 2.27 per cent interest.

In April 2006, Forum Energy enhanced its position in the region through the acquisition of the Philippine Oil and Gas assets of Basic Consolidated Inc (PSE: BCI). The newly-acquired assets included varying interests in nine offshore fields west of The Philippines. In September 2006, results of the interpretation of the 3-D seismic programme at the *Sampaguita* gas discovery indicated the potential of a world class gas accumulation with a range of Gas-in-Place (GIP) of up to around 20 TCF. Forum Energy has 70 per cent equity in the licence in which the *Sampaguita* offshore gas discovery is situated. The block (GSEC 101) is located off the Northwest coast of Palawan Island in The Philippines.

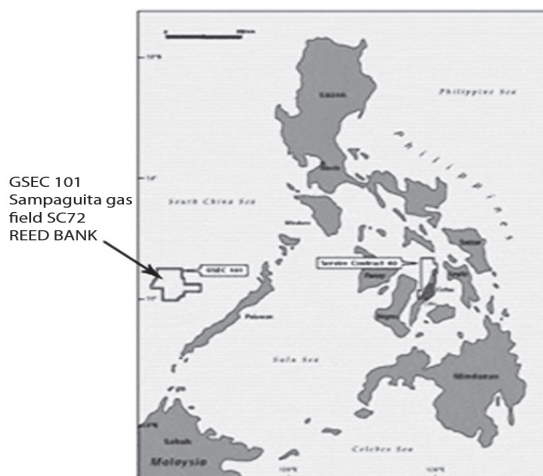


Figure 3: Forum Energy's lease west of Palawan Island
 Source: <http://www.forumenergyplc.com/operations/overview.aspx>

On a risked basis, estimated potential reserves from two discoveries total some 1.14 BCF of gas and estimated risked reserves from prospects within the licence total 93 million barrels (mmbbls) or 320 BCF in a gas case. Potential un-risked reserve estimates for the seven prospects and two discoveries within the SC40 licence total some 907 mmbbls in the oil case or 3,167 BCF in the gas case. In its audited results for the year ending 31 December 2010, Forum Energy's operational highlights were: conversion of the GSEC101 licence to Service Contract 72 in February 2010; first sub-phase work programme ongoing and 2-D and 3-D seismic surveys on track for completion within Q1 2011; Galoc production of 61,000 barrels in 2010 (net to Forum) and expected 40,000 barrels (net to Forum) in 2011.

In February 2011, Forum Energy concluded a two-year survey of the oil and natural gas reserves in the south-eastern sector of the basin. Philippine President Benigno Aquino sanctioned approval to the corporation, owned by Philippine billionaire and key political ally, Manny Pangilinan, to begin drilling. Forum Energy announced, on 15 March 2011, that it had completed its seismic acquisition over SC72. As part of the work programme, 564.887 sq km of 3-D seismic data was acquired over the *Sampaguita* Gas Field and 2,202.38 line-km of 2-D seismic data was also acquired over the block in order to further define additional leads identified within the SC72 acreage. The Company stated that it would immediately begin processing the data with the aim of further evaluating the commercial potential of the block, and to help identify the best location for possible appraisal wells to be drilled in the next sub-phase of the SC72 licence. The survey was carried out by CGG Veritas, using the M/V *Veritas Voyager*.

However, a diplomatic dispute ensued when the Philippine Government claimed that two Chinese military patrol boats entered the Reed Bank and forced an oil exploration vessel out of the area. President Benigno Aquino filed an official protest with China, which insisted that The Philippines possess “indisputable sovereignty” over the area. On 23 March 2011, the Philippine Government announced that it was prepared to begin oil exploration near the disputed islands in the South China Sea.¹³ BHP Biliton Ltd, announced on 11 May 2011 that it will take over operations and get a participating interest of up to 60 per cent in an oil prospect off the south-western Palawan Island, the Philippines.

CHINA NATIONAL OFFSHORE OIL CORPORATION (CNOOC)

Chen Weidong, chief energy researcher of state-owned China National Offshore Oil Corporation (CNOOC), announced at an energy forum in November 2010 that deepwater development had become more important due to the growing demand for oil, while the capability of drilling for offshore oil and gas in shallow waters is reaching its limit. The agency would build another offshore rig with a production capacity of 50 million tons during the 12th Five Year Plan (2011-2016). CNOOC announced a deepwater gas discovery on 15 December 2010 on Block 64/11 in the Qingdongnan Basin in the South China Sea, approximately 130 km offshore of Hainan Island (Figure 4) and at a depth of 1,338 metres.¹⁴

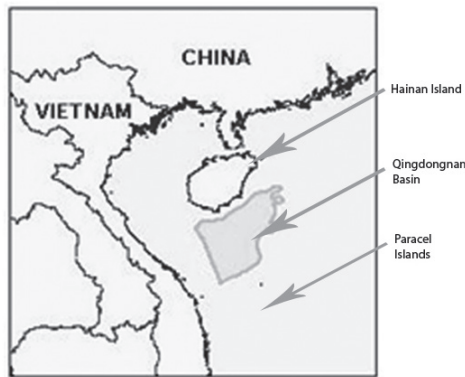


Figure 4: Location of Qingdongnan Basin (depicted as a polygon)

Source: <http://maps.ihp.com/basin-monitor-ordering-service/far-east/qiongdongnan-basin.html>

The East China and South China Seas are two potential areas for offshore gas and oil exploration and they will play important roles in China’s energy supplies and security according to Zhou Dadi, former President of the Energy Research Institute of the National Development and Reform Commission. China produced 190 million tons of oil, and imported 207 million tons, in the first 11 months of 2010. Figure 5 illustrates China’s liquid fuel consumption for the last seven years and forecast for 2011-12.¹⁵

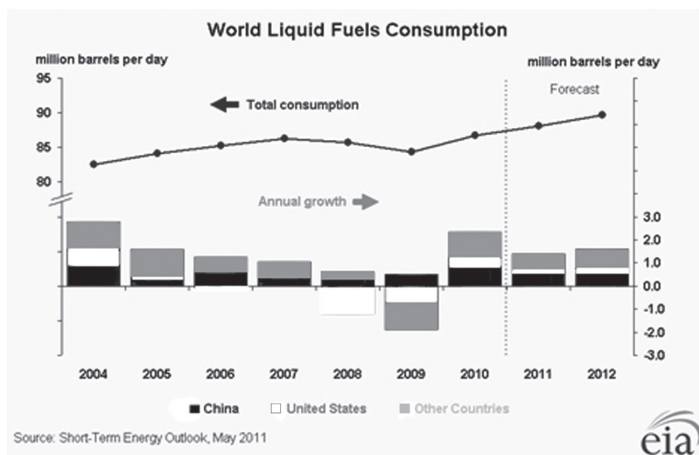


Figure 5: World Liquid Fuel Consumption highlighting that of China and USA

Source: <http://www.eia.doe.gov/emeu/steo/pub/gifs/fig6.gif>

<accessed 12 May 2011 and 1 October 2012>

The Chinese news daily, *Global Times*, published an article on 19 April 2011, entitled *Oil Bonanza in the South China Sea*. The article estimated that the disputed waters contained "over 50 billion tons of crude oil and more than 20 trillion cubic meters of natural gas;" however, it did not specifically identify the precise area. The CNOOC plans to invest USD30 billion in deep-water oil drilling in the South China Sea in keeping with the initiative set for expanded drilling in the current Five Year Plan. CNOOC announced that annual oil and gas production reached 50 million tons in 2010 for the first time. That 50 million tons – equal to the peak annual production capacity of Daqing, the largest oil base in China – included nine billion cubic meters of natural gas. The South China Sea, dubbed the 'second Persian Gulf', is perceived to be potentially rich in hydrocarbon resources. It is estimated that the area contains over 50 billion tons of crude oil and more than 20 trillion cubic meters of natural gas.¹⁶

One of the most amazing developments of the 21st century has been the rapid economic growth, international status recognition and military rise of China. That country's military dominance over the hotly-contested Spratly Islands could potentially affect the free flow of international trade in the area classified by local and foreign military planners as a strategic link between the world's east and west economies. The economic potential and diligent diplomacy within ASEAN will ensure that China will become the world's largest economy by 2020 but it will require diplomatic and international relations of exceptional quality, and, at the highest standard.¹⁷

SOFT-SHOE DIPLOMACY AND CHARM OFFENSIVE

The Government of China maintains that it wants close, cordial and cooperative relations – soft-shoe diplomacy and charm offensive – with its neighbours in Southeast Asia, the ten member-states of ASEAN and indeed in other regions. Progress in this direction gained impressive momentum since the early 1990s. By early May 2011, the then Premier, Wen Jiabao, was on an official visit to Indonesia and Malaysia. It was his first official visit to Indonesia and his second in six years to Malaysia. The visits speak volumes about China's genuine efforts to cement friendship and expand cooperation with ASEAN. As both countries are important members of ASEAN, Wen's tour has naturally contributed to closer China-ASEAN ties in many aspects. Premier Wen Jiabao promised billions of dollars in soft and commercial loans for Indonesian infrastructure development and export credits and another one billion Yuan (approx. USD154 million) for maritime cooperation. The Governments of China and Indonesia signed several agreements that would ensure closer cooperation and increase two-way trade to USD80 billion by 2015.

The Premier also attended the ASEAN Ministerial Meeting in Indonesia where he emphasised his Government's support for the incumbent governments in the region. He inferred that present-day diplomats and traders from China are as peaceful as their earlier counterparts of many centuries ago who did not seek to conquer but were purely interested in cultural exchange and economic development.¹⁸

According to Gao Zhiguo, Head of the China Institute for Marine Affairs of the State Oceanic Administration, the Government of China is facing challenges while protecting the country's marine rights.¹⁹ Offshore development and exploration for hydrocarbon reserves has accelerated and the maritime disputes between China and other countries have proliferated. China is examining its options for dialogue and cooperation with countries in the region with the hope of promoting peace and development. The Government of China is desirous in cooperating with ASEAN in tapping natural resources of disputed areas in the South China Sea and open for discussions on the issue of the contested Spratly archipelago according to the Chinese Ambassador to The Philippines on 6 April 2011.²⁰ Why then the show of force if this is the official stance of the Government of China?

FLEXING THE MILITARY MIGHT

Nearly 40 per cent of global maritime traffic transits through the South China Sea. Control of the region is of vital strategic interest to all the littoral States and stakeholders which includes Australia, Japan, Korea and the United States of America to name but a few nations.²¹ China's strategic maritime intentions and priorities are evident in naval exercises held in the East and South China Seas during March and April 2010; during 2011; and again during September and October 2012, especially in the East China Sea as a direct result of a dispute with Japan; its involvement in the international anti-piracy campaign in the Arabian Sea and Gulf of Aden in early-2011; and, humanitarian assistance in the Libyan crisis of March 2011.

China's military power is growing steadily and it claims ownership over a vast swath of the South China Sea, as depicted on a map by a series of nine-dashed lines in a u-shaped configuration which is dissimilar to the line depicted in Figure 1 (See Figure 6). This claim overlaps in a substantial way with those of at least three ASEAN countries, Malaysia, The Philippines and Vietnam. On 2 March 2011, Chinese naval patrol boats accosted a vessel belonging to Forum Energy in disputed waters. The Philippine Navy sent two jets to confront the Chinese patrol boats. Relations between the Governments of China and The Philippines worsened with China's execution of three Filipino drug couriers on 30 March 2011.²²

On 5 April 2011, the Philippine Government filed an official protest before the United Nations, contesting China's claim to Spratly Islands and the South China Sea.²³ In particular, the Philippines protested about a map (Figure 6) issued by China in May 2009 indicating its u-shaped claim to more than 80 per cent of the South China Sea, and referred to as the 'Nine-Dashed line' map. On 14 April 2011, China escalated the dispute, when it sent a letter to the United Nations stating that The Philippines had "invaded and occupied Chinese territory."²⁴



Figure 6: The 'nine-dashed line' map purporting to be China's marine territory
Source: http://www.southchinasea.org/9-dotted%20map/map_small.gif

The Government of China announced, on 2 May 2011, according to *China Daily* newspaper, plans to boost its maritime patrol service by at least ten per cent in the South China Sea in a move to monitor increasing (alien) incursions into Chinese territorial waters.²⁵ The report inferred that more employees, new ships and increased monitoring of the sea lanes, especially around China's outlying islands. Sun Shuxian, a spokesman for China Marine Surveillance, opined that by the end of 2011, around 1,000 recruits would be added to the 9,000 already employed. The Chinese Navy also will carry out regular sea patrols more frequently to strengthen law enforcement in China's maritime jurisdiction, however defined, to safeguard the country's marine rights in 2011.²⁶ Maritime boundary delimitation in the South China Sea is incomplete; many segments await resolution, for example, China and Vietnam in the vicinity southwest of Hainan Island, to list but one case.



Figure 7: PRC's Chigua Jiao Garrison on Johnson Reef (Chigua Jiao).

Source: <http://atlasobscura.com/place/spratly-island> <accessed 1 October 2012>

The maritime service has about 300 vessels including 30 that are more than 1,000 tons gross registered tons, and ten planes, including four helicopters. By 2016, an additional 36 ships are expected to be commissioned to improve law enforcement capacity. The service estimated that it carried out around 1,100 flights and more than 13,300 sea patrol voyages last year. It investigated nearly 1,400 illegal offshore activities and handed out fines totalling USD116 million in 2010.²⁷ New equipment has been installed as part of the inspection fleet to improve law enforcement capacity. The announcement came as tensions increased between China and its maritime neighbours over long-running territorial disputes concerning dozens of small islands, many uninhabited, in the South China Sea, an area from the eastern approaches of the Straits of Singapore near the Equator to the Strait of Taiwan in Latitude 25° N. The Government of China was looking at its options for dialogue and cooperation with countries in the region with the hope of promoting peace and development as its Premier toured Indonesia and Malaysia on 27 and 28 April 2011 and attended an ASEAN meeting.

MALAYSIA'S REACTION

During 'Question Time' in Malaysia's Parliament on 6 April 2011, a member sought an answer from the Minister of Foreign Affairs as to whether or not the Government of Malaysia supported a proposed joint development of the Spratly area with the relevant countries and the reason, if it choose not to support such a proposal.²⁸ In a statement issued on 25 April 2011, Deputy Prime Minister, Tan Sri Muhyiddin Yassin inferred that Malaysia would seek to apply the provisions of the 1982 Law of the Sea Treaty in the ongoing Spratly Islands territorial dispute to avoid an escalation of the dispute and possible harm to ties among the various claimants.²⁹ From the previous single island (Swallow Reef) it had occupied and converted into a dive resort, known locally as Pulau Layang-Layang which is located within the Spratly archipelago, Malaysia now claims five other islets. The island has a 1,200-metre runway that can accommodate heavy civilian and Malaysian military transport planes.³⁰ (See Figure 8)



Figure 8: Facility at Pulau Layang-Layang (Swallow Reef)
Source: http://en.wikipedia.org/wiki/Swallow_Reef

The Malaysian Defence Minister, Datuk Seri Dr. Ahmad Zahid Hamidi, emphasised that his government was firm in its stand not to use military power to resolve the Spratly Islands claim and has made a number of proposals to avoid untoward incident from happening. These include bilateral meetings, joint monitoring and dialogues for countries involved, to come to agreement. However, Malaysia still positions its navy at the disputed features for surveillance purposes. According to Zahid, 'military diplomacy is better than military might'.

VIETNAM'S REJOINER

Spratly Island or *Truong Sa* is controlled and administered by the Government of Vietnam. It is the administrative island for all nearby islands, has a 610-metre landing strip and a small jetty. It has an area of 13 hectares and is the fourth largest in the archipelago and the largest among Vietnamese-occupied Spratly islands.



Figure 9: Vietnam's Dao Truong-sa in the South China Sea

A defence exercise undertaken by China near the disputed Parcel Islands in the South China Sea on 3 February 2011 prompted lodgement of a protest by the Vietnamese Government a few days later citing serious violation of Vietnam's sovereignty over the archipelago.³¹ The Vietnamese Government made a similar complaint, on 18 January 2011, relating to the actions of the Chinese State Bureau of Surveying and Mapping about China's disputed version of its maritime border in the area on its official online mapping service which allocated to China more than 80 per cent of the South China Sea.³²

The Governments of Vietnam and China have agreed to sign a document outlining basic principles to solve territorial disputes in the South China Sea, however, no timeline or details were given on the agreement as of 20 April 2011. They pledged to continue implementing the 2002 China-ASEAN agreement, under which the parties agreed to pursue a peaceful resolution to the disputes and to exercise self-restraint to avoid escalation.

On 26 May 2011, the *Binh Minh 02* – a Vietnamese surveying ship conducting its regular oil and gas exploration activities well within Vietnam's 200 nautical mile Exclusive Economic Zone was interrupted when its surveying cables were allegedly cut by the crew of a Chinese naval ship, thereby causing a considerable concern on the maintenance of peace and stability in the South China Sea.

THE PHILIPPINES' RETORT

The mounting military and political tensions between the Governments of China and The Philippines occur simultaneously with rapidly expanding economic ties and promises by the former of massive investment in the latter's infrastructure. However, China opposed plans by The Philippines to restore an outpost on the Spratly Islands

in the South China Sea. Despite this, the Philippine military says it will push through with plans on its facilities on Kalayaan Island Group (KIG). Navy spokesman Edgard Arevalo says the repair and maintenance of the outpost and airport runway is necessary for the delivery of supplies for troops stationed on the island. (See Figure 10)



Figure 10: A C-130 plane lands at the Philippine military base on Pag-Asa Island. [Source: AFP]

Source: <http://australianetworknews.com/stories/201009/3019251.htm?desktop>

The Philippines' defence stance over its territory in the Kalayaan Island Group (KIG) had been steadily retrogressing, relying mainly on diplomacy to resolve any conflict that once in a while occurs in the area, the most recent of which was on 7 March 2011 when two Chinese gunboats, *Zhongguo 71* and *Zhongguo 75*, harassed MV *Vertias Voyager* which was commissioned to conduct seismic research in the Reed Bank Basin.³³ The Philippines sent a diplomatic protest to the Chinese Government but it simply ignored the protest, maintaining their territorial claim over the Reed Bank Area. The Philippine Government initially demanded an explanation from the Government of China regarding the alleged harassment of the latter country's ship towards the Philippine exploratory team who by that time was conducting researches on the said island.

The Government of China announced a ban on fishing in part of the South China Sea from 9 May to 1 August 2011, stating that the seasonal break was necessary to allow fish stocks to replenish. The ban extends up to what the Chinese Government considers its maritime boundary but overlaps areas claimed by Vietnam and other countries. However, Vietnamese fishermen were planning to not respect a Chinese ban on fishing in waters claimed by both nations.³⁴

The Philippine Armed Forces announced on Thursday, 19 May 2011 that it was validating reports that Chinese jet fighters had entered the country's airspace around the disputed Spratly chain near Palawan Island but conceded it had no capability to detect and intercept the alleged intrusions. The aircraft was spotted by the Filipino pilots of two

OV-10 light attack and observation planes which were on a routine patrol mission near the Reed Bank, part of the Kalayaan Group (Spratly chain) claimed by The Philippines.

In terms of capability, the Philippine Armed Forces do not have the detection and monitoring capability, or the radars to check if indeed the Chinese aircraft intruded into Philippine airspace. Indeed, to possess that capability, interdiction would be required. The Government's first option was to lodge a diplomatic protest. Such reactions were raised in Singapore.

By earlier 2013, diplomatic relations between the Governments of China and The Philippines became strained when the latter submitted a case for hearing against the former at the International Tribunal for the Law of the Sea. In May 2013, the Government of China categorically stated that it will not attend the proceedings.

SHANGRI-LA DIALOGUE, 2011

The 10th Shangri-La Dialogue was held in Singapore at the hotel of the same name from 3 to 5 June 2011. It was sponsored by the International Institute for Strategic Studies (IISS) and hosted by the Government of Singapore. The ethos of the Shangri-La Dialogue is one of frank exchange and sharp arguments that leads to more regular communication and more effective defence diplomacy. It argues that informality breeds trust and hence trust inspires confidence. During these annual summits, global issues are discussed and regional problems are addressed. Some are solved; those that are not solved are temporarily contained. A great number of vitally useful exchanges take place behind closed doors – on the sidelines – however, a large amount of intergovernmental debates are tested in open sessions. Previous Shangri-La Dialogue summits have produced not just policy statements but policy initiatives; not just talk of consultation but plans for improved cooperation. Maritime security has been a long-running theme at previous summits and vital initiatives taken in this domain.

The theme for the 2011 Summit was on Asia's security focusing in six plenary sessions on these topics: emerging security challenges in the Asia-Pacific; new military doctrines and capabilities in Asia; Asia's new distribution of power and its implications; China's international security cooperation; responding to new maritime security threats; and, building strategic confidence and avoiding worst-case outcomes. In five specialized sessions, delegates discussed issues on the topics of: budgeting for defence: how much is enough; Afghanistan's challenge for regional security; resolving territorial disputes; nuclear developments in the Asia-Pacific region; and, armed forces and transnational security challenges.

The Director-General and Chief Executive of IISS, Dr. John Chipman, posed two questions before calling upon the Prime Minister of Malaysia to deliver the Keynote address. Given that many defence budgets in Asia are growing, the questions and issues are: can there be smart procurement and the avoidance of arms races? Is the public explanation

of defence policy in white papers and other documents enough to build confidence or does more have to be done to reassure and ensure that worst-case assumptions are not made?³⁵

The Prime Minister of Malaysia acknowledged that China as a nation has grown more assertive; is opening up (being more transparent); and, engaging with its neighbours. Importantly his Government is convinced that the Government of China's first commitment is towards peace. He was optimistic that ASEAN and China will be able to agree on a more binding code of conduct to replace the Code of 2002 in the South China Sea. The overlapping claims in the South China Sea, involving six parties, are particularly complex but they have generally been managed with remarkable restraint. ASEAN should never allow any disagreements on this issue to escalate beyond the diplomatic realm. Parties must remain steadfast in their resolve to find a peaceful resolution to the South China Sea territorial dispute. Being fully committed to the common ASEAN position in terms of its engagement with China on the South China Sea, ensures bilateral relationship remains unaffected and will continue to go from strength to strength. The way forward is for dialogue, engagement and consensus – charmed diplomacy at its best.

Maritime security remains an issue of particular importance for the region, with questions about territorial claims and the appropriate use of the maritime domain presenting ongoing challenges to regional stability and prosperity. The Government of the United States of America's position on maritime security remains clear: it has a national interest **in stability**, in freedom of navigation, in unimpeded economic development and commerce; and, in respect for international law. It also believes that customary international law, as reflected in the 1982 UN Convention on the Law of the Sea, provides clear guidance on the appropriate use of the maritime domain and rights of access to it. By working together in appropriate regional and multilateral forums and adhering to principles that they are of benefit to all in the region, and ensure that all share equal and open access to international waterways.

The Government of USA maintains that it does not take sides on any competing sovereignty claims but opposes the use of force and actions that hinder freedom of navigation. It strongly objects to any effort that intimidates US corporations or those of any nation engaged in legitimate economic activities with direct reference to the exploration and exploitation of hydrocarbon reserves and in marine scientific research. US Defense Secretary, Robert Gates, in answering a question at the forum maintained that the US presence in the region will continue and even wagered a bet of USD100 that in 2016, the influence of the US will be just as strong and enhanced in the region as it is at present.

The Government of China has linked its fundamental interest with the world's common interest and its security with world peace. Maintaining world peace and advancing common development is an important mission for the Chinese military in

the modern era. The Government's participation in world security cooperation is by no means an enlargement in its sphere of influence or even of territorial expansion. Rather, it is for an enabling regional security environment, for interests to be shared with other nations, and for fulfillment of its due international responsibilities and humanitarian obligations. China adheres to the path of peaceful development. It is committed to mutual development and regional security. The Chinese military's outreach for international security cooperation is not intended to impair the current international system but to become a player and builder of the system, providing additional public goods to the international community so that the benefit of security could be truly shared by all.

The Government of China was represented at the Shangri-La Dialogue, by its Defence Minister, General Liang Guanglie. In his address, he advanced that his Government advocated four principles in security cooperation in Asia: (1) principle of respect and equality – accommodating each other's core interest and major concerns; (2) principle of mutual understanding and trust – fully understanding each other's strategic intentions; (3) principle of sharing weal and woe – States should not engage in any alliance targeting of a third party; and, (4) principle of openness, inclusiveness, solidarity and cooperation – welcoming all nations' contribution to the security in the Asia-Pacific region.

In the explanation of the first principle, China was seen as sending a strong message relating to presence and interest of the USA in the region, in particular the South China Sea. According to China:

Only by acknowledging that countries, big or small, strong or weak, rich or poor, are equal members of the international community, only by leaving domestic affairs to one's own and working together on affairs of shared interests through negotiation, only by advocating democracy in international relations and respecting each other's core interest and major concerns, could the Asia-Pacific region truly find its lasting peace, harmony and stability.

Claimant States in the South China Sea territorial dispute should work towards identifying and realising actual confidence-building measure (CBM) activities that would help alleviate some of the tension in the area. The Government of Vietnam considers its national security is closely linked to regional and international security. It stands ready to be a trustworthy friend and partner of countries in the international community, further promoting confidence-building, developing friendly and cooperative relationship with neighbouring States and those in the region and the world for peace, stability and development.

No changes in the diplomatic stance taken by the parties to the dispute were apparent at the Shangri-La 12 meeting held in June 2013 in Singapore.

SUMMARY

The innumerable boundary disputes and overlapping territorial claims in the South China Sea presents a dilemma as to where one State's jurisdiction ends and another commences. The Government of China's stance has been to settle the maritime sovereignty problems bilaterally. However, ASEAN adopts an alternate position – a cooperative approach – hence discussions among ASEAN members are of utmost importance. China's *status quo* policy allows that country at the same time to uphold its long-term interest – core concentration – of gaining suzerainty over the South China Sea. China's *status quo* policy is centred on remaining assertive in upholding China's claims to the islands and resources of the South China Sea while at the same time, rhetorically adopting a stance in favour of solving the territorial conflict according to international law. A number of other reasons than the focus on other foreign policy objectives may also have contributed to the "failure" of the energy policy to influence China's South China Sea stance in a more assertive drive for the petroleum of the disputed areas of the South China Sea. Primarily among which have been factors within the international petroleum markets and within China's petroleum sector.

Some political entities view China as a threat; others may suggest that economic and military rise of that country will have a gentle influence in the Asia-Pacific region. The Government of China has to be treated in a very constructive and positive manner and it in turn will respond positively. It adheres to the path of peaceful development.

The 2002 Declaration on the Code of Conduct has prevented escalation of disputes by providing the country claimants principles and norms that will govern their actions and relations; and it has encouraged the parties to conduct dialogues and exercise self-restraint with activities that will complicate or escalate disputes and affect peace and stability in the area. The Code states that there should be no disturbance in the area of dispute afterwards. However, incidents during June 2011 in the South China Sea indicate China's growing assertiveness and seeming readiness to pressure other countries to recognise its claims. The region urgently needs a revised Code of Conduct that is specifically designed for the prevention of armed conflict in the disputed areas. A number of incidents highlight what appears to be growing willingness by China to use its armed strength to pressure and influence rival claimants, particularly The Philippines and Vietnam.

As late as June 2012, the security situation in the Asia-Pacific region is generally stable as Asia leads in economic recovery; however, the situation in the South China Sea is slightly unbalanced. Collectively, the States of Southeast Asia, taking the centre and high moral ground, must engage with China in a constructive diplomatic way to secure a more peaceful and stable environment. However, in the instance of the territorial disputes, the Government of China insists that it will approach each case on a bilateral basis and not in a regional context.

The South China Sea dispute has caused a major strain in both Sino-ASEAN and intra-ASEAN relationship. The 2012 ASEAN Ministers Meeting (AMM) in Phnom Penh had not only caused a dent in the credibility of ASEAN but also escalated the dispute into a higher level of crisis where it was perceived that China had successfully divided ASEAN. Since then, Indonesian Foreign Minister, Marty Natalegawa has worked hard and succeeded in getting the Southeast Asian States to agree on a six-point statement. China's Foreign Minister, Yang Jiechi had also vowed to work with ASEAN to materialise the Code of Conduct. Despite the efforts of the ASEAN Foreign Ministers, it is clear that the South China Sea dispute has escalated again, adding another litre of fuel ready for ignition.

Beyond the ASEAN-Sino relationship, the South China Sea is also a concern because of the many important Sea Lines of Communication (SLOC) that lies within the basin. Any crisis or unrest will threaten freedom of navigation and cause disruption to the transportation of essential resources such as energy. For example, 70 per cent of Japan's energy and 65 per cent of China's were transported via SLOC in the South China Sea. One of US's motivations in its involvement in the South China Sea was also due to its concern in ensuring freedom of navigation within it. Indeed, on 20 October 2012, the United States' Navy Ship *George Washington* and its task force were on a goodwill mission to Vietnam whilst at the same time, testing its rights to navigation in the South China Sea.

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ANNEX

THE SOUTH CHINA SEA DISPUTE

A Chronology of Events on Land, at Sea and in the Air, January to October 2012

12 Jan	China announces Annual fishing ban – 16 May to 1 Aug. 2012
13-15 Jan	Official discussions on Implementation of Guidelines for CoC; The Philippines circulate Informal Working draft; ASEAN members divided on Articles III to VI.
22 Feb	Vietnamese fishing shot at and damaged near Parcel Islands
27 Feb	The Philippines offer 15 Offshore blocks for tender near Palawan Island
3 March	Chinese authorities detain 21 Vietnamese fishermen
9 March	Expansion of incursions in the Parcel Archipelago
12 March	China to send six Buddhist monks to restore temples in the Spratly Group
15 March	Vietnam accuses China of violating its sovereignty; CNOOC opens bids for 19 blocks in offshore Parcel; Fleet of 30 fishing boats escorted out; Military garrison to be established in the Parcel group.
21 March	The Philippines commence upgrade facilities of Pagagsa Island
3-4 April	Tensions surface at 20 th ASEAN Summit; ASEAN Chair endorses China's request; objections raised by The Philippines and Vietnam.
10 April	The Philippines send frigate to Scarborough Reef; investigate presence of eight Chinese boats
4 June	China and The Philippines agree to withdraw their ships from Scarborough Reef.
13 June	At 7 th meeting of ASEAN SOM agreement reached to submit Draft CoC Guidelines; China raises status of Sansha City (Woody Island); Vietnam announces its Law of the Sea legislation will take effect on 1 January 2013
14 June	China and The Philippines hold 17 th Foreign Ministry Consultations in Beijing
15 June	Two Vietnamese Air force fighter jets patrol Spratly Islands; China media downplay role of the jets.
22 June	Protests and counter protests lodged re: Sansha city establishment
23 June	CNOOC invites foreign companies to bid for nine offshore blocks in NW basin of SCS.
26 June	Six Chinese fishing boats and 17 smaller craft return to Scarborough reef lagoon; official protest lodged by Vietnam.
28 June	Ships from Sanya, Hainan Island, despatched; combat-ready patrols for disputed area.
2- 17 July	Chinese flotilla conducts drill near Zhubi, Yongshu and Huanyang Reefs.
8-13 July	At 45 th AMM key elements of CoC adopted; communiqué not issued; concerns raised over Scarborough Shoals; hydrocarbon exploration; Cambodia's attitude; and China's demands. Meeting perceived as a 'failure'.
19 July	Launch of <i>Haixun 01</i> , a 5,418 ton sip; Military command established at Sansha City; construction of military facility at Subi Reef.

- 20 July ASEAN releases "Six-Point Principles" on South China Sea; shuttle diplomacy by Indonesia.
- 12 Aug. Foreign Ministers from China and Malaysia meet.
- 25 Aug. China and The Philippine Foreign Ministers meet at various venues.
- 25 Sept. China takes delivery of ex-Russian aircraft carrier, *Liaoning*.
- October During the weeks of 1 to 21 October Chinese navy prepare for show of force in the East and South China Seas; US navy during weekend of 20 October also flexes its muscle to impress Vietnam.