



Eastern Sea Disputes and
United States Interests

By Pham Thuy Trang

Issues and Insights
Vol. 9-No. 13

Honolulu, HI
July 2009

Pacific Forum CSIS

Based in Honolulu, the Pacific Forum CSIS (www.pacforum.org) operates as the autonomous Asia-Pacific arm of the Center for Strategic and International Studies in Washington, DC. The Forum's programs encompass current and emerging political, security, economic, business, and oceans policy issues through analysis and dialogue undertaken with the region's leaders in the academic, government, and corporate areas. Founded in 1975, it collaborates with a broad network of research institutes from around the Pacific Rim, drawing on Asian perspectives and disseminating project findings and recommendations to opinion leaders, governments, and members of the public throughout the region.

Table of Contents

	Page
Acknowledgements	iv
Executive Summary	v
Introduction	1
Eastern Sea Disputes and Overlapping Sovereignty Claims	2
<i>Vietnam's claims and affirmation of it's sovereignty to the Eastern Sea</i>	2
<i>Chinese and other countries' claims to the Eastern Sea</i>	4
<i>The escalation of the Eastern Sea issue</i>	5
U.S National Interests in the Eastern Sea.....	10
<i>Freedom of navigation</i>	10
<i>Economic and security interests</i>	11
<i>Military interests</i>	13
U.S. Foreign Policy Regarding the Eastern Sea.....	14
<i>Strengthen relations with allies</i>	15
<i>Enhance relations with China</i>	15
<i>Support and encourage ASEAN to work together</i>	16
<i>Prioritize relations with Vietnam</i>	17
Conclusion	20
About the Author	23

Acknowledgements

I would like to express the deepest appreciation to Admiral Lloyd R. (Joe) Vasey, who provided the inspiration for the Lloyd R. (Joe) and Lilian Vasey Fellowship which gave me the opportunity to serve as a junior researcher at the Pacific Forum CSIS. I would like to thank Pacific Forum President Ralph A. Cossa, Executive Director Brad Glosserman, and Director of Programs Carl W. Baker for their support and guidance throughout my research project. A special thanks go to Brad, who spent time and effort editing this paper and having productive discussions with me. The staffs at Pacific Forum and my dear colleagues, Yang Young Jin, Kelly Fellow, and Catherine Boye, Monterrey Institute Fellow, all contributed ideas and technical help to make my work better.

I thank my Vietnamese teachers who discussed with me and helped me develop a correct orientation for this project. Special thanks also go to my family for their love and support. Last but not least, I would like to thank my friends in Vietnam for sharing information and ideas with me.

Executive Summary

The Eastern Sea is a large body of water with important sea routes, rich natural resources, and a strategic geopolitical position. Overlapping sovereignty claims threaten peace and stability in the Eastern Sea. Disputes over the Eastern Sea, including the Parcel and Spratly archipelagoes, have become a hot topic discussion. Navy confrontations between U.S. Navy survey vessels and Chinese ships in the Eastern Sea raise U.S. concerns about its interests here.

This research project includes three main issues. First, the project analyzes Eastern Sea disputes and overlapping sovereignty claims of Vietnam, China, and other countries. Vietnam has affirmed its sovereignty over the Spratly and Parcel archipelagos with historical evidence and legal foundations.

The history of Eastern Sea tensions is also mentioned. These tensions increased after incidents in 1974, 1988, and 1995 that marked the start of U.S. engagement in the Eastern Sea. Disputes were regarded to have been de-escalation after China and ASEAN signed the “Declaration on the Conduct of Parties (DOC)” in the Eastern Sea in 2002. However, clashes in the Eastern Sea continue and demand more attention after the naval confrontation between the U.S. and China in 2009.

Second, in the context of the escalation of tensions in the Eastern Sea, U.S. national interests are considered. The most important U.S. interest is freedom of navigation. Other important concerns include economic and energy security interests, military interests in natural resources, and military missions with U.S. allies and partners in Northeast and Southeast Asia to ensure stability and consolidate its position in the region.

Third, to protect its interests in the Eastern Sea, the U.S. has implemented the following policies: (1) strengthen relations with allies such as Japan and the Philippines; (2) enhance relations with emerging China; (3) support and encourage ASEAN to work together; and (4) prioritize relations with coastal countries such as Vietnam to seek a close relationship between the two countries’ economies and their militaries.

The changing world order and international factors complicate the Eastern Sea issue. Given recent moves by countries with sovereignty claims and recent incidents, the U.S. must update its “non-intervention” policy. Even without taking a position on any individual claim in Eastern Sea disputes, the U.S. should raise its voice to protect not only its allies and partners, but also its interests in the Eastern Sea.

Eastern Sea Disputes and United States Interests

By Pham Thuy Trang

Introduction

The Eastern Sea¹ is the second largest sea in the world, with an area of 648,000 sq. nautical miles.² The sea encompasses vital sea routes linking the Pacific Ocean, the Indian Ocean, Africa, the Middle East, and other regions with East Asia. Over half the world's merchant fleet (by tonnage) sails through the Eastern Sea every year.³ The Strait of Malacca – located at one end of the Eastern Sea – is the world's second busiest international sea lane, second only to the Strait of Hormuz.⁴ The sea is the route for most fuel transported by sea from Middle East and Africa to Japan, China, and South Korea.⁵ If the sea lines of communication were cut by armed conflict in the Eastern Sea as a result of territorial and jurisdictional disputes, the economic interests of almost all countries in the Asia-Pacific region, including the United States, would be adversely affected.

Brunei, China, Malaysia, the Philippines, Vietnam, and Taiwan island all claim jurisdictions over territorial waters and the continental shelf in the Eastern Sea. This issue has become more complicated because of sovereignty disputes over two strategic archipelagoes, Hoang Sa and Truong Sa (Paracels and Spratlys), between Southeast Asian countries, China, and Taiwan island. The Paracels are claimed by China, Taiwan island, and Vietnam, and the Spratlys are claimed in part by the Philippines, Malaysia, Taiwan island, and Brunei, and in whole by China and Vietnam. About 45 Spratly islands are occupied by small military forces from the competing claimants, apart from Brunei, which has established a fishing zone that overlaps the southern Louisa Reef. The claimant countries base their claims variously on the continental shelf principle, geography, or historical grounds. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) stated that a coastal state could claim 200 nautical miles of jurisdiction beyond its land boundaries.⁶

¹ *South China Sea* is the dominant term used in English for this body of water, and the name in most European languages is equivalent. It has different names in neighboring countries, often reflecting historical claims to the sea. In Vietnam, it is called the *Eastern Sea* (Biển Đông); this name is used by Vietnamese mapmakers in foreign-language publications. (This section draws from Wikipedia, http://en.wikipedia.org/wiki/South_China_Sea).

² Nguyen Hong Thao, "The Declaration on the Conduct of Parties in the South China Sea," in "Security and International Politics in the South China Sea," edited by Sam Bateman and Ralf Emmers, Routledge, 2009, p. 207.

³ John H. Noer and David Gregory, "Chokepoints – Maritime Economic Concerns in Southeast Asia," *Washington, DC: National Defense University Press*, 1996, p. 3.

⁴ Joshua P.H. Rowan, "The U.S.-Japan security alliance, ASEAN, and The South China Sea Dispute," *Asian Survey*, 2005, p. 415.

⁵ "The New Energy Strategy for the Peaceful Development of China," *Economy and World Policy*, 2005. About 70 percent of the fuel imports of Japan, China, and South Korea are transported through the Eastern Sea.

⁶ Joel D Adriano, "China, Philippines stoke island tensions," *Asia Times*, March 27, 2009, http://www.atimes.com/atimes/Southeast_Asia/KC27Ae02.html

Apart from those disputes, the region also requires a great number of maritime boundary delimitations – about 20 need to be settled. Moreover, piracy and armed robbery are present with about half the world’s reported cases of piracy occurring in Southeast Asia.⁷ Coastal countries also face transboundary issues such as marine pollution, and the management of highly migratory fish stocks. The Eastern Sea is an arena of competing security interests. It is in the interest of all claimants to actively seek solutions to transboundary problems, to avoid military action, and to promote the peaceful settlement of disputes through cooperation.⁸

Eastern Sea Disputes and Overlapping Sovereignty Claims

Vietnam’s claims and affirmation of its sovereignty to the Eastern Sea.

Vietnam’s sovereignty in the Eastern Sea has been long-lasting and continuous. From the remotest times, the Eastern Sea, known as the “golden sands,” was the cradle for the sea-oriented culture of the Viet people. The Eastern Sea is culturally important to the people of Vietnam as evidenced by its frequent appearance in Vietnamese folk-songs and common sayings.

*“If husband and wife get along well together,
They would easily drain of even the Bien Dong’s waters !”
“Poor Da-trang (a kind of small crab) vainly attempting
to carry sand for filling up the Bien Dong!”⁹*

Vietnam claims a significant portion of the Eastern Sea based upon its Exclusive Economic Zone (EEZ) and the continental shelf principle. Vietnam claims all the Spratly Islands, and has occupied 20 of them. Vietnam claims all the Paracel Islands despite being forcibly ejected from them by China in 1974. Vietnam also claims the Gulf of Thailand based upon its EEZ and the continental shelf principle. In 1982, Vietnam signed The Agreement on Historic Waters with Cambodia, setting the stage for cooperation between the two countries. In 2006, Vietnam and Cambodia announced their intention to share oil resources of the Gulf of Thailand. In 1992, Vietnam and Malaysia signed a Joint Development Areas agreement. In 1997, Vietnam and Thailand signed an agreement setting the delimitation of their respective sea boundaries.¹⁰

Vietnam continues to reaffirm its sovereignty over the Spratly and Paracel archipelagos. “Vietnam has adequate historical evidence and legal foundations to proclaim its sovereignty over these two archipelagos. As emphasized by the Vietnamese Foreign Ministry’s Spokesman in 1992 and 1996, Vietnam does not recognize the legal validity of any regulations on territorial waters and adjacent areas, baseline and all

⁷ *Jakarta Post*, October 22, 2003. According to the report of the ASEAN Conference on anti-piracy cooperation held in Medan, Indonesia, there were 42 pirate attacks recorded in the Strait of Malacca in 2002.

⁸ Nguyen Hong Thao, “The Declaration on the Conduct of Parties in the South China Sea,” in “Security and International Politics in the South China Sea,” op cit., p. 208

⁹ Ha Mai-Phuong & Chu Thu-Hang, “So thao dia danh Viet Nam qua Ca dao, Phong dao va Tuc ngu.”

¹⁰ “South China Sea Territorial Issues,” *Country Analysis Briefs*, March 2008,

http://eia.doe.gov/emew/cabs/South_China_Sea/SouthChinaSeaTerritorialIssues.html

activities concerned of any countries in Hoang Sa and Truong Sa archipelagos of Vietnam. China's erection of sovereignty markers at several basepoints in Hoang Sa archipelago of Vietnam violates the sovereignty of Vietnam and therefore is completely invalid. Vietnam once again reiterates its policy of resolving all disputes at sea with countries concerned through peaceful means on the basis of mutual respect for independence and sovereignty, in accordance with international law and practice, especially the 1982 United Nations Convention on the Law of the Sea and the 2002 Declaration of Conduct (DOC) in the Eastern Sea, in order to enhance friendship and cooperation and maintain peace and stability in the Eastern Sea."¹¹ "All activities conducted by Vietnam on its archipelagos and sea waters including concessions, gas exploration and exploitation are absolutely normal activities, in conformity with Vietnamese laws, international laws and practices, particularly the UNCLOS and the spirit of the 2002 Declaration on the Conduct of Parties in the Eastern Sea."¹²

The UNCLOS plays an important role in protecting Vietnam's sovereignty in Eastern Sea disputes. Many agreements on the delimitation of the territorial sea between Vietnam and other countries were negotiated based on the UNCLOS, including the agreement on the delimitation of the Gulf of Thailand with Thailand in 1997, the agreement on the delimitation of the Gulf of Tonkin with China in 2000 and the agreement on the continental shelf delimitation with Indonesia. In addition, Vietnam's position is that all disputes over the sea and continental shelf have to be solved using the UNCLOS. Vietnam and China are both members of UNCLOS. Other countries, including the U.S., agree that Eastern Sea disputes should be dealt with through international law without resort to any type of coercion.

Evidence of Vietnam's sovereignty over the Eastern Sea has been continuous since the Nguyen Lords (1558-1777) to the Tay Son Dynasty (1778-1802), to Nguyen Dynasty (1802-1945). Vietnam has official documents that record acts of possession and implementation of national sovereignty such as drawing maps, setting up landmarks, erecting monuments, building temples, planting trees and digging wells, etc. by the Nguyen Dynasty's naval forces.¹³ Eastern Sea nautical charts mapped by Western navigators and evangelists from the 16th century are the same as ancient maps mapped by An Nam¹⁴, showing the Paracel and Spratly archipelagos in the form of a pennon-shaped island chain, which is offshore Vietnam's middle and outside coastal islands, with the notations "Isle Pracel" and "Costa de Pracel" for the opposite coast. Recently, Vietnam found "a new chart of the China Sea with its several entrances, printed for Robert Sayer, London 1791" "according to the Draft of Cochinchina Pilot 1764." This chart, kept in Spain, noted "Cochinchina" (Nam Ky) under the word "Paracels," which proves that this

¹¹ Le Dung, Spokesman of the Ministry of Foreign Affairs of Vietnam, "Vietnam once again reaffirms its sovereignty over Hoang Sa and Truong Sa archipelagos," Dec. 28, 2006, http://mofa.gov.vn/en/tt_baochi/pbnfn/ns061229101042/view

¹² Le Dung, Spokesman of the Ministry of Foreign Affairs of Vietnam, "Vietnam possesses sufficient historical evidences and legal foundations to assert its indisputable sovereignty over Hoang Sa and Truong Sa archipelagos," April 11, 2007, http://mofa.gov.vn/en/tt_baochi/pbnfn/ns070412100036/view

¹³ PhD Nguyen Nha, in his speech to an international workshop on Vietnamese studies, Hanoi, December 2008.

¹⁴ An Nam is the name of Vietnam in previous periods of history.

area belonged to An Nam long time, and not to China since the second century BC as the Beijing government insists.¹⁵

China produced a map featuring a line of nine undefined dashes forming a “tongue-like configuration” or U-shaped line that has no legal foundations and is not consistent with international law. China’s boundary of the line forming the “tongue-like configuration” covers all the waters, which are 200 sea miles far from the coast, and accounts for 75 percent of the Eastern Sea area. The line forming a “tongue-like configuration” appeared for the first time around 1947 in a private, not a state-published, map, in the form of a seamless line drawn by hand. After that, the line forming a “tongue-like configuration” changed to a line of nine undefined dashes in 1950 after the People’s Republic of China was established in 1949, and a long time after Vietnam affirmed its national sovereignty on the Spratly and Paracel Islands in the Eastern Sea.¹⁶

Vietnam believes its historical evidence is more persuasive than that of China. Therefore, based on Vietnamese historical documents and research by Vietnamese scholars, Vietnam absolutely affirms that the Paracels and Spratlys belong to it.

Chinese and other countries’ claims to the Eastern Sea

China claims almost all the Eastern Sea. China claims all the Spratly Islands, and occupies several of the islands with its military. In 1974, China seized the Paracel Islands from Vietnam and continues to maintain sovereignty over them. Additionally, China claims the Pratas Islands. China’s claims to the Eastern Sea are based on the EEZ and the continental shelf principle, as well as historical records of the Han (110 AD) and Ming (1403-1433 AD) Dynasties.¹⁷ China affirms that it has indisputable sovereignty over the islands in the Eastern Sea and adjacent waters. China has stated that it has “the resolve and capability to safeguard our sovereignty and territorial integrity and will continue to be devoted to peace and stability of the Eastern Sea.”¹⁸ “The difference should be resolved in the spirit of putting aside differences and pursuing common development. To play up the differences is no good because it will not resolve the problem. China hopes that all stakeholders will implement the follow-up actions on the Declaration on the Conduct of Parties in the Eastern Sea and can act in cooperation.”¹⁹

Malaysia’s claim to the Eastern Sea is limited to the boundaries of the EEZ and continental shelf. Malaysia claims three islands in the Spratlys. It has built a hotel on one and brought soil from the mainland to raise the level of another. Malaysia makes no claim to the Paracel Islands. Malaysia also claims portions of the Gulf of Thailand, based upon

¹⁵ Nguyen Hong Thao, “Sang xu bo tot tim dau tich Hoang Sa-Truong Sa,” *Vietnam Week*, April 3, 2009, <http://www.tuanvietnam.net/vn/tulieusuyngam/6560/index.aspx>

¹⁶ Daniel Schaeffer, “Bien Dong: Nhung dieu hoang duong va su that cua duong luoi bo,” *Diplomatie* 36, January and February, 2009

¹⁷ “South China Sea Territorial Issues,” *Country Analysis Briefs*, March 2008, http://eia.doe.gov/emew/cabs/South_China_Sea/SouthChinaSeaTerritorialIssues.html

¹⁸ Jiang Yu, Chinese Foreign Ministry Spokesperson, Jan. 22, 2008, <http://www.fmprc.gov.cn/eng/xwfw/s2510/t402395.htm>

¹⁹ Yang Jiechi, Chinese Foreign Minister, March 14, 2008, <http://www.fmprc.gov.cn/eng/zxxx/t414877.htm>

its EEZ and the continental shelf principle. Malaysia signed a cooperative agreement for exploration and development with Thailand in 1979. In 1992, Malaysia and Vietnam signed a Joint Development Areas agreement. Malaysia has no such agreement with Cambodia.²⁰ On March 5, 2009 Malaysian Prime Minister Abdullah Ahmad Badawi landed on Swallow Reef and Ardasier Reef of the Spratly Islands to claim the islands as Malaysian territory.

The Philippines claim a sizeable portion of the Eastern Sea. The Philippines occupy eight of the Spratly Islands (Kalayaan in Tagalog). The Philippines do not claim the Paracel Islands. Philippine claims are based upon the EEZ and continental shelf principle, as well as a 1956 Philippine expedition.²¹ Most recently, the Philippines passed a law laying claim to some of the disputed islands in the Spratlys chain. Philippines President Gloria Macapagal-Arroyo signed a baseline bill March 10, 2009 claiming Scarborough Shoal (Chinese name: Huangyan Island) and the Spratly Islands (Chinese name: Nansha Islands). China reiterated Feb. 3, 2009 its claim to them. China protested the new Philippine law affirming sovereignty over parts of the two island groups. Beijing said it “has indisputable sovereignty” over the territories and called the Philippine claim “illegal and invalid.”²² Vietnam responded to the Philippine president’s signing of the Baseline Act saying “Vietnam has sufficient legal grounds and historical evidences to assert its sovereignty over the Paracels and Spratlys. Any acts carried out in the area by the parties concerned without Vietnam’s agreement are deemed to violate Vietnam’s sovereignty and are, therefore, legally invalid. President Arroyo’s signing of the Philippine Baseline Act on 10 March 2009, which includes the Spratlys under Vietnam’s sovereignty into the Philippines’ territory, has seriously violated Vietnam’s sovereignty over the Spratlys, further aggravated the situation, has not conformed to the Declaration of Conduct in the Eastern Sea and gone against the trend of cooperation in the region. Vietnam protests this move and appeals to the Philippines to exercise self-restraint and refrain from any acts of similar nature, which may be harmful to peace and stability in the region and the existing fine relations between the two countries.”²³

The escalation of the Eastern Sea issue

The Eastern Sea has long been a flashpoint. Fishing boats from one country are often harassed by other claimants, occasionally resulting in civilian fatalities. Companies permitted to explore for oil and natural gas by one country have been denied access to disputed areas by armed ships of other claimants.²⁴ In recent decades, Eastern Sea

²⁰ “South China Sea Territorial Issues,” *Country Analysis Briefs*, March 2008, http://eia.doe.gov/emew/cabs/South_China_Sea/SouthChinaSeaTerritorialIssues.html

²¹ “South China Sea Territorial Issues,” *Country Analysis Briefs*, March 2008, http://eia.doe.gov/emew/cabs/South_China_Sea/SouthChinaSeaTerritorialIssues.html

²² Christopher Bodeen, “China may up patrols amid South China Sea disputes,” March 19, 2009, <http://www.google.com/hostednews/ap/article/ALeqM5hUY-CITYMakNDZCbXNvCyyvYYVnUQD970U0B85>

²³ Le Dung, Vietnamese Ministry of Foreign Affairs’ spokesman, “Vietnam’s response to Philippine President’s signing of the Baseline Act,” March 12, 2009, http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090313185641

²⁴ “Regional Conflict and Resolution,” *Country Analysis Briefs*, March 2008, http://eia.doe.gov/emew/cabs/South_China_Sea/RegionalConflictandResolution.html

disputes have been increasing. Major naval and military clashes involving the use of force or the threat to use force occurred between China and two other competing states. In 1974, China invaded and captured the Paracel Islands from Vietnam. In 1988, 70 Vietnamese sailors died when China sunk several Vietnamese ships in a confrontation at Johnson Reef, also known as Fiery Cross Reef – in the Spratly Islands. In 1995, China clashed with the Philippines, a U.S. treaty ally, over Mischief Reef in the Spratlys. Some members of Congress introduced resolutions urging U.S. support for peace and stability. On May 10, 1995, the Clinton administration issued a statement opposing the use or threat of force to resolve the competing claims, without naming China.²⁵

Tension has been increasing because of the strategic position of the sea, territorial conflicts over the Paracels and Spratlys, the battle for natural resources, and because developments in the Law of the Sea have allowed countries to claim wider areas of maritime jurisdiction.²⁶ The control by one naval power of the maritime communication routes would endanger the security interests of littoral states as well as those of the U.S., Japan, and other maritime powers that use the waters.

In recent months, ships of the U.S. and China have had five incidents in the Asia-Pacific region, including two serious naval confrontations in the Eastern Sea and the Yellow Sea.²⁷ On March 8, 2009, a naval confrontation involved a U.S. Navy survey vessel, the *Impeccable*, and five Chinese ships in the Eastern Sea. On May 1, there was another incident between a U.S. Navy surveillance ship, the *Victorious*, and two Chinese fishing vessels in the Yellow Sea. In both incidents, the U.S. made official protests to China, although, the Pentagon's statement in the second incident is much softer than that of the first. In the *Victorious* incident, the Pentagon said that Chinese fishing boats engaged in "dangerous" maneuvers near a U.S. Navy ship in international waters off China. Spokesman Bryan Whitman refused to describe in detail the Chinese fishing boats' actions, and just described it as "unsafe and dangerous behavior."²⁸

In the *Impeccable* incident, the U.S. accused China of adopting a more aggressive military stance in the Eastern Sea and harassing the vessel in international waters. It called the actions dangerous, unprofessional, and in violation of international law; and said "the Chinese actions appeared deliberate." The U.S. said five Chinese vessels blocked and surrounded the *Impeccable* in international waters; the Chinese boats dropped wood debris in the *Impeccable's* path and one of the ships came within 25 feet, or 8 meters, of the U.S. ship. China has a key submarine base on Hainian Island from

²⁵ Shirley Kan, "U.S.-China Military Contacts: Issues for Congress," *CRS Report for Congress*, May 10, 2005.

²⁶ Nguyen Hong Thao, "The Declaration on the Conduct of Parties in the South China Sea," in "Security and International Politics in the South China Sea," op. cit., p. 207.

²⁷ The Yellow Sea is the name given to the northern part of the East China Sea, which is a marginal sea of the Pacific Ocean. It is located between mainland China and the Korean Peninsula. Its name comes from sand particles which originate in the Yellow River, and color its water. (This section draws from Wikipedia, http://en.wikipedia.org/wiki/Yellow_Sea)

²⁸ "New sea incident between China, US: Pentagon," *AFP*, May 5, 2009, http://www.google.com/hostednews/afp/article/ALeqM5i_TINopr_8M1spN9V_yWAnTjH71Q

which it has started operating new nuclear attack and ballistic missile submarines²⁹; this base is 75 miles north of the incident. China's Defense Ministry reiterated its demand that the U.S. Navy end surveillance missions off the country's southern coast.

U.S. National Intelligence Director Dennis Blair told Congress that China has become more assertive in staking claims to international waters around its economic zones and was "more military, aggressive, forward-looking than we saw a couple years before" in Southeast Asia and the Eastern Sea; it was unclear whether Beijing would use its growing military power "for good or pushing people around." He called the incident the most serious since a Chinese military plane collided with a U.S. electronic surveillance plane off Hainan in April 2001.³⁰ This incident was different from the incident in 2001 in that no one was killed. In the 2001 incident, a Chinese pilot died, and the U.S. plane made an emergency landing on the island. The U.S. crew was released 10 days later, and the plane returned in pieces.

U.S. President Barack Obama and Secretary of State Hillary Clinton discussed the incident with Chinese Foreign Minister Yang Jiechi during his visit to Washington D.C. on March 11, 2009. The president stressed the importance of raising the level and frequency of the U.S.-China military-to-military dialogue in order to avoid future incidents.³¹ Clinton also "raised concerns about the recent incident involving the U.S. Navy ship *Impeccable* and the PRC vessels in the Eastern Sea. We (U.S. and China) both agreed that we should work to ensure that such incidents do not happen again in the future."³²

China countered that the U.S. had distorted the truth and violated international and Chinese laws, contending that the U.S. surveillance vessel was conducting illegal activities in China's special economic zone. Chinese Foreign Ministry spokesman Ma Zhaoxu said that "The U.S. claims are gravely in contravention of the facts and confuse black and white and they are totally unacceptable to China"³³; the *Impeccable* had conducted activities in China's EEZ in the Eastern Sea without China's permission,³⁴ and "We demand that the United States put an immediate stop to related activities and take effective measures to prevent similar acts from happening."³⁵

²⁹ Hainan Island is located in the Eastern Sea.

³⁰ John Whitesides, "U.S.-China tension complicates minister's visit," *Reuters*, Mar 10, 2009, <http://www.reuters.com/article/worldNews/idUSTRE52958S20090311>

³¹ "The President meets with Chinese Foreign Minister Yang Jiechi," March 12, 2009, <http://www.whitehouse.gov/blog/09/03/12/The-President-meets-with-Chinese-Foreign-Minister-Yang-Jiechi/>

³² Hillary Rodham Clinton, "Remarks After Her Meeting With Chinese Foreign Minister Yang Jiechi," Washington, DC, March 11, 2009, <http://www.state.gov/secretary/rm/2009a/03/120284.htm>

³³ John Whitesides, "U.S.-China tension complicates minister's visit," *Reuters*, March 10, 2009, <http://www.reuters.com/article/worldNews/idUSTRE52958S20090311>

³⁴ Mark McDonald, "U.S. navy provoked South China Sea incident, China says," *International Herald Tribune*, March 10, 2009, <http://www.ihf.com/articles/2009/03/10/asia/navy.php>

³⁵ Don Lee, "China says U.S. provoked naval confrontation," *The Los Angeles Times*, March 11, 2009, <http://www.latimes.com/news/printedition/asection/la-fg-china-sea-confrontation11-2009mar11,0,4919655.story>

Vietnam also commented on the incident saying, “Vietnam holds that all activities in the Eastern Sea must be conducted in conformity with the 1982 United Nations Convention on the Law of the Sea and in respect of the legitimate rights and interests of coastal countries.”³⁶

According to official U.S. sources, the USNS *Impeccable* is a submarine-surveillance ship on a marine research mission for the U.S. navy. However, the ship operated within 200 nautical miles of Vietnam’s coastlines and China’s Hainan Island. Tran Cong Truc, former director of the Vietnamese government’s Frontiers Board, said that the *Impeccable* conducted surveillance operations on military targets within Vietnam’s and China’s special economic zone and the U.S. naval ship’s activities were wrong and violated the sovereignty and jurisdiction of related coastal countries in the EEZ in accordance with the 1982 United Nations Convention on the Law of the Sea.³⁷ He referred to:

United Nations Convention on the Law of the Sea of 10 December 1982, Section 3: Conduct and promotion of marine scientific research, Article 246: Marine scientific research in the exclusive economic zone and on the continental shelf:

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.

3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.

The U.S. often affirms its commitment to freedom of movement on the sea, and argues the substance of U.S. activities is to expand the sphere of deployment of U.S. military force over every continent by land and sea. Many discussions on the Law of the Sea were held in the U.S. and the U.S. signed the UNCLOS but has not ratified it. This allows the U.S. to leave open its right to operate on the oceans. With its power, the U.S. can pressure small countries. Small and developing countries seek to protect themselves against the activities of naval powers.

Vietnam and China are now negotiating to delimit the overlapping EEZs, proof that the EEZ does not belong to China. China’s unilateral actions have not respected Vietnam’s rights and interests, and violate the two sides’ commitments during those negotiations. Nor is the U.S. the only country with military ships in the Eastern Sea.

³⁶ Le Dzung, Vietnamese Ministry of Foreign Affairs’ spokesman, Press Conference, March 11, 2009, http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090312152347

³⁷ Tran Cong Truc, “Ung xu bien Dong: Nghien cuu ky luong, can nhac loi ich,” *Vietnam Week*, March 31, 2009, <http://tuanvietnam.net/vn/sukiennonghomnay/6532/index.aspx>

China also has ships and is upgrading its military force. Coastal states should not turn a blind eye to acts by navy powers, but should implement their jurisdiction over the EEZ to ensure conformity with the UNCLOS, protecting their legitimate interests and UNCLOS itself, which is the result of tireless efforts over nearly one century to achieve justice for countries with and without coastlines.³⁸

In the current international environment, both the U.S and China would like to “build a positive, cooperative, and comprehensive relationship ... to address common challenges and seize common opportunities,”³⁹ and “share broad common interests.”⁴⁰ The Obama administration needs Chinese cooperation on economic issues and Chinese leaders also need to build good relations with the U.S. to advance their international political objectives. Therefore, they agreed to treat the incidents as individual events.

However, two serious naval confrontations within two months prove that, although the U.S. and China have common interests, there are still disagreements over issues such as human rights in Tibet and arm sales to Taiwan. The U.S. requirement of free navigation in the Eastern Sea does not seem guaranteed.

In the long-term, the *Impeccable* incident will probably not seriously affect U.S.-China relations, but it has added one more item of contention to an already difficult relationship. Hans M. Kristensen, Nuclear Information Project director at the Federation of American Scientists, said the incident “will make life harder for those in the Obama administration who want to ease the military pressure on U.S.-Chinese relations, and easier for hard-liners to argue their case.”⁴¹ Relations between China and the Obama administration started out on positive terms when Secretary Clinton was warmly received during her visit in February to Beijing. The two sides had already agreed to resume a high-level military dialogue that was broken off last year by the Chinese in protest over a \$6.5-billion U.S. arms sale to Taiwan. Nobody can be sure that a confrontation will not happen again.

Right after the naval confrontation on March, the U.S. Navy sent destroyers to escort surveillance ships in the Eastern Sea.⁴² China also plans to boost patrols in the Eastern Sea to deal with the growing threat of illegal fishing and sharpening territorial disputes. China dispatched *Yuzheng 311*, the biggest and most modern fisheries patrol vessel, in mid-March to patrol the Spratlys (Nansha), Paracels (Xisha), and Zhongsha islands, and *Yuzheng 44183*, the largest fishery administration vessel, was dispatched in

³⁸ Tran Cong Truc, “Ung xu bien Dong: Nghien cuu ky luong, can nhac loi ich,” *Vietnam Week*, March 31, 2009, <http://tuanvietnam.net/vn/sukiennonghomnay/6532/index.aspx>

³⁹ Hillary Rodham Clinton, U.S. Secretary of State, “Remarks After Her Meeting With Chinese Foreign Minister Yang Jiechi,” March 11, 2009, <http://www.state.gov/secretary/rm/2009a/03/120284.htm>

⁴⁰ “Said Chinese Foreign Minister Yang Jiechi, Under the Influence: Challenging China with Cooperation,” *World Politics Review*, March 23, 2009, <http://www.worldpoliticsreview.com/article.aspx?id=3485>

⁴¹ Don Lee, “China says U.S. provoked naval confrontation,” *The Los Angeles Times*, March 11, 2009, <http://www.latimes.com/news/print/edition/asection/la-fg-china-sea-confrontation11-2009mar11,0,4919655.story>

⁴² “Gates hopes to call off escorts in South China Sea,” *AFP*, <http://www.google.com/hostednews/afp/article/ALeqM5gDDjIDKuWxw9IpJVQIgtvYVSSKw>

mid-May to patrol the Paracel islands in the Eastern Sea. Fisheries department director Wu Zhuang said that additional patrols were needed to handle new “challenges and complications” in overseeing the 1.16 million sq. miles (3 million sq. km) of ocean China’s claims in the Eastern Sea,⁴³ “China will make the best use of its naval ships ... and may also build more fishery patrol ships, depending on the need.”⁴⁴

After China’s dispatch of *Yuzheng 311* to the Eastern Sea, the Hanoi government said “Vietnam’s position on the Paracel and Spratly archipelagos is very clear. Vietnam closely follows the activities of vessel *Yuzheng 311* in the Eastern Sea. All exploitation activities of fishery and marine resources in the Eastern Sea should be implemented on the basis of respect for national sovereignty rights and national jurisdiction over the sea of countries concerned in accordance with international laws, including the 1982 United Nations Convention on the Law of the Sea.”⁴⁵ Many in the Philippines view China’s stepped up patrols as muscle flexing to show its growing military might against smaller claimants.

U.S National Interests in the Eastern Sea

U.S. interests in the Eastern Sea are linked to diverse and far-flung interests the country has in East Asia/Western Pacific as a regional and global power. A recent report identified U.S. national security interests as: “(1) Defense of the U.S. homeland, territories, citizens, allies, and interests; (2) Regional stability and the absence of any dominant power or group of powers that would threaten or impede U.S. access or interests; (3) Regional prosperity and the promotion of free trade and market access; (4) A stable, secure, proliferation-free global nuclear order; (5) Promotion of global norms and values, such as good governance, democracy, and individual human rights and religious freedom; (6) Ensuring freedom of navigation, which is an essential prerequisite for regional stability and the protection of American interests.”⁴⁶

These interests have remained constant even though U.S. administrations change. Indeed, the U.S. is increasingly engaged in the Asia-Pacific region.

Freedom of navigation

A key U.S. interest is freedom of navigation; indeed it might be the most important economic and security interest for the U.S. The Eastern Sea is an important trade route and the U.S considers this route international waters allowing free movement

⁴³ Christopher Bodeen, “China may up patrols amid South China Sea disputes,” March 19, 2009, <http://www.google.com/hostednews/ap/article/ALeqM5hUY-CITYMakNDZCbXNvCyvYYVnUQD970U0B85>

⁴⁴ “China mulls new sea patrols around Spratlys,” March 19, 2009, <http://www.google.com/hostednews/afp/article/ALeqM5gHn8NWTj2aX2xXlxdbBHEWjA1hVQ>

⁴⁵ Le Dzung, Vietnam Ministry of Foreign Affairs’ spokesman, “Vietnam’s reaction to China’s dispatch of vessel *Yuzheng 311* to the Eastern Sea,” Press Conference, March 17, 2009, http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090319154638

⁴⁶ Ralph A. Cossa, Brad Glosserman, Michael A. McDevitt, Nirav Patel, James Przystup, Brad Roberts, “The United States and the Asia-Pacific Region: Security Strategy for the Obama Administration,” February 2009, pp.10, 15.

for military and trade ships. “A threat to freedom of passage through the Eastern Seas would severely disrupt regional economies. America’s economic growth and security depend upon continued freedom of navigation for both merchant and military shipping.”⁴⁷

More than 60,000 ships pass through this strait every year to transport 50 percent of the world’s crude oil and 66 percent of its gas, 90 percent of the crude oil going to China, Japan, and South Korea, and 33 percent of world trade.⁴⁸ The U.S. has supported freedom of navigation all over the world, including the Eastern Sea, and has interests in sea routes in the region and in the peaceful solution of disputes in the Paracels and Spratlys, and other areas.⁴⁹

The U.S. Pacific Fleet, based in Japan, Hawaii, and Singapore and commanded by Admiral Robert Willard, operates over a large sea area from the Pacific coast of the U.S. to the Indian Ocean. The fleet includes 180 ships, 1,500 airplanes, and 125,000 soldiers, and some 50 to 60 of its ships are in transit in this area every day.⁵⁰

At the height of concerns about tensions in the Eastern Sea, then US Assistant Secretary of Defense for International Security Joseph Nye said that “If military action occurred in the Spratlys and this interfered with the freedom of the seas, then the U.S. would be prepared to escort and make sure that navigation continues.”⁵¹

Economic and security interests

Second, the U.S. would like to exploit its economic and security interests in natural resources in the Eastern Sea. The Spratlys around Palawan⁵² have rich fishing grounds and are home to various endangered marine species, including leatherback turtles, which are protected under Philippine law but are heavily prized and frequently poached by less-regulated Chinese fishermen. Some 300 million people now live in the coastal areas of the Eastern Sea and are the main consumers of fish. Per capita fish demand has increased substantially in almost every country bordering the Eastern Sea.⁵³

⁴⁷ Ralph A. Cossa, “Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict,” *A Pacific Forum CSIS*, March 1998, p. 7.

⁴⁸ Nguyen Mai, “Quan he Viet Nam – Hoa Ky huong ve phia truoc” (Vietnam – America relations toward the future), 2008, p. 126.

⁴⁹ Sen. John McCain, in a meeting at the Institute for International Relations in Hanoi, Vietnam, “My co loi trong giai quyet hoa binh tranh chap Bien Dong,” *Vietnamnet*, April 7, 2009, <http://www.vietnamnet.vn/chinhtri/2009/04/840610/>

⁵⁰ Robert Willard, “Tu lenh Ham doi Thai Binh Duong cua My tham Viet Nam: Uu tien hop tac cuu tro tham hoa,” *Tien Phong*, March 11, 2009, <http://www.tienphong.vn/Tianyon/Index.aspx?ArticleID=154769&ChannelID=5>

⁵¹ B.Raman, Institute For Topical Studies, Chennai, “Chinese Territorial Assertions: The Case of the Mischief Reef,” Jan. 14, 1999, <http://www.southchinasea.org/docs/Chinese%20Territorial%20Assertion%20The%20Case%20of%20the%20Mischief%20Reef.htm>

⁵² Palawan is an island province of the Philippines.

⁵³ J. Butcher, “The Closing of the Frontier: A History of the Marine Fisheries of Southeast Asia,” *Singapore Institution of Southeast Asia Studies*, 2004.

China and Vietnam signed two bilateral agreements, which demarcate territorial waters and EEZs and outline fisheries cooperation in the Gulf of Tonkin, or the Beibu Bay, on Dec. 25, 2000 to achieve sustainable fisheries in the Eastern Sea.⁵⁴ The U.S. will continue to have security interests in the stability of fisheries in the Eastern Sea.

More significantly, the contested islands are believed to contain significant oil and gas deposits, though estimates vary. The Eastern Sea has been identified as one of 10 major locations for oil and gas exploration.⁵⁵ Since 1972, Western oil companies explored and discovered huge oil reserves in the area around the Paracels and the Spratlys; for example, oil reserves in the Spratlys are thought to be equivalent to 100 billion barrels.⁵⁶ The first major Philippine oil discovery within the Spratly Islands occurred off the coast of Palawan in 1976. According to the US Energy Information Agency, the Eastern Sea has proven oil reserves of around 7 billion barrels while the U.S. Geological Survey has estimated the sum total of discovered oil reserves and undiscovered resources in the offshore basins of the Eastern Sea at 28 billion barrels.⁵⁷ If this figure is added to the reserves of natural gas which, according to the U.S. Geological Survey, account for 60-70 percent of the total potential hydrocarbon resources in this region,⁵⁸ the overall picture of petroleum exploration and development, even by conservative calculations, is still very encouraging.⁵⁹ For its part, China claims undiscovered reserves in the Eastern Sea could top 200 billion barrels which would be enough to provide China with 1 to 2 million barrels of oil a day, or as much as 25 percent of its current daily consumption of close to 8 million barrels.⁶⁰ China's Geology and Mineral Resources Ministry has predicted that the Spratly area holds oil and natural gas reserves of 17.7 billion tons, which if compared to the 13 billion tons held by Kuwait, would make the islands the fourth-largest reserve bed in the world.⁶¹ Vietnam Oil and Gas Corporation (PETRO Vietnam), Philippine National Oil Company (PNOC) and China National Offshore Oil Corporation (CNOOC) signed the "Tripartite Agreement for Joint Marine Seismic Undertaking (JMSU) in the Agreement Area in the South China Sea" on March 14, 2005. According to the Agreement, the three oil companies will undertake a joint research of petroleum resource potential in an area in the Eastern Sea, and are committed to strictly adhering to the 1982 UN Convention on the Law of the Sea

⁵⁴ David Rosenberg, "Fisheries management in the South China Sea," in "Security and International Politics in the South China Sea," op cit, p. 72.

⁵⁵ Mohamed Jawhar bin Hassan, "Disputes in the South China Sea: Approaches for Conflict Management" in D. da Cunha (ed.) *Southeast Asian Perspectives on Security, Singapore, Seng Lee Press, 2000*," p. 100.

⁵⁶ Nguyen Q. Thang, "Hoang Sa Truong Sa – lanh tho Viet Nam nhin tu cong phap quoc te," *Tri thuc Publishing House, 2008*.

⁵⁷ "Oil & Natural Gas," *Country Analysis Briefs, March 2008*,
http://eia.doe.gov/emew/cabs/South_China_Sea/OilNaturalGas.html

⁵⁸ Ibid.

⁵⁹ Zou Keyuan, "Cooperative development of oil and gas resources in the South China Sea," in "Security and International Politics in the South China Sea," op cit, p. 80.

⁶⁰ Peter Navarro, "China stirs over offshore oil pact," *Asia Times, July 23, 2008*

⁶¹ Joel D Adriano, "China, Philippines stoke island tensions," March 27, 2009,
http://www.atimes.com/atimes/Southeast_Asia/KC27Ae02.html

and the 2002 ASEAN-China Declaration on the Conduct of Parties in the Eastern Sea.⁶² After three years, Energy Secretary Angelo Reyes said that the JMSU, which expired July 1, 2008, “has lapsed and has not been extended” because the JMSU “undermined Philippines’ sovereignty and violated the Constitution when foreigners, particularly Chinese explorers, were allowed to conduct seismic tests in Philippine territorial waters.”⁶³

The U.S. economy was hard hit by the oil price crisis in 2008. Oil prices peaked above \$145 a barrel in July and bottomed out below \$34 a barrel in December 2008; as of this writing they remain within a trading range of \$45-\$55 a barrel.⁶⁴ The U.S. has developed alternative energies such as wind, solar, biomass and nuclear, etc. but they are not yet able to replace oil and gas energy. Therefore, the U.S. still needs to exert its influence and control in areas believed to hold huge oil and natural gas reserves, including the Eastern Sea.

However, the oil reserves of the Eastern Sea are still uncertain and initial estimates have been lowered. As oil prices have risen substantially, the situation in the Eastern Sea could get tense if proof was found of sufficient oil reserves for commercial use.⁶⁵

Military interests

Third, the Eastern Sea is an important link in the U.S. defense system because of traditional and nontraditional security challenges such as pirate attacks and terrorism, especially in the Malacca Strait. The U.S. proposed the “Regional Maritime Security Initiative” (RMSI) in April 2004 to develop a partnership of willing regional nations of varying capabilities and capacities to identify, monitor, and intercept transnational maritime threats under existing international and domestic laws.⁶⁶ Since then, the U.S. has sent marines and task forces to the Malacca Strait to prevent terrorism, pirate attacks, and the drug and slave traffic through maritime routes. The initiative is strongly objected to by Malaysia and Indonesia: they affirm that the security of the Malacca Strait is the responsibility of littoral countries.

U.S. military bases in Japan and Philippines aim to meet U.S. security obligations to Japan and its defense commitments to the Philippines underpin its interests in the area, as do perceptions of the U.S. as a “balancer” to China in the region. The Eastern Sea, connecting the Indian Ocean and the Pacific, is the theater for the U.S. 7th Fleet in the

⁶² Le Dzung, Vietnam Ministry of Foreign Affairs’ spokesman, “Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the Eastern Sea,” March 14, 2005, http://mofa.gov.vn/en/tt_baochi/pbnfn/ns050314164241/view

⁶³ Donnabelle Gatdula, “Joint exploration pact lapses,” July 12, 2008, <http://www.philstar.com/Article.aspx?articleid=72482>

⁶⁴ Brian Baskin, “OIL FUTURES: Crude Shoots Above \$52/Bbl On Rising Equities,” *Dow Jones Newswires*, April 9, 2009, <http://online.wsj.com/article/BT-CO-20090409-708352.html>

⁶⁵ Ralf Emmers, “The de-escalation of the Spratly dispute in Sino-Southeast Asian relations,” in “Security and International Politics in the South China Sea,” op cit., p. 137.

⁶⁶ <http://www.globalsecurity.org/military/ops/rmsi.htm>

West Pacific. After the U.S. and Philippines signed the “Agreement on exchanging military missions between the two countries” in 1995, the 7th Fleet was allowed to again cast anchor in Philippine harbors on the Eastern Sea.

U.S. Foreign Policy Regarding the Eastern Sea

U.S. policy toward the Asia-Pacific region has been consistent for many years and the broad outlines of that policy will continue under the Obama administration. First, the U.S. has calmed ASEAN’s nerves regarding an emerging China and continues to support ASEAN. Second, the U.S. has encouraged Southeast Asian countries to open their markets to foreign exporters, which has created successful economies in this region.⁶⁷

U.S. foreign policy in the Eastern Sea has focused on protecting U.S. interests and allies, balancing China’s power, and reassuring its economic and security interests. The U.S. closely watches developments and does not want to see disputes settled by force. It also wants to maintain a balanced relationship with coastal countries in the Eastern Sea. The U.S. considers Southeast Asia a key link in the Asia-Pacific region. Since the end of the Cold War, the U.S. sought to control Southeast Asia to gain geostrategic advantages with the aim of preventing the emergence of other powers, especially China. In Washington, China’s actions in Southeast Asia were seen as part of a broader pattern of provocative behavior by Beijing, including expanded territorial claims and stepped-up military activities.

For a long time, the U.S. had a policy of “non-intervention” regarding disputes in the Eastern Sea. Since the Cold War, the U.S. has become more concerned about disputes there arising from competing claims and unilateral activities by many countries.⁶⁸ “The question of maritime jurisdiction between countries, especially when there are disagreements, must be settled by those countries themselves in accordance with the United Nations Law of the Sea Convention.” The U.S. does not “take a position on the merits of these particular disputes,” but “does believe they should be dealt with peacefully and without resort to any type of coercion,” and does believe that U.S. companies “have the right to engage in the activities in which they are engaged.”⁶⁹ Relations in Southeast Asia are regarded as quite stable, and not as complicated or sensitive as the dispute between Japan and South Korea on Tokdo/Takeshima Island. Therefore, the U.S. believes that China and Southeast Asia countries should cooperate to deal with Eastern Sea disputes to achieve long-lasting solutions.

The U.S. position on the UNCLOS is complicated. It has been a contentious issue in the U.S. for a quarter of a century. The UNCLOS was supported by the U.S. Navy and signed by President Clinton in 1994, but was not ratified by the Senate because of the belief that it posed risks to U.S. interests, such as those regarding the settlement of

⁶⁷ Charles B. Salmon Jr in an interview, “Tranh chap Bien Dong: Can hop tac va dung luat quoc te,” Dec. 9, 2008, <http://www.tuanvietnam.net/vn/tulieusuyngam/5531/index.aspx>

⁶⁸ ARF annual security outlook “The United States,” <http://www.aseansec.org>

⁶⁹ John D. Negroponte, U.S. Deputy Secretary of State, in Press Conference, in Hanoi, Vietnam, Sept. 12, 2008, <http://vietnam.usembassy.gov/pr091208.html>

disputes, royalties on the exploitation of resources on the deep seabed, and the empowering of an additional U.N.-affiliated international bureaucracy.⁷⁰

After the Mischief Reef dispute between China and Philippines in February 1995, the Clinton administration reacted cautiously and confined itself to a reiteration of long-standing policy on the Eastern Sea. The State Department said that “The U.S. strongly opposes the threat or use of military force to assert any nation’s claim. The U.S. takes no position on the legal merits of the competing claims and is willing to assist in the peaceful resolution of the dispute.” In addition, “the U.S. would view with serious concern any maritime claim or restriction on maritime activity in the Eastern Sea that was not consistent with international law.”⁷¹

Strengthen relations with allies and partners

To safeguard its interests, the U.S has strengthened relations with allies such as Japan and Philippines to deploy its military forces, reassure regional security, and its position in the Eastern Sea. The U.S.-Japan security alliance, operating in conjunction with ASEAN, can foster long-term solutions in the Eastern Sea.

The U.S. has encouraged Asian countries to develop multilateral security relations. To deal with the Spratly Islands’ issue, the U.S. has stressed the importance of its military alliance with Philippines and supported ASEAN’s efforts to build a multilateral mechanism.⁷²

Enhance relations with China

The U.S. is concerned about China’s declaration of the Law of Territorial Waters, the claims to legal sovereignty in the Eastern Sea, China’s increasing military budget, and Chinese economic and military activities to express its sovereignty while ignoring the objectives of other countries.

The U.S. has enhanced its relationship with China, partnering to cooperate in oil and gas exploitation, especially during the current global economic crisis, and combating piracy to preserve safety of navigation in the Eastern Sea. This comes at the same time that Washington is closely monitoring China’s increasing navy power and its movements in the region. Adm. Willard, commander of the U.S. Pacific Fleet, said during a visit to Vietnam that the U.S. is “interested in, but not concerned” about China’s ambition to

⁷⁰ Edwin Meese, III, Baker Spring, and Brett D. Schaefer, “The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits,” *The Heritage Foundation*, May 16, 2007, <http://www.heritage.org/research/internationalorganizations/wm1459.cfm>

⁷¹ B.Raman, Institute For Topical Studies, Chennai, “Chinese Territorial Assertions: The Case of the Mischief Reef,” January 14, 1999, <http://www.southchinasea.org/docs/Chinese%20Territorial%20Assertion%20The%20Case%20of%20the%20Mischief%20Reef.htm>

⁷² “America: Adjustment in Foreign Policy,” *Vietnam News*, Reference No 10-2002, pp. 55-56.

float an aircraft carrier.⁷³ The U.S. would like to enhance military cooperation between the U.S. and China as then the two navies could contribute to the security of the Asia-Pacific and the Eastern Sea.

The U.S.-China relationship is making progress. The naval confrontation in March 2009 is evidence of how complicated this relationship is. Adm. Timothy J. Keating at U.S. Pacific Command told the Senate Armed Services Committee that the U.S. has made “some real headway” in improving relations with China, but “the relationship isn’t where we want it to be.” For example, China suspended military-to-military activity in response to the U.S. announcement of arms sales to Taiwan, the top officer at U.S. Pacific Command told the Senate Armed Services Committee.⁷⁴

Support and encourage ASEAN to work together

Third, the U.S. has supported and encouraged ASEAN nations to work together to peacefully solve Eastern Sea disputes to maintain stability in the region. The U.S. has developed an informal coordinating mechanism⁷⁵ which is harmonious for both sides based on international laws such as the UNCLOS and is believed to minimize tensions and create a precedent for dealing with intelligence gathering by countries outside ASEAN members’ exclusive economic zone. The U.S. wants the sides to solve definitively disputes as soon as possible to create a stable and peaceful environment.

The U.S. also intends to “begin the formal interagency process to pursue accession to the ASEAN Treaty of Amity and Cooperation,”⁷⁶ and “explore how best to engage with the East Asia Summit Process.” ASEAN is important to the U.S. and at the core of the emerging regional structures of cooperation throughout Asia to which the U.S. is deeply committed.⁷⁷

ASEAN and China signed the “Declaration on the Conduct of Parties (DOC)” in the Eastern Sea on Nov. 4, 2002, the first political document relating to the Eastern Sea concluded between ASEAN and China. The DOC is “designed to reduce tensions, promote cooperation, build confidence between ASEAN and China, and create favorable conditions for the settlement of disputes in the Eastern Sea through peaceful negotiations, consultations, cooperation, and other confidence-building measures. The DOC provides a

⁷³ John Ruwitch, “U.S. watching, not worried about China carrier: admiral,” *Reuters*, March 9, 2009, <http://www.reuters.com/article/newsMaps/idUSTRE5280SH20090309>

⁷⁴ Donna Miles, “More Work Needed in Military Relationship With China, Admiral Says,” March 19, 2009, <http://www.defenselink.mil/news/newsarticle.aspx?id=53559>

⁷⁵ “10th Meeting of the ASEAN – United States Informal Coordinating Mechanism Singapore, 4- 5 December 2008,” December 6, 2008, <http://www.mutrap.org.vn/en/Lists/Posts/Post.aspx?List=04b7f557%2D7dc2%2D4103%2D91f3%2Da38d33dc893d&ID=65>

⁷⁶ This Treaty aims to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship.

⁷⁷ Secretary Clinton said in her first visit to the ASEAN Secretariat, James B. Steinberg, “Engaging Asia 2009: Strategies for Success,” *Deputy Secretary of State, Bureau of Deputy Secretary*, Remarks At National Bureau of Asian Research Conference, Washington, DC, April 1, 2009, <http://www.state.gov/s/d/2009/121564.htm>

framework of conduct for all parties, ASEAN members, whether directly or indirectly concerned in the disputes, and China.”⁷⁸ The U.S. considers the DOC to be “a non-binding agreement to resolve disputes diplomatically, exercise restraint, and respect the freedom of navigation and over flight.”⁷⁹ “The major achievement of the DOC was on de-escalating the sovereignty and jurisdictional disputes and preventing potential conflict in the Eastern Sea. ‘More contact, less confrontation’ has become the main spirit for ASEAN-China. Thailand, Vietnam, and Malaysia have established mechanisms for security dialogues with China. New hotlines have been set up between the naval forces of China and the ASEAN countries. In April and November 2006, the two first joint patrols were conducted by Chinese and Vietnamese naval forces in the Gulf of Tonkin. The success of the implementation of the DOC can lead toward a regional code of conduct. The DOC is gradually being recognized as a guideline for behavior and state-to-state relations over the Eastern Sea issue. The implementation of the DOC has a double objective: to formulate trust and confidence among the claimants and to lead to the establishment of a Regional Code of Conduct in the Eastern Sea.”⁸⁰ Vietnam has actively participated in the ASEAN and made important contributions to boosting the efficiency of the Declaration of Conduct (DOC) which aims to become a Code of Conduct (COC) in the Eastern Sea.

The level of tension in the Eastern Sea has been considerably reduced since 2002. However, the parties continue activities that could spark clashes. Each year China has conducted maritime research in areas adjacent to the coasts of other countries in the Eastern Sea.⁸¹ Tensions between China and ASEAN countries such as Vietnam, the Philippines, and Malaysia have negatively effected their relations.

Prioritize relations with Vietnam

Fourth, the U.S. has prioritized economic and military relations with small coastal countries such as Vietnam to enhance peace and stability in the Eastern Sea. The U.S.-Vietnam relationship has improved since the normalization of diplomatic relations between the two countries on July 11, 1995. In 2008, two-way trade turnover between Vietnam and the U.S. was \$15 billion, and the U.S. is one of the 10 largest investors in Vietnam.⁸² John Negroponte, former deputy secretary of State, recognized Vietnam’s positive changes and applauded its 7-8 percent growth of the past decade.⁸³

⁷⁸ Nguyen Hong Thao, “The Declaration on the Conduct of Parties in the South China Sea,” in “Security and International Politics in the South China Sea,” op. cit., p. 210.

⁷⁹ Mark E. Manyin, “U.S.-Vietnam relations in 2009: Current issues and implications for U.S. policy,” *Congressional Research Service*, Feb. 5, 2009, p. 22.

⁸⁰ Nguyen Hong Thao, “The Declaration on the Conduct of Parties in the South China Sea,” in “Security and International Politics in the South China Sea,” op cit., pp. 210, 219

⁸¹ *Ibid.*, p. 211.

⁸² Nguyen Tan Dung Prime Minister said in talks with Senator John McCain, Xuan Linh, “My co loi trong giai quyet hoa binh tranh chap Bien Dong,” *Vietnamnet*, April 7, 2009, <http://www.vietnamnet.vn/chinhtri/2009/04/840610/>

⁸³ Xuan Linh, “Tranh chap Bien Dong phai duoc giai quyet theo Luat Bien Lien Hop Quoc,” *Vietnamnet*, September 12, 2008, <http://vietnamnet.vn/chinhtri/2008/09/803322/>

Vietnam's oil and gas enormous potential and reserves, determined to be from 0.9 to 1.2 billion m³ of oil and from 2,100 to 2,800 billion m³ of gas, are an opportunity for U.S. investment. About 40-60 percent of Vietnam's natural gas reserves will be explored by 2010. Conoco Phillips, one of the biggest foreign investors in Vietnam, has invested more than \$1 billion over the last decade.⁸⁴ Since 1994, U.S. oil companies such as Exxon Mobil and Conoco Phillips have worked with Vietnam to carry out oil exploitation in Tu Chinh-Vung May and South Con Son, mapping areas in Vietnam's territorial waters.

After China exerted pressure to stop cooperation in oil and gas exploration between U.S. companies and Vietnam in 2008, U.S. Ambassador to Vietnam Michael Michalak said that the U.S. supports "continued investment ties between the U.S. and Vietnam in all areas," does not "take sides on the legal merits of the competing claims in the East Sea," "objects to any pressure or any attempt to put pressure on U.S. firms operating in that area," and "continues to urge the government of Vietnam, the government of China, and particularly ASEAN to work together to try to come to a rapid resolution of the various competing claims" in the Eastern Sea.⁸⁵

The U.S. seeks a close relationship between the two countries' economies and their militaries. Adm. Willard said that the U.S. and Vietnam share concerns on maritime security, and both seek to stop illegal activities on the Eastern Sea such as drug trafficking and terrorism, and want to cooperate to provide sea disaster relief and other activities.⁸⁶ The recent visit of a high-profile delegation from the Vietnamese Defense Ministry on April 22 to the nuclear-powered aircraft carrier *USS John C. Stennis* while it was docked in international waters in the Eastern Sea off Con Dao Island showed the development of bilateral naval ties. Both Col. Nguyen Huu Vinh, deputy chief of the Vietnam Navy, and Ambassador Michalak agreed that the visit "has boosted bilateral understanding," "was a step toward closer cooperation between the Vietnamese and U.S. navies," and "will strengthen cooperation for the sake of regional and global peace."⁸⁷

U.S. interests have been threatened by the escalation of Eastern Sea disputes and the improvement of China's naval forces in the region. Recently, Adm. Timothy J. Keating, former commander of U.S. Pacific Command, said that recent strategic actions by China's naval force showed its ambitions.⁸⁸ No longer content with "nonintervention," the U.S. is increasingly engaged in the Eastern Sea. Even without taking a position on any individual claim in any dispute, the U.S. should raise its voice clearly to protect not only its allies and partners, but also its interests in the Eastern Sea.

⁸⁴ "Dau khi Viet Nam," *Vietnam Ministry of Foreign Affairs*, August 25, 2006, http://www.mofa.gov.vn/vi/tt_baochi/nr041126171753/ns060824151244

⁸⁵ Press Conference, January 20, 2009, <http://vietnam.usembassy.gov/ambspeech012009.html>

⁸⁶ Xuan Linh, "Viet - My thao luan ve an ninh tren Bien Dong," *Vietnamnet*, March 9, 2009, <http://vietnamnet.vn/chinhtri/2009/03/834991/>

⁸⁷ An Dien, "Vietnamese military delegation calls on US aircraft carrier," *Thanh Nien*, April 23, 2009, <http://www.thanhniennews.com/politics/?catid=1&newsid=48292>

⁸⁸ Linh Huong, "Hai quan Trung Quoc va du tinh "chia doi Thai Binh Duong," *Vietnam Week*, March 1, 2009, <http://www.tuanvietnam.net/vn/tulieusuyngam/6249/index.aspx>

First, freedom of navigation interest is being threatened. China treats the nine-dashed line as a de jure claim to the entire sea. If this claim were accepted, freedom of navigation there would vanish, crippling seafaring transportation in Southeast Asia. Concomitantly, after ratifying the 1992 ASEAN Declaration on the Eastern Sea, China drew territorial lines around the Paracel Islands and suggested that it might take similar action on the Spratlys. If this were accepted, China could demand that vessels entering and leaving the Eastern Sea obtain its permission to do so, further restricting international sea lanes. As Harvey Feldman, a former U.S. ambassador in Asia noted, this would turn the South China Sea into a “Chinese lake.”⁸⁹

Second, U.S. business interest is also affected. As one government official was quoted in the *Far Eastern Economic Review*, “We don’t want our companies drilling for oil in disputed areas. They can’t expect the U.S. Government to help later if they have problems.”⁹⁰ The supply of energy and its unimpeded transportation are a major security and economic interest for regional states and extra-regional powers have an interest in keeping sea lanes secure and stable. Chinese marine power is increasing and consolidating in the Eastern Sea. The Chinese energy firms CNPC, Sinopec, CNOOC, and PetroChina have spent billions of dollars on oil and gas production deals around the world during the last two years. In November 2008, China’s CNOOC declared a \$29 billion exploration plan in the Eastern Sea. China also has purchased a stake in the North West Shelf liquefied natural gas project in Australia in early 2007. To further enhance its sea-trade capacity, China recognizes the importance of the shipbuilding industry as indicated by its construction of the largest shipyard in the Shanghai estuary. In fact, China in the early 15th century led the world in ship construction, navigational science, and oceanography as was demonstrated by China’s Admiral Zheng He. Presently, China has the world’s third largest shipbuilding industry, which accounts for 10 percent of the global market in terms of dead weight ton production. The launching of the Dalian Shipbuilding Industry Corporation in 1998 is another landmark and expects a return exceeding \$9.9 billion by 2010. This is another Chinese effort to emphasize the importance of maritime capability.⁹¹

With its increasing power, China has implemented activities to affirm its sovereignty and control drilling activities of countries in the Eastern Sea by pressuring extra-regional powers such as the United States and United Kingdom, who seek to cooperate with coastal countries for exploration of oil and gas resources. In July 2008, China forced U.S. oil giant Exxon Mobil to suspend drilling in Vietnam’s territorial waters, explaining that it is taking place in disputing waters, although it is within 200 nautical miles of Vietnam’s continental shelf, and warned the project could threaten future mainland contracts. After that, Exxon Mobil halted its shared exploration plan with PetroVietnam. Its senior executives said that “Vietnam would probably prevail in international mediation. But it’s political, too. China’s concerns make the situation much

⁸⁹ Joshua P. Rowan, “The U.S.-Japan security alliance, ASEAN, and The South China Sea Dispute,” *Asian Survey*, 2005, p. 429.

⁹⁰ Susumu Awanohara, “Washington’s Priorities,” *Far Eastern Economic Review*, Aug. 13, 1992, p. 18.

⁹¹ Ramli H Nik, Senior Researcher, “The South China Sea: from hostility to stability,” *Maritime Institute of Malaysia*, May 2007, pp.10-11

more complicated for a company like Exxon,” “China is a very important player in the international oil industry.”⁹² Exxon Mobil’s decision was the same as that of Conoco Phillips, another U.S. oil company, in May 2008. China’s interference in economic cooperation between Vietnam and U.S. oil companies is unlawful according to the UNCLOS, and creates a misunderstanding among other countries that China’s action is due to Eastern Sea disputes. In fact, almost all Tu Chinh-Vung May and the Nam Con Son Basin areas are in the South boundary with Indonesia and Malaysia, and within 200 nautical miles of Vietnam’s coast. Vietnam sovereignty in these areas is not affected by claims by any country regarding the Spratlys and Paracels.

The U.S. government only expressed its worry, saying it followed the situation, suggested the use of peaceful methods in international disputes, and supported freedom of navigation, without offering any official direct or indirect criticism of China. The U.S. ambassador, when asked by a BBC journalist about Exxon Mobil being under pressure from China to stop a project in the South China Sea, explained “We certainly don’t like anybody interfering in commercial operations of companies that are trying to carry out their commercial contracts, and I think it’s up to the companies to decide where they would like to work and with whom they would like to work. Some of our companies are as big as small countries themselves, so we pretty much leave it up to them where they want to work.”⁹³ The U.S. attitude proved that the U.S. is concerned about China and U.S.-China relations, and is pressured by China, who wants to warn companies, who would like to explore in the disputed waters, of not having opportunities to work with China. This position is a mistake. The U.S. government should clearly express its view of issues in the Eastern Sea, and support small countries to protect its economic interests and the U.S. companies operating in the Eastern Sea.

Third, even if the U.S. does not want to get involved in disputes in the Eastern Sea, overlapping sovereignty claimants still cause difficulties for U.S. activities in the region. The air and naval confrontations between the U.S. and China in 2001 and 2009, respectively, are evidence of this.

The U.S. needs to maintain security, ensure freedom of navigation, and fight piracy and terrorism in the Eastern Sea. The U.S. should also press countries to refrain from using the threat of violence and to pursue peaceful negotiations to resolve disputes. The U.S. government and oil companies should continue their cooperation with Vietnam and other small countries.

Conclusion

Eastern Sea disputes are long-lasting issues because of overlapping claims and multilateral involvement in international waters. In every situation, Vietnam steadily reaffirms its sovereignty over the Spratlys and Paracels and asserts its historical evidence

⁹² “China warns Exxon Mobil over Vietnam deal,” July 20, 2008, http://www.aseanaffairs.com/page/china_warns_exxonmobil_over_vietnam_deal

⁹³ Ambassador Michalak, “1st Anniversary Press Conference,” Aug. 20, 2008, <http://vietnam.usembassy.gov/ambspeech082008.html>

and legal foundations to its claims over these two archipelagos. In the context of escalation in Eastern Sea disputes, U.S. interests have been threatened. Washington seems to be changing from “non-intervention” to “part intervention” in its foreign policy toward coastal countries and ASEAN in the Eastern Sea. The U.S. government and oil companies should maintain cooperation with Vietnam for mutual benefits. Vietnam always supports peaceful resolution of all disputes at sea on the basis of mutual respect for independence and sovereignty, in accordance with international law and practice, especially the 1982 United Nations Convention on the Law of the Sea and the 2002 Declaration of Conduct (DOC) in the Eastern Sea.

About the Author

Ms. PHAM Thuy Trang was the Pacific Forum CSIS 2009 Vasey Fellow. Ms. Trang received her Bachelor of Arts in International Economics at the Institute for International Relations in Hanoi, Vietnam in 2006. Since 2007, Ms. Trang has been working as an official in the Americas Department, Ministry of Foreign Affairs in Hanoi, Vietnam. Her research interests include U.S. and Asia countries relations, especially U.S.-China-ASEAN trilateral cooperation.