Conflict Management in the South China Sea

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Abstract

China’s diminishing economic growth rates, increasing maritime military capabilities, and rising nationalism, combined with new fiscal and political constraints on U.S. military capabilities, jeopardize the stability of the South China Sea region. Multiple overlapping territorial claims have long rendered the area a latent flashpoint. Shifts in the international balance of power now threaten to bring these competing interests to the fore. How these disputes are handled offers an important case study in modern international conflict management. Will nationalism drive state behavior pursuant to realist predictions of power politics? Or will international institutions provide for conflict management of a multilateral character in accordance with liberalism? Can new norms based on post-sovereign identities arise to ameliorate conflict? This paper examines the interests at stake, the likely options available to all parties, and the consequences for the surrounding region.
I. Introduction

Conflicting territorial claims in the South China Sea present an important test for theories of International Relations. Realism’s focus on power, liberalism’s emphasis on economic interdependence and international institutions, and constructivism’s concentration on identity offer different perspectives on how the dispute will proceed. While claimants include a single great power (China\(^1\)) and a handful of lesser powers (Brunei, Malaysia, Philippines, Taiwan, and Vietnam), the issues at stake bear upon the interests of other major powers in the region (Japan, South Korea) as well as the global superpower (United States). Moreover, the Philippines enjoys the protection of an express defense treaty with the United States, bringing balance of power and reputational concerns of credible alliance commitments into play. From a liberal perspective, bilateral trade between China and the various claimants is extensive, while numerous diplomatic institutions are found within the region. Thus factors liberalism highlights as suggestive of optimism for peaceful conflict management are in place. Lastly, the pan-regional consciousness and the alternative post-sovereign identity advanced by constructivism find strong advocates in various organizations in East Asia.

The South China Sea encompasses numerous interests, both regionally and globally. First, the geographic position of the sea provides it with clear strategic significance.\(^2\) Semi-enclosed by the island nations of Southeast Asia to the south and east, and by mainland Asia to the west and north, with Taiwan bounding the northeast, the sea provides a maritime highway for both trade and hostile approaches to the bordering states. Thus, both the economic health and the security of the coastal states are dependent, in varying degrees, on the stability of the maritime environment. The sea, by way of the Strait of Malacca, also provides the shortest route for vessels transiting between the Indian Ocean and Northeast Asia. Nearly one third of global crude oil and over half of liquefied natural gas, along with more than half of global merchant tonnage, pass through the South China Sea.\(^3\) Accordingly, freedom of navigation in these waters is a major interest for states outside the region.

Second, the seabed underneath these waters is believed to contain significant fossil fuel reserves. The U.S. Energy Information Administration estimates there are proven or probable reserves of 11 billion barrels of oil and 190 trillion cubic feet of natural gas in the South China Sea, while the U.S. Geologic Survey estimates between 5-22 billion barrels of oil and 70-290 trillion cubic feet of natural gas of additional undiscovered reserves. More optimistically, China’s National Offshore Oil Company estimates there may be 125 billion barrels of oil and 500 trillion cubic feet of natural gas in undiscovered reserves.\(^4\) Most of the proven reserves lie closer to shore, with difficulties attendant to deep-water drilling rendering exploitation of the

\(^{1}\) For ease of reference, the People’s Republic of China will be referred to as “China” in this paper while the Republic of China will be referred to as “Taiwan.”


\(^{4}\) Ibid.
more distant areas infeasible in the short term. However, increasing global demand for energy, particularly in newly industrializing areas in East Asia, elevates this resource potential to a vital interest for the claimants.

Third, overfishing in coastal areas has pushed national fishing fleets farther away from shore and into competition in the South China Sea, especially around the reefs and atolls of the Spratly Islands that are home to rich fish stocks. Coastal states view this as an issue of both food security and economic well-being. Sovereignty over islands carries with it exclusive fishing rights over a sizeable surrounding sea, making even those areas devoid of fossil fuel reserves important.

Fourth, territorial claims are imbued with nationalist significance. Even where the subject territory is devoid of strategic or economic significance, governments are loathe to make concessions. As a central defining element of statehood, territory is intimately involved with matters of national identity, sovereign independence, and international prestige. Empirical studies show territorial conflicts are among the most difficult to resolve and among the “most war prone of all issue types.” Thus, the intangible components of the South China Sea dispute, as well as the tangible issues, are of major importance.

Finally, both regional and global states have an interest in how the conflicting claims are handled. Specifically, will the claimants comply with international law or will raw power determine the outcome? For example, China’s conduct in the South China Sea is seen in Tokyo as having a direct bearing on China’s likely position regarding the Senkaku Islands (Diaoyu Islands) in the East China Sea. Smaller states want to see whether China will exert its power or agree to pacific dispute resolution. U.S. allies want to see whether the United States will attempt to balance China if power becomes the primary currency of the conflict, and to what extent an alliance with the United States is reliable in the face of an American military drawdown. Both Chinese and U.S. policy choices in the South China Sea will reverberate globally.

II. Competing Claims

The South China Sea conflict involves multiple overlapping claims among six different governments. Within the sea are two main sets of contested land features: the Paracel Islands and the Spratly Islands. In addition, more isolated reefs, atolls, and shoals are the subject of dispute. Brunei has the smallest claim, asserting rights over a straight-line rectangular extension of its continental shelf that extends into areas contested by each of the other claimants. Malaysia claims rights over land features in the southern part of the South China Sea, to include some of

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7 A third island group, the Pratas Islands, are claimed by both China and Taiwan, but no one else. Taiwan controls the main island, with a military camp and airstrip. This matter falls more properly under the broader China-Taiwan dispute and thus will not be covered here.
the Spratly Islands, bringing its claims into conflict with each of the other claimants. The Philippines claims most of the Spratly archipelago, naming it the Kalayaan Island Group (KIG), along with Scarborough Shoal. Parts of the KIG claim are contested by each of the other claimants, with Scarborough Shoal contested by China and Taiwan. Vietnam claims the entirety of the Paracels and the Spratlys. China and Taiwan have identical positions that at a minimum assert claims to the entirety of the Paracels, Spratlys, and Scarborough Shoal, and at a maximum claim most of the South China Sea as sovereign waters independent of the land features. Each of the claimants except Brunei has occupied at least one of their claimed islets; however, China has been the sole occupant of the Paracels since forcibly expelling the Vietnamese in 1974.

China’s exact position is unclear. Customary international law, reflected in the United Nations Convention on the Law of the Sea (UNCLOS), provides that the land dominates the water. In other words, states can only claim maritime space based upon title to an adjacent land feature. A state cannot assert sovereign control over water as if it were land. For example, the United States could not claim sovereignty over the entire Gulf of Mexico as U.S. waters. At most, it could make limited claims from its coastline and from any islands within the Gulf that were under U.S. sovereign control. China, following the lead of the prior nationalist Chinese government in 1947, has put forth a “nine-dash line” that includes almost the entire South China Sea (See Figure 1). It is not clear whether the line is meant to encompass all of the land features within the line’s borders, along with the adjacent, but limited, maritime space, or both the land and the entire maritime space within the line’s borders. Suggesting the former, China has delimited baselines around the Paracels - an act which would be unnecessary if claiming everything in the South China Sea.8 Suggesting the latter, China has enacted domestic law, such as 1992’s “Law on the Territorial Waters and the Contiguous Areas,” that claims jurisdiction over the entire sea, as well as domestic regulations that demand all foreign fishing vessels register with Chinese government to obtain permission to operate within waters of the nine-dash line, at risk of seizure and fines.9 Furthermore, it sends maritime patrols throughout the entire South China Sea. Somewhat ambiguously, China claims it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”10 It is unclear what the phrase “sovereign rights and jurisdiction over the relevant waters” means in this statement. However, China’s extraordinarily broad claims under the nine-dash line likely reflect the proximity of the proven energy reserves to the coastlines of the Southeast Asian states.

9 Hainan Province’s Measures to Implement the Fisheries Law of the PRC, and Fisheries Law of the PRC, as cited in Pedrozo, 24.
FIGURE 1: South China Sea

Source: Courtesy of the University of Texas Libraries, The University of Texas at Austin.
III. Current Situation

In 1978, Deng Xiaoping adopted a policy aimed at shelving attempts to settle conflicting claims of sovereignty, instead focusing on joint development. This policy has not always been followed since then, as most clearly evidenced by China’s March 1988 confrontation with Vietnamese troops near Johnson Reef that resulted in approximately seventy Vietnamese deaths and was followed by Chinese occupation of various features within the Spratlys. In 1995, Chinese construction on Mischief Reef was discovered by Filipino authorities, leading to heightened Chinese-Philippines tensions. China returned to a less aggressive stance during the first decade of the 21st century, as the South China Sea conflict fell off the international radar with the onset of al-Qaeda’s 2001 attacks and the subsequent U.S. response.

Over the past five years, tensions in the region have risen again. Confrontations between Vietnamese fishing vessels and Chinese state ships have occurred more regularly since 2009. In both 2011 and 2012, Chinese ships cut cables from Vietnamese survey ships in contested areas. 2012 also saw China emplace a new helipad at Mischief Reef in the Spratlys, block access of Filipino fishermen to the waters surrounding Scarborough Shoal, and interfere with the Philippines’ arrest of Chinese poachers.

In 2014, China sent an oil drilling rig of a state-owned enterprise into disputed waters near the Paracels, accompanied by several PLAN vessels and numerous civilian ships. Vietnamese boats protesting the move were accosted by the Chinese, including at least one instance of Chinese vessels ramming and sinking a Vietnamese fishing boat. Large-scale anti-Chinese demonstrations then rocked Hanoi. At the same time, Chinese ships physically blocked Filipino efforts to re-supply a handful of troops based aboard a beached WWII-era ship at Second Thomas Shoal. China also appears, as of 2014, to be developing an airstrip at Johnson South Reef in the Spratlys. In August 2014, PLAN vessels appeared at the Reed Bank in the Spratlys, less than 80 nautical miles from the coast of the Philippines’ Palawan Island. China also engaged in more aggressive behavior in the northern reaches of the South China Sea in 2014, including harassment of U.S. surveillance aircraft operating in international airspace east of Hainan Island in March, April, May, and August. And in August 2014, PLAAF aircraft sent on patrols of the South China Sea violated Taiwanese airspace, resulting in the scrambling of Taiwanese fighters.

Underlining the increased confrontations, both China and the various claimants have been rapidly building their military capabilities, although none of the smaller states comes close to approximating Chinese military power. China’s military buildup includes average annual increases in the defense budget of 15% every year since 1992. The buildup has covered all facets of Chinese power, with improved power projection capabilities, in the form of blue water

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naval assets such as China’s first aircraft carrier, and modern strike fighters, paramount. Focused directly at the South China Sea, China has established a submarine pen near Sanya at Hainan Island capable of servicing nuclear attack subs. Complementing these offensive capabilities are China’s missile development programs that serve as the foundation of its anti-access, area-denial (A2/AD) strategy designed to push American military power out of the East and South China Seas.

In this environment, the United States has taken a more prominent political role at regional diplomatic meetings, raising the issue of America’s South China Sea interests such as freedom of navigation and commerce, as well as pacific settlement of disputes. Although the United States refrains from taking a position on conflicting claims of sovereignty, it argues in favor of utilizing adjudication measures provided for in UNCLOS. Moreover, it seeks to highlight its past role as a guarantor of regional security, arguing that an American presence is necessary for continued stability.

Yet, uncertainty surrounds the American role. While the Obama Administration has emphasized its intent to rebalance government-wide attention to the Pacific, it has simultaneously enacted severe defense budget cuts. Financial constraints attendant to the global recession, along with exploding entitlement liabilities in the U.S. budget have placed deficit spending in the limelight. The consequent military downsizing has resulted in questions as to both American capabilities and American will to maintain an active role in the Asia-Pacific region in the face of a rising China. While official diplomatic discourse has tried to reassure American allies, the shrinking number of troops, ships, and planes, has the opposite effect.

Still, the United States has attempted to signal a continuing commitment. In the last five years, the United States has heightened defense cooperation with Australia, agreeing to a rotational presence of up to 2,500 Marines in country; Singapore has agreed to host four of the U.S. Navy’s new Littoral Combat Ships; the United States has signed a Memorandum of Understanding (MOU) with Vietnam regarding defense cooperation, and in 2013 agreed to the sale of five patrol boats to Vietnam; and the United States and the Philippines signed an Enhanced Defense Cooperation Agreement that includes increased joint operations, greater training missions, and regular access to Philippine bases for American military troops.

Japan has also become more interested in the South China Sea disputes as it deals with Chinese claims to the Senkaku Islands in the East China Sea. As Chinese power projection capabilities increase, Japan feels a greater threat to its own sea lines of communication. Japan must have free navigation through this area as a state dependent on trade for survival. Accordingly, Japan is seeking to assist both the Philippines and Vietnam in developing their

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15 Raine, 73.
16 Simon, 1003.
17 Raine, 70.
respective military capabilities, while also fostering ASEAN unity in dealing with China. Meanwhile, although seeking to enhance defense ties with the United States, Japan has its own questions over the credibility of the U.S. commitment, causing the Abe Administration to pursue greater indigenous military power and pursue additional ties with states such as India and Australia.

IV. Theories and Options

What policy options claimant states choose to deal with the territorial conflict will reflect the practical applicability of the three leading scholastic perspectives of International Relations: realism, liberalism, and constructivism.

Realism emphasizes power-politics, asserting the dominance of security considerations for states in the conduct of foreign relations and the necessity of self-help in the anarchic international setting. Stability, albeit uneasy at best, is obtained through competition, in which states seek to balance against threats by building up their own military capabilities or allying with other states. Where such is not possible, weaker states are expected to hop on board the threatening state’s “bandwagon” in hopes that acquiescence might purchase their continued sovereignty.

Liberalism focuses on the opportunities for cooperation between states. For example, liberal interdependence theory asserts that as states engage in greater economic trade with one another, there will be greater reluctance to go to war. Simply put, resource needs can typically be met more cheaply through commerce than through conquest. Moreover, once trading relationships are established, domestic constituencies with a vested interest in stability arise in both states. Another liberal theory, neoliberal institutionalism, contends that conflict often stems from mistrust and lack of information about another state’s intentions. Through the creation of international institutions aimed at developing ongoing relationships and providing greater transparency, these barriers to cooperation can be minimized.

A third approach, constructivism, highlights the importance of how states adopt a particular social identity, based in large part on how they interact with one another. This “socially constructed” identity helps determine state interests, in contrast to realism’s fixed interests in material power. In practice, constructivism presents a more dynamic perspective than realism or liberalism, as the policies it spawns suggest that rather than merely pursuing behavior change within a state, actors can re-shape the underlying nature of the government in power.

Realism and liberalism align with disparate policy alternatives for the claimant states. Claimants can rely on unilateral action in an attempt to obtain the best results possible through the application of power; they can pursue negotiation, such as joint development initiatives bilaterally or multilaterally; or they can seek third-party facilitation, ranging from mediation

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through binding adjudication. Theoretically, constructivism could lead to any of these policies, although most constructivist analysis tends to lean toward policy prescriptions advancing norms of non-violence and cooperation.

A. Unilateral Action

Realism’s focus on power and self-help suggest unilateral action as the likely outcome. Although powerful states would prefer to have others “bandwagon” so as to avoid the costly expenditure of resources in coercing others into a preferred outcome, the ability of weaker states to find allies to balance the stronger power often prevents this action.21

In the South China Sea, China’s power dominates that of the other claimants. Unsurprisingly, China is the party most associated with taking unilateral action in furtherance of its objectives in the area. In keeping with realism’s predictions, China has used military force to obtain possession of some of the disputed features in the area, dislodging South Vietnamese forces to complete Chinese occupation of the Paracels in January 1974 and against communist Vietnamese troops near Johnson Reef in the Spratlys in 1988. Legally, however, since the adoption of the UN Charter in 1945, conquest has no longer been a recognized means of obtaining sovereignty over territory. Moreover, China has consistently rejected efforts to “internationalize” the conflict, including refusing to negotiate claims outside of a bilateral context, declining all proposals for third-party facilitation, and rebuffing extra-regional states’

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expressions of interest. China has steadfastly repudiated smaller states’ efforts at using ASEAN as a means of collectively addressing the issue.\textsuperscript{22} For example in 2012, China forcibly prevented Filipino fishermen from working the waters at Scarborough Shoal. When the Philippines objected, China responded by blocking certain Philippines agricultural exports to China and canceling Chinese tourist visits to the Philippines, costing Manila tens of millions of dollars.\textsuperscript{23} Or, when other claimant states have attempted to bring in international oil companies to conduct exploration and surveying well within these states’ EEZs, China has pressured the oil companies to withdraw, even physically harassing private commercial vessels doing exploration under contract with these states.\textsuperscript{24} Exemplifying China’s perspective, in 2010, “staring straight at Singapore’s foreign minister, George Yeo, Yang observed: ‘China is a big country and other countries are small countries and that is just a fact.’”\textsuperscript{25} Indeed, one Chinese scholar describes China as a “victim” that must become more “proactive on the issue of the South China Sea” rather than working for “peaceful settlement of these disputes.”\textsuperscript{26}

Still, China has been circumspect in its use of military force. In 1974, the United States had withdrawn from the Vietnam War and was clearly not prepared to intervene on behalf of South Vietnam with respect to the Paracels. In 1988, the United States and the Hanoi-led Vietnamese state continued to view each other hostilely, while Hanoi’s Soviet allies were in the midst of internal collapse and in no position to come to Vietnam’s aid. Conversely, China has not turned its direct military power on the Philippines, which enjoys the protection of a Mutual Defense Treaty with the United States, or on Taiwan, which had a Mutual Defense Treaty with the United States until 1979 and currently has the more ambiguous guarantees of the Taiwan Relations Act.

Nonetheless, China’s recent assertiveness in the South China Sea has clearly provided the impetus for greater cohesion between the other claimants, most clearly represented in tighter relations between Vietnam and the Philippines.\textsuperscript{27} Moreover, in addition to driving other claimants into a unified front against China, China’s actions have impelled the ASEAN claimant states to seek closer ties with the United States, as seen in the 2014 U.S.-Philippines Enhanced Defense Cooperation Agreement, the 2011 U.S-Vietnam MOU, and the 2014 visit of President Obama to Kuala Lumpur – the first visit by a U.S. President to Malaysia in nearly fifty years – following the 2010 visit to Malaysia by U.S. Secretary of Defense Robert Gates and the 2013 visit by Secretary of Defense Chuck Hagel.

As realism predicts, smaller states are seeking to balance against Chinese power by turning to another great power. While U.S. military capabilities still trump those of China, the

\textsuperscript{22} Fravel, 300; David Scott, “Conflict Irresolution in the South China Sea,” \textit{Asian Survey} 52, no. 6 (2012): 1023.
\textsuperscript{24} Fravel, 301-303; Pedrozo, 11; Simon 1001.
\textsuperscript{27} Simon, 999.
previously discussed concerns about continued U.S. credibility give China the strategic option to bide its time under the belief that Chinese power is ascending while American power is declining. Yet, although this seems to explain Chinese actions between the 1990s and 2010, it does not explain China’s aggressiveness since 2010. If China believes it is in a superior power position, realism would expect China to act upon it and eject the other claimants. If China does not believe it is in a superior power position, realism would expect China to stay with a more cautious stance.

B. Negotiation

Negotiation represents a middle ground between realism and liberalism. Unbalanced bilateral negotiation, as China prefers, allows a more powerful state to pressure a weaker state into accepting unequal commitments. In this vein, negotiation represents a realist policy. Alternatively, negotiation between parties with relatively equal power may lead to a compromise wherein both sides agree to accept less than the optimal outcome rather than pressing for absolute victory. Such cooperation slides toward the liberal side of the scale.

In the case of the South China Sea, negotiation could result in some form of joint enterprise in which the claimants agree to co-develop the energy resources, share fishing rights, and establish an independent, or at least multilateral, policing authority. Unilateral activities, including all military activities, would be frozen if not reversed. While the details of such an agreement could vary markedly, the general outline would likely encompass these basic ideas.

Liberal interdependence theory would expect states that trade with one another to pursue such a negotiated settlement, so as to avoid the costs of violent conflict. As with military power, China’s economic power is dominant in the region. China is the leading trading partner of Vietnam, Taiwan, and Malaysia, the third largest trading partner of the Philippines, and the fourth largest trading partner of Brunei. Open hostilities, resulting in the disruption of trade with China could have a serious negative effect on the economies of the other claimant states. In 2005, China, Vietnam, and the Philippines engaged in trilateral negotiations, which resulted in an agreement calling for the three states to jointly manage a seismic surveying effort within the disputed area. However, the agreement did not cover developmental activity and was limited to a duration of three years. The agreement was not renewed upon expiration in 2008.

Writing in 2010, Weissmann argued that a “stable peace” had emerged in the region due in part to this regional economic interdependence. Yet, as noted above, tensions have increased since 2010, notwithstanding increasing bilateral trade between China and the other claimants. This mirrors the pattern observed between China and Japan. In that case, bilateral trade has steadily climbed, more than doubling between 2000 and 2010, surpassing U.S.-

29 Storey, 143.
Japanese bilateral trade since 2007; however, despite increased trade, security relations between China and Japan have deteriorated markedly across the same period. In short, the evidence in support of liberal interdependence’s logic is in short supply.

Another variant of liberalism, pluralism, can also be applied to try to understand the South China Sea conflicts. Pluralism emphasizes the various interest groups that compete at the domestic level for control of state policy. When coupled with the bureaucratic politics model of decision-making, it suggests the potential for inconsistent, or even incoherent, policy when viewed as a whole, as different domestic groups may exercise control over various facets of policy. For example, Lubold suggests that the provocative action undertaken by PLAAF pilots in the northern part of the South China Sea over the past few months may be pursuant to the direction of a particularly aggressive PLAAF commander rather than reflecting national policy. 31 The opacity of China’s domestic decision-making process prevents a full exploration of this; however, the decentralization of power necessary for this explanation seems inconsistent with the autocratic rule of the CCP.

C. Third Party Facilitation

Neoliberal institutionalism, as articulated by Keohane and Nye, stresses the possibilities of conflict management associated with third-party involvement. 32 Third parties can facilitate conflict management either through actors playing the role of honest-broker in negotiations, or through the creation of institutions. These institutions can establish norms of behavior, formal or informal, as well as provide unbiased adjudicatory forums.

Indonesia has attempted to serve as an honest broker and bring together the South China Seas claimants via a series of informal workshops since the early 1990s. However, the length duration of this mediation effort coupled with the lack of results demonstrates the difficulty this model faces. This endeavor appears to have stalled however with Indonesia’s rejection of the nine-dash line and support for the idea that none of the land features in the South China Sea is entitled to anything more than a 12 nautical mile security zone. 33

Institutions can be divided into both global and regional categories. Both attempt to establish a “rules-based order” that respects sovereign states as legal equals and rejects the use of force. The most important global institution for this dispute is UNCLOS, which has been in force since 1994 and which all of the claimant states have ratified. UNCLOS governs the use of the world’s oceans, and includes provisions establishing the scope of a state’s territorial waters (12 nautical miles (NM)), contiguous zone (another 12 NM), exclusive economic zone (200 NM), and continental shelf (up to 350 NM), along with delineating the rights of the state within

33 Ian Storey, 148
each of these areas. UNCLOS also differentiates between islands – land features that are not only perpetually above the high-tide land, but are capable of supporting “human habitation or economic life of their own” – and other land features (e.g. rocks, atolls, reefs, shoals) that do not meet these criteria. In addition, UNCLOS provides dispute resolution mechanisms, including establishment of the International Tribunal for the Law of the Sea, submission to the International Court of Justice, or creation of an ad hoc arbitral panel. However, nothing in UNCLOS provides for settlement of disputes over sovereignty.

The Philippines UNCLOS Arbitration Case

In January 2013, the Republic of the Philippines filed a claim with the Permanent Court of Arbitration (PCA) at The Hague, seeking to bring the maritime conflict with China to arbitration pursuant to Article XV and Annex VII of UNCLOS. China responded with a diplomatic note to the Philippines rejecting arbitration, denying the jurisdiction of the arbitral tribunal. The Philippine government proceeded with the claim nonetheless. China informed the PCA tribunal that it rejected arbitration and has not participated in the legal proceedings to date. The tribunal has provided a December 15, 2014 deadline for China to file a response to the Philippines’ claim. Thereafter, the tribunal will make a determination as to whether it has proper jurisdiction. If it finds that it does, China’s refusal to participate does not prevent the action from going forward. At that point, the tribunal would then consider the substantive merits of the claim, both legally and factually.

Table 1: Timeline of Philippines’ Arbitration Claim

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>1-22-2013</td>
<td>Philippines files case with Permanent Court of Arbitration (PCA)</td>
</tr>
<tr>
<td>2-19-2013</td>
<td>China informs Philippines it rejects arbitration</td>
</tr>
<tr>
<td>8-1-2013</td>
<td>China directly advises PCA it rejects arbitration</td>
</tr>
<tr>
<td>8-27-2013</td>
<td>PCA Tribunal issues 1st Procedural Order with timelines</td>
</tr>
<tr>
<td>3-30-2014</td>
<td>Philippines timely files statement of jurisdiction and argument as to claims</td>
</tr>
<tr>
<td>5-21-2014</td>
<td>China again advises PCA Tribunal it rejects arbitration</td>
</tr>
<tr>
<td>6-3-2014</td>
<td>PCA Tribunal issues 2nd Procedural Order with timelines</td>
</tr>
<tr>
<td>12-15-2014</td>
<td>Deadline for China to file response to Philippines’ statement</td>
</tr>
</tbody>
</table>

China’s position is based on two fundamental arguments. First, UNCLOS does not address matters of sovereignty. Thus, any attempt to adjudicate ownership of specific islands is outside the scope of UNCLOS and beyond the jurisdiction of any court or tribunal established thereunder. Second, China asserts that its formal declaration to UNCLOS, submitted in August 2006, rejects various procedures for adjudicating boundary disputes, including submission to arbitration. Such a declaration is expressly permitted under Part XV, Article 298. Accordingly, China contends that the PCA tribunal has no jurisdiction as the matters at issue require findings regarding sovereignty over specific territory, and China has not consented to adjudicate these matters.

34 UNCLOS, Article 121, Regime of Islands.
35 UNCLOS, Article 287, Choice of Procedure.
36 China rejected a request from the Philippines to voluntarily accept arbitration in 1999 and again in 2011.
The Philippine government denies that its claims necessarily involve determinations of sovereignty; rather, it argues that its claims are expressly stated in terms of issues within the tribunal’s competence.\(^{37}\) A decision by the tribunal would therefore be binding upon the parties. The most important claim presented by the Philippines regards China’s claim to nearly the entirety of the South China Sea, as represented in China’s nine-dash line. Specifically, the Philippines argues that China’s claim to maritime space must be based on that space’s relationship to a permanent land feature, according to UNCLOS. The Chinese claim to the great breadth of the South China Sea is not so supported.

Beyond UNCLOS at the global stage, there are a variety of regional institutions that play a role in the South China Sea dispute. The central regional institution is the Association of South East Asian Nations (ASEAN). Founded in 1967, ASEAN was created as a confidence building measure intended to promote regional development. However, the twin principles of non-interference in internal affairs and requiring consensus before speaking on external affairs have limited ASEAN’s ability to contribute to conflict management.

In 2002, the member states of ASEAN and China agreed to a Declaration on the Conduct of Parties in the South China Sea.\(^{38}\) While this represented a departure from China’s normal stance against internationalizing the dispute, it is important to recognize the limits of the agreement. First, the agreement was between China and the individual member states of ASEAN, rather than ASEAN as a collective entity. The signatories to the agreement are representatives of the individual governments; there is no signatory purporting to act in an official capacity for ASEAN. Second, the agreement was not an attempt to resolve sovereignty issues. Article Four of the agreement specifically reaffirms China’s stance by stating “The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means … through friendly consultations and negotiations by sovereign states directly concerned.” Third, the agreement provided little more than a non-binding promise to comply with existing international law, a commitment to exercise self-restraint in the conduct of activities that would complicate or escalate disputes, and a reaffirmation of the desirability of an actual code of conduct. A dozen years have passed since this and yet there is no code of conduct.

Over the past decade, China and the ASEAN claimants have been able to reach some accord on matters such as navigation safety, transnational crime, disaster relief, and certain environmental issues, but have been unable to make progress on the “high politics” of sovereign territorial claims or economic exploitation. Whereas the ASEAN claimants would like ASEAN to take a more active approach on the matter, China’s friends in Cambodia, Laos, and Burma are able to use the ASEAN principle of consensus to prevent this from happening.


\(^{38}\) With respect to ASEAN, Taiwan’s claims are often overlooked as Taiwan lacks diplomatic relations with the other claimants and has limited power projection capabilities. Kao, 162.
Other regional institutions that include additional participants, such as the ASEAN Regional Forum, the Asia-Pacific Economic Cooperation, and the East Asian Summit, also provide a forum for diplomatic discussion of the South China Sea disputes; however, none of these have been able to establish a “rules-based order” capable of solving territorial disputes. Accordingly, the logic behind neoliberal institutionalism – specifically, establishing transparency and minimizing misunderstanding - appears to be subject to debate. Realists would contend that there is little misunderstanding between the claimants; rather, they simply have conflicting interests and differences of opinion as to their respective power positions.

The constructivist position goes farther than neoliberal institutionalism, in that constructivists believe the “rules-based order” created by international institutions can actually change the identity of the relevant actors instead of merely shaping tactical behavior. By establishing norms of conduct, institutions can change how states view the international environment, allowing them to reorient their self-perception. If others not only agree, but demonstrate commitment through action to this rules-based order, a state could employ a different calculus when evaluating threats. Membership in the international community could become regarded as a more important interest than development of a self-help security force. Indeed, this logic permits the consideration of post-sovereign identity and elevation of human security above that of traditional national security. A practical example of this could be the establishment of an independent institution designed to manage the disputed area, with the respective states ceding their nationalist claims in favor of a regional ecological protectorate.  

Yet the constructivist argument need not tilt toward the creation of a pacific identity. For example, Dillon asserts that China rejects the Westphalian system of equal sovereign states comprising an international system. Instead, he argues, China sees itself as the center of civilization – a unique entity destined to regain historical greatness, which requires others in the region to demonstrate deference to Chinese wishes. This identity leads to incompatible interests with those states which are built upon Westphalian sovereignty. Institutions can be used to buy time as China builds its military capabilities to the point that it is able to exercise coercive power upon the other claimants regardless of their attempts to balance.

D. Another Theory

A relatively modern theory of foreign policy, Neoclassical Realism (NCR), brings elements of realism, liberalism, and constructivism together. Although it finds the realist appreciation of power to be the most important factor, NCR looks at both state and individual factors that cause states to deviate from the baseline “rational” behavior. In effect, NCR is highlighting the principal-agent problem of the state having to act through a government consisting of individuals whose interests may not be identical to those of the state. Moreover, the assessment of the actual balance of power among states must be filtered through the

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40 Dillon, 61.
perceptions of policymakers, which can be influenced by strategic culture, uncertainty over the power of others, unease with one’s own mobilization and extraction capabilities, and parochial concerns such as governmental stability or individual self-interest. As Fred Ikle observed over forty years ago, “Most senior officials are guided by a mixture of considerations: on the one hand, unselfish conceptions of the national interest; on the other – less conspicuously perhaps – partisan or personal motivations. If one emphasizes only the personal and factional element, or only the unitary view of the nation’s interests, one does not do justice to reality.”

NCR thus permits an answer as to why China has adopted increasingly aggressive behavior in the South China Sea, yet is reluctant to abandon the indicia of cooperative relations. In a word, Chinese leaders are responding to nationalism. Having dispensed with any recognizable version of Marxism-Leninism, including Maoism, the Chinese Communist Party (CCP) has become increasingly dependent on nationalism as a source of legitimacy for continuing CCP dominance. Although this causation precedes President Xi Jinping’s inauguration, tensions in the South China Sea have risen to greater heights with Xi’s attempts to establish his distinct authority in Beijing, as revealed in the unprecedented reach of his anti-corruption campaign domestically, and in the nationalist tenor of his foreign policy rhetoric.

NCR captures this through its recognition of the importance of both strategic culture and parochial interests as filters. NCR explains that power provides the first filter on policy choices. As Chinese military power has grown, its options in the South China Sea have expanded. While the CCP may believe that it would not yet be prudent to adopt policies leading to a potential military clash that could bring in the United States, China’s power has grown to the point that the traditional cultural perception of China as the center of the universe drives a popular demand that China not be subjected to any perceived foreign slights. In advancing nationalism to protect the privileged position of its own elites, the CCP has helped construct a constraint on its own freedom of policy. Thus, China’s leadership must satisfy its own domestic constituency by engaging in nationalist rhetoric and action, while attempting to avoid aggressiveness that could spur actual hostilities for which Chinese military power is as yet unprepared. Calibrating its policy to satisfy both the domestic and foreign audiences in this “two-level game” requires a seemingly uneven approach that both highlights and downplays China’s military force. For example, China must satisfy its nationalist hawks by such moves as resisting American surveillance near Chinese waters through naval and aerial intercepts, or by publicly dispatching its aircraft carrier on sea trials in the South China Sea. At the same time, it tries to downplay its military face by using non-military vessels such as Oceanic Administration or Maritime Surveillance ships, along with civilian fishing boats, to establish and enforce its maritime claims.

Likewise, NCR presents greater insight into the actions of other claimants. Given the concerns about U.S. credibility and will, the rational position of these smaller states may well be to “bandwagon” with China. By agreeing to recognize Chinese claims of sovereignty in exchange for a percentage of the profits associated with development and exploitation of the

disputed areas, the smaller powers could not only lock-in some measure of economic gain, but could also forego the costs of continuing their own military buildup as well as possible trade disruption with China. As China relies on open sea lanes of communication for its economic health, in the same way as the other claimants, allowing China to take responsibility for security could permit free-riding. Yet, such a rationalist power-politics explanation overlooks the intangible value of territory. No government, regardless of the objective power balance, can withstand such an admission of inferiority as is brought with the cession of territory, without opening itself up to widespread criticism in the domestic political realm. An appreciation of the cultural resonance of nationalism, coupled with consideration of a particular government’s parochial domestic political interests, would thus dismiss neorealism’s singular focus on power as incomplete.

V. Conclusion

Given the various interests and the challenging security environment outlined above, it seems unlikely that the conflicts in the South China Sea can be resolved with finality. Rather, managing these conflicts so that they do not degenerate into violence appears to be the best hope. Yet, each of the claimants is well aware that delay does not simply mean freezing the situation as it now exists for consideration in the future. Delay permits time for change, with the most notable aspect thereof being the widening gap between Chinese military capabilities and those of the other claimants. Thus, China has generally been content to delay resolution while strengthening its own position in the region – a policy variously described as creeping incrementalism, salami-slicing, or the cabbage strategy. Whether China’s recent aggressiveness marks a belief that China is now capable of militarily supporting a greater push of its claims, or is due to some other factor is now at issue.

While China has signed on to UNCLOS, it takes a maximalist view of state authority thereunder, insisting that it may impose restrictions on naval movement not solely within its territorial sea, but within the full breadth of its EEZ. This is exemplified by the 2009 incident involving Chinese harassment of the USNS Impeccable, a survey ship that was operating in China’s EEZ near Hainan Island, and the 2013 confrontation with the USS Cowpens which was monitoring the PLAN’s Liaoning in the South China Sea. Thus, even in the liberal realm of institutions, China takes a realist stance of demanding others abide by China’s unilateral interpretations.

As Zakaria concludes from his landmark study of U.S. foreign policy in the latter part of the 19th century, capabilities inevitably affect intentions. For now, China must balance its own

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44 Simon, 999.
uncertainty as to U.S. will to intervene with responsiveness to rising nationalist sentiment domestically. The more the CCP leans toward the latter, the more it alienates other states in the region, pushes claimants into a unified stance against it, and allows mobilization of anti-Chinese opinion that could bolster U.S. will to intervene. Conversely, the more the CCP leans toward caution, the greater the internal pressure the governing elites will feel. Should other pressures, such as declining economic growth rates, expanding social services costs, imbalanced demographics, or even a domestic push for greater popular political participation, come to bear more strongly on the Chinese government, the attraction of catering to nationalist groups may prove too much. In such an event, the weak foundation of stability in the South China Sea may crumble, kicking off a new regional conflict with unforeseeable consequences.
Bibliography


