

II. Maritime disputes in the South and East China seas

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When Chinese President Hu Jintao delivered his final work report to the Central Committee of the Chinese Communist Party (CCP) in November 2012, he stated for the first time that China should endeavour to ‘build China into a maritime power’ and emphasized the need to ‘resolutely safeguard China’s maritime rights and interests’.¹ Less than a year later, the Politburo of the CCP held a special collective study session in July 2013 on how to turn China into a maritime power. At this time, Chinese President Xi Jinping argued that the strategic importance of maritime power was continuing to rise and that China has extensive interests in that sphere.² In this context, two competing narratives have emerged to describe the deterioration of the East Asian maritime security relations. For the USA and its allies in the Asia–Pacific region, China’s increasing assertiveness with regard to territorial disputes in the East and South China seas has continued to raise tensions in the region. From a Chinese perspective, the US rebalance towards Asia has given countries that are involved in maritime disputes with China the confidence to openly challenge Chinese territorial claims.

Maritime security in the South China Sea

Several states—among them Brunei, China, Indonesia, Malaysia, the Philippines, Singapore, Taiwan and Viet Nam—have competing territorial claims in the South China Sea (see figure 7.1). In 2002, the Association of Southeast Asian Nations (ASEAN) and China signed a Declaration on the Conduct of Parties in the South China Sea. According to the declaration, all parties should refrain from unilateral actions until a binding Code of Conduct has been agreed. However, negotiations related to the Code of Conduct have been stalled since 2002. It is against this backdrop that tensions in the region are increasing. Over the past three years, the disputes between China and Viet Nam, and China and the Philippines, have deteriorated due to a number of incidents: the Scarborough Shoal standoff in 2012; the decision by the Philippines to seek arbitration under the United Nations Convention on the Law of the Sea (UNCLOS) in 2013; the deployment of an oil rig by China in an area disputed with Viet Nam in

¹ Full text of Hu Jintao’s report at 18th Party Congress, Xinhua Net, 17 Nov. 2012, <http://news.xinhuanet.com/english/special/18cpenc/2012-11/17/c_131981259.htm>.

² ‘习近平：进一步关心海洋认识海洋经略海洋推动海洋强国建设不断取得新成就’ [Xi Jinping: To further care for, know about and manage the seas, moving forward with building China into a maritime power], Xinhua Net, 13 July 2013, <<http://news.xinhuanet.com/politics/2013-07/31/c116762285.htm/>>.

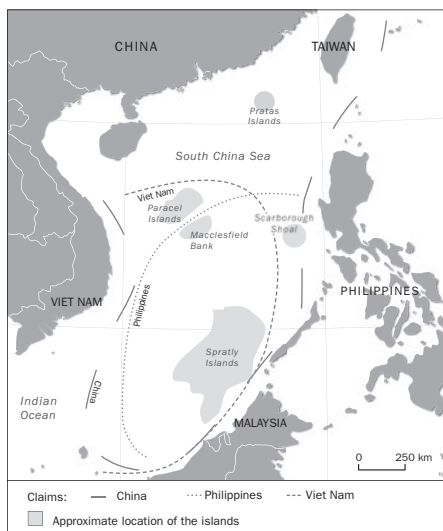


Figure 7.1. Territorial claims in the South China Sea made by China (the so-called nine-dash line), the Philippines and Viet Nam

2014; and China's ongoing construction and expansion of military features such as ports and airstrips in disputed areas. Simultaneously, the rivalry between China and the USA has escalated due to incidents in the South China Sea. US military surveillance of Chinese People's Liberation Army activities—especially in the vicinity of China's Yulin Naval Base, off the coast of Hainan Island—has prompted China to reinforce counter-surveillance capabilities and actions. As a result, the risk of an incident in the South China Sea has increased in the past two years,

China's relations with the Philippines have deteriorated since China took control of the Scarborough Shoal following a two-month long standoff between navy and coast guard vessels in the spring of 2012.³ The Philippines claim that the Scarborough Shoal lies within its exclusive economic zone (EEZ) as calculated under UNCLOS (200-nautical miles from the coastal baselines). On 22 January 2013 the Philippine Government turned to the Permanent Court of Arbitration in The Hague, seeking to declare Chinese territorial claims in its EEZ invalid. The Chinese Ministry of Foreign Affairs denies any violation of territorial rights and has rejected the arbitration.⁴ The court is expected to rule on the case in late 2015. While an

³ Perlez, J., 'Philippines and China ease tensions in rift at sea', *New York Times*, 18 June 2012.

⁴ Permanent Court of Arbitration, 'Arbitration between the Republic of the Philippines and the People's Republic of China: arbitral tribunal establishes rules of procedure and initial timetable', PCA Press Release, 27 Aug. 2013; Jing, L., 'China releases paper denouncing Philippines pressure over sea dispute arbitration', *South China Morning Post*, 8 Dec. 2014.

unfavourable ruling would put China under political pressure to reconsider its position, China has the right to reject the ruling under UNCLOS.

Violent tensions erupted between China and Viet Nam when China's National Offshore Oil Corporation (CNOOC) began drilling for oil west of the Paracel Islands in May 2014. China deployed a large number of coast guard vessels and some naval ships to protect its oil-drilling platform. In response, Viet Nam sent coast guard ships to try to prevent the oil exploration activities. Both China and Viet Nam accused each other of ramming each other's ships, and violent protests against Chinese companies occurred in Viet Nam.⁵ CNOOC withdrew the platform on 16 July 2014, but relations between the countries had already suffered considerably.⁶

Further, risks of unintended accident are also arising from US military surveillance operations within China's EEZ around Hainan Island. US reconnaissance flights and maritime surveillance vessels are regularly intercepted by China in the area.⁷ In August 2014 the US Department of Defense reported that a Chinese Su-27 combat aircraft intercepted a US P-8 anti-submarine warfare aircraft within 20 feet, calling the act 'aggressive' and 'dangerous'.⁸ Conversely, China warned the USA to stop its military surveillance activities, stating that the surveillance 'damages the strategic trust and bilateral relationship' between the two countries.⁹ According to China, the USA conducts approximately 500 surveillance flights 'around China' every year, with each flight lasting about 10 hours.¹⁰ The spiral of surveillance and counter-surveillance activities has already resulted in ships nearly colliding. In November 2013 a PLA Navy (PLAN) ship allegedly manoeuvred into the path of the US missile cruiser *Cowpens* (CG-63), which had to change course in order to avoid a collision.¹¹ In November 2014 China and the USA jointly announced a memorandum of understanding (MOU) on the rules of behaviour for the safety of air and maritime encounters. While the MOU drew on the 1972 Convention on the International Regulations for Preventing Collisions at Sea, the MOU is not considered legally binding.¹² Despite the agreement, approaches to the

⁵ Kaiman, J. and Hodal, K., 'Chinese nationals in Vietnam flee to Cambodia as anti-China riots turn fatal', *The Guardian*, 15 May 2014.

⁶ Hodal, K., 'Despite oil rig removal, China and Vietnam row still simmers', *The Guardian*, 17 July 2014.

⁷ Hodal (note 6).

⁸ 'US accuses China fighter of reckless mid-air intercept', BBC News, 23 Aug. 2014, <<http://www.bbc.com/news/world-asia-china-28905504>>.

⁹ Ministry of National Defence The People's Republic of China, Defence Ministry's regular press conference, 28 Aug. 2014, <http://eng.mod.gov.cn/TopNews/2014-08/28/content_4533181.htm>.

¹⁰ Zhang J., 'The U.S. should abide by international law and stop its close surveillance of China', *People's Daily Online*, 28 Aug. 2014, <<http://en.people.cn/n/2014/0828/c98649-8775584.html>>.

¹¹ Alexander, D. and Sweeney, P., 'U.S., Chinese warships narrowly avoid collision in South China Sea', Reuters, 13 Dec. 2013.

¹² US Department of Defense, 'Memorandum of Understanding between the Department of Defence of the United States of America and the Ministry of National Defence of the People's

matter appear to remain oppositional: the USA declared that it will continue its surveillance activities, while China considers military acts in its EEZ without prior permission to be illegal under UNCLOS, an interpretation rejected by the USA and almost all Asian and European countries.¹³

A significant aspect of the territorial dispute in the South China Sea concerns China's construction in the area, particularly in the past few years. This includes the building of so-called maritime features at Johnson South Reef, Cuarteron Reef and Gaven Reef in the Spratly Islands, and the construction of military facilities on Woody Island, which belongs to the Paracel Islands.¹⁴

China's motivation for this construction appears to be driven by two main considerations. First, the act appears to support China's sovereignty claims from a legal perspective; China is creating conditions to allow human habitation in order to consolidate its legal argumentation under the UNCLOS regime.¹⁵ Only islands, and not 'submerged features', are entitled to EEZ status, and human habitation is one of the criteria to determine if a feature is an island. However, UNCLOS also stipulates that artificial constructions do not suffice to justify sovereignty claims.¹⁶

Second—and more importantly—the construction of facilities on the islands follows a military logic. China has reportedly begun to construct an artificial island—3000 metres long and 200–300 metres wide—which could function as China's first offshore airstrip on the Fiery Cross Reef in the Spratly Islands.¹⁷ Furthermore, the China Ship Scientific Research Center (CSSRC) is developing multifunctional floating docks for deployment from the Spratly and Paracel Islands, which would allow small settlements to be built on the islands.¹⁸ Images released by the Chinese Ministry of National

Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters', 12 Nov. 2014.

¹³ 'China opposes any military acts in exclusive economic zone without permission', Xinhua Net, 26 Nov. 2010, <http://news.xinhuanet.com/english2010/china/2010-11/26/c_13624036.htm>.

¹⁴ Tweed, D., 'China to continue building on disputed islands, PLA General Says', Bloomberg News, 24 Nov. 2014. States contesting various aspects of the construction include Brunei, Malaysia, the Philippines, Taiwan and Viet Nam.

¹⁵ Wingfield-Hayes, R., 'China's island factory', BBC News, 9 Sep. 2014, <http://www.bbc.co.uk/news/special/2014/newsspec_8701/index.html>; and Beckman, R.C., 'Large-scale reclamation projects in the South China Sea: China and international law', *RSIS Commentary*, Nr. 213, 29 Oct. 2014, <<http://www.rsis.edu.sg/rsis-publication/rsis/co14213-large-scale-reclamation-projects-in-the-south-china-sea-china-and-international-law/>>.

¹⁶ Malig, J., 'Spratlys reclamation won't boost China's claims', *ABS-CBN News*, 29 Oct. 2014, <<http://www.abs-cbnnews.com/focus/10/29/14/why-spratlys-reclamation-wont-boost-chinas-claims>>.

¹⁷ Hardy, J. and O'Connor, S., 'China building airstrip-capable island on Fiery Cross Reef', *IHS Jane's*, 20 Nov. 2014; and 'US should stay out of S. China Sea land reclamation issue: PLA general', *Global Times*, 24 Nov. 2014, <<http://www.globaltimes.cn/content/893287.shtml>>.

¹⁸ Cornelius Weening, D., 'CSSRC showcases plans to build floating docks for Spratly Islands', *IHS Jane's*, 27 Oct. 2014.

Defence show PLA forces already in residence on Fiery Cross.¹⁹ The island could be turned into a military base serving as a command and control centre, which also might support a potential second Chinese air defence identification zone (ADIZ) that would cover the South China Sea.²⁰ Furthermore, China has set up additional radars, anti-aircraft guns, a heli-pad and other military equipment in the Spratly Islands.²¹ During the Xiangshan Forum in November 2014, Colonel Jin Zhirui of the Chinese Air Force Headquarters stated that ‘there is a need for a base to support our radar system and intelligence-gathering activities’.²² In addition, PLA Major General Luo Yuan explained that China was constructing infrastructure on the reef in order to improve the living standards for the soldiers stationed there and that the Philippines, Viet Nam and Malaysia had taken similar action.²³

Maritime security in the East China Sea

In September 2012 the Japanese Government bought several of the Diaoyu/Senkaku Islands from a private owner (see figure 7.2). China, which also claims the islands, perceived the action as a major escalation and a violation of a tacit bilateral agreement that no side should take action to consolidate sovereignty claims. Japan’s explanation that the public purchase was aimed at preventing far-right forces from taking provocative actions was dismissed by China. Consequently, the Chinese Coast Guard and the PLAN engaged in patrols aimed at signalling sovereignty and contesting Japan’s administration of the Diaoyu/Senkaku Islands.

As a result of the intensification of military and coast guard activities in disputed areas, several near collisions took place in 2013 and 2014. In January 2013 Japan accused PLAN of having locked its fire-control radars on a Japanese helicopter and a destroyer, but China denied the claim.²⁴ There were numerous other dangerous encounters involving coast guard ships in the territorial seas off the Diaoyu/Senkaku Islands, heightening the risk of potential collisions.²⁵

¹⁹ Hardy, J., ‘More details emerge on China’s reclamation activities in Spratlys’, *IHS Jane’s*, 4 July 2014.

²⁰ Kwok, K., and Chan, M., ‘China plans artificial islands in disputed Spratlys chain in South China Sea’, *South China Morning Post*, 7 June 2014; and Erickson, A. S., and Strange, A., ‘Pandora’s sandbox: China’s island-building strategy in the South China Sea’, *Foreign Affairs*, 13 July 2014, <<http://www.foreignaffairs.com/articles/141632/andrew-s-erickson-and-austin-strange/pandoras-sandbox>>.

²¹ Kwok and Chan (note 20); and Erickson and Strange (note 20).

²² Kurashige, N., ‘Chinese military officer explains need for construction in disputed Spratlys’, *Asahi Shimbun*, 23 Nov. 2014, <<http://ajw.asahi.com/article/asia/china/AJ201411230018>>.

²³ Hardy and O’Connor (note 17).

²⁴ Yu, M., ‘Inside China: China says Japan lied about radar’, *The Washington Times*, 14 Feb. 2013.

²⁵ For further details on crisis management in the East China Sea, see the series of 4 SIPRI Policy Briefs published in Feb. 2014, which focus on how to avoid collisions at sea or in the air and how to

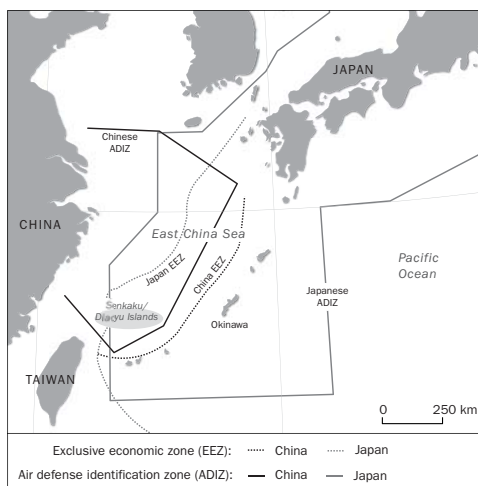


Figure 7.2. Territorial claims in the East China Sea made by China and Japan

The conflict was further exacerbated by China's decision to establish an ADIZ in the East China Sea in November 2013, which included airspace over the Diaoyu/Senkaku Islands.²⁶ Furthermore, China's ADIZ overlaps with Japan's ADIZ and partly with South Korea's ADIZ, and was consequently condemned by Japan and the USA.²⁷ As tensions increased, so did the risk of air collision. In 2014 China and Japan criticized each other's air forces for flying their aircraft dangerously close.²⁸ On 24 May 2014 a Chinese Su-27 combat aircraft and a Japanese YS-11EB electronic intelligence aircraft came within a dozen metres of each other.²⁹ Weeks later, on 11 June, two Japanese F-15 aircraft followed a Chinese Tu-154 aircraft and, according to Chinese claims, the F-15 came within 30 metres of the Chinese aircraft.³⁰ Japan's 2014 Defense White Book claims that the number of scrambles of Japan Self-Defense Forces (JSDAF) fighter aircraft against

prevent escalation when incidents do occur: <<http://www.sipri.org/research/security/china/promoting-crisis-management-in-the-east-china-sea>>.

²⁶ 'Announcement of the Aircraft Identification Rules for the East China Sea Air Defence Identification Zone of the P.R.C.', Xinhua Net, 23 Nov. 2013, <http://news.xinhuanet.com/english/china/2013-11/23/c_132911634.htm>; and 'PLA Air Force conducts first patrol in air defence identification zone', Xinhua Net, 23 Nov. 2014, <http://news.xinhuanet.com/english/china/2013-11/23/c_132912272.htm>.

²⁷ US Department of Defense, 'Hagel issues statement on East China Sea air defence identification zone', American Forces Press Service, 23 Nov. 2013, <<http://www.defence.gov/news/newsarticle.aspx?id=121223>>.

²⁸ 'Japan denies brush with Chinese planes, demands China withdraws footage', Reuters, 13 June 2014.

²⁹ 'China, Japan exchange barbs over action by warplanes in East China Sea', Reuters, 25 May 2014.

³⁰ 'Japan denies brush with Chinese planes, demands China withdraws footage', Reuters, 13 June 2014.

China dramatically increased in 2013, and in 2014 they increased by a further 29 per cent compared to the previous year.³¹ No official data from China is available on this issue.

Against this context of a heightened risk of incident, some progress was made during the year on crisis management negotiations, both at the bilateral and multilateral levels. In April 2014 the Code for Unplanned Encounters at Sea (CUES), the first multilateral code of conduct for unplanned encounters between navy ships and aircraft in the Asia-Pacific region was signed at the annual meeting of the Western Pacific Navies Symposium (WPNS).³² However, Chinese officials went on record and stated that CUES was not applicable to disputed maritime territories. There were also signs that China was supporting a crisis management approach to relations with Japan, after two years of interruption of military-to-military interactions. This was evidenced in September 2014 when the two countries decided to resume talks on a Japan-China maritime communication mechanism that was first introduced in 2008.³³

On 7 November 2014 Chinese State Councillor Yang Jiechi and Japanese National Security Advisor Yachi Shotaro reached a four-point agreement in Beijing aimed at improving bilateral relations. In the agreement, Japan for the first time acknowledged that there were 'different views as to the emergence of tense situations in recent years in the waters of the East China Sea, including those around the Senkaku (Diaoyu) Islands', although China and Japan disagree on the extent of this acknowledgement.³⁴ However, both countries agreed to establish crisis management mechanisms in order to avoid incidents.³⁵ The four-point agreement was followed by a tense handshake between Chinese President Xi and Japanese Prime Minister Abe at the November 2014 Asia-Pacific Economic Cooperation summit in Beijing, marking the re-establishment of top-level bilateral

³¹ Japanese Ministry of Defense, *Defense of Japan 2014*, Annual White Paper, 2014, <http://www.mod.go.jp/e/publ/w_paper/2014.html>, pp. 41-42; and R. Harding, 'Japan scrambles aircraft more often than during the Cold War', *Financial Times*, 20 Jan. 2015.

³² 'How warships communicate during unplanned encounters', *CRI English*, 24 Apr. 2014, <<http://english.cri.cn/6966/2014/04/24/3561s823706.htm>>. The 20 members of WPNS that signed CUES are: Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, South Korea, Malaysia, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Tonga, Thailand, Singapore, the USA and Viet Nam.

³³ Bräuner, O., Chan, J. and Huijskens, F., 'Confrontation and cooperation in the East China Sea: Chinese perspectives', SIPRI Policy Brief, Feb. 2015, <<http://books.sipri.org/files/misc/SIPRIPB1502a.pdf>>; and Cao, B., 'China-Japan Maritime Talks Resume Amid Territorial Spat', *Bloomberg News*, 25 Sep. 2014.

³⁴ Keck, Z., 'Japan has not recognized Senkaku Island dispute', *The Diplomat*, 11 Nov. 2014, <<http://thediplomat.com/2014/11/japan-has-not-recognized-senkaku-island-dispute/>>.

³⁵ Chinese Foreign Ministry, 'Yang Jiechi meets National Security Advisor of Japan Shotaro Yachi: China and Japan reach four-point principled agreement on handling and improving bilateral relations', 7 Nov. 2014, <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1208360.shtml>; and Japanese Ministry of Foreign Affairs, 'Regarding discussions toward improving Japan-China relations', 7 Nov. 2014, <http://www.mofa.go.jp/a_o/c_ml/cn/page4e_000150.html>.

exchanges between the two countries.³⁶ In January 2015 China and Japan agreed to launch a maritime and air crisis management mechanism aimed at avoiding encounters in the East China Sea, consisting of three components: a hot line, the use of a common radio frequency for ships and planes around the Senkaku/Diaoyu Islands and annual meetings.³⁷

³⁶ Chin, J. and Jun, H., 'Watch: Xi Jinping's ice-cold handshake with Japan's Shinzo Abe', *Wall Street Journal*, 10 Nov. 2014.

³⁷ Kyodo, 'China and Japan eye early launch of East China Sea crisis management mechanism', *South China Morning Post*, 13 Jan 2015.