

China's Diplomatic, Security, and Legal Perspectives on the South China Sea Disputes

Cheng-yi Lin

*Research Fellow, Institute of European and American Studies,
Academia Sinica*

Jonathan Spangler

*Director, South China Sea Think Tank,
Asia-Pacific Policy Research Association*

Abstract

Despite China's high-profile role in the South China Sea maritime territorial disputes, Beijing's perspectives are often misunderstood within the international community. With the aim of bringing clarity to the issue, this article discusses China's viewpoint on the disputes from diplomatic, security, and legal angles. From a diplomatic perspective, Beijing acknowledges that disputes exist in the South China Sea, favors bilateral negotiations for dispute settlement, is steadfast in its promotion of non-interference in regional relations, has no choice but to always take the Taiwan factor into consideration, and is forced more often than it wishes to engage in tit-for-tat, reactionary diplomatic behavior. From a security perspective, China holds that it has exercised remarkable restraint in the face of security threats and has argued, albeit unconvincingly, that its development efforts on disputed features are primarily for civilian purposes. From a legal perspective, the article assesses the PRC's position with regards to

international maritime law following the 1982 signing of the United Nations Convention on the Law of the Sea and in the context of the ongoing international arbitration case unilaterally initiated by the Philippines in 2013 under Annex VII of the Convention, in which China has declined to participate. It then concludes with a discussion of the implications of the article and suggests that there is a need for a more comprehensive understanding of Beijing's diplomatic, security, and legal perspectives within the international community if there is ever to be a resolution to the South China Sea disputes that does not seriously damage the interests of one stakeholder or another.

Keywords: Chinese Maritime Policy, International Law, Maritime Security, Maritime Territorial Disputes, South China Sea

I. Introduction

Today, there is a general acceptance that China plays a crucial role in regional and global affairs, and the unparalleled intensity of diplomatic and scholarly focus on its policies and behavior are a reflection of this. Nevertheless, China's perspectives on regional geopolitical issues, particularly the South China Sea, are among the most often misunderstood. Several factors contribute to such misunderstandings. For its part, Beijing suffers from an enduring lack of political transparency and poor track record of clearly articulating its intentions.¹ Far from promoting understanding about China among its neighbors and other states globally, its reputation imbues its diplomatic and cultural relations with a certain mistrust and doubt that is

1. Ja Ian Chong, "China's Transparency Deficit Complicates Beijing's Regional Outreach," *Asia Pacific Bulletin*, No. 185, November 13, 2012, *EastWestCenter*, <<http://scholarspace.manoa.hawaii.edu/bitstream/handle/10125/24290/APB%20no.%20185.pdf>>.

difficult to overlook. As for other states, many are anxious about the effect of China's rise on their own national interests, their economic and political autonomy relative to previous years, and the seismic shifts that are impacting their own diplomatic roles in the region and in the world. The resulting political rhetoric coming from New Delhi to Washington and everywhere in between has led to the dissemination of misinformation about threats to regional security. In turn, such rhetoric has triggered ever more forceful reactions from Beijing, creating a vicious and self-perpetuating cycle that does little to ease tensions in the region.

This article aims to shed light on the perspectives of the People's Republic of China (hereafter, "the PRC" or "China") on the South China Sea disputes, and we are indebted in large part to the many mainland Chinese scholars with whom we have had conversations and collaboration. The article divides the broad notion of "Chinese perspectives on the South China Sea" into three parts—diplomatic, security, and legal perspectives—in order to provide a clearer framework for understanding Beijing's views on the issue.

II. Diplomatic Perspectives

China's diplomatic perspectives on the SCS disputes are influenced largely by its shifting role in the global political order and economic system. Its economic development and re-emergence as a major force in the global economy has given rise to new responsibilities, expectations, and challenges from the international community.² As

2. Yong Deng, "China: The Post-Responsible Power," *The Washington Quarterly*, Vol. 37, Issue 4, January 21, 2015, pp. 117-132, *Taylor & Francis Online*, <<http://www.tandfonline.com/doi/abs/10.1080/0163660X.2014.1002159?journalCode=rwaq20>>; Amitai Etzioni, "Is China a Responsible Stakeholder?" *Inter*

China's role as a global superpower increasingly has gained mainstream acceptance, international anxiety about how it will fulfill this role has led to mounting pressure on China to proceed within the established framework for international relations. Nevertheless, there is a very fine line between encouraging a rising power to be a responsible stakeholder in the global system and advocating something that feels more akin to containment.

From a Chinese perspective, there is little doubt that, in parallel with its economic and political achievements domestically, it has played and will continue to play a positive role in the world—indeed, few countries would see themselves in any other light. Thus, members of the international community should not be surprised when their political rhetoric on China's role in the region is perceived by the leadership in Beijing as groundless, antagonistic, and often verging on containment or foreign involvement in domestic issues, both of which trigger memories of perceived injustices from its own history.³

China's diplomatic perspectives on the South China Sea disputes can be summarized into five key issues. First, Beijing acknowledges that disputes exist on multiple issues relevant to the South China Sea. The government has made this clear in many different official documents and international fora. Second, it has long been a proponent

national Affairs, Vol. 87, Issue 3, May 3, 2011, pp. 539-553, *Wiley Online Library*, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2011.00989.x/full>>.

3. Alison Adcock Kaufman, "The 'Century of Humiliation,' Then and Now: Chinese Perceptions of the International Order," *Pacific Focus*, Vol. 25, Issue 1, March 11, 2010, pp. 1-33, *Wiley Online Library*, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1976-5118.2010.01039.x/epdf>>.

of bilateral negotiations for dispute settlement. Although China has successfully relied on bilateral discussions for resolving territorial disputes in the past, this preference has been controversial in the South China Sea context. Third, it is adamant in its stance that countries outside of the region should refrain from interfering in regional relations. Asian countries, particularly those in ASEAN, have often taken this as a given in regional multilateral institution building.⁴ Fourth, the PRC's claim to the island of Taiwan is an inseparable aspect of its diplomatic relations with other countries, and its policies in the South China Sea are no exception. Fifth, interactions with other countries over the South China Sea disputes have forced Beijing to participate in a tit-for-tat game of reactionary diplomatic behavior.⁵

Beijing, perhaps to the benefit of all involved parties, is clear in its acknowledgement that disputes exist in the South China Sea. It also recognizes that these disputes relate to sovereignty over maritime features and territory, legal rights that states are entitled to given sovereignty over such features, and the interpretation of international maritime law. This is in contrast to the perspectives of countries with territorial disputes elsewhere. Japan, for example, has obstinately refused to acknowledge the existence of any dispute in

4. Amitav Acharya, "Ideas, identity, and institution-building: From the 'ASEAN way' to the 'Asia-Pacific way'?" *The Pacific Review*, Vol. 10, Issue 3, 1997, pp. 319-346, *Taylor & Francis Online*, <<http://www.tandfonline.com/doi/pdf/10.1080/09512749708719226?redirect=1>>.

5. Jonathan Spangler & Olga Daksueva, "Philippines v. China Arbitration Case: Background, Legal Perspectives, and International Responses," in Fu-Kuo Liu & Jonathan Spangler, eds., *South China Sea Lawfare: Legal Perspectives and International Responses to the Philippines v. China Arbitration Case* (Taipei: South China Sea Think Tank/Taiwan Center for Security Studies, 2016), pp. 17-43, *South China Sea Think Tank*, <<http://scstt.org/reports/2016/525/>>.

its relations with the PRC and ROC over the Diaoyu/Senkaku Islands in the East China Sea. Far from settling the dispute, such an approach prevents meaningful cooperation on the issue and increases mutual distrust, which may even spill over and negatively impact relations on other issues. In contrast, China has acknowledged the existence of the South China Sea maritime territorial disputes in many different fora over the years, including the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC),⁶ bilateral agreements with Vietnam and the Philippines,⁷ and statements issued in response to the Philippines v. China arbitration case.⁸ China's acknowledgement of the disputes has important implications for diplomatic relations in the region. In particular, it provides a basic foundation upon which diplomatic negotiations regarding the management of the disputes can take place. Moreover, it offers some evidence that China is following the path to becoming a responsible stakeholder in the existing global political system, as many countries have expressed

6. Foreign Ministers of ASEAN & the People's Republic of China, "2002 Declaration on the Conduct of Parties in the South China Sea," paper presented at the 8th ASEAN Summit (Phnom Penh, Cambodia: ASEAN, November 4, 2002), *National University of Singapore*, <<http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf>>.

7. Ministry of Foreign Affairs of the People's Republic of China, "Foreign Ministry Spokesperson Hua Chunying's Remarks on the Release of the Transcript of the Oral Hearing on Jurisdiction by the South China Sea Arbitral Tribunal Established at the Request of the Philippines," *Ministry of Foreign Affairs of the People's Republic of China*, August 24, 2015, <http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1290752.shtml>.

8. Ministry of Foreign Affairs of the People's Republic of China, "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines," *Ministry of Foreign Affairs of the People's Republic of China*, December 7, 2014, <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml>.

their hopes about.⁹

Another important aspect of China's diplomatic perspectives on the South China Sea disputes is its diplomatic preference for employing bilateral negotiations for dispute settlement. As Beijing has noted, it has already resolved territorial disputes with 12 of its 14 neighbors.¹⁰ All of these instances were resolved through bilateral means, and none of them required either party to unilaterally resort to international arbitration. From Beijing's perspective, that is a relatively impressive track record that continues to be neglected by international commentators. Given the context, China views the arbitration case initiated by the Philippines as an unnecessary provocation, a departure from the status quo, and a disingenuous attempt by a weaker neighbor to frame a bilateral dispute as an international issue in order to rally the international community against China's interests.

The internationalization of the dispute is closely related to the third of China's diplomatic perspectives on the issue. Beijing has long been a proponent of non-interference by extra-regional actors in regional affairs. It is not alone in this respect, as evidenced in the *1976 Treaty of Amity and Cooperation in Southeast Asia*,¹¹ which

9. Robert B. Zoellick, "Whither China: From Membership to Responsibility?" *The DISAM Journal*, Winter 2006, pp. 94-98, *DISAM*, <https://www.disam.dsca.mil/Pubs/Indexes/Vol%2028_2/Zoellick.pdf>; Katharine A. Fredriksen, "China's Role in the World: Is China a Responsible Stakeholder?" statement presented to the U.S.-China Economic and Security Review Commission, August 4, 2006, *USCC*, <http://www.uscc.gov/sites/default/files/06_08_3_4_fredriksen_kathy_statement.pdf>.

10. Ministry of Foreign Affairs of the People's Republic of China, "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines."

11. Heads of State/Government at the 1st ASEAN Summit, *1976 Treaty of Amity*

China signed in 2003. In a sense, Beijing sees itself as already being remarkably flexible on South China Sea issues by being open to discussing the management of the disputes in bilateral and even multi-lateral contexts, even when it considers itself to have indisputable sovereignty over the maritime territory and features under discussion. For actors outside of the region, including countries, such as Australia, India, Japan, and the United States, and international organizations, such as the Permanent Court of Arbitration, to interfere in the disputes is crossing a red line. Certain members of the international community, however, have shown little hesitation in their efforts to become involved—or from Beijing’s perspective, “interfere”—in China’s domestic or regional affairs.

The fourth aspect of China’s diplomatic perspectives is the Taiwan factor. Beijing views Taiwan as a renegade province that will eventually be reunited with the mainland and has not renounced the use of force to achieve this objective. For PRC leadership, the issue of sovereignty is non-negotiable; it would be political suicide for any leader to demonstrate too much flexibility on the matter. Moreover, the PRC’s territorial claims in the South China Sea are based upon those of the ROC government, which promulgated its claims prior to the foundation of the PRC and occupies several features in the area, including Itu Aba (Taiping) Island, the largest feature in the Spratly Islands, and the Pratas (Dongsha) Islands. Prior to 1988, the PRC was absent from the Spratly Islands while Taiwan has stationed its marines or coast guard personnel on Itu Aba (Taiping) Island since 1956. Since the PRC inherited its U-shaped line claim from the ROC,

and Cooperation in Southeast Asia, adopted at the 1st ASEAN Summit (Bali, Indonesia: ASEAN, February 24, 1976), Ch. I, Art. 2, *Centre of International Law*, <<http://cil.nus.edu.sg/rp/pdf/1976%20Treaty%20of%20Amity%20and%20Cooperation%20in%20Southeast%20Asia-pdf.pdf>>.

if Taiwan decided to clarify the legal meaning of this controversial line, it would further weaken the foundation of China's claims. Beijing has long proposed Cross-Strait cooperation to safeguard sovereignty and sovereign rights in the South China Sea. China also perceives any possible Taiwan-U.S. cooperation or coordination in the South China Sea as a betrayal of Chinese nationalism, which could lead to deterioration of Cross-Strait relations. China has insisted that Taiwan be excluded from any negotiations related to a legally binding code of conduct in the South China Sea. For these reasons, the Taiwan factor is inseparable from South China Sea issues. To date, both sides have separately reasserted their claims on many occasions and maintained sufficient ambiguity so as to avoid stepping on each other's toes, the effect of which has been an implicit support for the legitimacy of one another's maritime territorial claims. This status quo has so far served both sides well, but the possibility of Taipei revising or clarifying its South China Sea claims remains a source of anxiety for policymakers in Beijing.

Finally, the fifth aspect of China's diplomatic perspectives on the South China Sea disputes is that they have given rise to a tit-for-tat game of diplomatic reactionism, in which Beijing, often against its interests, is forced to engage. Given that the South China Sea (and Taiwan) are viewed as essentially domestic issues, international pressure has dragged PRC policymakers into a situation in which they must respond to the multitude of different actors that confront them. Although each has their own perspectives, the widespread criticism of its policies and actions can make Beijing feel that it has been ganged up on and backed into a corner, leaving it with no option but to implement measures to defend its interests. President Xi Jinping has taken an assertive foreign policy since the 18th Chinese Communist Party Congress, particularly in the South China Sea, through the merging of China maritime law enforcement units into the Chinese

Coast Guard in July 2013 and land reclamation activities starting from the end of 2013. With the maritime confrontations in recent years, including the Scarborough Shoal standoff with the Philippines since April 2012 and the Haiyang Shiyou 981 oil rig incident in 2014, China's neighboring countries are increasingly concerned by the prospect of China's future domination in the South China Sea. Beijing has also been forced to respond to the Philippine-initiated international arbitral proceedings, and its non-participation has faced growing criticism internationally. In order to defend its interests, China has constructed airstrips, lighthouses, and many other civilian structures with intention of making its control of certain features a *fait accompli* before its position is further complicated by the actions of other claimants and stakeholders and the outcomes of the arbitration case. The cycle of action and reaction that has developed in the South China Sea will likely haunt President Xi for the remainder of his time in power. China's diplomatic perspectives on the South China Sea disputes, as summarized by these five issues, have been inadequately understood by international commentators and are also the basis for its security perspectives on relevant issues.

III. Security Perspectives

Given the antagonism of the international community, the involvement of extra-regional actors, and the history of incursions into what is considered to be domestic maritime territory, China holds that it has demonstrated a remarkable level of restraint and goodwill in the South China Sea disputes. China's security perspectives on and actions in the South China Sea cannot be understood in isolation; they must be assessed within the broader context of global relations and, in particular, the ongoing shifts in the regional and global power structure. Specifically, China's security perspective on the South China Sea must be understood within the context of the U.S. rebalancing

strategy, Japanese re-militarization, and strengthening defense ties between countries in the region, including members of ASEAN and other South China Sea claimants.

As the U.S. rebalancing strategy has moved from rhetoric to action, Beijing has perceived its moves as a response to China's peaceful rise, an effort to deter it from becoming a maritime power, and a part of a greater shift that resembles the encirclement or containment that it has faced historically. Beijing has detected a dramatic departure of U.S. South China Sea policy from a passive and neutral stance and a shift towards a more active one that has tilted the balance in favor of ASEAN and other claimants and stakeholders in the South China Sea. China has accused the Obama administration of siding with Manila in its confrontations with the Philippines over the Scarborough Shoal and Second Thomas Shoal and also of endorsing the Philippines' decision to pursue international arbitration. As for Xi Jinping's proposal to build a new model of great power relations with the U.S., it has met serious challenges in the two countries' respective South China Sea policies. In a joint press conference with President Obama in September 2015, Xi Jinping asserted Chinese sovereignty but committed to avoid militarization in the South China Sea.¹²

Coinciding with the tensions between China and the Philippines over the Scarborough Shoal incident in April 2012, China was forced to confront Japan in response to the Democratic Party of Japan's na-

12. The White House Office of the Press Secretary, "Remarks by President Obama and President Xi of the People's Republic of China in Joint Press Conference," *The White House*, September 25, 2015, <<https://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>>.

tionalization of the disputed Diaoyu/Senkaku Islands in the East China Sea in September 2012. In November 2013, Beijing announced the East China Sea Air Defense Identification Zone (ADIZ) covering the airspace of the disputed Diaoyu/Senkaku Islands. China perceives the right-wing Japanese President Shinzo Abe's return to power, the adoption of the Guidelines for Japan-U.S. Defense Cooperation in April 2015, and the passage of new Japan security bills in September 2015 as further evidence of a trend towards Japanese remilitarization, which conjures up memories of its imperial actions historically. These actions, the Enhanced Defense Cooperation Agreement (EDCA) between the U.S. and the Philippines, the increasing numbers Japanese and U.S. patrols in the disputed waters, their transfers of patrol vessels to Vietnam and the Philippines, and the widespread accusations that Chinese actions in the South China Sea are overly assertive or aggressive are viewed as collusion between these countries that constitutes a serious threat to China's security.

Beijing has consistently reiterated that its land reclamation and infrastructural development on features in the South China Sea are primarily for civilian use. In May 2015, Chinese Foreign Ministry spokesperson Hua Chunying revealed that civilian facilities on relevant maritime features of the Nansha Islands were built to "offer better services to vessels from littoral countries of the South China Sea."¹³ In June 2015, Assistant Minister of Foreign Affairs Zheng Zeguang confirmed that "facilities including navigation and search and rescue equipment aiming to meet various civilian demands will

13. Ministry of Foreign Affairs of the People's Republic of China, "Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on May 26, 2015," *Ministry of Foreign Affairs of the People's Republic of China*, May 26, 2015, <http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1267054.shtml>.

be mainly constructed on the islands” to better fulfill China’s international obligations.¹⁴

Although Beijing has reiterated in much of its political rhetoric that its efforts are primarily for civilian use, its policies and behavior in the South China Sea do not help to support these assertions. In February 2016, satellite images revealed the likely presence of HQ-9 “medium-to long-range, active radar-homing air-defense missile system[s]” on Chinese-occupied Woody Island in the Paracels.¹⁵ By completing such upgrades, China has built airstrips on three separate disputed reefs in the Spratly Islands, including two on the low-tide elevations of Subi Reef and Mischief Reef and the longest one on Fiery Cross Reef. By doing so, China has achieved unprecedented capabilities for power projection and rapid military deployment, and three airstrips, instead of only one, greatly reduces its vulnerability in the event of a crisis. The airstrips are dual-use in that they serve both civilian and military purposes. In order to bolster its claims that its infrastructural developments are primarily for civilian purposes, two civilian flights departed from Hainan Island and landed on Fiery Cross Reef in January 2016. International perceptions of these landings, however, reveal the widespread prevalence of doubt and mistrust in the international community regarding China’s actions in the South China Sea. Even if they are currently used as civilian landing strips,

14. Ministry of Foreign Affairs of the People’s Republic of China, “Assistant Foreign Minister Zheng Zeguang Expounds on China’s Stand on South China Sea, Cyber Security and Other Issues,” *Ministry of Foreign Affairs of the People’s Republic of China*, June 25, 2015, <http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1276895.shtml>.

15. Gordon Lubold & Chun Han Wong, “China Positions Missiles on Disputed South China Sea Island,” *Wall Street Journal*, February 16, 2016, <<http://www.wsj.com/articles/china-deploys-missiles-on-disputed-island-in-south-china-sea-1455684150>>.

it is widely recognized that the PRC easily could turn the occupied features into naval/air bases for military use. If China decides to declare a South China Sea ADIZ, as it has done in the East China Sea, the infrastructural developments would make it able to track all aircraft entering the area, identify potential threats, and further restrict the air transit of other affected countries, which Beijing has thus far committed not to do. Countries, such as Japan, the U.S., and the Philippines, have expressed their concerns about the possibility of the South China Sea being turned into a “Chinese lake” as “the Caribbean or the Gulf of Mexico is for the United States.”¹⁶

In August 2014, Chinese Foreign Minister Wang Yi first announced a dual-track policy toward the South China Sea, which included negotiations between China and other claimants to settle the disputes and dialogue between China and ASEAN to maintain peace and stability in the South China Sea.¹⁷ Beijing intentionally excluded the U.S. from the South China Sea dispute settlement process because the U.S. is not a claimant to land features in South China Sea and non-interference has been accepted as a norm by regional actors. Nevertheless, perhaps due to U.S. insistence, the two countries began the U.S.-China Asia-Pacific Consultations between foreign ministry officials in June 2011¹⁸ and the Asia-Pacific Security Dialogue

16. Mark F. Cancian, John Schaus, & Zack Cooper, *Asia-Pacific Rebalance 2025: Capabilities, Presence, and Partnerships* (Washington, D.C.: Center for Strategic and International Studies, 2016), p. 19, <<http://csis.org/publication/asia-pacific-rebalance-2025>>.

17. “China Supports ‘Dual-Track’ Approach to Resolve Dispute,” *ChinaDaily*, August 10, 2014, <http://www.chinadaily.com.cn/china/2014-08/10/content_18280181.htm>.

18. U.S. Department of State, “U.S.-China Asia-Pacific Consultations,” *Embassy of The United States*, June 25, 2011, <<http://beijing.usembassy-china.org.cn/062511p.html>>.

between their respective defense ministries from March 2015¹⁹ to discuss mutual security interests and deal with flashpoints in the region. Washington's shifting policy approach to the South China Sea and the Asia-Pacific region more broadly has posed the greatest security challenges for Beijing. Since the latter half of 2015, the Obama administration has dispatched its armed forces, including destroyers and bombers, into the waters and airspace surrounding disputed features occupied and claimed by China. China believes that both the security of the sea lanes through which its energy supplies are imported from Africa and the Middle East and its ability to manage the South China Sea dispute could be handicapped by the U.S. military presence. Persistent efforts by the U.S. to guarantee freedom of navigation in the region, reassure other countries of its continued commitment to promoting regional security and stability, and maintain its leadership role in regional affairs have not been viewed by PRC leadership in the positive light that Washington intends. Instead, they have been perceived as attempts to contain China and stifle its growing prominence in regional political and economic affairs. Therefore, China feels that it has no choice but to implement necessary measures to prepare for contingencies that it hopes to avoid, such as a war of attrition with the U.S. in the South China Sea.

China is also competing with the U.S. for support from ASEAN. To reduce the likelihood of U.S. intervention in the South China Sea disputes, Beijing has demonstrated its willingness to expedite the negotiation process with ASEAN parties directly involved in the disputes. In July 2011, China concluded the Implementation Guidelines of the

19. U.S. Department of Defense, "U.S., China Conduct Asia-Pacific Security Dialogue," *U.S. Department of Defense*, March 11, 2015, <<http://www.defense.gov/News-Article-View/Article/604252/us-china-conduct-asia-pacific-security-dialogue>>.

Declaration on the Conduct of Parties in the South China Sea with ASEAN, and China and ASEAN have conducted negotiations through meetings between senior officials to set up a hotline mechanism to be used in case of emergencies related to territorial disputes in the South China Sea. Immediately after President Obama's proposal for a Southeast Asia Maritime Partnership in November 2011,²⁰ Chinese Premier Wen Jiabao announced that China would set up a fund of up to RMB \$3 billion covering China-ASEAN maritime cooperation projects, including marine scientific research and freedom of navigation and search and rescue activities.²¹ China also proposed military exercises with ASEAN to deal with unexpected encounters and counter piracy in the South China Sea.

Despite its many attempts to charm its neighbors and present itself as a peaceful and responsible stakeholder in the region, Beijing's policies and behavior unsurprisingly cause anxiety within the international community, particularly among its neighbors.²² This is a serious issue that Beijing's leadership must work to address. Efforts to date have fallen far short of convincing relevant stakeholders that its land reclamation efforts, development of infrastructure on occupied

20. The White House Office of the Press Secretary, "Fact Sheet: ASEAN-United States Leaders Meeting," *The White House*, November 20, 2011, <<https://www.whitehouse.gov/the-press-office/2011/11/20/fact-sheet-asean-united-states-leaders-meeting>>; U.S. Department of State, "Joint Statement of the 3rd U.S.-ASEAN Leaders Meeting," *United States Mission to ASEAN*, November 18, 2011, <<http://asean.usmission.gov/news11182011.html>>.

21. Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Abingdon: Routledge, 2012), p. 193.

22. M. Taylor Fravel, "Things Fall Apart: Maritime Disputes and China's Regional Diplomacy," in Jacques DeLisle & Avery Goldstein, eds., *China's Challenges* (Philadelphia: University of Pennsylvania Press, 2014), pp. 204-226, SSRN, <<http://ssrn.com/abstract=2466488>>.

sea features, and broader naval buildup are in the region's best interest or, at a minimum, not a threat to neighboring states. Beijing will need to show that it has the capacity to back up its political rhetoric with actions to match by implementing policies that demonstrate a commitment to civilian use of maritime areas and peaceful management of territorial disputes.

If any claimant in the South China Sea could be seen as an exemplar in this regard, it may be the ROC. Despite having relatively convincing historical evidence to support its claims as well as having actively occupied and administered, among others, Itu Aba (Taiping) Island, the largest feature in the Spratly Islands, the Taiwanese government has supported its political rhetoric about peaceful development and dispute settlement with concrete actions. Infrastructural development on Itu Aba Island to make it increasingly environmentally sustainable, self-sufficient, and equipped with emergency services of use to maritime vessels in the area, the establishment of Dongsha Atoll National Park and scientific research station on the Pratas (Dongsha) Islands, and President Ma Ying-jeou's South China Sea Peace Initiative are all evidence of this. The initiative reaffirms the ROC government's commitment to "upholding the basic principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development" and its willingness "to exploit resources in the South China Sea in cooperation with the other parties concerned."²³ Indeed, members of the international com-

²³ Ying-jeou Ma, "South China Sea Peace Initiative—shelving sovereignty disputes, jointly developing resources, and peacefully resolving disagreements," presented at the 2015 International Law Association and American Society of International (ILA-ASIL) Asia-Pacific Research Forum, *Republic of China Office of the President*, May 26, 2015, <<http://english.president.gov.tw/Default.aspx?tabid=1124&itemid=34858&rmid=3048>>.

munity have taken note. The U.S. Department of State expressed its appreciation for “Taiwan’s call on claimants to exercise restraint, to refrain from unilateral actions that could escalate tensions, and to respect international law as reflected in the Law of the Sea Convention,”²⁴ and at least 6 U.S. Congressmen have expressed their support for the initiative²⁵ because “the national leader of Taiwan is willing to provide a peaceful approach to decrease the tension in this region.”²⁶ Beijing is in dire need of convincing its neighbors and other South China Sea stakeholders of its peaceful intentions in the region. If China is to counter the rising tide of antagonism against it, its leadership would do well to consider the policies of other claimants that have already proven successful in positively influencing international opinion. Resources invested in demonstrating that its commitment to regional cooperation, security, and stability is genuine could have an even greater positive impact on protecting its national security interests than those invested in the development of its armed forces.

IV. Legal Perspectives

As for the PRC’s legal perspectives on the South China Sea dis-

24. Jeff Rathke, “Daily Press Briefing,” *U.S. Department of State*, May 26, 2015, <<http://www.state.gov/r/pa/prs/dpb/2015/05/242852.htm>>; Lynn Kuok, “Taiwan and the South China Sea: More Steps in the Right Direction,” *Brookings*, August 24, 2015, <<http://www.brookings.edu/research/opinions/2015/08/24-taiwan-south-china-sea-kuok>>.

25. Rita Cheng & Elaine Hou, “U.S. Congress members support Taiwan’s initiatives in South China Sea,” *Taiwan News*, December 19, 2015, <http://www.taiwannews.com.tw/etn/news_content.php?id=2854974>.

26. Blake Farenthold, “Supporting President Ma of Taiwan and the Proposed South China Sea Peace Initiative Road Map,” *Congressional Record*, February 3, 2016, p. E102, *Congress. Gov.*, <<https://www.congress.gov/crec/2016/02/03/CREC-2016-02-03-pt1-PgE102.pdf>>.

putes, the international arbitration case initiated by the Philippines against China has had a dramatic impact on relations among claimants and non-claimant stakeholders. Whether or not the initial intention of the case was to lead to a resolution to the dispute, there is little doubt that, at the current stage, it has exacerbated rather than ameliorated tensions in the South China Sea. This is in no small part because of China's perception that the arbitration case has led to the creation of a united front made up of various members of the international community that seeks to undermine some of its key interests in the region. China could be forgiven for thinking as much because, at first glance, it certainly does appear as such and there is indeed historical precedent for it to harbor such anxieties.

A crucial aspect of Beijing's legal perspectives on the issue is its understanding that Chinese claims to and relevant activities in the South China Sea long predate the establishment of modern international maritime law, not to mention the 1982 signing of and its 1994 ratification and accession to United Nations Convention on the Law of the Sea (UNCLOS). Regarding the arbitration case, China has made clear its legal perspectives in a series of official statements despite its non-participation in the case. China maintains that it is supportive of the principles of international law and recognizes the importance of international arbitration tribunals for dispute settlement in certain contexts, but the essence of this specific arbitration case relates to issues of territorial sovereignty. Based on these views, Beijing rejected the Philippines' initiation of the arbitral proceedings, declined to participate in the arbitration case, and holds that the Tribunal has no jurisdiction over the issues raised in the case. Declining to participate is not an unusual occurrence in international adjudication and cannot be used by a tribunal against the party choosing not to participate.²⁷

27. Stefan A. G. Talmon, "The South China Sea Arbitration: Is There a Case to

Nevertheless, in this case, because China's non-participation prevents it from fully developing and presenting its legal perspectives to the Tribunal, some of its valid legal positions and claims may be neglected by those participating in the case, a risk that Beijing has chosen to accept because it allows it to reject the outcomes of the case. The PRC also views the Philippines' internationalization of the disputes as breaching several bilateral agreements between the two countries and a violation of the spirit of the DOC. It asserts that bilateral negotiations are the only appropriate means of dispute settlement in the South China Sea and remains committed to returning to bilateral negotiations with the Philippines. China also argues that the Philippines' arbitration case is an abuse of international law in that it frames illegal occupations of Chinese territory as a legal issue. Moreover, because the Tribunal will effectively be deciding on sovereignty issues, which are beyond its jurisdiction, the arbitration case could undermine the authority of other tribunals in the future. Beijing has also warned that the outcome of the case may harm the interests of other countries, including the Philippines.²⁸

One of the major issues with UNCLOS is the ambiguity by which it defines maritime features. In the arbitration case, the status of specific features has yet to be decided. Although it seems likely that the Tribunal will decide on some relevant issues, at this stage, there is no guarantee that it will choose to do so. If the Tribunal or a future international decision making authority rules on the status of PRC — and ROC — occupied features, there is reason to believe

Answer?" in Stefan Talmon & Bing Bing Jia, eds., *The South China Sea Arbitration: A Chinese Perspective* (Oxford: Hart Publishing, 2014), pp. 15-79, SSRN, <<http://dx.doi.org/10.2139/ssrn.2393025>>.

28. Jonathan Spangler & Olga Daksueva, "Philippines v. China Arbitration Case: Background, Legal Perspectives, and International Responses," pp. 17-43.

that Fiery Cross Reef, Cuarteron Reef, Johnson South Reef, and Scarborough Shoal could be deemed as rocks entitled to only 12-nautical-mile territorial waters and not entitled to EEZs. This is because some evidence shows that those features, in their natural states before the initiation of land reclamation and development efforts, are exposed at high tide yet incapable of sustaining human habitation or economic life on their own. Several other features, namely, Mischief Reef, Second Thomas Shoal, Subi Reef, Gaven Reefs, and the adjacent McKennan Reef and Hughes Reef, would likely be deemed as either low-tide elevations because they are fully submerged at high tide or reefs/shoals that are fully submerged even at low tide. As such, they would not be entitled to EEZs, nor would they be entitled to 12-nautical-mile territorial waters. As for Itu Aba (Taiping) Island, it may be the only feature in the Spratly Islands that qualifies as an island under UNCLOS because it is “a naturally formed area of land, surrounded by water, which is above water at high tide” and the ROC government has demonstrated that the island can “sustain human habitation or economic life”²⁹ given the availability of fresh water, the diversity of plant and animal life, the presence of agriculture, long-term year-round human habitation, and basic infrastructure to support it, such as a hospital, post office, telecommunications services, and power generation facilities. If the Arbitral Tribunal in the Philippines v. China arbitration case or a future authority clarifies the status of said features under international law, China may find aspects of its legal perspectives compromised by the decision, and there is little doubt that other claimants and stakeholders will be emboldened in their efforts to counter the PRC's claims in the South China Sea.

29. Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea*, Part VIII, Article 121, December 10, 1982, *United Nations*, <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

Whether or not Beijing (or Taipei) will be pressured into clarifying, reconsidering, or revising their claims as a result has yet to be seen.

V. Conclusion and Implications

Given China's central role in the South China Sea disputes, the international community will need to learn to better understand the PRC's diplomatic, security, and legal perspectives if there is ever to be a resolution to the South China Sea disputes that takes into account the interests of all stakeholders. For its part, Beijing's diplomatic perspectives involve its preference for bilateral negotiations, its opposition to interference by extra-regional actors, the inseparability of the Taiwan factor from the South China Sea disputes, and the feeling that it has been unjustly forced to participate in an international game of tit-for-tat diplomatic behavior over what it essentially views as a domestic issue or, much more reluctantly, a bilateral or regional one. It is fortunate that, despite disagreement on sovereignty, legal, and procedural issues, all South China Sea claimants acknowledge that there is a dispute between them. From a security perspective, Beijing maintains that it has demonstrated a remarkable level of restraint and goodwill throughout the disputes, especially given the security challenges it is faced with. These challenges include perceived incursions into domestic territory, the U.S. rebalancing strategy, Japan's re-militarization, and strengthening defense ties between other countries, all of which seem a bit too resemblant of a global front united for the purposes of containment. In terms of its legal perspectives, China has become the unwilling defendant in an international arbitration case that threatens to damage its interests whether it participates or not. Given the circumstances, it has opted not to participate but has nevertheless taken it upon itself to clearly articulate its reasoning while the proceedings are ongoing.

Genuine attempts to understand China's perspectives, as outlined in this chapter, as well as those of other stakeholders have significant, real world implications. As we have seen in the South China Sea disputes, failure to take into account the views of all stakeholders breeds antagonism and is unlikely to ease tensions or contribute to a dispute settlement that is palatable for the political leadership and citizenries of all involved. On the other hand, a recognition of the diverse perspectives of different stakeholders and the reasoning behind them would be an important first step towards achieving a mutually acceptable resolution to the disputes. Only time will tell whether or not the many stakeholders involved will have the capacity and motivation to develop such an awareness of one another's diplomatic, security, and legal perspectives on the South China Sea disputes. Should relevant actors take it upon themselves to do so, they would be collectively paving the way towards an eventual dispute settlement that would not seriously damage the interests of one stakeholder or another.

References

Books

Hong, Nong, 2012. *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea*. Abingdon: Routledge.

Online Resources

2014/8/10. "China Supports 'Dual-Track' Approach to Resolve Dispute," *ChinaDaily*, <http://www.chinadaily.com.cn/china/2014-08/10/content_18280181.htm>.

Acharya, Amitav, 1997. "Ideas, identity, and institution-building: From the 'ASEAN way' to the 'Asia-Pacific way'?" *The Pacific Review*, Vol. 10, Issue 3, pp. 319-346, *Taylor & Francis Online*, <<http://www.tandfonline.com/doi/pdf/10.1080/09512749708719226?redirect=1>>.

Cancian, Mark F., John Schaus, & Zack Cooper, 2016. *Asia-Pacific Rebalance 2025: Capabilities, Presence, and Partnerships*. Washington, DC: Center for Strategic and International Studies, <<http://csis.org/publication/asia-pacific-rebalance-2025>>.

Cheng, Rita & Elaine Hou, 2015/12/19. "U.S. Congress members support Taiwan's initiatives in South China Sea," *Taiwan News*, <http://www.taiwannews.com.tw/etn/news_content.php?id=2854974>.

Chong, Ja Ian, 2012/11/13. "China's Transparency Deficit Complicates Beijing's Regional Outreach," *Asia Pacific Bulletin*, No. 185, *EastWestCenter*, <<http://scholarspace.manoa.hawaii.edu/bitstream/handle/10125/24290/APB%20no.%20185.pdf>>.

Deng, Yong, 2015/1/21. "China: The Post-Responsible Power," *The Washington Quarterly*, Vol. 37, Issue 4, pp. 117-132, *Taylor & Francis Online*, <<http://www.tandfonline.com/doi/abs/10.1080/0163660X.2014.1002159?journalCode=rwaq20>>.

- Division for Ocean Affairs and the Law of the Sea, 1982/12/10. *United Nations Convention on the Law of the Sea*, United Nations, <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.
- Etzioni, Amitai, 2011/5/3. "Is China a Responsible Stakeholder?" *International Affairs*, Vol. 87, Issue 3, pp. 539-553, *Wiley Online Library*, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2011.00989.x/full>>.
- Farenthold, Blake, 2016/2/3. "Supporting President Ma of Taiwan and the Proposed South China Sea Peace Initiative Road Map," *Congressional Record*, p. E102, *Congress.Gov*, <<https://www.congress.gov/crec/2016/02/03/CREC-2016-02-03-pt1-PgE102.pdf>>.
- Foreign Ministers of ASEAN & the People's Republic of China, 2002/11/4. "2002 Declaration on the Conduct of Parties in the South China Sea," paper presented at the 8th ASEAN Summit. Phnom Penh, Cambodia: ASEAN, *National University of Singapore*, <<http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf>>.
- Fravel, M. Taylor, 2014. "Things Fall Apart: Maritime Disputes and China's Regional Diplomacy," in Jacques deLisle & Avery Goldstein, eds., *China's Challenges*. Philadelphia: University of Pennsylvania Press, pp. 204-226, *SSRN*, <<http://ssrn.com/abstract=2466488>>.
- Fredriksen, Katharine A., 2006/8/4. "China's Role in the World: Is China a Responsible Stakeholder?" statement presented to the U.S.-China Economic and Security Review Commission, *USCC*, <http://www.uscc.gov/sites/default/files/06_08_3_4_fredriksen_kathy_statement.pdf>.
- Heads of State/Government at the 1st ASEAN Summit, 1976/2/24. *1976 Treaty of Amity and Cooperation in Southeast Asia*, adopted

at the 1st ASEAN Summit. Bali, Indonesia: ASEAN, *Centre of International Law*, <<http://cil.nus.edu.sg/rp/pdf/1976%20Treaty%20of%20Amity%20and%20Cooperation%20in%20Southeast%20Asia-pdf.pdf>>.

Kaufman, Alison Adcock, 2010/3/11. "The 'Century of Humiliation,' Then and Now: Chinese Perceptions of the International Order," *Pacific Focus*, Vol. 25, Issue 1, pp. 1-33, *Wiley Online Library*, <<http://onlinelibrary.wiley.com/doi/10.1111/j.1976-5118.2010.01039.x/epdf>>.

Kuok, Lynn, 2015/8/24. "Taiwan and the South China Sea: More Steps in the Right Direction," *Brookings*, <<http://www.brookings.edu/research/opinions/2015/08/24-taiwan-south-china-sea-kuok>>.

Lubold, Gordon & Chun Han Wong, 2016/2/16. "China Positions Missiles on Disputed South China Sea Island," *Wall Street Journal*, <<http://www.wsj.com/articles/china-deploys-missiles-on-disputed-island-in-south-china-sea-1455684150>>.

Ma, Ying-jeou, 2015/5/26. "South China Sea Peace Initiative—shelving sovereignty disputes, jointly developing resources, and peacefully resolving disagreements," presented at the 2015 International Law Association and American Society of International (ILA-ASIL) Asia-Pacific Research Forum, *Republic of China Office of the President*, <<http://english.president.gov.tw/Default.aspx?tabid=1124&itemid=34858&rmid=3048>>.

Ministry of Foreign Affairs of the People's Republic of China, 2014/12/7. "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines," *Ministry of Foreign Affairs of the People's Republic of China*, <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml>.

Ministry of Foreign Affairs of the People's Republic of China, 2015/5/26. "Foreign Ministry Spokesperson Hua Chunying's

- Regular Press Conference on May 26, 2015,” *Ministry of Foreign Affairs of the People's Republic of China*, <http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1267054.shtml>.
- Ministry of Foreign Affairs of the People's Republic of China, 2015/6/25. “Assistant Foreign Minister Zheng Zeguang Expounds on China's Stand on South China Sea, Cyber Security and Other Issues,” *Ministry of Foreign Affairs of the People's Republic of China*, <http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1276895.shtml>.
- Ministry of Foreign Affairs of the People's Republic of China, 2015/8/24. “Foreign Ministry Spokesperson Hua Chunying's Remarks on the Release of the Transcript of the Oral Hearing on Jurisdiction by the South China Sea Arbitral Tribunal Established at the Request of the Philippines,” *Ministry of Foreign Affairs of the People's Republic of China*, <http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1290752.shtml>.
- Rathke, Jeff, 2015/5/26. “Daily Press Briefing,” *U.S. Department of State*, <<http://www.state.gov/r/pa/prs/dpb/2015/05/242852.htm>>.
- Spangler, Jonathan & Olga Daksueva, 2016. “Philippines v. China Arbitration Case: Background, Legal Perspectives, and International Responses,” in Fu-Kuo Liu & Jonathan Spangler, eds., *South China Sea Lawfare: Legal Perspectives and International Responses to the Philippines v. China Arbitration Case*. Taipei: South China Sea Think Tank / Taiwan Center for Security Studies, pp. 17-43, *South China Sea Think Tank*, <<http://scstt.org/reports/2016/525/>>.
- Talmon, Stefan A. G., 2014. “The South China Sea Arbitration: Is There a Case to Answer?” in Stefan Talmon & Bing Bing Jia, eds., *The South China Sea Arbitration: A Chinese Perspective*. Oxford: Hart Publishing, pp. 15-79, *SSRN*, <<http://dx.doi.org/10.2139/ssrn.2393025>>.
- U.S. Department of Defense, 2015/3/11, “U.S., China Conduct Asia-

Pacific Security Dialogue,” *U.S. Department of Defense*, <<http://www.defense.gov/News-Article-View/Article/604252/us-china-conduct-asia-pacific-security-dialogue>>.

U.S. Department of State, 2011/6/25, “U.S.-China Asia-Pacific Consultations,” *Embassy of The United States*, <<http://beijing.usembassy-china.org.cn/062511p.html>>.

U.S. Department of State, 2011/11/18, “Joint Statement of the 3rd U.S.-ASEAN Leaders Meeting,” *United States Mission to ASEAN*, <<http://asean.usmission.gov/news11182011.html>>.

The White House Office of the Press Secretary, 2011/11/20. “Fact Sheet: ASEAN-United States Leaders Meeting,” *The White House*, <<https://www.whitehouse.gov/the-press-office/2011/11/20/fact-sheet-asean-united-states-leaders-meeting>>.

The White House Office of the Press Secretary, 2015/9/25. “Remarks by President Obama and President Xi of the People’s Republic of China in Joint Press Conference,” *The White House*, <<https://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>>.

Zoellick, Robert B., 2006/Winter. “Whither China: From Membership to Responsibility?” *The DISAM Journal*, pp. 94-98, *DISAM*, <https://www.disam.dsca.mil/Pubs/Indexes/Vol%2028_2/Zoellick.pdf>.