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**Research Report**

## A "great wall of sand" in the South China Sea? Political, legal and military aspects of the island dispute

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# SWP Research Paper

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German Institute for International  
and Security Affairs

*Michael Paul*

## A “Great Wall of Sand” in the South China Sea?

Political, Legal and Military Aspects  
of the Island Dispute

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**A “Great Wall of Sand” in the South China Sea?  
Political, Legal and Military Aspects of the  
Island Dispute**

China has set new records in the ways, means and speed with which it has expanded its outposts in the South China Sea. Neighbouring states such as Vietnam have also extended their bases on small islands and reefs, but they have done so over many years and not within a few months. From September 2013 to June 2014 alone, more than ten million cubic metres of sand and cement were taken to five reefs in the Spratly Islands area. Among other things, a specially constructed ship sucked up sand from the seabed and poured it onto coral reefs or behind artificial walls. By March 2015, this had created a total surface area of about 14.5 square kilometres, which the commander of the US Pacific Fleet ironically dubbed “the Great Wall of Sand”. A reconnaissance flight in May 2015 showed that one outpost had been equipped with a concrete runway measuring over three kilometres as well as a deep-water port, suggesting it has not just civilian but also military significance. Beijing insisted the works had been completed, but continued to build additional runways. In January 2016, the White House renewed its criticism of China’s activities, which, it said, created tensions and undermined regional stability. Shortly afterward it became known that China had deployed two missile batteries on Woody Island, an area also claimed by both Taiwan and Vietnam. Despite Beijing’s claims to the contrary, its expansions signal an emerging militarisation of these disputed waters, whose plentiful resources and energy deposits have been considered potential causes of conflict since the 1980s.

The South China Sea is currently one of the world’s most contentious zones. But the situation risks becoming even worse, despite the fact that all of the region’s states depend on stable and secure sea lines of communication. As a “superhighway of the seas” the South China Sea is an important route for the international transport of goods and raw materials. Developments there have a significant impact not only on distant trade nations such as Germany, but also on the coastal states of adjacent sea areas. Any impairment of shipping traffic would immediately affect Japan and South Korea. Territorial conflicts in the South China Seas also have a direct impact on the East China Sea, where

China and Japan are involved in an ongoing island dispute. Japan has declared its intention to use its navy to prevent Chinese ships from transiting through the territorial waters of the contested Senkaku/Diaoyu Islands in the future. In turn Beijing has finished building a second ship (CCG-3901) – the world’s largest – for the China Coast Guard (CCG). These “monster ships” manifest China’s maritime territorial claims through their size alone: they are bigger even than US guided missile destroyers of the Arleigh-Burke class (such as the *USS Lassen*). CCG-2901 patrols the East China Sea; the new ship is intended to assert China’s maritime claims in the South China Sea. China’s naval modernization means that the People’s Liberation Army (PLA) can potentially enforce the territorial claims and deter other countries from resisting. This could heighten tensions in East Asia, where every intervention – by armed forces, maritime militias, or piracy – takes its toll on the maritime security and economic wellbeing of all.

Therefore the South China Sea is currently an area of regional disputes that could potentially develop into an international conflict because some of the colliding interests are irreconcilable. On the one hand there are the territorial claims by the People’s Republic of China, which insists it has “indisputable sovereignty” over islands and waters of the South China Sea. These claims are a sacrosanct part of its domestic policy. On the other hand, the United States are wielding their maritime power, which is a central plank of their foreign policy and the basis of their superpower status. At its core, this is a regional conflict about sea lines, territorial claims and resources that primarily involves ASEAN (Association of Southeast Asian Nations) states and China. Nevertheless, it also has global repercussions. First, it concerns “a superhighway of the seas”, which handles almost a third of the world’s sea trade. Any impediment to the shipping traffic would have a direct impact on world trade in general but also particularly on Japan and South Korea. Second, the South China Sea is closely connected to the rivalry between Beijing and Washington because important allies and partners of the United States are involved in the dispute about China’s territorial claims. Third, it is a conflict about international norms and laws that calls into question a fundamental principle of the liberal world order: the “freedom of the seas” versus exclusive maritime zones. What, then, are the reasons of this conflict? How to gauge its past and future developments? What are the implications and potential ways of containing it both regionally and internationally?

# The Territorial Conflicts in the South China Sea

Because of its favourable monsoon winds for sailboats, the South China Sea<sup>1</sup> was already an important trade route in ancient times. It is as vitally important to Asia as the Mediterranean Sea is to Europe; and, as with the Mediterranean, domination of the South China Sea must be understood as an attempt to control the region's most important sea routes.<sup>2</sup> As a Pacific Rim sea, the South China Sea was already used for the exchange of goods between Southeast Asia's coastal states when the largely jungle-covered inland still made overland trade impossible. The Sea thus became the joint hub and pivot of a region characterised by diversity, be it political, economic, cultural or religious.

In the 21st century, the South China Sea provides the main trade route for the prospering East Asian economies. Whoever controls it, controls a decisive part of the global economy. Over 60,000 ships transporting goods valued at over 5.3 billion US dollars (including 1.2 bn from US trade and a substantial share from European and German foreign trade) pass through the South China Sea every year. This corresponds to almost a third of global trade. What is more, this "superhighway of the seas"<sup>3</sup> ensures the supply of the Northeast and Southeast Asian states with energy and raw materials. It is virtually irreplaceable.<sup>4</sup> More than a third of the globally available

crude oil (around 15.2 million barrels a day) is shipped to the states of the East Asian growth region via the Strait of Malacca, the entrance to the South China Sea. So is more than half the world's liquefied natural gas (LNG).<sup>5</sup> The states obtain their crude oil mostly via the South China Sea – about 80 percent in the case of China, 66 percent for South Korea and almost 60 percent for Japan. Furthermore, about ten percent of the world's catch of edible fish stem from the abundant fishing grounds of the South China Sea. And last but not least, its large offshore gas and oil fields have seen it labelled the "new Persian Gulf". In 2013, the US Energy Information Administration – an agency of the US Energy Ministry responsible for statistical analyses – published its estimates of 11 billion barrels of oil and 190 billion cubic metres of gas under the South China Sea. The state oil company China National Offshore Oil Corporation (CNOOC) assumes that the deposits are much larger still, at 125 bn barrels of oil.<sup>6</sup> This is not the first time the fields have been viewed as a potential cause of regional conflict, given the rising demand for oil.<sup>7</sup>

Graham, "Maritime Security and Threats to Energy Transportation in Southeast Asia", *RUSI Journal* 160, no. 2 (2015): 27.

<sup>5</sup> Part of the crude oil – around 1.4 million barrels a day (MMbbl/d) – is destined for Singapore and Malaysia, where it is refined and shipped onwards. The lion share (12.8 MMbbl/d) goes to China (4.5 MMbbl/d) and Japan (3.2 MMbbl/d), Asia's biggest consumers of energy, as well as to South Korea via the East China Sea. U.S. Energy Information Administration (EIA), *South China Sea*, 7 February 2013, [http://www.eia.gov/beta/international/analysis\\_includes/regions\\_of\\_interest/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/beta/international/analysis_includes/regions_of_interest/South_China_Sea/south_china_sea.pdf).

<sup>6</sup> Ibid.

<sup>7</sup> Cf. U.S. Department of Defence (DoD), *The Asia-Pacific Maritime Strategy: Achieving U.S. National Security Objectives in a Changing Environment*, Washington, DC, 27 July 2015, 5; EIA, *South China Sea* (see note 5); Amos A. Jordan and William J. Taylor Jr., *American National Security. Policy and Process* (Baltimore and London: Johns Hopkins University Press, 1981), 376; Robert D. Kaplan, *Asia's Cauldron. The South China Sea and the End of a Stable Pacific* (New York: Random House, 2014), 10, 170f.; Graham, "Maritime Security and Threats to Energy Transportation in Southeast Asia" (see note 4), 20–31; Ronald O'Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, R42784 (Washington, DC: Congressional Research Service [CRS], 22 December 2015), 2; Raine and Le Mièrè, *Regional Disorder* (see note 1), 12, 29,

<sup>1</sup> The name "South China Sea" has become established in the English-speaking world and thus also as the commonly used international designation. In Southeast Asia it is known neutrally by the direction in which it lies, as seen from the respective country. Thus, the Chinese call it the 'South Sea' (nanghai) and the Vietnamese the "East Sea" (bien dong). The Philippines are alone in using, since 2012, the name "West Philippine Sea". Cf. Sarah Raine and Christian Le Mièrè, *Regional Disorder. The South China Sea Disputes* (London: International Institute for Strategic Studies [IISS], 2013), 13; Gerhard Will, *Tough Crossing: Europa und die Konflikte in der Südchinesischen See*, SWP-Studie 10/2014 (Berlin: Stiftung Wissenschaft und Politik, June 2014), 7.

<sup>2</sup> Cf. David Abulafia, *Das Mittelmeer. Eine Biographie* (Frankfurt: S. Fischer, 2013), 813.

<sup>3</sup> Arne Perras, "Pazifikraum. Ritt auf dem Tiger", *Süddeutsche Zeitung*, 29 April 2016, 4.

<sup>4</sup> Alternative routes mean long detours and significantly higher costs. The Arctic sea route to Northeast Asia, for instance, can only be used for parts of the year. Cf. Euan



Its exceptional importance as a sea line of communication and a reservoir of resources has made the South China Sea and its four groups of islands (Pratas, Paracel, Spratly and Scarborough) the object of overlapping regional territorial claims by China and Taiwan, the Philippines, Malaysia, Brunei and Vietnam. In some cases, this has already led to military confrontations and violent nationalist clashes. With the exception of Brunei, all the claimant states have erected various buildings and military installations on islands and coral reefs. There are twenty-six features occupied by Vietnam; ten by the Philippines; eight by China; seven by Malaysia; and two by Taiwan. Many of the reefs or rocks are underwater at high tide and are not suitable for human settlement unless they have been artificially consolidated. Only the largest natural island in the Spratly group, Itu Aba (Taiping), currently occupied by Taiwan, is an “island” under the 1982 United Nations Convention on the Law of the Sea (UNCLOS): it has all the required characteristics of a “naturally formed area of land, surrounded by water, which is above water at high tide” (UNCLOS Article 121 para 1). The island has been the object of disputes between China, Taiwan, Vietnam and the Philippines, particularly since large oil reserves were suspected to exist under the Spratly Islands.<sup>8</sup>

In accordance with UNCLOS, states can claim as their Exclusive Economic Zone (EEZ) an area that stretches out to sea from their coast for up to 200 nautical miles (370 kilometres), measured from the baseline along the coast (UNCLOS Arts. 55 and 57). The EEZ remains a part of the high seas, but the coastal state is entitled to exploit the zone’s natural resources, including fishing, and is granted individual sovereignty rights (UNCLOS Art. 56). China is laying claim to an area of the South China Sea that is more than 1,000 kilometres from its coast, a claim justified by its presi-

dent on historical grounds:<sup>9</sup> Imperial China’s use of the maritime silk road, and the Potsdam Declaration of 26 July 1945, which contained the conditions for Japan’s surrender, including the return of areas and islands in the South China Sea that it had conquered since 1914.<sup>10</sup> Moreover, the Chinese Nationalist Kuomintang government brought out a map of China in 1947 that shows all the islands to which China now lays claim – including the fishing, navigational and resource rights associated with them. According to this map, up to 90 percent of the South China Sea – two to three million square kilometres – falls under Chinese jurisdiction.<sup>11</sup>

In May 2009, China’s Permanent Representation to the UN sent two notes verbales to the UN General Secretariat. They contained a map roughly based on the 1947 version and showing a U-shaped nine-dash line (NDL), as well as a declaration that China had “indisputable sovereignty” over the islands enclosed by the NDL and their territorial waters.<sup>12</sup> Vietnam, Malaysia and the Philippines asserted their own, mutually competing claims and also sent the UN notes

<sup>9</sup> “Islands in the South China Sea since ancient times are China’s territory”. The White House, *Remarks by President Obama and President Xi of the People’s Republic of China in Joint Press Conference*, Washington, DC, 25 September 2015, <http://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>.

<sup>10</sup> Chinese Prime Minister Li Keqiang during his 2013 visit to Berlin. Embassy of the People’s Republic of China in the Federal Republic of Germany, *Li Keqiang im Potsdamer Schloss Cecilienhof*, Berlin, 26 May 2013, <http://www.china-botschaft.de/det/zt/premier/t1043961.htm>. Cf. Zhiguo Gao and Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications”, *The American Journal of International Law* 107, no. 1 (2013): 101f.; Rana Mitter, “The End of the Second World War and the Shaping of Geopolitics in East Asia”, *RUSI Journal* 160, no. 4 (2015): 14–17.

<sup>11</sup> Cf. Markus Ackeret, “Angewandte chinesische Geografie”, *Neue Zürcher Zeitung*, 27 November 2012, 5; DoD, *Annual Report to Congress. Military and Security Developments Involving the People’s Republic of China 2013* (Washington, DC, 2013), 3f.; Gao and Jia, “The Nine-Dash Line” (see note 10), 103, 108; James Kraska, “The Nine Ironies of the South China Sea Mess”, *The Diplomat*, 17 September 2015; Raine and Le Mièrre, *Regional Disorder* (see note 1), 31.

<sup>12</sup> “China 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 (see attached map).” Permanent Mission of the People’s Republic of China, *Notes Verbales CML/17/2009 and CML/18/2009*, 7 May 2009, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf), [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf).

75f.; Will Rogers, “The Role of Natural Resources in the South China Sea”, *Cooperation from Strength. The United States, China and the South China Sea*, ed. Patrick M. Cronin (Washington, DC: Center for a New American Security [CNAS], January 2012), 87, 90; Mamdouh G. Salameh, “China, Oil and the Risk of Regional Conflict”, *Survival* 37, no. 4 (Winter 1995–1996): 133–46.

<sup>8</sup> Cf. Richard Cronin and Zachary Dubel, *Maritime Security in East Asia: Boundary Disputes, Resources, and the Future of Regional Stability* (Washington, DC: Stimson, February 2013), 14f.; M. Taylor Fravel, “Maritime Security in the South China Sea and the Competition over Maritime Rights”, in *Cooperation from Strength*, ed. Cronin (see note 7), 34; Kaplan, *Asia’s Cauldron* (see note 7), 13, 88.

Map 1  
Asia



Source: Can&Able.

verbales. The catalyst for this diplomatic flurry, however, was not China but a problematic deadline: submissions on continental shelf areas had to be made to the UN by May 2009.<sup>13</sup> Since 2009, however, Beijing has done much in the way of assertive diplomacy: in March of that year, Chinese ships prevented the *USNS Impeccable* from continuing its passage near the island province of Hainan and ordered it to leave the EEZ. Also in 2009, Beijing exerted pressure on foreign oil companies to stop exploring in disputed waters.<sup>14</sup>

<sup>13</sup> Submissions were received by the Commission on the Limits of the Continental Shelf (CLCS).

<sup>14</sup> Cf. Raine and Le Mièrre, *Regional Disorder* (see note 1), 34, 48; David E. Sanger, *Confront and Conceal. Obama's Secret Wars and Surprising Use of American Power* (New York: Broadway Paperbacks, 2012), 392.

In a more recent note verbale, in April 2011, China added that Chinese sovereignty and its resulting claims were well-founded in history and the law.<sup>15</sup> The burden of proof for such historical claims, however, lies with the claimant and is quite difficult. China has therefore taken a different approach. It is focusing on extending the area of applicability of Chinese legislation (for instance, in a law to protect the marine environment) beyond zones defined under maritime law – such as territorial waters (UNCLOS Art. 3), EEZ

<sup>15</sup> “China’s sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence.” Permanent Mission of the People’s Republic of China, *Note Verbale CML/8/2011*, 14 April 2011, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2011\\_re\\_phl\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf).

(Art. 55) or continental shelf (Art. 76) – to include “any other sea areas under the jurisdiction of the People’s Republic of China”.<sup>16</sup> In other words, China is attempting to fill a perceived legal vacuum using national legislation. Such “gap-filling”, however, is questionable under international law.<sup>17</sup>

Ultimately, the practical significance of the nine-dash line remains unclear. This ambiguity seems to be deliberate, affording China a certain latitude in the claims it puts forward, and making it more difficult for other parties to refute them.

The United States have urged a peaceful solution of the territorial conflicts in the South China Sea, but have not taken a position on the various claims made. Nevertheless, the US State Department has examined China’s territorial claims and has criticised the notes verbales for not specifying whether they concern only ownership of the islands (which are not named individually) or maritime zones as well.<sup>18</sup> US diplomats have thus called on China to clarify its position unambiguously and bring it into line with maritime law.<sup>19</sup> Furthermore, the geographical data are insufficient to clearly define the area. In a move likely to aggravate matters, Chinese maps published since 2014 show a vertical “line” east of Taiwan, thereby uniting the

island republic with the People’s Republic with a stroke of the pen.<sup>20</sup>

This already complicated situation concerning maritime law became even more politically charged at the annual ASEAN conference in Hanoi in July 2010. US Secretary of State Hillary Clinton declared freedom of navigation in the SSC to be in the national interest of the United States and stressed that international law had to be respected.<sup>21</sup> A particularly problematic legal point between Washington and Beijing is whether military activities by third states are prohibited in EEZs, as they are in territorial waters (as part of the “right to innocent passage” provisions contained in UNCLOS Art. 17). China is demanding that the US stop such activities in its EEZ, which have repeatedly led to incidents in Chinese airspace and at sea. The US follows a broad interpretation, under which the same rights obtain in an EEZ as on the high seas.<sup>22</sup> China, on the other hand, takes a much narrower view. To that extent, the controversy between the two powers resembles the historical dispute of *mare liberum* versus *mare clausum*.<sup>23</sup>

<sup>16</sup> “This law shall apply to the internal water, territorial sea, contiguous zone, exclusive economic zone and continental shelf of the People’s Republic of China and any other sea areas under the jurisdiction of the People’s Republic of China.” *The Marine Environmental Protection Law of the People’s Republic of China*, <http://www.cecc.gov/resources/legal-provisions/marine-environmental-protection-law-of-the-peoples-republic-of-china>.

<sup>17</sup> Cf. U.S. Department of State (DoS), *Limits in the Seas. China: Maritime Claims in the South China Sea* (Washington, DC, 5 December 2014), 10, 17; Gao and Jia, “The Nine-Dash Line” (see note 10), 123.

<sup>18</sup> “China has not clarified through legislation, proclamation, or other official statements the legal basis or nature of its claim associated with the dashed-line map.” DoS, *Limits in the Seas. China* (see note 17), 1. Cf. *ibid.*, 11–15; O’Rourke, *Maritime and EEZ Disputes* (see note 7), 23.

<sup>19</sup> “Under international law, maritime claims in the South China Sea must be derived from land features. Any use of the ‘nine-dash line’ by China to claim maritime rights not based on claimed land features would be inconsistent with international law. The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea.” Assistant Secretary of State for East Asian and Pacific Affairs Danny Russel in a February 2014 hearing, quoted by Jeffrey A. Bader, *The U.S. and China’s Nine-Dash Line: Ending the Ambiguity* (Washington, DC: Brookings, 6 February 2014).

<sup>20</sup> Ishaan Tharoor, “Could This Map of China Start a War?”, *Washington Post*, 27 June 2014; Harry Kazianis, “China’s 10 Red Lines in the South China Sea”, *The Diplomat*, 1 July 2014; O’Rourke, *Maritime and EEZ Disputes* (see note 7), 23; DoS, *Limits in the Seas. China* (see note 17), 3, 6.

<sup>21</sup> Mark Landler, “Offering to Aid Talks, U.S. Challenges China on Disputed Islands”, *New York Times*, 23 July 2010.

<sup>22</sup> “Robert Scher, then-Deputy Assistant Secretary of Defense, Asian and Pacific Security Affairs [...] stated that ‘we reject any nation’s attempt to place limits on the exercise of high seas freedoms within an exclusive economic zones [sic!] [...] Customary international law, as reflected in articles 58 and 87 of the 1982 United Nations Convention on the Law of the Sea, guarantees to all nations the right to exercise within the EEZ, high seas freedoms of navigation and overflight, as well as the traditional uses of the ocean related to those freedoms. It has been the position of the United States since 1982 when the Convention was established, that the navigational rights and freedoms applicable within the EEZ are qualitatively and quantitatively the same as those rights and freedoms applicable on the high seas.’” O’Rourke, *Maritime and EEZ Disputes* (see note 7), 30.

<sup>23</sup> The concept of the “freedom of the seas” (*mare liberum*), as proposed by Hugo Grotius in the 17th century, is a key principle in maritime law. Grotius declared the seas to be the common good of all humanity, arguing that neither the Bible nor conquest nor customary law were able to change the fact that the sea, by its very nature, was open to use by all. By contrast, his contemporary John Selden believed that claims to exclusive rights did exist (*mare clausum*): military control over a claimed sea area conferred state sovereignty, which could then be enforced. The legal principle of free seas ultimately prevailed because it more closely corresponded to the mari-

These fundamentally incompatible interpretations of maritime law – freedom of navigation versus exclusive maritime zones – collide heavily in the case of the land features in the South China Sea claimed by China. In May 2015, PLA Navy declared one of the outposts to be a “military exclusion zone”,<sup>24</sup> denying the US the right to freedom of navigation and overflight. However, China has itself not acted according to its own demands. In September 2015, five Chinese navy ships conducted an “innocent passage” through the Aleutian Islands, part of the US state of Alaska. The passage had not been announced beforehand – although China itself always demands such announcements from others. Similarly, in July 2014, the PLAN electronic surveillance ship *Beijixing* carried out military reconnaissance in the US EEZ near Hawaii, an activity that China itself does not tolerate from others in its own waters.<sup>25</sup>

Washington’s conduct, however, is ambiguous as well. On the one hand, the United States argue, in accordance with UNCLOS (which the US Senate still refuses to ratify), that claims to maritime zones are valid only if they emanate from a recognised coastal state. On the other hand, it wants to apply a broad interpretation of maritime law in Washington’s favour, so that the same military activities are allowed in any EEZ as on the high seas. Both arguments are certainly plausible. EEZs cover over 30 percent of the world’s seas. If the United States renounced their military activities in all of these, they could hardly continue to fulfil their role as guardian of the seas (and the global commons). That would also jeopardise their

status as a world power. Consequently, the US stresses the freedom of the sea as a guiding principle, as Secretary of Defence Ashton Carter has repeatedly declared.<sup>26</sup> However, for once even China and Vietnam agree in rejecting US demands for the right to conduct military activities in EEZs when they are unannounced and unlimited.

time interests of the most important European states at the time. It also applied to those sea areas that are far from any coast, which make up over 50 percent of the earth’s surface. At the same time, it is an example of how reconciling the interests of various states brings about a legal system that encourages economic interdependence. Nonetheless, there is still a counter-current that aims to put sea areas located closer to land (and their resources) under the control of coastal states. Cf. Michael Paul, *The United States, China and the Freedom of the Seas. Washington’s FONOPs Conflict with Beijing*, SWP Comments 15/2016 (Berlin: SWP, March 2016), 2–3.

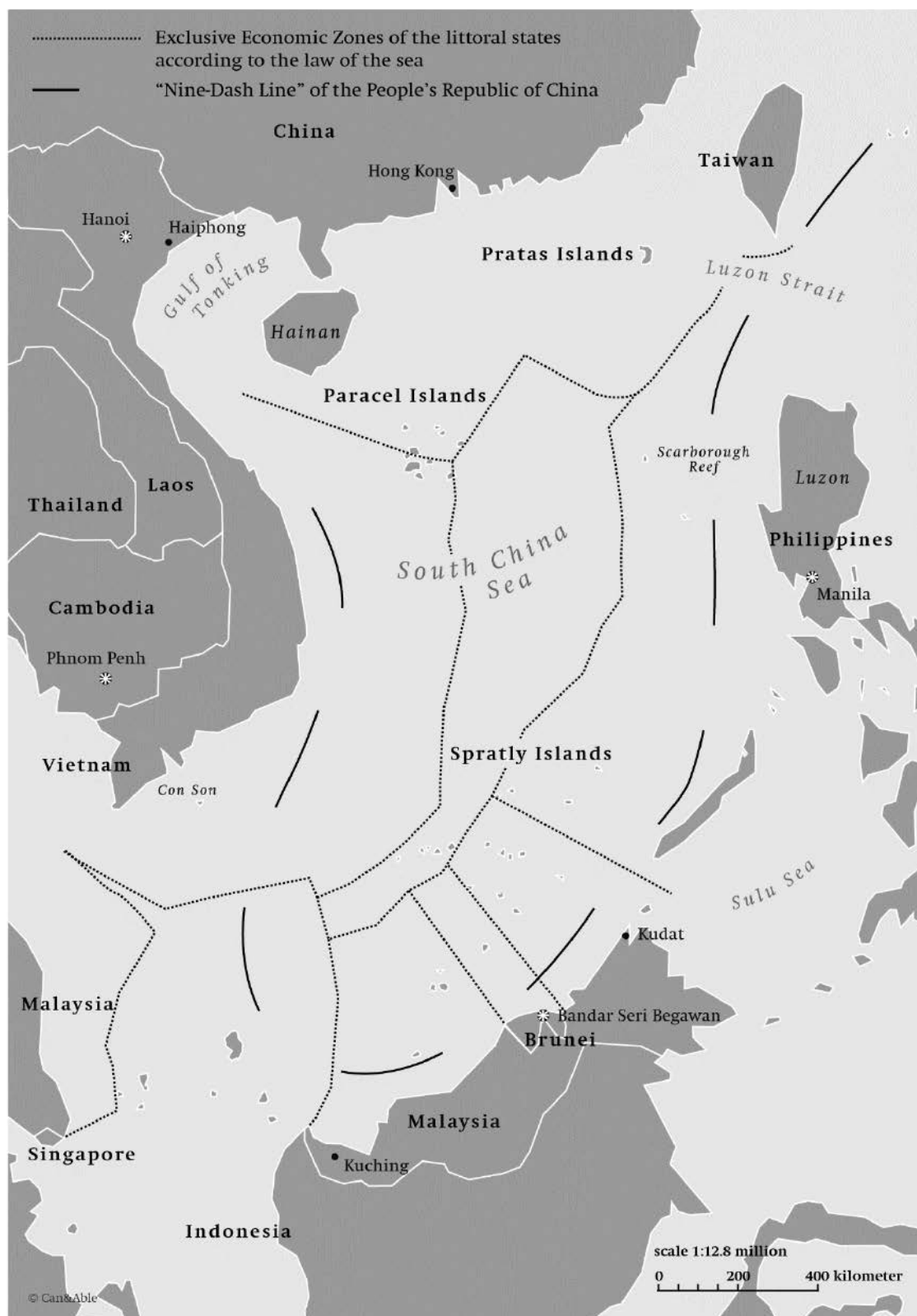
<sup>24</sup> David S. Cloud, “U.S. Confronts China in Air, at Sea”, *Los Angeles Times*, 22 May 2015, 6.

<sup>25</sup> Sam LaGrone, “U.S. Pacific Commander: Chinese Spy Ship Off Hawaii Has an Upside”, *U.S. Naval Institute (USNI) News*, 29 July 2014; Jeremy Page and Gordon Lubold, “Chinese Navy Ships Came within 12 Nautical Miles of U.S. Coast”, *The Wall Street Journal*, 4 September 2015; O’Rourke, *Maritime and EEZ Disputes* (see note 7), 70f.; Missy Ryan and Dan Lamothe, “Chinese Naval Ships Flirted with U.S. Soil”, *Washington Post*, 5 September 2015, A02.

<sup>26</sup> “[...] the United States will fly, sail, and operate wherever international law allows, as U.S. forces do all around the world.” DoD, *IISS Shangri-La Dialogue: “A Regional Security Architecture Where Everyone Rises”*, Secretary of Defense Speech, Singapore, 30 May 2015, <http://www.defense.gov/News/Speeches/Speech-View/Article/606676/iiss-shangri-la-dialogue-a-regional-security-architecture-where-everyone-rises>.

Map 2

Beijing's territorial claims in the South China Sea



Source: Can&Able.

# The Spratly Islands and the “Great Wall of Sand”

The Spratly archipelago (called Nansha in Chinese) lies at the heart of China’s territorial claims (see Map 2, p. 12). It extends over more than 1,000 kilometres and consists of about 120 scattered rocks, coral reefs and small islands. The majority of these are not islands under maritime law (UNCLOS Art. 121) since they are mostly covered by water, and such a low-tide elevation which is submerged at high tides has no territorial sea of its own (Art. 13). Taiwan has stationed coast guard personnel on the largest natural island in the group, Itu Aba (Taiping), which has a surface area of half a square kilometre. Its port facilities were renewed in February 2015 with the support of mainland China. China and Taiwan make similar claims to the entire island group, according to the Nine-Dash Line. The archipelago is also claimed in its entirety by Vietnam. Brunei, Malaysia and the Philippines each claim parts. With the exception of Brunei, all of these claimants have already taken possession of islands or other features in the sea, erected buildings for civilian and military use on many of the otherwise uninhabited islands, and taken steps to reclaim land. In the 1980s, for instance, Malaysia built a runway on Swallow Island, and the Philippines on Thitu Island. Between 2009 and 2014, Vietnam engaged in various activities to reclaim land.<sup>27</sup>

In 1998 China used national legislation to grant itself jurisdiction over a 200 nautical mile zone for all its claimed territories. Among these, it counts the entire Spratly archipelago. In 2011, it applied to the UN for an EEZ of 200 nautical miles for each of the reefs it occupies. Using national legislation and state practice, China has thus laid claim to almost the entire South China Sea, largely corresponding to the NDL. In 2014 and 2015, before the controversy could be settled either diplomatically or by arbitration, China created new facts on the ground by reclaiming land. Domestically, this approach has been established as the party line since January 2013, when President Xi Jinping excluded any compromise on territorial

matters before the Politburo. Internationally Beijing’s measures have been catastrophic. Every area used by China for reclaiming land – such as the Fiery Cross, Mischief and Subi Reefs (see Map 3, p. 22) – is also claimed by at least one other state. Three, including the Mischief Reef, are inside the EEZ claimed by the Philippines, which is currently under arbitration in The Hague.<sup>28</sup>

China has set new records in the ways, means and speed of its land reclamation activities.<sup>29</sup> No state had previously reclaimed land to this extent. Besides other means, a specially constructed ship sucked up sand and rocks from the seafloor and poured them over coral reefs or behind artificial walls. This had a devastating impact on the fragile eco-system.<sup>30</sup> During the Spratly archipelago land reclamation, more than ten million cubic metres of sand are believed to have been transported to five reefs.<sup>31</sup> By March 2015, this had created a surface area of about 14.5 square kilometres, which the Commander of the US Pacific Fleet, Admiral Harry Harris Jr., ironically dubbed “the Great Wall of

<sup>28</sup> Cf. Permanent Mission of the People’s Republic of China, *Note Verbale CML/8/2011* (see note 15); Asia Maritime Transparency Initiative (AMTI)/Center for Strategic and International Studies (CSIS), *Island Tracker*, <http://amti.csis.org/island-tracker/>; Peter Dutton, “Cracks in the Global Foundation: International Law and Instability in the South China Sea”, in *Cooperation from Strength*, ed. Cronin (see note 7), 73f.

<sup>29</sup> “China has now reclaimed 17 times more land in 20 months than the other claimants combined over the past 40 years, accounting for approximately 95 percent of all reclaimed land in the Spratly Islands.” DoD, *Asia-Pacific Maritime Strategy* (see note 7), 16.

<sup>30</sup> James Borton and Nguyen Chu Hoi, “China and the Deep Blue Sea”, *Project Syndicate*, 8 September 2015; Gabriel Dominguez, “Beijing’s South China Sea Projects ‘Highly Disruptive’ to Local Ecosystems”, *Deutsche Welle*, 16 April 2015; Ben Dolven, Jennifer K. Elsea, Susan V. Lawrence, Ronald O’Rourke and Ian E. Rinehart, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, R44072 (Washington, DC: CRS, 18 June 2015), 4.

<sup>31</sup> The ship used was designed by Shanghai Jiaotong University and the German engineering firm Vosta LMG. It is the third, and biggest, ship of this type (a cutter suction dredger) in Asia. It can move up to 4,500 cubic metres of sand per hour and reach depths of up to 30 metres. Dolven et al., *Chinese Land Reclamation* (see note 30), 17f.

<sup>27</sup> Cf. DoD, *Asia-Pacific Maritime Strategy* (see note 7), 15f.; Shannon Tiezzi, “Mainland Firm Lends a Hand as Taiwan Expands South China Sea Presence”, *The Diplomat*, 10 February 2015.

Sand”.<sup>32</sup> Substantial expansion was carried out on Woody Island (now 2.13 square kilometres in size), in the northern Paracel archipelago as well as on the reefs Fiery Cross (2.74 sq km), Subi (3.95 sq km) and Mischief (5.85 sq km) in the Spratly archipelago (see Map 3, p. 22). They have each been equipped with a runway three kilometres long, fit for even Chinese fighter bombers.<sup>33</sup>

The first public account of these activities came in March 2015 when Foreign Minister Wang Yi explained that China was carrying out “necessary construction on its own islands and reefs”, which concerned no-one else. He contrasted this with other countries which “engage in illegal work in another person’s house”. China would accept no criticism, he stated, since it was merely erecting buildings on its own land, which it had every right to do. However, China would maintain the freedom of navigation and play a constructive role for peace and stability in the region.<sup>34</sup> China argued that it had shown massive restraint in the past, but that the time had now come for works that primarily served civilian purposes and fulfilled international obligations.<sup>35</sup> The search for the Malaysian passenger plane, flight MH 370, which disappeared in March 2014, showed that an operational base was needed to improve maritime surveillance in the

area.<sup>36</sup> However, radar installations and other means justified by civilian reconnaissance can also be used for military purposes. In a domestically popular move, the director of the South China Sea Institute, Wu Sichun, rationalised that China had been “forced” to create the artificial islands for its self-defence: The defence co-operation of the United States with the Philippines had left it feeling insecure. In January 2016, the head of China’s navy, Admiral Wu Shengli, similarly declared that the “necessary defensive measures” in the Spratly area were not a case of militarisation and would not be abandoned. Whether or not they were used depended on the extent of the threat. The Chinese Foreign Ministry added that the outposts enabled China to protect its territorial sovereignty and maritime rights and interests and were required for military defence.<sup>37</sup>

### Successful “salami-slicing” tactics?

The outposts continue to be controversial under international law. What is clear, however, is that artificial islands do not expand a state’s territorial waters. Politically, China’s land-reclamation measures have violated both the spirit and the letter of the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC). In it, the ASEAN states and China explicitly – but non-bindingly – agreed to act with restraint.<sup>38</sup> For the first time in ASEAN history, China was criticised by its Southeast Asian neighbours at the April 2015 summit of heads of states and governments in Kuala Lumpur. Land reclamation, the statement said,

32 “China is creating a great wall of sand”, Admiral Harry Harris Jr. said in a speech to the Australian Strategic Policy Institute (ASPI), Canberra, 31 March 2015, <http://www.cpf.navy.mil/leaders/harry-harris/speeches/2015/03/ASPI-Australia.pdf>.

33 CSIS, *Island Tracker* (see note 28); Edward Wong and Jane Perlez, “As Tensions with U.S. Grow, Beijing Says It Will Stop Building Artificial Islands in South China Sea”, *New York Times*, 16 June 2015.

34 Johnny Erling, “Stückweise holt sich Beijing das Süd-chinesische Meer”, *Die Welt*, 11 June 2014; Ministry of Foreign Affairs of the People’s Republic of China, *Foreign Minister Wang Yi Meets the Press*, 8 March 2015, [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1243662.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1243662.shtml). Cf. Dolven et al., *Chinese Land Reclamation* (see note 30), 13–15.

35 “China’s work on the South China Sea islands is intended to fulfil its international responsibilities and obligations, such as providing maritime search and rescue services, ensuring safety of navigation, disaster prevention and mitigation, meteorological observations, environmental protection, and fishery production.” “US, Please Stop Stirring Up Trouble in the South China Sea”, *People’s Daily*, 3 June 2015. Cf. Dolven et al., *Chinese Land Reclamation* (see note 30), 14f.; Ministry of Foreign Affairs of the People’s Republic of China, *Foreign Ministry Spokesperson Lu Kang’s Remarks on Issues Relating to China’s Construction Activities on the Nansha Islands and Reefs*, 16 June 2015, [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1273370.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1273370.shtml).

36 Cf. Kevin Baron, “China’s New Islands Are Clearly Military, U.S. Pacific Chief Says”, *Defense One*, 24 July 2015; Dolven et al., *Chinese Land Reclamation* (see note 30), 10f.

37 Sam LaGrone, “Head of Chinese Navy Defends South China Sea Moves in Teleconference with CNO Richardson”, *USNI News*, 20 January 2016; O’Rourke, *Maritime and EEZ Disputes* (see note 7), 65; Wong and Perlez, “Beijing Says It Will Stop Building Artificial Islands” (see note 33).

38 “5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.” ASEAN, *Declaration on the Conduct of Parties in the South China Sea*, 17 October 2002, [http://www.asean.org/?static\\_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2](http://www.asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2).

had undermined trust and could jeopardise peace, security and stability in the South China Sea.<sup>39</sup>

In May 2015, the Taiwanese President Ma Ying-jeou, launching Taiwan’s South China Sea Peace Initiative, pleaded for self-restraint. Nevertheless, he also emphasised that the sea areas surrounding Nansha (Spratly), Xisha (Paracel), Chungsha (Macclesfield Bank) and Tungsha (Pratas) were historically, geographically and legally part of China’s territory, and thus of Taiwan’s – a position shared by the People’s Republic. His proposed solution would pragmatically divide up existing marine resources while putting territorial claims on hold.<sup>40</sup> However, a similar proposal was already presented by the Philippines in 2011, in vain. Since then, China’s robust approach has not only made it more difficult to agree on detailed binding rules of conduct. It has also made a fair division of marine resources look less realistic. As in 1990, an agreement along the lines proposed by Ma may well be scuppered by Beijing’s insistence that Chinese claims would have to be recognised first.<sup>41</sup>

China’s behaviour in the region is not at all atypical. Vietnam carried out land reclamation as long ago as the 1970s, which was later secured through acts of sovereignty by erecting buildings and stationing military personnel. China is progressing in a similar manner, but its activities are wider in scope and have more far-reaching consequences. Politically, its land reclamation expands China’s sovereignty claims over the previously extraterritorial islands. State sovereignty is one of China’s core interests, alongside security, territorial integrity, national reunification and its

political system.<sup>42</sup> Strategically, the bases substantially extend the radius of its fishing fleets, coast guard and military, since they offer re-provisioning and protection far from their home ports on Hainan or the mainland. Militarily, the area can in future be controlled more effectively both above and below water, using radar, aircraft and drones. Ships could also be temporarily stationed there. The new bases will also enhance Chinese airspace. China has ordered Russian Su-35 fighter planes, which have communications systems allowing contact with an operating base for distances of up to 1,500 kilometres – enough for patrolling the South China Sea.<sup>43</sup> Economically, the outposts are important for the exploration and subsequent exploitation of oil and gas reserves located there. In all, the newly consolidated bases give China a more regular, concentrated and effective presence in the South China Sea.

Concrete runways over 3 kilometres long have been built on Fiery Cross and Subi. A runway on Mischief Reef followed in January 2016. For search and rescue shorter landing strips would have sufficed. Clearly, its considerable length has a military rationale: it allows fighter aircraft and even long-range bombers to be deployed. The bases substantially improve the operating range and thus the deployment possibilities of PLA forces. Ships of the maritime militias,<sup>44</sup> Chinese Coast Guard and PLA navy can now be deployed in the disputed areas practically on a daily basis, as can

<sup>39</sup> Chairman’s Statement of the 26th ASEAN Summit, Kuala Lumpur & Langkawi, 27 April 2015, “Our People, Our Commitment, Our Vision”, Point 59–62, <http://www.miti.gov.my/miti/resources/fileupload/Chairman%20Statement%2026th%20ASEAN%20Summit.pdf>.

<sup>40</sup> “The principle that sovereignty cannot be divided, but resources can be shared, however, allows sovereignty disputes to be shelved while development proceeds jointly, he said.” Ministry of Foreign Affairs Republic of China (Taiwan), *President Ma Proposes South China Sea Peace Initiative*, Taipei, 26 May 2015, [http://www.mofa.gov.tw/en/News\\_Content.aspx?n=8157691CA2AA32F8&sms=4F8ED5441E33EA7B&s=F71CA7963F189938](http://www.mofa.gov.tw/en/News_Content.aspx?n=8157691CA2AA32F8&sms=4F8ED5441E33EA7B&s=F71CA7963F189938).

<sup>41</sup> Cf. Dolven et al., *Chinese Land Reclamation* (see note 30), 12; Kay Möller, “China in Ostasien: Die Renaissance der Pax Sinica”, in *Weltordnung oder Chaos? Beiträge zur internationalen Politik*, ed. Albrecht Zunker (Baden-Baden: Nomos, 1993), 322; Ian Storey, “China’s Bilateral and Multilateral Diplomacy in the South China Sea”, in *Cooperation from Strength*, ed. Cronin (see note 7), 60.

<sup>42</sup> “China is firm in upholding its core interests which include the following: state sovereignty, national security, territorial integrity and national reunification, China’s political system established by the Constitution and overall social stability, and the basic safeguards for ensuring sustainable economic and social development.” Information Office of the State Council, *China’s Peaceful Development*, Beijing, 6 September 2011, [http://news.xinhuanet.com/english2010/china/2011-09/06/c\\_131102329\\_4.htm](http://news.xinhuanet.com/english2010/china/2011-09/06/c_131102329_4.htm). Cf. Raine and Le Mière, *Regional Disorder* (see note 1), 58f.

<sup>43</sup> Peter Wood, “Su-35 Purchase: Evidence of Sino-Russian Relations’ Weakness or Strength?”, *China Brief* 15, no. 23 (7 December 2015): 1–3, [http://www.jamestown.org/uploads/media/\\_CB\\_15\\_23.pdf](http://www.jamestown.org/uploads/media/_CB_15_23.pdf).

<sup>44</sup> Unlike the navy, the fishing boats and crews that make up the “maritime militias” look civilian – but some have undergone military training. They can use force against other boats or ships while having less of an escalating effect. Cf. Andrew S. Erickson and Conor M. Kennedy, “Irregular Forces at Sea: ‘Not Merely Fishermen – Shedding Light on China’s Maritime Militia’”, *Center for International Maritime Security (CIMSEC)*, 2 November 2015; Christopher P. Cavas, “China’s ‘Little Blue Men’ Take Navy’s Place in Disputes”, *Defense News* 3, no. 20 (9–16 November 2015), 1, 6.



planes. If Y-9 type surveillance aircraft or Ka-28 helicopters were stationed on the new bases, they would be also a distinct boost to China’s ability to combat submarines.

The harbour on Fiery Cross appears to be of sufficient size for warships, meaning type 054 frigates, type 056 corvettes and type 022 missile ships. Radar, ground-to-air missiles, anti-ship cruise missiles (ASCM) and drones can now also be stationed on the new outposts. All told, this puts China in a position to control large swathes of the South China Sea and incorporate them into its military strategy.<sup>45</sup>

The bases could be used defensively to secure Chinese claims as well as to extend them offensively. In the meantime, they create a tangible atmosphere of threat for neighbouring states. China’s exercise in July 2015 involving over 100 PLAN ships as well as the PLA Airforce and PLA Rocket Force (PLARF) made that very clear. It improved China’s “rapid reaction” capability, the state news agency Xinhua reported. China tested anti-ship cruise missiles as well as the transfer and logistical supply of units of the Rocket Force. In a placatory move, a PLAN spokesperson claimed these drills were simply part of annual exercises, but added that the Nansha (Spratly) Islands and surrounding waters had belonged to China since time immemorial.<sup>46</sup> In fact, China’s southern fleet already conducted live-firing drills back in July 2010. All three of its fleets participated. In November 2011 China tested amphibious landings, and in 2013 it even simulated fighter-bomber attacks on harbours on the open sea. All of these exercises increase its offensive capability against other states’ bases in the South China Sea.<sup>47</sup> Troop contingents deployed on these bases would make it pos-

sible to attack disputed features in surrounding waters at short notice. The new outposts therefore have substantial importance for the regional balance of power, which has tilted further away from claimant states like Vietnam and the Philippines. China’s land reclamation has also exacerbated the political, legal and economic situation in neighbouring countries. The previous status quo can hardly be re-established, now that Beijing has literally created a new reality that cannot be undone – neither the concreting of the reefs nor the loss of eco-systems.

The new outposts also potentially lay the ground for an Air Defence Identification Zone (ADIZ), as already exists in the East China Sea. In May 2015, the deputy chief of staff of the PLA, Admiral Sun Jianguo, did not exclude the possibility of establishing an ADIZ in the South China Sea. An employee of the US National Security Council (NSC) commented that establishing a further ADIZ was “provocative and destabilising”; Admiral Harris declared that the US would ignore a new ADIZ as it ignores the ADIZ in the East China Sea.<sup>48</sup>

In May 2015, Washington dispatched a reconnaissance aircraft to the new outposts, directing international attention to China’s activities. The plane was not intercepted by Chinese fighter aircraft, as had previously been the case near Hainan in August 2014. However, PLA Navy ordered the crew immediately to leave its “military exclusion zone”, even though the aircraft was over 12 nautical miles from Fiery Cross Reef, the location of the newly consolidated base.<sup>49</sup> In a front-page article in the state newspaper *Global Times*, the Chinese leadership in Beijing made it clear that it would not accede to US demands to stop construction work. It warned that if Washington continued to insist, there was the risk of military confrontation “sooner or later”.<sup>50</sup> A former member of the Reagan

<sup>45</sup> “If you look at all of these facilities – and you could imagine a network of missiles sites, runways for their fifth generation fighters and surveillance sites and all that – it creates a mechanism in which China would have de facto control over the South China Sea in any scenario short of war,” [Admiral Harry] Harris said.” Sam LaGrone, “Report: Chinese Complete Runway on Reclaimed South China Sea Island”, *USNI News*, 25 September 2015. Cf. DoD, *Asia-Pacific Maritime Strategy* (see note 7), 15–17; Dolven et al., *Chinese Land Reclamation* (see note 30), 4, 7–9; Raine and Le Mièrè, *Regional Disorder* (see note 1), 66; Demetri Sevastopulo, “White House Urges Beijing to Halt Runway Building on Reefs, South China Sea”, *The Financial Times*, 15 January 2016, 1.

<sup>46</sup> “Don’t Excessively Interpret South China Sea Drill: China Navy”, *New China*, 25 July 2015; “Chinese Navy Conducts Live Firing Drill in South China Sea”, *Xinhua*, 28 July 2015; U.S.-China Economic and Security Review Commission, *2015 Report to Congress* (Washington, DC, 17 November 2015), 367f.

<sup>47</sup> Raine and Le Mièrè, *Regional Disorder* (see note 1), 67.

<sup>48</sup> Cf. Dolven et al., *Chinese Land Reclamation* (see note 30), 8f., 11, 21; Edward Wong, “China Says It Could Set Up Air Defense Zone in South China Sea”, *New York Times*, 31 May 2015, 8; Sam LaGrone, “PACOM Harris: U.S. Would Ignore a ‘Destabilizing’ Chinese South China Sea Air Defense Identification Zone”, *USNI News*, 26 February 2016.

<sup>49</sup> “‘Foreign military aircraft, this is Chinese navy. You are approaching our military alert zone. Leave immediately,’ the Chinese dispatcher said in a radio transmission, the Navy recounted Thursday. When the U.S. crew responded that it was flying in international airspace, the Chinese dispatcher answered, ‘This is the Chinese navy. [...] You go!’” Cloud, “U.S. Confronts China in Air, at Sea” (see note 24), 6.

<sup>50</sup> “If the US sets its bottom line on the condition that China must stop its construction work, then military confrontation will start sooner or later.” “Onus on US to Cool South China

administration cautioned that the South China Sea should not be turned into a *casus belli* such as the Balkans in the First World War – China’s careful “salami-slicing tactics” were not worth a military confrontation.<sup>51</sup> Besides, he argued, its activities neither violated the law of the sea nor threatened freedom of navigation. In his view, China’s militarisation was cause for criticism, since the new bases and harbours could be used for military purposes. However, in the past that had not been sufficient reason for the United States to demand the cessation of construction activities at any higher level than diplomatic appeals. De facto he suggested tolerating Chinese tactics. Liberal voices meanwhile pointed out that Washington should not consider every artificial island or runway as a direct threat to its own interests or those of other states. After all, Beijing’s behaviour was to be expected from a new great power, and the “stationary aircraft carriers” it was creating with its outposts were analogous to the real US carriers. Land reclamation of this scope was clearly new, but not automatically a threat.<sup>52</sup> In sum, China’s “salami-slicing” approach to the island dispute has been extremely successful. If it pursues this tactic, it will very likely end up controlling a maritime zone that more or less corresponds to the area enclosed by the Nine-Dash Line and encompasses nearly the whole South China Sea.

## The *USS Lassen* and the Freedom of the Seas

On 27 October 2015, the guided missile destroyer *USS Lassen* (DDG-82) passed less than 12 nautical miles from a Chinese outpost on Subi Reef in the South China Sea.<sup>53</sup> The reef has been occupied by China since 1988

and forms its northernmost outpost in the Spratly Islands, close to the Philippines. Since July 2014, it has been transformed into a base measuring 3.95 square kilometres.<sup>54</sup> US Secretary of Defence Carter described the US destroyer’s operation as a routine move in accordance with international law. He added that Washington would not take any further position on competing territorial claims. He also made clear, however, that this “freedom of navigation” operation (FONOP) was intended to demonstrate that the US would not accept any restrictions on its freedom of navigation in this region.<sup>55</sup>

The naval manoeuvre had been preceded by months of controversy in Washington. High-ranking representatives of both parties in Congress, including John McCain as chairman of the Senate Armed Forces Committee and Bob Corker as chairman of the Senate Foreign Relations Committee, had called on Carter and Secretary of State John Kerry to respond to shifts in the status quo of the region. A policy of restraint could be a “dangerous mistake”, McCain said, because respecting the twelve-mile zone would mean *de facto* sovereignty, agreed to tacitly.<sup>56</sup>

Washington had in fact for years largely ignored the implications of China’s behaviour in the South China Sea. The passage of the *USS Lassen* was the first “Freedom of Navigation” operation in the area since 2012.<sup>57</sup> However, opinions diverged as to the message it was supposed to convey. Subi Reef is a “low-tide elevation” (UNCLOS Art. 13), generating no claim to a territorial sea. To that extent the transit of the US warship was no “innocent passage”, as that applies

Sea Heat”, *Global Times*, 24 May 2015. Cf. DoD, *A Regional Security Architecture Where Everyone Rises* (see note 26).

51 Doug Bandow, “The Ultimate Irony: Is China the ‘America of Asia?’”, *The National Interest*, 27 May 2015.

52 Michael E. O’Hanlon, “Don’t Be Provoked: China and the United States in the South China Sea”, *Brookings Brief*, 18 September 2015.

53 “A U.S. defense official told CNN that the destroyer *USS Lassen* ‘conducted a transit’ within 12 nautical miles of Subi Reef in the Spratly Islands [...]. The operation put the ship within an area that would be considered Chinese sovereign territory if the U.S. recognized the man-made islands as being Chinese territory, the official added.” Jim Sciutto and Barbara Starr, “U.S. Warship Sails Close to Chinese Artificial Island in South China Sea”, *CNN*, 27 October 2015. On the following section, see Paul, *The United States, China and the Freedom of the Seas* (see note 23), 1f.

54 See AMTI/CSIS, *Subi Reef Tracker*, <http://amti.csis.org/subi-reef-tracker/> (accessed 17 February 2016).

55 “[...] this FONOP challenged attempts by claimants to restrict navigation rights and freedoms around features they claim, including policies by some claimants requiring prior permission or notification of transits within territorial seas.” Carter in a note to McCain of 22 December 2015, in “Document: SECDEF Carter Letter to McCain on South China Sea Freedom of Navigation Operation”, *USNI News*, 5 January 2016. Cf. Ankit Panda, “After Months of Waiting, US Finally Begins Freedom of Navigation Patrols Near China’s Man-Made Islands”, *The Diplomat*, 27 October 2015; Michael J. Green, Bonnie S. Glaser and Gregory B. Poling, *The U.S. Asserts Freedom of Navigation in the South China Sea* (Washington, DC: CSIS, 27 October 2015).

56 Austin Wright, Bryan Bender and Philip Ewing, “Obama Team, Military at Odds over South China Sea”, *Politico*, 31 July 2015. Cf. James Kraska, “The Legal Rationale for Going Inside 12”, *AMTI Brief*, 11 September 2015.

57 Sydney J. Freedberg Jr., “US Hasn’t Challenged Chinese ‘Islands’ since 2012”, *Breaking Defense*, 17 September 2015.

only in territorial waters. Some argued, however, that the *USS Lassen*’s passage within twelve miles implied recognition of China’s claims.<sup>58</sup> In fact, the opposite was true. The *USS Lassen* operation was intended to underline that China’s base-building activities had not altered the status quo concerning free navigation. Consequently, the Americans treated the outpost erected on a “low-tide elevation” as an artificial island, which may have a security zone of 500 metres but no territorial sea.<sup>59</sup> The second “Freedom of Navigation” operation, the patrol of the *USS Curtis Wilbur* (DDG-54) close to Triton Island in January 2016 was directed against “excessive claims” by China, Taiwan and Vietnam. Here too, the passage occurred without the prior notification demanded by China and Vietnam.<sup>60</sup> This was also true of the third operation in early May 2016, when the *USS William P. Lawrence* (DDG-110) passed within 12 nautical miles of Fiery Cross Reef.<sup>61</sup>

By ignoring artificial outposts and the associated claims to territorial waters, the United States is acting to prevent China acquiring possession by default. Under international law, any territorial acquisition presupposes that effective sovereignty is exercised over the territory during considerable lengths of time and without interruption.<sup>62</sup> While the creation of

artificial islands cannot be undone, the claim to sovereignty, the associated right to establish exclusive zones and the ensuing restriction of freedom of navigation can certainly be denied. This also holds true for the right associated with such claims to establish exclusive zones and for any inferred restrictions on maritime freedom of action. Given the rival territorial claims, recognition of diverse exclusive zones would leave the South China Sea looking like a Swiss cheese, gravely obstructing freedom of navigation in one of the world’s most important sea routes.

President Obama has frequently been criticised for his policy of military restraint. Beijing’s activities in the South China Sea likewise caused members of Congress and high-ranking officers to push long and hard for the US Navy to be deployed. In the run-up to Chinese president Xi Jinping’s visit to Washington in September 2015, however, Obama correctly gauged the difficult situation for Beijing and mustered strategic patience. He delayed deploying the *USS Lassen* until its impact was less confrontational (but also more ambiguous and controversial). The deployment thus mirrored the confusion and ambiguity characterising China’s maritime claims. Australia, Japan, the Philippines and South Korea welcomed the operation. The Malaysian Defence Minister, who a few days later hosted the ASEAN Defence Ministers Meeting Plus (ADMM-Plus), also described the patrol as “very important”. Beijing, on the other hand, inevitably criticised the US operation for what it claimed was an illegal unauthorised transit through Chinese territorial waters.<sup>63</sup> In any event, the three “Freedom of Navigation” operations carried out so far by the United States have only been tactical successes in the protracted conflict over freedom of the seas and control of the South China Sea. Indeed, an US expert believes that freedom of navigation is currently as strongly threatened as it was during Imperial Germany’s unrestricted submarine campaign of 1915.<sup>64</sup>

At stake are not just a couple of outposts, but elementary principles and historic claims, over which the United States and China disagree. That is what

<sup>58</sup> Euan Graham, “Innocent Passage: Did the US Just Fumble Its South China Sea Strategy?”, *the interpreter*, 4 November 2015, <http://www.lowyinterpreter.org/post/2015/11/04/Innocent-passage-Did-the-US-just-fumbled-its-South-China-Sea-strategy.aspx>. Cf. Euan Graham, “Freedom of Navigation and Collective Self-Interest”, *ASEAN Focus* 3 (December 2015/January 2016): 8f.

<sup>59</sup> Cf. Bonnie S. Glaser and Peter A. Dutton, “The U.S. Navy’s Freedom of Navigation Operation around Subi Reef: Deciphering U.S. Signaling”, *The National Interest*, 6 November 2015; Raul “Pete” Pedrozo and James Kraska, “Can’t Anybody Play This Game? US FON Operations and Law of the Sea”, *Lawfare*, 17 November 2015.

<sup>60</sup> Cf. Jane Perlez, “U.S. Challenges China’s Claim of Islands With Maritime Operation”, *New York Times*, 30 January 2016; Shannon Tiezzi, “China Rejects Latest US FONOP in the South China Sea”, *The Diplomat*, 2 February 2016; Gregory Poling, “South China Sea FONOP 2.0: A Step in the Right Direction”, *AMTI Brief*, 2 February 2016.

<sup>61</sup> Cf. Sam LaGrone, “U.S. Destroyer Passes near Chinese Artificial Island in South China Sea Freedom of Navigation Operation”, *USNI News*, 10 May 2016.

<sup>62</sup> While a state can acquire territory by contract, it can also acquire a stateless area (*terra nullius*) with its territorial waters by occupying it effectively, continuously and with a view to acquisition. Cf. Knut Ipsen, ed., *Völkerrecht. Ein Studienbuch* (6th entirely revised edition, Munich: Beck, 2014), 77; Alfred Verdross and Bruno Simma, *Universelles Völkerrecht. Theorie und Praxis* (2nd ed., Berlin: Duncker & Humblot, 1981), 557, 561–563.

<sup>63</sup> Green et al., *The U.S. Asserts Freedom of Navigation* (see note 55); Yeganeh Torbati and Trinna Leong, “U.S., Japan Push for Inclusion of South China Sea in Defense Form Statement”, *Reuters*, 3 November 2015; Matthew Southerland, “U.S. Freedom of Navigation Patrol in the South China Sea: What Happened, What It Means, and What’s Next”, *USOUTH CHINA SEA Issue Brief*, 5 November 2015.

<sup>64</sup> Kraska, “The Legal Rationale for Going Inside 12” (see note 56).

makes it so difficult to resolve the disputes and to prevent crisis escalation. The commander of the US Pacific Fleet, Admiral Harris, stated in January 2016 that “Freedom of Navigation” operations will grow in frequency, complexity, and scope.<sup>65</sup> During an April 2016 operation, however, Washington was careful not to provoke Beijing excessively. Instead of a “Freedom of Navigation” operation near a Chinese outpost at Mischief Reef, four A-10 type US ground attack aircraft conducted an overflight of the Scarborough Reef, which is claimed by both China and the Philippines.<sup>66</sup> Unlike previous FONOPs, the overflight caused hardly any public debate. Its ostensible purpose was to prevent China from erecting military-use infrastructure on this reef, as it had on the Spratly Islands. If this interpretation is correct, Washington pre-empted a *fait accompli*.<sup>67</sup> Given that Beijing is sticking to its claims and the US Navy intends to step up its FON operations, a latent escalation potential is the new normal in the South China Sea.

## The political and military implications of the Chinese outposts

The South China Sea conflict will determine future interactions between China and its neighbours, as well as its relationship with the United States. South-east Asian neighbours, such as Vietnam and the Philip-

pines, have responded to Chinese threats to their sovereignty claims by modernising their armed forces and turning towards the United States. In just a few years, maritime cooperation with Vietnam has grown from port visits of the US Navy to multi-day joint exercises. Vietnam (and Malaysia) will also get marine surveillance training and equipment. The Enhanced Defence Cooperation Agreement (EDCA) signed in Manila in 2014 allows US armed forces to use eight Philippine military bases. Two of them are only 500 miles from the Chinese outpost on the Spratly archipelago. Indonesia also increasingly participates in maritime surveillance exercises with US forces. In April 2015, these included flights over the South China Sea for the first time. To date, any direct confrontation has been avoided – all the actors in the South China Sea are proceeding with caution.

But the Chinese claims to individual outposts are only part of the problem. The larger and better connected the bases are in the long term, the more control China will be able to exert over the South China Sea and its sea routes. The central geostrategic location of the Sea could eventually give China a hegemonic role in the region. This would allow Beijing to redefine the rules not only of navigation in the region but also of international affairs in the West Pacific.

China’s land reclamation can be interpreted as part of a defensive military strategy.<sup>68</sup> The transfer of missile batteries and radar facilities in February 2016 presumably means that the newly consolidated bases will be used as a robust “buffer zone” to keep US forces at bay, thus implementing an Anti-Access/Area Denial (A2/AD) strategy. Another crucial question remains whether the new facilities are intended to serve as gateways for actions against bases and outposts of other claimant states. Once established, the outposts can be used both for maritime exploration and for further expansion, depending on political will, the type of infrastructure and its equipment. It is not yet possible to determine whether Beijing plans to leave the path of peaceful development. The outposts’ vulnerability certainly does not make them fit for a military confrontation, but they are an important part of the effort to gain control of the South China Sea.<sup>69</sup>

<sup>65</sup> Sydney J. Freedberg Jr., “US Will Push Chinese Harder on Territorial Claims: PACOM”, *Breaking Defense*, 27 January 2016; Andrea Shalal and Idrees Ali, “U.S. Navy Plans Two or More Patrols in South China Sea per Quarter”, *Reuters*, 2 November 2015.

<sup>66</sup> Scarborough Reef is claimed by China and is the object of arbitration in The Hague, initiated by the Philippines.

<sup>67</sup> “First, it clearly communicated U.S. interests *before* Chinese activity began, rather than waiting for a Chinese *fait accompli*. Second, it practiced *immediate* deterrence by signaling that ‘specific actions will have specific consequences,’ instead of trying to rely only on heretofore ineffective general deterrence. Third, and perhaps most important, Washington demonstrated that it was willing to *accept some risk*, by placing U.S. forces near Scarborough and elsewhere in the region to conduct operations continuously. Fourth, rather than drawing public red lines, the administration *communicated its declaratory policy quietly* – speaking softly but carrying a big stick, while still preserving some flexibility.” Zack Cooper and Jake Douglas, “Successful Signaling at Scarborough Shoal?”, *War on the Rocks*, 2 May 2016 (original italics). Cf. Sam LaGrone, “McCain to SECDEF Carter: U.S. South China Sea Presence Operations Should Be ‘Magnified’ Not ‘Classified’”, *USNI News*, 28 April 2016.

<sup>68</sup> Cf. Christian Becker, *Die militärstrategische Bedeutung des Südchinesischen Meeres. Überlegungen zum chinesischen Kalkül im Inselstreit*, SWP-Aktuell 82/2015 (Berlin: Stiftung Wissenschaft und Politik, September 2015).

<sup>69</sup> “If the Chinese continue their construction projects, ‘you can imagine a network of missile sites, runways for their 5th generation fighters, and surveillance sites,’ Harris told the

China’s deployment of two missile batteries on Woody Island was clearly a provocation. It became known shortly before the end of a conference at which President Obama had hosted Southeast Asian leaders as well as the ASEAN Secretary-General for a two-day summit at the Sunnylands Center in California, to discuss ways of de-escalating the conflict in the region.<sup>70</sup> Woody Island is part of the Paracel archipelago which is also claimed by both Taiwan and Vietnam. China’s ground-to-air missiles deployed there are of the HQ-9 type, with a radius of 200 kilometres, and are used for air defence. Their purpose seems to be to stop other states from conducting aerial patrols and thus also to deter further reconnaissance, including for PR purposes. However, their radar can also be used to target ships. In a comment by the state news agency Xinhua, China called news about the missile deployment a “media hype”.<sup>71</sup> But given the timing the missile deployment was a signal to Washington that Beijing was able and willing to escalate (although it did not contradict previous statements by the Chinese president, who did not mention the Paracel Islands).<sup>72</sup> As

senators. ‘China would have de facto control over the South China Sea in any scenario short of war.’ But in a shooting war with the US, he said, ‘these are obviously easy targets.’” Freedberg, “US Hasn’t Challenged Chinese ‘Islands’ since 2012” (see note 57). Cf. O’Rourke, *Maritime and EEZ Disputes* (see note 7), 3.

<sup>70</sup> See *Joint Statement of the ASEAN-U.S. Special Leaders’ Summit: Sunnylands Declaration*, 17 February 2016, <http://www.asean.org/joint-statement-of-the-asean-u-s-special-leaders-summit-sunnylands-declaration/>.

<sup>71</sup> “For starters, China has indisputable sovereignty over the Xisha Islands and deploying limited and necessary national defense facilities on China’s own territory has nothing to do with militarization in the South China Sea. China has repeatedly made it clear that it has no intention to militarize the region. Its activities are mainly for maintenance purposes, improving the living conditions for the stationed personnel there and providing more public goods in the region.” “Commentary: Washington’s Destabilizing Role in South China Sea”, *Xinhua*, 18 February 2016. Cf. “China verlagert Raketen auf international umstrittene Insel”, *Frankfurter Allgemeine Zeitung*, 17 February 2016; Daniel Hurst, Oliver Holmes and Justin McCurry, “Beijing Places Missile Launchers on Disputed South China Sea Island”, *The Guardian*, 17 February 2016; Mark Landler and Michael Forsythe, “Chinese Missiles Under-score a Growing Conflict Risk”, *New York Times*, 18 February 2016, 4.

<sup>72</sup> Xi Jinping declared in Washington in September 2015 that China had no intention of militarising the Nansha (Spratly) Islands. Cf. Sydney J. Freedberg Jr., “Few Choices for US as China Militarizes South Pacific”, *Breaking Defense*, 17 February 2016; David Ignatius, “The U.S. Is Heading toward a Dangerous Showdown with China”, *Washington Post*, 15 March 2016.

recently as January 2016 a civilian aircraft landing on Fiery Cross Reef was viewed as a sign of Chinese restraint. But that was before it became known that J-11 combat aircraft and JH-7 fighter bombers had been deployed in hardened hangars on Woody Island. In late March 2016, there were reports that China had also transferred type YJ-62 anti-ship cruise missiles and tested one of them from the island. Radar facilities have been built on smaller outposts in the Spratly Islands (Gaven, Hughes, Johnson South, Cuarteron), expanding China’s reconnaissance capabilities. Almost the entire sea area claimed by China can now be covered in triangles (Fiery Cross–Subi–Mischief and Paracel–Spratly–Mischief) by aircraft, missiles and radar.<sup>73</sup> As sensors and weapons, they could be the first components of an Air Defence Identification Zone and thus of a denial strategy (A2/AD). This would transform the Great Wall of Sand from a metaphor into a reality.

In the long term, China’s ongoing naval build-up is just as suggestive. If up to three more aircraft carriers are built and corresponding carrier groups created by approximately 2030, the South China Sea could be transformed into a “Chinese pond”.<sup>74</sup> Although the outposts are highly vulnerable in a military conflict,<sup>75</sup> they will be important as “stationary aircraft carriers” in a transitional phase – until the South China Sea has become a sea in southern China.

China wants to secure its claims in the South China Sea by all means necessary. That does not mean it is preparing for a military confrontation. Rather, the future exploitation of oil and gas reserves is a further trigger for China’s activities. Such exploitation can best be

<sup>73</sup> Cf. Liu Zhen, “Chinese Civilian Aircraft Make Test Run to Fiery Cross Reef in South China Sea”, *South China Morning Post*, 6 January 2016; “Another Piece of the Puzzle. China Builds New Radar Facilities in the Spratly Islands”, *AMTI*, 22 February 2016; Michael Forsythe, “Report Shows China Building Radar Facilities”, *New York Times*, 24 February 2016, 8; Freedberg, “Few Choices for US” (see note 72); Bill Gertz, “Pentagon Concerned by Chinese Anti-Ship Missile Firing”, *Washington Free Beacon*, 30 March 2016.

<sup>74</sup> Michael Green, Kathleen Hicks and Mark Cancian, *Asia-Pacific Rebalance 2025. Capabilities, Presence, and Partnerships. An Independent Review of U.S. Defense Strategy in the Asia-Pacific* (Washington, DC: CSIS, January 2016), 19.

<sup>75</sup> The vulnerability of outposts depends on the situation as it develops. They could undoubtedly be destroyed in a military confrontation. However, this would require concerted action in a scenario where the necessary forces are already involved in military operations. In addition, the PLA can make approaching these bases very risky by stationing both air defence and combat aircraft that could take off from the base runways.

safeguarded when the disputed area is protected by one's own security forces. When oil prices are low, however, extracting offshore fossil fuel reserves only makes sense if there are substantially growing energy needs to be met or if China wants to shake off its dependence on transport routes like the Malacca Strait. Here too future developments in the region will indicate the course that Beijing wants to pursue.

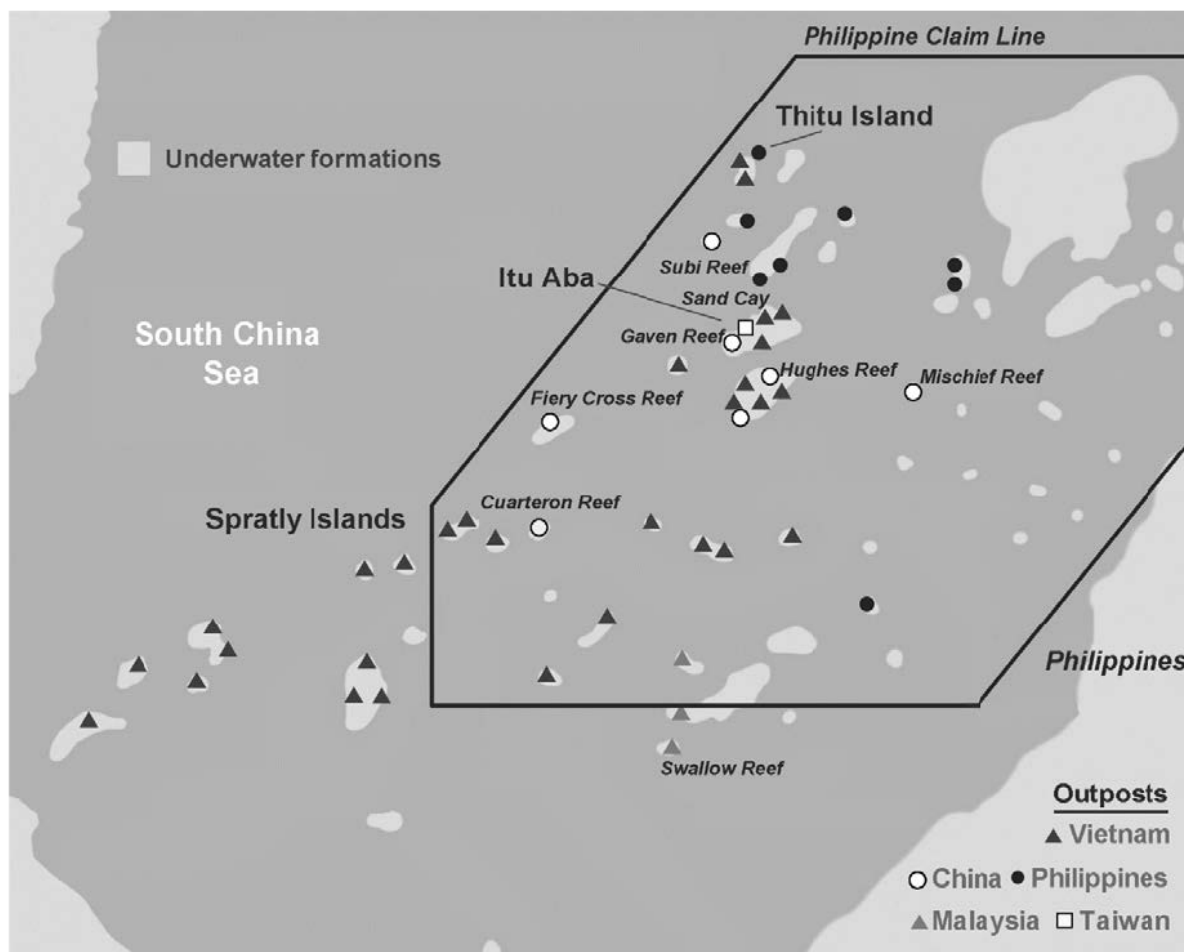
In any event, the new bases have considerable significance for military strategy, especially for China's future sea-based nuclear deterrent. Strategic submarines of the Jin (type 094) class, equipped with 12 ballistic missiles each, can now be much better shielded from reconnaissance and surveillance when leaving the naval base on the island of Hainan. The outposts expand China's air defence range and substantially improve its capabilities for maritime surveillance and anti-submarine warfare (ASW). Some have even called the area a sanctuary<sup>76</sup> for China's submarine fleet. The bases also boost China's previously underdeveloped capability for combating submarines; helicopters and aircraft can now conduct surveillance on sea areas that were previously out of reach from Hainan or the mainland. This capacity is also enhanced by the runway on Mischief Reef and the expansion of Duncan Island into a landing site for Z-18F-type helicopters.<sup>77</sup> Not only can China now monitor Vietnamese submarines, it can potentially breach, at least in part, the submarine barrier planned in the US's concept of "Air-Sea Battle" and will in the long term eventually establish another "Great Wall" under water.<sup>78</sup> While the outposts are vulnerable in military conflicts, they complicate reconnaissance and surveillance by foreign forces. In a crisis, Chinese submarines could exploit this tactical advantage and reach deeper waters before they could become the targets of ASW.

<sup>76</sup> O'Rourke, *Maritime and EEZ Disputes* (see note 7), 3; Raine and Le Mièrre, *Regional Disorder* (see note 1), 66.

<sup>77</sup> Cf. Dolven et al., *Chinese Land Reclamation* (see note 30), 11; Greg Torode, "China's Island Airstrips to Heighten South China Sea Underwater Rivalry", *Reuters*, 17 September 2015; Sam LaGrone, "China Reclaimed Land for South China Sea Anti-Submarine Helicopter Base Near Vietnam", *USNI News*, 15 February 2016.

<sup>78</sup> Cf. Matteo Dian, "The Pivot to Asia, Air-Sea Battle and Contested Commons in the Asia Pacific Region", *The Pacific Review* 28, no. 2 (2015): 249; Richard D. Fisher, "China proposes 'Underwater Great Wall' that could erode US, Russian submarine advantage", *IHS Jane's 360*, 17 May 2016.

Map 3  
Spratly Archipelago outposts



Source: Peter Forster, *Das Bulletin* No. 1,  
[http://www.das-bulletin.com/wp-content/uploads/2015/10/150514\\_spratlyOutpostsMap.jpg](http://www.das-bulletin.com/wp-content/uploads/2015/10/150514_spratlyOutpostsMap.jpg).

## Outcomes and Prospects

The tense situation in the South China Sea risks becoming the “new normal”.<sup>79</sup> International concern is mounting. At the G7 Foreign Ministers’ Meeting in Hiroshima in April 2016, the Ministers expressed “concern” over the increasing tensions in the East and South China Seas. Southeast Asian states expressed in June 2016 their “serious concerns” over recent and ongoing developments in the South China Sea, which have increased tensions and have the potential to undermine peace, security and stability.<sup>80</sup> But what further means and methods might there be to prevent an escalation spiral?

A constructive diplomatic approach would be for ASEAN states and China to negotiate a binding code of conduct for the South China Sea. Such negotiations could also provide a starting-point for a rebalanced transatlantic policy toward the Asia-Pacific by the EU and the United States.<sup>81</sup> Efforts to produce a diplomatic settlement could be backed by certain defensive meas-

ures without an escalating effect, such as improving the maritime surveillance capabilities and civil resources of neighbouring countries. Expanding the coast guard and surveillance capabilities of the Philippines and Vietnam would enable them better to safeguard maritime security in their territorial waters. The US suggestion of consolidating and coordinating information on this sea area would be helpful here. The hub of the proposed network, the Information Fusion Centre (IFC), could be Singapore. In May 2015, US Secretary of Defence Carter launched an initiative of this kind for Southeast Asian states, funded by 425 million US dollars over five years.<sup>82</sup>

The dispute between the United States and China over maritime norms and laws is likely to continue in its current restrained form, but it has the potential to endanger the rule of law also in other parts of the world.<sup>83</sup> It is in the interest of all to avoid a direct confrontation. Wherever possible “Freedom of Navigation” operations should be conducted multilaterally in combination with Southeast Asian navies. Australia, Singapore, India and even European countries could likewise contribute to underlining the international significance of freedom of navigation. Prospective US-Indian patrols<sup>84</sup> – as well as possible cooperation

<sup>79</sup> “While it is clear that U.S. policy is still evolving, Assistant Secretary of State Daniel Russel underscored that the administration is playing the long game; it recognizes that high tensions and provocations are the new normal in the South China Sea.” Gregory B. Poling, *Grappling with the South China Sea Policy Challenge. A Report of the CSIS Summit Chair for Southeast Asia Studies*, Washington, DC: CSIS, August 2015, 2. Cf. O’Hanlon, “Don’t be Provoked” (see note 52).

<sup>80</sup> At the G7 Foreign Ministers’ Meeting in Hiroshima, Japan, on 11 April 2016, the Foreign Ministers of Germany, France, the United Kingdom, Italy, Japan, Canada and the US expressed “concern” over the increasing tensions in the East and South China Seas. While not addressing China explicitly, they emphatically opposed “all intimidation or unilateral provocation”, for instance by building outposts or using them for military purposes. The strongly-worded statement by ASEAN was released by the Malaysian foreign ministry. Just hours later, a Malaysian ministry spokeswoman recalled the statement. Cf. *G7 Foreign Minister’s Statement on Maritime Security*, Hiroshima, 11 April 2016, [http://eeas.europa.eu/statements-eeas/2016/160411\\_05\\_en.htm](http://eeas.europa.eu/statements-eeas/2016/160411_05_en.htm); Rozanna Latiff, “Southeast Asian countries retract statement expressing concerns on South China Sea”, *Reuters*, 15 June 2016, <http://uk.reuters.com/article/uk-southchinasea-asean-idUKKCNOZ10L1>.

<sup>81</sup> More actionable policy recommendations for transatlantic policymakers can be found in the CSIS report by Heather A. Conley, James Mina and Phuong Nguyen, *A Rebalanced Transatlantic Policy toward the Asia-Pacific Region*, Washington, DC: CSIS, Mai 2016.

<sup>82</sup> Cf. DoD, *Asia-Pacific Maritime Strategy* (see note 7), 28; DoD, *A Regional Security Architecture Where Everyone Rises* (see note 26); Simon Denyer, “U.S. Weighs Options in South China Sea”, *Washington Post*, 14 May 2015, A08; Dolven et al., *Chinese Land Reclamation* (see note 30), 21; O’Rourke, *Maritime and EEZ Disputes* (see note 7), 35.

<sup>83</sup> “This issue is of the utmost importance, and not only for the stability and security of the region, because, if the Law of the Sea is not observed in the China seas today, it will be in jeopardy in the Arctic, the Mediterranean and elsewhere tomorrow. In order to keep the risk of conflict contained, we must defend the Law and defend ourselves with the Law.” Jean-Yves Le Drian, Minister of Defence, France, “The Challenges of Conflict Resolution”, in *IISS Shangri-La Dialogue 2016 Fourth Plenary Session*, 5 June 2016, <http://www.iiss.org/en/events/shangri%20la%20dialogue/archive/shangri-la-dialogue-2016-4a4b/plenary4-6c15/drian-5b52>.

<sup>84</sup> Manu Balachandran, “US, Indian Navies Planning Joint Patrols in South China Sea”, *Defense One*, 11 February 2016. Cf. Gurpreet Singh Khurana, “First China-India Maritime Dialogue: Beyond ‘Icebreaking’”, *CIMSEC*, 5 April 2016, <http://>



between India and Japan in the northwest of the Malacca Strait<sup>85</sup> – would signal to the Chinese leadership the growing concerns in the Indo-Pacific much more clearly than any commitment of Southeast Asian states within the ASEAN framework. The first joint US-Philippine patrols started in March 2016. Australian involvement has also been proposed, since two-thirds of its foreign trade transit through the South China Sea. This might include Australian-Philippine capacity-building.<sup>86</sup> Japan also intends to join US (or Philippine) navy patrols in the South China Sea and conduct reconnaissance flights using P-3C Orion type maritime patrol aircraft, to be refuelled in turn by Vietnam, the Philippines and Malaysia.<sup>87</sup> However, Japanese operations would not de-escalate the conflict; they would fan the flames. Therefore Tokyo currently seems unwilling to put such plans into action.<sup>88</sup> Further US Navy “Freedom of Navigation” operations also carry the risk of escalation and confrontations with Chinese ships. And clashes with “civilian” vessels of the Chinese maritime militia could make US warships look either helpless or brutal.<sup>89</sup>

How might it be possible to generate more conciliation rather than escalation? Proposals ranging from fishing to Search and Rescue (SAR) have frequently been cited as potential civilian areas of cooperation.<sup>90</sup>

[cimsec.org/first-china-india-maritime-dialogue-beyond-icebreaking/23990](http://cimsec.org/first-china-india-maritime-dialogue-beyond-icebreaking/23990).

<sup>85</sup> The Andaman Islands and Nicobar Islands are located on an important access route to the Malacca Strait. Their infrastructure is to be expanded. See Ellen Barry, “As India Collaborates with Japan on Islands, It Looks to Check China”, *New York Times*, 11 March 2016.

<sup>86</sup> David Wroe, “Admiral Urges Australia to Join Patrols”, *Sydney Morning Herald*, 23 February 2016, 5; Simon Denyer, “China Fumes at U.S. Military Patrols”, *Washington Post*, 15 April 2016, A14.

<sup>87</sup> Kyle Mizokami, “Essay: Understanding Japan’s Shifting Defense Policy”, *USNI News*, 20 August 2015; “Japan’s Self-Defense Forces to Cover More of South China Sea”, *Chicago Tribune*, 12 January 2016.

<sup>88</sup> Cf. Sam LaGrone, “U.S. 7th Fleet CO: Japanese Patrols of South China Sea ‘Makes Sense’”, *USNI News*, 29 January 2015; Sam LaGrone, “China on ‘High Alert’ to Prevent Japan from Entering South China Sea Disputes”, *USNI News*, 19 January 2016.

<sup>89</sup> Cf. Andrew Browne, Gordon Lubold and Trefor Moss, “China’s Island-Building Poses Dilemma for U.S.”, *Wall Street Journal*, 1 June 2015; Poling, *Grappling with the South China Sea Policy* (see note 79), 5; Jerry Hendrix, “China Is Cruising for a Bruising”, *Defense One*, 22 February 2016; Raine and Le Mièrè, *Regional Disorder* (see note 1), 190f.

<sup>90</sup> Inter alia, cf. Raine and Le Mièrè, *Regional Disorder* (see note 1), 205–208.

Other steps towards a cooperation spiral have been recommended by Lyle Goldstein of the U.S. Naval War College’s China Institute. According to him, the United States could invite (US 1) China to the international manoeuvre Cooperation Afloat Readiness and Training (CARAT). In return, China could propose (PRC1) joint deployments against pirates<sup>91</sup> in the Malacca Strait. Then the US could create (US 2) a forum for a South-east Asian coast guard, and China open (PRC 2) the military complex on Hainan for annual visits by ASEAN states. The US could then reduce (US 3) its surveillance in the northern South China Sea, and China could verify (PRC 3) its NDL claims against maritime law. In return Washington supports (US 4) China’s bilateral negotiation attempts in the island dispute, to which Beijing responds (PRC 4) by initiating substantial joint developments consistent with the principle of equality.<sup>92</sup> The result of a cooperation spiral would not be an exclusive zone of influence for China, but instead a territory jointly managed by China and the United States. Vietnamese and Philippine efforts to internationalise the conflict can partly be explained by their resistance to such an idea which is, in the end, a US-Chinese condominium. They want to subject the South China Sea to comparable rules so that all coastal states (and the United States) can enjoy equal rights.

Beijing’s assertive approach has complicated the political, military and legal situation in the South China Sea. Increasingly, the rhetoric of cooperation is giving way to the reality of intensified competition. Neither Beijing nor Washington currently seem prepared to back down. After the presidential elections, Washington will need some time to establish its foreign policy staff and coordinate its new China policy. But Beijing can expect more competitive attitudes from the new US government, regardless of the election results. In the meantime China will therefore try to change the situation in the South China Sea to its own advantage. In the long term, if the United States and China cannot agree on a mutually beneficial cooperation, a divisive Great Wall of Sand risks being erected in people’s minds, further complicating constructive approaches to cooperation and to containment of the conflict.

<sup>91</sup> In 2015, Asian piracy made up about three-quarters of all pirate activity reported to the International Maritime Bureau (IMB).

<sup>92</sup> Lyle J. Goldstein, *Meeting China Halfway. How to Defuse the Emerging US-China Rivalry* (Washington, DC: Georgetown University, 2015), 284, 291.

## Abbreviations

A2/AD	Anti-Access/Area Denial
ADIZ	Air Defence Identification Zone
ADMM	ASEAN Defence Ministers Meeting
AMTI	Asia Maritime Transparency Initiative (CSIS, Washington, DC)
ASCM	Anti-Ship Cruise Missile
ASEAN	Association of Southeast Asian Nations
ASPI	Australian Strategic Policy Institute (Canberra)
ASW	Anti-Submarine Warfare
CARAT	Cooperation Afloat Readiness and Training
CCG	China Coast Guard
CFR	Council on Foreign Relations
CIMSEC	Centre for International Maritime Security
CLCS	Commission on the Limits of the Continental Shelf (United Nations)
CNAS	Centre for a New American Security
CNN	Cable News Network
CNOOC	China National Offshore Oil Corporation
CRS	Congressional Research Service
CSIS	Centre for Strategic and International Studies (Washington, DC)
DoC	Declaration on the Conduct of Parties in the South China Sea
DoD	U.S. Department of Defence
DoS	U.S. Department of State
EDCA	Enhanced Defence Cooperation Agreement
EEZ	Exclusive Economic Zone
EIA	U.S. Energy Information Administration
FON	Freedom of Navigation
FONOP	Freedom of Navigation Operation
IFC	Information Fusion Centre
IISS	International Institute for Strategic Studies
IMB	International Maritime Bureau
LNG	Liquefied Natural Gas
MMbbl/d	million barrels per day
NDL	Nine-Dash Line
NSC	National Security Council (USA)
PACOM	Pacific Command (USA)
PLA	People's Liberation Army (People's Republic of China)
PLAN	PLA Navy
PR	People's Republic
SAR	Search and Rescue
SECDEF	Secretary of Defence (USA)
UN	United Nations
UNCLOS	UN Convention on the Law of the Sea
USNI	U.S. Naval Institute
USNS	United States Naval Ship
USS	United States Ship