



SPECIAL REPORT

The South China Sea Dispute: Prospects for Preventive Diplomacy *A Special Report of the United States Institute of Peace*

ABOUT THE STUDY GROUP

The United States Institute of Peace has convened a series of seven study group meetings since March 1995 on managing potential territorial conflicts in the South China Sea. These meetings were held as part of an ongoing series of activities on potential conflicts in Asia and implications for U.S. policy. Senior experts and grantees of the Institute researching the issue were invited to present their latest findings on aspects of the South China Sea dispute to a group of forty to fifty specialists from the Washington, D.C. area.

This report, authored by Institute Program Officer Scott Snyder, draws on that series of discussions as well as proceedings from a number of conferences and meetings on the South China Sea issue that have been held during the past two years. The contents of the report do not necessarily represent the views of the United States Institute of Peace, which does not advocate particular policies. For more information regarding the meeting series or this report, please contact Scott Snyder at (202) 429-3808.

Key Points

- The disputed territorial claims in the South China Sea remain a dangerous source of potential conflict in the absence of preventive measures to forestall a military or political crisis. Three periods of heightened tension over the Spratly Islands within the past ten years offer a clear warning sign of the risk of future confrontation if the core issues remain unresolved. It is in the interest of all the claimants to actively seek solutions to the disputes through political negotiations to avoid future military conflict. All the claimants have an interest in participating in a preventive diplomatic approach to the South China Sea—one that takes into account the interests of all claimants—to minimize the risk of future crises, rather than resorting to a more costly approach of military action.
- It may still be possible to find a political, “win-win” settlement. If the political will can be generated to reach a negotiated settlement, there is a window of opportunity to pursue progress. Military conflict would threaten the interests of all parties to the dispute, since the political costs of military escalation would be higher than any single party is currently willing to bear. No country in the region currently possesses the military capabilities needed to assert and maintain its claims, relations in the region are generally cooperative, and no claimant has yet discovered commercially viable quantities of oil or natural gas. In time, however, all these factors are subject to change, especially as China, and perhaps other claimants, acquire the military strength to impose their claims by threat or use of military force.
- Given the nature and complexity of the various legal claims to the islands and concerns about the regional balance of power, no purely legal process is likely to be sufficient to achieve a settlement, although the establishment and acceptance of international legal precedents, such as those contained in the UN Convention on the Law of the Sea, may pro-

August 1996

The level of attention to the conflicting claims in the South China Sea has increased in proportion to estimates of the area's resource development potential.

vide a necessary foundation for the negotiation of key issues. For instance, Beijing's ratification of the Law of the Sea Convention can be seen as a major step toward achieving a negotiated settlement in the Spratly Islands dispute, although the National People's Congress simultaneously promulgated baselines surrounding the Parcel Islands that defy conventional international legal interpretations. In the final analysis, a *political* settlement is the only realistic means of resolving these complex issues.

- The level of attention to the conflicting claims in the South China Sea has increased in proportion to estimates of the area's resource development potential. Little attention had been given to sovereignty in the South China Sea until the 1960s and 1970s, when international oil companies began prospecting in the region. As speculation about possible hydrocarbon resources has grown, the claimants have scrambled to reinforce their claims, leading to heightened tensions and periodic conflict. Although hydrocarbon potential has been the main focus of the disputants until now, fisheries and other marine resources, navigational safety, and strategic and environmental concerns may become equally critical issues in the future.
- A range of preventive diplomatic mechanisms and approaches might be used to dampen tensions, forestall the outbreak of conflict in the South China Sea, and provide the basis for a political settlement. The Indonesian-hosted Workshops on Managing Potential Conflicts in the South China Sea have provided important opportunities for cooperative action on technical issues, but it has thus far not been possible to generate any meaningful discussion in these meetings on the critical sovereignty issue. Nevertheless, an effort might be made to upgrade these informal meetings to address such questions as sovereignty or mechanisms for joint exploration of resources.
- A variety of supplementary approaches to the Indonesian workshops could be considered. For example, creation of an Eminent Persons Group, possibly composed of high-level representatives from the nonclaimant members of the Association of Southeast Asian Nations (ASEAN), has been suggested to jump-start political talks and create new political channels for negotiation. Another possibility is mediation by an ad hoc tribunal or nonofficial third party if the claimants themselves are willing to accept such a negotiation process to facilitate resolution of territorial claims. If the parties can agree to an equitable approach by which to shelve sovereignty issues, it may be possible to create joint multilateral development authority to exploit resources in the disputed area. Alternatively, recent developments suggest that it might be possible to settle bilateral claims in the South China Sea area before tackling areas in which multiple claims overlap. The critical question, however, is whether the disputants can find the political will to come to a lasting negotiated settlement.
- It is in the U.S. interest to maintain a neutral position on the legal merits of the various territorial claims, insisting that the claimants peacefully resolve conflicting territorial claims in the South China Sea con-

sistent with international law, including the UN Convention on the Law of the Sea. Without becoming a party to the dispute, Washington might be able to quietly encourage diplomatic efforts among the claimants themselves to find a lasting, peaceful resolution to the outstanding South China Sea issues.

Given the troubled nature of U.S.-Chinese relations at present, a leading and public U.S. role in trying to resolve the dispute over the Spratly Islands is likely to be counterproductive because China may have less incentive to be forthcoming if the issue seems to become "Americanized." Nevertheless, the United States has vital interests at stake in this dispute, including maintaining freedom of navigation, encouraging the consolidation of the rule of law in the management of international maritime disputes, and protecting the credibility of U.S. forces as a balancing and stabilizing presence in the Asia-Pacific region.

While maintaining neutrality on the merits of the sovereignty claims, the United States has an interest in retaining the capacity and willingness to dissuade any single claimant from imposing a solution to the dispute through force, since overt conflict or successful intimidation would have serious implications for regional security. Quiet diplomacy by the United States in support of a *negotiated* settlement may help the claimants generate the necessary political will to resolve the disputes through a negotiation process without drawing the United States directly into the dispute.

The critical test is whether the disputants can find the political will to come to a lasting negotiated settlement. Given the troubled nature of US-Chinese relations at present, a leading and public U.S. role in trying to solve the Spratly Islands dispute is likely to be counterproductive.

The views expressed in this report do not necessarily reflect views of the United States Institute of Peace, which does not advocate particular policies.

The South China Sea's unexplored resource potential and its significance as a strategic passageway are at the core of this dispute over sovereignty and resources.

Despite the overlapping claims at the heart of the Spratly Islands dispute, much of this vast sea area remains unregulated.

Background and Significance of the South China Sea Dispute

The South China Sea dispute over territory and resources may foreshadow a new type of security challenge among Asian states. Within the South China Sea, the Paracel Islands and Macclesfield Bank have been sources of dispute, but the Spratly Islands area, contested by six claimants, has drawn the greatest attention. Recent tensions between Korea and Japan over Tokdo/Takeshima Island (and the renewal of the long-standing Senkaku/Diaoyutai Island disputes between Japan, the People's Republic of China (PRC), and Taiwan) demonstrate the complexity of sovereignty disputes, and their underlying resource potential, as sources of future confrontation among U.S. allies and friendly states. It is not difficult to imagine other maritime resource disputes coming to the fore in Asia during a global energy crunch or as regional fishing stocks are depleted.

The unresolved question of whether the Spratly Islands area of the South China Sea is a significant source of energy and other resources is central to an examination of current tensions. Conflicting assessments have been made of the potential of the South China Sea as an unexplored source of oil and natural gas. A 1995 study by Russia's Research Institute of Geology of Foreign Countries estimates that the equivalent of 6 billion barrels of oil might be located in the Spratly Islands area, of which 70 percent would be natural gas. On the other hand, Chinese media outlets have referred to the South China Sea as "the second Persian Gulf," and some Chinese specialists have asserted that the South China Sea could contain as much as 130 billion barrels of oil and natural gas. Despite these optimistic assessments, the cost of drilling in deep-water areas of the South China Sea and assessments of the geochemistry of the Spratly Islands area suggest that, for the time being, the costs of exploration and low likelihood of substantial and easily exploitable yields will remain limiting factors. In any event, the fact that the area remains subject to dispute is likely to block most oil companies from taking the financial risk of carrying out the exploration necessary to determine whether the potential yields in the area are commercially viable.

The importance of the South China Sea as a strategic passageway is unquestioned. It contains critical sea lanes through which oil and many other commercial resources flow from the Middle East and Southeast Asia to Japan, Korea, and China. Safety of navigation and overflight and the freedom of sea lanes of communication are critical strategic interests of the United States, which uses the South China Sea as a transit point and operating area for the U.S. Navy and Air Force between military bases in Asia and the Indian Ocean and Persian Gulf areas. Any military conflict in the South China Sea that threatens the strategic interests of the United States or the security and economic interests of Japan might be seen as sufficiently destabilizing to invite U.S. involvement to preserve navigational freedom in these critical sea lanes.

Despite the overlapping jurisdictional and territorial claims at the heart of the Spratly Islands dispute, much of this vast area remains unregulated. Among the consequences of the lack of a clear jurisdiction are rapid environmental degradation, a lack of emergency procedures to deal with mari-

time or environmental crises, and depletion of fishing stocks—including tuna stocks that migrate to the South Pacific.

Other factors in the calculus of the various claimants are the rise of nationalist political pressures and the complex challenges of governance that have accompanied rapid economic growth in the region. As states move from authoritarianism toward an atmosphere of greater political pluralism, the political leeway to resolve complex disputes involving issues of sovereignty may be constrained by domestic political processes, making it more difficult to avoid an international confrontation. The twin challenges of responding to nationalist sentiment and maintaining political legitimacy are major constraining factors that have grown more important as democratization has taken greater hold in the region.

Nature and Status of the South China Sea Claims

The question of who owns the 400-plus rocks, reefs, and islands (known as the Spratly Islands) that are scattered within an 800,000-square-kilometer area within the South China Sea was largely ignored until the 1970s. (The vast South China Sea region also includes other island chains and submerged reefs that have been the subject of disputes, including the Paracel Islands and Macclesfield Bank.) At that time, the area became a possible target for exploration by multinational oil companies. In addition, the likelihood of conflict has increased as international maritime laws have slowly been codified and institutionalized following World War II. Motivated by the desire to extend control over sea-based resources, neighboring states in the area have increasingly come into verbal conflict and even sporadic military confrontations over sovereignty, sovereign rights, jurisdiction, and arms control efforts in the South China Sea.

During the 1980s and 1990s, most of the disputing states have found themselves in a race to bolster their claims to sovereignty by gaining occupation of the islands that can support a physical presence or by establishing markers on the islands where physical occupation is not feasible. In some cases claimants have even built structures on features that are completely submerged at high tide, maintaining a physical presence on these island specks under arduous and mind-numbing physical conditions. Currently, Vietnam occupies more than twenty islets or rocks, China occupies eight, Taiwan one, the Philippines eight, and Malaysia three to six.

The race for occupation of the Spratly Islands has increased the likelihood of international conflict, resulting in three cases of military intimidation in recent years (setting aside China's use of military force against Vietnamese troops to enforce its claim to the Paracels in 1974), the first of which led to military conflict. This confrontation occurred between the Chinese and Vietnamese over the occupation of Fiery Cross Reef (Yung Shu Jiao) in 1988, at which time the PRC sank three Vietnamese vessels, killing seventy-two people. In 1992 the Chinese announcement of an oil exploration concession to the U.S. Crestone Company, combined with the occupation of Da Lac Reef and subsequent deployment of three *Romeo*-class conventional submarines to patrol the area, aroused alarms among the ASEAN states, which had just called for the nonuse of force in resolving the Spratly Islands dispute in the Manila Declaration on the South China Sea. The third

The race for occupation of the Spratly Islands has increased the likelihood of international conflict, resulting in three cases of military intimidation within the past decade.

A strict interpretation of the Law of the Sea may leave few if any of the features in the Spratly Islands able to generate an Exclusive Economic Zone, greatly reducing the potential area of overlapping claims.

incident began with the discovery that the Chinese had occupied Mischief Reef (Meijijiao/Panganiban), a circular reef well within the Exclusive Economic Zone (EEZ) of the Philippines (following the Philippines' announcement of a desktop oil exploration concession in the "Mischief Reef area"), and involved encounters between military vessels from the Philippines and the PRC in March and April 1995. It was the aptly named Mischief Reef confrontation that has catalyzed the most recent wave of interest and concern over the Spratly Islands issue. That concern was reinforced by PRC military pressures against Taiwan.

International Laws Related to the Dispute

The documentary background for the various territorial claims in the South China Sea is quite thin, and the historical records are often contradictory. None of the claimants offers unassailable historical or legal claims. The International Court of Justice (ICJ) has used "effective occupation" and discovery as primary considerations in evaluating the legitimacy of island territorial claims, although a feature's location, its history, and whether other claimants have a record of protesting illegal occupation may be considered in determining the legitimacy of sovereignty claims to particular features.

Separate from the issues of who owns the islands and rocks and whether the submerged reefs of the Spratly Islands can themselves generate maritime zones is the question of whether the islands can "sustain human habitation or economic life of their own," the minimum criterion for an island to generate its own continental shelf or EEZ. Even if human life can be sustained, islands carry less weight than continental borders in generating EEZs under the prevailing interpretations of the Law of the Sea. Artificial islands on which structures have been built are entitled to a 500-meter safety zone, but they cannot generate a territorial sea, much less a continental shelf or EEZ. Features that appear only at low tide can generate a partial twelve-mile territorial sea only if they are within twelve nautical miles of any feature that generates a territorial sea. Features submerged at low tide are not subject to sovereignty claims and generate no maritime zones at all.

The acceptance by the disputing parties of the prevailing interpretation of these provisions to islands in the South China Sea has the potential to greatly reduce the area of overlapping claims, since some disputants have based their claims on an interpretation that the features themselves can generate an EEZ of up to 200 nautical miles. A strict interpretation of the Law of the Sea provision regarding a feature's ability to "sustain human habitation or economic life of their own" may well leave few if any of the features in the Spratly Islands able to generate an EEZ, greatly reducing the potential area of overlapping claims. Even if these islands were capable of generating an EEZ, it is unlikely that they would be considered able to generate one of 200 nautical miles. After sovereignty of the islands is decided, the question of how EEZs might be defined is critical to determining the size and scope of the areas where negotiations might be necessary to resolve territorial disputes.

The Law of the Sea Convention stipulates that in areas where EEZs overlap, the dispute should be settled through peaceful negotiation among the parties concerned, or the parties might voluntarily agree to third-party me-

diation or to judicial consideration by the ICJ. There is a slowly evolving body of international legal precedents for evaluating the validity of various claims based on the Law of the Sea, and many disputants have found creative ways to avoid sensitive sovereignty issues through limited bilateral joint resource development schemes (for instance, the 1989 Timor Gap Treaty between Australia and Indonesia or arrangements to share jurisdiction over contested fisheries between Malaysia and Thailand).

Summary of the Claims

The Chinese and Vietnamese claims to sovereignty in the South China Sea are both based on historical claims of discovery and occupation. The Chinese case is better documented, but the extent of the Chinese claims (and particularly the PRC's expansive and undefined "nine-dashed line" claim, which as shown on some maps includes waters, such as Natuna, not generally considered by others to be in the South China Sea) remains ambiguous and contradictory. The Japanese occupied the Spratly Islands during World War II and used the island of Itu Aba (Taiping Dao) as cover for surveillance and as a supply depot, but the Japanese claim lapsed with their defeat in World War II. Taiwan's claims to Chinese ownership of the South China Sea are similar to those of the PRC, and there has been some evidence of coordination of positions on the Chinese claims in the Indonesian Workshops on the South China Sea. The Philippine claim is based on the "discovery" of the unclaimed islands of "Kalayaan" (Freedomland) by an explorer, Tomas Cloma, in 1956. This is one of the most challenged claims, and the U.S.-Philippines security commitment has been consistently interpreted by the United States as excluding Kalayaan. The Malaysian claim is based on its continental shelf claim. The Bruneian claim is also based on a straight-line projection of its EEZ as stipulated by the UN Convention on the Law of the Sea.

China's Claims and the Spratly Islands

Rightly or wrongly, many Western editorial and opinion writers have emphasized China's approach to handling its claims in the East and South China Seas as a critical test of Beijing's role as a regional and global power in Asia in the twenty-first century.

In particular, many ASEAN analysts worry that China has since the late 1980s been working to acquire a blue-water navy and other offensive force projection capabilities, such as longer-range aircraft, aerial refueling capabilities, and more modern, harder-to-detect submarine technology, with potential negative implications for the security interests of neighboring countries in Southeast Asia.

The People's Liberation Army (PLA) navy has adopted a strategic doctrine of "offshore active defense." This doctrine envisions a midterm (10–15 years) ocean-going naval capability in which the PLA navy would be able to assert "effective control of the seas within the first island chain," presumably including Taiwan and the South China Sea. Although the Chinese navy is currently limited in its offshore capabilities and although development of indigenous production capability is taking place at a rather slow pace, concerns among Southeast Asian countries about the future development of the PLA's force projection capabilities have heightened ASEAN sensitivities to

China's approach to its South China Sea claims is seen as a critical test of Beijing's role as a regional and global power in the twenty-first century.

Chinese naval actions in the South China Sea region. Off-the-shelf purchases of foreign military technology such as SU-27s, *Kilo*-class submarines, and other military equipment from Russia that could speed up China's military development have attracted notice from China's neighbors; however, the time required to learn new technologies and integrate them into China's existing force structure and to make them operational suggests that any increase in China's military capacity will be incremental rather than dramatic.

In response, some Southeast Asian countries have begun to take limited but significant military modernization steps of their own, meant to enhance their command and control capabilities, thereby creating the potential for a regional arms race around the South China Sea.

There is conflicting analysis of China's strategy and tactics in pursuing its claims to the Spratly Islands area. Given the PRC's limited capability to take and hold the islands it claims, some see a pattern of hot-and-cold tactics by China that is intended to throw the other claimants off balance until the PRC is able to enforce its claim through intimidation or force. These analysts point to Chinese "salami tactics," in which China tests the other claimants through aggressive actions, then backs off when it meets significant resistance. China's ambiguity on the extent and nature of its claims is regarded as a tactical ploy to stall or defer any attempt to achieve a negotiated settlement until China is prepared to get what it wants through military strength.

Other analysts emphasize that while the political issue of sovereignty is a particularly sensitive one during a period of political transition in Beijing, the top goal of the PRC leadership for the foreseeable future is to maintain a stable environment conducive to China's economic development. These analysts assert that China's defense strategy of "active defense" is still focused primarily on continental defense and the ability to react to localized conflicts. China's actions in the Spratly Islands area are seen as primarily defensive, preserving China's options vis-à-vis the other claimants as the Law of the Sea is applied. In addition, some experts have suggested that the South China Sea dispute cannot be solved in isolation from China's other maritime disputes in the East China Sea and the Yellow Sea. These experts suggest that China may feel hemmed in by its neighbors and therefore "geographically disadvantaged." Such a condition might make these maritime border disputes more difficult to settle because the strategic stakes for a China encircled by discrete maritime boundaries would be too high.

Given the reverberations from sporadic military confrontations in the South China Sea in recent years, all parties have reason to be vigilant for opportunities to pursue progress on the Spratly Islands issue. Efforts to build confidence among the parties might serve as a buffer to the further escalation of tensions. One result of the Mischief Reef (Meijijiao/Panganiban) incident in February 1995 was to bring high-level attention to the dispute. It also catalyzed a united ASEAN reaction, to which China has responded in a cautious and seemingly conciliatory manner, and prompted the U.S. government to issue a policy statement (discussed below), which has been welcomed by ASEAN. In the latter half of 1995, China agreed in concept to establish bilateral "codes of conduct" in the Spratly Islands with both the Philippines and Vietnam that include pledges to resolve the Spratly Islands dispute peacefully, although the PRC has ignored Philippine requests to return to the status quo ante by vacating Mischief Reef.

Given the reverberations from sporadic military confrontations in the South China Sea in recent years, all parties have reason to pursue progress on the Spratly Islands issue.

These new developments in the dispute may open the door for further progress. Currently no military in the region is capable of forcefully asserting its claims, relations in the region are generally cooperative, and assessments of the resource potential of the region show significant benefits only over the long term. All these positive factors are subject to change, but there may be a window of opportunity to pursue progress through political negotiations that forestall military escalation.

On the other hand, an overemphasis on the South China Sea's current resource and strategic potential may force the Spratly Islands dispute to be seen in zero-sum terms. The heightened scrutiny resulting from the symbolic and psychological issues attached to the Spratly Islands raises questions about how one correctly identifies potential "winners" and "losers" in this dispute. China's preoccupation with its own political transition and increasing feelings of nationalism in the region are also complicating factors that increase the potential for conflict.

Approaches to Resolving the Dispute

The complexity and ambiguity of the conflicting claims in the South China Sea have been cited as factors that have frustrated previous attempts to arrive at a lasting solution, but the fact that not all positions are set in stone may allow flexibility in future negotiations. A wide variety of approaches have been presented for consideration if the parties can develop the political will to resolve the dispute through negotiations.

Mechanisms for Sustaining Dialogue

- **South China Sea Informal Meetings**—The annual Indonesian-hosted Workshops on Managing Potential Conflicts in the South China Sea were initiated in Bali in 1990. The meetings have been attended by government officials in their private capacities and technical experts on aspects of maritime cooperation, security, and resource development in the South China Sea. Representatives from both the PRC and Taiwan have participated since 1991.

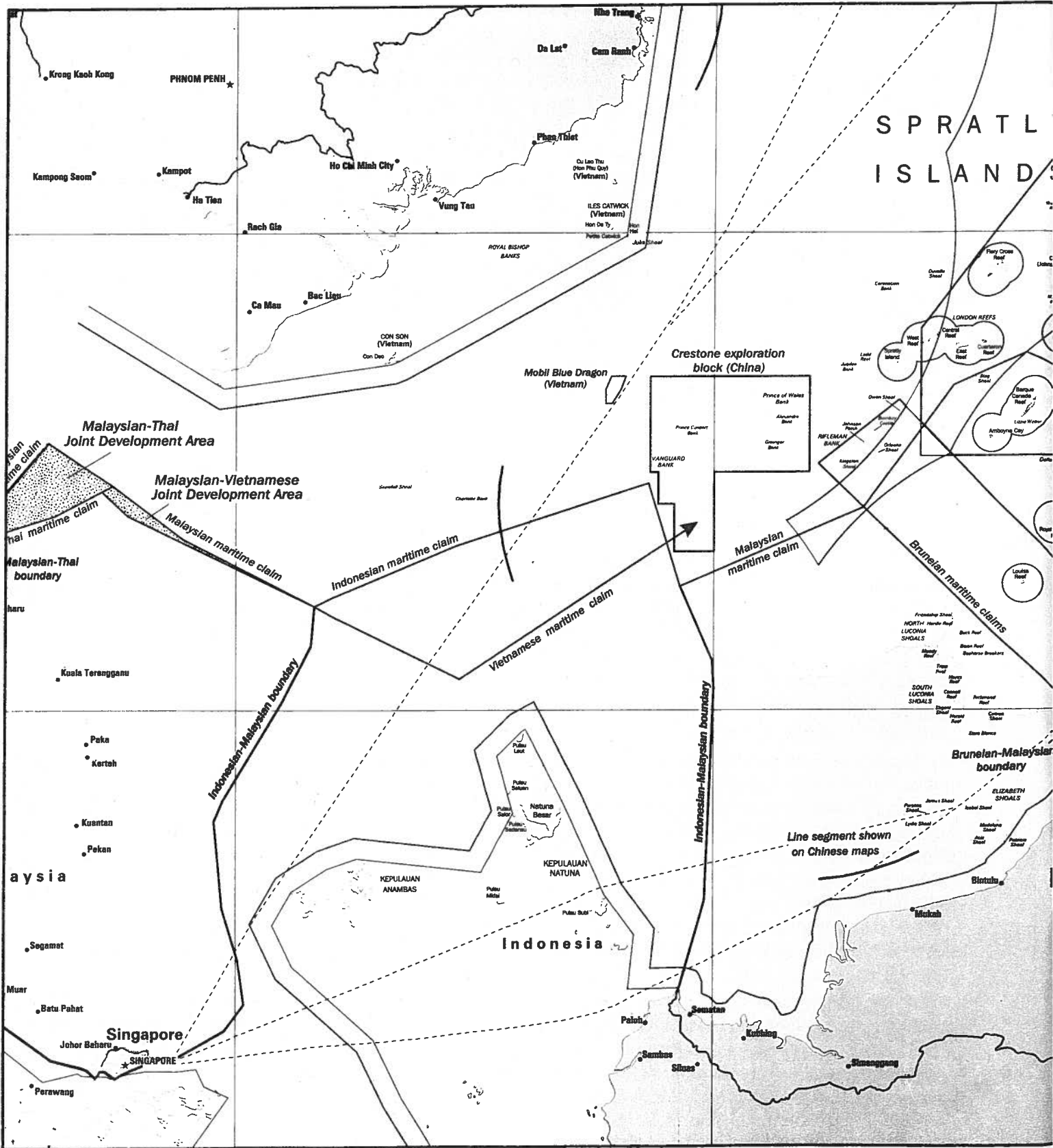
An important feature of the Indonesian-hosted workshops has been the establishment of technical working groups on resources assessment; marine scientific issues; safety of navigation, shipping, and communication; and legal matters. The significance of the technical working groups lies in their attempts to establish practical areas of cooperation and contact among disputants even while the sovereignty issue remains unresolved. Confidence-building measures (CBMs) have also been a part of the agenda for the workshops—with much success in generating ideas but little consensus on how CBMs might be implemented in practice.

While the Indonesian-hosted meetings have provided useful contacts and a bottom-up approach toward creating a basis for cooperation, some critics doubt that these meetings can provide the basis for political negotiations to resolve the dispute. This type of incremental approach has supported the status quo but thus far has not found a way to generate the political momentum necessary to achieve a negotiated settlement.

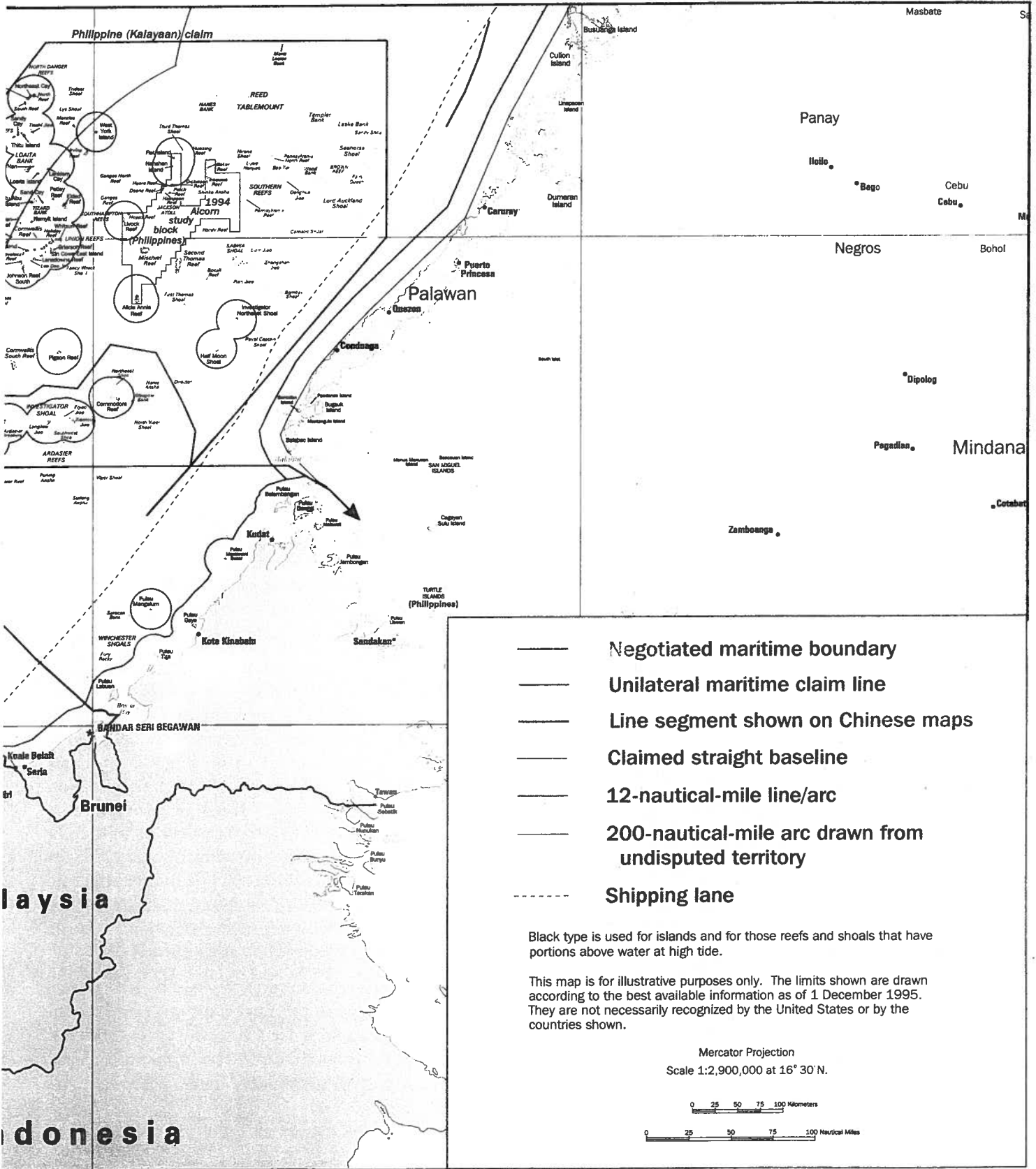
An overemphasis on the South China Sea's current resource and strategic potential may force the Spratly Islands dispute to be seen in zero-sum terms.

The creation of an Eminent Persons Group, third-party mediation or other talks might be considered as part of a negotiating process to address political aspects of the South China Sea dispute.

South C



na Sea



The establishment of a multilateral joint resources development authority or the acceptance of mechanisms such as fair division might be used to facilitate resolution of the Spratly Islands question.

In addition, the meetings have failed to forestall confrontations or the escalation of bilateral tensions between some claimants, such as the Mischief Reef incident of March 1995. In view of the widely varied estimates of the Spratlys' oil and gas reserves, it is conceivable that some of the claimants are intentionally delaying a political solution as they wait for more conclusive information regarding the area's economic potential.

- **Creation of an Eminent Persons Group**—It has been suggested that to create the political breakthrough necessary to lay the groundwork for substantive official negotiations, an Eminent Persons Group might be formed to complement the Indonesian workshops. A group of senior representatives from ASEAN nonclaimants (that is, Singapore, Indonesia, and Thailand) might be called upon to play a mediating role among the disputants. China might balk at this formulation, however, since it essentially would pit Beijing against the ASEAN bloc. In another formulation of this approach, the group could be made up of high-level participants from among the disputants—with potential assistance from highly respected representatives of the international community playing private roles—as a means to create the necessary political momentum.
- **Third-Party Mediation**—Another possibility along the lines of an Eminent Persons Group is mediation by a third party. The ICJ administers decisions in cases where the parties are willing to submit to a judicial decision, but it is difficult to predict how the ICJ might rule in such a complex case, and China is not likely to accept ICJ jurisdiction in the South China Sea because such a process would “internationalize” the dispute and run counter to its preferred strategy of dealing with each of the other claimants bilaterally.

Professor Ji Guoxing from the Shanghai Institute of International Studies has proposed that an ad hoc tribunal or nonofficial third party could play a role without “institutionalizing” the negotiating process or “internationalizing” the dispute, two critical Chinese concerns. Third-party mediation has played a role in resolving other maritime disputes, such as the Iceland Continental Shelf Agreement, and in settling a dispute between Argentina and Chile in the Beagle Channel. As with the creation of an Eminent Persons Group, mediation by a third party would be a way of catalyzing political negotiations at the highest levels. Perhaps a useful model for conducting such negotiations would be to consider “proximity” talks hosted by a nonofficial third party—similar to the role provided by the United States during the Dayton negotiations on Bosnia. (In this case, the United States might provide communication and the technical means for verifying complex boundary negotiations.)

- **Creation of Joint Resource Development Authority**—The idea of setting aside claims to sovereignty in favor of joint resource development has been articulated on many occasions by Chinese representatives. However, the Chinese concept of “joint resource development” appears to be defined as bilateral cooperation in disputed areas, while ASEAN claimants appear to prefer a multilateral joint development scheme. A series of bilateral development agreements would in effect expand the

Chinese claim to resources in contested areas that would most likely not be open to Chinese participation following a final settlement.

The idea of joint resource development has been proposed in various forms, including as part of the Indonesian-hosted workshops. University of Hawaii and East-West Center researchers Mark Valencia, Jon Van Dyke, and Noel Ludwig have developed a range of possible options for consideration as part of a multilateral joint resource development authority similar to the Antarctic Treaty, a multilateral agreement to share resources in Antarctica. The Timor Gap treaty between Australia and Indonesia, agreements in the Persian Gulf, and other bilateral resource development agreements provide ample precedent for considering this approach; however, a multilateral maritime development authority, if implemented, would be the first of its kind.

- **Multilateral Talks between ASEAN and the PRC**—The entry of Vietnam into ASEAN in the summer of 1995 and the solidarity of the ASEAN members in support of the Philippine position regarding Mischief Reef has made a coordinated ASEAN approach to the South China Sea dispute more likely.

Professors David Denoon and Steven Brams of New York University have proposed that a new mathematical technique, called “fair division,” be used to help facilitate the negotiations over sovereignty. They suggest a two-stage negotiation: first between ASEAN and China and then among ASEAN members.

In fair division, each side is given an agreed-upon number of points to allocate over various assets they desire, and a neutral umpire then calculates how to divide the assets in a way that gives each side the same percentage of its preferences. As an example, Denoon and Brams suggest that the South China Sea could be divided into five zones, and the PRC and ASEAN could bid for the areas that were most important to them. Thus, the PRC and ASEAN might each get some of the islands and some of the deep water hydrocarbon development areas. The advantage of this technique is that it would be fair and resolve sovereignty definitively, thus making it easier to get businesses to invest in the follow-on development needed.

- **Resolving Bilateral Issues First, Then Pursuing Multilateral Negotiations**—There has traditionally been a reluctance among the smaller claimants in the Spratly Islands to pursue bilateral negotiations with larger states for fear that a larger state would diplomatically overpower its smaller neighbors, resulting in unsatisfactory precedents for other bilateral negotiations. China, on the other hand, has resisted calls for multilateral discussions of the Spratly Islands issue in an official setting, insisting on bilateral negotiations involving the PRC while condemning bilaterals involving other claimants.

However, the fallout from the discovery of a Chinese presence on Mischief Reef has led to progress in raising the Spratly Islands issue in both the bilateral and the multilateral context, at the ASEAN Regional Forum meeting in Brunei in August 1995, and through the negotiation of bilateral “principles for a peaceful settlement” with Vietnam and the Philippines.

In the absence of a resolution to the dispute, the next phase could be much more volatile.

A failure to come to grips with the core issues increases the likelihood that another crisis will be necessary before the parties will find the political will to come to the negotiating table.

Given the enhanced cohesiveness among ASEAN claimants following the Mischief Reef incident (and since Vietnam entered ASEAN in the summer of 1995), perhaps the time has come to initiate bilateral negotiations to resolve disputes in areas of the South China Sea where there are not multiple claimants. If successive bilateral negotiations were to succeed in areas where there are only two claimants, such agreements would eliminate significant portions of the overall area under dispute. In addition, the conclusion of agreements in areas where there are only two claimants might create sufficient momentum toward a multilateral solution to the "doughnut" area where multiple claims overlap. There is a need to study carefully the significance of the areas where bilateral claims overlap, the resource potential of these areas, and the strategic implications of proceeding with bilateral talks.

One concern expressed in connection with this approach is that bilateral solutions might serve as a precedent for subsequent negotiations that would recognize expansive claims of the most powerful parties to the dispute. If a strong coordinating mechanism were developed among the ASEAN claimants, it might be possible to "backstop" a bilateral negotiating process with multilateral consultations in the same way that a coordinated position was developed among South Korea, Japan, and the United States during nuclear negotiations with the Democratic People's Republic of Korea. The consultative infrastructure within ASEAN states is already in place, and a coordinated ASEAN position would provide smaller Southeast Asian states with sufficient leverage to protect the interests of ASEAN members in negotiations with China. Such an approach is consistent with ASEAN's efforts to pursue the "integration" of China into the region.

Developing the Political Will to Sustain Peaceful Settlement

Mischief Reef marked a new phase in the South China Sea dispute. It mobilized the ASEAN claimants to pull together in response to China's occupation of a reef located well within the EEZ of the Philippines. The incident forced China's acquiescence in allowing the South China Sea dispute onto the formal agenda of the ASEAN Regional Forum held in Brunei in August 1995. At that meeting, PRC foreign minister Qian Qichen responded by declaring that the PRC would pursue a solution to the dispute consistent with the UN Convention on the Law of the Sea, declaring that the PRC's claim did not contradict the right of safe passage or freedom of navigation through international waterways in the South China Sea. The PRC has also acquiesced to bilateral talks with the Philippines and Vietnam to establish a "code of conduct" in the South China Sea, in effect building on ASEAN's Manila Declaration of 1992.

Nevertheless, in the absence of a resolution of the dispute, the next phase could be much more volatile. Rather than seizing additional unoccupied features, claimants desiring to strengthen their claims might seek to play "king of the hill" by taking physical occupation of features currently occupied by other claimants. The current outposts in the South China Sea already pose a significant obstacle to resolving the dispute because a unilateral withdrawal from these features might represent a loss of face that would be much more difficult to negotiate. Competition for resources through oil exploration or

fisheries disputes may constitute additional sources of conflict. Major oil companies may continue to be reluctant to invest money or other resources in the area of overlapping territorial claims.

These potentially destabilizing factors serve only to emphasize that none of the mechanisms for achieving a lasting resolution of disputes in the South China Sea can be put in place if all the parties do not have the political will to come to the negotiating table and seek a peaceful settlement. The Mischief Reef incident crystallized regional concern about the dangers of a military confrontation in the South China Sea and heightened ASEAN's suspicions regarding China's long-term intentions and tactics. It also gave a clearer picture of the potential costs of a militarily imposed solution. But a comparison of the advantages of cooperation and the costs of confrontation is not necessarily sufficient to overcome the emotional response that is precipitated when core issues such as sovereignty are involved. Moreover, the immediate crisis in relations between the Philippines and the PRC has ebbed with the passage of time. Attention has shifted to the escalation of tensions between China and Taiwan, dissipating the momentum necessary to shape a negotiated settlement in the Spratly Islands. A failure to come to grips with the core issues increases the likelihood that another crisis will be necessary before the parties will find the political will to come to the negotiating table.

Some analysts have suggested that there is no near-term evidence that the parties are ready to come to a negotiated settlement, given domestic political transitions in the PRC and the need to focus on the more urgent tensions in cross-straits relations. According to this analysis, the best hope under current circumstances is that any simmering potential disputes will stay beneath the surface and that the claimant states will be able to avoid aggressive actions or new crises that might cause renewed confrontation.

Others argue that now is the time to pursue a political settlement. This analysis suggests that rising nationalism and the political transition from authoritarianism to democratic rule will make it even more difficult to muster political support for painful compromises on sensitive issues such as sovereignty. In addition, the discovery of new resource potential, negative long-term trends in the military balance in the area of the Spratly Islands, or tensions among claimants over unrelated side issues might emerge, setting the stage for a more far-reaching conflict than the current one. Regardless of whether the dispute will be easier or harder to resolve in the future, it is in the interest of all the parties to seek to create the political will necessary to reduce the likelihood of conflict in the South China Sea.

Implications for U.S. Policy Toward the South China Sea

Given the complexities of the South China Sea dispute and the difficulty of evaluating the legal and historical legitimacy of competing claims, what are the implications for U.S. policy toward the South China Sea? In view of the possible options that have already been presented for jump-starting political negotiations among the claimants, what role, if any, might the United States play in supporting a peaceful settlement?

A coherent and effective U.S. policy toward the South China Sea must include two objectives: (1) to help the disputants to generate the political will to engage in a negotiating process, and (2) to maintain the credibility of

U.S. policy toward the South China Sea must help to generate a political negotiating process among the disputants while deterring any party from unilaterally seeking a military solution.

US support for greater transparency in the South China Sea might reduce the possibility of conflict.

the U.S. intent to deter any one (or group of) claimants from unilaterally asserting a solution by force of arms.

The immediate U.S. interests in the South China Sea disputes include maintaining peace and stability in the South China Sea, maintaining freedom of navigation, and upholding international law, including the UN Convention on the Law of the Sea. These points were emphasized in a May 10, 1995, statement by the U.S. Department of State on the Spratly Islands and the South China Sea. While maintaining its neutral position on the legal merits of the various territorial claims, the United States expressed concern over destabilizing unilateral actions in the region, declared that maintaining freedom of navigation is in the fundamental interest of the United States, and strongly urged that the disputants peacefully resolve the dispute among themselves consistent with international law, including the UN Convention on the Law of the Sea.

The initial reactions of Chinese government press spokesmen to the U.S. statement were negative, but Foreign Minister Qian Qichen's statements the following August at the ASEAN Regional Forum (ARF) meeting in Brunei ostensibly committed the PRC to a path consistent with what the U.S. government had recommended. This pattern suggests that repeated U.S. expressions of interest in seeing an expeditious and peaceful settlement of the South China Sea dispute might help deter unilateral actions by the claimants and maximize the possibility for a negotiated solution, rather than waiting for all sides to continue to harden their respective positions. At the same time, the United States might underscore its neutrality and avoid mediating the dispute on behalf of any single party.

The National People's Congress (NPC) ratified the UN Convention on the Law of the Sea in May 1996, a move that specialists hailed as a major step forward in clarifying the rules under which China will consider its claim, as only islands and rocks above water at high tide generate maritime zones. Simultaneously, the NPC declared straight baselines from which Chinese claims to an EEZ and continental shelf will presumably be measured, including some baselines surrounding the Paracel Islands that deviate from conventional practice, in which only archipelagic states may draw baselines enclosing groups of islands. As part of its interest in upholding the generally accepted interpretations of the Law of the Sea, it is likely that the United States will dispute the Chinese baselines around the Paracels or any other future baseline claims that do not conform to conventional international practice (as has also been the case with Vietnam's expansive baseline claims).

Many specialists believe a leading U.S. role in trying to resolve the Spratly Islands dispute is likely to complicate matters by adding another contentious issue to the already-overloaded agenda of U.S.-Chinese relations. Such a role would also be perceived by China as interference by a nonclaimant in an attempt to internationalize the issue. At the same time, the fact that China responded at the ARF meeting in Brunei to the major U.S. concerns highlighted in its May 10, 1995, statement on the Spratly Islands suggests that the United States may be able to indirectly influence the claimants to be active in constructive directions while also taking actions to diminish the possibility that intimidation tactics might be used as part of a negotiation process.

The U.S. naval presence in the region is essential in implementing the second aspect of U.S. policy toward the South China Sea by deterring the use of military force by any of the disputants. A regular U.S. naval presence in the South China Sea area underscores the nation's interest in stability and reinforces the prevailing interpretation that a significant part of the South China Sea outside of the immediate area of the Spratly Islands is categorized as high seas, where no party exercises territorial jurisdiction.

In the event of destabilizing unilateral actions by any party to the Spratly Islands dispute, the U.S. Navy has an interest in playing its balancing role in the Asia-Pacific area by undertaking an augmented presence in international waters proportional to the severity of any unilateral provocation. Such a response would underscore the U.S. commitment to seeing the dispute resolved nonviolently, while avoiding taking sides in or becoming a party to the conflict. The recent U.S. naval response to Chinese missile exercises in the Taiwan Straits show that a stepped-up U.S. military presence in response to aggressive unilateral actions may be important in reassuring Asian allies that the United States maintains the political will to deter aggressive or destabilizing unilateral actions that threaten the status quo in Asia.

Some analysts have suggested that the United States support greater transparency in the South China Sea by using satellite reconnaissance to actively monitor and make public reports on activities in the area. Another possibility—if such information were made available to a nongovernmental mediator respected by all sides in the Spratly Islands dispute—would be to find a way to provide technical support for South China Sea “proximity” negotiations by using satellite imagery similar to that provided by the Defense Mapping Agency for the Bosnian proximity talks.

The likelihood is slim that direct U.S. intervention will be useful or accepted in resolving the Spratly Islands dispute. After all, there is a range of mechanisms that might be used to bring about a peaceful settlement of the issue without U.S. involvement. The most constructive role for the United States may be in urging the parties to muster the political will necessary to find peaceful solutions while continuing to discourage a military resolution of future disputes. Most important, the United States might support preventive diplomacy by the parties involved by underscoring positive precedents such as the decision by Great Britain and Argentina to enter into negotiations over Falkland Islands boundaries without prejudice to the claims made by the disputants themselves. A steady U.S. policy of “active neutrality”—combined with a “forward-leaning” posture to deter potentially destabilizing military aggression and stepped-up support for an expeditious and peaceful resolution of the parties’ conflicting claims consistent with the Law of the Sea—is the surest sign of support for preventive diplomacy that the United States can offer to deter potential conflict in the South China Sea.

A steady U.S. policy of “active neutrality” to deter potentially destabilizing military aggression without inserting the U.S. into the dispute is the surest sign of support the United States can offer for preventive diplomacy in the South China Sea.

USIP South China Sea Meeting Series

Meeting 1: H.E. Hasjim Djalal, Ambassador-at-large, Republic of Indonesia, March 31, 1995

Meeting 2: Mr. Jon M. Van Dyke, University of Hawaii, June 14, 1995

Meeting 3: Professor Ji Guoxing, Shanghai Institute for International Studies, July 13, 1995

Meeting 4: Dr. Gregory Austin, Australia National University, September 11, 1995

Meeting 5: The Honorable Stapleton Roy, Ambassador-designate to Indonesia, October 24, 1995

Meeting 6: Professor David Denoon, New York University, Feb. 8, 1996

Meeting 7: Professor Ian Townsend-Gault, University of British Columbia, March 27, 1996

USIP Grantees on the South China Sea

1991

Mr. Ning Lu, International Center for Development Policy

The South China Sea: Potential Conflicts and Conflict Resolution

Current

Mr. Jon M. Van Dyke, University of Hawaii

The South China Sea Issues: Approaches and Solutions

Professor Ji Guoxing, Shanghai Institute for International Studies

China's Maritime Jurisdictional Disputes with East Asian Neighbors and Options for Settlement

Professor David Denoon

Fair Division: A New Approach to the Spratly Islands Controversy

The United States Institute of Peace is an independent, nonpartisan federal institution established by Congress to promote research, education, and training on the peaceful resolution of international conflict.