

Maritime Claims and Energy Cooperation in the South China Sea

LESZEK BUSZYNSKI and ISKANDAR SAZLAN

The unresolved maritime claims to all, or parts, of the South China Sea involve Vietnam, Malaysia, the Philippines, Brunei, Taiwan, and China, and have hindered the development of the hydrocarbon resources there. Rising oil prices and China's voracious appetite for energy have stimulated greater interest in the exploitation of the area's oil reserves. Despite the uncertainty, ASEAN countries have involved energy companies in exploration and drilling in their respective claims. Cooperation arrangements between national oil companies including Chinese have been negotiated which hold out the prospect of greater security, even in the absence of a settlement of the maritime claims. Energy cooperation may stabilize the South China Sea providing a secure operating environment for oil exploitation. In time, the way could be prepared for further steps which would involve the claimants in negotiations over a resolution of the maritime claims.

Keywords: South China Sea, maritime claims, energy cooperation, oil, hydrocarbons, China, Vietnam, Malaysia, the Philippines, ASEAN, UNCLOS.

The South China Sea is an area comprising over 200 islands, rocks, and reefs and includes the Paracels and Spratly groups. The unresolved maritime claims of China, Taiwan, Brunei, Malaysia, Vietnam, and the Philippines overlap; China and Vietnam have claimed the entire area; and the others have claimed contiguous zones. Uncertainty in relation to sovereign jurisdiction has hindered the exploitation of the hydrocarbon and fishing resources there. Attempts to settle the claims have stumbled over the complexity of the issue and sanguine expectations that reason and the logic of compromise would prevail have proven to be unfounded. One important reason for the as yet

unresolved status of the area has been the refusal of the main claimant, China, and also Vietnam, to depart from their formal claim to the entire area. Proposals that have called for multilateral negotiations with the intention of accommodating China have floundered accordingly. If the South China Sea were just an outlying area where the competing claims could be shelved without detriment, it would not merit much attention. The search for new sources of energy reserves however, has added a new urgency to the issue, particularly as China struggles to meet exploding demands for energy. The claimants are now interested in exploiting the energy reserves of their respective claims, the ASEAN states in particular. Can there be security in the South China Sea which would allow the claimants to tap those resources without a resolution of the maritime claims?

The Maritime Claims

The key point about the maritime claims is that their resolution according to the UN Conventional on the Law of the Sea (UNCLOS) would ignore what China regards as its historical rights to the South China Sea, while giving the littoral states control over resources to which the Chinese feel they have a right of access. The issue arose largely because China was prevented by events from realizing its historical claims to the South China Sea, while ASEAN countries took the opportunity to occupy islands there. This division between China's sense of historical rights and actual possession of the South China Sea islands was the outcome of the San Francisco Conference of September 1951 when the allied powers failed to identify who had title to the South China Sea islands when they divested Japan of possession after the Pacific War. Article 2(f) of the San Francisco Treaty simply stated that "Japan renounces all right, title, and claim to the Spratly Islands and to the Paracel Islands". The result as Valero noted was a "legal and political vacuum" which allowed the littoral states to raise their respective claims, however justified (Valero 1994). Had China not fallen to the communists the US delegation at the conference may have allowed a non-communist China to assume possession. Chinese claims based on prior discovery carried weight with the allied powers as China had repeatedly affirmed them. The Qing dynasty had lodged a diplomatic protest in 1877 when British vessels reached the Spratlys, a similar protest was made in 1883 when a German vessel surveyed the area. In 1887 China and France, as the colonial power in Indochina, signed a boundary agreement which specified that islands situated east of the designated line belonged to China,

leaving the South China Sea islands to China (Choon-ho 1978). Chinese markers were placed on the Paracels in 1907, which were subsequently incorporated into Guangdong province (Valero 1994). France on 26 July 1933 claimed possession of the South China Sea islands and incorporated them into French Indochina. In 1939 Japan occupied some of the main islands in the Spratlys but when France returned after the war the Nationalist government in China continued to contest French possession. In December 1947 the Nationalist government issued a declaration reaffirming that the Paracels and Spratlys were part of Guangdong province. Before the San Francisco Conference Chinese Foreign Minister Zhou Enlai on 15 August 1951 again declared Chinese claim to the islands (Valero 1994). The allied powers would not permit the islands to revert to a Communist China, in which case the critical separation between China regarded as its historical rights and actual occupation was the result.

China had protested against external intrusions into the islands and had contested French and Japanese possession giving its claims some substance in law. The problem for China was that historical claims are insufficient and need to be perfected by a demonstration of “continuous and effective acts of occupation” before the title can be recognized in law. The importance of effective occupation was established as a precedent in *the Island of Palmas*, which was heard by the Permanent Court of Arbitration on 4 April 1928, other cases affirming the same were *Clipperton* (28 January 1931) and *Eastern Greenland* (5 April 1932). These cases not only affirmed the importance of continuous occupation in deciding sovereignty but gave an incentive for states to occupy islands irrespective of historical claims in the expectation that the title would follow (Valero 1994). The separation of historical claims from actual occupation was significant for the subsequent development of the South China Sea dispute, and for understanding China’s grievances and sense of injustice. The Chinese Nationalists in 1947 had occupied some of the Spratly Islands briefly after the Japanese vacated them but they withdrew while the mainland was falling to the Communists. The presence of the United States and later the Soviet Union, however, prevented the Chinese Communists from demonstrating effective occupation of the Spratlys, though in 1956 they occupied the Eastern Paracels and in 1974 they seized the Western Paracels. Communist China resorted to maps to publicize its claim, which followed a broad sweep deep into the South China Sea but the exact dimensions and coordinates were never defined (Wang 1958; Yu 2003). The inability to validate historical claims through occupation explains China’s frustration over the issue and

the determination to regain what later came to be regarded as “lost territories” (Garver 1992; Tai 1990).

Vietnam similarly insisted on a historical claim to the South China Sea based on contact with the islands there during the Nguyen dynasty, from the 16th through to the 19th century. Those claims relate to the Paracels and evidence supporting historical contact with the Spratlys is doubtful (Valero 1994). In 1956 South Vietnam claimed that the Paracel Islands became Vietnamese when Vietnam was unified by the Nguyen dynasty in 1802, and that the Spratlys had been incorporated by the French into Cochin China in 1929.¹ South Vietnam also claimed the right of succession for the entire South China Sea from the French colonialists as rightful heirs. When a Philippine adventurer called Tomas Cloma claimed the Western Spratlys for the Philippines, South Vietnam began to occupy islands there as from August 1956, and on 22 October 1956 reiterated its claim to the area. Cloma’s activity also prompted Taiwan to garrison the largest island called Itu Aba as from October 1956. Not wishing to provoke China at this stage North Vietnam was silent and on 14 September 1958 Premier Pham Van Dong in a diplomatic note accepted China’s sovereignty over both the Paracels and Spratlys. North Vietnam also witnessed China’s expulsion of the South Vietnamese from the Western Paracels on 19 January 1974. Reunification in 1975 gave Vietnam the confidence to deal with China from a position of strength. It repudiated the earlier acknowledgement of Chinese sovereignty and moved to occupy 13 islands in the Spratlys precipitating an open breach with China (Joyner 1999). Prompted by the ongoing UNCLOS negotiations, Vietnam on 12 May 1977 declared a 200 nautical mile (nm) Exclusive Economic Zone (EEZ), and included the Paracels and Spratly Islands in its territorial waters (Hyer 1995). Vietnam expressed its claims in two White Papers published by the Ministry of Foreign Affairs in 1979 and 1981 entitled *Vietnam’s Sovereignty over the Hoang Sa and Truong Sa Archipelago* (Valero 1994). It had the advantage of being able to demonstrate effective occupation in the Spratlys of 21 islands by 1989, and by 1999 some 27 islands and reefs were occupied (Joyner 1999).

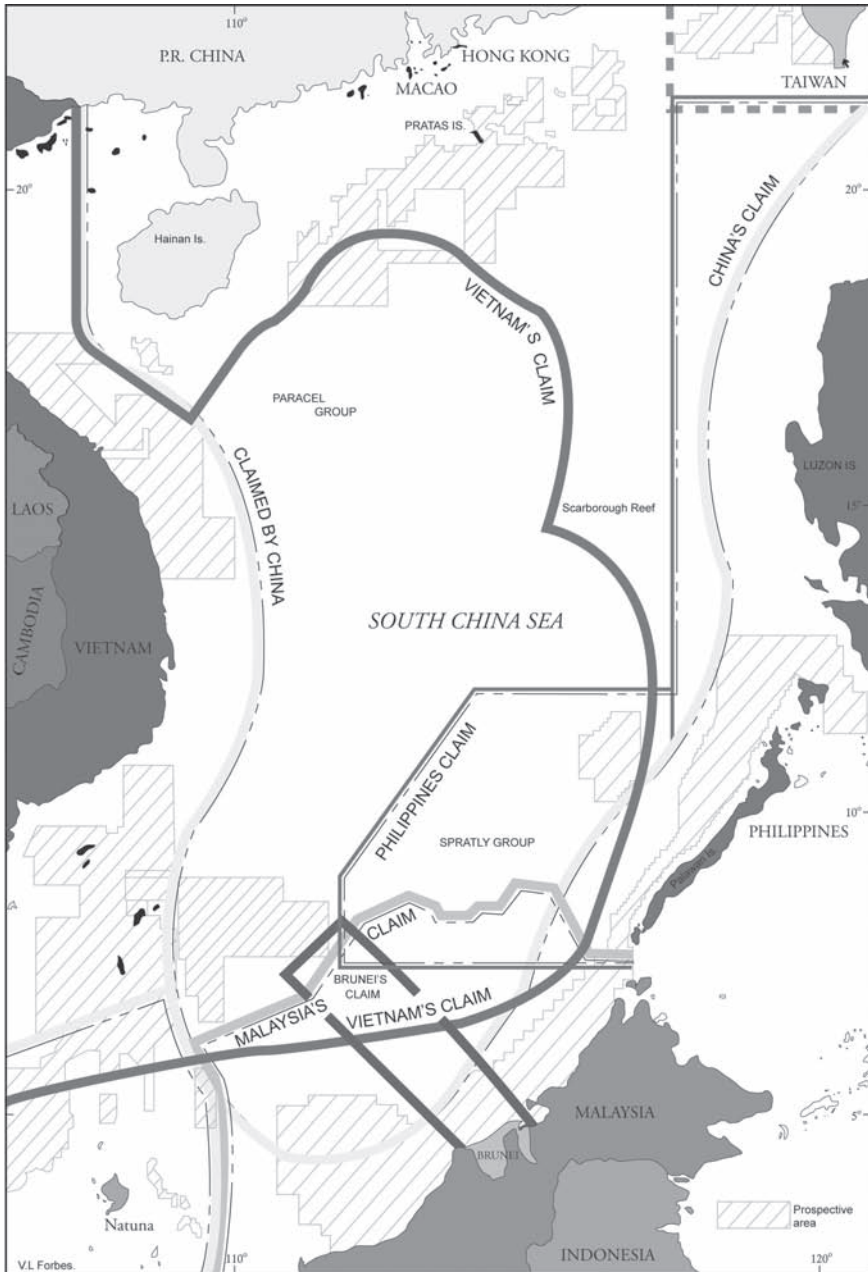
The other claimants similarly resorted to the occupation of islands to support claims that otherwise had a dubious historical basis. The Philippines has long laid claimed rights to a contiguous area in the South China Sea and protested when France declared sovereignty over the islands in 1933. The Americans who ruled the Philippines at that stage, however, regarded the Spratly Islands as outside Philippine jurisdiction (Barnes 1939). Similar protests were raised when Japan seized the Spratly Islands in 1939, Secretary for Public Works and

Communications Mariano Jesus Cuenco called for a survey of the islands to ascertain which were part of the Philippines (Odell 1939). These differences between Filipinos and Americans over whether the Islands were part of Philippine territory were again revealed over 1995–99 when Filipinos looked to the United States for protection under the bilateral alliance. Tomas Cloma landed in the Spratlys in May 1956 and named the islands Kalayaan (Freedomland) claiming them for the Philippines.²

Cloma had intended to register his claim with the United Nations but the Taiwanese navy captured one of his vessels and put him to flight. President Carlos Garcia issued a declaration in December 1956 announcing that the Spratlys had been placed under an allied trusteeship after the San Francisco Conference — a spurious claim, which by implication prevented them from being occupied by the Chinese. Garcia declared that the Tomas Cloma claim was *terra nullius* or “unoccupied territory” (Valero 1994). The unjustified distinction between the Spratlys and the Cloma claim was central to the Philippine position and allowed the then President Ferdinand Marcos to claim the contiguous sea zone on 10 July 1971, which in 1972 was included into the province of Palawan. The Philippines occupied eight islands beginning in March 1878, and issued a declaration incorporating the claim into Philippine territory in the following December.³ The Malaysian claim was based on a claim to the continental shelf and was expressed in 1979 with the publication of a map of the South China Sea by the Directorate of National Mapping. The claim originated in Ghazali Shafie’s Home Affairs Ministry and was prompted by Vietnam’s occupation of islands and the Philippine declaration of sovereignty of 1978 (interview sources, Kuala Lumpur 2002). Malaysia in May 1983 occupied Swallow Reef or Layang Atoll; in 1986 another two reefs were occupied; and in 1999 two more, bringing the total to five. The Malaysian claim overlapped with that of the Philippines and tensions were revealed over 1988–89 when Filipino fishermen were arrested in that area of overlap (see Map 1).

The occupants of the islands have created a *fait accompli* and their removal by anything short of military force is unlikely. Despite the importance attached to occupation, however, legality does not offer them full security. UNCLOS-3 in 1982 defined various maritime zones including the continental shelf and the EEZ, both of which confer a right to resources but not to the islands. Malaysia and the Philippines have invoked the continental shelf to justify their claims but this is an insufficient legal basis to claim islands. Possession of the islands brings access to resources as Article 121 of UNCLOS-3 states that

Map 1 South China Sea Claims



SOURCE: Vivian Louis Forbes, *Conflict and Cooperation in Managing Maritime Space in Semi-enclosed Seas* (Singapore: Singapore University Press, 2001), p. 136. (Reproduced with the kind permission of Dr Vivian Louis Forbes)

islands can generate their own EEZs and continental shelves. Title to those islands is not immediately settled by occupation, particularly where there are competing historical claims, and a final determination of sovereignty would be required at some stage. The question arises as to whether the rocks and reefs occupied by the claimants can offer any particular benefits under UNCLOS. Article 121(3) would seem to prevent this as it says that rocks “which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”. Charney notes that Article 121 may not prevent rocks from having other maritime zones not proscribed in the section above, such as territorial seas and contiguous zones. Moreover, economic viability may be understood in different ways and as long as the waters around a rock or a reef are regularly used for fishing or temporary shelter it may have an “economic life” of its own (Charney 1999). During the negotiations for UNCLOS, small island states argued that uninhabited offshore features should be treated as islands generating maritime zones as long as offshore waters were regularly used for fishing. The claimants may push for this looser interpretation in any negotiations over the South China Sea, which would allow them to attach EEZs and continental shelves to the rocks and reefs they have occupied. However, this would immensely complicate negotiations to resolve those claims.

Prior occupation by Vietnam and ASEAN claimants had excluded China from the South China Sea, giving the Chinese a powerful incentive to recover what they regarded as rightfully theirs (Shee 1998). Reclaiming the “lost territories” or China’s “ocean rights” was a task popularized by Liu Huaqing who was chief of the navy from 1982 (Tai Ming Cheung 1990), and who was appointed as First Deputy Chairman of the Central Military Commission (CMC) in 1992. The Chinese began moving into the Spratlys in July 1987, exploiting the Soviet desire to disengage from the area and to leave their ally Vietnam to its own devices. Two islands were occupied in January 1988, and on 14 March 1988 Chinese naval vessels clashed with Vietnamese naval units near Johnson Reef. By May 1989 China had occupied seven islands and by 1992 a total of nine islands, giving it a presence in the area where previously it had none. ASEAN was alarmed by Chinese action. The *Jakarta Post* opined that China was “becoming more assertive” and may want to “rearrange the power equation in East Asia”.⁴ The *Straits Times* noted that “China’s claims make nonsense of the natural principles of geographic proximity”.⁵ Others saw China’s actions in terms of a “hegemonic interest” to replace the United States in the region (Hamzah 1992). The National

People's Congress (NPC) on 25 February 1992 declared the South China Sea as Chinese territorial waters, more than a claim to the resources of the area since legally it would allow the restriction of shipping. One widespread view was that China's intention was to control the South China Sea, which seemed "inevitable" unless China modified its behaviour (Smith 1994). Some claimed that the Beijing political leadership had granted the PLA (People's Liberation Army) autonomy of action over the South China Sea in exchange for domestic support after the Tiananmen incident of 1989, and that the political leadership's survival depended on PLA loyalty (Dobson and Fravel 1997). Others noted that "irredentist views are common amongst the Chinese elite" but that China was strengthening its position for bargaining purposes at the appropriate time (Hyer 1995).

The Chinese occupation of Mischief Reef in the Philippine claim zone, which was revealed in February 1995, provoked a similar outcry and raised suspicions within ASEAN that China's intention was to realize its claim by gradual expansion. In the Philippines the Mischief Reef event was regarded as Chinese deception, particularly as Foreign Minister Qian Qichen had in July 1992 assured ASEAN of China's pacific intentions. One explanation for the occupation was that it was planned by the Chinese navy or the PLAN in cooperation with the Chinese fisheries department, behind the backs of the political leadership (Shee 1998). Others noted a local connection from Hainan authorities whose intention was to secure fishing rights in the area (Zha 2001). Incremental expansion into areas that may not be defended by a weak claimant such as the Philippines reaches limits, however, when an opposing coalition is precipitated and a diplomatic backlash from the international community is threatened. Changes were noted when Jiang Zemin removed Liu Huaqing from the CMC after the 15th Communist Party Congress in September 1997. In addition, despite Chinese efforts to keep the United States out of the dispute, it signed a Visiting Forces Agreement (VFA) with the Philippines on 10 February 1998 and thereafter conducted regular exercises with the Philippine Armed Forces. In August 1999 America moved two aircraft carriers into the South China Sea at a time of tension between Beijing and Taiwan as a show of force. America's interest in the South China Sea has been the maintenance of freedom of shipping and the prevention of any hostile power from dominating the area, without supporting any of the maritime claims there. The United States acted when it seemed that China would dominate the area that would give Beijing control over shipping to both Japan and Korea. The Taiwan crises of

1995–96 coincided with the Mischief Reef incident and heightened American concern over China's intentions at that time. The United States responded by seeking naval facilities in the Philippines and it even sounded out Vietnam for the use of Cam Ranh Bay, the former Soviet base which was used by Russia until 2002. China retreated from risk-taking behaviour that would alienate ASEAN and further draw in the United States, and this stabilized the situation in the South China Sea to some extent (Buszynski 2002). Thereafter, the Chinese revealed greater receptiveness to ASEAN proposals for managing the issue, raising the welcome prospect of progress towards its eventual resolution.

Attempts at Resolution

Efforts towards a resolution of the dispute have been based on the expectation that China would eventually compromise over a territorial claim to allow the exploitation of resources from which all would benefit. China's behaviour followed a particular pattern over territorial disputes: the leadership first assumes the moral high ground in defence of sovereignty as a sacred principle; once this has been affirmed and recognized by all parties, pragmatic adjustment may follow without loss of face. Beijing reached territorial settlements with its neighbours — Nepal in 1961, Pakistan in 1963, Mongolia in 1962, Burma in 1960, Afghanistan in 1963 — which demonstrated its capacity for practical compromise (Hyer 1995). To this list one may add Russia when compromise agreements in 1991 and 2004 finally resolved the troubled border issue. The basis for a resolution was perceived in China's declared willingness to engage in joint development of the South China Sea's resources which was first announced by Premier Li Peng in Singapore on 13 August 1990. Then the Chinese Premier said that China was ready for "joint efforts with Southeast Asian countries to develop the islands while putting aside for the time being the question of sovereignty" (Chanda and Tai 1990). The formula was repeated by Qian Qichen at the 25th ASEAN Ministerial Meeting (AMM) in Manila in July 1992, where he stated that "when conditions are ripe we can start negotiations".⁶ It was never clarified when conditions would be ripe or what kind of joint development would be possible and where. Seeming Chinese disinterest in the joint development idea gave rise to the view that China was engaging in diplomatic deception to prevent ASEAN opposition from coalescing. Others have explained Chinese behaviour in terms of a bureaucratic conflict between the expansionist CMC group and the foreign and economics ministries, which would

be more flexible over the issue (Garver 1992). Dismissing the idea of simple deception, ASEAN foreign ministries have noted that China speaks with different voices and that coordination of positions has been a problem for Beijing over this as well as other issues. ASEAN's strategy of dealing with China has been to engage the pragmatic groups in the Beijing leadership in negotiations over the maritime claims. If ASEAN could offer these groups a resolution of the issue which would allow China access to the fishing, oil, and gas resources of the area, their position in relation to the hardliners would be strengthened and an eventual compromise would be the result.

The first approach towards a settlement of the issue entailed second-track diplomacy (Track 2) which was intended to influence officials in the first track. Indonesia invited Chinese and ASEAN representatives to a series of annual workshops entitled "Managing Potential Conflicts in the South China Sea", which provided a forum where proposals could be introduced before their elevation to the official level of negotiations. Dispute resolution theorists invested much hope in these workshops and in the efficacy of Track 2 diplomacy to bring about changes in official positions; these workshops began in January 1990 with funding from the Canadian International Development Agency [CIDA]. At the second workshop in 1991, Chinese, Vietnamese, and Taiwanese representatives were invited, Indonesian Foreign Minister Ali Alatas introduced the idea of a joint authority to exploit the resources of the area while sovereign claims would be shelved, without success, which received no support.⁷ In 1993 Ali Alatas proposed that the workshops be elevated to the level of formal negotiations, to which both China and Vietnam objected.⁸ In 1994 Ali Alatas and Special Diplomat for the Law of the Sea Hashjim Djalal promoted the "doughnut" proposal according to which each littoral claimant would be entitled a 200 nm claim based on UNCLOS, and the area beyond that would be subject to joint development (Chanda 1994). Needless to say, both Vietnam and China were disadvantaged by the proposal and opposed it. Though the workshops continued the hopes vested in Track 2 diplomacy by the dispute resolution theorists were seemingly betrayed as it became an extension of Track 1. The participants regarded themselves as officials as they were for the most part appointed by their governments and adopted official positions. A disappointed CIDA withdrew in 2001 but funding from participants has made possible a continuation of the series.

The second approach entailed multilateral negotiations over the South China Sea within ASEAN or the ASEAN Regional Forum (ARF).

Initially, there were hopes within ASEAN that China would accept multilateral negotiations within the ARF but these have been stoutly resisted by China. The Chinese concern was that they would allow ASEAN to develop a common position and would permit the intrusion of external powers such as the United States and Japan. At the 25th AMM in July 1992 the Philippine Foreign Minister Raul Manglapus proposed a UN international conference on the South China Sea, which was opposed by ASEAN members, in particular, Indonesia and Malaysia, which were fearful of antagonizing China.⁹ A solicitous concern for China's reactions has shaped ASEAN diplomacy over this issue, the expectation being that avoidance of diplomatic confrontation would promote a favourable environment for negotiations. The Philippines raised the issue of China's occupation of Mischief Reef with ASEAN Foreign Ministers in March 1995 and obtained a perfunctory statement urging the claimants to refrain from destabilizing action. This statement made no distinction between the disputants though one of them was an ASEAN member.¹⁰ The Philippines also raised the issue at the ARF Senior Officials Meeting (SOM) which was held in Brunei in May 1995 to prepare the agenda for the full ARF in July. China dominated the discussions but the senior officials wanted nothing controversial to anger the Chinese.¹¹ China insisted that the ARF was a discussion forum and not a meeting to resolve conflicts and to ensure continued Chinese participation, ASEAN members agreed that the South China Sea would not be placed on the agenda. Vietnam has also resisted proposals that would undermine its position there, on occasion finding itself adopting views similar to those of China. During a visit to Vietnam in March 1994 Philippine President Ramos proposed the demilitarization of the Spratlys, a freeze on all destabilizing activities there and cooperation over the environment and related functional issues, but the Vietnamese showed little interest.¹²

Expectations that China could be induced into a compromise of its claim to sovereignty and that it would settle for a claim to some of the resources of the South China Sea were premature. One reason was China's sense of victimization over the issue which, rightly or wrongly, stimulated the desire for the return of the "lost territories". Any solution based on the status quo and the application of UNCLOS, which may have seemed just to the ASEAN claimants, would have denied China's historic rights in the area. The ASEAN occupants would be confirmed in their current positions and China would be the loser, and from the Chinese perspective, proposals for a resolution were tilted to ASEAN's advantage. To ASEAN, however, it seemed that China was unwilling to agree on joint development with ASEAN but

wanted ASEAN recognition that the resources were China's (Valencia 1995). Moreover, differing views persisted in Beijing between the defenders of sovereignty in the military, on the one hand, and the pragmatists in the foreign ministry and the economic agencies on the other hand (interview sources, Beijing, 18 July 2000). Negotiation over this issue would require a precise definition of the claim, which China has postponed, and the formulation of positions in relation to five claimants. This would demand the effective coordination of the views of different agencies, a complicated task which the leadership has avoided. There were other issues to take into account which complicated matters as compromise over the South China Sea could undermine Beijing's strict insistence on sovereignty over Taiwan. China, indeed, was unprepared for negotiations.

ASEAN was more successful in negotiating norms of good behaviour with China which did not challenge sovereignty but which could lead to a process of maritime regime building (Valencia 2000). The ASEAN Declaration on the South China Sea of 22 July 1992 was negotiated with China and included an appeal for restraint to create a positive climate for the resolution of the issue. The declaration also included the idea of an "international code of conduct" that would govern behaviour in the area (ASEAN Secretariat 1992). A code of conduct was included in the communiqué from the Philippine-China meeting of August 1995 and the Philippine-Vietnam meeting of November 1995. Though China may have accepted the idea of a code, bilaterally it resisted a multilateral declaration with ASEAN until 4 November 2002, and then it was a Declaration on a Code of Conduct (DOC), less than what ASEAN had been seeking (Buszynski 2003; Nguyen 2003). China's interest in the code was motivated by the need to prevent further American involvement in the area and to head off military exercises between ASEAN with the United States. Avoiding military exercises was a key feature of its own draft of a code of conduct which had been previously circulated among ASEAN members.¹³ The declaration made mention of the need for self-restraint when conducting activities in the area and the peaceful settlement of disputes. There was no reference to the declaration's geographical scope, China wanted the Paracels excluded but Vietnam wanted them included, so the matter was dropped (ASEAN Secretariat 2002; Wain 2002). Within ASEAN the DOC was regarded as a notable change in China's position over the issue as it signified an acceptance of multilateral negotiations, which the Chinese had previously rejected. ASEAN's policy of promoting cooperative measures with China was seemingly vindicated.

Changing Chinese Interests

China's attitude towards the issue was indeed changing as it revealed a concern for the stability of the South China Sea and a need for closer relations with ASEAN. China has consistently attempted to prevent the involvement of external powers in the dispute — the United States and Japan, in particular. Continued uncertainty in relation to China's motives over the South China Sea would simply strengthen ASEAN interest in a US military presence as a balance. The Philippines had already involved the US navy in port visits and military exercises after China encroached on its claim in 1995 and the extension of military cooperation with the United States to the ASEAN level was something China wanted to avoid (Whiting 1997). Moreover, China required a cooperative ASEAN to promote an East Asian regionalism which would further its broader diplomatic objective of reducing American and Japanese influence in the Western Pacific (Lam 2005). Singapore's Ambassador-at-Large Tommy Koh noted that ASEAN was the "driving force" behind East Asian regionalism, because rivalry prevented either China or Japan from assuming a position of leadership.¹⁴ ASEAN's significance for China was elevated as new proposals for the expansion of regionalism were raised. In particular, the East Asian Community idea was most attractive to China because it excluded the United States (Vatikiotis and Murphy 2003). In this situation China moved to strengthen ties with ASEAN and signed ASEAN's Treaty of Amity and Cooperation (TAC) on 8 October 2003. Under Article 10 China was committed not to engage in threatening behaviour towards other members, and under Article 13 it was obliged to resolve disputes with ASEAN peacefully (ASEAN Secretariat 1976). In April 2005 Chinese leader Hu Jintao visited two ASEAN oil producers — Indonesia and Brunei — to promote good relations. He included a stopover in Manila as well to assuage concerns about China. The Chairman of the National People's Congress Wu Bangguo visited Manila in September 2003 and proposed joint exploration of the resources of the South China Sea.¹⁵ In May 2005, Wu visited Kuala Lumpur with a similar message of peaceful cooperation. China's need to demonstrate its peaceful and cooperative intentions to ASEAN would bind its leaders to good behaviour in the foreseeable future more effectively than any declaration.

China requires access to the energy reserves of the South China for which ASEAN cooperation will be necessary. China became a net oil importer in 1993 and, according to Zhu Jianjun of the China National Petroleum Company (CNPC), China's oil imports in 2010

will reach 50 per cent of consumption, rising to 60 per cent in 2020. Ballooning oil demand brings with it a need for diversification of energy supplies to avoid excessive dependence on one supplier or region; by the year 2005, 45 per cent of China's oil imports originated from the volatile Middle East, and 17 per cent from Saudi Arabia.¹⁶ China has been negotiating agreements with a wide range of energy suppliers: in Africa, South America, as well as Asia. China has also been searching for new oil reserves, which requires collaboration with other consumers in exploration and drilling to minimize costs and to spread the risk, particularly in the South China Sea where ultra deep sea drilling beyond 600 metres is required. China's estimates of the oil reserves of the South China Sea have generally been very optimistic. Zhang Dawei of the Ministry of Land Resources claimed that the South China Sea would become one of China's ten major oil and gas sites: the oil reserves were estimated at 23–30 billion tons or 168–220 billion barrels.¹⁷ If that were the case, the South China Sea would indeed be very important for China, but Western estimates of the area's oil reserves differ significantly. The US Energy Information Administration places the proven oil reserves at around 7 billion barrels or around 960 million tons (US Energy Information Administration 2003). These estimates would place the South China Sea at the same level as Norway or Azerbaijan in terms of oil production, which would still justify exploitation.

Energy Cooperation

China and the ASEAN claimants have a common interest in the exploitation of those oil reserves but the maritime claims have acted as impediments. Efforts to propose joint development to circumvent sovereignty have been frustrated, particularly as formulae for allocating the benefits of joint development would depend on sovereignty in any case. Nonetheless, ASEAN states have involved international companies in cooperation agreements with their own national energy companies to exploit the energy reserves of their claims. These international companies provide the technology and the equipment for deep sea exploration and drilling operations in the South China Sea. One important effect is that protest action from rival claimants is discouraged as conflict would destroy the confidence of the energy companies in the area to the detriment of all. In a similar way, energy cooperation between the ASEAN claimants and China has been developing, which bodes well for the future. The Chinese National Oil Company (CNOOC), and its listed subsidiary PetroChina, are interested in

expanding operations in the South China Sea and through cooperative agreements with ASEAN, national oil companies would obtain access to oil and gas reserves without the need to enforce exclusive claims to sovereignty. Through energy cooperation the most immediate obstacles posed by sovereignty may be side-stepped which would remove some of the uncertainty that has surrounded the area. Energy cooperation between national oil companies could function as a confidence building and stabilizing measure which could prepare the way for other steps leading to a process of maritime regime building.

The energy companies involved in oil exploration by the ASEAN claimants lament the absence of a resolution of the claims to the South China Sea as the uncertainty constrains their activity. Occasionally, when companies undertake exploration in contested zones, activity has been halted by naval intervention, resulting in delays and considerable losses. No doubt there is the concern that existing conflicts may be exacerbated by exploration activity and clashes may result. Nonetheless, if the exploitation of the energy resources there proceeds to everyone's benefit the risk of conflict may be reduced significantly in preparation for a future time when it would be possible to resolve the maritime claims. For this process to be initiated, China should be allowed a share of the spoils as currently its access to the energy resources of the South China Sea is constricted by the claims of others. Chinese companies are unable to operate in the South China Sea on their own; they have much experience in shallow waters but they lack the experience and the technology for ultra deep-water operations. Chinese companies require production-sharing agreements with foreign partners which would provide the technology and equipment for exploration in the deep waters of the South China Sea.¹⁸ Energy cooperation in some cases has been trilateral involving several ASEAN national oil companies with their Chinese counterpart, which may be a harbinger of greater cooperation to come.

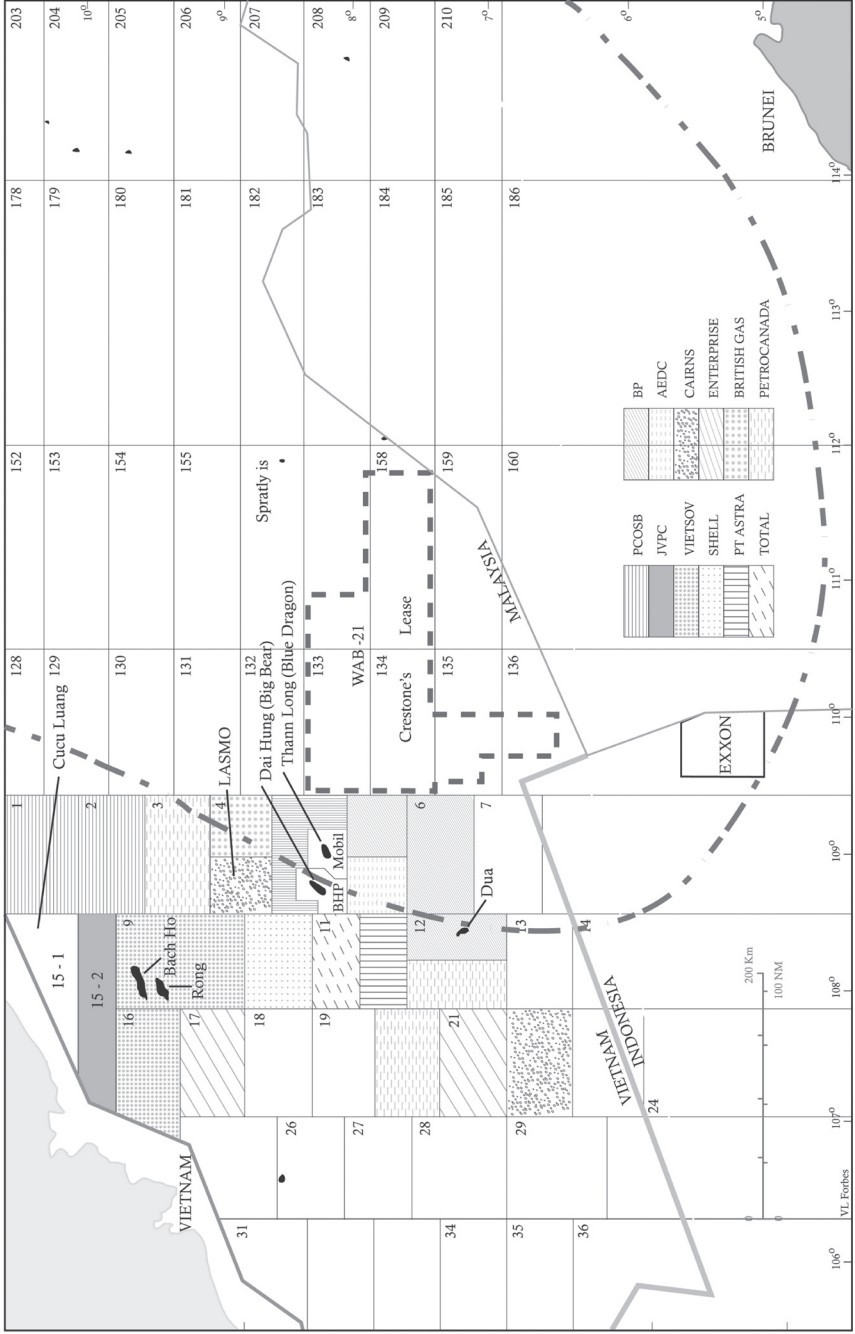
Vietnam is a major offshore oil producer in the South China Sea and it has had an incentive to involve as many foreign partners as possible to reinforce its claims in the area and to deter Chinese opposition. Vietnam's experience is instructive as it reveals initial tensions with China, and several near clashes over exploration rights, and then a subsequent effort to avoid conflict and to engage in energy cooperation. Since the Foreign Investment Law was promulgated in 1987, PetroVietnam has signed 37 Production-Sharing Contract (PSC), one Business Cooperation Contract (BCC), and seven Joint Operating Contracts (JOC) with over 50 international oil and gas companies.

Vietnam's largest and most productive area is the Bach Ho field, which was first developed by the joint venture Vietsovpetro. Established with the Soviet Union in 1981, it later became a cooperation agreement between PetroVietnam and Russia's Zarubezhneft (see Map 2). China, however, invited exploration in the Vietnamese claim area when on 8 May 1992 CNOOC concluded an agreement with the Denver-based Crestone Energy Corporation for the development of the Wanan Bei-21 Block (WAB-21). The Crestone concession overlapped with the Vietnamese claim zone provoking new tensions with Vietnam, particularly when PetroVietnam and the Vietnamese State Oil Corporation began drilling in Crestone's concession area.

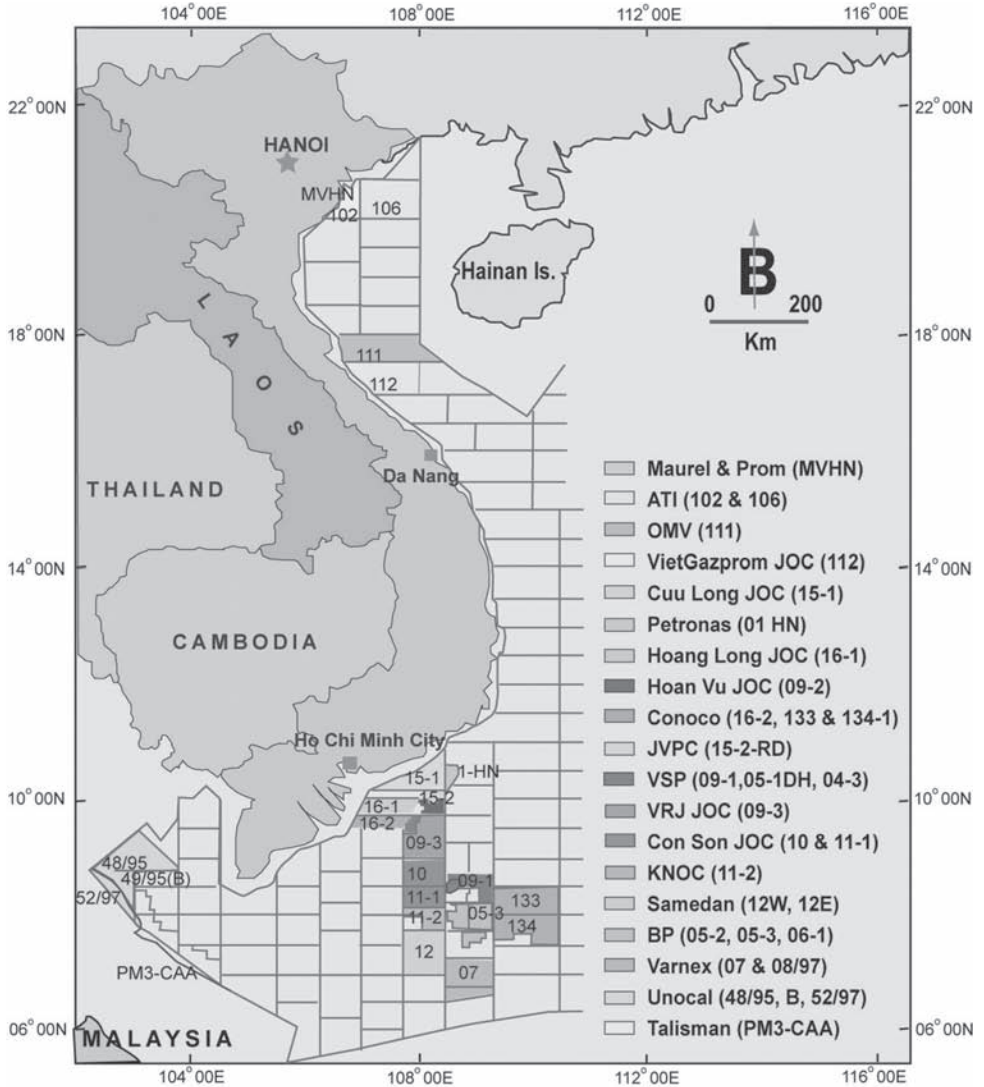
On 18 April 1994 Vietnam involved Mobil in the exploration of the Blue Dragon field, and in 1997 it engaged ConocoPhillips in a production-sharing agreement in an area close by. There were several incidents when conflict was narrowly avoided: in April 1994 five Vietnamese naval vessels chased a Chinese exploration craft from the disputed area, and in July 1994 two Chinese naval vessels blocked a Vietnamese oil rig operating in the Crestone concession area.¹⁹ In March 1997 the Chinese drilling ship the Kantan III travelled some 100 km off the Vietnamese coastline provoking a Vietnamese protest. On 20 March the Vietnamese Foreign Ministry appealed to ASEAN ambassadors and on 1 April the Chinese drilling rig withdrew from the area.²⁰ China was deterred from escalating the issue by Vietnam's membership of ASEAN and both sides subsequently avoided creating incidents that could alarm investors. Vietnam has developed another four fields with foreign partners; in October 1998 Vietnam negotiated a joint venture to exploit the Cuu Long field which included PetroVietnam, Conoco of the United Kingdom, the Korean National Oil company, and Geopetro of France (see Map 3). Oil was discovered in two different fields in August 2000, and October 2001 and production began on a large scale in November 2003. Other agreements included the Hoan Vu joint venture between PetroVietnam, the UK-based company SOCO International and Thailand's PTT Exploration and Production (PTTEP) to explore the Ca Ngu Vang field; there was also the Truong Son joint venture between PetroVietnam, Canada's Talisman, and Malaysia's Petronas Carigali; PetroVietnam also concluded joint ventures for oil exploration, with Petronas Carigali, Indonesia's Pertamina, and Korea's National Oil Company (KNOC) for the development of gas fields in Block 11-2 (see Map 2) in southern Vung Tau province (Brown 2005).

Some tensions surfaced again with China in 2004 when Vietnam protested against China's attempts to involve oil companies in

Map 2
Exploration Blocks Offshore Vietnam, Including the Crestone, Bach Ho, and Blue Dragon Fields



Map 3
**Exploration Blocks Offshore Vietnam,
 Including the Yacheng, Con Son, and Cuu Long Fields**

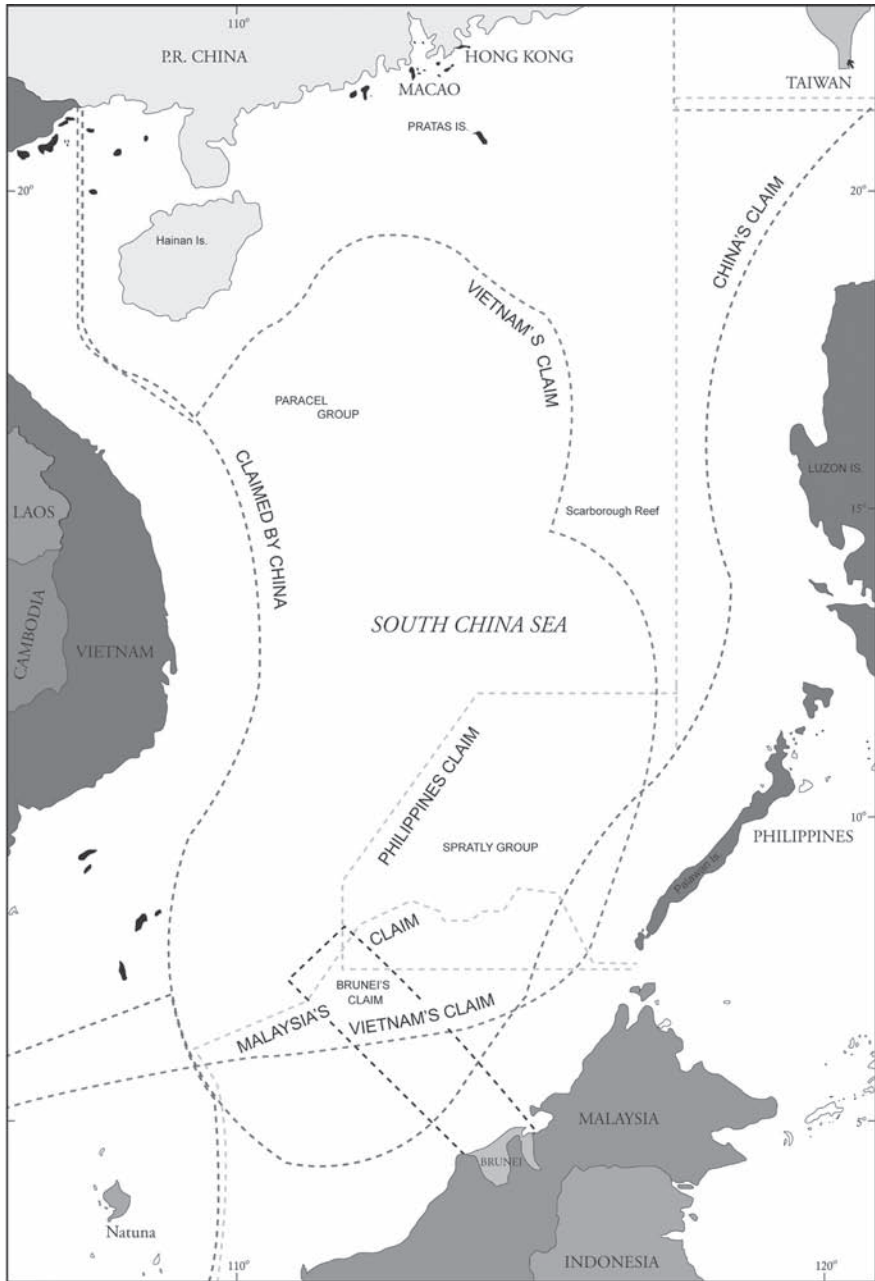


SOURCE: PetroVietnam.

exploration in its own zone. In September 2004 Vietnam criticized a Chinese agreement with the Philippines for joint seismic work. In October 2004 China in turn criticized Vietnam when PetroVietnam opened nine blocks for bidding off Vietnam's central coast.²¹ In 2005, however, there were indicators of a Chinese willingness to improve relations with Vietnam over what they called "border issues left over in history", the land border as well as the South China Sea issue. Both sides sought to remove tensions in the relationship, particularly in the South China Sea, which could spill over into a mutually destructive conflict and they invoked energy cooperation as an instrument to manage relations. When Vietnamese president Tran Duc Luong visited Beijing in July 2005, China and Vietnam stressed cooperation over oil and gas exploration in the South China Sea and their desire to turn their border into "one of peace, friendship and long-lasting stability".²² Chinese Vice-President Zeng Qinghong declared in October 2005 that China was ready to come to an agreement with Vietnam over the land border and "to actively push forward the joint exploration of the disputed areas in the South China Sea".²³ Vietnam's Party Leader Nong Duc Manh visited Beijing in August 2006 and agreed to a joint oil exploration with China in the Gulf of Tonkin/Beibu.²⁴ Implementing these declarations may prove troublesome, nonetheless they reveal that in the most difficult and potentially conflict-ridden relationship in the area, that between China and Vietnam, a serious effort has been undertaken to improve relations.

The Philippines involved Amoco International in oil exploration in Reed Bank off Palawan in 1976, and prompted both China and Vietnam to protest. The Philippines was placed in a difficult situation after China occupied the Mischief Reef as the Chinese could conduct exploration and drilling well within the Filipino's own claim zone. Manila had every incentive to involve international companies in its claim zone as an assurance against renewed Chinese encroachment into that claim. In August 1998 Shell was awarded a contract for offshore drilling in the Malampaya natural gas field (see Map 4), which was to be connected with an onshore processing centre by a pipeline. Philippine Energy Secretary Vicente Perez in October 2003 declared that 46 exploration blocks would be opened for public tender not only in the Malampaya field but in northwest, southeast, and east Palawan.²⁵ American Energy Secretary Spencer Abraham was invited to the Philippines to explore the prospects for US involvement in oil and gas exploration in the Philippine claim area (Villanueva 2003).

Map 4
Malampaya Fields and the Philippines/China/Vietnam
Joint Seismic Survey Area



The Philippine National Oil company (PNO) also negotiated a joint venture with Malaysia's Petronas for oil and gas exploration off Mindoro. Third-party investors such as Unocal of the United States, Santos of Australia, Lasmo of the United Kingdom, PTTEP of Thailand, Medco of Indonesia, and GM International of Canada were offered stakes (Domingo 2003). Manila searched for additional assurances in the area as anxiety was stimulated that China would undertake large-scale exploration and drilling in the Philippine claim zone. If that occurred, the Philippines would have few realistic options in the face of Chinese pressure. It could declare Chinese activity there a violation of the ASEAN Code of Conduct, or it could appeal to the international community but both would be revealed as ineffectual (Ager 2004). To assuage these concerns in March 2005 Philippines Secretary of Foreign Affairs Alberto Romulo visited Beijing when he claimed that China was willing to discuss exploration there on the basis of mutual respect and equality (Xinhua 2005). The Mischief Reef incident has unsettled the Filipinos and has made them eager for Chinese reassurances. As they seize upon Chinese proposals for joint development they may be required to offer China broad access to their zone as the price of the reassurance they seek. Malaysia's Petronas Carigali has teamed up with Murphy Oil, ConocoPhillips, and Shell in exploration agreements in Blocks M, L, and G off Sabah (see Map 5). A Petronas Carigali, Shell, and ConocoPhillips consortium struck oil in Blocks J and G in 2004. Petronas also awarded exploration rights to Murphy Oil to conduct deep-water exploration in Block K (Yunis 2004). A dispute erupted between Malaysia and Brunei as Malaysia's Blocks M and L overlap with Brunei's claims in Blocks K and J. Malaysia has offered exploration rights to Petronas Carigali and Murphy oil in the Kikeh field (see Map 5). In January 2002 Brunei awarded exploration rights in the same area to a TotalFinaElf, BHP Billiton, and Americada Hess consortium, which was to conduct drilling exploration in deep water in Block J. In March 2003 a Brunei gunboat drove away a Murphy drilling ship, and in April Malaysian patrol boats forced a Total exploration vessel to leave the Block J area. The French company ceased drilling, declared *force majeure*, and cancelled the contract. Shell, which had been drilling in Block K, and Petronas, active in Block L offshore Sarawak, both ceased operations pending the resolution of the dispute (Jayasankaran and McBeth 2003; Rigzone 2003). Negotiations were conducted between Malaysia and Brunei on 25 August 2003 and 30 August 2005, but they were inconclusive. Malaysia proposed a production-sharing agreement with Brunei similar to the Malaysian-Thailand joint exploration agreement.

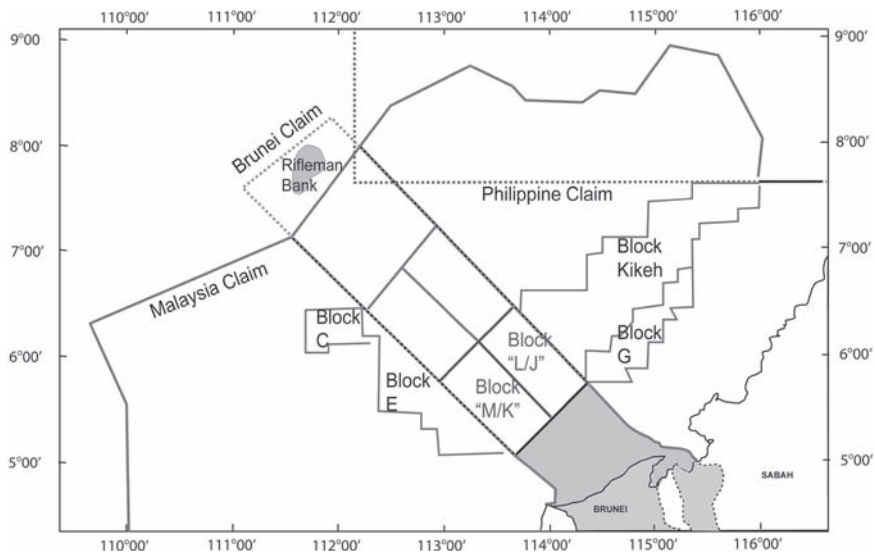
Brunei, however, was guided by its UK advisers who warned that this might entail conceding territorial claims.

Brunei may involve Chinese companies in exploration and drilling in the disputed areas as Hu Jintao proposed joint development when he visited Brunei in April 2005. If this proceeds Malaysia's position would become difficult. Proposals to resolve the dispute include a production-sharing agreement similar to that concluded between Petronas and the Petroleum Authority of Thailand (PTT) in 1998, where Malaysian and Thai claims overlapped.

A significant development was the negotiation of trilateral exploration agreements over the past few years. Trilateral agreements allow national oil companies to operate together in particular areas promoting cooperation and encourage a willingness to circumvent the constraints of sovereignty for the sake of common benefits. In January 2002 Malaysia's Petronas, Indonesia's Pertamina, and PetroVietnam agreed to form the Con Son joint operating company to conduct exploration in Blocks 10 and 11.1 offshore Vietnam (see Map 3). In June 2003 these three companies concluded a tripartite cooperation agreement to explore and develop hydrocarbon resources offshore Sarawak in Block SK305.

After concluding exploration agreements in Vietnamese and Malaysian zones, the companies agreed to negotiate a similar joint agreement for the Indonesian blocks as well.²⁶ On 14 March 2005, CNOC, the Philippines National Oil Company (PNOCO), and PetroVietnam agreed to conduct joint seismic surveys over a three-year-period in an area in the Philippine claim zone (see Maps 5 and 6). The agreement stated that the basic positions held by the respective governments in relation to sovereign claims would not be affected. Philippine President Gloria Arroyo Macapagal declared that the agreement represented a "diplomatic breakthrough" for peace in the region and the first step in the implementation of the ASEAN Code of Conduct with China.²⁷ The Philippine president also stated that the agreement would assist the country's energy independence programme, which demanded "strategic alliances with our friends and allies so that we can have more supply of energy for the region and our country". The Chinese ambassador to the Philippines Wu Hongbo said that the agreement could be a good example of resolving disputes peacefully (Xinhua 2005). For the Philippines, a trilateral arrangement involving China would allow progress in exploration removing the perpetual fear of Chinese reactions which has haunted its leaders. To move ahead with the exploitation of the energy resources in its own zone the Philippines is compelled to involve the Chinese and share the benefits with

Map 5
Malaysian Blocks G, L, M, and Brunei Blocks K, J, and the Kikeh Field



them. The trilateral agreement, however, was limited to seismic data acquisition, the first stage of which was concluded in November 2005. Whether or not the same cooperation would extend to drilling and production in the way anticipated by Manila is another matter.

Conclusion: Energy Cooperation and Security

China has been the main claimant over the issue and the principal source of uncertainty for ASEAN. Past efforts to resolve the South China Sea problem visualized either a grand solution to the maritime claims, as though all claimants were equally interested in or capable of a settlement of those claims, or a conspicuous effort to ignore sovereignty by promoting joint development. These approaches struck against the Chinese leadership's obsession with sovereignty, the legacy of the humiliations of the 19th century, the severance of Taiwan from the mainland, and the concern about historical rights in the South China Sea. The margin of flexibility over this issue was limited for China's leaders, committed as they have been to a defence of China's sovereignty. The unresolved maritime claims have provided an uncertain environment for the exploitation of the area's energy

reserves and yet the demand for energy and fear of global shortages will intensify interest there. Conflict and naval clashes to protect claims cannot be excluded but the effect would be to drive away the energy companies, creating an instability from which all would suffer. This awareness is a constraint upon conflict and an incentive for the claimants to ameliorate conditions there to prevent clashes. In particular China's need for energy and commodity imports has made it hostage to regional and global stability. The proud self-reliance its leaders once displayed has given way to an understanding that spectacular economic growth brings with it an acute vulnerability to external disruption of its energy supplies. China's interest is to participate in exploration and drilling and not to engage in provocative action in the area, which would shatter its stability and undermine its regional diplomacy. It is notable that the one recent case of confrontation over overlapping claims in the South China Sea involved two oil-producing ASEAN members, Malaysia and Brunei, whose need for the development of these energy resources is less urgent than is the case with China, which has more lose by resorting to confrontational tactics.

Energy cooperation can bring greater confidence to the South China Sea alleviating some of the uncertainties that have plagued the area for the past two decades. As cooperation over exploration and drilling proceeds, tacit agreements between the claimants are likely which would establish interim guidelines or norms of behaviour to avoid conflict and to resolve disputes which would create a more stable operating environment for the energy companies. Energy necessity, indeed, may break the log jam over this issue and stimulate a process of gradual cooperation which could then prepare the claimants for more difficult negotiations over production-sharing at the appropriate time. ASEAN's promotion of energy cooperation in the South China Sea would make sense, if only to allow access to the area's energy reserves. Whatever the merits of China's grievances it should be made clear in any negotiations relating to the area that China would benefit from energy cooperation and that it would be involved in the exploitation of the energy reserves of the area. It would be possible to start from exploration, drilling, and then to move to actual production-sharing in a process that may promise better results than previous efforts to deal with this issue. China's demand for energy has escalated, and its need for cooperation with ASEAN is now greater. The trilateral agreements negotiated between regional and national oil companies discussed above offer a convenient way of engaging China and extending cooperative activity. An ASEAN policy of involving Chinese energy companies in exploration, drilling, and

eventually production would strengthen China's interest in further cooperative steps. One proposal would be for the ASEAN governments to move from trilateral arrangements which have involved China to quadrilateral or pentilateral agreements. By expanding cooperation to the multilateral level it would be possible to build a basis for greater stability in the area and to prepare the way for a future resolution of the claims, when that time comes.

ASEAN, indeed, should promote greater energy cooperation in the area by involving as many international energy companies as possible, not only from China and the United States but from India and Europe as well. The intention should be to create an environment where governments, including those outside the region, would find it in their interest to have the maritime claims settled. When sovereign claims create uncertainty and throw up impediments to energy exploration and exploitation, governments would face pressure to act. Insisting on their own particular claims, governments have turned the South China Sea into a convenient stalemate which would not threaten their positions. The unfortunate but predictable result has been that well-meaning proposals for a resolution of the issue have been ignored, and relegated to the dust bin. When the benefits of energy cooperation in the region become much more tangible to these governments the existing stalemate would become an inconvenient one, a barrier to further exploitation and development of the area's energy resources. At that point existing regional mechanisms such as the ARF would assume an important role in devising an appropriate resolution of the issue, one which would avoid the trap of simply affirming exclusive sovereign claims by partially converting them into entitlements to the benefits of energy cooperation. If maritime claims could be regarded as entitlements according to a satisfactory formula for sharing the energy resources, many of the current obstacles to negotiations could be circumvented. China, above all, would be assured of its share and would have less incentive to act as a spoiler over the issue. In view of the complications of the maritime claims and the rising demand for the energy resources, there is no other way to deal with the issue.

NOTES

- 1 *The Times* (London), 9 June 1956.
- 2 *Christian Science Monitor*, 23 May 1956.
- 3 *International Herald Tribune*, 30 and 31 December 1978.
- 4 "Watching China Closely", *Jakarta Post*, 29 March 1988.

- 5 “Dealing with China”, *Straits Times*, 1 April 1988.
- 6 *Business Times*, 23 July 1992.
- 7 *Straits Times*, 16 July 1991; Reuters, 17 July 1991.
- 8 *Straits Times*, 24 August 1993.
- 9 *Indonesian Observer*, 21 July 1992.
- 10 *Straits Times*, 19 March 1995.
- 11 *Straits Times*, 25 May 1995.
- 12 *Straits Times*, 30 March 1994.
- 13 *Straits Times*, 21 February 2000.
- 14 *Straits Times*, 22 February 2000.
- 15 *Straits Times*, 1 September 2003.
- 16 “China Forecasts on Crude Oil Consumption”, *Alexander’s Gas and Oil Connections* 11, no. 11 (8 June 2006).
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- 20 *Nation*, 21 April 1997; *Straits Times*, 8 April 1997.
- 21 “China Rejects Vietnam’s Demand to Cancel Oil Exploration in South China Sea”, *Alexander’s Gas and Oil Connections* 9, no. 24 (9 December 2004).
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- 23 “China, Vietnam Likely to Complete Border Demarcation Work before 2008, Chinese Vice President”. *People’s Daily*, 19 October 2005.
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- 26 *Star*, 17 June 2003.
- 27 *Star Maritime*, 15 March 2005.

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LESZEK BUSZYNSKI is a Professor at the Graduate School of International Relations, International University of Japan in Niigata.

ISKANDAR SAZLAN is currently a Senior Researcher in the Centre for Maritime Security and Diplomacy at the Maritime Institute of Malaysia (MIMA) in Kuala Lumpur.