

## **China's New Wave of Aggressive Assertiveness in the South China Sea<sup>+</sup>**

*Carlyle A. Thayer\**  
University of New South Wales

### **Abstract**

During the first half of 2011 China began to aggressively assert its sovereignty claims in the South China Sea by interfering with the commercial operations of Philippine and Vietnamese oil exploration vessels operating in their Exclusive Economic Zones. China also undertook to demonstrate its jurisdiction by enforcing a unilateral fishing ban and by deploying civilian vessels in disputed waters. This study examines the drivers behind Chinese assertiveness and highlights the importance of energy security and sovereignty. The article considers in detail the impact of Chinese assertiveness in the South China Sea on its bilateral relations with Malaysia, the Philippines and Vietnam, and the responses by these claimant states particularly in presentations to the Shangri-La Dialogue. The article concludes by exploring the utility of multilateral diplomatic efforts towards reducing tensions through a regional code of conduct.

**Keywords:** *South China Sea, Chinese assertiveness, ASEAN, UNCLOS, code of conduct*

**JEL classification:** *F51, F52, F59, N45*

### **1. Introduction**

In 2009 and 2010 the South China Sea emerged as a potential regional hot spot as a result of an increase in Chinese assertiveness in pressing its sovereignty claims. During this period China imposed its annual unilateral fishing ban with unusual vigour targeting Vietnamese fishing craft in particular.<sup>1</sup> Vietnam, as Chairman of the Association of Southeast Asian Nations (ASEAN), used its position to internationalize this issue. The United States responded to lobbying by Vietnam and other concerned regional states by raising the South China Sea issue at the Shangri-La Dialogue in Singapore and at the 17th ASEAN

Regional Forum meeting in Hanoi. The South China Sea quickly emerged as another irritant in Sino-American relations.

By October 2010, the tensions that had arisen earlier in the year appeared to have abated. China resumed military-to-military contacts with the United States suspended in response to arms sales to Taiwan. China and ASEAN revived the moribund Joint Working Group to Implement the Declaration on Conduct of Parties in the South China Sea (DOC). These and other developments led the author to conclude that there were grounds for cautious optimism that some progress could be made in managing South China Sea tensions.<sup>2</sup> This assessment appeared to be borne out by testimony in April 2011 given by Admiral Robert Willard, Commander of the US Pacific Command, that the People's Liberation Army Navy (PLAN) had adopted a less aggressive stance in the Pacific.<sup>3</sup>

Events during the first half of 2011 have witnessed a pattern of behaviour on the part of China that has not been seen before and this has contributed to a rise in regional tensions. In particular, China began to aggressively interfere in the commercial operations of oil exploration vessels conducting seismic testing in waters claimed by the Philippines and Vietnam. Diplomatic protests by both states were routinely dismissed by China. This article assesses developments affecting the security of the South China Sea in the first half of 2011.

Following this introduction, this article is organized into six parts. Section 2 provides background to recent developments. Sections 3, 4 and 5 consider China's relations with Malaysia, the Philippines and Vietnam, respectively. Section 6 reviews official statements made by key defence ministers at the Shangri-La Dialogue. Section 7 offers some conclusions.

## **2. Background**

There are two major drivers that explain Chinese behaviour: sovereignty and hydrocarbon resources.

In May 2009 China protested submissions by Malaysia and Vietnam to the United Nations Commission on Limits of Continental Shelf by officially submitting a map of China's claims. This map contained nine dash lines in a U-shape covering an estimated eighty per cent or more of the maritime area of the South China Sea. Having staked its claim China began to demonstrate that it had legal jurisdiction over the South China Sea. China therefore challenged any and all assertions to the contrary by the Philippines and Vietnam.

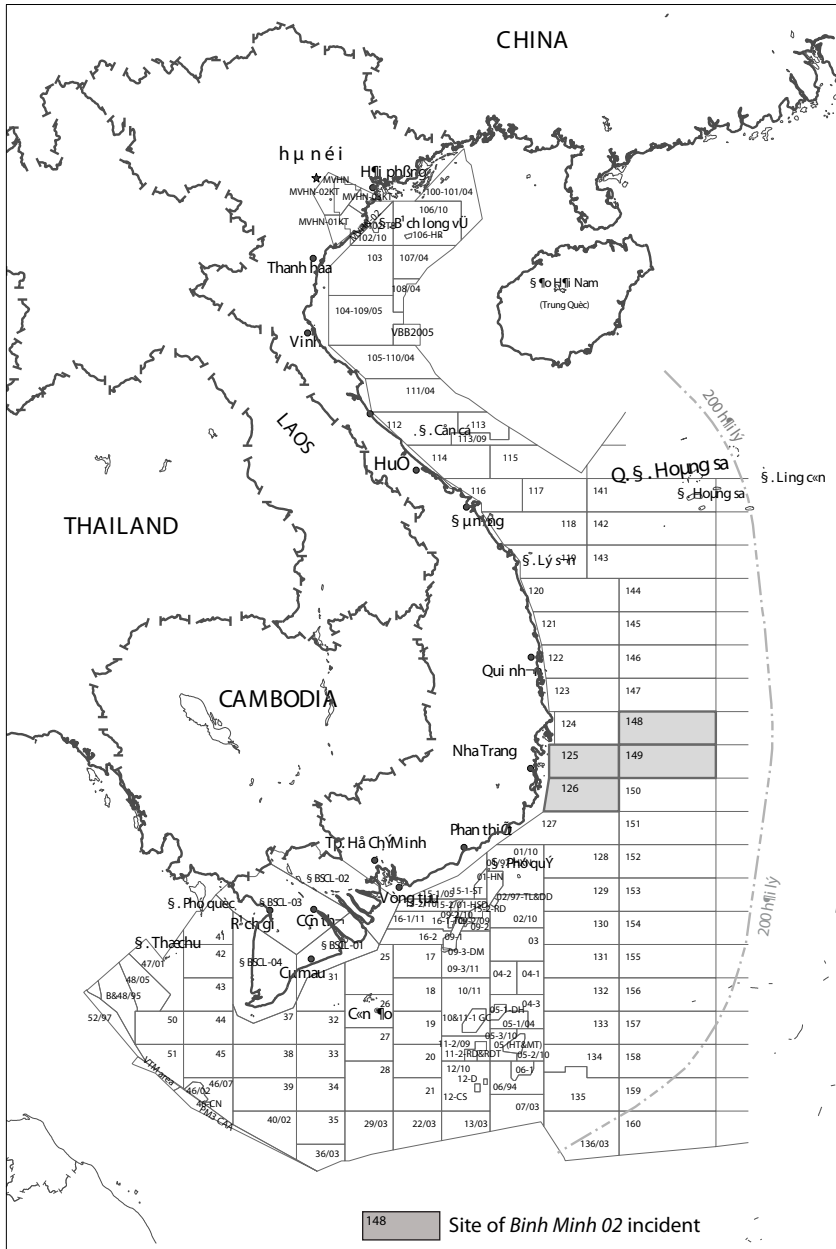
Recent announcements of joint oil and gas exploration by the Philippines and Vietnam were viewed in Beijing as a challenge to China's tolerance.<sup>4</sup> For example, in February 2011, Forum Energy, an Anglo-Canadian consortium based in the United Kingdom, concluded a two-year survey of oil and gas resources in the South China Sea. President Benigno Aquino III then awarded

Figure 1 China's Official Nine-Dash Line Map



Source: China's submission to the United Nations Commission on the Limits of the Continental Shelf, 7 May 2009.

Figure 2 Vietnam's Oil Exploration Blocks



Source: Vietnam National Oil and Gas Group (PetroVietnam).

Forum Energy an exploration contract to explore for gas in the Reed Bank area.<sup>5</sup> Vietnam awarded Services Corporation and CGG Veritas of France a license to conduct seismic surveys off its coast.<sup>6</sup>

According to Song Enlai, chairman of China National Offshore Oil Corporation's (CNOOC) board of supervisors, China loses about twenty million tons of oil annually or about forty per cent of its total offshore production due to the activities of countries in the South China Sea. CNOOC has plans to invest US thirty-one billion dollars to drill eight hundred deep-water wells in the East Sea, Yellow Sea and South China Sea with the aim of producing five hundred million tons of oil by 2020.

On 7 March 2011, Chinese Foreign Minister Yang Jiechi stated that China's foreign policy would serve the country's economic development. China then warned against any oil exploration in waters it claimed in the South China Sea.<sup>7</sup> In early May, China announced that it would step up maritime patrols by at least ten per cent in the face of increasing incursions into its territorial waters. Chinese media reported that around one thousand recruits would be added to China's marine service to raise the total to 10,000.<sup>8</sup>

That same month China launched a mega oil and gas-drilling platform to be used by the CNOOC in the South China Sea. The rig frees China of dependence on foreign-owned contractors for deep-sea drilling. The rig is capable of exploring waters up to 3,000 metres in depth, a capability that neither the Philippines nor Vietnam possesses.<sup>9</sup> Chinese sources indicated that the rig would begin operations in the South China Sea in July and thereby enable China to establish a major presence in the area.

On 27 May, the Philippines' Department of Foreign Affairs summoned Chinese officials to convey its concern about the planned location of the mega rig. Philippines officials asked the Chinese diplomats the exact planned location of the new oil rig and stated that it should not be placed in Philippine territory or waters.

### **3. China-Malaysia**

In June 2009 Malaysia's Prime Minister Dato' Sri Najib Tun Razak paid a state visit to China. In April 2011, Deputy Prime Minister Tan Sri Muhyiddin Yassin went to China to prepare for the return visit of Premier Wen Jiabao (who was also scheduled to visit Indonesia at the same time). Deputy Prime Minister Muhyiddin met with Vice Premier Li Keqiang on 18 April. Li reiterated China's position that disputes in the South China Sea should be resolved on a bilateral basis. He pressed Muhyiddin for bilateral talks on the Spratly Islands issue. Muhyiddin agreed and also offered to relay China's request for bilateral talks to other ASEAN members, particularly the claimant states.<sup>11</sup>

Prior to Premier Wen's visit the media reported that he would sign agreements related to telecommunications and infrastructure construction and that the Spratly issues would not figure prominently. China's Assistant Foreign Minister Hu Zhengyou observed, for example, "The South China Sea problem is an old one. I think that when the leaders of both nations meet they won't deliberately try to avoid it, but as we both understand each other's stance, this won't be a major issue".<sup>12</sup>

After his return to Malaysia Muhyiddin revealed that overlapping claims to the South China Sea would be discussed between Prime Minister Datuk Seri Najib Tun Razak and Premier Wen. According to Muhyiddin, "Malaysia is of the opinion that discussions with China on the issue of overlapping claims should be carried out after officials have come up with a basic framework on the claims based on facts, law and history". He further stated, "We believe negotiations among the ASEAN claimants are important. But there will be a case where the overlapping claims involve three countries, so discussions will have to be more than bilateral".<sup>13</sup>

Before setting out on his trip, Premier Wen gave an interview to Malaysian and Indonesian journalists. When he was asked, "whether China would hold talks on joint development in these contested islands and reefs with Malaysia and other relevant countries that have cross claims with China?", Premier Wen replied:

China remains committed to the Declaration on Conduct of the Parties in the South China Sea. We take the position that territorial disputes over maritime rights and interests should be peacefully addressed and resolved by the countries concerned through bilateral channels.

We disapprove of referring bilateral disputes to multi-lateral forums because that will only complicate the issue. You have rightly mentioned that although China and Malaysia have some disputes over the mentioned island and reefs in the South China Sea, these disputes have not impeded our efforts to have peaceful co-existence between the two countries.

Secondly, I totally agree that the countries concerned can and should have joint development of resources in the South China Sea because this is in the interest of regional peace in the area and it also serves the interests of all claimant countries.<sup>14</sup>

Premier Wen visited Malaysia from April 27-28 and discussions with Prime Minister Najib mainly focused on economic and educational issues.

#### **4. China-Philippines**

According to the Philippines Department of Foreign Affairs, China increased its presence and activities in the Spratly Islands in the fourth quarter of 2010.<sup>15</sup>

This increased presence led to six or seven major incursions into waters claimed by the Philippines in the first five months of 2011.<sup>16</sup> The Philippines has not yet officially released the list but from statements by government officials the following list appears indicative:

- ◆ Incident 1. On 25 February, three Philippines fishing vessels, F/V *Jaime* DLS, F/V *Mama Lydia* DLS and F/V *Maricris* 12, were operating in the waters off Jackson Atoll one hundred and forty nautical miles west of Palawan. According to a report prepared by the Armed Forces of the Philippines (AFP), the fishing vessels were approached by a Jianghu-V Class missile frigate, *Dongguan* 560, which broadcast over its marine band radio, “This is Chinese Warship 560. You are in the Chinese territory. Leave the area immediately”. Then the frigate repeatedly broadcast, “I will shoot you”.<sup>17</sup> As the fishing vessels began to withdraw, the Chinese frigate fired three shots that landed 0.3 nautical miles (556 meters) from F/V *Maricris* 12. The F/V *Maricris* 12 left the area but then returned three days later to recover its anchor that it cut in its hasty departure. The F/V *Maricris* 12 spotted three Chinese fishing vessels exploiting marine resources in the area. The Philippine government reportedly did not file a protest with the Chinese Embassy over this incident.<sup>18</sup> The Chinese Ambassador to the Philippines, Liu Jianchao later denied that any Chinese vessel had fired on Filipino fishermen.<sup>19</sup>
- ◆ Incident 2. On 2 March, two Chinese white-painted patrol boats, No. 71 and No. 75, ordered MV *Veritas Voyager*, a Forum Energy Plc survey vessel operating in the Reed Bank area off Palawan Island, to leave and twice manoeuvred close in what appeared a threat to ram the MV *Veritas Voyager*.<sup>20</sup> The survey ship was French-owned and registered in Singapore.

The Philippines responded by dispatching two OV-10 aircraft to investigate. The Chinese boats departed without further incident. Foreign Affairs Undersecretary Erlinda Basilio lodged a protest with Chinese Charge d’Affairs, Bai Tian, on 4 March. According to one report the note “raised four points to prove that Reed Bank is not part of the disputed area by projecting eighty-five nautical miles from the base point in the northern part of Palawan and not from the Kalayaan Island Group (KIG). China questioned this during a meeting with the Philippines, but did not reply in a diplomatic note”.<sup>21</sup>

After the incident, the Philippines announced a temporary halt to seismic testing and ordered the Philippine Navy and Philippines Coast Guard to escort the survey ship when testing resumed.<sup>22</sup> Later, President Aquino instructed the Philippine Coast Guard to provide security for oil and gas exploration activities in the KIG.<sup>23</sup>

On 5 April, the Philippine Mission to the United Nations submitted a letter in response to China's Notes Verbales of 7 May 2009 (CML/17/2009 and CML/18/2009) restating the Philippines' claim to sovereignty over the Kalayaan Island Group, adjacent waters and geological features (relevant waters, seabed and subsoil).<sup>24</sup> China responded on 14 April with a Note Verbale to the United Nations that accused the Philippines of invading and occupying "some islands and reefs of China's Nansha Islands... The Republic of the Philippines' occupation of some islands and reefs of China's Nansha islands as well as other related acts constitutes an infringement upon China's territorial sovereignty".<sup>25</sup> The Chinese Note Verbale also argued that on the basis of domestic legislation "China's Nansha Islands is fully entitled to Territorial Sea, EEZ [Exclusive Economic Zone] and Continental Shelf".<sup>26</sup>

- ◆ Incident 3. On 6 May, a Chinese marine vessel with a flat bed was sighted in Abad Santos (Bombay) Shoal.<sup>27</sup>
- ◆ Incident 4. On 19 May, the AFP claimed that two Chinese jet fighters allegedly flew into Philippines' air space near Palawan on 11 May. This initial report was never confirmed and appears the least substantiated of the six or seven incidents of reported Chinese incursions.<sup>28</sup>
- ◆ Incident 5. On 21 May, Chinese Marine Surveillance ship No. 75 and Salvage/Research Ship No. 707 were observed heading toward Southern Bank.<sup>29</sup>
- ◆ Incident 6. On 24 May, Filipino fishermen reportedly witnessed a China Maritime Surveillance vessel and People's Liberation Army Navy (PLAN) ships unloading steel posts, building materials and a buoy near Likas and Patag islands, near Iroquois Reef-Amy Douglas Bank one hundred nautical miles off Palawan.<sup>30</sup> The fishermen reported their sighting to the AFP the next day. Navy Headquarters in Manila ordered a ship to verify the sighting but bad weather delayed its arrival until 29 May by which time the Chinese ships had departed. Local fishermen removed the steel polls and handed them over to authorities.

The AFP reported this incident on 27 May. Four days later the Department of Foreign Affairs summoned the Chinese Charge d' Affaires to seek a clarification of the incident. On 1 June the Philippines conveyed "serious concerns" in a Note Verbale to the Chinese Embassy. The note stated, "These ships reportedly unloaded building materials, erected an undetermined number of posts, and placed a buoy near the breaker of the Iroquois Bank".<sup>31</sup> The Chinese Embassy responded, "The reported 'incursion of Chinese ships' is not true... It's only China's marine research ship conducting normal maritime research activities in the South China Sea".<sup>32</sup> Speaking on a TV forum that same day, Defense Secretary Voltaire Gazmin observed, "It's alarming in the sense that the intrusions are increasing. They are staking claim on the areas



where we do not have a presence. They want to hoist their flag so they can claim the area”.<sup>33</sup> Foreign Affairs Secretary Albert del Rosario charged that “any new construction by China in the vicinity of the uninhabited Iroquois Bank is a clear violation of the 2002 Association of Southeast Asian Nations (ASEAN)-China Declaration on the Conduct of Parties (DOC) in the South China Sea”.<sup>34</sup>

During 2011, President Aquino lobbied his ASEAN colleagues to unite as a bloc on a detailed code of conduct and proposed that a unified position on the South China Sea dispute among the ASEAN claimant states was the best way to approach China.

On 8 March, President Aquino paid an official visit to Indonesia where he met with President Bambang Susilo Yudhoyono. At a joint press conference after their talks, President Aquino expressed his support for Indonesia’s leadership role as ASEAN Chair. President Yudhoyono said Indonesia as ASEAN Chair would bring the Spratly Islands issue to the forthcoming ASEAN Summit and East Asia Summit. President Yudhoyono expressed his hope that the South China Sea could become a “zone of possible economic cooperation”. President Aquino replied, “With regard to joint exploration [in the area], that is an idea that has been proposed a few decades past but perhaps we should continue the talks with other claimant countries. There is no room for unilateral action in that particular region”.<sup>35</sup>

On 1 June, President Aquino paid an official visit to Brunei Darussalam for discussions with Sultan Hassanal Bolkiah. According to Presidential Communications Operations Secretary Herminio Coloma Jr., the two leaders expressed their desire to maintain peace and stability in the South China Sea through a multilateral dialogue among the ASEAN countries, claimant countries and China. Cloma quoted the Sultan as stating “it’s best to have good relations with China”.<sup>36</sup>

President Aquino told the reporters covering his visit: “We govern ourselves there [Spratly Islands/KIG]. Instead of one country has a bilateral agreement with China and the other has a different bilateral agreement with China. Let’s come together as a body. Why do we have to fight or increase all of these tensions when it profits nobody?”<sup>37</sup> Aquino also renewed his call for the immediate adoption of the implementing guidelines on the DOC.<sup>38</sup> The following day, 12 June, Eduardo Malaya, a spokesperson for the Department of Foreign Affairs, called for a “more binding Code of Conduct of Parties in the South China Sea” in response to Chinese intrusions into Philippine waters.

During his state visit to Brunei President Aquino revealed that the Philippines was preparing to file a complaint to the United Nations in response to Chinese intrusions into its territory. According to Aquino, “We are completing the data on about six to seven instances since February. We

will present it to [China] and then bring these to the appropriate body, which normally is the United Nations".<sup>39</sup> The Aquino Administration is supporting two legislative measures in response to China's assertiveness in the Spratly Islands. The House of Representative is drawing up the Philippine Maritime Zones bill to delineate the Philippines' maritime zones, while the Senate is considering the Archipelagic Sea Lanes bill.<sup>40</sup>

On 28 March, General Eduardo Oban, chief of the Armed Forces of the Philippines, announced that the Philippines had increased air and naval patrols in the South China Sea and had plans to upgrade Rancudo Air Field on Pag-Asa (Thitu) island and repair barracks.<sup>41</sup> The AFP was allocated US one hundred and eighty-three million dollars in funds from the Capability Upgrade Program to purchase two offshore fast patrol boats, long-range maritime aircraft, surveillance and communication equipment including air defence radar to better protect its territory.<sup>42</sup> President Aquino had earlier released US two hundred and fifty-five million dollars to the armed forces.

The Philippines recently acquired the US Coast Guard Cutter USCGC *Hamilton*, which is expected to enter service during 2011 and then commence patrolling disputed waters in the South China Sea.<sup>43</sup> The Philippines also expects to take delivery of three new Taiwan-manufactured Multi-Purpose Attack Craft in 2012.<sup>44</sup> In May, a Philippine navy study recommended the acquisition of submarines as a "deterrent against future potential conflicts".<sup>45</sup>

The Philippines defence and military agencies are drawing up a new defence strategy in response to developments in the South China Sea. The new strategy would focus on both internal security operations and external territorial defence. AFP chief General Oban said the military was planning to set up a coast watch system on the western seaboard in the next two to three years to monitor and secure maritime borders and natural resources.<sup>46</sup> In June, it was reported that the Philippines Embassy in Washington was in the market for excess defence equipment from the US under its Foreign Military Sales (FMS) programme including one or more patrol ships.<sup>47</sup> The Philippines also announced a new US training programme for its naval forces to enable them to better carry out their mission of providing security for oil exploration activities in the South China Sea.<sup>48</sup>

On 14 May, President Aquino and several members of his Cabinet flew out to the USS *Carl Vinson* aircraft carrier in the South China Sea as it headed towards the Philippines. The aircraft carrier made a "routine port call and goodwill visit" accompanied by the USS *Bunker Hill*, USS *Shiloh* and USS *Gridley*.<sup>49</sup> In fact, the visit by the carrier was a reaffirmation of the alliance relationship on the eve of an official visit by China's Defence Minister General Liang Guanglie. Liang paid an official visit to the Philippines from 21-25 May for discussions with his counterpart Defense Secretary Voltaire

Gazmin. The two ministers agreed to hold regular discussions to promote trust and confidence and find common ground on territorial disputes in the Spratly Islands. A joint statement declared, “both ministers expressed hope that the implementing guidelines of the 2002 Declaration of Conduct would soon be finalized and agreed upon, that responsible behavior of all parties in the South China Sea issue would help keep the area stable while all parties work for the peaceful resolution... Both ministers recognized that unilateral actions which could cause alarm should be avoided”.<sup>50</sup>

When Defence Minister Liang met with President Aquino South China Sea issues were discussed in general, but the latter refrained from directly mentioning the Reed Bank incident and the reported intrusion of Chinese aircraft into Philippine air space.<sup>51</sup> President Aquino also told General Liang that more maritime incidents in disputed areas of the South China Sea could spark a regional arms race.<sup>52</sup> Immediately after the defence ministers met Sun Yi, Deputy Chief of Political Section at the Chinese Embassy in Manila, announced that China looked forward to an “accelerated dialogue” with the Philippines to resolve the dispute in the South China Sea. “It’s a bilateral issue. We repeatedly said that and we believe it’s a bilateral issue,” Sun Yi stated.<sup>53</sup>

On 4 June, the Department of Foreign Affairs issued a statement revealing it had lodged a protest with the Chinese Embassy two days earlier over the “increasing presence and activities of Chinese vessels including naval assets in the West Philippines Sea (South China Sea)”. The note stated, “These actions of Chinese vessels hamper the normal and legitimate fishing activities of the Filipino fishermen in the area and undermines the peace and stability of the region”.<sup>54</sup>

China responded on 7 June with a statement by Foreign Ministry spokesperson, Hong Lei: “Chinese vessels were cruising and carrying out scientific studies in waters under China’s jurisdiction and their activities were in line with the law... China asks the Philippine side to stop harming China’s sovereignty and maritime rights and interests, which leads to unilateral actions that expand and complicate South China Sea disputes. The Philippines should stop publishing irresponsible statements that do not match the facts”.<sup>55</sup>

Liu Jianchao, Chinese Ambassador to the Philippines, responded to complaints by the Philippines government for the first time when he met with reporters in Manila on 9 June. The ambassador stated that China had not yet started to drill for oil in the Spratly Islands. “We’re calling on other parties to stop searching for the possibility of exploiting resources in these areas where China has its claims”.<sup>56</sup> In response to a question how China would react if countries went ahead and continued to explore without Beijing’s permission, the ambassador said China would use diplomatic means to assert its rights. “We will never use force unless we are attacked,” he said. Liang also con-

firmed to reporters that Chinese forces took action to keep the exploration vessel from Reed Bank. “That’s part of our exercise of jurisdiction. It’s not harassment,” he claimed.<sup>57</sup>

In response to Chinese assertiveness, President Aquino launched a new initiative calling for the South China Sea to become a Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C). Aquino explained “what is ours is ours, and with what is disputed, we can work towards joint cooperation”.<sup>58</sup> He directed the Department of Foreign Affairs to promote the ZOPFF/C concept through sustained consultations and dialogue.

According to the Department of Foreign Affairs, the ZOPFF/C provides a framework for separating the disputed territorial features that may be considered for collaborative activities from non-disputed waters in the West Philippines Sea (South China Sea) in accordance with international law in general and UNCLOS in particular.<sup>59</sup> A disputed area could be turned into a Joint Cooperation Area for joint development and the establishment of marine protected area for biodiversity conservation. Areas not in dispute, such as Reed Bank that lies on the Philippines’ continental shelf, can be developed exclusively by the Philippines or with the assistance of foreign investors invited to participate in its development.

## 5. China-Vietnam

In December 2008, China and Vietnam agreed to commence bilateral discussions on maritime issues with first priority given to developing a set of “fundamental guiding principles” as a framework for settling specific issues. These confidential discussions began in early 2010 and five sessions were held during the year. According to Vietnamese Foreign Ministry sources, Vietnam and China agreed to settle their differences “through peaceful negotiation” and “refrain from any action to complicate the situation, violence or threat of use of violence”.<sup>60</sup>

Significantly, Vietnam and China agreed to bilateral discussions on matters that did not affect third parties, such as the waters at the mouth of the Gulf of Tonkin. Vietnam wanted to include the Paracel Islands in bilateral discussion but China refused. Vietnam and China also differed on the question of multilateral negotiations. According to Vietnam:

Issues that are related to other countries and parties like the Spratly Islands cannot be settled by Vietnam and China; they require the participation of other concerned parties. For issues that are not only related to countries that border the East Sea such as maritime safety and security, they must be negotiated and settled by all countries that share this common interest.<sup>61</sup>

China and Vietnam held two further working-level rounds of discussions. At the seventh and most recent round on August 1, a Vietnamese spokesperson

noted that “the two sides reached preliminary consensus on some principles” and that the eighth round of discussion would be held later in the year.<sup>62</sup>

During the eight months of 2011, China and Vietnam exchanged five high-level visits. In February 2011, immediately after Eleventh National Congress of the Vietnam Communist Party, the new Secretary General, Nguyen Phu Trong, dispatched a special envoy, Hoang Binh Quan, to Beijing. Quan met with Hu Jintao, President and General Secretary of the Chinese Communist Party, and briefed him on the outcome of the party congress. Quan also extended an invitation to Hu and other Chinese party and state leaders to visit Vietnam. In return, Hu extended an invitation to Secretary General Trong to visit China.<sup>63</sup> In deference to China, Trong will visit Beijing first.

In April, Senior Lieutenant General Guo Boxiong, vice chairman of China's Central Military Commission, visited Hanoi at the invitation of General Phung Quang Thanh, Minister of National Defence. Lt. Gen. Guo was also received by Prime Minister Nguyen Tan Dung and party Secretary General Nguyen Phu Trong. Prime Minister Dung “proposed the two sides talk and seek fundamental and long-lasting measures that both sides are able to accept for the East Sea [South China Sea] issue...”<sup>64</sup> The joint press communiqué issued after the conclusion of Guo's visit outlined a number of cooperative military activities, including increasing the scope of joint naval patrols in the Gulf of Tonkin, but no mention was made of the South China Sea.<sup>65</sup>

Immediately after General Guo's visit, Vietnam hosted a meeting of the heads of the government delegations on boundary negotiations between China and Vietnam (18-19 April). These discussions were held at deputy minister level. China's Foreign Ministry reported that the two vice ministers pledged, “to properly handle maritime disputes through friendly consultations and explore solutions with a positive and constructive attitude”.<sup>66</sup> A Vietnamese spokesperson revealed that “the two sides agreed they will sign an agreement on the fundamental guidelines to settle the maritime issues” but negotiations are still continuing and no date has been set to sign the agreement.<sup>67</sup>

The fourth high-level meeting took place in Singapore in June on the sidelines of the Shangri-la Dialogue and involved the two defence ministers, Liang Guanglie and Phung Quang Thanh. This meeting took place under the shadow of the 26 May cable-cutting incident. Minister Thanh expressed the concern of Vietnamese party and state leaders over what he termed a “pressing incident” and then offered the conciliatory comment that “Sometime, regrettable cases happen which are beyond the expectation of both sides”.<sup>68</sup> Minister Liang replied that China did not want a similar incident to occur in the future. He noted in particular that the People's Liberation Army was not involved in the incident. Four days later a second cable-cutting incident occurred.

In June, Vietnam dispatched a second special envoy to Beijing, Deputy Minister of Foreign Affairs Ho Xuan Son who met with his counterpart, Zhang Zjijun. A joint press release issued at the conclusion of their talks on June 25 stated, *inter alia*, the two sides “laid stress on the need to steer public opinion along the correct direction, avoiding comments and deeds that harm friendship and trust...”<sup>69</sup>

On 11 May, the Haikou Municipal Government, Hainan province, issued an announcement imposing China’s annual unilateral fishing ban in the South China Sea from 16 May – 1 August ostensibly to protect dwindling fish stocks during the spawning season. Vietnam immediately issued a verbal protest: “China’s unilateral execution of a fishing ban in the East Sea is a violation of Vietnam’s sovereignty over the Hoang Sa [Paracel] archipelago, as well as the country’s sovereignty and jurisdiction over its exclusive economic zone and continental shelf...”<sup>70</sup> Vietnam also protested the deployment of a Chinese Fishery Administration Vessel, *Leizhou 44261*, to patrol in the waters around the Paracel Islands from 5-25 May. Vietnam accused the patrol boat of “causing difficulties for normal fishing activities conducted by Vietnamese fishermen in their traditional fishing ground and making the situation at sea more complicated”.<sup>71</sup>

Vietnamese local authorities reported the arrival of Chinese fishing boats in Vietnamese waters in greater numbers than in the past. The head of Phu Yen Province Border Guard Headquarters stated that, “every day between one hundred and twenty and one hundred and fifty fishing boats of China were operated within waters from Da Nang City to the Truong Sa [Spratly] Archipelago... Previously Chinese fishing boats have violated our waters, but this was the first time there were so many boats”.<sup>72</sup> The numbers reportedly rose to two hundred on some occasions. Vietnamese fishermen formed fishing teams of five to ten boats for protection because of intimidation from larger Chinese craft that sometimes used weapons to threaten them. The Vietnamese government is currently considering a proposal by the Ministry of Agriculture and Rural Development to build ten fishery patrol boats at a total cost estimated at US one hundred and two million dollars.

Although Vietnamese fishermen vowed to defy the ban the Vietnamese press has not reported any major incidents of harassment or detention.<sup>73</sup> On 1 June, however, it was reported that Chinese military vessels threatened to use their guns against a Vietnamese fishing boat operating in waters near the Spratly archipelago.<sup>74</sup> A more serious incident took place on July 5 when armed Chinese naval troops reportedly beat the skipper of a Vietnamese fishing boat, threatened the crew, and then forced the boat to leave contested waters near the Paracel Islands.<sup>75</sup>

On 26 May, three China Maritime Surveillance ships accosted the *Binh Minh 02*, a Vietnamese seismic survey ship operating in Block 148, in an

incident that lasted three hours. China Maritime Surveillance ship No. 84 cut a cable towing seismic monitoring equipment.<sup>76</sup> The next day Vietnam lodged a diplomatic protest with China's Ambassador claiming that the actions of the China Maritime Surveillance ships violated international law and Vietnam's sovereignty.<sup>77</sup> Vietnam also sought compensation for the damage caused. The *Binh Minh 02* returned to port for repairs and resumed its oil exploration activities accompanied by an escort of eight ships.<sup>78</sup>

Some news media erroneously reported that this was the first instance in which the Chinese had cut the cable of a Vietnamese exploration vessel. According to Do Van Hau, a senior PetroVietnam official, "When we conduct seismic survey and drilling operations, the [China] have aeroplanes flying over to survey our activities, they harass us with their vessels, and in extreme cases they cut our [exploration] cables".<sup>79</sup> The Vietnamese press reported that when Vietnamese conducted continental shelf surveys in 2008, "Chinese vessels also cut Vietnamese ships' survey cables... and further obstructed Viet Nam from conducting oil and gas exploration in the East Sea..."<sup>80</sup>

China responded to Vietnam's protest on 28 May with the following statement: "What relevant Chinese departments did was completely normal marine law-enforcement and surveillance activities in China's jurisdictional area".<sup>81</sup> Vietnam retorted on 29 May, "the area where Vietnam conducted exploration activities situates entirely in the exclusive economic zone and the two hundred nautical mile continental shelf of Vietnam in accordance with the 1982 United Nations Convention on Law of the Sea. It is neither a disputed area nor is it an area 'managed by China.' China has deliberately misled the public into thinking that it is a disputed area".<sup>82</sup> China responded in kind: "the law enforcement activities by Chinese maritime surveillance ships against Vietnam's illegally operating ships are completely justified. We urge Vietnam to immediately stop infringement activities and refrain from creating new troubles".<sup>83</sup>

On 9 June, according to Vietnam's Ministry of Foreign Affairs, a second "premeditated and carefully calculated" incident occurred when Chinese fishing boat No. 62226 equipped with a "cable cutting device" snared the cable of the *Viking II* seismic survey ship operating in survey Block 136-03 in the vicinity of Vanguard Bank (Tu Chinh).<sup>84</sup> *Viking II* is registered in Norway and was operating under charter with PetroVietnam.<sup>85</sup> Two China Maritime Surveillance ships and other Chinese fishing craft came to assist the distressed fishing boat. According to Nguyen Phuong Nga, the official Foreign Ministry spokesperson, "China's systematic acts were aimed at turning an undisputed region into one of dispute, to carry out its ambition to make China's nine-dash line claim a reality".<sup>86</sup>

Earlier the *Viking II* had been involved in separate incidents on 29 May and 31 May in which Chinese boats – the *Fei Sheng* No. 16 and Vessel

No. B12549 – attempted to approach its rear deck and interfere with its operations. Security escorts with the *Viking II* successfully blocked their approaches.<sup>87</sup>

Chinese authorities claimed that the *Viking II* incident occurred when armed Vietnamese ships chased Chinese fishing boats from the Wan-an (Vanguard) Bank. One of the Chinese boats became entangled in the cable of the *Viking II* ship operating in the same area. The Chinese boat was dragged for more than an hour before the entangled net could be cut. According to the Chinese Foreign Ministry spokesperson, Hong Lei, “The Vietnamese ship put the lives and safety of the Chinese fishermen in serious danger”. Vietnamese Foreign Ministry officials lodged a protest with Chinese Embassy on the afternoon of the incident and announced that the Vietnam National Oil and Gas Group would be seeking compensation for damages.<sup>88</sup>

On 9 June, Prime Minister Nguyen Tan Dung responded to growing domestic pressure by making an unusually strong statement in defence of national sovereignty. Dung said: “We continue to affirm strongly and to manifest the strongest determination of all the Party, of all the people and of all the army in protecting Vietnamese sovereignty in maritime zones of the country”. Dung also reaffirmed “the incontestable maritime sovereignty of Vietnam towards the two archipelagos, the Paracel and Spratlys”.<sup>89</sup> On the same day, President Nguyen Minh Triet, visiting Co To island off Quang Ninh province near the China border, stated that Vietnam was “determined to protect” its islands and “we are ready to sacrifice everything to protect our homeland, our sea and island sovereignty”.<sup>90</sup>

On 9 June, after the Chinese Ambassador to the Philippines called on Vietnam and the Philippines to cease oil exploration and after China announced it would be conducting routine naval exercises in the Western Pacific,<sup>91</sup> Vietnam raised the stakes by announcing a live-fire exercise. Vietnam’s Northern Maritime Safety Corporation issued a notice that two live firing exercises would be held on 13 June in the waters near Hon Ong Island. The exercises would last for a total of nine hours and be conducted during the period eight am-noon and seven pm-midnight local time. The notice further declared, “All vessels are to refrain from engaging in activities in the area during the live-fire period”.<sup>92</sup> Hon Ong Island is located approximately forty kilometres off Quang Nam province in central Vietnam.

Vietnam’s Foreign Ministry characterized the live-firing exercises as “a routine annual training activity of the Vietnam navy in the area where the Vietnam navy regularly conducts training [activities] that are programmed and planned annually for units of the Vietnam People’s Navy”.<sup>93</sup> Vietnam did not specify how many ships would be involved. The first phase of the exercise involved coastal artillery while the second part of the exercise involved missile corvettes firing their deck gun.



On 11 June, the *Global Times*, an English-language newspaper published by the Chinese Communist Party, editorialized that Vietnam's conduct of a live-firing exercises was the "lowest form of nationalism to create a new enmity between the people of the two countries. Hanoi seems to be looking to dissipate domestic pressure and buck up morale at home, while at the same time further drawing in the concern of international society over the South China Sea dispute".<sup>94</sup> The editorial stated that China has "never sought to politically blackmail smaller countries. But when a small country turns that around and tries to blackmail China, the Chinese people will on the one hand feel rather angry, while on the other hand find it quite amusing". In conclusion, the editorial opined "If Vietnam insists on making trouble, thinking that the more trouble it makes, the more benefits it gains, then we truly wish to remind those in Vietnam who determine policy to please read your history".

China's new wave of aggressive assertiveness provoked a patriotic response among students and a wider section of the Vietnamese community. Using Facebook and other social networking site they mounted eleven anti-China demonstrations in Hanoi commencing Sunday 5 June when an estimated three hundred Vietnamese gathered near the Chinese Embassy, On the same day a crowd estimated "at nearly 1,000" to "several thousand" gathered in Ho Chi Minh City.<sup>95</sup> On the following weekend, 12 June, two hundred demonstrators took to the streets of Hanoi while another three hundred marched in Ho Chi Minh City in a repeat of the previous weekend's protests.<sup>96</sup> The protestors held placards reading "Down with China," "The Spratlys and Paracels belong to Vietnam" and "Stop Violating Vietnam's Territory". Police intervention prevented a third demonstration from being held in Ho Chi Minh City while peaceful demonstrations continued in Hanoi on the weekends of 19 and 26 June. On the following two weekends the police intervened and broke up the demonstrations by detaining protesters no doubt following government instructions to fulfil Vietnam's commitment to China "to steer public opinion". No demonstrations occurred on Sunday 31 July. Despite police intervention the anti-China protests continued thereafter but with reduced numbers. On 18 August the Hanoi People's Committee issued a directive ordering a halt to public demonstrations, when a crowd of nearly fifty protesters defied this ban on the following weekend, the police intervened once again and detained fifteen activists.<sup>97</sup>

During early June, growing enmity between nationalists in China and Vietnam spilled over into cyberspace. According to Nguyen Minh Duc, director of the Bach Khoa Internetwork Security Centre, more than two hundred Vietnamese websites were subject to cyber attacks. Among the sites affected were those of the ministries of Agriculture and Rural Development and Foreign Affairs where hackers succeeded in posting Chinese flags and slogans.<sup>98</sup>

## 6. Shangri-La Dialogue

Many of the major incidents in the South China Sea in the first half of 2011 occurred prior to the annual meeting of the Shangri-La Dialogue held in Singapore from 3-5 June. Defence Ministers raised South China Sea territorial disputes in all plenary sessions at the dialogue. Malaysia's Prime Minister Dato' Sri Najib Tun Razak, who gave the opening keynote address, offered the upbeat assessment that "ASEAN and China will soon be able to agree on a more binding code of conduct to replace the 2002 Declaration on Conduct in the South China Sea" and that "overlapping claims in the South China Sea... have generally been managed with remarkable restraint". He then offered this insight into Malaysia's policy: "I remain fully committed to the common ASEAN position in terms of our engagement with China on the South China Sea, I am equally determined to ensure our bilateral relationship remains unaffected and, in fact, continues to go from strength to strength".<sup>99</sup>

US Secretary of Defense Robert Gates, while not mentioning the South China Sea specifically, stated the well-known position that the US had a "national interest in freedom of navigation..." He also stressed the importance of customary international law as a guide for "the appropriate use of the maritime domain, and rights of access to it".<sup>100</sup> China's Defence Minister put on record his country's commitment "to maintaining peace and stability in South China Sea". He noted that, "at present, the general situation in the South China Sea remains stable".<sup>101</sup>

In contrast, Vietnam's Defence Minister spoke in detail about the legal basis for activities at sea "to facilitate cooperation for development and deter actions that risk our common interests, regionally and nationally". Minister Thanh specifically raised the *Binh Minh 02* cable-cutting incident that had raised "considerable concern on the maintenance of peace and stability in the East Sea". He ended his remarks on this incident with these words: "We truly expect no repetition of similar incidents".<sup>102</sup> Four days later a second cable-cutting incident occurred despite General Liang's private remarks cited above.

The Philippine Secretary of National Defence, Voltaire Gazmin, reportedly watered down comments on the South China Sea in his draft text before delivery.<sup>103</sup> His address began by declaring that, "maritime security is one of our foremost concerns". In an obvious reference to the 2 March Reed Bank incident Gazmin stated that the actions by other states "make... the Philippines worry and concerned. These actions necessarily create insecurity not only to the government but more disturbingly to ordinary citizens who depend on the maritime environment for their livelihood". He then gave details of recent incidents involving Chinese vessels without mentioning China by name.<sup>104</sup>

Malaysia's Defence Minister Datuk Seri Dr Ahmad Zahid Hamidi drew attention to disputes in the South China Sea – geopolitics, Sea Lines of Communication, security and competition over petroleum resources. He argued that the 2002 DOC needed to be “supported by actual activities that can promote confidence building among the claimants” and suggested that “claimant countries in the South China Sea work towards identifying and realizing actual confidence-building (CBM) activities that would help alleviate some of the tension in the area”.<sup>105</sup>

## **7. Conclusion**

China's aggressive assertion of sovereignty over the South China Sea in the first half of 2001 has raised the security stakes for Southeast Asian states and all maritime powers that sail through these waters. Ensuring the security of the South China Sea is now an international issue that must be addressed multilaterally by all concerned states.

Three major incidents mark the new wave of Chinese aggressive assertiveness. On 2 March Chinese patrol boats operating within the Philippine's Kalayaan Island Group approached a Philippine seismic survey ship in waters off Reed Bank and ordered it to leave the area. On 26 May, three China Maritime Surveillance ships accosted a Vietnamese state-owned oil exploration vessel deep within Vietnam's declared Exclusive Economic Zone (EEZ). The vessel was ordered to leave the area after a Chinese ship deliberately cut its submerged survey cable. And on 9 June, a second Vietnamese exploration vessel was accosted by Chinese boats leading to an alleged second cable-cutting incident.

In May 2009, when Malaysia and Vietnam filed a joint submission to the United Nations Commission on the Limits of Continental Shelf, China lodged a protest accompanied by a map. The Chinese map contained nine dash marks in a rough U-shape covering virtually all of the South China Sea. China claims “indisputable sovereignty” over the South China Sea. Yet it has never made clear the basis of this claim despite two decades of entreaties by regional states. It is unclear what it is that China is claiming. Does China claim sovereignty over all the rocks and features within these dash marks? Or is China claiming the South China Sea as its territorial waters?

Some maritime specialists speculate that China's claim is based on the nine rocks it occupies in the Spratly archipelago. In other words, China claims that the rocks are in fact islands in international law and thus attract a two hundred nautical mile (three hundred and seventy kilometers) EEZ. This is a legal fiction. Islands must be able to sustain human habitation and have an economic function. Rocks, which do not meet these criteria, cannot claim an EEZ or continental shelf.

China's dash marks cut into the EEZs that have been declared by Vietnam and the Philippines. These EEZs are based firmly in international law. Both states have drawn straight base lines around their coasts and then extended their claim from these baselines seaward out to two hundred nautical miles. Under the United Nations Convention on Law of the Sea littoral states have sovereignty over these waters in terms of exploitation of natural resources such as fisheries and oil and gas deposits on the ocean floor.

In November 2002, China and ASEAN reached agreement on a Declaration on Conduct of Parties in the South China Sea. This was a non-binding document in which the signatories pledged not to use force to settle their sovereignty disputes. The DOC, which contains numerous proposed confidence-building measures, has never been implemented.

Chinese assertiveness in pushing its sovereignty claims in the South China Sea in 2009 and 2010 provoked an international backlash. South China Sea disputes featured prominently at the ASEAN Regional Forum and at the inaugural ASEAN Defense Ministers Meeting Plus in 2010. China was outmanoeuvred diplomatically and sought to limit further damage by agreeing to revive the heretofore-moribund ASEAN-China Joint Working Group to Implement the Declaration on Conduct of Parties. This working group had been stalled over China's insistence that territorial and sovereignty claims could only be settled bilaterally by the states concerned. China also objected to a clause in the draft guidelines to implement the DOC, drawn up by ASEAN, that mentioned ASEAN members would gather first to work out a common position before meeting with China. In July 2011, ASEAN and China finally reached agreement on the guidelines to implement the DOC after ASEAN quietly dropped the offending clause.<sup>106</sup>

According to an assessment by a veteran commentator: "Hard-headed strategists in Southeast Asia know that adopting the implementing guidelines is hardly a constraint on China's increasingly aggressive behavior in the South China Sea. The real restraint on China is the presence of the U.S. Navy and the need to have stable U.S.-China relations."<sup>107</sup>

ASEAN, under the chairmanship of Indonesia, has been pushing China to upgrade the DOC into a more binding Code of Conduct. Some regional diplomats are hopeful that an agreement can be reached by the tenth anniversary of the DOC in November 2012. This is unlikely to be achieved unless ASEAN maintains its unity and cohesion and adopts a common stance. It is clear there are "nervous Nellies" among its members.

In the early to mid-1990s, when China began to occupy rocks in the Spratlys including the celebrated Mischief Reef, security analysts described Chinese strategy as "creeping assertiveness" and "talk and take". The events during the first half of 2011 are best described as aggressive assertiveness. China appears to be paying back Vietnam for its role in internationalizing the

South China Sea when it was Chair of ASEAN. Chinese actions in the Reed Bank area are designed to expose ambiguities in the US-Philippines Mutual Security Treaty over whether or not the Kalayaan Island Group is covered by this treaty.

ASEAN and the international community, both of which rely on transit through the South China Sea, must diplomatically confront China over its aggressive assertiveness. They should bring collective diplomatic pressure to bear on China to faithfully implement the guidelines to implement the DOC adopted between ASEAN and China in Bali in July 2011. ASEAN should also seek endorsement for its diplomatic position at the East Asia Summit to be held in November 2011.

Meanwhile, both the Philippines and Vietnam should continue to enhance their capacity to exert national sovereignty over their EEZs. Their weakness only invites China to act more assertively. On 11 June, Nguyen Phuong Nga, spokesperson for the Ministry of Foreign Affairs, responded to a question about a possible role for the United States and other countries in resolving South China Sea disputes, by replying, "Maintaining maritime peace, stability security and safety in the Eastern Sea is in the common interests of all nations within and outside the region. Every effort by the international community toward peace and stability in the Eastern Sea is welcome".<sup>108</sup> It is in the interest of the United States and its allies as well as India to assist both nations in capacity building in the area of maritime security. At the same time this "coalition of like-minded states" should back ASEAN in its efforts to secure agreement on a code of conduct for the South China Sea. If China is not forthcoming, ASEAN members themselves could draw up a Treaty on a Code of Conduct in the South China Sea, and after ratification, open it to accession by non-member states along the lines of the ASEAN Treaty of Amity and Cooperation and the Southeast Asian Nuclear-Free Weapons Zone Treaty.

## Notes

- <sup>+</sup> This is a revised version of a paper originally delivered to the Conference on Maritime Security in the South China Sea, sponsored by the Center for Strategic and International Studies, Washington, D.C., 20-21 June 2011.
- <sup>\*</sup> Dr Carlyle A. Thayer is Emeritus Professor in the School of Humanities and Social Sciences, University of New South Wales (UNSW) at the Australian Defence Force Academy (ADFA), Canberra, Australia. Professor Thayer was educated at Brown, received an MA in Southeast Asian Studies from Yale and a PhD in international relations from the Australian National University (ANU). He joined the UNSW in 1979 and taught first in its Faculty of Military Studies at the Royal Military College-Duntroon before transferring to the academic staff at ADFA (1985-2010). Professor Thayer's career includes visiting appointments with the Department of Political and Social Change at ANU (1992-94); the Asia

Pacific Center for Security Studies in Hawaii (1999-02); and Deakin University as their on-site academic co-ordinator at the Centre for Defence and Strategic Studies at the Australian Defence College (2002-04). Thayer has been honoured by appointment as the C.V. Starr Distinguished Visiting Professor at the School of Advanced International Studies at Johns Hopkins University (2005) and the Inaugural Frances M. and Stephen H. Fuller Distinguished Visiting Professor at Ohio University (2008). He is the author of over 400 publications including *Southeast Asia: Patterns of Security Cooperation* (2010). <Email: c.thayer@adfa.edu.au>

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