

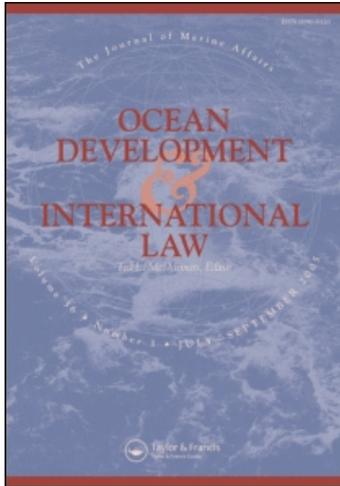
This article was downloaded by: [2007- 2008-2009 National Sun Yat Sen University]

On: 21 October 2010

Access details: Access Details: [subscription number 792349081]

Publisher Taylor & Francis

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Ocean Development & International Law

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713774325>

### South China Sea: Troubled Waters or a Sea of Opportunity?

Nien-Tsu Alfred Hu<sup>ab</sup>

<sup>a</sup> The Center for Marine Policy Studies and College of Social Sciences, National Sun Yat-sen University, Kaohsiung City, Taiwan, Republic of China <sup>b</sup> National Cheng Kung University, Tainan City, Taiwan, Republic of China

Online publication date: 12 August 2010

**To cite this Article** Hu, Nien-Tsu Alfred(2010) 'South China Sea: Troubled Waters or a Sea of Opportunity?', Ocean Development & International Law, 41: 3, 203 – 213

**To link to this Article:** DOI: 10.1080/00908320.2010.499312

**URL:** <http://dx.doi.org/10.1080/00908320.2010.499312>

## PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

## Introduction

# South China Sea: Troubled Waters or a Sea of Opportunity?

NIEN-TSU ALFRED HU

The Center for Marine Policy Studies  
and College of Social Sciences  
National Sun Yat-sen University  
Kaohsiung City, Taiwan, Republic of China  
and  
National Cheng Kung University  
Tainan City, Taiwan, Republic of China

*As a semi-enclosed sea, the South China Sea is the location of conflicts and disputes arisen from intra-regional claims by bordering States over various insular features and the surrounding waters and from extra-regional interests projected in the region. Regional cooperation is an approach called for by the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to address potential conflicts and disputes in semi-enclosed seas. The submissions to the Commission on the Limits of the Continental Shelf (CLCS) by two bordering States and the improved cross-Strait relations between Taiwan and China are two recent developments that have implications for stability and cooperation in the region. This article provides a background to these developments and highlights the assessments on the situation and prospects of the South China Sea presented by articles in this and the next Special Issue.*

**Keywords** disputes, regional cooperation, South China Sea

## Introduction

South China Sea has long been labeled as “troubled waters” or “a flash point,” whether viewed from regional security,<sup>1</sup> or in terms of living<sup>2</sup> and nonliving marine resources.<sup>3</sup> Although the signing of the Declaration on the Conduct of Parties in the South China Sea in Phnom Penh, Cambodia, on 4 November 2002 by China and the Association of Southeast Asian Nations (ASEAN) countries<sup>4</sup> was seen as an encouraging sign for stability in the South China Sea,<sup>5</sup> the submissions made in 2009 to the Commission on the Limits of the Continental Shelf (CLCS)<sup>6</sup> by Malaysia and Vietnam<sup>7</sup> have resulted in a resurfacing of questions about the future of cooperation in the region.

Received 10 May 2010; accepted 14 May 2010.

Address correspondence to Dr. Nien-Tsu Alfred Hu, Director, The Center for Marine Policy Studies, National Sun Yat-sen University, 70 Lien-Hai Road, Kaohsiung City, Taiwan, Republic of China. E-mail: omps@faculty.nsysu.edu.tw

The submissions to the CLCS, the responses these generated, and the improvement of cross-strait relations between Taiwan and China provided the background for The Center for Marine Policy Studies (CMPS) of the National Sun Yat-sen University in Kaohsiung City, Taiwan, a leading marine policy think-tank in Taiwan, hosting of the International Conference on Issues in the South China Sea in Taipei on 19–20 August 2009. Papers from the Conference make up the articles in this Special Issue I and the next Special Issue II.

This article provides an introduction to the recent actions by the South China Sea States that have raised questions and concerns about cooperation within the region. Special attention is given to the Republic of China (ROC) and the People's Republic of China (PRC) dotted line maps and cross-Straits relations. This article also provides an overview of the articles in these Special Issues and their contribution on the current situation with respect to cooperation in the South China Sea.

### **Submissions to the CLCS and the Philippine Legislation**

While it is understood that the CLCS is not a forum for the settling of maritime disputes involving maritime claims and delimitation between or among States, the CLCS can be used as a policy tool to highlight, accentuate, or assert a State's maritime claims. This is exactly what has happened in the South China Sea region.

The joint submission by Malaysia and Vietnam with respect to the southern part of the South China Sea and the submission by Vietnam in the North Area (also in the southern part of the South China Sea) encountered protests from the PRC<sup>8</sup> and the ROC.<sup>9</sup> In addition, in view of its lack of access to the United Nations system, including the CLCS, the ROC Foreign Ministry issued a comprehensive declaration on 12 May 2009 outlining its position with respect to the CLCS and its right to make claims on the extended continental shelf beyond 200 nautical miles in the East China Sea, in the waters to the east of Taiwan Island proper, and in the South China Sea.<sup>10</sup>

The PRC stated in its Note Verbale dated 7 May 2009 that:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese Government, and is widely known by the international community.

The continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and the Socialist Republic of Viet Nam has seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea.<sup>11</sup>

The reading of the above PRC's statement can lead to the following observations: The PRC asserts sovereignty over the islands in the South China Sea and the adjacent waters of such islands (i.e., Xisha Qundao, Nansha Qundao, Zhongsha Qundao, and Donsha Qundao). Second, the PRC asserts sovereign rights and jurisdiction over the "relevant waters" as well as the seabed and subsoil thereof. The "relevant waters" are the waters encompassed by the nine discontinuous U-shaped lines shown in the map in Figure 1, although the PRC has not specified the legal nature of the "relevant waters." Third, the PRC's position concerning the islands and their adjacent waters, the relevant waters and the seabed and subsoil thereof, as well as the map itself, has been held by the PRC consistently and is widely known by the international community. This implies long usage or historical title. Fourth, the PRC



Figure 1. Map attached to China's Note CML/17/2009, submitted to the United Nations 7 May 2009.

asserts sovereignty, sovereign rights, and jurisdiction in the South China Sea delineated by the U-shaped lines.

In the above noted ROC's statement concerning the joint submission of Malaysia and Vietnam and the submission of Vietnam, it states:

In terms of either historical, geographical or international legal perspective, the Nansha Islands (Spratly Islands), Shisha Islands (Paracel Islands), Chungsha Islands (Macclesfield Islands), Tungsha Islands (Pratas Islands), as well as their surrounding waters, their respective sea bed and subsoil belong to the existent territories of the Republic of China. The sovereignty of these archipelagoes belongs to our Government is an undeniable fact, Taiwan therefore enjoys and deserves all rights accordingly. Any sovereignty claims over, or occupation of, these islands and their surrounding waters will not be recognized by the Government of the Republic of China.<sup>12</sup>

Apparently, the ROC also takes a historical perspective and characterizes the four groups of islands and their surrounding waters, seabed, and subsoil as a part of its existent territories and that it has sovereignty over these archipelagoes.

Reference also needs to be made to the new legislation in the Philippines, the Republic Act No. 9522 (An Act to define the archipelagic baselines of the Philippines) enacted on 10 March 2009,<sup>13</sup> in which the Philippines defined its archipelagic baselines. Article 2 declares that the Philippines exercises "sovereignty and jurisdiction" over the Kalayaan Island Group and the Bajo de Masinloc/Scarborough Shoal.<sup>14</sup> The Philippines has deposited with the United Nations a list of geographical coordinates of the points contained in the Act.<sup>15</sup> The ROC, the PRC, and Vietnam have all communicated their nonacceptance of the Philippines legislation. The ROC declared that all the four groups of islands in the South China Sea and the surrounding waters are the territories of the ROC.<sup>16</sup> The PRC lodged a protest note dated 13 April 2009 to the UN Secretary-General in which it is stated:

The above-mentioned Philippine Act illegally claims Huangyan Island (referred as "Bajo de Masinloc" in the Act) and some islands and reefs of Nansha Islands (referred as "The Kalayaan Island Group" in the Act) of China as "areas over which the Philippines likewise exercises sovereignty and jurisdiction." The Chinese Government hereby reiterates that Huangyan Island and Nansha Islands have been part of the territory of China since ancient time. The People's Republic of China has indisputable sovereignty over Huangyan Island and Nansha Islands and their surrounding maritime areas. Any claim to territorial sovereignty over Huangyan Island and Nansha Islands by any other State is, therefore, null and void.<sup>17</sup>

Vietnam made a similar communication.<sup>18</sup>

### **The U-shaped Lines and the Improved Cross-Strait Relations**

While there are problems and difficulties between the two sides of Taiwan Strait, the territorial claims over the insular features within the U-shaped lines and claims over the waters within the lines constitutes a common ground for the both sides of the Taiwan Strait vis-à-vis other claimants of the South China Sea. The assertion of the U-shaped lines claims

and the improved cross-Strait relations since mid-2008 have significant implications for the situation in the South China Sea.

In a chronological sense, it was the ROC Government that first made territorial claims on all the islands, islets, reefs, rocks, banks, and shoals and claimed all the waters as “historic waters” in the South China Sea (to the Chinese people and in the Chinese language, it is called “South Sea,” or “Nan-Hai,” rather than South China Sea)<sup>19</sup> within the 11 discontinuous U-shaped lines presented in a map issued by the Department of the Territories and Boundaries of the Ministry of the Interior in December 1946 while the ROC still ruled mainland China (see the map in Figure 2).<sup>20</sup> The ROC conducted surveys and named a number of the insular features following the World War II. In September 1947, the Ministry of the Interior of the ROC Government ordered the annexation of the four island groups in the Nan-Hai under the administrative jurisdiction of the Kuangtung Provincial Government and formally approved and publicized the names of the insular features of the four island groups to all the countries of the world. This met with no opposition from other countries.<sup>21</sup>

Since 1949, after its establishment on the mainland, the PRC Government has succeeded the ROC’s claims in the South Sea with a set of revised, but similar, nine discontinuous U-shaped lines. The ROC Government in Taiwan has continuously held to its original claims. Thus, the “two Chinas” have possessed the same position in the South China Sea over the past 6 decades.

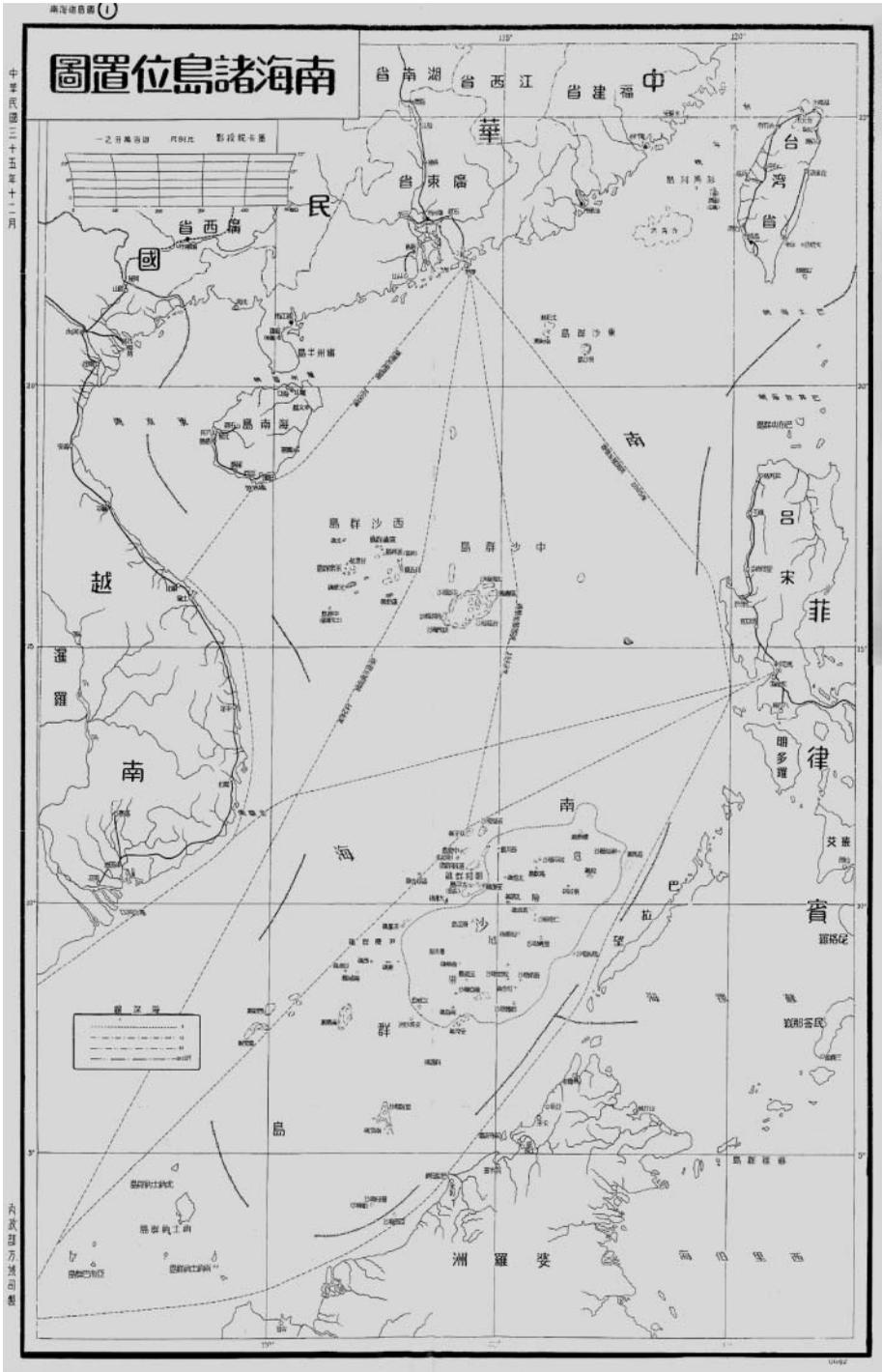
Since Ma Ying-Jeou took office as President of the ROC on 20 May 2008, the cross-Strait relations between Taiwan and China have undergone a substantive change.<sup>22</sup> Both sides have taken a more positive and friendlier attitude toward each other. This change exists on many fronts.<sup>23</sup> The development of recent cross-Strait relations, combined with the long-standing and common positions of both sides toward the territorial claims over insular features in the South China Sea and the claims of sovereign rights and jurisdiction over the waters encompassed by the U-shaped lines, have facilitated the collaboration of Taiwan and China for the first time in a second-track regional forum specifically dealing with the issues of South China Sea.<sup>24</sup>

### **Assessments of the Current Situation and Perspectives on the South China Sea**

With their strategic location and potential surrounding waters and associated resources therein, the insular features in the South China Sea are the “blocking stones” for any peaceful settlement and development in the region. Hope for the region is based on politically acceptable, legally sound, and practically feasible maritime delimitation solutions.

In his article “Maritime Delimitation in the South China Sea: Potentiality and Challenges,” Robert W. Smith, after briefly examining the existing bordering States’ claims in the South China Sea, suggests a long-term solution scenario of maritime delimitation that starts from identifying areas of the South China Sea in which only two countries dispute the area, then moving into the more tricky central part of the South China Sea where multiple claimants exist. His proposal is to have an outside entity (an organization, government, group of experts) offer nonbinding advice and recommendations on how to allocate the area to the respective States or to create joint development schemes. Smith is of the view that the opportunities are endless for the countries to work together and to enjoy the fruits of what the waters and seabed have to offer.

As already noted, it is the ROC Government that made the earliest claim to all of the insular features and waters of the South China Sea within the U-shaped lines, which was



**Figure 2.** A reproduction of the official map issued by the Republic of China Government on December 1946 with U-shaped 11 discontinuous lines. [Source: Chang Wei-I (張維一), *Nan-Hai Tsu-Yuan K'ai-Fa yu Chu-Ch'uan Wei-Hu* (南海資源開發與主權維護 *The Resources Exploitation and Sovereignty Protection of the South Sea*) (Taipei County, Taiwan: P'an Shih Library, December 1994), map presented on a folded page at the end of the book.]

Downloaded By: [2007-2008-2009 National Sun Yat Sen University] At: 09:12 21 October 2010

followed by the PRC Government. The position, practice, and interpretation on the ROC and PRC claims, especially the nature of the discontinued U-shaped lines, needs to be examined if one intends to grasp the common position of the two Chinese Governments in the South China Sea. Kuan-Hsiung Wang offers his observation and analysis on this issue in the article "The ROC's Maritime Claims and Practices with Special Reference to the South China Sea." Wang first presents the maritime zone claims and related legislation of the ROC, and then moves to the ROC claims and practices in the South China Sea. Wang argues that: (1) the method of constructing the discontinuous U-shaped lines is through the median line principle by which the lines fall in the middle of the insular features that the ROC Government claimed and the opposite land masses of other bordering States of the South China Sea; (2) the legal status of the U-shaped lines is not baselines separating the territorial sea and the internal waters, rather the lines indicate all the insular features that are under the ROC or PRC sovereignty; and (3) based on existing practices in the waters enclosed by the U-shaped lines, it would be difficult for either the ROC or the PRC to claim such waters as territorial waters, let alone internal waters, and whether the insular features possess maritime zones such as an EEZ and continental shelf is contingent on the ambiguous legal distinction between islands and rocks that cannot sustain human habitation or an economic life of their own.

Taiwan has been handicapped in dealing with other claimant States through normal diplomatic channels,<sup>25</sup> and yet Taiwan is in control of the largest island in the Spratly Islands. One international mechanism that has sought to overcome this situation has been the second-track forum, the Workshops on Managing Potential Conflicts in the South China Sea (the SCS Workshops) initiated and sponsored by the Indonesia Government. Yann-Huei Song offers a historical account of this dialogue process with special reference to the interactions between Taiwan and China in his article "The South China Sea Workshop Process and Taiwan's Participation." Song takes the adoption of a joint project proposal submitted jointly by Taiwan and China at the 2009 SCS Workshops as a major step regarding Taiwan's participation in the Workshop process. He raises issues about the implications of this for future interactions or maneuvering perceived or taken by different actors, both intra- and extraregional.

Establishing MPAs within undisputed marine areas needs no bilateral or multilateral cooperation. It is cooperation within disputed waters that requires political will and policy input. "The Spratly Islands constitute one of the most ecologically significant areas of the Earth, hosting a high diversity of marine species, providing critical habitats for endangered species, and providing marine larvae to reestablish depleted stocks among the heavily overfished and degraded coastal ecosystems of the South China Sea," and Taiwan has a strong capacity for biodiversity research. Because of this, John W. McManus, Kwang-Tsao Shao, and Szu-yin Lin, in their article "Toward Establishing a Spratly Islands International Marine Peace Park: Ecological Importance and Supportive Collaborative Activities with an Emphasis on the Role of Taiwan," suggest that Taiwan should promote the Spratly Islands as an international Marine Peace Park. Their view is that the protection of the natural resources of the Spratly Islands is vital to maintaining the fisheries and economically important ecosystems throughout the coastal areas of the entire South China Sea, and this should outweigh the socially and economically costly and environmentally destructive military maintenance in the region. They argue that the recent developments in the cross-strait relationship between Taiwan and China has improved since 2008 and this will give Taiwan a better chance to promote the Spratly Islands as an international Marine Peace Park.

Is it possible that the bordering States of the South China Sea could come together to take the South China Sea as a common heritage and give themselves the opportunity of joint

development through regional cooperation in the spheres of management and conservation of marine living resources, protection of marine environment, and joint scientific research programs? Nien-Tsu Alfred Hu, the organizer of the 2009 International Conference and the Guest Editor of this Special Issue, looks at this issue based on existing practices and precedents in two other semi-enclosed seas (i.e., the Mediterranean Sea and the Caribbean Sea) and draws certain lessons for the bordering States of South China Sea to consider. In his article "Semi-enclosed Troubled Waters: A New Thinking on the Application of the 1982 UNCLOS Article 123 to the South China Sea," Hu first notes the treaty obligations provided for in Article 123 of the UNCLOS on the bordering States of an enclosed or semi-enclosed sea to cooperate in three substantive spheres directly or through an appropriate regional organization or other interested States. He then examines the practices in the Mediterranean region and the Caribbean region on the protection of marine environment and management of marine living resources. After putting the lessons learned from two semi-enclosed sea regions into the context of South China Sea, Hu puts forward his thinking on future cooperation in the South China Sea. He argues that: (1) the involvement of the UN system will not guarantee the success of regional cooperation; (2) a cooperative program with a large geographical coverage, a great number of participating States, and a high degree of diversity among participating States can result in difficulties; (3) inviting or allowing the involvement of other extraregional interested States or international organizations may not be helpful; (4) a complicated cooperative mechanism with too many agenda items and too high expectations can overwhelm the capacities and political will of participating States; and (5) the bordering States of the South China Sea must have the political will to incorporate Taiwan as an equal partner in bilateral or multilateral engagement in the region.

The South China Sea is important not simply because of its numerous insular features, but also because of its strategic geography of choke points of sea lines of communication (SLOC). Chris Rahman and Martin Tsamenyi first describe this strategic geography in their article "A Strategic Perspective on Security and Naval Issues in the South China Sea" (This particular article will appear in the Special Issue II). These authors then analyze recent naval and strategic developments, especially naval modernization, in the region. They argue that "the small size of even the largest islands in the Spratly group, their isolation and need for infrastructure and constant replenishment, mean that they would have minimal strategic value in any significant conflict;" nevertheless, "any strategic value they may hold pertains mostly during peacetime, as surveillance or staging outposts, and as political indicators of intent with respect to territorial and maritime claims." Their article also analyzes and predicts certain types of military operations in the exclusive economic zone (EEZ) in the region, including those operations undertaken by extraregional powers and responses from littoral states, especially the contention between the PRC and the United States. They conclude with an observation that "China is increasing its pressure on other claimant States in the South China Sea and 'unwelcome' forces such as those of the United States in a concerted fashion;" while "[o]ther South China Sea States are also asserting their own claims and developing their own naval capacity, albeit to a lesser degree than China." This observation leads to their conclusion that "[a]ny thoughts that the South China Sea can become a zone of peace and cooperation may have to be placed on hold for some time yet."

If regional cooperation is one of the solutions to the tensions and conflicts in the South China Sea region, what will the road map look like? Aldo Chircop, in his article "Regional Cooperation in Marine Environmental Protection in the South China Sea: A Reflection on New Directions for Marine Conservation," (this particular article will appear in the Special Issue II) indicates that "[d]espite ongoing conflict management and confidence-building efforts in the South China Sea, there is still no clear path to the resolution of complex

multilateral sovereignty and maritime boundary disputes.” Chircop observes that “[o]ver the past two decades, however, there has been a growing sense of urgency in the need to take action in marine environmental cooperation at global and regional levels” and that there are numerous globally or regionally accepted international instruments that apply to all the littoral players, but Taiwan, of the South China Sea. Thus, there is no lack of legal commitments for the South China Sea States to cooperate on the marine environmental protection. Chircop notes that “[a]t this time most of the marine areas [within the South China Sea] under current protection fall within undisputed waters and what is missing is networking of existing [marine protected areas] MPAs as well as cooperation to pursue the common conservation interest in disputed waters.” He suggests that the littoral States should pursue the creation of MPA networks under the concepts of “Large Marine Ecosystem” (LME) and “ecosystem-based management,” along with another layering of protection through the designation of “special areas” or “Particularly Sensitive Sea Areas” (PSSAs) under the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL)<sup>26</sup> regime and through the International Maritime Organization (IMO) ship routing measures. Accordingly, Chircop suggests that

[t]he region should take greater ownership of initiatives to protect its common ecosystemic heritage and commit financial and administrative resources. International organizations may play important facilitative roles, but those roles will necessarily be catalytic and the ultimate responsibility to make marine conservation work rests on the regional States.

## Conclusion

Is the South China Sea troubled waters or a sea of opportunities? The answer is contingent on the political will of the bordering States. There are numerous international legal instruments that provide for rights and obligations for policy formulation on the part of the bordering States. These legal instruments, however, point in two different directions: one is to take them as legal bases or tools to augment each individual bordering State’s interests, like the recent contention in the CLCS forum; the other is to take them as legal bases or tools to reduce the tensions and conflicts through regional cooperation by means of the formulation of regional mechanisms for marine environmental protection and management and conservation of marine living resources. The bordering States should have the collective wisdom to solve their common problems within the region, but this is based on political will.

## Notes

1. BBC News, 14 February 1999, “World: Asia-Pacific Analysis: Flashpoint Spratly,” available at [news.bbc.co.uk/2/hi/asia-pacific/279170.stm](http://news.bbc.co.uk/2/hi/asia-pacific/279170.stm) (accessed 7 April 2010); Peter Brookes, “Flashpoint: The Great Wall Goes to Sea,” 8 July 2009, The Heritage Foundation, available at [www.heritage.org/Research/Commentary/2009/07/Flashpoint-The-Great-Wall-goes-to-sea](http://www.heritage.org/Research/Commentary/2009/07/Flashpoint-The-Great-Wall-goes-to-sea) (accessed 7 April 2010).

2. AFP, 13 April 2008, “South China Sea Headed for Troubled Waters: Marine Experts,” available at [www.illegal-fishing.info/item.single.php?item=news&item\\_id=2816&approach\\_id=29](http://www.illegal-fishing.info/item.single.php?item=news&item_id=2816&approach_id=29) (accessed 7 April 2010).

3. “Oil on Troubled Waters; Vietnam’s Conoco Deal Draws Fire from China,” *Far Eastern Economic Review* (1996), available at [www.faqs.org/abstracts/Business-international/Oil-on-troubled-waters-Vietnams-Conoco-deal-draws-fire-from-China.html](http://www.faqs.org/abstracts/Business-international/Oil-on-troubled-waters-Vietnams-Conoco-deal-draws-fire-from-China.html) (accessed 7 April 2010); Monica Feria,

“South China Sea Flashpoint: Oil Finds Raising Stakes in the Spratlys,” *Philippine Daily Inquirer*, 19 April 2008, available at [khmerkromngo.org/articles/philippineInquirer041908.htm](http://khmerkromngo.org/articles/philippineInquirer041908.htm) (accessed 7 April 2010).

4. The text of the Declaration is available at the Web site of ASEAN at [www.aseansec.org/13163.htm](http://www.aseansec.org/13163.htm) (accessed on 7 April 2010).

5. See Nguyen Hong Thao, “The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note,” *Ocean Development and International Law* 34 (2003): 279–285.

6. The Commission of the Limits of the Continental Shelf was established by Annex II of the 1982 UN Convention on the Law of the Sea, done at Montego Bay, Jamaica, 10 December 1982, entered into force 16 November 1994, 1833 *U.N.T.S.* 397. Regarding the work of the Commission, see its Web site at [www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm).

7. Malaysia-Viet Nam Joint Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in Respect of the Southern Part of the South China Sea, Executive Summary, May 2009, available at the Web site of the Commission, supra note 6. Viet Nam Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982, Partial Submission in Respect of Vietnam’s Extended Continental Shelf: North Area (VNM-N), Executive Summary, April 2009, available at the Web site of the Commission, supra note 6.

8. People’s Republic of China, Letter to Secretary-General of the United Nations, Doc. CML/17/2009, New York, 7 May 2009; and Letter to Secretary-General of the United Nations, Doc. CML/18/2009, New York, 7 May 2009, available at the Web site of the Commission, supra note 6.

9. ROC Foreign Ministry reacted to the two submissions with a statement in Chinese issued on 8 May 2009, available at [www.mofa.gov.tw/webapp/ct.asp?xItem=38031&ctNode=1548&mp=1](http://www.mofa.gov.tw/webapp/ct.asp?xItem=38031&ctNode=1548&mp=1); and with a statement in English on 11 May 2009, available at [www.mofa.gov.tw/webapp/ct.asp?xItem=38046&ctNode=1548&mp=1](http://www.mofa.gov.tw/webapp/ct.asp?xItem=38046&ctNode=1548&mp=1) (accessed 10 May 2010).

10. See this Declaration at the ROC Foreign Ministry Web site at [www.mofa.gov.tw/webapp/fp.asp?xItem=38073&ctnode=1548](http://www.mofa.gov.tw/webapp/fp.asp?xItem=38073&ctnode=1548) for Chinese version; and at [www.mofa.gov.tw/webapp/ct.asp?xItem=38077&ctNode=1901&mp=6](http://www.mofa.gov.tw/webapp/ct.asp?xItem=38077&ctNode=1901&mp=6) for English version (accessed 17 May 2010). In the English version, there are minor translation errors and imprecision from the original Chinese version.

11. PRC Letters, supra note 8.

12. See the English version of the ROC Foreign Ministry Statement, supra note 9.

13. See the text of the Act at [www.lawphil.net/statutes/repacts/ra2009/ra\\_9522\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html) (accessed 7 April 2010).

14. To both Taiwan and China, the Kalayaan Island Group is just a set of islets of the Nansha Qundao/Islands (or Spratly Islands, 南沙群島) while the Scarborough Shoal is “Huangyan Dao” (or 黃岩島) belonging to the Macclesfield Islands/Bank (or Zhongsha Qundao/Islands, 中沙群島).

15. See the maritime zone notification made by the United Nations concerning the Philippines’ deposit of its geographical coordinates of basepoints, available at [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn\\_s/mzn69.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn69.pdf) (accessed 7 April 2010).

16. See the Chinese version of statement issued on 4 February 2009 at the Web site of the ROC Foreign Ministry at [www.mofa.gov.tw/webapp/ct.asp?xItem=36869&ctNode=1548&mp=1](http://www.mofa.gov.tw/webapp/ct.asp?xItem=36869&ctNode=1548&mp=1); and the English version statement issued on 6 February 2009, available at [www.mofa.gov.tw/webapp/fp.asp?xItem=36914&ctnode=1902](http://www.mofa.gov.tw/webapp/fp.asp?xItem=36914&ctnode=1902) (accessed 16 May 2010).

17. See People’s Republic of China, Letter to Secretary-General of the United Nations, Doc. CML/12/2009, New York, 13 April 2009, available at the Web site of the UN Division on the Law of the Sea at [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn69\\_2009\\_chn.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn69_2009_chn.pdf) (accessed 16 May 2010).

18. Vietnam, Permanent Mission to the United Nations, “Vietnam’s Response to Philippine President’s Signing of Baseline Act,” 13 March 2009, available at [www.vietnam-un.org/en/news.php?id=77&act=print](http://www.vietnam-un.org/en/news.php?id=77&act=print) (accessed 7 April 2010).

19. See ROC Ministry of the Interior, *The Claim of the Sovereignty of Nan-Hai, Including the Historic Waters, Belonging to This Country* (南海主權(含歷史性水域)屬我之主張), in Chinese,

September 1992, on file with the author. This pamphlet-like government publication describes the geographic extend of the Nan-Han as “starting from the North Verker Bank (北衛灘) at 21°4'N to the north to the James Shoal (曾母暗沙) at 3°5'N to the south, and starting from the Vanguard Bank (萬安灘) at 109°36'E to the west to the Seahorse (or Routh) Bank (海馬灘) at 117°50'E to the east.” Three out of the four figures of longitude and latitude are slightly different from the ones cited in Nien-Tsu Alfred Hu’s article in this Special Issue from Chang Wei-I (張維一), Nan-Hai Tsu-Yuan K’ai-Fa yu Chu-Ch’uan Wei-Hu (南海資源開發與主權維護 *The Resources Exploitation and Sovereignty Protection of the South Sea*) (Taipei County, Taiwan: P’an Shih Library, December 1994).

20. A reproduction of the map can be seen at Chang Wei-I, *ibid.*, folded page at the end of the book.

21. See ROC Ministry of the Interior, *The Claim of the Sovereignty of Nan-Hai, Including the Historic Waters, Belonging to This Country*, *supra* note 19, at 14.

22. For a description and analysis of China versus Southeast Asia in general, and the situation of South China Sea in particular, before 2006, see Michael A. Glosny, “Heading Toward a Win-Win Future? Recent Developments in China’s Policy Toward Southeast Asia,” *Asian Security* 2, no. 1 (2006): 24–57.

23. The change includes the admission of Taiwan as an observer in the United Nations World Health Assembly, the submission of a joint project proposal by Taiwan and China at the 2009 nineteenth Workshops on Managing Potential Conflicts in the South China Sea (the SCS Workshops), and the mutual efforts in concluding an Economic Cooperation Framework Agreement (ECFA) by June 2010.

24. Regardless the amicable surface, there is still a strong undercurrent in the international context in which China exerts its diplomatic pressure to control Taiwan’s status. For example, in the International Consultations for the establishment of a regional fisheries management organization in the South Pacific, Taiwan was treated as a “Special Observer,” rather than an equal negotiating partner as in other similar negotiations and was designated as “Chinese Taipei Fishing Entity,” rather than “Chinese Taipei,” in the Final Act of the International Consultations on the Establishment of the Proposed South Pacific Regional Fisheries Management Organization signed on 14 November 2009. This implies that the South China Sea situation may well be a special case where China is willing to collaborate with Taiwan due to their common position on their claims in the South China Sea.

25. For a historical account of the evolution of the “One-China policy” with special reference to the key statements from Washington, Beijing, and Taipei, see Shirley A. Kan, “China/Taiwan: Evolution of the ‘One China’ Policy—Key Statements from Washington, Beijing, and Taipei,” Congressional Research Service (CRS) Report for Congress, 17 August 2009, available at [www.fas.org/sgp/crs/row/RL30341.pdf](http://www.fas.org/sgp/crs/row/RL30341.pdf) (accessed 5 May 2010).

26. Convention on Prevention of Pollution from Ships (1973/1978), 1340 *U.N.T.S.* 61.