

Rebalancing: Vietnam's South China Sea Challenges and Responses

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Introduction

The South China Sea persists as the leading security and development challenge for Vietnam. In Hanoi's view, the situation in the South China Sea affects almost all aspects of national security and development: protecting territorial integrity and national sovereignty; promoting maritime economic development; maintaining an external peaceful environment and, in particular, peaceful relationships with China and other claimants; and safeguarding regime legitimacy and internal stability. This paper analyses Vietnam's approaches to the current situation in the South China Sea in seeking to achieve its main objectives, and examines the state's responses with reference to the interactions among relevant states and organisations.

Challenges

There are four prevailing issues that Vietnam needs to address in the South China Sea disputes: (i) its sovereignty claim over 'land features' in the Spratlys; (ii) sovereignty over 'land features' in the Paracels; (iii) sovereignty rights and jurisdiction within Vietnam's exclusive economic zone and continental shelf, including management and use of hydrocarbon, mineral resources, and other living resources, especially fishing; (iv) and protecting fishermen and their vessels operating in the overlapping areas of claims, particularly around the Parcel Islands.¹

Creeping and Diversified Challenges

Although Vietnam's claims in the South China Sea overlap with five other parties (China, Taiwan, Malaysia, Brunei, and the Philippines), ASEAN claimants have implicitly reached a common understanding in maintaining the status quo of occupation, settling disputes by peaceful means and refraining from activities that can negatively affect the interests of other members.² Taiwan's activities have mainly concentrated on its

¹ Tran Truong Thuy & Nguyen Minh Ngoc, [Vietnam's Security Challenges: Priorities, Policy Implications and Prospects for Regional Cooperation](#), in "Security Outlook of the Asia Pacific Countries and Its Implications for the Defense Sector", edited by National Institute for Defense Studies (Tokyo: National Institute for Defense Studies, 2013), p.96, http://www.nids.go.jp/english/publication/joint_research/series9/pdf/08.pdf

² In addition to the Agreement with China on the Delimitation of the Tonkin Gulf and on Fishery Cooperation on 25 December 2000, Vietnam has signed the Agreement with Thailand on Maritime Delimitation on 9 August 1997 and the Agreement with Indonesia on the Delimitation of Continental Shelf on 26 June 2003. Vietnam is currently involved in negotiations regarding delimitation of the Exclusive Economic Zone with Indonesia. In 1992, Vietnam signed with Malaysia the MOU for cooperation in exploration and exploitation of petroleum in a defined area of the continental shelf involving the two countries in the Gulf of Thailand, which has been effectively implemented, and is currently engaged in negotiations with Thailand and Malaysia on cooperation in Tripartite Overlapping Continental Shelf Claim Area. In early May 2009, Vietnam in cooperation with Malaysia provided to the United Nations the Submission on the Limits of the Continental Shelf beyond 200nm in the

occupied island, Itu-Aba, the largest feature of the Spratlys, and therefore has not directly threatened Vietnam's security in the South China Sea. Rather, it is China's renewed assertiveness in the South China Sea since 2007 that has been widely perceived within Vietnam as encroachment on its sovereignty and maritime interests. China's assertive and comprehensive approach – expanding military, paramilitary and civilian activities – has raised the frequency of occurrence of incidents in the overlapping area between the so-called 'U-shaped line' covering approximately 80 per cent of waters in the South China Sea and Vietnam's exclusive economic zone and continental shelf.

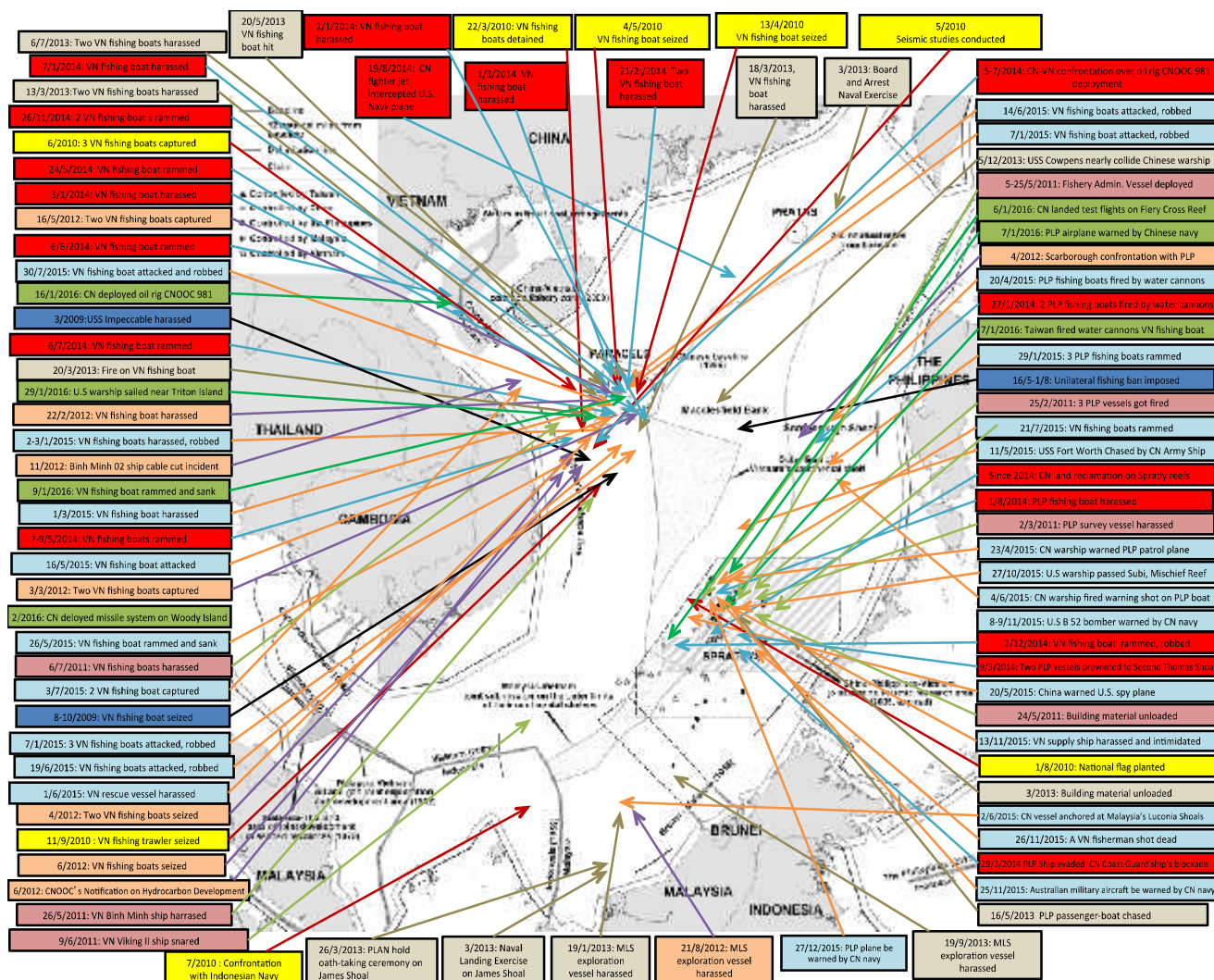
Resource exploitation in the South China Sea – hydrocarbons and fisheries – constitute the most frequent source of tensions between China and Vietnam. During the period of its unilaterally declared fishing ban between May and August – imposed annually since 1999 – Chinese maritime security forces have repeatedly detained Vietnamese fishermen, confiscated fishing boats, and charged fines for their release. This type of incident occurs most frequently in the Paracel Islands as Vietnamese fishermen continue to catch fish in what are regarded as traditional fishing grounds.

Besides activities at sea, a number of steps adopted by China were perceived by Vietnam as aiming to extend the legal basis for China regarding land features and maritime zones in the South China Sea, and as encroachment on Vietnam's sovereignty and jurisdiction. This had resulted in diplomatic protest by Vietnam.

Map: Approximate Locations of Incidents between China and other Countries in the South China Sea during 2008–2016.³

Southern part of the South China Sea. See, The Ministry of Foreign Affairs, "Vietnam – a responsible party of UNCLOS Convention", <http://english.vov.vn/Politics/East-Sea/Vietnam-a-responsible-party-of-UNCLOS-Convention/251426.vov>

³ Compiled by author bases on press's reports (VN: Vietnam; PLP: Philippines; MLS: Malaysia)



Two recent developments – Chinese conduct of reclamation activities in the Spratlys, and deployment of the Chinese oil rig HYSY 981 in the area claimed by Vietnam – attracted considerable attention from the international community and are regarded by Vietnam as the most vivid and worrisome signs of China's increasing assertiveness in the South China Sea.

Other developments related to the oil rig crisis have ushered in a new dimension in the Vietnamese leadership's approach to handling maritime issues, whereby the implications for economic development assume increased significance. This reflects populist opinion: for the first time, the oil rig incident not only inflamed anti-China sentiment among the Vietnamese population, but it also provoked large-scale anti-China riots in a number of Vietnamese cities. The likelihood of skirmishes between Chinese and Vietnamese vessels in the SCS escalating into conflict and domestic riots has deleteriously affected the business environment in Vietnam, which until the crisis was widely considered as one of the safest and stable economies in the region.

Although the oil-rig incident is worrisome, it has fallen short of direct conflict and the situation quickly renormalised. Massive land reclamation and construction activities by China in the Spratlys since 2014 has nonetheless permanently destabilised this

normalcy, with far-reaching strategic implications for the region. Such construction works have affected the responses of the major powers and the dynamics of the claimants' relations. China's expanded military presence in the area has already enhanced Chinese power projection in the South China Sea.

Vietnam: Responses

Since Doi Moi (Renovation) in 1986, Hanoi has maintained that peaceful and favourable international environment is indispensable for economic development, and consequently, one of the main objectives of foreign policy is to 'create a favourable international environment and conducive conditions to serve the cause of national construction and defense.'⁴ In dealing with the South China Sea issues, the foreign policy principle of maintaining a peaceful environment has been evident in the strategy of solving territorial and maritime disputes with other countries exclusively by peaceful means. The White Paper published in 2009 by the state's Ministry of Defense similarly reaffirms that 'Vietnam's consistent policy is to solve both historical and newly emerging disputes over territorial sovereignty in land and at sea through peaceful means on the basis of international laws.'⁵ At the same time, Vietnam's objective in dealing with China in the South China Sea issue is to ensure that it does not negatively affect cooperation in the overall Vietnam-China bilateral relationship.

In response to China's extra-national encroachment Vietnam applies policy typical of the weaker party in an asymmetric relationship, seeking to defend its national interests while preserving cordiality: Vietnam's policy in this regard is a combination of engagement and soft and hard balancing towards China. It combines several elements: (i) *Direct engagement*, including high-level exchange, agency to agency interactions, and direct negotiations with China on maritime issues to defuse tensions and settle remaining bilateral issues; (ii) *Indirect engagement*, by working with members of ASEAN to engage China in DOC implementation and completing a new code of conduct (COC); *Soft balancing*, including (iii) raising South China Sea issues in regional forums (particularly ASEAN-related forums), (iv) engaging the participation of other external powers in South China Sea issues, and (v) using international law, especially the UNCLOS 1982, to defend its maritime claims. *Hard balancing* is primarily deterrent, namely (vi) improving military capacity, especially in modernising the navy and strengthening law enforcement capabilities in the Coast Guard and the Fishing Patrol Agency.

Direct Engagement

Regarding *direct engagement*, Vietnam has sought to encourage the exchange of high-level visits with China, and to push for the issue of the South China Sea to be one of the main topics of discussion among leaders. In addition to high-level exchanges, Vietnam and China have established the Steering Committee on Vietnam-China Bilateral Cooperation (since 2006), and a network of engagement with China through party-to-

⁴See Text of the 13th Politburo Resolution, May 1988; Nguyen Co Thach's Interview with Journal of International Relations Studies, January 1990, *Movements in the World and Our New Perspective*; reprinted in Nguyen Vu Tung, *Vietnam's Foreign Policy 1975-2006*, Institute of International Relations, Hanoi, 2007, p. 42.

⁵ Defence White Paper 2009, p19.

<http://admm.org.vn/sites/eng/Pages/vietnamnationaldefence%28vietnamwhitepapers-nd-14440.html?cid=236>

party and agency-to-agency cooperation channels. These include cooperative measures between agencies directly and indirectly relating to the handling of maritime issues, such as militaries (e.g., exchanged visits, hot line accessibility, strategic dialogue, port calls, joint naval patrols), agencies responsible for fishery cooperation, combating transnational crimes, and administering border provinces. Vietnam and China have also conducted direct negotiations on unresolved maritime issues. In October 2011, during the visit of the Vietnam Communist Party's Secretary General Nguyen Phu Trong to Beijing, Vietnam and China signed the Agreement on the Basic Principles Guiding the Resolution of Maritime Issues, in which two sides pledged to address maritime issues incrementally, expedite demarcation and cooperation in waters off the Tonkin Gulf, and foster cooperation in less sensitive fields including marine environmental protection, marine science research, search and rescue operations, and natural disaster mitigation and prevention.⁶ Most recently, in the first official visit by Prime Minister Nguyen Xuan Phuc to China at the invitation of Chinese Premier Li Keqiang (September 10–15, 2016), Phuc met with Chinese President Xi Jinping, conducted talks with Premier Li, and held a number of meetings with other high-ranking leaders. During the talks and meetings, Vietnam News Agency reported that Vietnamese and Chinese leaders agreed:

They will control and satisfactorily handle existing disagreements and arising problems, while fostering the healthy and stable development of the comprehensive strategic cooperative partnership, thereby practically benefiting the two peoples and contributing to peace, stability and prosperity in the region.

The two sides agreed to seriously implement the bilateral agreement on basic principles guiding the settlement of sea-related issues, and, together with ASEAN countries, comprehensively and effectively carry out the DOC, and resolve disputes by peaceful measures on the basis of international law, including the 1982 UNCLOS.⁷

Some Vietnamese analysts believe that by raising matters concerning the South China Sea to high-level international and regional discussions these issues will secure a higher level of priority in China's foreign policy, thereby encouraging Chinese leaders to situate Vietnam's concerns within a broader picture of bilateral and regional relations. This is expected to improve China's domestic management of interest groups – one of the main sources of tensions in recent years. These engagements are also expected to promote mutual trust and cooperation, and minimise misunderstanding among interest groups of both sides. In addition, cooperative mechanisms among agencies directly dealing with maritime issues can arguably help both sides to prevent incidents from happening or to deescalate tensions. However, it is relevant at this point to observe that although confrontations between Vietnam and China in the South China Sea in recent years typically occur between law enforcement agencies protecting and preserving hydrocarbon and biological resources, both sides have yet to establish any cooperative and dialogic mechanisms between their Coast Guards. During the period May–July 2014 Vietnam continued in its efforts to promote high-level meetings and to undertake over fifty diplomatic communications with China to resolve the oil rig crisis. Despite these attempts, the relatively long duration of the crisis indicates the limitations of direct

⁶ “Vietnam-China agree on basic principles to resolve maritime issues”, <http://en.nhandan.org.vn/en/politics/external-relations/item/1808602-vietnam-china-agree-on-basic-principles-to-resolve-maritime-issues.html>

⁷ PM Nguyen Xuan Phuc finishes tour of China, <http://english.vietnamnet.vn/fms/government/163782/pm-nguyen-xuan-phuc-finishes-tour-of-china.html>

bilateral engagement in deescalating political pressure. China withdrew the oil rig one month before the planned time, but it is arguably not the result of bilateral Vietnam–China engagement.

Direct bilateral Vietnam–China engagement proves to have been more helpful in restoring the damaged relationship once the crisis was over. After China withdrew the oil rig, leaders and high-ranking officials of both parties undertook a number of significant exchange visits and meetings by to renormalise relationships and promote practical cooperation. As the result, by the end of 2014 the bilateral relationship has approached a new normal.

Vietnam’s policy of isolating inflammatory issues in order to avoid negatively affecting the its overall bilateral relationship is evident in a number of pertinent instances. For example, while demonstrating its determination in confronting China over deployment of the oil rig HYSY 981 in its exclusive economic zone, Hanoi maintained communication linkages on different levels with Chinese counterparts and successfully maintained commercial and investment cooperation. Similarly, Vietnam determined in the aftermath of the oil rig crisis to become one of the founding members of the Chinese-initiated Asian Infrastructure Investment Bank (AIIB).⁸

At the same time, the process of detaching specific conflicting issues from the general relationship is a challenging task. The more China asserts control in the South China Sea, the more anti-Chinese sentiment grows among Vietnamese people within and without the country. According to Pew Research surveys, 78 per cent in 2014 and 74 per cent in 2015 of Vietnamese people hold an unfavourable view of China.⁹ As Vietnam incrementally introduces democratic institutions, the exposure of government to public opinion increases, adding to the need to appear decisive in protecting national sovereignty. During the oil rig crisis in 2014, Prime Minister Nguyen Tan Dung received nationwide endorsement in declaring ‘we cannot trade our sacred independence and sovereignty for some elusive peace or any type of dependence.’¹⁰ Due to the maritime territorial dispute, the prospect of each nation seeking to share ideological aspirations wanes.

Due to the negative spillover effects of the ongoing maritime dispute, a number of Vietnam experts have regarded economic proposals from China with suspicion. For example, they consider China’s grand initiative of ‘One Belt One Road’ (OBOR), as primarily driven by China’s intention to advance its sovereignty by means of creating a maritime Silk Road. Realising OBOR could deepen the economic dependence of Vietnam and other ASEAN members on China, thereby lowering the standing of these countries in establishing ASEAN consensus on the South China Sea.

Indirect Engagement

⁸ Vietnam joins AIIB to seek new funding source, <http://english.thesaigontimes.vn/41699/Vietnam-joins-AIIB-to-seek-new-funding-source.html>

⁹ <http://www.pewglobal.org/database/indicator/24/country/239/response/Unfavourable/>

¹⁰ http://www.nytimes.com/2014/07/13/opinion/sunday/vietnams-overdue-alliance-with-america.html?_r=0

Regarding *indirect engagement*, Vietnam has sought to work with other ASEAN members to engage China collectively in multilateral discussions of the South China Sea – within the framework of ASEAN–China dialogue, and in DOC implementation anticipating a new code of conduct (COC). This indirect engagement is widely considered one of the most important components of Vietnam’s overall strategy towards the South China Sea.

Hanoi understands the internal and external dynamics of ASEAN. Due to divergent interests and external pressures, ASEAN countries exhibit disparate viewpoints regarding the South China Sea. While acknowledging that ASEAN countries have divergent interests, Vietnam has made continuous efforts to work with member states to maintain at least minimum denominators on this issue. All ten ASEAN member states participated in negotiation and signed the Declaration of Conduct (DOC) in 2002, and all had also reached consensus to promote negotiation of the Code of Conduct (COC) with China in order to manage the disputes effectively and enhance peace and cooperation in the region.¹¹ While working towards the COC, Vietnam sees the DOC 2002 as one of the most important documents used to regulate the behaviour of parties in the South China Sea, despite its non-legal status. Although some of the DOC provisions are ambiguous and open for parties to criticise one another for its violations, the more clearly stated provisions – such as no use of force, and no new inhabitation on unoccupied islands/rocks in the South China Sea – to a certain extent have helped to prevent China from conducting adventurist activities. The process of DOC implementation and negotiation on COC has arguably facilitated China’s engagement with discussing the South China Sea within the ASEAN–China framework.

At the same time, Vietnam understands the limits of indirect engagement with China through the ASEAN framework, as it requires not only consensus within ASEAN, but also the political will from Beijing to accept regional agreement. The three-level game of negotiation – domestic, within ASEAN, and between ASEAN and China – explains why the process of concluding any agreement is protracted. For example, ASEAN took more than seven years to engage China in negotiating the DOC, which was signed in 2002,¹² and almost nine years to complete the symbolic Guidelines for the implementation of the DOC, agreed in July 2011.¹³ The original purpose of the Code of Unplanned Encounters at Sea (CUES) was to avert incidents between Coast Guards in the South China Sea. Although China has objected to it, ASEAN is confident it will nonetheless secure from China a joint statement for application of CUES to naval ships and naval

¹¹ In July 2012 ASEAN foreign ministers had reached consensus, adopted the ‘proposed elements’ of the COC, and tasked ASEAN senior officials to meet with senior officials from China to negotiate the code. Michael Lipin, “Cambodia Says ASEAN Ministers Agree to ‘Key Elements’ of Sea Code,” Voice of America, July 9, 2012.

http://www.voanews.com/content/cambodia_asean_ministers_agree_to_key_elements_of_sea_code/1381574.html

¹² Declaration on the Conduct of Parties in the South China Sea, ASEAN website, <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>

¹³ “Guidelines for the Implementation of the DOC,” ASEAN website, <http://www.asean.org/documents/20185-DOC.pdf>.

aircraft.¹⁴ This joint statement has only symbolic meaning given all claimant states have already adopted CUES within the framework of the Western Pacific Naval Symposium (WPNS). Similarly, the future of ongoing negotiations on the Code of Conduct remains uncertain and protracted as ASEAN hopes to engage China in accepting a binding agreement that will regulate China's conduct in the South China Sea. Nevertheless, for ASEAN, the process of engagement with China is equally as important as the results.

Soft and Hard Balancing

As discussed above, although direct and indirect engagement through ASEAN provides useful channels for Vietnam in dealing with China on the South China Sea, it is not sufficient to prevent China from advancing its territorial aspirations. Therefore, Vietnam has also to rely on soft and hard balancing elements in its strategy. Its soft balancing has consisted of broaching the South China Sea as a crucial issue in regional forums, particularly in ASEAN-related forums; engaging the participation of other major powers in the South China Sea; and using international law, especially the UNCLOS 1982, to defend its maritime claims and settle disputes by peaceful means.

Major Powers Engagement

Since the 1990s, Vietnam has adopted a foreign policy of diversification and multilateralisation of external relations, in which major powers play very important roles in strengthening its autonomy, security, and development. Some Vietnamese analysts see one of the positive implications of this process in intertwining the interests of major powers in the country, and consequently, Vietnam's potential competitors have to take into account the interests of these major powers as well. In these circumstances, the possibility of resorting to military action to resolve territorial disputes can be narrowed.¹⁵

Specifically, highlighting South China Sea issues in regional forums with the participation of other countries with convergent concerns and interests, could become a feasible approach in influencing China's direction. When such issues become one of the main concerns in China's external relations, it may force China to reevaluate its current extraterritorial course in the context of its other interests in relations with major powers, and adjust its approach in the South China Sea accordingly. As a consequence, prioritisation of the South China Sea issue in China's foreign policy decision-making process has encouraged its leadership to redress ongoing tension caused by internal conflict between its domestic interest groups, thereby rendering the issue of the South China Sea more manageable.¹⁶

¹⁴ Joint Statement on the Application of the Code of Unplanned Encounters at Sea in the South China Sea, September, 7, 2016, See full text at <http://asean.org/storage/2016/09/Joint-Statement-on-the-Application-of-CUES-in-the-SCS-Final.pdf>

¹⁵ Interview with author.

¹⁶ In March 2013, China announced plans to restructure the country's top oceanic administration by bringing China's maritime law enforcement agencies, currently scattered in different ministries, under the unified management of one single administration, to "enhance maritime law enforcement and better protect and use its oceanic resources". See: "China to restructure oceanic administration, enhance maritime law enforcement", Xinhuanet, October 10, 2013, at http://news.xinhuanet.com/english/china/2013-03/10/c_132221768.htm

Among major powers, the US is considered as one of Vietnam's most important trade and security partners. Some Vietnamese analysts believed that although the US conducts its activities in the South China Sea according to its own interests, US involvement has nonetheless increased leverage for Vietnam in relations with China, making China militarily less assertive and less willing to use force to solve territorial disputes. In addition, US policy has had a spillover effect on the positions of other countries, especially countries that have close relationships with Washington, encouraging these stakeholders – such as Japan, Australia, India, and some European countries – to express concern about developments in the South China Sea through numerous multilateral mechanisms (ARF, EAS, ADMM+, ASEM, G7, etc.).

After a long engagement in the Middle East and Afghanistan in the war against terrorism, the US has redirected its attention to Asia in response to rising Chinese territorial aspirations.¹⁷ The South China Sea becomes one of the main focal points of Asia's rebalancing strategy adopted by the Obama administration. In recent years, the US has enhanced military and maritime cooperation with China's competitors in maritime domains, such as Japan and the Philippines. The US strengthened its access and readiness levels in the South China Sea by signing with the Philippines the 'Enhanced Defense Cooperation Agreement' in April 2014, which covers a broad range of defense cooperation initiatives, including the deployment of US rotational troops on Philippine territory, and developing maritime security and maritime domain awareness.¹⁸ In official presentations high-ranking US officials also refer to South China Sea issues more frequently and with greater substance than in the past, especially within multilateral diplomatic meetings. During 2015–16, in a move to signal more direct regional engagement, the US conducted freedom of navigation operations three times in the South China Sea to challenge China's 'excessive maritime claims', sending navy destroyers within 12 nautical miles of Subi Reef and Fiery Cross in the Spratly Islands, and in the vicinity of Triton Island in the Paracel Islands.¹⁹

However, Vietnam analysts also emphasise the limits of the US–Vietnam relationship in the triangle US–Vietnam–China. Hanoi views relationships between the US and China as containing elements both of cooperation and competition. While they are strategic competitors, Washington still needs to work with Beijing on convergent interests: conflicts in the Korean peninsula; the Middle East; economic cooperation; and climate change, amongst many other issues. Therefore, some fear that in certain circumstances Washington may secure Beijing's cooperation on specific issues in exchange for agreement with China on South China Sea matters that damage Vietnamese interests. Conversely, Vietnam does not want to be forced to ally itself to either great power, and tries to avoid the possibility of being dragged into US–China strategic competition, which would jeopardise its independence and curtail its capacity for strategic

¹⁷ Hillary Clinton, "America's Pacific Century", Foreign Policy, October 11, 2011, http://www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century

¹⁸ "Q&A on the Enhanced Defense Cooperation Agreement", <http://www.gov.ph/2014/04/28/qna-on-the-enhanced-defense-cooperation-agreement/>

¹⁹ Return of the FONOP: US Navy Destroyer Asserts Freedom of Navigation in Paracel Islands <http://thediplomat.com/2016/01/return-of-the-fonop-us-navy-destroyer-asserts-freedom-of-navigation-in-paracel-islands/>

maneuvering. Within the limits of ‘three no’s’ policy – no military alliances, no alignment with one country against third parties, no foreign military bases in its territory – Vietnam is also careful not to allow the developments in its relations with the US to provoke China and inadvertently deteriorate bilateral relationships with its largest neighbour.²⁰

In addition to concerns about US commitment and permanency in the region due to global overreach, perceived power decline, and military budget cuts, there are also other aspects regarding limitations to US involvement in the South China Sea. That the US has yet to join the 1982 UN Convention on the Law of the Sea reduces its legitimacy in criticising other countries, particularly China, for not respecting maritime law. The increasing presence and activities of US naval forces in the South China Sea will not prevent China from – but may increase the likelihood of – further expansion and militarisation of its occupied islands. In response to the US’s freedom of navigation operations around the Paracel Islands, for example, China determined to deploy surface-to-air missiles with a range of 200km, signalling long-term plans to extend its military reach across the South China Sea.²¹ On other hand, the increasing presence of US naval forces does not have a significant impact on the contest for control of resources in the South China Sea, which occurs mainly among law enforcement vessels from the claimant countries. If China continues to use nonmilitary naval measures and economic and diplomatic means to influence ASEAN countries’ policies, the US will be severely limited in its capacity to influence the settlement of South China Sea issues. While continuing to demonstrate its commitment, the US can best respond to China’s strategy by complementing its own approach with other elements such as paramilitary and economic initiatives, which the US has neglected over recent decades.²² In addition to helping other countries to improve their maritime surveillance and law enforcement capabilities, the US might specifically consider deploying its Coast Guard directly in the South China Sea, possibly in the name of cooperation in combating non-traditional security threats. The US can help littoral states in improving their maritime domain awareness, individually or collectively, and in sharing intelligence concerning local developments. Regarding economic involvement, Washington should place greater emphasis on the strategic aspect of the Trans-Pacific Partnership (TPP) as a means of reaching consensus to expedite the ratification process – once concluded it will strengthen US economic engagement with the region and dovetail with establishment of the permanent base for its rebalancing strategy. Failure to ratify the TPP will harm US credibility and its strategic interest in the Indo-Pacific to a greater extent than its failure to ratify the UNCLOS.

²⁰ Keynote Address Nguyen Tan Dung, Prime Minister, Vietnam, “Building Strategic Trust for Peace, Cooperation and Prosperity in the Asia-Pacific Region”, *Shangri-La Dialogue 2013*, <http://www.iiss.org/en/events/shangri-la%20dialogue/archive/shangri-la-dialogue-2013-c890/opening-remarks-and-keynote-address-2f46/keynote-address-d176>

²¹ “Paracels build-up a pointer to China’s broader South China Sea ambitions” <http://mobile.reuters.com/article/idUSKCN0VT0YA>

²² Tran Truong Thuy, “The South China Sea: Interests, Policies, and Dynamics of Recent Developments”, paper presented at the conference titled “Managing Tensions in the South China Sea” held by CSIS in Washington DC., on June 5-6, 2013, available at https://csis.org/files/attachments/130606_Thuy_ConferencePaper.pdf

Among *other major powers*, Japan is emerging as one of the most important partners of Vietnam, not just in terms of economic cooperation, but also in the field of maritime cooperation and strategic concerns over China's long-term intentions. Russia is the main arms provider to Vietnam and invests heavily in oil and gas exploration in the South China Sea. Vietnam and Russia upgraded relations to comprehensive strategic partnership level in 2013. However, Russia's focus is on its immediate neighbours once members of the republic – particularly its conflict in Ukraine. Southeast Asia is secondary in the list of priorities of Moscow's foreign policy in comparison with Europe, the Middle East, and Northeast Asia. Russia is also a comprehensive strategic partner and currently enjoys 'the best relationship ever' with China:²³ it needs Beijing's cooperation after Western sanctions due to the annexation of Crimea. In addition, Russia supports China's position that the South China Sea dispute should be resolved through bilateral negotiations, opposing third party involvement. Russia has conducted bilateral military exercises with China in the South China Sea, and Moscow's reactions to recent incidents – particularly China's deployment of oil drilling rig HYSY 981 within Vietnam's EEZ in 2014 – has not met the expectation of Vietnamese counterparts. India is also involved in oil and gas exploration in the South China Sea, improving military cooperation with Vietnam. It also maintains territorial disputes with China, but it seems that the Indian 'Act East' strategy has not yet met its 'Look East' aspirations.

International law

On other aspects of soft balancing Vietnam has increasingly relied on international law, particularly the UNCLOS 1982, to defend its maritime claims and settle disputes. By compliance and reliance on international law, Vietnam expects to deal with China on more equal, less asymmetrical basis. Vietnam has criticised the legality of China's territorial and maritime claims and its assertive moves in the South China Sea, and has gained moral support from the international community. Vietnam has yet to resort to third-party arbitration in the matter. The possibilities of economic retaliation from China and deterioration of bilateral relations, the difficulties in securing China's involvement in the UNCLOS dispute settlement mechanism, the uncertainty of arbitration outcomes, and the lack of enforcement mechanisms in international arbitration contribute to Vietnam's reluctance in choosing this path. However, as discussed above concerning the limitations of direct engagement, if other strategies cannot help Vietnam in deterring China from encroachment, Hanoi might seriously consider using legal means as the last peaceful resort. Vietnam supports the Philippines' decision to seek arbitration in its dispute with China under Annex VII of the 1982 UNCLOS. On 5 December 2014 Vietnam submitted a statement to the Arbitration panel recognising the court's jurisdiction over the case and rejecting the nine-dotted line.²⁴ Responding to the Arbitration Award on 7 July 2016, the spokesperson for the Foreign Ministry stated: 'Viet Nam welcomes the fact that, on 12 July 2016, the Tribunal issued its Award in the arbitration between the Philippines and China.... Viet Nam strongly

²³ Author's interview with senior researchers of the Diplomatic Academy of Russia, Moscow, January 2014

²⁴ "Beijing rejects Hanoi's legal challenge on Spratly, Paracel islands disputes", <http://www.scmp.com/news/china/article/1661364/china-rejects-vietnam-claims-arbitration-submission-over-south-china-sea>

supports the settlement of disputes in the East Sea by peaceful means, including legal and diplomatic processes...and respect for the rule of law in the oceans and seas.²⁵

During the oil rig crisis of 2014, the Vietnamese government did consider various defence options against China, including legal action.²⁶ Prime Minister Nguyen Tan Dung ordered relevant agencies to prepare documents for legal proceedings against China for encroachment on Vietnamese territorial seas.²⁷ The sweeping victory of the Philippines in its arbitration case with the Tribunal may add more convincing arguments for those who advocate a legal approach. Whether or not to undertake this strategic move, of course, would be a subject of careful consideration by the Vietnamese Communist Party's Politburo.

Hard Balancing

Although Vietnam considers diplomacy as its first line of defence, rising competition in the South China Sea has induced Hanoi to invest in improving its physical deterrent capacity – after more than a decade of inadequate investment – with increased attention being given to its naval and air forces. For instance, it was widely reported that Vietnam has signed contracts with Russia to buy six Project 636 Kilo-class submarines with a value of up to US\$ 1.8 billion. The first and second Kilo-class submarines were transferred to Vietnam in December 2013 and March 2014, and the sixth is scheduled to be delivered in 2016.²⁸ The expense of this procurement – equivalent to the annual defence budget – demonstrates the seriousness with which Vietnamese leaders consider the nation's maritime security and sovereignty. Vietnam also ordered from Russia four Gepard-class light frigates, equipped for anti-submarine warfare, and in 2011 deployed two of these. In 2012 Vietnam finalised a contract to purchase four Sigma-class corvettes from the Netherlands. To provide air cover to its naval fleet, Vietnam is acquiring at least 20 Russian-made Su-30MK2 multi-role fighter aircraft in addition to a dozen relatively modern SU-27 and MiG aircraft.²⁹ In August 2013 Vietnam signed a contract with Russia for the purchase of an additional twelve Sukhoi Su-30MK2 multirole jet aircraft armed with anti-ship missiles in a deal valued at US\$450 million.³⁰ To improve naval surveillance and patrol, Vietnam has procured six amphibious DHC-6

²⁵http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns160712211059

²⁶Exclusive: Vietnam PM says considering legal action against China over disputed waters, <http://www.reuters.com/article/2014/05/21/us-vietnam-china-idUSBREA4K1AK20140521>

²⁷“Vietnam's PM calls for preparation of lawsuit against China,” <http://www.thanhniennews.com/politics/vietnams-prime-minister-calls-for-preparation-of-lawsuit-against-china-27986.html>

²⁸However, it takes time for the Vietnamese Navy to develop submarine capability, as it requires substantial infrastructure: maritime aerial surveillance, proficient crews, submarine rescue capabilities and international cooperation with regional navies. See, Koh Swee Lean Collin, “Vietnam's New Kilo-class Submarines: Game-changer in Regional Naval Balance?” <http://www.rsis.edu.sg/publications/Perspective/RSIS1622012.pdf>

²⁹“Vietnam builds naval muscle”, The Asia Times, March 29, 2012, http://www.atimes.com/atimes/Southeast_Asia/NC29Ae01.html;

³⁰Carl Thayer, “With Russia's Help, Vietnam Adopts A2/AD Strategy”, The Diplomat, October 08, 2013, <http://thediplomat.com/2013/10/with-russias-help-vietnam-adopts-a2ad-strategy/>

Twin Otter aircraft from Canada.³¹ Vietnam's new submarine force, combined with anti-submarine warfare capability, naval surveillance and patrol, and additional Su-30s will significantly enhance its anti-access/area-denial capability for protecting the country's sovereignty and interests in the South China Sea.

At the same time, Vietnam has also strengthened bilateral and multilateral defence cooperation with other powers to deal with national security challenges. The complex nature of security threats, not only in the South China Sea, has demanded Vietnam to 'expand defense diplomacy and actively participate in defense and security cooperation in the regional and international community.'³² Vietnam's defence diplomacy actively contributes to 'maintaining a peaceful and stable environment' and promoting regional cooperation. Alongside Vietnam's policy of raising issues of common concerns in international and regional forums to engage China and other countries collectively to find solutions, Vietnam's defence sector also raises these issues in defense-related forums and participates in confidence-building processes, such as ADMM and ADMM+.

A further aspect of Vietnam's hard balancing is ***improvement of law enforcement capability***. Vietnam considers that military confrontation is unlikely in the near future and the primary form of confrontation in the South China Sea is between law enforcement craft. In 2013 the Marine Police unit was restructured, rebadged 'Coast Guard' and placed under direct command of the Minister of Defense, instead of being answerable to the agency. These restructures aim to avoid blame for using military vessels for law enforcement purposes and for expanding international cooperation with the Coast Guards of other countries. In 2013 Vietnam also established Vietnam Fisheries Resources Surveillance (under Vietnam Directorate of Fisheries) with a view to improving protection of the country's sovereign rights relating to fisheries within its exclusive economic zones.³³ Law enforcement vessels are prioritised to deploy in the contested area during confrontations to serve two purposes: demonstrating the country's sovereign right and jurisdiction; while averting escalation or military confrontation through use of naval vessels. For example, during the oil rig skirmish of 2014, Vietnam deployed more than thirty government ships – from Coast Guard and Fisheries Resources Surveillance – to confront Chinese craft, keeping naval assets at a discreet distance.³⁴

To improve its law enforcement capability, Vietnam is also expanding international cooperation with major countries that share concerns about China's maritime expansion. For instance, in 2013 Vietnam and Japan reached an agreement in which Tokyo would transfer patrol vessels to Vietnam to help strengthen maritime security

³¹For information on Vietnam's Major Defence Acquisitions since 1995, see, Le Hong Hiep, "Vietnam's Hedging Strategy against China since Normalization", Contemporary Southeast Asia, Vol. 35, No. 3, pp. 354-355.

³² Vietnam Defence White Paper 2009, p. 24

³³ "Ra m t l c l n g Ki m n g Vi t Nam" (Launching Vietnam Fisheries Resources Surveillance force, Government's Website), <http://baodientu.chinhphu.vn/Hoat-dong-cua-lanh-dao-Dang-Nha-nuoc/Ra-mat-luc-luong-Kiem-ngu-Viet-Nam/197269.vgp>

³⁴ "Chinese vessels deliberately ram Vietnam's ships in Vietnamese waters: officials", <http://tuoitrenews.vn/society/19513/chinese-vessels-deliberately-rammed-into-vietnamese-boats>

capability.³⁵ In August 2014 Japanese Foreign Minister Fumio Kishida announced during his visit to Hanoi that Japan would provide Vietnam with six used vessels to boost the maritime patrolling capability of the Vietnam Coast Guard and Fishery Surveillance Force.³⁶ While visiting Vietnam in December 2013, US Secretary of State John Kerry also announced the US decision to provide \$18 million of assistance in bolstering Vietnam's maritime security capability – including five fast patrol boats for the Vietnam Coast Guard – and an additional \$32.5 million to help other Southeast Asian nations.³⁷ In April 2014 the US and Japan jointly declared their intention to collaborate in providing support to ASEAN's littoral states 'in building maritime domain awareness and other capacities for maritime safety and security so that they can better enforce law, combat illicit trafficking and weapons proliferation, and protect marine resources'.³⁸

Conclusion

Vietnam's policy of combining engagement and soft and hard balancing in dealing with China's assertive strategy in the South China Sea is still widely considered as the most effective strategy to defend Vietnam's national interests while simultaneously preserving a non-confrontational and peaceful relationship with China, enhancing Vietnam's role within ASEAN, and promoting cooperation with other major powers including the US, Japan, and other SCS stakeholders. Vietnam's strategic room for maneuver has not yet reached its limits, particularly with regards to two specific directions: using the channel of international law, and promoting cooperation with other stakeholders. If other soft and hard balancing measures cannot help Vietnam to deter Chinese encroachment on its national interests, Hanoi might seriously consider using legal means as the last peaceful resort. Treading a thin line between China and the US, Vietnam will develop its relationships with the US to the extent that they do not court confrontation with China. China's policy towards Vietnam in the SCS will be a determining factor in Vietnam's policy of maintaining an appropriate balance between nurturing bonds with the US and maintaining cordial ties with China.

³⁵ "Japan Coast Guard vessels and equipment in high demand in S.E. Asia, Africa", the Asahi Shimbun, September 30, 2013 http://ajw.asahi.com/article/asia/around_asia/AJ201309300001

³⁶ Japan to supply six ships to Vietnam, intended for patrolling: sources, <http://www.japantimes.co.jp/news/2014/08/01/national/japan-supply-six-ships-vietnam-intended-patrolling-sources/#.VGYZwigp-fQ>

³⁷ "US boosts maritime security aid to Vietnam", AP, <http://news.yahoo.com/us-boosts-maritime-security-aid-vietnam-082842052--politics.html>

³⁸ "U.S.-Japan Joint Statement: The United States and Japan: Shaping the Future of the Asia-Pacific and Beyond", <http://www.whitehouse.gov/the-press-office/2014/04/25/us-japan-joint-statement-united-states-and-japan-shaping-future-asia-pac>

