

CHAPTER 8

Vietnam's Maritime Security Challenges and Responses

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As events in 2014 unfolded, the South China Sea issues have been, and will continue to be, the number one security and development challenge for Vietnam. The situation in the South China Sea (SCS) in 2014 once again highlights the fact that maritime disputes in the SCS impact almost all aspects of Vietnam's national security and development priorities, including protecting territorial integrity and national sovereignty, promoting economic development, maintaining a peaceful external environment based on, inter alia, friendly and cooperative relations with China and other SCS claimants, and safeguarding regime legitimacy and preserving domestic stability.

All Quiet before Storm

As discussed in my paper at the NIDS conference last year, since the beginning of 2013, China's new leadership arguably started to moderate its approach towards ASEAN and the South China Sea issues with a new round of diplomatic and "charm offensive" to improve its relationships with almost all ASEAN countries (except the Philippines). China also agreed to begin "step by step" "consultations" with ASEAN on a Code of Conduct (COC) in the SCS¹. There were also fewer tensions between China and Vietnam in 2013 compared to the previous years; China apparently refrained from intimidation of other claimants, including Vietnam, in the South China Sea. There were no reports on arrests of Vietnamese fishermen or confiscations of Vietnamese fishing boats as in the previous years, although China continued to declare its unilateral fishing ban in the area north of 12 degrees latitude of the South China Sea from May 16 to August 1 - which Vietnam has protested as a violation of Vietnamese sovereign rights². Chinese law enforcement vessels also did not conduct new harassments against Vietnamese oil and gas exploration

¹ Tran Truong Thuy, "Vietnam's Security Outlook in 2013," p.80, http://www.nids.go.jp/english/publication/joint_research/series11/pdf/08.pdf

² "Vietnam dismisses China fishing ban in East Sea," <http://www.thanhniennews.com/index/pages/20130516-vietnam-opposes-china-fishing-ban-on-east-sea.aspx>

activities in the area where Vietnam's 200 nautical mile exclusive economic zone and the area enclosed by China's U-shaped line overlap.

China also promoted bilateral cooperation with Vietnam. During Chinese Premier Li Keqiang's visit to Vietnam in October 2013, both sides reached consensus on simultaneously advancing maritime, onshore and financial cooperation and establishing three related working groups³. The two sides also "agreed to exercise tight control of maritime disputes and not to make any move that can further complicate or extend disputes" and set up a hotline between the two countries' Agricultural Ministries (in addition to the hotlines between their Defense Ministries, between their Foreign Ministries, and between the two General Secretaries of the two Communist Parties) in order "to promptly and suitably deal with arising problems" in the South China Sea⁴. On February 19 and 20, 2014, the two sides also conducted the fifth round of negotiations on cooperation in a less sensitive area, and arrived at a draft agreement on search and rescue cooperation at sea and agreements on two cooperative projects - one on joint research on the management of the marine and island environment in the Gulf of Tonkin and the other on comparative studies of sediments dating back to the Holocene epoch in the Red River Delta and the Yangtze River Delta⁵.

However, as this author has observed in a paper presented at last year's workshop, China's moderated approach towards Vietnam with regard to the South China Sea issues seems to have been a change in tactics, not in overall strategy. China continued to embrace its multi-directional expansionism in 2014. Two developments in the South China Sea in 2014 - Chinese conduct of land reclamation activities in the Spratlys and the deployment of the Chinese oil rig HYSY 981 in the area claimed by Vietnam - attracted much attention from the international community and are regarded by Vietnam as the most vivid and worrisome signs of China's increasing assertiveness in the SCS.

³ "Chinese Premier Li Keqiang visits Vietnam," <http://tuoitrenews.vn/politics/23971/vietnam-china-to-boost-ties-settle-disagreements-satisfactorily>, <http://english.vietnamnet.vn/fms/government/86738/chinese-premier-li-keqiang-visits-vietnam.html>, "Premier Li Keqiang Holds Talks with Prime Minister Nguyen Tan Dung of Vietnam," <http://www.fmprc.gov.cn/eng/topics/lkqzlcxdyldrxlhy/t1089863.shtml>

⁴ "Chinese Premier Li Keqiang visits Vietnam," <http://english.vietnamnet.vn/fms/government/86738/chinese-premier-li-keqiang-visits-vietnam.html>

⁵ One project is on joint research on the management of the marine and island environment in the Gulf of Tonkin and the other on conducting comparative research on sediment dating back to the Holocene epoch in the Red River Delta and the Yangtze River Delta. Sea, "Vietnam, China discuss sea borders" at <http://english.vietnamnet.vn/fms/government/96056/vietnam--china-discuss-sea-borders.html>

Land Reclamation in the Spratlys⁶

Since the beginning of 2014, the international press has widely reported that China is conducting land reclamation on six of its seven occupied features in the Spratlys in the South China Sea, transforming the submerged reefs and rocks into full-pledged islands with airstrips, harbors and other military and civilian structures. Once reclamation works are completed, Fiery Cross Reef alone will be at least two square kilometers in size—as large as all other islands in the Spratlys are combined⁷.

Chinese officials and scholars have cited several reasons to justify Beijing's strategic move, including a need for improved search and rescue capability in the South China Sea, a desire to improve the working and living conditions of Chinese nationals working there, and a need for a base to support China's radar and intelligence system⁸. Chinese representatives have complained on various occasions that it is unfair to point the finger at China as other SCS claimants have already engaged in reclamation activities and China is the last of the claimants to have airstrips there.

Chinese unprecedented large-scale land reclamation works, once finished, will tremendously impact major powers' competition and the dynamics of the claimants' contest in the South China Sea.

Chinese fishing squads, which already enjoy financial, technical, and administrative support from central and local governments⁹, can utilize facilities on the enlarged islands to extend the duration and scope of their fishing activities, which will most likely stoke tensions with other claimants as they intrude into the exclusive economic zones of Vietnam, the Philippines, Malaysia, Brunei, and Indonesia, and court confrontation with those countries' fishermen and law enforcement forces.

The enlarged islands with airstrips and harbors could arguably strengthen Chinese coercive capabilities, allowing China to quickly and extensively deploy its military, paramilitary and pseudo-civilian vessels and aircrafts to the central and southern

⁶ This session derives partly from Tran Truong Thuy, "Land Reclamation: A South China Sea Game Changer," <http://amti.csis.org/land-reclamation-a-south-china-sea-game-changer/>

⁷ "Fiery Cross Reef now largest of Spratlys after PLA land reclamation," <http://www.wantchinatimes.com/news-subclass-ent.aspx?cid=1101&MainCatID=11&id=20141021000087>

⁸ "Chinese military officer explains need for construction in disputed Spratlys," <http://ajw.asahi.com/article/asia/china/AJ201411230018>

⁹ "Satellites and seafood: China keeps fishing fleet connected in disputed waters," <http://www.reuters.com/article/2014/07/28/us-southchinasea-china-fishing-insight-idUSKBN0F0WQP20140728>

parts of the South China Sea in case of confrontation with other claimants.

Jane's Defence Weekly considers Chinese facilities on the enlarged islands as "purpose-built to coerce other claimants into relinquishing their claims and possessions"¹⁰. It is unlikely that other claimants will ever relinquish their claims and possessions in the Spratlys; nevertheless, those facilities could arguably enhance Chinese capabilities to block Vietnam's supply routes, and Philippines access to their controlled islands and rocks there. China's attempts to block Philippine supply routes to the Second Thomas Shoal in the first half of 2014 illustrates this point well¹¹.

On the brighter side, it might be argued that possession of large islands with sophisticated military and civilian facilities that could cater to all its needs would decrease the incentives for China to attack islands controlled by others.

Different from other claimants' presence on the Spratlys, which is aimed at demonstrating effective administration of their currently controlled islands by maintaining airstrips that can assist in supplying those islands, China's expanded military presence there could serve to enhance Chinese power projection capability in, if not control of, the South China Sea. The web of Chinese military bases in the South China Sea, connecting Sanya (in Hainan Island) in the north to Woody Island in the Paracels in the west to new unsinkable aircraft carriers in Fieri Cross, Johnson South, Cuateron and Gaven Reefs in the Spratlys in the center and the south, and possible bases in the Mischief Reef and Scarborough Shoal in the east¹², will enhance Chinese capability to enforce an air defense identification zone above the South China Sea if and when established, harass U.S. military activities in and above the sea, hunt for American submarines, place Australia within Chinese strategic bombers' range for the first time¹³, and control or at least send a deterrent message of Chinese capability in blocking the critical energy supply routes from the Middle East to Japan, South Korea, and Taiwan.

¹⁰ "China building airstrip-capable island on Fieri Cross Reef," <http://www.janes.com/article/46083/china-building-airstrip-capable-island-on-fieri-cross-reef>

¹¹ "Second Thomas Shoal Tensions Intensify," <http://thediplomat.com/2014/03/second-thomas-shoal-tensions-intensify/>

¹² http://csis.org/files/attachments/140807_Koda.pdf

¹³ "Construction of an airfield on the disputed Spratly Islands puts Australia in reach of China's strategic bombers: Reports," <http://www.news.com.au/technology/innovation/construction-of-an-airfield-on-the-disputed-spratly-islands-puts-australia-in-reach-of-chinas-strategic-bombers-reports/story-fnpjxnk-1227133763994>

From an international law perspective, Robert Beckman has already highlighted that China's reclamation works constitutes a breach of international agreements, which require all parties to exercise restraint and not undertake unilateral actions that would permanently change the status quo regarding the disputed areas¹⁴. Insofar as Chinese dredging and constructing activities are damaging the coral system in the Spratlys¹⁵, they are also indicative of China's disregard for the 'duty to cooperate' with other environmentally affected states. Furthermore, these activities are inconsistent with the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea, which calls on all parties to refrain from activities that would complicate or escalate the disputes. In presenting other states with a new "fait accompli" during the negotiation for an ASEAN-China Code of Conduct in the South China Sea, one of the main purposes of which is to keep the status quo of the South China Sea, China is dashing any hope for a meaningful document that can help govern this troubled maritime area.

So far, three countries—Vietnam¹⁶, the Philippines¹⁷ and the United States¹⁸—have protested China's reclamation activities, but clearly diplomatic protests alone have little impact on China's will and calculations. Yi Xianliang, deputy head of the Chinese Foreign Ministry's Boundary and Ocean Affairs Departments, has stated that China can carry out whatever construction in the reefs that are within its "sovereignty"¹⁹.

Despite the enormous strategic implications of China's excessive land reclamation work in the Spratlys for Vietnam (and other countries), the leadership in Hanoi (and other capitals) seems to have no choice but to live with this new reality from now on.

¹⁴ Robert Beckman, "Large Scale Reclamation Projects in the South China Sea: China and International Law," <http://cil.nus.edu.sg/wp-content/uploads/2010/12/Beckman-RSIS-Commentary-of-Reclamation-in-SCS-CO14213-29Oct2014.pdf>

¹⁵ "Victims Under the South China Sea," <http://www.bloombergview.com/articles/2014-11-27/victims-under-the-south-china-sea>

¹⁶ "Land reclamation further complicates East Sea issue, Vietnam says," <http://www.thanhniennews.com/politics/land-reclamation-further-complicates-east-sea-issue-vietnam-says-33996.html>

¹⁷ "PH files diplomatic protest vs China airstrip," <http://globalnation.inquirer.net/114825/ph-files-diplomatic-protest-vs-china-airstrip/>

¹⁸ US. State Department: Jeff Rathke, Director, Press Office, Daily Press Briefing, Washington, DC, November 24, 2014, <http://www.state.gov/t/pa/prs/dpb/2014/11/234366.htm#.VHfwzQ62LWU.twitter>

¹⁹ "China says can build what it wants on South China Sea isles," <http://www.reuters.com/article/2014/08/04/us-china-southchinasea-idUSKBN0G40UI20140804>

Oil Rig Crisis

Before 2014, China had, on the one hand, accused Vietnam of extracting “China’s oil” in the SCS and, on the other hand, tried to prevent Vietnam from developing resources in the overlapping areas between China’s U-shaped line and Vietnam’s continental shelf. Notably, the level of China’s protests escalated incrementally over time. During the 2007-2010 period, China limited its protest to sending diplomatic notes directly to the Vietnamese government, issuing statements by the Chinese Ministry of Foreign Affairs spokesperson, and verbally threatening international oil and gas companies to cease joint offshore exploration operations with PetroVietnam. In the 2011-2013 period, China escalated its protest and adopted more aggressive tactics, using law enforcement vessels (from Maritime Surveillance Agency) and/or fishing boats to harass and cut the seismic cables of commercial oil exploration vessels operating within Vietnam’s EEZ.

From May to July 2014, in a move that surprised not only Hanoi but also many international observers, and is widely considered as signaling China’s more “proactive assertive” South China Sea approach, Chinese state oil company CNPC stationed the huge oil rig Haiyang Shiyou 981 (HYSY 981) (the building cost of which is approximately 1 billion USD) for deep-sea drilling in the area just 120 nautical miles off the coast of Vietnam. The location is claimed by Vietnam as within its own EEZ and is internationally considered as within a disputed maritime area. China also deployed more than one hundred ships, including law enforcement and military vessels, along with aircrafts to protect the rig. Tension quickly intensified when Chinese vessels rammed, fired water cannons and chased away Vietnamese law enforcement vessels and fishing boats operating in nearby waters²⁰. This episode also led to a two-and-a-half month diplomatic crisis and reduced the China-Vietnam bilateral relationship to the lowest level since normalization in the 1990s.

Other developments related to the oil rig crisis have ushered in a new dimension in the Vietnamese leadership’s thinking of handling maritime issues—the implication of maritime disputes for economic development. For the first time, the oil rig incident not only inflamed anti-China sentiments among the Vietnamese population, but also provoked large scale anti-China riots in various Vietnamese cities. On May

²⁰ “Chinese vessels deliberately ram Vietnam’s ships in Vietnamese waters: officials,” <http://tuoitrenews.vn/society/19513/chinese-vessels-deliberately-rammed-into-vietnamese-boats>

13 and 14, some unsanctioned anti-China protests in Vietnam escalated into riots, causing damages to a number of foreign companies belong to foreign investors not only from mainland China but also from other Chinese speaking territories and from other countries (due to the protesters' confusion with those companies' origins). The possibility of the skirmish between Chinese and Vietnamese vessels in the SCS escalating into full-scale conflict and resulting in riots deteriorated the business environment in Vietnam, which until the crisis unfolded was widely considered to be one of the safest and most stable in the region. The crisis also had a major impact on the Vietnamese tourism industry and stock market. On May 8, 2014, VN-Index, Vietnam's benchmark stock index, plunged to 5.91%, which marked its the biggest drop since 2001²¹. A small-scale survey of 18 of Vietnam's total 640 hotels shows that these hotels lost over 1.8 million USD—or 14,945—night room cancellations—in July 2014²². According to one statistic, Chinese accounted for about a quarter of the nearly 4.3 million foreign visitors to Vietnam in the first six months of 2014. But in June 2014, arrivals from the Chinese mainland to Vietnam fell by about 30 percent and those from Hong Kong fell by 72 percent, compared to May 2014²³.

Overall, the oil rig crisis has provided a critical case for Vietnam to test the effectiveness of its policy, which I described in my paper last year as the policy of engagement and balancing towards China with the objective of defending Vietnam's national interests and simultaneously preserving a peaceful external environment conducive for growth. This policy is a combination of engagement and (soft and hard) balancing towards China. It is relatively comprehensive and combines several elements: (i) *Direct engagement*, including high-level exchanges, 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 other ASEAN members to engage China in DOC implementation and foster the development of a new code of conduct (COC); (iii) *soft balancing*, which consists of efforts to broach the topic of the South China Sea issues in regional forums (particularly ASEAN-related forums), to encourage the participation of other external powers in resolving the South China Sea issues, and to make the most

²¹ “Chứng khoán giảm cực mạnh vì biển Đông,” <http://vnmoney.nld.com.vn/vnmoney/chung-khoan-giam-cuc-manh-vi-bien-dong-20140508152840735.htm>

²² “Struggling businesses urge Vietnam to expand visa waiver to lure back tourists,” <http://www.thanhniennews.com/business/struggling-businesses-urge-vietnam-to-expand-visa-waiver-to-lure-back-tourists-27177.html>

²³ “China Tensions Choke Off Tourism to Vietnam,” http://www.nytimes.com/2014/07/22/business/international/china-tensions-choke-off-tourism-to-vietnam.html?_r=0

of universally recognized principles in international law, especially the UNCLOS 1982, to defend Vietnam's maritime claims and interests; iv) *hard balancing*, mainly for deterrent purposes, to improve Vietnam's military prowess, especially naval modernization, and strengthen its law enforcement capability (the Coast Guard and Fishing Patrol Agency).

Immediately after China deployed the oil rig, Vietnam sought to employ the most important component of its overall strategy - direct engagement with China. However, despite Vietnam's continuous efforts to use high-level meetings, hot-lines and more than fifty diplomatic communications with China to resolve the crisis, the relatively long duration of crisis indicated the limit of direct bilateral engagement in deescalating tension. China withdrew the oil rig one month before the planned date, but Beijing's decision was arguably not a result of direct Vietnam-China bilateral engagement.

Direct Vietnam-China bilateral engagement proved to be more helpful in restoring the damaged relationship between the two countries once the crisis was over. On August 26-27, 2014, Vietnam sent its special envoy, Politburo member Le Hong Anh, to China to meet with Chinese leaders. During Le Hong Anh's meeting with Chinese President Xi Jinping, both sides agreed to take measures to restore and develop their bilateral relations, which have been eroded by China's deployment of the oil rig²⁴. The visit was followed by a number of other important visits by other leaders and high-ranking officials from both sides to renormalize the China-Vietnam bilateral relationship and promote practical cooperation. During the visit of Vietnamese Defense Minister General Phung Quang Thanh to Beijing in mid-October, China and Vietnam signed a memorandum of understanding on establishing a direct communication line between their respective defense ministries, a hotline that could prove valuable for both sides to avoid miscalculations and escalation of future tensions²⁵. On October 16, Prime Minister Nguyen Tan Dung met with Premier Li Keqiang on the sidelines of the Asia-Europe Summit Meeting in Milan. News agencies reported that Vietnam and China agreed to "address and control" maritime disputes in the South China Sea. Prime Minister Dung was quoted as saying that "the two countries should properly address and control maritime differences and not

²⁴ "Vietnam, China agree to restore ties after oil rig rift," <http://tuoitrenews.vn/politics/21978/vietnam-china-agree-to-act-to-restore-ties-after-oil-rig-incident>

²⁵ Carl Thayer, "China-Vietnam Defense Hotline Agreed: What Next?," <http://thediplomat.com/2014/10/china-vietnam-defense-hotline-agreed-what-next/>

complicate the situation further,” “maintain high-level meetings to improve trust²⁶,” and boost “cooperation in infrastructure, finance and maritime exploration²⁷.” Xinhua News Agency quoted Premier Li as expressing “thanks to the efforts from both sides,” as “China-Vietnam relations have ridden out the recent rough patch and gradually recovered²⁸.” As 2014 drew to an end, China sent Yu Zhengsheng, chairman of the National Committee of the Chinese People’s Political Consultative Conference (CPPCC), who ranks fourth in the Communist Party leadership, to Vietnam for a three-day visit. The main purpose of Yu’s three-day stay in Hanoi, as the ranking Chinese official said, was “to consolidate political trust and beef up cooperation and exchanges between the two Parties and States²⁹.”

On another front, Hanoi continued to rely on ASEAN for support in raising the incident in regional diplomatic forums. Despite external pressures as well as its members’ divergent interests and different viewpoints regarding the South China Sea issues, ASEAN, after its failure to release a joint communiqué at the AMM-45 in Phnom Penh in 2012, realized the importance of maintaining consensus on the South China Sea issues so as to preserve its credibility and centrality in the evolving regional security architecture. ASEAN members have now come to share common views and interests, which include, among others, the protection of navigational freedom and regional stability, respect for international law, and the maintenance of ASEAN’s solidarity and centrality in the evolving regional security, and economic, architecture. In almost all important meetings within ASEAN and between ASEAN and its partners (AMM, ASEAN Summit, ARF, EAS meetings) under the chairmanship of Brunei and Myanmar in 2013 and 2014 respectively, the South China Sea issues were brought up, discussed and mentioned in concluding documents without any diplomatic rancor³⁰. During the oil rig crisis between China and Vietnam, with some diplomatic pushes by Vietnam, the ASEAN Foreign Ministers consensually released a statement for the first time since 1992, particularly to address the South China Sea issues, in which they “expressed their serious concerns over the *on-going developments in the South China Sea*, which

²⁶ “Vietnam, China pledge to address and control maritime differences,” <http://www.thanhniennews.com/politics/vietnam-china-pledge-to-address-and-control-maritime-differences-32691.html>

²⁷ “China, Vietnam pledge to ‘address and control’ maritime disputes,” <http://www.reuters.com/article/2014/10/17/us-southchineseachina-vietnam-idUSKCN01609N20141017>

²⁸ Ibid.

²⁹ “VN, China need to treasure bilateral ties,” <http://news.chinhphu.vn/Home/VN-China-need-to-treasure-bilateral-ties/201412/23405.vgp>

³⁰ See related documents on ASEAN website at <http://www.asean.org>

have increased tensions in the area” and “urged all parties concerned, in accordance with the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS), to exercise self-restraint and avoid actions which could undermine peace and stability in the area; and to resolve disputes by peaceful means without resorting to threat or use of force³¹” (emphasis added). Although the ASEAN Foreign Ministers did not explicitly mention China and the oil rig incident by name to avoid negative reactions from Beijing, the phrase “on-going development in the South China Sea” was carefully selected to point to the oil rig incident.

In dealing with the crisis, Vietnam also appealed for support from the international community by publicly exposing the intensity of the incident through regular and irregular press conferences with the Vietnamese MOFA spokesperson³², showing evidence of clashes, including a video footage of a Vietnamese fishing boat sinking near the oil rig after being rammed by a Chinese vessel³³, and sending diplomatic notes to the United Nations to protest China’s claims and actions³⁴.

Unsurprisingly, other stakeholders concerned about the situation that could escalate into conflict between China and Vietnam responded quite positively (from the Vietnamese perspective) to Hanoi’s appeal. Japan’s Foreign Minister Fumio Kishida stated unequivocally, “the tensions have increased as a result of China unilaterally commencing excavation in an area of ocean with undefined borders,” which was “one step in a series of unilateral and provocative maritime advances by China³⁵.” During a meeting between Vietnamese Prime Minister Nguyen Tan Dung and Philippine President Benigno Aquino III, the two “shared the deep concerns over the current extremely dangerous situation cause by China’s many actions that violate the international law³⁶.” Indonesian Foreign Minister Marty Natalegawa, speaking after

³¹ “ASEAN Foreign Ministers’ Statement on the Current Developments in the South China Sea,” <http://www.asean.org/news/asean-statement-communicues/item/asean-foreign-ministers-statement-on-the-current-developments-in-the-south-china-sea>

³² “Vietnam to take suitable responses in oil rig row: ministry,” <http://www.thanhniennews.com/politics/vietnam-to-take-suitable-responses-in-oil-rig-row-ministry-26364.html>

³³ “Clip: Chinese vessel rams, sinks Vietnam fishing boat,” <http://tuoitrenews.vn/society/20092/clip-chinese-vessel-rams-sinks-vietnam-fishing-boat>

³⁴ “VN continues protest against China at UN,” <http://news.chinhphu.vn/Home/VN-continues-protest-against-China-at-UN/20146/21319.vgp>

³⁵ Press Conference by Foreign Minister Fumio Kishida, Friday, May 9, 2014, 8:25 a.m. Front Entrance Hall, Prime Minister’s Office, http://www.mofa.go.jp/press/kaiken/kaiken4e_000068.html

³⁶ “Vietnam, Philippines voice concern over West Philippine Sea developments,” <http://president.gov.ph/news/vietnam-philippines-voice-concern-west-philippine-sea-developments/>

a meeting with Vietnamese Foreign Minister Pham Binh Minh at the ASEAN Summit in Myanmar's capital, said that Indonesia was deeply concerned and "disappointed" with China's decision, which threatened regional stability³⁷. Other countries such as India, Australia, Singapore, France, the UK, Canada, Russia, the European Union, the G7 countries also expressed their concerns about the incidents between China and Vietnam.

Noticeably, the oil rig incident between China and Vietnam has paved the way for a closer relationship between Vietnam and the US. By lending verbal support to Vietnam and condemning China's actions, the US has greatly endeared itself to the Vietnamese public³⁸. Immediately after the incident happened, the US Department of State declared that it was monitoring events closely and urged restraint from all parties³⁹. US Secretary of State John Kerry took to the stage to announce that the United States was "deeply concerned" that China had placed an oil rig in an area of the South China Sea claimed by Vietnam, adding that the move was "provocative" and "aggressive"⁴⁰. Speaking at the Shangri-La security conference in Singapore, Defense Secretary Chuck Hagel condemned China for undertaking "destabilizing, unilateral actions asserting its claims in the South China Sea." He also listed systematic activities undertaken by China to expand its presence and bolster its claim in the SCS, including "restrict[ing] access to the Scarborough Reef, put[ing] pressure on the long-standing Philippine presence at the Second Thomas Shoal, beg[inning] land reclamation activities at multiple locations, and mov[ing] an oil rig into disputed waters near the Parcel Islands⁴¹." At the 21st ASEAN Regional Forum held in Myanmar in August 2014, in a move indicating a new level of US engagement on the South China Sea issues, US Secretary of State John Kerry proposed the idea of a "freeze," asking SCS claimants to voluntarily refrain from actions altering the status-quo, including a moratorium on the reclamation work on occupied features⁴².

³⁷ "Indonesia 'Disappointed' With China Over South China Sea Oil Rigs: Marty," <http://thejakartaglobe.beritasatu.com/news/indonesia-disappointed-china-south-china-sea-oil-rigs-marty/>

³⁸ Proportion of Vietnamese with favourable/unfavourable view of US in 2014 according to Pew Research survey: 76%/18%, while the view of China is approximately opposite with 16%/78%. See at <http://www.pewglobal.org/database/indicator/1/> and <http://www.pewglobal.org/database/indicator/24/>

³⁹ "White House urges dialogue, not intimidation in China rig dispute," <http://www.reuters.com/article/2014/05/14/us-usa-china-sea-idUSBREA4D0K020140514>

⁴⁰ "Kerry: China's Oil Rig in South China Sea 'Provocative'," <http://www.voanews.com/content/kerry-chinas-oil-rig-in-south-china-sea-provocative/1913329.html>

⁴¹ Speech at IISS Shangri-La Dialogue, As Delivered by Secretary of Defense Chuck Hagel, Singapore, Saturday, May 31, 2014, <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1857>

⁴² "US Official on Kerry's Trip to ASEAN Regional Forum," US Department of State, August 4, 2014," <http://translations.state.gov/st/english/texttrans/2014/08/20140806305185.html#ixzz3J3hnrB00>

The oil rig incident also precipitated Vietnam's internal discussions on the need to rethink its strategic calculation: how to escape China's orbit and diversify the country's external political and economic relations. On the US side, besides negotiations within the Trans-Pacific Partnership (TPP) framework for promoting economic cooperation, in October 2014, Washington announced that it would partially lift its long-standing policy of not selling lethal arms to Vietnam, with the main objective of enabling transfers of "maritime security-related defense articles." According to *The Diplomat*, one of the first items that will likely be on Vietnam's wish-list is Lockheed's P3 Orion maritime surveillance aircraft⁴³.

The possibility of a "pivot" in Vietnam's strategic calculation, and particularly the closer relationship between Vietnam and the US, have arguably partly influenced Beijing's calculation not to push Hanoi too hard and led to China's decision to withdraw the oil rig one month earlier than planned and to try to restore the damaged China-Vietnam bilateral relationship.

With the withdrawal of the oil rig and the restoration of the China-Vietnam bilateral relationship, Vietnam seems to have reversed back to its traditional strategic game of walking a delicate line between China and the US. This calculation is rooted in Vietnam's strategic inclination to avoid taking sides and getting dragged into a US-China strategic competition, thus jeopardizing its independence and narrowing the room for its strategic maneuver. Within the limits of Vietnam's "three no's" policy—no military alliances, no alignment with any one country against third parties, no foreign military bases in its territory—Vietnam is also careful not to allow the development of its relations with the US to provoke China and inadvertently deteriorate its bilateral relationship with its biggest neighbor⁴⁴. Unless China pursues a comprehensive aggressive policy towards Vietnam, Hanoi, while continuing to promote cooperation with the US, will definitely not become Washington's ally. In this context, the dispute in the South China Sea and China's extant and future strategy towards Vietnam will continue to be a determining factor for Vietnam's policy as it walks the delicate balance between China and the US.

⁴³ Ankit Panda, "United States Lifts Vietnam Arms Embargo (With a Catch)," <http://thediplomat.com/2014/10/united-states-lifts-vietnam-arms-embargo-with-a-catch/>

⁴⁴ Keynote Address Nguyen Tan Dung, Prime Minister, Vietnam, "Building Strategic Trust for Peace, Cooperation and Prosperity in the Asia-Pacific Region," Shangri-La Dialogue 201, <http://www.iiss.org/en/events/shangri%20la%20dialogue/archive/shangri-la-dialogue-2013-c890/opening-remarks-and-keynote-address-2f46/keynote-address-d176>

On other aspects of soft balancing, Vietnam has increasingly relied on international law, particularly the 1982 UNCLOS, to defend its maritime claims and settle the SCS disputes by peaceful means. So far, Vietnam has not resorted to third party arbitration for the settlement of its territorial and maritime disputes with China. The possibility of economic retaliation by China and an overall deterioration in bilateral relations, the difficulties of getting China's serious involvement in the UNCLOS dispute settlement mechanism, the uncertainty of the outcome of international legal rulings, and the lack of enforcement mechanisms in international arbitration all explain the up-to-date reluctance of Vietnam in choosing this path. However, if other soft balancing acts and also hard balancing measures cannot help Vietnam deter China from impinging on Vietnam's national interests, Hanoi might seriously consider using legal means as the last peaceful resort. In fact, Vietnam supports the Philippine move in bringing the Philippines' dispute with China to an arbitration established under Annex VII of the 1982 UNCLOS. On December 11, 2014, Vietnam submitted a statement to the Arbitration panel and its foreign ministry also rejected China's position paper, which was released days before laying out Beijing's legal objections to the arbitration⁴⁵. According to *The South China Morning Post*, Vietnam's statement to the Arbitration Panel made three main claims in opposition to China's stand. First, it recognized the court's jurisdiction over the case brought by the Philippines, directly contradicting China's position that the court had no such authority. Second, it asked the court to give "due regard" to its legal rights and interests in the Spratlys, the Paracels and in its exclusive economic zone and continental shelf when deciding on the merits of the case. Third and lastly, it rejected China's nine-dash line claim as being "without legal basis"⁴⁶. By recognizing the court's jurisdiction over the case and rejecting the nine-dotted line, Vietnam's statement arguably has implicitly supported Philippines in the case.

During the crisis ignited by the deployment of the Chinese mega oil rig in Vietnam's EEZ in May-July 2014, the Vietnamese government did consider various "defense options" against China, including legal actions⁴⁷. Prime Minister Nguyen Tan Dung ordered relevant agencies to prepare documents for legal proceedings against

⁴⁵ "Vietnam dismisses China's position paper on East Sea claims," <http://www.thanhniennews.com/politics/vietnam-dismisses-chinas-position-paper-on-east-sea-claims-35200.html>

⁴⁶ "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>

⁴⁷ "Exclusive: Vietnam PM says considering legal action against China over disputed waters," <http://www.reuters.com/article/2014/05/21/us-vietnam-china-idUSBREA4K1AK20140521>

China for “illegally placing a drilling rig in Vietnam’s waters⁴⁸.” Whether or not to undertake this strategic move, of course, would be a subject of careful consideration by the Vietnamese Communist Party’s Politburo.

COC negotiation

During 2014, facing the renewed tension in the South China Sea stemming from China’s land reclamation activities in the Spratlys and its oil rig deployment near the Paracels, ASEAN tried to accelerate the ongoing process of COC negotiation with China. On the Chinese side, the objective of eliminating external involvement in the South China Sea issues by emphasizing COC negotiations/consultations become prominent in China’s approach in 2014. In response to the aforementioned US proposal of a “freeze,” Chinese Foreign Minister Wang Yi proposed a “dual-track approach” in which “disputes [would be] addressed by countries directly concerned through friendly consultations and negotiations and in a peaceful way,” and “peace and stability in the South China Sea [would be] jointly maintained by China and ASEAN countries⁴⁹.” Yi Xianliang, deputy head of the Chinese Foreign Ministry’s Boundary and Ocean Affairs Departments, considered that the US proposal for a “freeze” on tension-raising activities “could be seen as an effort to undermine drawn-out efforts by China and ASEAN for a code of conduct in the South China Sea by acting as a replacement for the code⁵⁰.”

However, it is predictable that the process of COC negotiation/consultation will likely be protracted due to different priorities of ASEAN and China. China seems interested just in appearing to accommodate ASEAN in discussions of the COC for the purpose of showing “progress” in dispute management and demonstrating that ASEAN and China could work together and that there is no need for external involvement in the South China Sea issues. To break the deadlock, ASEAN, while continuously stresses for the early conclusion of the Code of the Conduct, advocates an “early harvest” approach on the COC—as soon as agreement is reached on one issue it should be

⁴⁸ “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>

⁴⁹ Xinhua, “China Supports ‘Dual-Track’ Approach to Resolve Dispute,” *China Daily*, last updated August 10, 2014, accessed December 21, 2014, http://www.chinadaily.com.cn/china/2014-08/10/content_18280181.htm

⁵⁰ Ben Blanchard, “China Says Can Build What It Wants on South China Sea Isles,” *Reuters*, August 4, 2014, accessed December 20, 2014, <http://www.reuters.com/article/2014/08/04/us-china-southchinasea-idUSKBN0G40UI20140804>.

implemented immediately, not waiting for agreement on the entire COC⁵¹. At the 8th ASEAN-China Senior Officials' Meeting (SOM) on the Implementation of the DOC in Bangkok on October 28-29, 2014, both sides adopted the first basket of "early harvest" measures for the COC, which includes the first document on commonalities covering broad objectives of the COC, and joint maritime search and rescue hotline and senior officials' hotline for maritime emergencies⁵². They also agreed to have the Joint Working Group (JWG) work on the second list of commonalities, which would be expanded from the first list and would be more comprehensive⁵³.

The future of ongoing negotiations/consultation on the Code of Conduct remains uncertain. At best, it is predictable that the COC process and will likely be protracted as ASEAN hopes to get China to acquiesce to a binding agreement that will, among other things, regulate China's behavior in the South China Sea. Nevertheless, for ASEAN (and Vietnam), the process of engagement with China is as equally important as the results.

Conclusion

Vietnam's policy of combining engagement and both soft and hard balancing in dealing with China's assertive strategy in the South China Sea is still widely considered to be 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 regarding two specific directions: using the international law channel, and promoting cooperation with other stakeholders. If other soft balancing acts and hard balancing measures cannot help Vietnam deter Chinese encroachment on its national interests, Hanoi might seriously consider using legal means as the last peaceful resort. On other aspects, walking a delicate balance between China and the US, Vietnam will develop its relationships with the US to the extent that such development does not

⁵¹ Carlyle A. Thayer, "Can ASEAN Respond to the Chinese Challenge? ASEAN and China tussle over how to resolve dispute over the South China Sea," *Yale Global*, 18 March 2014, <http://yaleglobal.yale.edu/content/can-asean-respond-chinese-challenge>

⁵² Foreign Office, The Government Public Relations Department, Office of the Prime Minister, Thailand, "The 8th ASEAN-China Senior Officials' Meeting," http://thailand.prd.go.th/view_news.php?id=7479&a=3

⁵³ *Ibid.*

court confrontation with China. Unless China pursues a comprehensive aggressive policy towards Vietnam, Hanoi would definitely not become Washington's ally even as Vietnam continues to promote "comprehensive" cooperation with the US. China's policy towards Vietnam at in the SCS will be a determining factor for Vietnam's policy of maintaining an appropriate balance between nurturing bonds with the US and keeping ties with China.