

Routledge Security in Asia Pacific Series

Series Editors

Leszek Buszynski, Strategic and Defence Studies Centre, the Australian National University

William Tow, Australian National University

Security issues have become more prominent in the Asia Pacific region because of the presence of global players, rising great powers, and confident middle powers, which intersect in complicated ways. This series puts forward important new work on key security issues in the region. It embraces the roles of the major actors, their defense policies and postures, and their security interaction over the key issues of the region. It includes coverage of the United States, China, Japan, Russia and the Koreas, as well as the middle powers of ASEAN and South Asia. It also covers issues relating to environmental and economic security, as well as transnational actors and regional groupings.

1 Bush and Asia

America's evolving relations with East Asia

Edited by Mark Beeson

2 Japan, Australia and Asia-Pacific Security

Edited by Brad Williams and Andrew Newman

3 Regional Cooperation and Its Enemies in Northeast Asia

The impact of domestic forces

Edited by Edward Friedman and Sung Chull Kim

4 Energy Security in Asia

Edited by Michael Wesley

5 Australia as an Asia Pacific Regional Power

Friendships in flux?

Edited by Brendan Taylor

6 Securing Southeast Asia

The politics of security reform

Mark Beeson and Alex J. Bellamy

7 Pakistan's Nuclear Weapons

Bhumitra Chakma

8 Human Security in East Asia

Challenges for collaborative action

Edited by Sorpong Peou

9 Security and International Politics in the South China Sea

Towards a co-operative management regime

Edited by Sam Bateman and Ralf Emmers

10 Japan's Peace Building Diplomacy in Asia

Seeking a more active political role

Lam Peng Er

11 Geopolitics and Maritime Territorial Disputes in East Asia

Ralf Emmers

12 North Korea's Military-Diplomatic Campaigns, 1966–2008

Narushige Michishita

13 Political Change, Democratic Transitions and Security in Southeast Asia

Mely Caballero-Anthony

14 American Sanctions in the Asia-Pacific

Brendan Taylor

15 Southeast Asia and the Rise of Chinese and Indian Naval Power

Between rising naval powers

Edited by Sam Bateman and Joshua Ho

16 Human Security in Southeast Asia

Yukiko Nishikawa

17 ASEAN and the Institutionalization of East Asia

Ralf Emmers

18 India as an Asia Pacific Power

David Brewster

19 ASEAN Regionalism

Cooperation, values and institutionalisation

Christopher B. Roberts

20 Nuclear Power and Energy Security in Asia

Edited by Rajesh Basrur and Koh Swee Lean Collin

21 Maritime Challenges and Priorities in Asia

Implications for regional security

Edited by Joshua Ho and Sam Bateman

- 22 **Human Security and Climate Change in Southeast Asia**
Managing risk and resilience
Edited by Lorraine Elliott and Mely Caballero-Anthony
- 23 **Ten Years After 9/11 – Rethinking the Jihadist Threat**
Arabinda Acharya
- 24 **Bilateralism, Multilateralism and Asia-Pacific Security**
Contending cooperation
Edited by William T. Tow and Brendan Taylor
- 25 **Negotiating with North Korea**
The Six Party Talks and the nuclear issue
Leszek Buszynski
- 26 **India's Ocean**
The story of India's bid for regional leadership
David Brewster
- 27 **Defence Planning and Uncertainty**
Preparing for the next Asia-Pacific war
Stephan Frühling
- 28 **The South China Sea Maritime Dispute**
Political, legal and regional perspectives
Edited by Leszek Buszynski and Christopher B. Roberts

The South China Sea Maritime Dispute

Political, legal and regional
perspectives

Edited by
**Leszek Buszynski and
Christopher B. Roberts**

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published 2015
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN
and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2015 selection and editorial material, Leszek Buszynski and Christopher B. Roberts; individual chapters, the contributors

The right of Leszek Buszynski and Christopher B. Roberts to be identified as authors of the editorial material, and of the individual authors as authors of their contributions, has been asserted by them in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging in Publication Data
The South China Sea maritime dispute: political, legal and regional perspectives/edited by Leszek Buszynski and Christopher B. Roberts. pages cm.— (Routledge security in Asia Pacific series; 28)
Includes bibliographical references and index.

I. South China Sea – International status. I. Buszynski, Leszek, editor of compilation. II. Roberts, Christopher B., editor of compilation. III. Buszynski, Leszek. Origins and development of the South China Sea maritime dispute. Contains (work):
KZA1692.S68 2014
341.4'480916472 – dc23
2014012825

ISBN: 978-0-415-72288-9 (hbk)
ISBN: 978-1-315-85802-9 (ebk)

Typeset in Times New Roman
by Florence Production Ltd, Stoodleigh, Devon, UK



Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY

Contents

<i>List of illustrations</i>	ix
<i>Notes on contributors</i>	x
<i>Acknowledgements</i>	xiii
<i>List of abbreviations</i>	xiv
<i>Maps</i>	xvi
<i>Introduction</i>	xxiii

1 The origins and development of the South China Sea maritime dispute	1
LESZEK BUSZYNSKI	
2 Adrift on complex waters: geographical, geopolitical and legal dimensions to the South China Sea disputes	24
CLIVE SCHOFIELD	
3 The 1982 UN Convention on the Law of the Sea and its relevance to maritime disputes in the South China Sea	46
DONALD R. ROTHWELL	
4 China's South China Sea policy: evolution, claims and challenges	60
JIAN ZHANG	
5 Vietnam's evolving claims	83
DO THANH HAI	
6 The 2012 Scarborough Shoal stand-off: from stalemate to escalation of the South China Sea dispute?	111
RENATO CRUZ DE CASTRO	
7 ASEAN: the challenge of unity in diversity	130
CHRISTOPHER B. ROBERTS	

viii	<i>Contents</i>	
8	The US rebalance to Asia and the South China Sea disputes	150
	RALF EMMERS	
9	Australia's interests in the South China Sea	164
	MICHAEL WESLEY	
10	The South China Sea as a 'crisis'	173
	BRENDAN TAYLOR	
11	The South China Sea: stabilisation and resolution	187
	LESZEK BUSZYNSKI AND CHRISTOPHER B. ROBERTS	
	Conclusion	209
	<i>Index</i>	217

Illustrations

Figures

5.1	Oil production and consumption of Vietnam	91
5.2	Fisheries total capacity and catch per unit effort of Vietnam (1985–2005)	91

Maps

1	Maritime claims	xvi
2	Official Chinese map of the South China Sea with the nine-dash line	xvii
3	The South China Sea, including Vietnam's current claim	xviii
4	South China Sea, showing EEZ claims	xix
5	The Joint Marine Seismic Undertaking 1	xx
6	The Joint Marine Seismic Undertaking 2	xxi
7	Proven and probable oil reserves	xxii
8	Vietnam's claimed straight baselines, 1982	107
9	Vietnam petroleum concession block map (1980s)	108
10	Map of South China Sea claims by Vivian L. Forbes (2001)	109
11	Delimitation line and joint fishing zone (Gulf of Tonkin)	110

Notes on contributors

Leszek Buszynski is a Visiting Fellow at the National Security College, Australian National University. From 1997 to 2010, he was professor of International Relations, at the International University of Japan (IUJ). From 1997 to 2001, he was Dean of the Graduate School of International Relations at the IUJ and concurrently Director of the IUJ Research Institute. He has published widely on Asia Pacific security issues, including 'The South China Sea Maritime Dispute: Legality, Power, and Conflict Resolution', *Asian Journal of Peacekeeping*, 1(1), 2013, and 'The South China Sea: Oil, Maritime Claims, and U.S.–China Strategic Rivalry', *The Washington Quarterly* 35(2), March 2012.

Renato Cruz De Castro is a Professor in the International Studies Department, De La Salle University, Manila, and the holder of the Charles Lui Keung Professorial Chair in China Studies. He has a PhD from the University of South Carolina, where he was a Fulbright Scholar in 2001. His published work includes 'The Philippines in 2011: Muddling through a Year of Learning and Adjustment', *Asian Survey*, 52(1), January/February 2012, 'The Aquino Administration's 2011 Decision to Shift Philippine Defense Policy from Internal Security to Territorial Defense: The Impact of the South China Sea Dispute', *Korean Journal of Defense Analysis*, 24(1), March 2012, 'The Obama Administration's (Neo-Liberal) Engagement Policy in East Asia: Implications for U.S.–China Relations in the 21st Century', *Issues and Studies*, 47(2), June 2011, and 'Weakness and Gambits in Philippine Foreign Policy in the 21st Century', *Pacific Affairs*, 83(4), December 2010.

Do Thanh Hai is a doctoral candidate at the Strategic and Defence Studies Centre, Australian National University, before which he was a researcher with the Institute for Foreign Policy and Strategic Studies, Diplomatic Academy of Vietnam, a think tank affiliated to the Ministry for Foreign Affairs, Vietnam. He holds a Bachelor of Arts in International Relations from the Institute of International Relations in Vietnam and a Master of Arts from the European Master's Course 'Global Studies – A European Perspective' jointly offered by the University of Vienna and the University of Wrocław. He was awarded an Erasmus Mundus Scholarship and the Award for Best Graduate of the Year 2008 by the Erasmus Mundus Global Studies Consortium.

Ralf Emmers is Associate Professor at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Singapore. He is the author of *Resource Management and Contested Territories in East Asia*, Palgrave Macmillan, 2013, *Geopolitics and Maritime Territorial Disputes in East Asia*, Routledge, 2010, and *Cooperative Security and the Balance of Power in ASEAN and the ARF*, RoutledgeCurzon, 2003.

Jian Zhang is a Senior Lecturer in International and Political Studies in the School of Humanities and Social Sciences at the Australian Defence Force Academy, the University of New South Wales, Australia. He received his Bachelor's and Master's degrees from Zhejiang University in China and completed his PhD at Murdoch University, Western Australia. He has held teaching and research positions in the School of Economics at Zhejiang University and the Asia Research Centre of Murdoch University. His primary research interests are Chinese politics and foreign and security policy, Australia–China relations, international relations in Asia-Pacific, and Asia-Pacific regionalism. He is the author of *Government and Market in China: A Local Perspective*, Nova Science Press, 2004.

Christopher B. Roberts is Associate Professor and Director of Executive Education within the School of Humanities and Social Sciences at the University of New South Wales (Australian Defence Force Academy campus). Christopher specialises in Southeast Asian security, politics, and institutional developments. Notable publications include four sole authored and edited books – *Indonesia's Ascent: Power, Leadership, and the Regional Order* (Palgrave Macmillan, forthcoming), *ASEAN's Myanmar Crisis: Challenges to the Pursuit of a Security Community* (ISEAS, 2010), and *ASEAN Regionalism* (Routledge, 2012) – as well as an ASEAN commissioned (but AusAid funded) report on the East Asia Summit.

Donald R. Rothwell is Professor of International Law and Head of School at the ANU College of Law, Australian National University. His research has a specific focus on law of the sea, law of the polar regions and implementation of international law within Australia. His books include *Law of the Sea*, Edward Elgar, 2013, *Antarctic Security in the Twenty-First Century: Legal and Policy Perspectives*, with Alan Hemmings and Karen Scott, Routledge, 2012, *The International Law of the Sea*, with Tim Stephens, Hart, 2010, and *The Polar Regions and the Development of International Law*, Cambridge University Press, 1996. A co-edited book work with Alex Oude Elferink and Erik Molenaar, entitled *The Law of the Sea and Polar Regions: Interactions between Global and Regional Regimes*, is in press.

Clive H. Schofield is Director of Research and Professor at the Australian Centre for Ocean Resources and Security (ANCORS), University of Wollongong, Australia. He is presently an Australian Research Council Future Fellow and is Academic Leader of the University of Wollongong's Global Challenge research initiative on Sustaining Coastal and Marine Zones. He holds a PhD in Geography from the University of Durham, UK, and also holds an LLM in International Law from the University of British Columbia. He is one of the foremost authorities on maritime boundary delimitation and security in the Asia-Pacific region, including disputes over islands, and geotechnical and spatial analysis of claims to straight baselines around the world and their impact on maritime jurisdiction and ocean management. He is co-editor, with Bruce Elleman and Stephen Kotkin, of *Beijing's Power and Borders: Twenty Neighbors in Asia*, M. E. Sharpe, 2012, and is co-author, with Victor Prescott, of *The Maritime Political Boundaries of the World*, Brill, 2005.

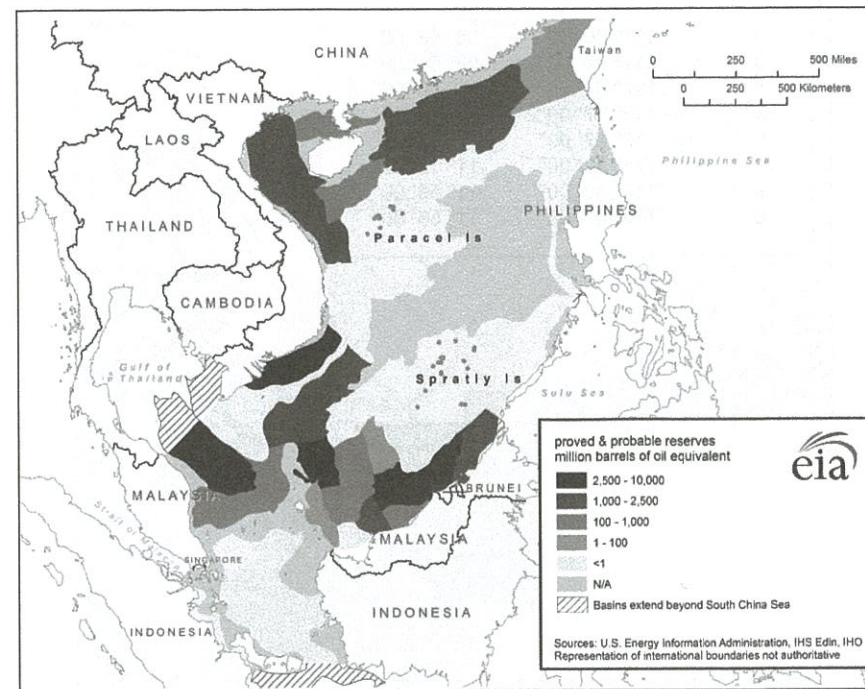
Brendan Taylor is Head of the Strategic and Defence Studies Centre, Australian National University. He is a specialist on great power strategic relations in the Asia-Pacific, economic sanctions and Asian security architecture. His publications have featured in such leading academic journals as *International Affairs*, *Survival*, *Asian Security*, *Review of International Studies* and the *Australian Journal of International Affairs*. He is the author of *Sanctions as Grand Strategy*, which was published in the International Institute for Strategic Studies (IISS) Adelphi series, as well as *American Sanctions in the Asia Pacific*, Routledge, 2010. He is also the editor of *Australia as an Asia-Pacific Regional Power*, Routledge, 2007, *Insurgent Intellectual: Essays in Honour of Professor Desmond Ball*, ISEAS, 2012, and *Bilateralism, Multilateralism and Asia-Pacific Security*, Routledge, 2013.

Michael Wesley is Professor of National Security and Director of the School of International, Political and Strategic Studies at the Australian National University. He was Executive Director of the Lowy Institute for International Policy from June 2009 to August 2012 and Director of the Griffith Asia Institute at Griffith University, Brisbane, Australia. He completed his PhD at the University of St Andrews in Scotland. He is a Visiting Professor at the University of Hong Kong, and was a Lecturer at the University of New South Wales, Sydney, Australia. He was an official with the Australian government at the Office of National Assessments. He is the author of *There Goes the Neighbourhood: Australia and the Rise of Asia*, UNSW Press, 2011, and *The Howard Paradox: Australian Diplomacy in Asia 1996–2006*, ABC Books, 2007.

Acknowledgements

The editors would like to thank Michael L'Estrange, Director of the National Security College at the Australian National University, for approving the funding for the workshop on the South China Sea on 28 March 2013, upon which this book was based. Many thanks also to the staff of the college for their unstinting help and assistance in arranging the workshop and also for taking care of the many tasks and duties that followed. The college also funded the fieldwork undertaken by the editors in Kuala Lumpur, Phnom Penh, Hanoi and Beijing in April and June of the same year, for which we are most grateful. Many pertinent ideas, perceptive insights and percipient observations were gleaned from interviews, meetings and conversations that were conducted during the fieldwork, both on a strictly formal basis and in a more casual atmosphere. Most of the interviewees will remain nameless by their own choice, as required by their position and office, but some can be named and thanked for their time and contribution. A particular thank you to Prince Norodom Sirivudh for his explanation of Cambodia's position in ASEAN, Dr Tranh Troung Thuy of the Diplomatic Academy of Vietnam for his explanation of the Vietnamese position, and Dr Wang Hanling of Centre for Ocean Affairs and the Law of the Sea in Beijing for his views of China's policy towards the issue, and also for introducing us to Guangxi cuisine.

Introduction



Map 7 Proven and probable oil reserves
Source: US Energy Information Administration

The chapters in this volume are based on papers presented at a workshop on the South China Sea held on 28 March 2013, sponsored by the National Security College, the Australian National University, Canberra ACT. They have been revised according to feedback and comments received and suitably updated. The stimulus for the workshop was concern over the development of events there and the conviction, as expressed by some commentators, that the area was a potential 'flashpoint', which, under certain circumstances, could get out of control. Some see the issue as a case of Chinese pressure upon the Association of Southeast Asian Nations (ASEAN) claimants that are calling upon external support from the US and Australia. China, they say, is becoming expansionist and is pressing the ASEAN claimants to recognise its claim to the area by resorting to deliberately low-key pressure tactics against them. Others see the issue as a problem that could be resolved by negotiation and within the framework of international law. They argue that China is simply pressing for recognition of its rights to the area and will negotiate with the ASEAN claimants in good faith in time, or, to use a well-known expression often used by Chinese representatives, 'when conditions are ripe'. Some thought that the dispute should be looked at historically and that Southeast Asian cultures had traditionally deferred to China and would do so again over this issue. The ASEAN countries would learn to live with Chinese primacy, as they have always done. Still others are undecided and wait for events to play out before committing themselves to any particular view. Presenters at the workshop adopted various perspectives, which, one way or another, touched upon these views, depending on their professional background or their country affiliation.

Chapter 1, by Leszek Buszynski, examines the development of the dispute over the past few decades. It is necessary to remind ourselves that this was not always a major dispute in quite the same way that we see it now, and that it developed in stages. In the past, the South China Sea was China's southern maritime frontier, and not included within the borders of the empire. China is today engaged in an effort to transform what was a frontier zone outside the dynastic state into national territory, just like Taiwan or Tibet. Chapter 2 is by Clive Schofield, who analyses the conflicting and overlapping claims to the South China Sea from spatial, legal and geopolitical perspectives. He outlines the geographical context of the South China Sea to explain the factors that inform and underlie the South China Sea

dispute. Chapter 3 is by Donald R. Rothwell, who examines the legal side of the dispute, specifically the capacity of the features in the South China Sea to generate maritime zones consistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). One issue is whether these maritime features are Article 121 (1) islands, or Article 121 (3) rocks. A second issue is whether these features will be considered for the purposes of delimiting the exclusive economic zone (EEZ) or continental shelf maritime boundaries. Chapter 4 is by Jian Zhang, who explains China's perspective. He notes that China's assertive actions have been undertaken by civilian governmental and maritime law enforcement agencies, which could be described as 'administrative diplomacy'. Jian argues that within China, there is an increasing recognition of the importance and legitimacy of international law and UNCLOS, and that China may consider a diplomatic and even legal solution to the dispute in the future. In Chapter 5, Vietnam's perspective is explained by Do Thanh Hai, who argues that Hanoi has redefined its claims to maritime zones in the South China Sea to ensure consistency with international law and UNCLOS. Vietnam has clarified the limits of its EEZ and continental shelf claim, as measured from the baseline of the mainland, and may be willing to accept that the Spratly and Paracel features may not be entitled to full maritime zones. Vietnam has been pressed by China, which has made Vietnamese leaders aware of the importance of international law as a support for their own claims to the area. The Philippine position is outlined by Renato Cruz De Castro in Chapter 6. In this chapter, he examines China's challenge to the Philippine claim in the South China Sea, which led up to the two-month-long standoff between Philippine and Chinese civilian vessels in the Scarborough Shoal. He notes that the Philippines was the first to bring the South China Sea issue to adjudication when, in January 2013, it appealed to an Arbitral Tribunal under Annex VII of UNCLOS. In Chapter 7, Christopher B. Roberts analyses ASEAN's role in the dispute and the reasons for the divisions in ASEAN over the issue. ASEAN had been relatively unified during the 1990s, but since China has become more assertive over the South China Sea issue, it has become disturbingly divided between pro-Beijing members and claimants such as Vietnam and the Philippines, both of which seek ASEAN solidarity over the issue. In Chapter 8, Ralf Emmers adumbrates the US position over the South China Sea in the context of its rebalancing effort towards the Asia-Pacific. He notes that the US stresses the importance of freedom of navigation in the area and the need to uphold the key international rules for defining territorial claims in the South China Sea. In Chapter 9, Michael Wesley traces the implications for Australia and argues that Australia's disinterest in the issue is unsustainable, and that it has to become more ambitious. He stresses that Australia should promote a sustainable solution to the South China Sea dispute in recognition that its interests are affected. In Chapter 10, Brendan Taylor compares the South China Sea with other potential conflict zones in the region, such as the Korean Peninsula and the East Sea, and argues that despite the attention it receives, it should not be considered a crisis yet.

What kind of solution can there be that has not been discussed before? In Chapter 11, Leszek Buszynski and Christopher B. Roberts distinguish between

stabilisation and resolution of the issue. Proposals to stabilise the issue to prevent conflict and escalation include Code of Conduct (CoC), which has been promoted by ASEAN, and an Incidents at Sea Agreement (INCSEA) of the kind that the two superpowers the US and the Soviet Union, concluded in 1972. Disturbing incidents have occurred in the South China Sea such as cutting the cables of Vietnamese vessels and the harassment of fishing vessels, which could result in accidental conflict. An INCSEA would detail procedures to avoid close contact between vessels in the area to prevent unintended clashes. Resolution of the dispute, however, is much more ambitious. Proposals to resolve the dispute include a legal resolution based on UNCLOS, joint development of the hydrocarbon resources, second-track diplomacy and a cooperative maritime regime. All had considerable appeal at the time they were raised, but none has been implemented. Despite the appeal of a legal resolution, China has not defined its claim in legal terms and shows no signs of doing so. This chapter calls for a UN conference on the South China Sea, which would deal with the legal situation of semi-enclosed areas where claims overlap. It would combine the benefits of a cooperative maritime regime with a legal resolution, and it argues that if there were to be a resolution of the issue, it would come about in no other way.