Introduction

John B. Welfield and Le Thuy Trang

Interstate conflict, in the view of one-third of the global decision-makers and experts assembled to compile the World Economic Forum 2015 Global Risks Report, was the most probable serious danger facing the East Asia-Pacific region over the coming decade.¹ A Pew Research Center global opinion poll conducted in the spring of 2014 found that people in eight of the 11 Asian countries surveyed expressed fears about possible military conflict over territorial disputes involving the People's Republic of China and its neighbors. In China itself, more than six in every ten citizens expressed similar concerns. Two-thirds of Americans in 2014 also feared that intensifying territorial disputes between China and its neighbors could spark an armed conflict.² Although the World Economic Forum 2017 Global Risks Report considered such conflict as a decreasing risk in terms of likelihood and impact,³ majorities in China, Japan and several other East Asian nations remained concerned about territorial tensions and the strategic drama being played out between the United States and China on land and at sea across the region had begun to fuel fears that the "Pacific century" might be shattered by a new Pacific war.⁴ For better or for worse, Southeast Asia, the region which has given birth to the most vigorous efforts to construct a regional security architecture designed to ensure long-term peace and stability in Asia and the wider Pacific Basin, is today confronted by a series of intractable problems that may well constitute the greatest tests it has faced since the end of the Cold War.

Much has been said about the significance of the South China Sea for the security and development of the Indo-Pacific. This sea offers the shortest route from the Pacific Ocean to the Indian Ocean. About half of the world's commerce, half of global liquefied natural gas and a third of global crude oil transit through this body of water each year.⁵ Two-fifths of the world's tuna are born in the South China Sea, contributing to a multibillion-dollar fisheries industry.⁶ These statistics, oft-cited, are just a few indicators of the South China Sea's importance to the region and the world at large. A durable regional security system that can deliver lasting stability and prosperity for the Indo-Pacific cannot be constructed in the

absence of a smoothly functioning regional maritime order in this critical area. Yet this body of water, blessed with so many valuable resources and crisscrossed by a network of vital sea-lanes, has become the home to some of the most intractable territorial disputes in Asia and a stage for intensifying great power strategic competition. The longstanding territorial and maritime disputes simmering in the South China Sea and the machinations of great powers have been slowing down the momentum for regional cooperation and frustrating attempts to forge a robust and mutually beneficial security architecture. There is also another troubling dimension of very great significance. While the tempo of regional cooperation has slackened, the rate at which the South China Sea marine environment is deteriorating has accelerated. Forty percent of the South China Sea's fish stocks have already been exhausted and, according to the United Nations Food and Agriculture Organization, most fish resources in the western part of the South China Sea have been exploited or overexploited.⁷ Meanwhile, 70 percent of the South China Sea's coral reefs are reported to be in poor or only fair condition.⁸ Put simply, while the challenges to the South China Sea marine environment are growing, the capacity of regional mechanisms to effectively address those challenges has been undermined or severely constrained.

What, then, can be done to avert the specter of war and better utilize the potential of the South China Sea for the benefit of all stakeholders? If, as many observers have long predicted, the future of the South China Sea will have profound consequences for world politics, how are we to shape that future?⁹ Those are questions that participants in the annual International scholarly dialogue on "The South China Sea: Cooperation for Regional Security and Development," organized by the Diplomatic Academy of Vietnam (DAV), the Vietnam Lawyers Association (VLA) and the Foundation for East Sea Studies (FESS), have grappled with over the past several years. The dialogue, first held in 2009, has endeavored to provide a venue for scholars and policymakers to explore possible ways to manage disputes, prevent conflicts, ensure peace and foster development in the South China Sea. The wide array of views and perspectives brought to the dialogue over nearly a decade reflects a breadth and intensity of interest in the South China Sea, both within the region and beyond, that will be much needed if constructive engagement and cooperation on the many complex issues confronting all the parties involved are to be sustained.

Yet amid all the differences and uncertainties, there is one encouraging sign that has been appreciated by regular attendees and interested observers of the DAV–VLA–FESS initiated dialogue process. While agreement on a final settlement of the South China Sea issues remains elusive,

participants in this process have arrived at a consensus on at least three points. First, informed policy decisions require deep understanding of recent developments in their historical context, a thorough appreciation of the stakes involved and careful consideration of all possible consequences. Second, given the varied interpretations of history that have contributed to fomenting tensions and disputes in the South China Sea, the functionality of the current rules-based international system demonstrates that international law has a role to play in expediting durable solutions to those disputes. Third, and perhaps most importantly, while the South China Sea issues are far more complicated than many imagine, effective management of the disputes and the search for peaceful solutions to them are worthy of sustained efforts by all concerned. In brief, a common awareness has emerged that the increasingly precarious South China Sea security environment is posing greater challenges to efforts to promote stability and development in the region, and that this predicament is precisely why greater commitment and determination are necessary.

That, in essence, is what this book is about. A collection of some of the most informative and insightful analyses presented at recent DAV–VLA–FESS dialogues on the South China Sea, this volume is intended to offer a deeper look at the rapid changes sweeping the region, at the impact of these changes on policymakers and at the new security environment emerging as a result of their decisions. “Security,” in this context, includes the vital issues of environmental and food security. The book aims to promote greater awareness of the nexus between international law and enhanced prospects for regional security. If some degree of consensus on the provisions of international law and their relevance to the problems of the region can be realized, the application of international legal principles might help the countries around the South China Sea to mitigate, or perhaps remove altogether, the recurring tensions and persistent disputes that poison their relations. Moreover, as the application of law and the pursuit of order fare better in a constructive atmosphere of mutual trust and forbearance, this volume is also intended to enrich the ongoing global discussion on conflict management as well as to chart potential pathways to improving the security climate in the South China Sea.

The structure of this book reflects these objectives. The first section provides some critical appraisals of the current South China Sea situation and the driving forces behind it. Andrew Scobell opens the floor by examining a number of worrisome recent developments, which, in his view, have the potential to undermine regional peace and stability in the short to medium term. He begins by looking at the history of the South China Sea sovereignty disputes and suggests that in view of the small size of the maritime features lying at their heart, the real issues are more about

maritime jurisdiction and dominance than about territorial control *per se*. Against this background, developments since the late 2010s seem to represent a new “high simmer” phase in what he describes as a “slow boil” of tensions in the South China Sea. China, portrayed as engaged in a “long game” to advance and consolidate its presence in the South China Sea, is generally seen as the main actor setting the temperature of the boil. Scobell notes, however, that Beijing views its actions in the Sea as a response to the U.S. “pivot to Asia” announced in 2010 and to Washington’s subsequent assertive posture in the region. However this may be, Scobell warns that Beijing’s strategy of “low intensity conflict,” employing many different instruments of national power to wage a protracted struggle characterized by innumerable small skirmishes short of war, could lead to further erosion of trust and confidence in regional cooperation and exacerbate the “security–insecurity paradox,” serving to worsen the security climate and torpedo the fragile process of dialogue and negotiation in the South China Sea. He concludes his chapter with a number of constructive suggestions for deescalating tensions, managing the disputes and, eventually, resolving them.

Michael Yahuda, too, seeks to explain the increasingly precarious security situation in the South China Sea, but focuses his analysis on the exploitation of the power imbalances in the region by some of the relevant parties. He argues that the Chinese leadership under Xi Jinping has tried to thwart external interference in regional affairs, advance its territorial and maritime claims and boost Beijing’s centrality and economic clout in Asia by attempting to draw China’s neighbors into an ever-expanding and deepening web of socio-economic links with the PRC. He points out that Beijing’s efforts to push forward its vision for a China-centric hub-and-spokes system in Asia, however, have met with only a partial success. While the PRC is certainly ASEAN’s major trading partner, and the single most important trading partner of every country in the region, it must contend with the well established position of its principal rivals, the U.S., Japan and the EU, all of which far outstrip it in terms of investment in ASEAN. The impact of Beijing’s “One Belt One Road” initiative on this evolving balance has yet to be felt since it is still in its very early stage of development. China’s own future as an economic power, too, faces many uncertainties. It is China’s superior military strength and its ability to exploit the divisions within ASEAN, Yahuda contends, that perpetuate the power asymmetry between the organization’s member states and the PRC and ensure that it always works to Beijing’s advantage. In Yahuda’s view, ASEAN’s operating principle of consensus, while helping to reduce internal frictions and enable member countries to work together to elevate the organization’s profile over the past several decades, has weakened its

ability to hammer out an effective response to China's forceful pursuit of sovereignty claims in the South China Sea. On the other hand, continued Chinese pressure and attempts to undercut ASEAN's ability to formulate and carry out collective action have encouraged individual ASEAN member states to search for alternative ways to defend their territorial and maritime interests. These measures, Yahuda warns, could well raise the cost of China's military activism and cause significant shifts in the regional security environment, although recent leadership changes in a number of regional and extraregional states have made prediction even more difficult than usual.

Implicitly concurring with Scobell's description of the South China Sea as a region in "slow boil" but seeking to provide an alternative narrative, Wu Xiangning and You Ji demonstrate how the Chinese leadership under Xi Jinping views the Sea from the vantage point of a rising power enjoying enhanced positional advantages but also confronting an increasing number of constraints. Beginning with a succinct account of the process whereby the South China Sea has come to be defined as one of China's core interests, Wu and You examine a wide range of issues that have impacted on Chinese strategic thinking and consequently on Beijing's adoption of a more assertive posture in that body of water. These include Beijing's perception of the true significance of the U.S. "pivot to Asia" and increased American involvement in the South China Sea disputes, rising nationalism, the perceived tendency on the part of other South China Sea claimants to engage in behavior deemed excessive and detrimental to Chinese interests, civil-military relations and the expanded role of the People's Liberation Army in Chinese South China Sea policy formulation and execution, public opinion and the need to cultivate the domestic sources of the Chinese leadership's legitimacy. As they seek to strike a balance between avoiding war and projecting an image of strength in the face of external and domestic pressures, Wu and You contend, the Chinese leadership under Xi has embarked on an assertive South China Sea policy as a way to preempt the eruption of actual military conflict. Beijing has embarked on this course of reactive-assertiveness, even though it may mean further tensions with and alienation from its neighbors, because the South China Sea has emerged as a stage for U.S.–China strategic rivalry, where the ultimate goal of both powers is to write the script of the play.

The transformation of the South China Sea from an arena of festering territorial disputes to a theater for great power competition is also the theme of Leszek Buszynski's chapter. Unlike Wu and You, however, Buszynski considers that Beijing's shift to an assertive *modus operandi* in the South China Sea has been a deliberate rather than a reactive choice. He argues that the PRC's strategic and foreign policy decisions emerge

within the context of a hierarchical order of priorities which Chinese leaders believe they must respect in order to ensure their country's security. There is a consensus among the Chinese Communist Party leadership, the Chinese military and the security establishment, regardless of institutional inclinations, that strengthening China's ability to prevail in a hypothetical Taiwan Straits conflict, guarding the nation's oil transportation routes through the Malacca Straits and developing a protected area for its nuclear submarines based at Sanya in Hainan to counter U.S. nuclear capability constitute the PRC's most important strategic interests, which must be upheld at all costs. It is these interests that have dictated China's efforts to stake out an exclusive claim to the greater part of the South China Sea and to dislodge U.S. and other major powers from it, despite the fact that the 2016 Arbitral ruling on the South China Sea case between the Philippines and China might have opened opportunities for policy recalibration. Observing Beijing's move to enclose the South China Sea, Buszynski argues, other claimant states as well as the U.S., its allies and partners fear that they have reached a critical juncture where swift and decisive measures are needed to check China's attempts to gain a positional advantage from which to threaten their maritime interests. Buszynski offers a nuanced description of a classic strategic dilemma that underlies the growing competition and rivalries in the South China Sea.

The first part of this volume does not strike a very hopeful note. Such, however, are the realities of the South China Sea at the time of this writing. Buszynski's concluding suggestion that the 2016 UN Convention on the Law of the Sea (UNCLOS) Arbitral Award on the South China Sea, if accepted and conscientiously upheld by all parties, could create favorable grounds for a positive transformation of the regional security environment serves as a good transition point to the second part of this book, which looks at the evolving South China Sea disputes from the perspective of international law. The focus here is on two closely related issues. First, how the principles enshrined in the UNCLOS, which, since its adoption in 1982, has come to be widely (albeit not universally) recognized as the most authoritative manual both on maritime issues and on the management and utilization of marine natural resources, should be applied to the complex situation in the South China Sea. Second, and more specifically, how the UNCLOS Annex VII Arbitral Tribunal's decision on the Philippines–China case, and the reaction of the various parties to it, might affect the future of this troubled body of water.

Vu Hai Dang begins by examining the legal regime of maritime features as defined in the UNCLOS and international jurisprudence as well as in international and regional practice. Pointing out the many differences between the views of Vietnam and China with regard to the historical

and legal status of the Paracel Islands, which have rarely been discussed at length because of China's refusal to acknowledge the existence of a dispute over the sovereignty of the archipelago, Vu argues that understanding these differences and carefully studying the actual extent of entitlements that could be conferred on the various features of the island group under international law might not only help dampen perennial tensions but also deter activities that might compound existing tensions, such as the May 2014 deployment of a Chinese oil rig near the Paracels and within Vietnam's claimed exclusive economic zone. On the basis of a meticulous scrutiny of international law and practice, Vu comes to the conclusion that very few of the features in the Paracels can be regarded as "islands" entitled to archipelagic baselines or capable of generating an exclusive economic zone (EEZ) or continental shelf. Because of this, and because the sovereignty issue is currently impossible to resolve, Vu suggests that Vietnam and China should make joint efforts to "enclose" and "diminish" the Paracels dispute, move forward with delimitation of the area at the mouth of the Gulf of Tonkin, negotiate a fisheries agreement, undertake joint scientific research around the islands as a confidence building measure and draw up a mutually acceptable register of low-tide elevations incapable of generating maritime entitlements, which will effectively eliminate a large number of "disputed" features and pave the way for further beneficial bilateral cooperation.

James Kraska extends the discussion on maritime entitlements to examine the legal structure of the exclusive economic zone as codified in the UNCLOS and international legal practice. The points he makes bear great relevance to the heated discussion on the recent Philippines–China Arbitration Award. Tracing the history of the development of the EEZ regime from state practice in the 1950s–1970s to negotiations during the three United Nations conferences on the law of the sea, Kraska concludes that the EEZ has been one of the most forward-looking concepts in recent international law. Its fundamental purpose has been to override the notion of "historic rights" and establish a new set of principles designed for the optimal management and conservation of the oceans' resources. By granting coastal states special authority to regulate the exploitation and conservation of natural resources within the 200-nautical mile zone projecting seaward from their coasts, the EEZ regime helps protect the economic needs of coastal communities while allowing other states access to the surplus resources through mutual arrangements with the coastal states that ensure the sustainability of the resources utilized. This, Kraska argues, is a balanced *modus operandi* that should be observed by all the South China Sea states, regardless of how the various disputes over legal title to the maritime features of the Sea are eventually resolved.

Kraska's call for greater commitment to a rules-based order of the oceans opens the way for a wider discussion of the rules and conventions governing state behavior in and above disputed waters, and to the legal and practical implications of that behavior, especially to its potential impact on territorial claims. Two highly controversial contemporary issues are taken up here. The first is examined by Nguyen Thi Lan Anh in her chapter on the question of constructions at sea. The second is the law and practice governing Air Defense Identification Zones (ADIZs) taken up by Robert Beckman and Phan Duy Hao.

Nguyen Thi Lan Anh's exhaustive analysis of both the UNCLOS and international customary law leads her to the conclusion that sufficient legal guidance for the conduct of activities that involve making or installing man-made objects or features in the marine environment already exists. For the advancement of good order at sea, the crux of the debate is not about whether those activities are permissible under international law but about under what conditions they can be carried out. While the rights to construct and operate facilities are bestowed exclusively upon coastal states in the waters landward of the EEZ limit and generally upon every state in high sea areas, Nguyen notes, such rights must be exercised with a view to not impeding the navigation rights of other states or degrading the marine environment. She also points out that the liberty states enjoy in undertaking construction at sea does not include the liberty to claim full maritime zones for man-made features or artificial islands, since the legal status of those features and islands is determined before, not after, construction activities have begun. Using desktop geographic information system software to establish the hypothetical baselines and territorial sea limits of several disputed Spratly features based on their geographical configuration, Nguyen illustrates vividly how the extensive land reclamation works being undertaken in, on and around those features are not only devoid of any capacity to advance maritime claims but are also conducive to stoking tensions and escalating disputes. This, she argues, speaks to the need of promoting interim arrangements and prior consultation with regard to constructions at sea among the concerned parties.

China's declaration of an ADIZ in the East China Sea in November 2013 and subsequent suggestions that it might establish another one in the South China Sea provoked alarm throughout the Asia-Pacific region. Robert Beckman and Phan Duy Hao, in their chapter, examine the legal framework and practice governing ADIZs and seek to place China's action in its historical and legal context. They also look at the potential impact of ADIZs on territorial/maritime disputes and at the diplomatic and security implications of a possible Chinese ADIZ in the South China Sea. They make a number of significant observations. First, ADIZs are common in

all parts of the world, including the Asia-Pacific region. Many countries have established and maintained ADIZs, including the U.S., Japan, South Korea, and several others. China's declaration of an ADIZ, therefore, was not an unusual act for a sovereign state to take. Second, the status of ADIZs in both conventional and customary international law is nebulous. State practice, moreover, is neither uniform nor consistent. Third, the principles of international law governing airspace, particularly the principle concerning freedom of overflight outside the territorial sea, and the fact that ADIZs are unilaterally declared zones, make it clear that ADIZ proclamations cannot help strengthen the proclaiming state's sovereignty and maritime claims over disputed offshore features and waters. Fourth, precisely because the legal basis of ADIZs is unclear and state practice concerning them is far from consistent, countries should work together to develop "rules of the road" and ensure application of best international practice rather than adopt unilateral measures likely to arouse unease and complicate existing disputes. Fifth, although China might enjoy the right to proclaim an ADIZ in the South China Sea, any attempt by Beijing to establish such a zone there, incorporating either the Paracels alone or both the Paracels and the Spratlys, would be fraught with grave political and strategic dangers, exacerbating Sino-Vietnamese friction, raising tensions with all ASEAN member states and provoking reactions from the United States, Japan, Australia and other countries outside the region.

To complete the discussion on some of the legal issues most germane to recent developments in the South China Sea, Jonathan G. Odom examines the legality of freedom of navigation operations (FONOPs) such as those that have been conducted by the United States in the vicinity of the Paracels and Spratlys. After discussing the basis of U.S. freedom of navigation policy, Odom differentiates between four types of claims that lie at the core of the disputes in the South China Sea. Among these, restrictive, or excessive, maritime claims pursued by a coastal state that impose undue limits on the activities of other seafaring nations in that coastal state's maritime zones are considered most liable to being challenged by FONOPs. After reviewing a number of factors that have complicated the identification of excessive maritime claims and therefore affected the conduct of FONOPs, including the continued lack of clarity on the part of a number of South China Sea claimant states as regards their maritime claims and the increased pace of reclamation activities at many of the Paracel and Spratly features, Odom explains how the 2016 ruling by the Arbitral Tribunal in the Philippines-China case has to a certain extent reduced the potential impact of these factors and helped place the South China Sea FONOPs on firmer grounds. On that premise, and after scrutinizing the justifications for U.S. South China Sea FONOPs in international law and conventional

state practice as well as examining the policies of other states with regard to FONOPs, Odom makes an emphatic appeal for concerted South China Sea freedom of navigation efforts to delegitimize excessive maritime claims lest they become accepted through continuous enforcement.

The various surveys of international law in the second section of this book, no doubt, demonstrate its importance in increasing awareness of the issues involved in the South China Sea disputes and in illustrating how the effective utilization of global rules and regulations might help in managing them. The plain fact is, however, that the legal debate is becoming more and more complex. Rather than moving toward a common understanding of international legal principles governing state practice in the maritime domain, for which the release of the 2016 Arbitral Award on the Philippines–China case might have created auspicious conditions, the parties to the disputes seem to be veering off onto increasingly divergent paths, driven not only by their persistent differences about some of the core aspects of international law itself but also by the temptation to pursue individual agendas that raise new legal issues in the ongoing debate. Since the uniform application of international law requires not only familiarity with global rules and norms but the willingness to work with others to sustain a normative order that can help advance collective interests, the last part of this volume is devoted to presenting some concrete suggestions to elevate the level of mutual trust, prevent conflict and foster a cooperative environment in the South China Sea.

In the first chapter of this section, Vu Thanh Ca looks at the potential of environmental conservation and promotion of biodiversity as areas for regional countries both to foster sustainable development and to build mutual trust and cooperation. He begins by examining the current state of the ecological system and the living resources in the South China Sea, notably fish and coral species, which, due to the semi-enclosed nature of the Sea, are inherently vulnerable to environmental stress, man-made or otherwise. Human activities, he notes, are causing irreparable damage to the South China Sea marine environment. This discussion is followed by an assessment of the various existing national laws as well as regional and international mechanisms that have been created to foster better management of the South China Sea marine ecosystem as part of the world's oceans. These laws and mechanisms, he laments, are in abundant supply but their implementation and functioning is woefully inadequate. They may, to some extent, be effective in coastal areas but the central area of the South China Sea continues to be neglected largely because of the long-standing territorial and maritime disputes there. To solve this problem, Vu puts forward the idea of instituting an integrated regional framework for monitoring and managing the environmental conditions of the entire

South China Sea, based not only on rigorous application of UNCLOS principles but also on implementation of the July 2016 Hague Arbitral Award. Proceeding in this way, he argues, would help narrow the areas in dispute as well as define the “high sea” area in the South China Sea where different cooperative mechanisms could be established.

Raphael P. M. Lotilla, in his chapter, probes more deeply into the UNCLOS and the 2016 Hague Arbitral Tribunal Award to develop a possible concrete legal framework for regional cooperation on environmental issues. Concurring with Vu Thanh Ca’s assessment that the semi-enclosed nature of the South China Sea and the “tragedy of the commons” make it inherently susceptible to environmental threats such as pollution and other human-related hazards, and that the central part of the South China Sea is especially experiencing increasing stress due to the accelerated pace of island reclamation activities there, Lotilla argues that the relevant provisions of the 2016 Hague Tribunal ruling have clarified the legal boundaries of what is acceptable and what is not acceptable under the UNCLOS with regard to resource exploitation and marine environmental preservation. This, he suggests, could serve as the basis for a code of conduct in the South China Sea. Putting forward the concept of “comprehensive, common and cooperative security,” of which environment and resource protection would be a key pillar, Lotilla points out that the rationale for cooperation between regional states, especially with regard to marine environmental preservation, is both fundamental and longstanding: All East Asian states presumably shared a common awareness of the need to ensure the equitable and efficient utilization of the oceans’ resources and the protection of the maritime environment when they acceded to the UNCLOS. That South–South solidarity, Lotilla contends, should continue to undergird regional states’ approach to managing the South China Sea environment. On this basis, he proceeds to make a number of concrete proposals for both the claimant and non-claimant South China Sea littoral states to display that cooperative spirit more vividly and demonstrate their commitment to the UNCLOS.

The next chapter focuses on an economic issue which might, in appropriate circumstances, function as an engine for cooperation and conflict management in the South China Sea. For some time energy experts have differed in their estimates of the scale of the oil and gas reserves in the Sea. Chinese estimates are, on the whole, more optimistic than those of their Western counterparts. Dylan Mair and Rachel Calvert argue strongly in favor of the more conservative assessments and add an important dimension to the debate by examining in detail the accessibility and commercial viability of the remaining hydrocarbons under the seafloor. Their rigorous analysis not only examines the geological features that can impact prospectivity but also looks at the technological factors frequently

assumed to have the potential to transform the face of the region. Despite the fact that technological developments theoretically make possible the exploitation of hydrocarbons that lie mostly in remote, deep-water basins of the South China Sea, the cost of such advanced technologies renders large-scale production commercially unviable in the near to medium term. China, Mair and Calvert note, is now the region's largest oil and gas consumer. The current and projected capacity of gas hydrates production and the limited capacity of the alternative overland pipelines and shipping routes that supply Beijing's energy requirements mean that the real strategic significance of the South China Sea stems not from its hydrocarbon resources but from its function as an energy transportation lifeline for China and several other East Asian countries. These realities should dictate more cooperation among regional countries both to avert any disruptions to the shipping lanes and to undertake unconventional oil and gas development projects in the Sea. With regard to unconventional gas production, Mair and Calvert table a proposal for government and private sectors from all interested states to pool their technical expertise and financial capital to develop offshore methane hydrate deposits in the region.

Finally, Jay Batongbacal provides a critical assessment of the utility of the litigation approach in expediting the settlement of maritime disputes in the South China Sea in a way that would establish a basis for genuine cooperation. Batongbacal begins with a succinct overview of recent events, in which he notes two distinct trends that seem to have had converse effects on the evolution of the South China Sea disputes: first, the increasing willingness of most of the South China Sea claimant states to clarify and bring their respective claims into conformity with the UNCLOS, which has helped narrow the scope of the waters in dispute and augment the prospects of the litigation approach in addressing maritime conduct deemed in contravention of the Law of the Sea Treaty; second, the continued pursuit of assertive activities by some claimants, many of which introduce new elements of complexity into the already complicated South China Sea disputes due to their unprecedented scope and location close to the mainland of the littoral states. After a careful review of the relevant provisions in the UNCLOS, several of which have been further clarified by the Philippines–China case at The Hague, particularly UNCLOS Part XV on dispute settlement procedures, Batongbacal examines their possible application to a growing number of different incidents relating to resource exploration and exploitation, marine scientific research, and military and construction activities in the maritime zones projected from the mainland of the littoral states as well as those around the disputed features in the South China Sea. While certain provisions in Part XV, namely the oft-invoked and oft-debated Article 297 and Article 298, may restrict the application of the dispute settlement

mechanisms designated for state parties to the UNCLOS, Batongbacal uses the Philippines–China case at The Hague to show how the South China Sea states can still avail themselves of the compulsory dispute settlement procedures provided for in the UNCLOS and to demonstrate how a creative combination of law and diplomacy could help foster the building of a just and cooperative order in the South China Sea.

The perspectives presented in this volume, while by no means representing the whole range of ideas about the South China Sea, do reflect some of the most recent discourses on many salient issues. Like pieces of a mosaic, they should help decision-makers and interested observers of this maritime century (to borrow one Indian strategic thinker's words) form a more comprehensive picture of the current situation and what is at stake.¹⁰ The various assessments and outlooks may reinforce, complement or contradict each other, but the detailed and structured way in which they have been presented gives testimony to the sober contemplation and personal commitment that underpin them. This is an encouraging beginning if the community of nations concerned about the South China Sea in particular and the East Asian seas more generally is to undertake serious dialogues about how they might move forward together in these times of increasing uncertainty and volatility.

No matter what specific issues they seek to address, the chapters appearing in this book all point to one essential for the promotion of security and development in the South China Sea. That is the need for a balanced understanding of the views and interests of all the parties concerned, including both the coastal and user states having direct economic and security stakes in the region, as well as other members of the global community who are concerned about the maintenance and further development of the current rules-based international system. A balanced understanding also entails a comprehension of the balance between the rights and responsibilities of the states concerned within the context of international law. A repeated call made by several contributors to this book is for the intensification of intellectual exchanges to deepen the pool of knowledge and stimulate the search for innovative solutions to the South China Sea issues. It is hoped that this book, itself a product of one such exchange process, will make a meaningful contribution to answering that call.

NOTES

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