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The Case for Internationalising the South China Sea

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Introduction

The contemporary South China Sea (SCS) situation began with regional disagreements regarding the competing claims over islands and reefs by nations including China and five members of the Association of Southeast Asian Nations (ASEAN), Vietnam, the Philippines, Malaysia, Brunei and Indonesia.

All the claimants except Brunei have occupied features within their claimed areas and established military outposts or bases, and they have adopted domestic legislation related to each by name. See Figure 1.

Had the competition for sovereignty in the SCS remained a purely regional issue it is possible it could have been settled, perhaps through economic negotiations, as a result of Chinese endeavours to connect with ASEAN and to fashion more grounded ties within its immediate region. However, disputes over sovereignty have come to garner worldwide attention. On occasions, heightened tensions led to a loss of assets and life. Circumstances now make it difficult for swift regional resolution and claimant states now find themselves locked into a seeming endless series of roundtable talks.

Resolution is imperative; equally from the perspective of regional economies, as from the perspective of regional security. But security concerns can be overshadowed by the clamour for economic growth.

Deeply concerned with economic issues, and with the imperative of economic welfare, the Asia Pacific is no different from the rest of the world, where states are preoccupied with the need for economic development in order to sustain the demand for ever-better standards of living.¹ But the demand for economic growth should not eclipse the need for security, especially since the Asia Pacific is not without security problems, some of them major.

Disagreements about sovereignty among neighbouring states present as a pressing and destabilising problem for the region and indeed the global community. Nevertheless, since 1990 numerous efforts have been made by the regional countries to reduce tension. Most conspicuously, we might recall the 1992 ASEAN declaration on the SCS and, the adoption in 2002 of the ASEAN–China Declaration on the Conduct of Parties within the SCS. It is a matter for great regret that some of the concerned parties have not ceased unconstructive and destabilising activity.

But beyond contemporary provocations, tension is fuelled by deep-seated unease and antagonism.

Friction in the SCS traces its provenance beyond the law narrowly defined, to involve politics broadly defined. The realpolitik of past disputes has turned on issues as disparate as competition for natural resources to national face-saving. Most recently, tensions seem to give expression to a proxy contest between China and the United States.

China claims approximately 90 per cent of the whole area of SCS.² Robert C. Beckman on his Rajaratnam School International Studies publication mentions that China's claim developed more substance when it attached a map delineating the Nine-Dash Line as an official submission when disputing the Joint Submission of Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf on 7 May 2009.³



The United States seeks to advance liberal political norms, creating favourable international economic institutions, and diplomatic regional security organisations. The United States promotes and advocates the rule of law, multilateral cooperation, military alliances and a rules-based free trade system. Security of the sea lanes in the vicinity of the SCS is of considerable concern to the United States since it has significant economic interests with nearly all states in the region. The United States even has a Mutual Defence Treaty with the Philippines, dating from 1951, emphasising mutual commitments on peacefully resolving any international conflicts by constitutional means should the Philippines come under threat in the Pacific area.⁴

Japan's stake in the maritime routes near the Spratly Islands is greater even than that of the United States. Japan is a major trading partner and investor in all the claimant states; it is also involved in financing or operating some of the oil exploration efforts in the SCS. Like the United States, Japan is also apprehensive about China and seeks greater regional and global influence.⁵

In contrast, the People's Republic holds a less reciprocative view, being more evidently concerned about potential adversaries. Chinese policy seems fixed upon the assertion of China's rights and, concurrently, on the power grip of the Chinese Communist Party (CCP). From the Party's point of view, the stronger China grows abroad, the stronger the CCP will be on its own soil.⁶

Hypothesis

In recent years, the ASEAN countries have been concerned as China intensifies activities in the SCS. The uptick in Chinese activity has resulted in the United States making it clear that it has a national interest in freedom of navigation, accessibility in the maritime environment and adhering to international law in the SCS. However, China, even though it is prepared, even eager, to take part in any initiatives to promote confidence through bilateral negotiations with other affected parties, nonetheless stresses that attempts to internationalise the SCS's issues are unwelcome. However, claimant states argue that China, due to its economic influence, has an unfair advantage in any negotiations.⁷ Countries outside the region argue that China should negotiate with ASEAN. However, China is opposed to this, while ASEAN's influence to seek appropriate measures to mitigate the issues is dwindling.



Even so, some regional countries are willing to internationalise any skirmishes with regards to the SCS. The Permanent Court of Arbitration ruling in favour of the Philippines in its case over territorial control presents the most recent example of internationalisation. The aim of internationalisation is fundamentally to drive the discussion of issues in multilateral arenas and to demonstrate a unified will to resist China’s aggressive behaviour. Internationalisation will add more weight to asserting the importance of solving maritime disputes professionally and securing freedom of navigation according to the rules of law.

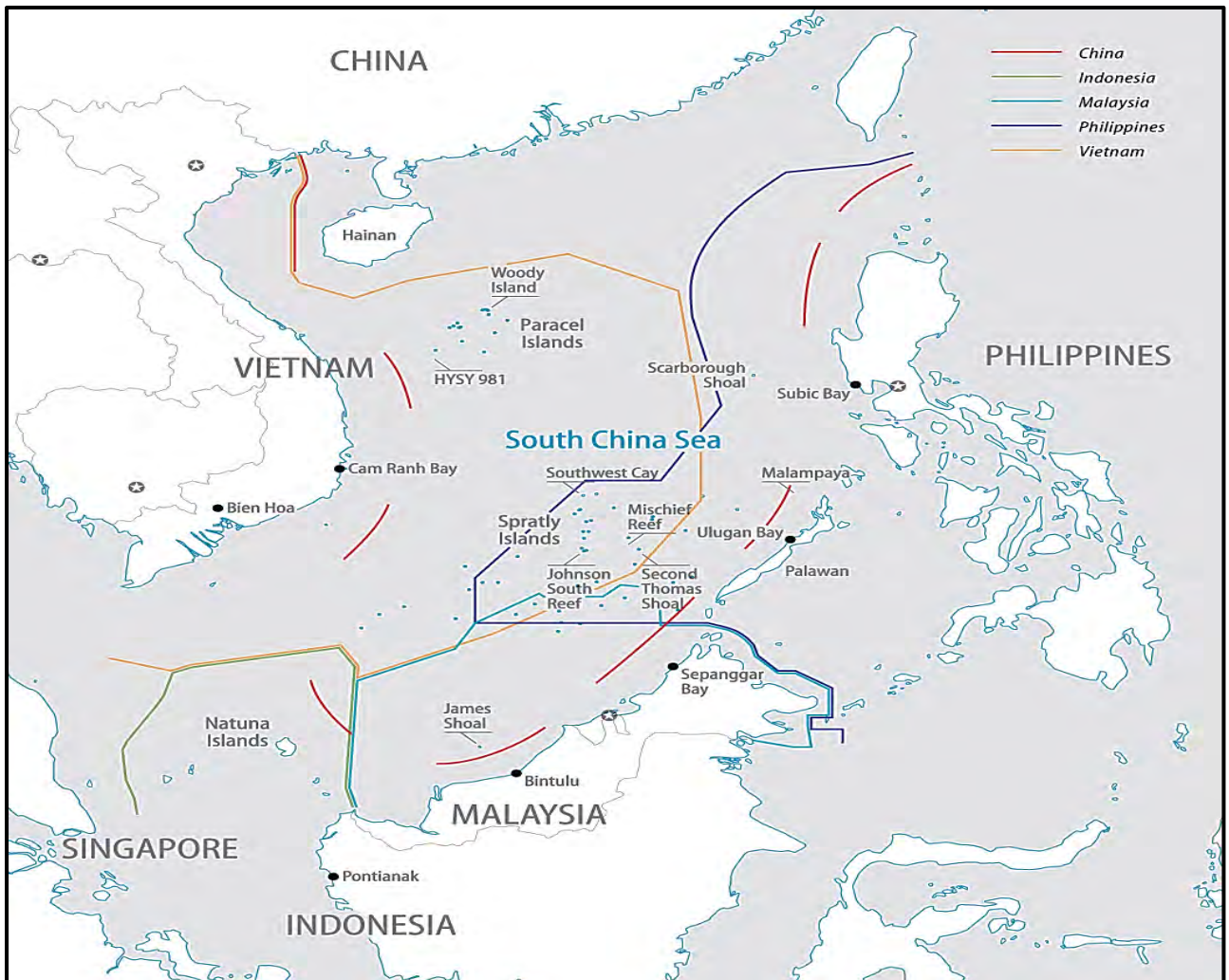


Figure 1: South China Sea and the Claimants



Methodology and Structure

This paper is descriptive and analytical. The primary sources are secondary. Some interviews and informal discussions were conducted with relevant authorities and officers.

Structure: Section 1 describes the importance of the SCS to the regional countries and the world. The disagreements in the region and its ongoing issues are considered further in Section 2. Mitigating the disputes by the regional countries is an ongoing effort towards sustaining a peaceful environment, and the productiveness of the mitigation process is discussed in Section 3. Many non-regional countries have a significant interest in the SCS, especially from an economic perspective. Therefore their standpoints are very much required to answer the problem statement, and this is emphasised in Section 4. China's positions, its understanding of the SCS and how the world perceives China's actions and policies is discussed comprehensively in Section 5. The needs and benefits of internationalisation are the focus of Section 6, describing both proponents and contenders of internationalisation of the SCS. Finally, Section 7 concludes the research by summarising the above analysis and clarifying the principles supporting the whole research.

Section 1: The importance of the SCS

The SCS is a region covering a part of the Pacific Ocean stretching roughly from Singapore in the southwest to the Strait of Taiwan in the northeast. The surrounding region consists of hundreds of small islands, rocks and reefs with the Paracel and Spratly Island groups providing the main concentrations. Factually, several of these islands are in some part half-submerged atolls, rocks and reefs which are unsuitable for occupation. However, countries that claim these areas have started development and expansion, turning some of the reefs into islands for military purposes, such as naval bases and airfields, to be able to enhance and defend their claims.

For the world, the SCS is strategically important for several reasons:

- **Vital trading route:** The trading route between Europe, the Middle East and East Asia passes from the Indian Ocean, through the Malacca Strait and subsequently uses the SCS as the onward route to South Korea, Japan and China. Regrettably, recent events have led to Japan and South Korea seeing this trading route as being monopolised by China's dominance. Moreover, Japan views this route as essential and against its national interest for any country to control it since the SCS is the ultimate route for Japan to import oil and other commercial resources.
- **Oil and gas reserves and fishery resources:** It is believed significant hydrocarbon resources reside in the vast sea area of the SCS. Li Guoqiang from the China Institute of International Studies states that the oil and gas reserves of the main basins in the SCS amount to 70.78 billion tons, of which petroleum deposits comprise 29.19 billion tons and natural gas deposits comprise 58 trillion cubic metres, although this has not been proven.⁸ On the other hand, the US Energy Information Administration (EIA) estimates the South China Sea contains approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves. Conventional hydrocarbons mostly reside in undisputed territory.⁹ Besides China, other countries have an interest in subsea resources. See Figure 2.



- Geo-political strategy:** Proximate to choke points in the Malacca Strait and the Singapore Strait, the SCS has conspicuous strategic gravity. The general concern is that if any claimant country establishes total control in the area, then that country will benefit unfairly from the economic expansion and the commercial trading routes in the region. Thus, naval deployments are used by China to demonstrate its strategic objective to be a global naval power.¹⁰ Similarly, the Chinese naval presence in the Indian Ocean is forecast to grow, in accordance with the China Maritime Silk Road Initiative.¹¹
- From the record of history, we might see that the Japanese similarly mindful of the strategic moment of the SCS. In February 1939, after Japanese troops occupied China’s Hainan Island, they occupied the Paracel Islands, and in March of that same year -- the Spratlys.¹² During World War II, Japan also built a submarine base in Itu Aba (Taiping Dao), the largest island in the Spratlys.¹³ This was used as a staging point from which to launch attacks on the Philippines, the Dutch East Indies (now Indonesia) and Malaya (now Malaysia). Today, the Spratly Islands could similarly be used as forward logistical and operational bases to support air assets, surface combatants and submarines.

Why the South China Sea Matters: By the Numbers

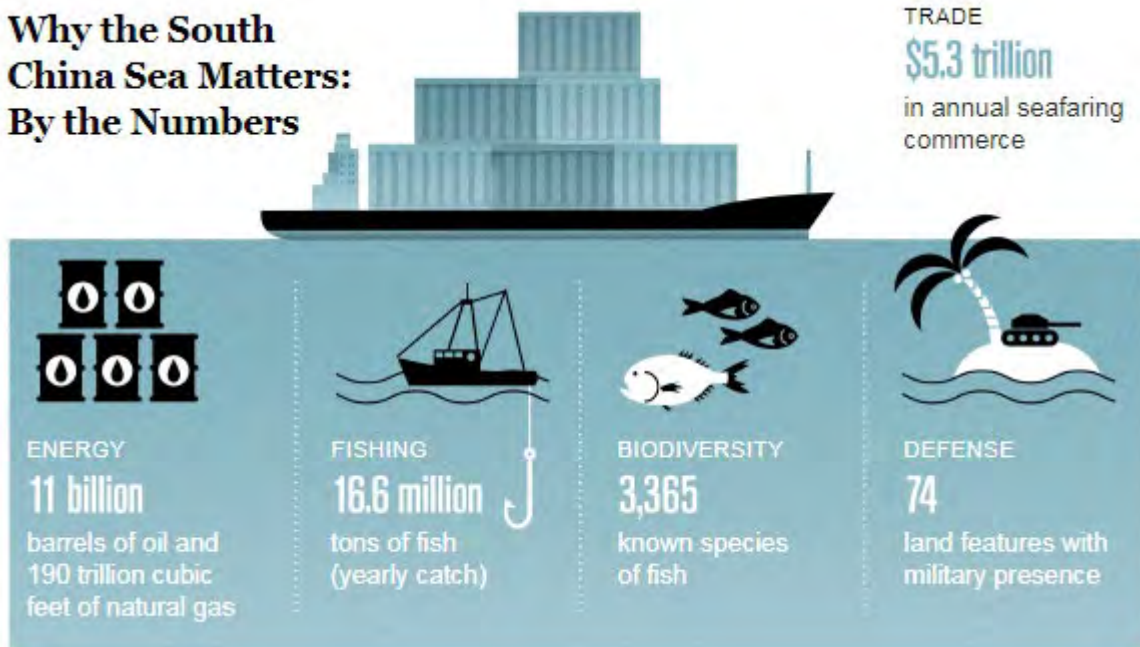


Figure 2: SCS Economic Interest¹⁴

Maritime areas

The United Nation Convention on Law of the Sea (UNCLOS) provides that ownership of any island grants access and control over associated waters and the resources therein, including any continental



shelf and seabed.¹⁵ Islands can also serve as the outermost points in drawing baselines from which a state can measure its 200 nautical mile Exclusive Economic Zone (EEZ).¹⁶ With most countries in Southeast Asia having overlapping EEZs and delimitation negotiations having been hampered, if initiated at all, this complicates the equation and adds to potential conflicts in the region.

In summary, globalisation is the biggest turn of events in the 21st century, with economic interaction among countries its most crucial aspect. Trading is the principal element of commercial engagement and the medium for transportation is generally the sea. The increase in international trade has led countries such as Japan, South Korea, China and Taiwan to achieve remarkable growth in recent years. Subsequently, sea lines of communications and security at sea have become vital elements for their sustainable trading and economic development. However, it is important to note that any actions creating instability in the region might have a domino effect on all countries that benefited. Sustaining a harmonious environment is therefore crucial to ensure economic progress.

Section 2: Conflicts in the region

Conflicting maritime claims

The disputes over the SCS involve five claimant states, as well as the potential and actual use of force in handling the issues on several occasions. China and Vietnam claim all of the SCS Islands and its surrounding waters, the Philippines and Malaysia claim parts of the Spratlys, while Brunei and Indonesia have issues on overlapping claims of EEZ. In the most recent developments, China has developed seven mostly submerged reefs into islands that analysts have said could be used as forward air and naval bases with missile defence systems installed.

China used the Nine-Dash Line, a disputable delineation line to amplify its claim over the territories and waters surrounding the SCS.¹⁷ It bases its claim on historical grounds, and the principles of discovery and occupation. China claims prerogative rights to all the islands in the SCS, as well as control over adjacent waters. China claims that the Spratlys (Nansha), Paracel (Xisha), Pratas (Dongsha), and Macclesfield Bank and Scarborough Shoal (Zhongsha) belong to the People's Republic of China because of historical reasons.

Vietnam also stakes claims on historical grounds, in its case based on inheritance from its former colonial ruler, France. Vietnam effectively occupied and administered the islands and never ceased to assert its sovereignty over the archipelago, even after China illegally occupied a portion of the islands in 1956 and the entire archipelago in 1974.¹⁸ Vietnam asserted its claim in 1977 by issuing statements claiming 12 nautical miles of territorial water, 200 nautical miles of EEZ, and the continental shelf.¹⁹

The Philippines does not claim sovereignty over the whole of the Spratly Archipelago but rather a group of islands known as the Kalayaan Island Group (Reed Bank, Mischief Reef, Itu Aba, Second Thomas Shoal and Fiery Cross Reef), which consists of 53 features in the eastern South China Sea excluding Spratly Island itself.²⁰ The Philippines asserted its sovereignty over the Spratly Islands before the United Nations General Assembly in 1946 and 1950 based on national security. Thereafter, since the 1960s, it made effective occupations and administration over eight of the islands.²¹ In 1972, these islands were designated as part of Palawan Province, Kalayaan municipality.²² The primary focus of the Philippine Government is the Scarborough Shoal and the Kalayaan Island Group.



Although Brunei does not claim any of the islands, its continental shelf and EEZ overlap China's Nine-Dash Line claim. In 1984, Brunei declared an EEZ that includes Louisa Reef.²³ The reef is partially submerged at high tide and is 200 km off the coast of Brunei. The government issued declarations on its territorial waters in 1982 and declared its EEZ in 1993.²⁴

Malaysia's claim is based on the projection of its continental shelf, well within its declared EEZ, and amplified it with a 1979 map. The government claims seven islands or atolls in the Spratly group, two of which are occupied by Vietnam (Amboyna Cay and Barque Canada Reef), and one by the Philippines (Commodore Reef).²⁵ Malaysia occupies the remaining five and even has an airstrip with a permanent military presence on each of these features.

Crucial conflicts in the region

To have a better understanding of the situation, it is imperative to identify what has happened in recent years as tensions increased in the region.

- **The Philippines protests Chinese presence.** On 1 June 2011, the Philippine Government expressed its resentment over the presence of Chinese warships in the nation's waters off the coast of Palawan Island. The Chinese presence started in March when a Philippines ship surveying in the Reed Bank was forced to leave by a Chinese surveillance ship. As the incident violated the 2002 ASEAN–China Declaration on the Conduct of Parties, both countries started a sequence of scuffles in the disputed area. At the same time, a similar stand-off occurred between Vietnam and China, with China harassing a Vietnamese oil exploration vessel.
- **SCS renamed.** In October 2011, on every formal occasion and communication, the Philippines Government started to refer to the SCS as the West Philippine Sea.²⁶ This was part of its retaliation at the presence of Chinese warships and it subsequently signed an executive order affirming its 'inherent right and power to declare its maritime area'. The United States supported the Philippines' moves, confirming this in November 2011 in a joint press conference to show its solidarity while the Philippines continued to confront China in its territorial integrity disputes.²⁷
- **Incident at Scarborough Shoal.** On 8 April 2012, a Philippine Navy ship was tasked to contest a small number of Chinese fishing boats in the area of Scarborough Shoal, north of the Spratlys. This led to a further deterioration in diplomatic relations between both countries. Consequently, two months of stand-off followed after China sent their surveillance ship to protect their interests in the area.²⁸ China began to place sanctions on fruit imports from the Philippines, and subsequently it was estimated that the Philippines lost almost \$34 million just from banana exports. The Philippines Government started to pursue several solutions, which included ASEAN participation, UNCLOS for legislative options, and seeking assistance from the United States should military confrontation occur. However, China continues conducting regular patrols, preventing fishermen from the Philippines gaining access in the area concerned.
- **Vietnam authorised maritime law.** In June 2012, Vietnam took a bold step in upholding its influence and jurisdiction over the disputed area of the Spratly and Paracel Islands by passing a



maritime law insisting any foreign naval warship plying the area must notify Vietnamese authorities. As though to disagree with Vietnam's action, China declared the establishment of Sansha City in the Paracels, which will administer the Paracels and Spratlys, as well as Macclesfield Bank. Hanoi and Beijing relations have fluctuated ever since. Between May and June 2011, China demonstrated direct aggression by cutting the cables of oil and gas survey ships operated by Vietnam's state-owned energy firm. However, the situation between both countries eased when they entered into a bilateral agreement in which a method of assessing the maritime dispute was outlined. Meanwhile, Hanoi increased its defence budget, reportedly by 70 per cent to \$2.6 billion in 2011.²⁹

- **China deploys missiles to the Paracels.** On 14 February 2016, the US and Taiwan officials revealed that Chinese surface-to-air missiles had been stationed on Woody Island, one of the Paracel Islands. Subsequently, the regional countries expressed their concern at the militarisation of disputed territory.³⁰ China responded that the stationing of missiles was a self-defence measure.³¹ Based on Chinese media reports, the People's Liberation Army Air Force also stationed J-11 fighter aircraft in the Paracels in October 2015.³²
- **Natuna stand-off.** In June 2016, an Indonesian warship chased away a Chinese fishing boat that was allegedly fishing in the proximity of Natuna Island. As sources claimed, this was the third incident in which Chinese fishing boats encroached on Indonesian waters.³³ The boat was seized and the crew arrested. China protested the action taken by Indonesian authorities by stressing that the fishing area was based on its historical background claim. The relationships between both countries became tenser as Indonesia summoned the Chinese diplomat disputing the fishing boat activities and protested the presence of the Chinese Coast Guard off the island.
- **US warships conduct freedom of navigation operations.**³⁴ Since 2015, the United States has publicly conducted freedom of navigation operations.³⁵ These operations demonstrate US determination to show that China should comply with international rules and to make clear its disagreement over China's actions to restrain freedom of navigation in the disputed area.
- **China deploys warships to the Paracel Islands.** On 27 May 2018, China deployed warships and aircraft, warning two US warships, *Higgins* and *Antietam*, which were spotted entering China's claimed areas.³⁶ China stressed the encroachment seriously violated Chinese sovereignty. However, US officials responded that their warships were merely conducting freedom of navigation operations (FONOP). The United States has gradually stepped up its military presence and in particular naval operations in the region, conducting FONOP to demonstrate that the SCS should be free to all.³⁷

In summary, it is apparent in recent years that China has become very firm in defending its claims in the SCS by militarising the disputed Spratly and Paracel Islands, and has exacerbated the argument between Beijing and its Southeast Asia neighbours.³⁸ See Figure 3 for a map of China's South China Sea Presence (as of April 2018).



China will certainly impede any research, surveillance and exploration of hydrocarbon deposits, fishing or any development by other states in the region. Primarily, the disputed states in the region face a fundamental challenge to the sovereignty of their claims based on China's aggressive actions, which will eventually undermine their capability to legitimately exercise jurisdiction per UNCLOS.



Figure 3: China's Presence in the South China Sea (as of April 2018)

Chapter 3: Conflict mitigation in the region

The security and stability of the Southeast Asia region depends on how contesting states manage disputes. Due to the density and fervour of the argument, the SCS dispute does seem to be a potential threat to the region and the affected trading nations. China's continued claims about possession of the area; the military growth in the region; the pursuit of maritime resources; autonomous actions by



claimants to amplify their claims; lack of solid mechanisms to handle the disagreements; and the potential power vacuum in the region may lead to conflict. On the other hand, even though the tensions in the SCS have been quite alarming in recent times, some positive initiatives for confidence-building measures and co-operation, as well as engagements at the bilateral and multilateral level to manage the dispute, have emerged.

Soft balancing

Diplomatic engagement between ASEAN and China has been ongoing for more than three decades with the primary objectives to have soft balance strategies. The ASEAN Regional Forum, the East Asia Summit and the ASEAN Defence Ministers' Meeting-Plus have all been used as platforms to debate significant issues and deliver some promising resolutions for both China and ASEAN. However, China is disposed to discuss any issues on the SCS on a bilateral basis.

Code of Conduct

China and ASEAN agreed on the non-binding Declaration on the Conduct of Parties in the SCS (DOC) in 2002. Article 10 of the DOC cited that 'the adoption of a code of conduct in the SCS would promote peace and stability in the region'.³⁹ Thereafter in 2017, a negotiating framework for a Code of Conduct (CoC) in the SCS was developed among ASEAN leaders during ASEAN's 50th anniversary, a step closer towards finalising the CoC.⁴⁰

The acceptance of the negotiating framework for a CoC has been praised by China, but analysts believe that China has ulterior motives.⁴¹ On 6 August 2017, the United States, Japan and Australia stressed the issue by delivering a joint statement pressing the Chinese Government to accept the decision made by the Hague Tribunal, which decided in favour of the Philippines and concluded that the CoC was consistent with international law, and legitimate.⁴² Nonetheless, the implementation of the CoC seemed not to lessen the stress of the dispute since both China and the Philippines did not comply with the award. China questioned the authority of the tribunal by boycotting it, while the Philippines put aside the award to improve their relationship with China.⁴³

On 28 April 2018, Singapore Prime Minister Lee Hsien Loong mentioned that negotiations on multilateral territorial disputes generated a 'useful exchange of views' from the ASEAN countries. Mr Lee stressed that:

the key difficulty is, whether it's binding or legally binding, once you have a document like that you have to define what exactly you are disagreeing about, which are the areas to which it applies, and the conduct to which it applies. In the SCS, what is in disagreement is itself not in agreement. That is the nature of the dispute. Because what is mine is indisputably mine, what is yours is being disputed. If it's going to be binding or legally binding, how are disagreements or issues going to be arbitrated . . . what jurisdiction do we subject ourselves to? These are all 'very difficult issues' that will take a long time even to crystallise.⁴⁴

China's economic prosperity places it in an advantageous position compared to ASEAN, which remains uncertain whether the CoC should be legally binding. Eventually, it seems that the final CoC would be based on the least commonality and that solving the sovereignty disputes was not on the main agenda. This is certainly unlikely to delay Chinese intentions towards the SCS.



The ASEAN Pivot to China

Philippines

In recent months the diplomatic relationship between the Philippines and China has become closer after President Rodrigo Duterte signed several business projects in an attempt to secure his transformation program of improving infrastructures, in particular, the country's transportation systems.⁴⁵ Despite the ongoing disputes over the SCS, the Philippines Government is willing to compromise and focus on establishing the bilateral relationship and greater cooperation for the country's best interests. On the other hand, China is keen on securing a business deal on joint exploration in the SCS. Both countries have arranged to work on oil and gas exploration offshore, based on the so-called appropriate legality context.⁴⁶ The road ahead seems unclear if we may refer to the Philippine Constitution, which stresses that a country that rejects the Philippine's EEZ and its sovereignty should be barred.⁴⁷ Consequently, many analysts and critics have argued that the Philippines might end up repaying the loans taken out for the government projects early, and eventually fall into a debt trap.

Vietnam

The relationship between Vietnam and China now seems closer following the tension caused by China's military activities. In part, increased closeness follows 30 March 2018, when China's Foreign Minister, Wang Yi, and his fellow delegates made an official visit to Vietnam mainly to attend the sixth Greater Mekong Subregion (GMS) Economic Cooperation Leaders' Meeting. While the meeting was meant to focus on economic matters, it turned out to be more a discussion on the SCS dispute. Vietnamese President reiterated that the ongoing issues at sea should be settled based on mutual respect of each other's legitimate interests and the rule of international law.⁴⁸ The dispute should be approached peacefully, in line with the basic guiding principles of both countries' leaders and in particular following mutual views.

Likewise, the Chinese Foreign Minister, Wang Yi mentioned China is willing to work with Vietnam for a comprehensive joint development program to create progressive conditions in several fields, especially in handling maritime issues, and at the same time strengthen the development strategies of both countries.⁴⁹

At the 17th International Institute of Strategic Studies (IISS) Shangri-La Dialogue Summit 2018 in Singapore, Vietnam's Minister of National Defence, General Ngô Xuân Lịch, spoke about some of the key foundations for security, peace and development, in particular adhering to international laws and promoting greater cooperation.⁵⁰ This is essential for concerned parties to peacefully handle especially complex issues such as the SCS while respecting the principles of sovereign territory, international law and non-interference in each other's internal affairs.



Malaysia

On 18 October 2015, Malaysia's Chief of Armed Forces made a public comment at the Xiangshan Forum held in Beijing that China's construction work on islands in the disputed SCS is 'unwarranted provocation'.⁵¹ During the 16th IISS Shangri-La Dialogue Summit 2017, the Malaysian Defence Minister strongly upheld Malaysia's position that military deployment on China's artificial islands is unacceptable.⁵² Later, during the visit by the Prime Minister of Malaysia to China on 1 November 2016, it was agreed with Premier Li Keqiang, that the SCS disputes should be settled through bilateral means and on a dialogue basis.

However, even though the Malaysian Government is strict in upholding its policy towards the SCS issue, it is notable that medium-power states with limited resources like Malaysia have to balance the circumstances and be more practical in safeguarding their rights on their territory. Malaysia has always had to soften its approach when dealing with China so as not to impede the growing trade between both countries.

The relationship between both countries reached another 'new high' after the Malaysian Government signed a two-year defence deal to build four littoral mission ships (LMS). It was indeed a turning point for Malaysia as this is the first-ever shift in its military focus as well as geostrategic alignment towards China. On 5 June 2018, the new Prime Minister of Malaysia, Mahathir Mohammad, made a surprise statement that it is better to have no Malaysian warships in the Strait of Malacca and the SCS.⁵³ He stressed that stationing ships in the area would only induce more warships from other countries to be there, thus creating an unfavourable situation for the maritime community.

Non-claimant countries: Indonesia and Brunei

Indonesia, a non-claimant country in the disputed SCS, started paying close attention to China's aggressive actions, especially when Chinese fishing boats encroached into Natuna Island's waters. It is important to note that China's Nine-Dash Line overlaps Indonesia's EEZ around Natuna Island, as well as the continental shelf.⁵⁴ Opposing illegal fishing in their waters, Indonesian authorities arrested the fishermen and convicted them. On 21 March 2016, the Indonesian Government conveyed a note of protest to the Chinese Government over the incident.⁵⁵ (See Figure 4.) In July 2017, the Indonesian Government renamed the disputed maritime area, especially to the north of Natuna Island, as the North Natuna Sea. Also, the Indonesian Maritime Affairs and Fisheries Minister Susi Pudjiastuti emphasised that Indonesia has the right to make decisions on their territory. However, it must be noted that the Indonesia only renamed some of its EEZ where it also falls inside China's Nine-Dash Line.

A researcher from Australia's Lowy Institute argues that the purpose of renaming the waters was to demonstrate Indonesian interest in protecting its territory and defending its rights on its soil, as well as reinforcing troops and facilities, and does not demonstrate a tougher stance on the wider issues in the SCS.⁵⁶ It is therefore unlikely that Indonesian President Jokowi Widodo would provoke a crisis because doing so would hamper his planning to attract Chinese investors to fund his country's infrastructure projects. However, it is unclear as to whether Indonesian action to deter China's hegemony will remain effective in the longer term as the PLA (Navy) and Chinese Coast Guard



appear intent on increasing their presence and activities in the region. This may affect both countries' relationships sooner or later.

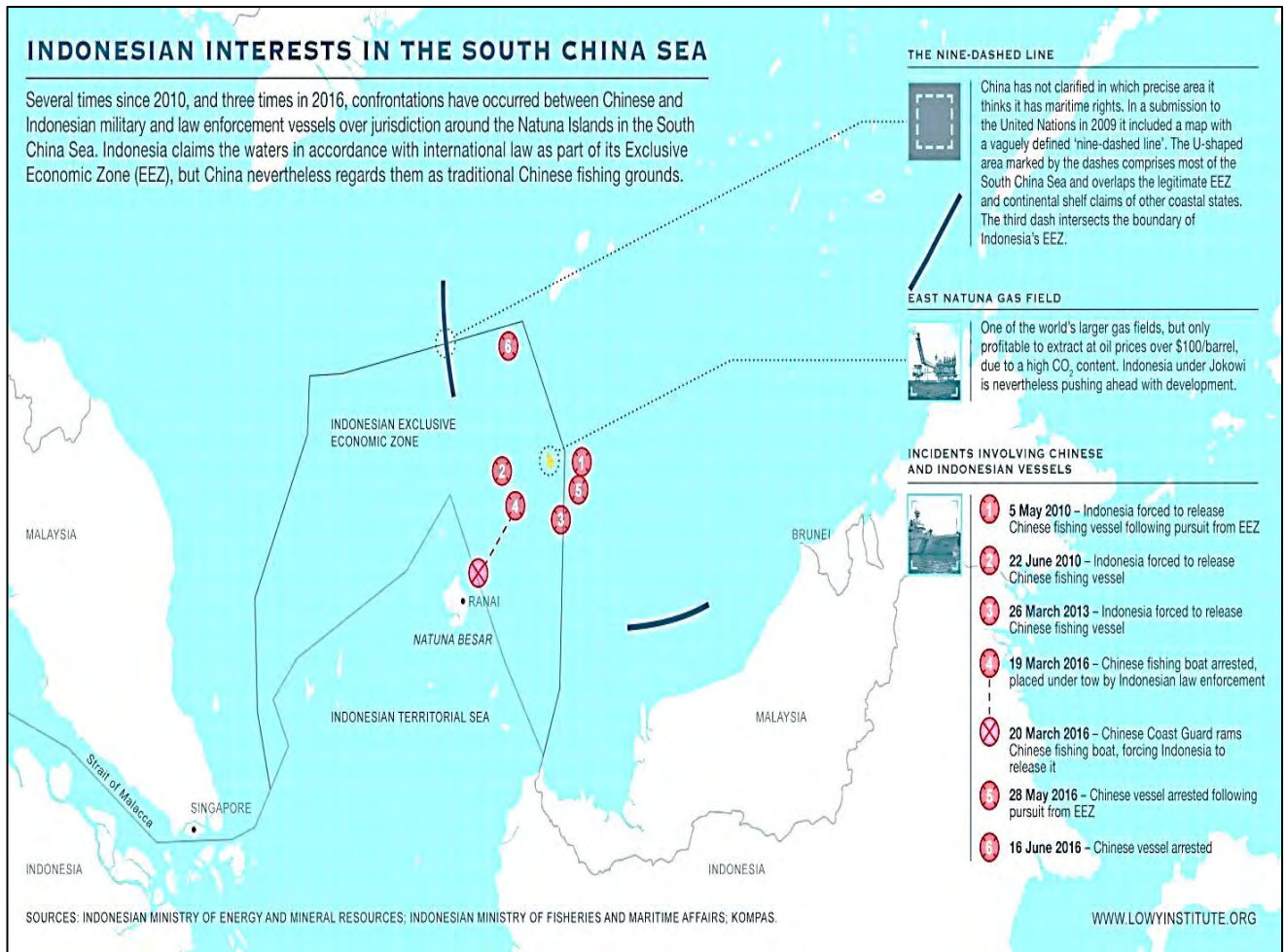


Figure 4: Incidents involving Chinese and Indonesian vessels

Another non-claimant state in the SCS is **Brunei**. It is the only state that has not installed any military features or stationed a permanent military presence in its 200-mile EEZ. Brunei has been dealing with China in constructing a refinery and petrochemical complex.⁵⁷ This major foreign direct investment project, which was signed on 28 March 2017, is a boost for the Brunei economy, particularly since its hydrocarbon reserves are predicted to be depleted within the next two decades.⁵⁸ Oil is the major source of Brunei's economic development, and the country's revenue is declining in line with the global oil price. Furthermore, the agreement with China will create almost 10,000 job opportunities for Bruneians. This bilateral engagement meets Brunei's interests and puts China in an advantageous position since Brunei, jointly with Laos and Cambodia, agrees that the disputes in the SCS should not be solved within ASEAN but through direct engagement and consultations only.⁵⁹



In summary, collaboration and relationship building is complicated. And the stakes are high; alongside pragmatic economic imperatives, the most pressing and fundamental need is the need for justice and the need for peace.

Thus, it is perhaps regrettable, that some ASEAN countries, such as Indonesia, Malaysia and Brunei, have been hit by lower commodity and oil prices in recent years, slowing the pace of infrastructure development because of financial constraints, and engendering political uncertainty. This has encouraged politicians to engage with richer countries, and China, with its high economic growth, has proved more than helpful. Bilateral engagement and financial aid in the form of investment and trade have put ASEAN countries in China's debt literally and figuratively, further fuelling expectations and demands in the SCS. The strategic shift or positioning of these countries is due to political transitions, domestic political uncertainties, and narrow self-interest, which unfortunately discourage them from engaging with other Southeast Asian countries or external sources in mitigating the increased tension facing the region.⁶⁰

Section 4: The key players

The territorial disputes in the SCS foment a general regional geopolitical instability. Most likely, tension will not rise to the level of out-and-out conflict. But there have been concerning incidents or clashes at sea with minor casualties. China's militarisation of its artificial islands in the SCS and the territorial and sovereignty disputes indicate a potential use of firepower. This instability and the frequent emergence of new issues have drawn serious attention from other countries, especially key players such as the United States, Japan, India and Europe.

The United States of America

The United States has a belief that China -- as a growing economic power will come to be the ascendant Indo-Pacific power in years to come. Perhaps in living proof of this expectation, China's presence in the SCS is becoming more conspicuous and less amicable. China, for example, has claimed the whole sea unilaterally, and defended this claim vehemently, fortifying seven man-made islands in the area. The United States believes China will seek total control of maritime trade in the region and enforce such claims by military means. In June 2018, the then US Secretary of Defense, Jim Mattis, spoke at the IISS Shangri-la Dialogue in Singapore, relaying that the United States opposed Chinese aggression and intimidation directed towards ASEAN countries and stressed that the Pentagon will react forcefully if the situation dictates.⁶¹

Since 1990, the US has been engaging with ASEAN countries as well strengthening its international alliances with Japan, Korea, Australia and New Zealand to preserve a favourable balance of power in the Asia-Pacific region. The US policy in Asia is focused on establishing peaceful trading and greater investment, and building regional institutions that encourage regional prosperity while seeking to avoid any potential conflicts or tension in the region. US policy in the Asia-Pacific has become less realistic in the past 10 to 15 years as China's rise as a global economic superpower has continued. Thanks to globalisation, China's economy has boomed, generating more wealth as the country grows militarily stronger.



China's economic dominance has induced the ruling party, the Chinese Communist Party (CCP), to become more aggressive in terms of military expansion and its desire to seek status in the world. The party rules in an authoritarian manner, exerting full control over the country's national policy and economic development to pursue its objectives both internal and external. The advancement of China's assertive behaviour clashes with US efforts to preserve a favourable balance of power in the Asia-Pacific region.

Japan

Japan does not claim the SCS. But, Japan has a profound interest in the SCS. Japan is concerned that if China gains supremacy over the SCS, it would block the sea lanes of communication between the Pacific and Indian Oceans, a route that carries 90 per cent of oil imports to Japan. Like Australia, Japan relies on maritime trade for its economy and security. Additionally, many of Japan's trading partners are ASEAN nations who assert claim rights to the SCS in competition with China. Furthermore, Japan has confronted China over the Diaoyu/Senkaku Islands in the East China Sea, with claims of sovereignty and exclusive economic zones. Significantly as well, the United States, has an alliance and commitment with Japan over the defence of the islands.

China's assertiveness has encouraged Japan to help ASEAN countries, the Philippines and Vietnam in particular, to protect their interests. Japan offered assistance to train the Philippines Coast Guard in enforcing maritime and security needs to intensify its activities in the disputed area.⁶² Japan also dealt with regional security initiatives with ASEAN countries to show support in safeguarding the seas from piracy and armed robbery. The establishment of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP) is the sole idea of Japan, with the intention of promoting multilateral engagement between ASEAN countries.⁶³

During a visit to Japan by the Malaysian Prime Minister on 12 June 2018, in a joint press conference, Japanese Prime Minister Shinzo Abe said the Indo-Pacific region, including the SCS, should be free and open based on the rule of law and maintained as a global public route for regional peace and prosperity. The statement has provided comprehensive assurance of Japan's commitments in the SCS.

India

India has a different perspective from other countries in Asia and particularly Southeast Asian nations. This perspective is related to security and cooperation, economic trading and enhancing bilateral relationships. Moreover, India has strong economic ties with Vietnam with its joint exploration of oil and gas reserves off the coast of Vietnam in the SCS by ONGC Videsh Limited (OVL) and PetroVietnam (PVN). Moreover, both countries have mutually agreed to engage in a transfer of technology in the defence sector from India as part of cooperation strategies.⁶⁴

For India, the location of the SCS is as strategic as the Indian Ocean since it links the East China Sea, Singapore Strait and the Malacca Strait which are considered the most important SLOC. The interest is greater today as the growing demand for energy sources for Indian consumption has accelerated in recent years. For example, in 2015, India was considered the third-largest importer of oil after the United States and China.⁶⁵



Ongoing disputes and conflict in the SCS have drawn India's attention. India's view is that any crises or hostility in the region will disrupt the SLOC and thus, India's economy. For that reason, India's security interest in Southeast Asia has deepened, emphasising freedom of navigation and overflight in the area, which has been much stressed by the United States.

India's involvement in the SCS focuses on three objectives, according to Byron Chong: 'First, to ensure peace and stability in the region and keep the vital sea lanes open; second, to maintain cordial relations with regional powers; and third, to ensure that no potentially aggressive external power comes to dominate the region.'⁶⁶ India's presence in Southeast Asia is now more evident, as it works together with regional countries in bilateral and multilateral exercises at sea, knowledge and expertise sharing, arms deals and securing trading partners.

Australia

With its deep strategic and economic interests in the region, Australia perceives that security imbalances in Southeast Asia will affect its economy.⁶⁷ The region affords Australia the maritime trading routes critical to the export of coal, iron ore and liquefied natural gas. Additionally, Australia has strong military commitments in the SCS, especially in the Five Power defence arrangements established in 1971. This strong relationship allows Australia to regularly participate in maritime and air exercises in the southern corridor of the SCS. Operation GATEWAY is another defence relationship between Australia and Malaysia in providing maritime surveillance patrols in the North Indian Ocean and SCS as part of efforts to ensure security and stability in Southeast Asia.

According to the 2016 Defence White Paper, Australia is concerned about China's expansion in the SCS, with the prospect of territorial disputes and ASEAN's military growth creating tensions in the region and eventually threatening Australia's interests. During the meeting of the ASEAN–Australia Special Summit (The Sydney Declaration), held on 18 March 2018, regional leaders indirectly opposed China's occupation of the Spratlys by emphasising their commitment to the non-violent resolution of disputes, and stated that freedom of navigation applies to all, and any military activities are not permissible because they may escalate tensions.⁶⁸ During the summit, Prime Minister Malcolm Turnbull's government signed a memorandum of understanding on counter-terrorism with ASEAN to show Australia's commitment to working together even more closely to enhance regional cooperation to fight terrorism.

In a speech delivered at the IISS Shangri-La 2018 Dialogue, the Australian Defence Minister, Marise Payne, urged China against adopting a 'might is right' approach to international relations, because such a stance is contrary to the interests of all nations and will eventually lead to instability in the region. She stressed that no country should develop laws that favour themselves at the expense of the common good. Hinting at the chill in Australia–China relations, Payne said: 'Nations must also have the right to be free from coercion or criticism when they lawfully and reasonably communicate concerns about the behaviour of others. This extends to the reasonable expectation that rules, not the exercise of power, govern our actions.'⁶⁹



Europe

As far as the European states are concerned, only France and Britain have a strong history of siding with the United States to oppose Chinese assertiveness in the SCS. This was evident when the European Union acknowledged the Permanent Court of Arbitration ruling in favour of the Philippines, without villainising China.⁷⁰ As mentioned by Theresa Fallon in the *Newsbrief* of the Royal United Services Institute, ‘the EU’s approach to China’s assertiveness in the South China Sea can be described as “principled pragmatism”, based on a pragmatic pursuit of its own interests on one hand and on upholding the principles of international law on the other’.⁷¹

In a recent development, France supported US actions in the SCS by deploying warships to the region.⁷² The deployment took place after President Emmanuel Macron visited Australia in May 2018, where he stressed the importance of the balance of power and preserving the rules-based order in the Indo-Pacific region.⁷³

On 3 June 2018, the UK Defence Secretary, Gavin Williamson, stated that the British Government had deployed three warships to the Asia-Pacific to conduct FONOPs in SCS to demonstrate the importance of every nation being bound by the international rule of law.⁷⁴

In summary, the SCS is a key link in the chain connecting trade throughout the world. It is a matter of concern therefore, that regional instability looks set to continue for years to come. Hopefully, pressure exerted by the key players might slow down China’s efforts to militarise the region.

Section 5: China’s interest in the SCS

China’s rise began in the early 1980s. Since this time, the pace of modernisation has been tremendous. Growing wealth has enabled socio-economic improvements, notably reducing poverty, as well as increasing budget outlays to fund military expansion, which has taken place under a united political direction.⁷⁵ Economically rich, China seeks for its place in the world. Part of this place is as a maritime power, with the aim that China will rise as a *prosperous society in all respects*.⁷⁶

Potential benefits

China uses the legal frameworks of UNCLOS – which Beijing ratified, with some exceptions, on 7 June 1996 – as the basis for its claims in the SCS.⁷⁷ As China claims sovereignty of the island chains, it may extend jurisdiction and rights to explore the potential oil and gas reserves and fish stocks in adjacent waters.

The militarisation of the seven artificial islands with significant civil and military intent provides strategic outposts for Beijing to monitor any activities by neighbouring countries or outsiders. This projection of military power may act as deterrence for any eventualities in the region now or in the future. At the same time, China’s craving for energy to feed its domestic consumption requires oil, coal and minerals imported from all over the world. Therefore safeguarding the SLOC is considered vital for its continued economic growth and prosperity.

The People’s Liberation Army (PLA) has been developing underwater fibre-optic cable technology since the 1990s. While the technology has become commercially advantageous, so have the demands



for global data and networking increased.⁷⁸ With total control of the SCS, China will use its fibre-optic cable capability to explore undersea dominance and gain undersea warfare advantages, allowing them to control media and propaganda. At the same time, a credible anti-submarine warfare capability will put the PLA in a tactically advantageous position in monitoring underwater operations in the SCS.

ASEAN countries such as Vietnam and the Philippines have already engaged with China on Joint Development Agreements (JDA) on mutually exploring hydrocarbon deposits in disputed areas. Joint developments are not new in the region since many ASEAN countries have signed at least one agreement between them.⁷⁹ However, this move ideally will set aside the skirmishes and foster tangible relationships in promoting cooperation.

Potential for conflicts

The United States has strongly backed peaceful resolution of territorial disputes and unimpeded passage for commercial shipping, and therefore protests China's claims over the SCS. The United States deploys warships to conduct FONOPs in the disputed area. China strongly rejects the US presence, and tension keeps rising. France and Britain deploy warships in support of the US stance on freedom of navigation.⁸⁰

Though China does not have legitimate maritime claims to the artificial islands (Article 21 UNCLOS), we may reasonably expect that China will declare a 12-nautical mile territorial limit and even an Exclusive Economic Zone.⁸¹ China will seek to use these claims to justify the aggressive assertion of its own interests, to more vigorously harass foreign trawlers, any marine survey ships or other law enforcement forces. It is even possible that Chinese authorities might seek to control merchant shipping in the area using paramilitary forces.

President Rodrigo Duterte preferred a non-confrontational approach and agreed to pursue a joint exploration of hydrocarbons in the disputed area.⁸² In 2016 the Permanent Court of Arbitration ruled that China does not have overlapping claims with the Philippines on the areas which both countries intend to explore.⁸³ This means, the Philippines will not seek a Joint Development Agreement with China. A JDA is meant for a country that has overlapping claims, referring to the provision in UNCLOS. Moreover, the Philippines' 1987 Constitution states that any country intending to collaborate with the Philippines must, first of all, acknowledge its sovereignty.⁸⁴

In an attempt to resolve periods of tension in the SCS, China signed the Declaration on the Conduct of Parties (DOC) in 2002.⁸⁵ The DOC was intended to establish a favourable relationship between both China and ASEAN members on solving disputes and differences peacefully. It is now obvious that the DOC has not met its intended purpose, with China constantly expanding its interests in the SCS by fortifying its claims. As the DOC was non-binding, it did not affect China's claims. As well, some ASEAN members, such as Laos, Cambodia and the Philippines, were more concerned about their own economic interests rather than ASEAN's interests.

On 13 August 2017, ASEAN members gathered in Manila to celebrate ASEAN's 50th anniversary. At this time, ASEAN leaders developed a Framework Agreement of the Code of Conduct to amplify the DOC signed in 2002. The draft framework was then presented in the 20th ASEAN-China Summit on 13 November 2017 in the Philippines. Eventually, ASEAN leaders and Chinese Premier Li



Keqiang agreed to negotiate a practical Code of Conduct in the SCS.⁸⁶ During the seventh Trilateral Strategic Dialogue, held on 7 August 2017 in Manila, the Foreign Ministers of Australia and Japan, together with the US Secretary of State, urged ASEAN leaders and China to expedite the process of finalising the COC, and stressed that it should be legally binding under international law.⁸⁷ The point is: ASEAN countries desire a future for the SCS in which disputes are resolved peacefully. China's tactic, however, is to slow negotiations while expanding its claims.

In summary; constant tension and uncertainty in the SCS may generate disruption or catastrophe. Despite positive initiatives and confidence-building measures such as high-end bilaterally or multilaterally, meetings, and despite economic cooperation, the future remains unclear.

Section 6: Internationalising the SCS

Though Vietnam, Indonesia and the Philippines have voiced disagreement with China, very often these complaints are retracted or toned down, though Indonesia has maintained an emphatic statement in claiming the Natuna Islands and the North Natuna Sea – a claim which overlaps with China's Nine-Dash Line. Malaysia and Brunei have taken a less assertive approach. Perhaps this reflects economic self-interest, or perhaps accommodation is a response to Chinese muscle flexing?

Certainly, more powerful nations are intimidated less. The United States and its allies constantly challenge China's strategy in the SCS. Withdrawal by the United States of an invitation to China to RIMPAC, a joint multi-naval exercise, is a clear example of opposing Chinese's military activities in the SCS.

Even so, Beijing continues to assert its influence in the SCS, most conspicuously by the artificial islands, and by increasing military activities. For example, challenging US warships conducting FONOPs near the disputed islands shows China's seriousness in defending its maritime interests. On 27 June 2018, Chinese President Xi Jinping mentioned to US Defence Secretary Jim Mattis that China is always committed to peace but will never give up what it considers to be its territory.⁸⁸

Meanwhile, based on a report published by the Stockholm International Peace Research Institute (SIPRI), Chinese military spending was second only to the United States, with China estimated to have spent US\$228 billion in 2017. The defence think-tank said it estimated that China's share of global military spending had doubled since 2008 to 13 per cent.

See Table 1. China's huge increase in military spending over the years poses serious concerns for ASEAN countries because it undermines the search for peaceful solutions to disputes in the SCS.

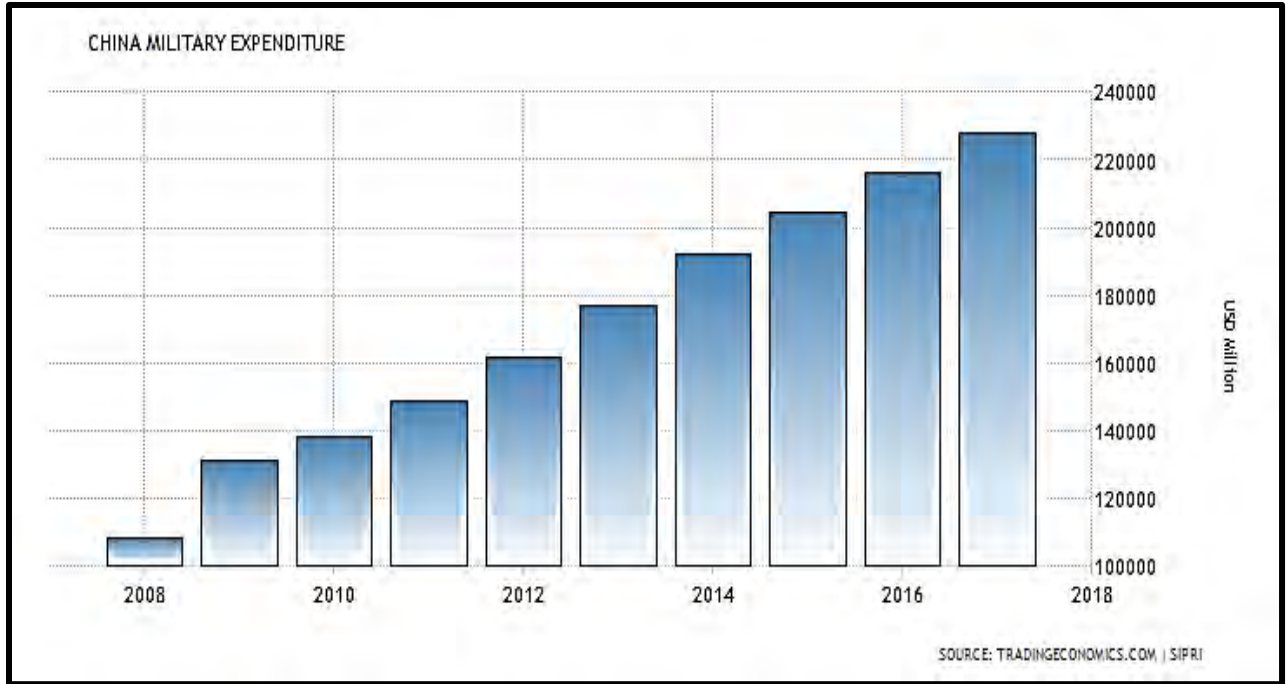


Table 1: China’s Military Expenditure⁸⁹

With China’s military budget growing by about 9 per cent per year over the past decade,⁹⁰ most countries in the Asia-Pacific region have concerns about China’s growing military power. A Pew Research Centre survey reported that countries actively engaged in disputes with China over military activities in the East and SCS considered that China’s growing military power was a bad thing for their country. See Table 2.

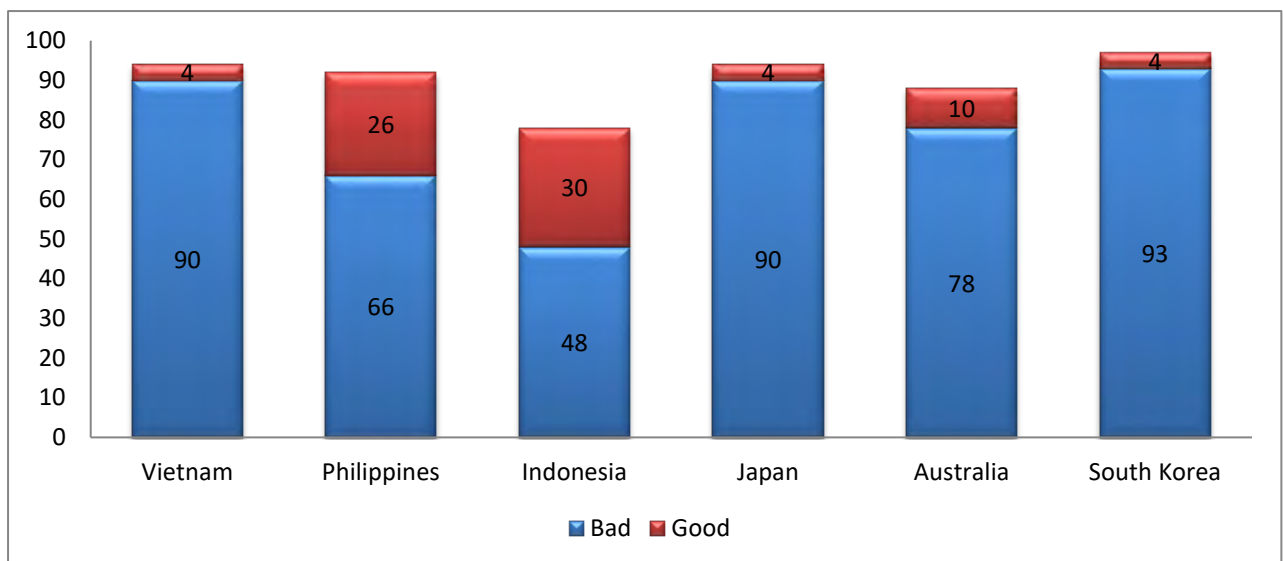


Table 2: How People in the Asia-Pacific View China’s Growing Military Power⁹¹



Furthermore, many people in Asia-Pacific countries perceive China’s power and influence as a top threat posing a great concern in the region. Based on the research done by the Pew Research Centre, an average of 47 per cent of people see it as a major threat. South Koreans and Vietnamese rated China’s power and influence as the top threat facing their nations. See Table 3.

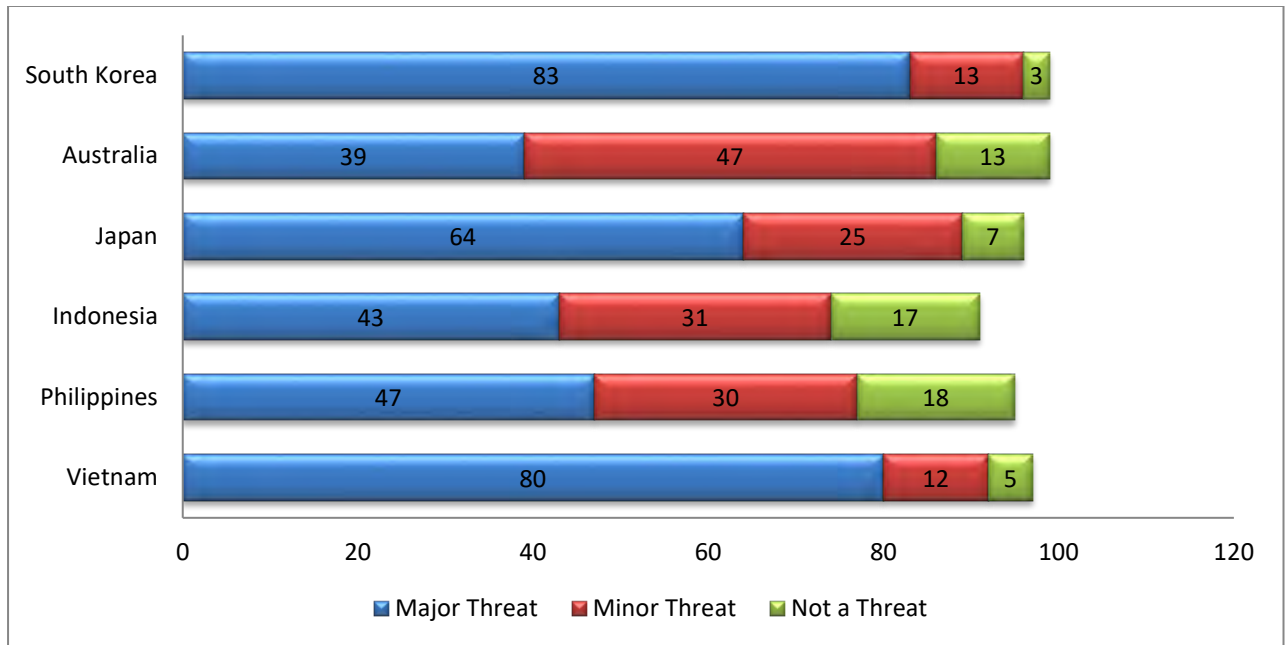


Table 3: China’s Rising Power⁹²

Based on the analysis presented by this paper, I argue that a new mechanism is needed to resolve the skirmishes in the SCS or to at least not allow them to escalate towards global tension. This mechanism should adhere to international diplomacy, capacity building and respect for international law in the SCS.

Internationalisation is defined as:

an act of leveraging, whereby a given actor initiates a certain form of cooperation with at least one other actor on the regional or global level, aiming to engage this actor in a specific affair of the initiating actor, affecting regional and/or global dynamics⁹³.

The concept of internationalisation is fundamentally to drive discussion in multilateral arenas with the involvement of external powers, their focus being to demonstrate their unified will to aggressive behaviour.

The concept of internationalisation with regards to the SCS can be studied in several ways, such as regional cooperation analysis, security analysis, bilateral or multilateral analysis, energy and resources analysis, and even overall analysis of the SCS.

A profitable internationalisation strategy would be for ASEAN to encourage regional cooperation, with multilateral participation on a more assertive footing from countries such as the United States,



Japan, Australia, India, Europe and even countries in the Middle East... Some of these countries have been active partners with ASEAN members over a long period.

Multilateral engagements will help ASEAN gain press China to agree that the Code of Conduct be legally binding. Multilateral influence can be exerted perhaps by ASEAN organising workshops, seminars, conferences and official dialogue with active participation by scholars and subject matter experts from the United States, Japan, India, Australia and Europe

However, this strategy is workable only as long the ASEAN countries have a strong unified will, allowing the multilateral cooperation to take place. And, China's commitment to solve any disputes in the regions on a unilateral basis will impose a credible threat to the success of the strategy described above.

The second internationalisation strategy is based on bolstering the capability of the regional nations. Southeast Asian countries have been expanding their military assets significantly over the last ten years, especially Cambodia (332 per cent), Indonesia (122 per cent), and Vietnam, the Philippines and Myanmar (more than 40 per cent but less than 100 per cent)⁹⁴. Controlling sovereignty over the territorial sea is among the main reasons for this expansion of military capability.

It would be to the advantage of ASEAN countries if they took a big leap, collaborating more purposefully by inaugurating a combined operations concept such as combined patrol between the armed forces, the coast guard, and law enforcement agencies. Moreover, since most of the countries are member of the Western Pacific Naval Symposium, it would bring regional naval leaders together to discuss issues of maritime security. Such unified action would eventually create a broader Maritime Domain Awareness and enhance cooperation through information sharing and knowledge of best practices.

Additionally, were ASEAN was able to forge strong relationships among its members, it would reap credible support from external powers such as the United States, Australia, New Zealand and the United Kingdom, which has a strong relationship under the Five Power Defence Arrangement (FPDA) with Malaysia and Singapore. India and Japan.

Never properly legitimate, China's claims to the SCS have become less viable and less reasonable after the Permanent Court of Arbitration ruling. Despite being a signatory to China's refusal to accept the ruling of the Permanent Court smacks of belligerence and an absurd arbitrary disregard of the international laws of the sea.⁹⁵ The sense of greedy arbitrariness is underlined by the refusal or failure of Beijing to define what the Nine-Dash Line included or excluded.⁹⁶ As things stand, the Nine-Dash Line that appears to enclose roughly 90 per cent of the SCS,⁹⁷ an apparently egomaniacal grasp which ignores the convention that maritime claims derive from land features.⁹⁸

Beijing acts as if it has exclusive rights over such waters, but it has never clearly stated its position, thus greatly increasing the overall level of uncertainty.⁹⁹ Furthermore, the UNCLOS clearly states that 'artificial islands, installations, and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the EEZ or the continental shelf' (Article 60(8)). The area inside the Nine-Line segments far exceeds what is claimable as territorial waters as reflected in UNCLOS, and includes waters that are within the claimable EEZs of the Philippines, Malaysia, Brunei and Vietnam.¹⁰⁰



After the Court of Arbitration ruling, several ASEAN states – Vietnam, Malaysia, Singapore and Myanmar – made their statements on supporting the legal process of the tribunal and adhering to the rules of law.

Beyond disputes over territory and sovereignty, the strategic relevance of the SCS obtains from its rich biodiversity.

People in the SCS have been fishing for decades. However, Chinese land reclamation has caused widespread destruction of the marine life.¹⁰¹ At the same time, overfishing looms as another serious threat.¹⁰² Illegal, unregulated and unreported fishing (IUU fishing) is the main culprit.

Studies by the University of British Columbia Fisheries Economic Research Unit have found securing exact statistics about IUU fishing in the region is very challenging. According to the US Centre for Strategic and International Studies (CSIS), which conducted studies on marine biology in the SCS in 2017, total fish stocks in the South China Sea dropped by 70–95 per cent since the 1950s, and catch rates have declined by 66–75 per cent over the last 20 years. Giant clam harvesting, dredging and artificial island-building in recent years severely damaged or destroyed over 160 square km, or about 40,000 acres, of coral reefs, which studies indicate is declining by 16 per cent per decade.¹⁰³

It is evident that the SCS is on the verge of fisheries collapse, which will certainly affect the communities in the region as well as national revenues. Unfortunately, none of the disputed countries has taken drastic measures to overcome the situation except for the Philippines, which brought its case to the Court of Arbitration.

A multilateral organisation incorporating independent marine experts, fisheries departments, scientific researchers and environmentalist experts from regional authorities should be formed to establish a Joint Development Agreement on Fisheries and Environmental Protection in the SCS. The Blueprint for Fisheries Management and Environmental Cooperation in the South China Sea suggested by the CSIS would be ideal as the framework for such an agreement.¹⁰⁴

Section 7: Summary

Internationalising the SCS will be very challenging despite the opportunities. China is just too unilateral and perverse to imagine that constructive dialogue and practical collaboration is feasible just yet.

However, in the longer term, multilateral cooperation will be the game-changer.

ASEAN states must cultivate and strengthen their present consensus; they must collaborate to secure a region that is utterly against violence and extremism, adheres to peaceful diplomatic means, and respects international law.

In time, the United States, Japan, Australia and India, as regional maritime powers, will likely play more prominent roles in the Indo-Pacific to safeguard regional security and common interest.

And in time, it is hoped that China will take a seat at the table to help shape a practical, sustainable Code of Conduct.



Conflict must be avoided.

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