

THE EMERGING MECHANISMS TO PROMOTE SECURITY AND  
STABILITY IN THE SOUTH CHINA SEA

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by

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## ABSTRACT

THE EMERGING MECHANISMS TO PROMOTE SECURITY AND STABILITY IN THE SOUTH CHINA SEA, by LTC Gulliver L. Señires, 98 pages.

A security dilemma continues in the South China Sea, as disputes remain unresolved. While sporadic skirmishes between China, the Philippines, and Vietnam cause diplomatic and military tension, none has escalated into serious armed conflict. Tensions occur as claimants pursue unilateral actions that are perceived by other claimants as altering the status quo. This study looks into the different actions taken by claimants as incidents at sea occur, and identify trends and mechanisms that promote security and stability in the SCS. When tensions increase, claimants resort to diplomatic means and de-escalation of conflict. The increased participation of other institutions and states also deter the escalation of conflict. The Declaration on the Conduct of Parties in SCS embodies the commitment of claimants to exercise self-restraint, seek peaceful resolution of conflict, uphold the rule of law, and pursue confidence-building activities. The DOC resulted from increased involvement of ASEAN in the disputes. The ASEAN, ASEAN Regional Forum, and SCS conferences allowed for informal and formal consultations, dialogues, and negotiations that promoted a collective interest on stability and security. The ASEAN Way and such foreign policies as China's "peaceful rise" and US and ASEAN's engagement of China also facilitated the relative peace in the SCS.

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## TABLE OF CONTENTS

	Page
MASTER OF MILITARY ART AND SCIENCE THESIS APPROVAL PAGE .....	iii
ABSTRACT.....	iv
ACKNOWLEDGMENTS .....	v
TABLE OF CONTENTS.....	vi
ACRONYMS.....	viii
ILLUSTRATIONS .....	ix
TABLES .....	x
CHAPTER 1 INTRODUCTION .....	1
Overview.....	1
Geography.....	4
Economics.....	6
Resources .....	7
Stakeholders and Actors .....	9
ASEAN and the “ASEAN Way” .....	10
The Problem.....	13
Primary Research Question .....	15
Secondary Research Questions.....	16
Assumptions.....	16
Limitations .....	16
Delimitations.....	16
Significance of the Study .....	17
CHAPTER 2 LITERATURE REVIEW .....	18
Overview.....	18
The Disputes .....	19
A Flashpoint?.....	30
ASEAN, ARF, and UN.....	33
Strategies Employed .....	36
Potential Security Outcomes.....	39
CHAPTER 3 METHODOLOGY .....	43
CHAPTER 4 ANALYSIS .....	44

Overview.....	44
The Nature of the South China Sea Disputes .....	45
The Ambiguity of Claims .....	46
Varying Claims and Bases of Claims .....	48
Strengthening their Claims .....	50
South China Sea Incidents .....	53
Spratly Skirmishes of 1988 and the Johnson Reef Incident .....	54
Mischief Reef Tension .....	55
Scarborough Shoal and Spratly Islands Skirmishes.....	56
Hainan Island Air Collision .....	56
Reed Bank.....	58
Gulf of Tonkin and the Oil Rig Incident.....	59
The Drivers of Tension .....	60
Managing Tensions in the SCS.....	61
ASEAN and the “ASEAN Way” .....	62
Security Outcomes .....	65
Regional and International Institutions.....	69
CHAPTER 5 CONCLUSION.....	73
APPENDIX A Maps and Charts.....	77
APPENDIX B Spratly Islands Distribution.....	79
BIBLIOGRAPHY.....	80

## ACRONYMS

ARF	ASEAN Regional Forum
ASEAN	Association of South East Asian Nations
CLCS	Commission on the Limits of the Continental Shelf
COC	Code of Conduct
DOC	Declaration on the Conduct of the Parties in the South China Sea
EEZ	Exclusive Economic Zone
EIA	Energy Information Administration
EU	European Union
ICJ	International Court of Justice
ITLOS	International Tribunal on the Law of the Seas
KIG	Kalayaan Island Group
PRC	People's Republic of China
RP	Republic of the Philippines
SCS	South China Sea
SEA	South East Asia
SLOC	Sea Line of Communication
TAC	Treaty of Amity and Cooperation in Southeast Asia
UN	United Nations
UNCLOS	United Nation Convention on the Laws of the Sea
US/USA	United States of America
WPS	West Philippine Sea

## ILLUSTRATIONS

	Page
Figure 1. Political Map of Southeast Asia.....	5
Figure 2. ASEAN Member Countries .....	11
Figure 3. South China Sea Territorial Claims .....	20
Figure 4. Paracel Islands .....	24
Figure 5. Territorial Claims in the Spratly Islands .....	47
Figure 6. China's Nine-Dash Line Map of South China Sea .....	77
Figure 7. South China Sea Maritime Claims.....	78

TABLES

	Page
Table 1. South China Sea Territorial Claims .....	23

## CHAPTER 1

### INTRODUCTION

We are strongly committed to safeguarding the country's sovereignty and security, and defending our territorial integrity.<sup>1</sup>

— Chinese President Xi Jinping, September 21, 2012

#### Overview

On March 30, 2014, the Republic of the Philippines (RP) filed a memorial to the Permanent Court of Arbitration in The Hague, Netherlands. Invoking Annex VII of the United Nations Convention on the Laws of the Sea (UNCLOS), the RP sought arbitration pertaining to its (RP) “dispute with China on the maritime jurisdiction over the West Philippine Sea.”<sup>2</sup> The West Philippine Sea (WPS) refers to that portion of the South China Sea (SCS) claimed by the RP based on the UNCLOS provision allowing a 200 nautical mile exclusive economic zone (EEZ). Will the RP's initiative pave the way for the resolution of the long-standing disputes that haunt the stability and security of the SCS region?

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<sup>1</sup> Remarks of Chinese Vice President (now President) Xi Jinping at the opening ceremony of the China-ASEAN Business and Investment Summit and Forum on China-ASEAN Free Trade Area, Nanning, China, September 21, 2012, accessed October 1, 2014, [http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/>/.](http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/)

<sup>2</sup> Pursuant to Republic of the Philippines Administrative Order No. 29 signed and promulgated on September 5, 2012, the maritime areas covered by the Luzon Sea and the waters around, within, and adjacent to the Kalayaan Island Group and Bajo de Masinloc (Scarborough Shoal) where the Philippines exercises sovereign jurisdiction shall be called West Philippine Sea and this will be used in all public documents, communications, and messages by all departments, subdivisions, agencies, and instrumentalities of the Government.

The SCS disputes involve the countries of Brunei Darussalam, Malaysia, the RP, the PRC, Taiwan, and Vietnam. These arise out of competing territorial and sovereignty claims over the islands and waters in the SCS. The Spratly Islands, an archipelago in between Vietnam and the Philippines, is the most contested of all the island chains in the SCS. The PRC claims it wholly while Brunei, Malaysia, the RP, and Vietnam respectively present partial claims. The PRC and Vietnam have disputes over the Paracel Islands while the PRC and the RP have disputes over the Macclesfield Bank or Scarborough Shoal. The PRC and Taiwan also have a disagreement over the Pratas Island off mainland Hong Kong.

The resolution of the SCS disputes is elusive. The number of claimants, the opacity of the various claims, the different bases of claims, and the differences on the preferred means of dispute settlement are the major impediments to immediate resolution. Currently, most of the claimants (except Brunei) have established a foothold on some of these contested islands either through presence of their citizens, military personnel, naval vessels, or the establishment of semi-permanent structures. Also, claimants engage in limited economic activities such as fishing and exploration of energy resources. Claimants also exercise jurisdiction over their occupied territories by blocking the entry of other claimants or arresting those who intrude. As claimants strengthen their respective claims, “incidents at sea” continue. These “incidents at sea” involve fishing boats, military and paramilitary vessels, trawlers, and survey ships with confrontations ranging from blockades, chases, water cannons, and actual shots being fired. A few of these confrontations have resulted in damaged or sunk vessels, and even the loss of lives. Though none of these incidents has actually escalated into a serious conflict, these

“incidents at sea” have caused diplomatic and military tensions in the region that extend beyond the claimants involved. This is primarily due to the participation of two global powers, the PRC and the United States of America (US), in the SCS disputes. Although the US is not technically a party to any of the competing claims, it has contentious issues over the freedom of navigation and overflight of its military forces in the SCS with the PRC. In fact, a few of the recorded “incidents at sea” involving military planes and naval vessels are between the PRC and the US. This issue becomes more compelling as China claims “indisputable sovereignty” over ninety percent of the SCS and the US recent declaration of its pivot to Asia. Also, though the US has remained neutral about the SCS disputes, its 1952 Mutual Defense Treaty with the RP may draw the US into a situation against the PRC should the disputes between the RP and the PRC escalate into war.

The complexity of the SCS disputes, the varying assertiveness of the claimants, and the involvement of two global powers the US and the PRC, are some of the major factors that could escalate the SCS conflict. Yet, despite that, a resolution of the SCS disputes has not been achieved. Amazingly, despite the sporadic skirmishes in disputed territories, no serious armed conflict involving the claimants and their allies has occurred. With over fifty years of unresolved SCS disputes, how has the escalation of conflict been avoided or prevented? Hence the question, what are the emerging mechanisms that promote security and stability in the SCS? For the purpose of this study, the concept of security refers to the absence of armed conflict or war. Stability, on the other hand, refers to steadiness in relationship characterized by the absence of any disruptions or tension in diplomatic relations. Key to answering this question is understanding the issues

surrounding the SCS disputes, specifically the extent of the claims, the parties involved, how they interact, and the security outcomes of such interactions.

To do this, this chapter provides a brief description of the general context of the SCS disputes. This begins with describing the geographic and economic characteristics that renders the SCS strategically important to the security and stability of the region. This is further explained as the stakeholders, their interests, and involvements are illustrated and discussed. In the said discussions, three prevalent international relations theories are used to determine the impact of the SCS disputes to regional and global stability and security. This chapter also presents the assumptions, limitations, and delimitations of this study and ends with the significance of this study.

### Geography

The SCS is an important sea line of communication (SLOC) in the western Pacific. It spans approximately three million square kilometers from the Strait of Malacca in the West to its exit to the Pacific Ocean in the East. Specifically, it is bounded by the PRC and Taiwan in the North, the RP archipelago in the East, Malaysia and Brunei Darussalam in the South, and Vietnam in the West.<sup>3</sup>

Connected to the SCS are the East China Sea extending from the Sea of Japan towards the Pacific Ocean all the way to the west coast of the US and Canada. Also, the SCS directly relates to various SLOCs, particularly the Eurasian line, North Pacific line, South Pacific line, and the Cape of Good Hope line, as well as, host to the Strait of

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<sup>3</sup> The Columbia Encyclopedia, "South China Sea," 2013, accessed March 30, 2014, [http://www.encyclopedia.com/topic/South\\_China\\_Sea.aspx](http://www.encyclopedia.com/topic/South_China_Sea.aspx).

Malacca, which is one of the most strategically significant choke points associated with the world's energy supply.



Figure 1. Political Map of Southeast Asia

Source: Central Intelligence Agency, “Political Map of Southeast Asia,” World Factbook, accessed November 3, 2014, <https://www.cia.gov/library/publications/the-world-factbook/docs/refmaps.html>.

The SCS is a major transshipping lane and serves as the gateway from the West to the East.<sup>4</sup> It serves as the primary artery of international sea-borne trade and commerce and provides a shorter route for maritime travel from the Indian Ocean to the Pacific Ocean. It facilitates heavy shipping traffic volume and hosts the transportation of key maritime products in and out of Asia region. Overall, “A third of global crude oil and over half of global liquefied natural gas (LNG) passes”<sup>5</sup> through the area every year. This is just part of the one-third of the world’s maritime trade that passes through the SCS that includes grain, coal, iron ore, and other trade goods.

### Economics

Generally, Asian economies are growing and the region continues to attract foreign investments. In a recent article in *Forbes*,<sup>6</sup> it named six Asian countries as locations for multinational corporations’ investments for the past 20 years. The list includes Indonesia, Malaysia, the RP, Singapore, Thailand, and Vietnam. China, despite recent economic challenges, continues to be the best investment choice for manufacturing

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<sup>4</sup> Brad Kaplan, “Rich Regions, Strong States: The Political Economy of Security in Asia,” April 2013, accessed March 30, 2014, <http://www.igcc.uscd.edu/assets/001/504657.pdf>.

<sup>5</sup> United States Energy Information Association, “The South China Sea is an Important World Energy Trade Route,” April 4, 2014, accessed April 30, 2014, <http://www.eia.gov/todayinenergy/detail.cfm?id=10671#>.

<sup>6</sup> Sylvia Vorhauser-Smith, “Defining the Six Tiger Countries of Southeast Asia: Workforce Characteristics and Talent Management Implications,” *Forbes*, April 15, 2014, accessed April 21, 2014, <http://www.forbes.com/sites/sylviavorhausersmith/2014/04/15/defining-the-six-tiger-countries-of-southeast-asia-workforce-characteristics-and-talent-management-implications/>.

companies.<sup>7</sup> Western corporations continue to shift their investments towards the region. Experts predict this phenomenon will continue until cheaper operational costs and raw materials can be found elsewhere. The SCS contributes to these economic activities through its sea-lanes. In addition to it being a strategic route, the abundant marine resources and untapped mineral and energy deposits offer promising economic activities in the region.

### Resources

Like any ocean, the SCS is rich in marine life and underwater resources. This vast ocean is a major source of livelihood for sea-based industries in countries bordering the SCS. Since time immemorial, fishermen have dominated the area and it can be said that this is where the essence of “multinational” presence, cooperation, and co-existence is displayed. Domestic consumption of marine goods are predominantly high in the surrounding states with the PRC being the country with the biggest demand. Accordingly, one-tenth of the world’s fish supply comes from the SCS and countries bordering the SCS have been among the top fish producers in the world for the past decade.<sup>8</sup>

Additionally, explorations conducted in the SCS have identified a large amount of essential minerals in certain islands, specifically at the vicinity of the Paracel Islands chain. The area contains proven and probable hydrocarbon deposits, which is in great

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<sup>7</sup> Karel Eloit, Alan Huang, and Martin Lehnich, “A New Era for Manufacturing in China,” *McKinsey Quarterly* (June 2013), accessed April 21, 2014, [http://www.mckinsey.com/insights/manufacturing/a\\_new\\_era\\_for\\_manufacturing\\_in\\_china](http://www.mckinsey.com/insights/manufacturing/a_new_era_for_manufacturing_in_china).

<sup>8</sup> Ralf Emmers, “Natural Resources and Inter-State Cooperation and Competition in the South China Sea,” in *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime*, eds. Wu Shicun and Nong Hong (New York: Routledge, May 22, 2014), 161.

demand in the world market.<sup>9</sup> The U.S. Energy Information Administration (EIA) reported an estimated 11 million barrels of oil reserves and 190 trillion cubic meters of natural gas reserves<sup>10</sup> and natural gas in the Paracel Islands chain, which can potentially produce a volume greater than the oil reserves in the Middle East and natural gas deposits in Russia.

Any disruption in global sea borne trade arising from the SCS disputes will adversely affect not only the economies of the claimants or the region but also the rest of the world. Thus, the security and stability of the SCS cannot be ignored. The significance of the SCS is not only limited to its proven and potential energy and marine resources, the volume of international trade that passes through it, but also control this critical route.

The control of SCS have great significance to power and security architecture, not only in the SCS, but also throughout the Asia-Pacific region. The jurisdiction over the freedom of navigation and safety of passage would largely depend on whoever gets to control the SCS. The SCS is not only a global trade and energy choke point; its strategic location also makes it a platform for naval power projection between and among the claimants and their allies. This renders the SCS strategically significant.

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<sup>9</sup> Leszek Buszynski, "The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry," *Washington Quarterly* (Spring 2012), accessed March 30, 2014, <http://csis.org/files/publication/twq12springbuszynski.pdf>.

<sup>10</sup> United States Energy Information Administration, "South China Sea," February 7, 2013, accessed March 30, 2014, [http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).

## Stakeholders and Actors

Given this geostrategic and economic significance of the SCS to the region, freedom of navigation and security of the maritime commons continue to be a paramount concern not only to the claimants but to other states as well. The stakeholders in the SCS are not limited to the individual claimants only; they also extend to the regional and international institutions, too. Stakeholders refer to individuals, groups, institutions, or entities who are affected by, and have interest over, an issue, activity, institution, or situation. All who benefit from the access to SCS are its stakeholders. Those who have competing territorial claims in the SCS, specifically Brunei Darussalam, the PRC, Malaysia, the Philippines, Taiwan, and Vietnam are the primary stakeholders in the SCS. They are the direct actors in the SCS disputes. Major economic powers such as the European Union (EU), the US, Australia, Japan, and oil producing countries such as Saudi Arabia are stakeholders as well. They all seek to ensure freedom of navigation and security of the maritime commons, adherence to international laws, and the peaceful settlement of SCS disputes. Institutions such as the Association of Southeast Asian Nation (ASEAN) and the United Nations (UN) also foster the peaceful settlement of disputes. These states and institutions are the indirect actors in the SCS disputes. They are not parties to the SCS disputes but they have incentives that can affect the outcomes of the SCS disputes.

## ASEAN and the “ASEAN Way”

On August 8, 1967, five nations in Southeast Asia signed the Bangkok Declaration thereby establishing the ASEAN.<sup>11</sup> The founding members were Indonesia, Malaysia, the RP, Singapore, and Thailand. ASEAN sought to promote regional cooperation, peace, and stability through respect for justice and human rights. It sought consensus by all members to abide by the UN charter. In 32 years, the ASEAN grew into ten member states with Brunei Darussalam joining on January 7, 1984; the Socialist Republic of Vietnam on July 28, 1995; the Lao Peoples Democratic Republic and Myanmar on July 23, 1997; and the Kingdom of Cambodia on April 30, 1999.<sup>12</sup>

Recognizing the diverse economic, political, cultural, and historical characteristics of countries in the region, the ASEAN member states agreed to the “Treaty of Amity and Cooperation in Southeast Asia (TAC).”<sup>13</sup> The TAC provided guidelines on how the member states should relate to one another. Relations were anchored on cooperation, mutual respect for sovereignty of states and non-interference, peaceful resolution of disputes, and renunciation of the use of force. The treaty has added several amendments in order to accommodate non-Southeast Asian states to accede to the treaty as a manifestation of their support to ASEAN and recognition of the treaty’s

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<sup>11</sup> Association of Southeast Asian Nations, “History: The Founding of ASEAN,” accessed September 27, 2014, <http://www.asean.org/asean/about-asean/history>.

<sup>12</sup> EU-Vietnam Business Network, “ASEAN Info,” accessed September 27, 2014, <http://evbn.org/asean-info/>.

<sup>13</sup> The treaty is also referred to as the “Bali Treaty” having been signed in Bali, Indonesia on February 24, 1976 by the founding fathers of ASEAN.

tenets.<sup>14</sup> As such, ASEAN members, specifically Brunei Darussalam, Malaysia, the RP, and Vietnam, are signatories to the Treaty, while China is one of the non-ASEAN member states that acceded to the TAC.

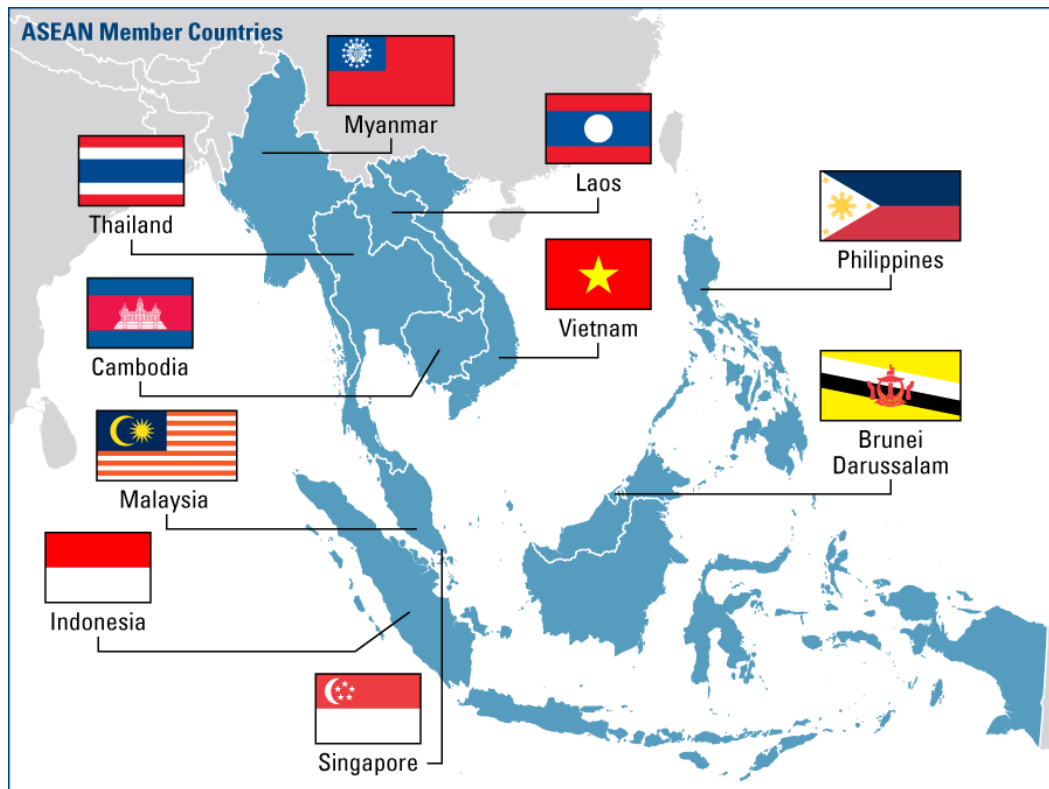


Figure 2. ASEAN Member Countries

Source: EU-Vietnam Business Network, "Map of ASEAN Member States," accessed October 1, 2014, <http://evbn.org/asean-info/>.

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<sup>14</sup> Association of Southeast Asian Nations, "Text of the Treaty of Amity and Cooperation in Southeast Asia and Related Information," March 2005, accessed September 27, 2014, [http://www.mid.ru/bdomp/spm\\_md.nsf/0/2c07c6d0b170685544257be8001fce4f/\\$FILE/TAC-text.pdf](http://www.mid.ru/bdomp/spm_md.nsf/0/2c07c6d0b170685544257be8001fce4f/$FILE/TAC-text.pdf).

Moreover, ASEAN has been instrumental in the signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002 by all parties in the dispute including China. Though the DOC did not resolve the dispute, it committed the signatories to seek peaceful ways of resolving the disputes, to exercise self-restraint, to maintain the status quo, and to pursue maritime cooperation. With the DOC, the PRC, the RP, and Vietnam continue to communicate and cooperate with each other on matters other than the SCS disputes. This cooperation occurs despite the sporadic confrontations between them in the last three decades. The DOC allowed trade, economic, and foreign relations to continue between these countries. Although a few short-lived crises interrupted these relations, the ASEAN stressed self-restraint and adherence to the DOC.

ASEAN leaders have been instrumental in maintaining communications, consultations, and consensus building between and among SCS stakeholders. The ASEAN Way, “a process of regional interactions and cooperation based on discreteness, informality, consensus building and non-confrontational bargaining styles”<sup>15</sup> seemed to have facilitated the maintenance of collegial relationship between ASEAN and the PRC. Today, ASEAN continues to play a key role in maintaining peace and security, promoting economic and cultural interactions, as well as defense cooperation in the region.

Like the ASEAN, the UN also plays a critical role in ensuring peace and security, not only in the region, but also in the world. The UN has the authority to “maintain international peace and security ... to take effective collective measures for the

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<sup>15</sup> Amitav Acharya, *Constructing a Security Community in South East Asia: ASEAN and the problem of regional order* (New York: Routledge, 2001), 63.

prevention and removal of threats to the peace.”<sup>16</sup> The UN is instrumental in the enactment of statutes and agreements that seek to promote peace, such as the 1982 UN Convention on the Laws of the Sea (UNCLOS) that provides the guidelines in delineating territorial boundaries in international waters and resolving disputes among sovereigns.

### The Problem

Recent incidents at sea once again raised diplomatic and military tension in the SCS. The PRC’s oil exploration in the Paracels that started in May 2014 has caused naval skirmishes with Vietnam. This generated violent protests in mainland Vietnam that sent Chinese businessmen fleeing to the PRC.<sup>17</sup>

Also, tension between the PRC and the RP has been increasing since 2012 over the Scarborough Shoal. These incidents involve patrol vessels and fishermen from trying to block each other from fishing and incursions, often involving arrests, and water cannons. In 2012, a standoff between Chinese and Filipino naval vessels occurred when the PRC prevented the RP authorities from arresting Chinese fishermen engaged in “poaching” activities in the disputed waters.<sup>18</sup> Tensions increased as Chinese vessels tried to block the resupply to Philippine Navy soldiers posted on the marooned BRP Sierra

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<sup>16</sup> United Nations, *Charter of the United Nations and Statute of the International Court of Justice* (San Francisco, 1945), accessed 30 March 2014, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

<sup>17</sup> Hillary Whiteman, “How an Oil Rig Sparked Anti-China Riots in Vietnam,” *CNN*, May 19, 2014, accessed November 11, 2014, <http://www.cnn.com/2014/05/19/world/asia/china-vietnam-islands-oil-rig-explainer/>.

<sup>18</sup> Jason Miks, “China, Philippines in Standoff,” *The Diplomat*, April 11, 2012, accessed November 11, 2014, <http://thediplomat.com/2012/04/china-philippines-in-standoff/>.

Madre in 2014.<sup>19</sup> Incidents between the US and the PRC in the SCS have also occurred. The most recent of which is the Chinese fighter plane intercept of a US Navy plane off Hainan Island in August 2014.<sup>20</sup>

Again, these incidents test the security and stability in the region. The unilateral actions of the claimants continue to drive tensions. To the Realist, this proves that the international system remains anarchic. The international legal system remains inadequate to deter states from pursuing their interests. The claimants in the SCS disputes compete economically to survive thus rendering conflict inevitable. Further, to the Realists, the shifts in power position of states cause insecurity; hence, the rise of PRC to power is considered a threat. PRC's recent assertiveness is associated with the increase in its economic and military power. This causes further insecurity in the region as the less powerful claimants seek alliances to balance Chinese power. The US is the most likely balancer.

But the history of the SCS shows that none of the incidents at sea escalated into a serious conflict. Tensions de-escalated. The Liberalist is more likely to attribute the de-escalation of conflict to increasing international engagements and growing economic integration regionally and globally. The Liberalist would argue that the volume of regional and global trade that a conflict in the SCS would disrupt is a major deterrent.

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<sup>19</sup> Tarra Quismundo, "Ship evades Chinese Blockade," *Philippine Daily Inquirer*, March 30, 2014, accessed November 11, 2014, <http://newsinfo.inquirer.net/590216/ship-evades-chinese-blockade>.

<sup>20</sup> Tom Cohen, "'Aggressive' Chinese Fighter Jet Flies Dangerously Close to U.S. Navy Plane," *CNN*, August 24, 2014, accessed November 11, 2014, <http://www.cnn.com/2014/08/22/world/asia/us-china-air-encounter/>.

Like the Liberalists, the Constructivists are predisposed to predicting more peaceful security outcomes. Constructivists emphasize the importance of norms, identity, and ideas and how these are shaped and can be shaped and shared beyond national boundaries. This would account for the growing influence of the ASEAN, the UN, and other regional and international entities on SCS outcomes. Claimants are engaged in a dynamic web of international relations, where they are socialized into universally acceptable norms of peaceful resolution of disputes.

Yet, neither the Liberalist nor the Constructivist could conclusively rule out the possibility of a future war. And none of these theories can adequately explain two facts about the SCS disputes. One, “incidents at sea” arising from the SCS disputes continue to persist and cause tension. Two, none of these “incidents at sea” has escalated into a serious conflict. Given the seemingly irreconcilable differences among major claimants, and the varying degrees of assertiveness and capabilities, how has the escalation of conflict been avoided? Thus, this research seeks to identify the emerging mechanisms that promote peace and stability in the SCS.

#### Primary Research Question

What are the emerging mechanisms that promote security and stability in the South China Sea?

To address this question, it is important to understand the over-all security situation arising from the SCS disputes. Thus, the following secondary questions will also be answered:

### Secondary Research Questions

1. What are the drivers of tension in the SCS and how are these managed?
2. What are the real security outcomes to date?
3. What are the factors, actions, or arrangements that promote security and stability in SCS?

### Assumptions

In the discussions in this study, Taiwan is considered part of the PRC. Hence, the disputes between Taiwan and the PRC are not covered.

### Limitations

With the limited time to conduct this research, findings, analysis and conclusions are largely based on available data. The primary and secondary sources of information are limited to official documents and studies accessed in the Combined Arms Research Library and the internet. Lastly, western authors have written most of the literature studied and the dearth of available official documents from the PRC, Vietnam, and Malaysia pertaining to the SCS proved to be critical limitations in terms of the primary source of data.

### Delimitations

This study is descriptive. It only intends to identify the emerging mechanisms that promote the security and stability in the SCS. It does not intend to evaluate the effectiveness of said mechanisms. Also, it does not intend to establish correlation between the identified mechanisms and security outcomes.

### Significance of the Study

The SCS situation is a complex, protracted dispute. The existing debates about the future of the regional and global security situation from the SCS disputes focus more on the tension points or conflict drivers that interpret events and highlight factors that will more likely lead to conflict. On the other hand, when managed well, these tensions can also lead to cooperation and even collaboration.

The SCS disputes have critical implications for international relations, legal systems, and global order. The issues of sovereignty, territorial disputes and dispute settlement, military alliances, freedom of navigation, and balance of power poses not only critical security issues but also tests the relevance and effectiveness of the international system.

Further, the instability of the SCS situation has already denied the parties to the disputes access to the benefits from the SCS's rich energy and maritime resources. It has generated much speculation that can shape the way events unfold.

Finally, this study provides an understanding of the varying interpretations related to SCS events. These interpretations will allow future scholars to assess the SCS situation from a different perspective and use these ideas in devising solutions to the enduring conflict that is currently impossible to achieve.

## CHAPTER 2

### LITERATURE REVIEW

We will not be pushed around because we are a tiny state compared with theirs.<sup>21</sup>  
— President Benigno S. Aquino III, June 17, 2011

#### Overview

The abundant literature on SCS dispute illustrates the conflicting interpretations on the disputes' real issues. Different studies and opinions present different and sometimes contradicting interpretations and security outcomes emanating from the SCS disputes. As such, this chapter aims to examine the different studies and official documents to establish the facts and opinions pertaining to the SCS disputes. To do this, the chapter is broken down into five parts. The first part presents studies and opinions about the SCS disputes, the tension points, and the security challenges such disputes pose. The second part presents opposing views on whether the SCS is a flashpoint or not. These narratives are key in understanding the security context where the SCS disputes exist. The third part focuses on literature about the strategies the different actors employed and how their actions affect the regional security situation. The fourth part presents the potential security outcomes of the SCS disputes as interpreted and predicted by analysts and experts. Lastly, the fifth part presents studies that identify the factors that promote SCS security and stability.

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<sup>21</sup> Remarks of Republic of the Philippines President Benigno S Aquino III during an interview with The Associated Press, Manila, Philippines, June 17, 2011, accessed October 1, 2014, <http://newsok.com/philippines-to-china-dont-intrude-into-our-water/article/feed/269028>.

## The Disputes

Naval strategist and historian, Alfred Thayer Mahan, once wrote, “Whoever rules the waves, rules the world.”<sup>22</sup> A century later, Mahan may still be correct. The SCS appears to be the major prize in this contest for territories and power in Asia. But is the fundamental issue about power, influence, and the control of the SCS?

For over fifty years, six countries bordering the SCS continue to challenge each other’s sovereignty and jurisdiction over reefs, shoals, and atolls in three geographical areas. Brunei Darussalam, the PRC, Malaysia, the RP, Taiwan, and Vietnam are the main actors. Accordingly, Beijing bases its claims on historical and sovereign rights. Its claims are reflected by a “nine-dash line” that overlaps the EEZ of all coastal states surrounding the SCS.<sup>23</sup> (See figure 3) Although the PRC is yet to clarify the exact extent of the nine-dash line, it represents the extent of the PRC’s SCS claims. Similarly, the nine-dash line also represents Taiwan’s claim since it was the original claimant as the Republic of China until 1949.<sup>24</sup>

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<sup>22</sup> Alfred T. Mahan, “Sea Power,” Digital History, accessed October 2, 2014, [http://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtID=3&psid=4044](http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=4044).

<sup>23</sup> Robert Beckman, “Maritime Claims in the South China Sea: Issues and Challenges” (7th ABLOS Conference 2012, Monaco, Princess Grace Theatre, October 2012), accessed November 1, 2014, <http://cil.nus.edu.sg/wp/wp-content/uploads/2012/10/Beckman-ABLOS-Keynote-3-Nov-2012-Monaco.pdf>.

<sup>24</sup> Shannon Tiezzi, “Taiwan Will Not Cooperate with China in South China Sea,” *The Diplomat*, May 15, 2014, accessed September 28, 2014, <http://thediplomat.com/2014/05/taiwan-will-not-cooperate-with-china-in-south-china-sea/>.

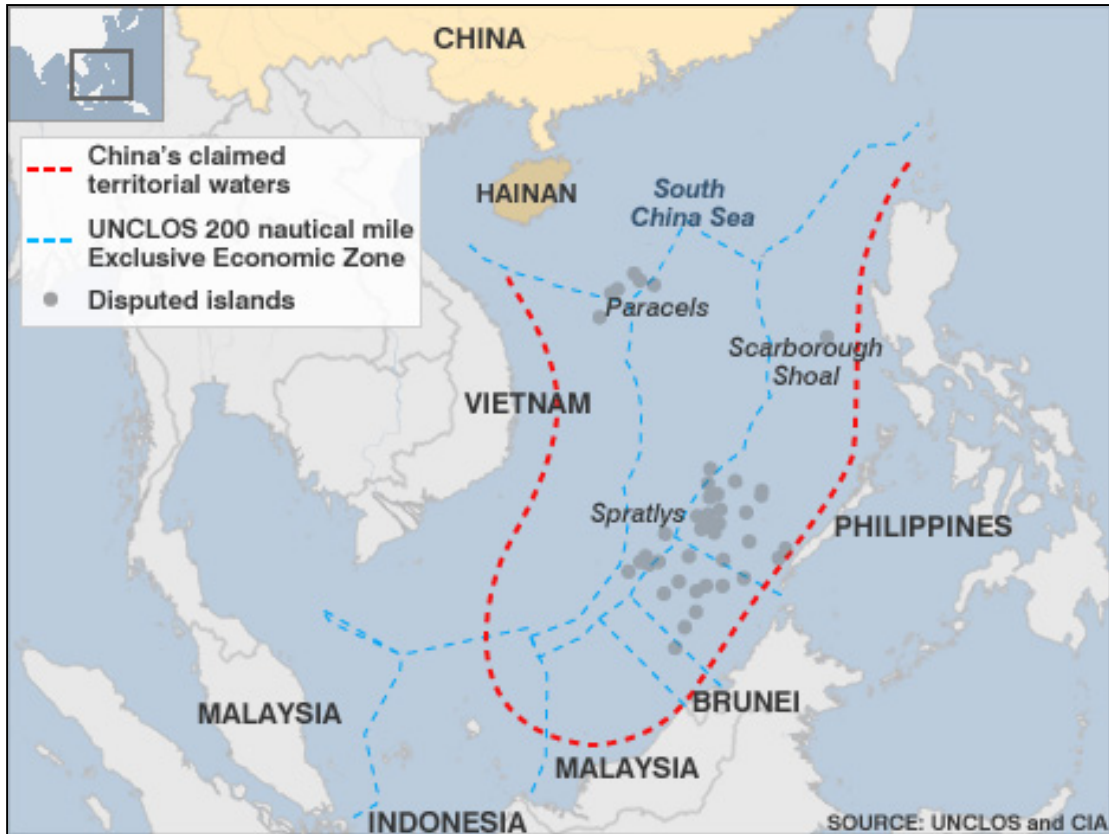


Figure 3. South China Sea Territorial Claims

*Source:* UNCLOS and CIA, “Disputed Regions: South-China-Sea- 9 Dash Line,” accessed October 1, 2014, <http://www.theepochtimes.com/n2/images/stories/large/2012/05/23/image41.jpg>.

The Spratly Islands are the most contested of all with Brunei, the PRC, Malaysia, the RP, and Vietnam advancing their respective claims. Of all the claimants, Brunei, Malaysia, the RP, and Vietnam are physically the closest to the Spratly Islands. Though Brunei has not put forward any aggressive claim, some islands fall within its EEZ. This puts Brunei in competition with Malaysia who bases its claims on boundary agreements

with Indonesia, Thailand, and the Treaty of Paris of 1898 where Spain ceded the Philippines to the US.<sup>25</sup>

The RP asserts its claim to the Kalayaan Island Groups (KIG), a portion of the Spratlys, on the principle of terra nullius. No one owned the islands when Thomas Cloma occupied and claimed them in 1956.<sup>26</sup> Further, the RP's claim to the KIG is based on the UNCLOS provision on the regime of islands. This entitles the KIG "the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island" like that of a land territory.<sup>27</sup>

If the KIG is entitled to a 200 nautical miles EEZ, then the RP's claim would cover all of Spratlys. If the KIG is entitled to a 12 nautical mile territorial limit, then the RP's claim still overlaps with the claims of PRC, Malaysia, and Vietnam due to the proximity of the islands that each of the claimant occupies.

Vietnam's claims are founded on historical rights and the EEZ provisions of UNCLOS. Vietnam asserts that its jurisdiction over the Spratly and Paracel Islands can

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<sup>25</sup> Gregory B. Poling, *The South China Sea in Focus: Clarifying the Limits of Maritime Dispute* (Washington, DC: Rowman and Littlefield, July 2013), accessed September 28, 2014, [http://csis.org/files/publication/130717\\_Poling\\_SouthChinaSea\\_Web.pdf](http://csis.org/files/publication/130717_Poling_SouthChinaSea_Web.pdf).

<sup>26</sup> Renato Cruz De Castro, "The Philippines in the South China Sea Dispute," in *The South China Sea and Australia's Regional Security Environment*, eds. Leszek Buszynski and Christopher Roberts (Acton: National Security College, September 2013), 31.

<sup>27</sup> United Nations, "Part VIII Regime of Islands," *United Nations Convention on the Law of the Sea*, December 10, 1982, accessed November 11, 2014, [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part8.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm).

be traced to the time when the country was still a French colony.<sup>28</sup> As such, Hanoi claims that when Vietnam gained independence, it also gained jurisdiction over these islands and continues to claim the entirety of both island groups. With reference to the Spratlys, Malaysia and Vietnam forwarded a joint submission to the Committee on Limits of Continental Shelf in 2009 where their respective EEZ are based on land territory and the islands in the Spratlys are not entitled to a 200 nautical mile EEZ but to a 12 nautical mile territorial limit.

The Paracels is an island chain composed of 130 small coral islands and reefs divided into the Amphitrite group in the Northeast and the Crescent group in the West area. The PRC occupied the Amphitrite group of islands in 1956. The PRC secured the Crescent group, which the Vietnamese formerly occupied, in 1974. After four decades, Vietnam is still challenging the PRC's sovereignty and control over this island group.<sup>29</sup>

Vietnam's claim of the Paracel Islands, officially called "Huang Sa" by Hanoi, is based on historical precedent and official documents that date back to 1838. This island chain is more or less 250 miles (400 kilometers) east of central Vietnam and it is considered part of Quang Nai province. They were "incorporated in the French colony of

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<sup>28</sup> Do Thanh Hai, "Vietnam's Evolving Claims in the South China Sea," in *The South China Sea and Australia's Regional Security Environment*, eds. Leszek Buszynski and Christopher Roberts (Acton: National Security College, September 2013), 25-9.

<sup>29</sup> Veeramalla Anjaiah, "Paracel Islands Dispute Still Lingers on after 40 Years," *The Jakarta Post*, January 19, 2014, accessed October 5, 2014, <http://www.thejakartapost.com/news/2014/01/19/paracel-islands-dispute-still-lingers-after-40-years.html>.

Cochinchina” in 1933.<sup>30</sup> “In 1949 Vietnam “inherited” from France all former French rights over the Paracel Islands and the Spratlys Islands.”<sup>31</sup>

Table 1. South China Sea Territorial Claims				
Country	South China Sea	Spratly Islands	Paracel Islands	Gulf of Thailand
Brunei	UNCLOS	no formal claim	no	-
Cambodia	-	-	-	UNCLOS
China	all*	all	all	-
Indonesia	UNCLOS	no	no	-
Malaysia	UNCLOS	3 islands	no	UNCLOS
Philippines	significant portions	8 islands	no	-
Taiwan	all*	all	all	-
Thailand	-	-	-	UNCLOS
Vietnam	all*	all	all	UNCLOS
* excluding buffer zone along littoral states (calculations for buffer unknown)				

Source: U.S. Energy Information Administration, “Country Analysis Brief, South China Sea,” February 7, 2013, accessed September 28, 2014, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

<sup>30</sup> Manuel J. Laserna, Jr., “The Spratlys: Legal Basis of the Claim of the Socialist Republic of Vietnam,” Paracel and Spratly Islands Forum, 2008, accessed October 5, 2014, <http://paracelspratlyislands.blogspot.com/2008/01/legal-basis-of-vietnams-claims.html>.

<sup>31</sup> Ibid.

For the PRC, the Paracels, which Beijing calls “Xisha,” is 220 miles (350 kilometers) southeast of Hainan Island<sup>32</sup> and is included within the “nine-dash line.” The nine-dash line, as it appears on maps of claims in the SCS, is currently interpreted to represent the extent of PRC’s claim in the SCS. Although the PRC has yet to officially clarify the extent of its actual claims.

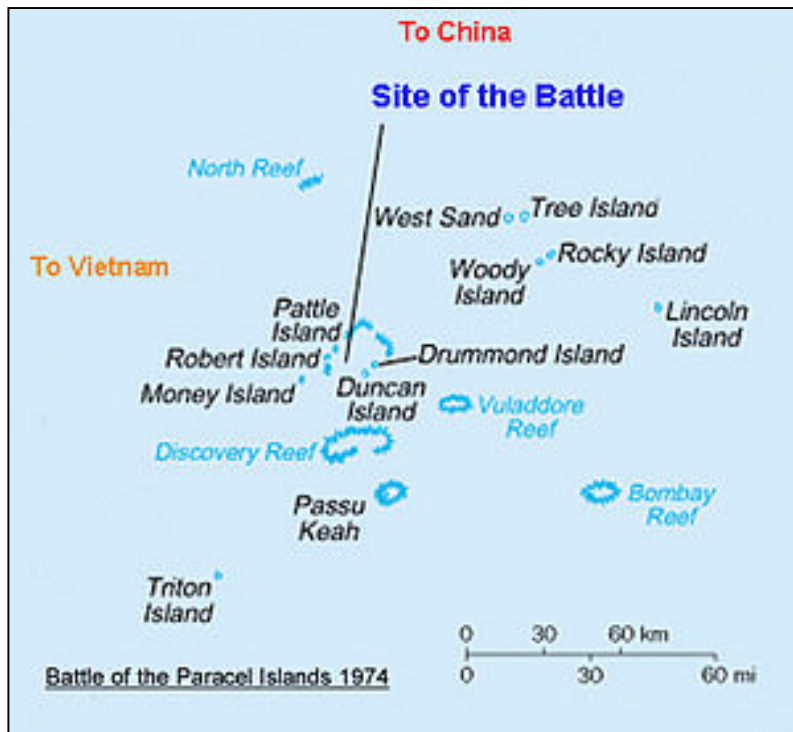


Figure 4. Paracel Islands

Source: Wikipedia, “Map of the Battle of Paracel Islands 1974,” accessed October 1, 2014, [http://upload.wikimedia.org/wikipedia/commons/thumb/e/e3/Paracel\\_Islands-CIA\\_WFB\\_Map-2.JPG/300px-Paracel\\_Islands-CIA\\_WFB\\_Map-2.JPG](http://upload.wikimedia.org/wikipedia/commons/thumb/e/e3/Paracel_Islands-CIA_WFB_Map-2.JPG/300px-Paracel_Islands-CIA_WFB_Map-2.JPG).

<sup>32</sup> Encyclopedia Britannica, “Paracel Islands,” July 22, 2013, accessed October 5, 2014, <http://www.britannica.com/EBchecked/topic/442423/Paracel-Islands>.

Accordingly, the battle for jurisdiction over the Paracels stems beyond political, economic, and security significance to countries in the region. In the case of the PRC, the location of this island chain gives Beijing strategic control of its southern waters.<sup>33</sup>

Another disputed territory is the Scarborough Shoal located between the PRC and the RP. Scarborough Reef (Panatag Shoal to the RP and Huanyan Island to the PRC) is a triangular-shaped atoll composed of several rocks and reefs covering an area of 152 square kilometers including an inner lagoon. It is 170 nautical miles from Macclesfield Bank and 115 nautical miles from Zambales province located west of the RP island of Luzon. The PRC asserts territorial sovereignty based on historical accounts while the RP assert its claims based on the 200 nautical miles EEZ. Scarborough Shoal is the only land feature that is above water in the area, thereby making it vital to China's claim over Macclesfield Bank. Macclesfield Bank is permanently submerged, therefore it cannot be claimed based under the UNCLOS stipulations.<sup>34</sup>

As previously mentioned, the RP already submitted its claims for international arbitration. For their part, Vietnam and Malaysia jointly submitted to the Committee on the Limits of the Continental Shelf (CLCS). As the three submit to international law specifically the UNCLOS, the PRC stands firm on its "indisputable sovereignty" claim over the SCS. It refuses to participate in the RP arbitration case. Though the PRC ratified

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<sup>33</sup> Clarence J. Bouchat, *The Paracel Islands and U.S. Interests and Approaches in the South China Sea* (Carlisle Barracks, PA: US Army War College Press, June 2014), 111, accessed October 6, 2014, <http://www.strategicstudiesinstitute.army.mil/pdf/files/PUB1207.pdf>.

<sup>34</sup> Zou Keyuan, "Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?," *IBRU Boundary and Security Bulletin* (Summer 1999), accessed November 11, 2014, [https://www.dur.ac.uk/resources/ibru/publications/full/bsb7-2\\_keyuan.pdf](https://www.dur.ac.uk/resources/ibru/publications/full/bsb7-2_keyuan.pdf).

UNCLOS in 1996, the PRC also filed reservations regarding the UNCLOS provision on the Compulsory Procedures Entailing Binding Decisions in August 2006. The arbitration case can proceed even without PRC participation.

The resolution of the SCS disputes is caught in a complex web of territorial sovereignty and maritime boundary issues. As Sarah Raine and Christian Le Mière aptly describe, the claims to be “often grounded in a confusing, inconsistent yet ruthlessly pragmatic mixture of international law and historic rights.”<sup>35</sup> For one, territorial sovereignty cases fall within the purview of the International Court of Justice (ICJ). Noteworthy is the fact that in this jurisdiction no case can proceed without the participation of all parties to the dispute. The PRC asserts a “territorial sovereignty” claim in the SCS. In such case, if the PRC choose not to participate, no legal proceedings could occur. On the other hand, if the SCS disputes qualify as maritime boundary disputes, arbitration proceedings can proceed in the Permanent Court of Arbitration or International Tribunal on the Law of the Sea. Arbitration cases can proceed even without the participation of all parties. But there is no mechanism to bind the PRC to honor a decision given its August 2006 reservation. Further, different interpretations regarding UNCLOS provisions on islands and EEZ also poses a challenge to the validity of legal arguments and hence, the consequent resolution.

Relatedly, Beijing and Washington have different opinions regarding the freedom of navigation and overflight of military aircraft and naval vessels. This issue about the type of activities that can be permitted under the “freedom of navigation” remains

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<sup>35</sup> Sarah Raine and Christian Le Mière, *Regional Disorder: The South China Sea Disputes* (Oxon: Routledge, 2013), 14.

obscure. The US has consistently affirmed “freedom of navigation and open access to Asia’s maritime commons and respect for international law in the SCS” as a US national interest.<sup>36</sup> With its renewed focus in Asia, US military activities and presence in the SCS is expected to increase. Would the PRC’s stand that military activities shall not be allowed within the 200 nautical miles EEZ, coupled with its claim of almost ninety percent of the SCS, become a critical predicament to PRC-US relations? Note that China has also declared the SCS as a “core interest, one that is so crucial it would use military force to defend it.”<sup>37</sup> What seems to be a mere battle for territorial integrity and sovereignty of the nations involved in the territorial dispute presents critical economic, geopolitical and security implications significant not only to the nations in dispute, but also to the rest of the world.

The SCS is that body of water adjacent to the Pacific Ocean flowing through the Taiwan Strait up North and to the Indian Ocean through the Malacca and Singapore Straits down South. It is bounded by the PRC (including Taiwan) in the North, the RP in the East, Vietnam in the West, and Brunei, Malaysia and Indonesia in the South.<sup>38</sup>

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<sup>36</sup> Emmanuel Yujuico, “The Real Story Behind the South China Sea Dispute” (London School of Economics and Political Science, July 3, 2013), accessed March 30, 2014, [http://www.lse.ac.uk/IDEAS/programmes/southEastAsiaProgramme/pdfs/SA\\_southchinaseadispute.pdf](http://www.lse.ac.uk/IDEAS/programmes/southEastAsiaProgramme/pdfs/SA_southchinaseadispute.pdf).

<sup>37</sup> Michael Richardson, “China’s Troubling Core Interests,” *The Japan Times*, June 6, 2013, accessed April 30, 2014, <http://www.japantimes.co.jp/opinion/2013/06/06/commentary/world-commentary/chinas-troubling-core-interests/#.U2fmK01OXuh>.

<sup>38</sup> Joe Burgess, “Territorial Claims in South China Sea,” *The New York Times*, May 31, 2013, accessed March 30, 2014, [http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?\\_r=0](http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?_r=0).

Aside from abundant marine resources and potential energy deposits under its seabed, the SCS is a primary artery of international seaborne trade and commerce. SCS is a primary SLOC providing a shorter route for maritime travel from the Indian Ocean to the Pacific Ocean. “Sea Lines of Communication are key maritime passageways that facilitate heavy shipping traffic volumes and hosting the transportation of key maritime trades such as crude oil.”<sup>39</sup> The SCS is one of the significant SLOCs in Asia Pacific. Adjacent to it is the East China Sea that spans from the Sea of Japan, Pacific Ocean, and the Pacific Coast of US and Canada. The Eurasian line, North Pacific line, South Pacific line, and Cape of Good Hope line are four other SLOCs that directly relate to SCS. “A third of global crude oil and over half of global liquefied natural gas (LNG) passes”<sup>40</sup> through the area every year. This is just part of one third of the world’s maritime trade volume that includes grain, coal, iron ore, and goods. If the SCS is closed, more than half of the world’s fleet will be required to sail through farther route. This will increase costs of transport and vessel capacity requirements.<sup>41</sup> With the dramatic increase in the global economic contribution of the countries in the Asia Pacific region and considering the dependence of major economic players such as the PRC, Japan, South Korea, the USA, Australia, Canada, Brazil, the EU, Middle East countries, and India on this SLOC, any

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<sup>39</sup> Nazery Khalid, “Sea Lines under Strain,” *IUP Journal of International Relations* 6, no. 2 (April 2012), accessed March 30, 2014, <http://www.mima.gov.my/mima/wp-content/uploads/sealinesunderstrain.pdf>.

<sup>40</sup> U.S. Energy Information Administration, “The South China Sea is an Important World Energy Trade Route.”

<sup>41</sup> Ji Guoxing, *SLOC Security in the Asia Pacific* (Honolulu, HI: Asia Pacific Center for Security Studies, February 2000), accessed April 30, 2014, <http://www.apcss.org/Publications/Ocasional%20Papers/OPSloc.htm>.

incident that would disrupt the freedom of navigation will adversely affect international trade and commerce. This poses a serious threat not only to the regional economic order but also to the global economic order.

With its global economic significance, SCS security and stability is critical. However, studies show that there are issues that challenge the security in the SCS. In 2012, Nazery Khalid identifies security concerns in SLOCs to include safety of navigation, the security and environmental state of the passageways as shipping traffic intensifies and the increase in naval presence as nations exert their claims and propagate their strategic interests in key maritime areas. Khalid further states, “the role of navies as an instrument of power to protect these claims and interests will become more pronounced.”<sup>42</sup>

Meanwhile, in a study conducted in 2000, Ji Guoxing identified five key issues that threaten security in SCS. These include unstable political relations among regional countries, the disputes over sovereignty and maritime jurisdiction, increased naval build-up, transport of radioactive wastes from Europe to Japan, and non-conventional actions such as piracy, maritime hi-jacking, drug trafficking, pollution, and natural disasters.<sup>43</sup> Another study by Jorge Friedrichs in 2012 identified security challenges in the SCS to include the security dilemma emanating from increased military spending, a competitive rise and decline of powers with reference to the big three China-Japan-US, the fragility of

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<sup>42</sup> Khalid, “Sea Lines under Strain,”

<sup>43</sup> Ji Guoxing, *SLOC Security in the Asia Pacific*.

East Asian regimes, and the rich legacy of interstate conflict.<sup>44</sup> The three studies present more or less similar security challenges in the SCS that can be categorized into (1) interstate relations (includes history of conflict and territorial disputes), (2) safety of navigation emanating from non-traditional security threats (environmental degradation and sea crimes like piracy, smuggling etc.), and (3) power projection (naval build-up and military spending).

The Stockholm International Peace Research Institute reported that despite the over-all decrease in the world's military spending, military spending in the East, led by China, continues to increase.<sup>45</sup> This has been observed among South East Asian nations in recent decades. Some analysts consider this more of military modernization than a heightened arms race. Vietnam and the RP are exceptions. Their increased military spending is attributed to China's increased assertiveness.<sup>46</sup> The increase in military spending coupled with an increased naval presence in the SCS is a formula for potential violent conflict.

### A Flashpoint?

Will the chronic diplomatic and military tension caused by the SCS disputes generate an escalation of conflict or a war in the SCS? David G. Wiencek warns of a risk

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<sup>44</sup> Jorg Friedrichs, "East Asian Regional Security: What the ASEAN Family Can (Not) Do," *Asian Survey* 52, no. 4 (2012): 754-776, accessed April 30, 2014, <http://joerg-friedrichs.qeh.ox.ac.uk/uploads/pdf/EastAsianRegionalSecurity.pdf>.

<sup>45</sup> Stockholm International Peace Research Institute, "Military Spending Continues to Fall in the West but Rises Everywhere Else," April 14, 2014, accessed April 30, 2014, [http://www.sipri.org/media/pressreleases/2014/Milex\\_April\\_2014](http://www.sipri.org/media/pressreleases/2014/Milex_April_2014).

<sup>46</sup> Economist, "Military Spending in Southeast Asia," *The Economist*, March 24, 2012, accessed April 30, 2014, <http://www.economist.com/node/21551056>.

of armed conflict in the SCS largely based on how Beijing is “positioning itself to exert control-in-time of the regional vital sea lanes and airspace.”<sup>47</sup> He based his arguments on the EP-3E incident of 2001 where a Chinese and a US aircraft collided in the SCS, and the PRC’s calculated build-up of military installations in the disputed territories in the SCS.

In his latest book *Asia’s Cauldron*, Robert Kaplan premised his arguments on the inevitable primacy of the PRC in the SCS given a more accommodating US.<sup>48</sup> Kaplan, recognizing that the SCS links the Indian Ocean to the Pacific Ocean, likens the geostrategic importance of the SCS to the PRC, to that of the Caribbean to the US. Though he argues that the PRC will not risk a war with the US since the PRC is weaker militarily. He further argues that the rise of the PRC is benign as it lacks an ideological struggle that characterized American relations with Moscow and Berlin. The PRC is more concerned with business than ideology. Lastly, Kaplan believes that the PRC, due to its economic primacy in the region, would be able to influence its neighbors towards its interests. True, if the SCS claimants and the US accommodate China’s primacy in the SCS, there will not be conflict or war. Yet, this condition is but an affirmation that the SCS is a potential flashpoint. Should the US and the other claimants continue to challenge the PRC in its bid to dominate the SCS and the Chinese aggressively pursues dominance, escalation of conflict or even war is possible.

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<sup>47</sup> David G. Wiencek, “South China Sea Flashpoint,” *China Brief* 1, no. 2 (July 24, 2001), accessed November 11, 2014, [http://www.jamestown.org/programs/chinabrief/single/?tx\\_ttnews%5Btt\\_news%5D=28452&tx\\_ttnews%5BbackPid%5D=191&no\\_cache=1#.VGkfvzTF9lo](http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=28452&tx_ttnews%5BbackPid%5D=191&no_cache=1#.VGkfvzTF9lo).

<sup>48</sup> Robert D. Kaplan, *Asia’s Cauldron: The South China Sea and the End of a Stable Pacific* (New York: Random House, 2014), 27-8.

On the other hand, Brendan Taylor argues that the SCS is not a flashpoint because the SCS situation lacks the three elements of Timothy Hoyt's definition. A flashpoint consists of a political dimension, proximity, and an outside superpower whose entry into the scene would potentially make the issue erupt into a full-blown conflict.<sup>49</sup> Taylor argues that the countries involved in the SCS disputes lack long-standing political issues. Utilizing John Mersheimer's concept of the "stopping power of water," he further argues that due to the distance of the contested territories from the mainland, rapid escalation of conflict can be avoided. It takes time for a conflict at sea to affect populations in the mainland and that same "time" allows opportunity for negotiation and de-escalation of conflict. Lastly, Taylor argues that SCS issues are less likely to bring the US and the PRC into a military showdown. He explains that while balance of power in the SCS has shifted in the PRC's favor, it remains incomparable with that of the US. Therefore, the PRC's threat to the balance of power in the SCS remains remote. He further argues that the US and China have already established the capacity to "navigate crises" in their bilateral relationship. Taylor recognized that while the SCS is not a flashpoint, it does not mean that conflict is not possible but this should not be overemphasized. Doing so "unnecessarily raises the temperature around a set of disputes that, while protracted and complex, appear eminently manageable with sufficient time and patience for creative diplomatic solutions."<sup>50</sup>

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<sup>49</sup> Brendan Taylor, "The South China Sea is not a Flashpoint," *The Washington Quarterly* (Spring 2014): 100, accessed August 29, 2014, [https://twq.elliott.gwu.edu/sites/twq.elliott.gwu.edu/files/downloads/Taylor\\_PDF.pdf](https://twq.elliott.gwu.edu/sites/twq.elliott.gwu.edu/files/downloads/Taylor_PDF.pdf).

<sup>50</sup> *Ibid.*, 104.

Whether the SCS is a flashpoint or not, pressures arising from these territorial disputes, continue to cause diplomatic and military tension in the region. This motivates other states and institutions to take initiatives geared towards managing these tensions to deter armed crisis among claimants.

### ASEAN, ARF, and UN

The ASEAN has proved influential in managing the SCS disputes. Among the claimants, the PRC (including Taiwan) is the only non-member of ASEAN. Yet, ASEAN has been instrumental in engaging the PRC in several multilateral platforms in the region. In fact, the DOC is PRC's first multilateral agreement pertaining to the SCS dispute. In 2002, claimants agreed to seek peaceful means in resolving territorial and jurisdictional disputes and maintain the status quo. The DOC also contains agreements where claimants will pursue confidence building efforts and explore cooperative activities in areas of marine environmental protection and scientific research, safety of navigation and communication at sea, search and rescue operation, and combating transnational crimes. Though the DOC has not resolved the SCS disputes, it has generated the commitment of parties to conduct self-restraint and resolve the disputes peacefully.

The agreement remains non-binding and adherence to the DOC relies heavily on claimants' own accord. The DOC is void of mechanisms that will compel the claimants to abide by the agreements to the letter. In fact, as claimants fortify their claims in the disputed territories with patrol boats, coast guards, construction of structures, and reclamation of islands, claimants are already violating the "spirit" of the declaration, specifically the provision on the preservation of the status quo. Recently, activities that altered the status quo resulted in new "incidents at sea," thus raising questions on the

DOC's effectiveness in preventing future SCS conflict. Based on the DOC, parties also agreed to come up with a Code of Conduct (COC), a more binding agreement that will regulate the activities of the SCS claimants. However, ASEAN has yet to develop a solid position on this and engage the PRC in pursuing the same. The PRC stands firm on bilateral means of settling the SCS disputes.

Also, the ASEAN Regional Forum (ARF) attached to the ASEAN. "The ARF is a key forum for security dialogue in Asia, complementing the various bilateral alliances and dialogues. It provides a setting in which members can discuss current regional security issues and develop cooperative measures to enhance peace and security in the region."<sup>51</sup> The countries and regional organizations currently participating in the ARF are Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, the Democratic People's Republic of Korea, the European Union, India, Indonesia, Japan, Lao PDR, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea, Russia, Singapore, Sri Lanka, Thailand, Timor-Leste, the United States, and Vietnam. The ARF seeks the following objectives: (1) to foster constructive dialogue and consultation on political and security issues of common interest and concern; and (2) to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region.<sup>52</sup>

The ARF is a multilateral security platform. The PRC has engaged the ARF despite its known aversion towards multilateralism particularly on those involving

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<sup>51</sup> Australian Government Department of Foreign Affairs and Trade, "ASEAN Regional Forum," accessed November 11, 2014, <http://www.dfat.gov.au/arf/>.

<sup>52</sup> ASEAN Regional Forum, "About The ASEAN Regional Forum," accessed November 11, 2014, <http://aseanregionalforum.asean.org/about.html>.

security issues. Michael Swaine and Ashley Tellis explain that the PRC participated in the ARF because “Beijing realized that its lack of participation could result in these institutions adopting policies that might not be in China’s best interest.”<sup>53</sup> Whatever the PRC’s intentions in joining the ARF, this multilateral dialogue opens up opportunities to develop more “cooperative security” mindedness among participants as they interact. According to Rosemary Foot, multilateral mechanisms have transformative effects that develop interdependence among participants. As the group interacts, they develop group norms and abide by them, thus developing cooperative tendencies in the process.<sup>54</sup>

The ARF has been instrumental in confidence building and fostering cooperative arrangements. Though cooperative arrangements and confidence building do not resolve the SCS disputes, these are helpful in promoting the peaceful means of resolving conflict.

The ASEAN (all ASEAN e.g. ASEAN+2, ASEAN+3) continues to promote peace and stability in the region. The UN is also influential, but is not as involved as the ASEAN. The UN has the authority to “maintain international peace and security, ... to take effective collective measures for the prevention and removal of threats to the peace.”<sup>55</sup> The UN is part of the international legal system responsible in pursuing laws, treaties, etc..., such as the 1982 UNCLOS that provide guidelines in delineating

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<sup>53</sup> Michael D. Swaine and Ashley J. Tellis, *Interpreting China’s Grand Strategy: Past, Present, and Future* (Santa Monica, CA: Rand, 2000), 201.

<sup>54</sup> Rosemary Foot, “China in the ASEAN Regional Forum: Organizational Processes and Domestic Modes of Thought,” *Asian Survey* 38, no. 5 (May 1998), accessed November 11, 2014, <http://www.jstor.org/discover/10.2307/2645501?uid=3739672&uid=2&uid=4&uid=3739256&sid=21105196644843>, 426-427.

<sup>55</sup> United Nations, *Charter of the United Nations and Statute of the International Court of Justice*.

territorial boundaries in international waters and resolving disputes among the sovereigns involved.

These regional and international institutions play a critical role, not in resolving the SCS disputes, but in ensuring that these disputes do not escalate into an armed conflict. Without a real serious conflict however, none of these institutions can compel claimants to any action nor restrain them. Hence, claimants continue to take different strategies to strengthen their respective claims.

### Strategies Employed

In recent years, the PRC has been involved in several diplomatic fray with Vietnam, the RP, and the US. Does this mean PRC has become more assertive? Or is getting in trouble more frequently is just a logical consequence of having more opponents due to the vastness of its SCS claims?

Robert Haddick explained that the PRC is employing a “salami-slicing strategy”; a “slow accumulation of small actions, none of which is a *causus belli*, but which add up over time to a major strategic change.”<sup>56</sup> In this argument, the PRC is basing its SCS strategy on taking steps that are small enough not to cause a serious conflict or to warrant international attention. When these actions accumulate over time, the result will be a more advantageous for the PRC. Joseph Cao illustrates this salami slicing strategy in the

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<sup>56</sup> Robert Haddick, “America has no Answer to China’s Salami-Slicing,” *War on the Rocks*, February 6, 2014, accessed November 11, 2014, [http://warontherocks.com/2014/02/america-has-no-answer-to-chinas-salami-slicing/#\\_](http://warontherocks.com/2014/02/america-has-no-answer-to-chinas-salami-slicing/#_).

PRC's recent oilrig in the Paracels.<sup>57</sup> Though this incident has caused loss of lives, destruction of property, and sinking boats from anti-China protests and harassments, the incident was not big enough to warrant any collective action to stop the PRC from putting up the oilrig. The ASEAN and even the US can only issue statements reminding parties to exercise restraint and de-escalation of tension.

Brahma Chellaney emphasized a similar strategy. Chinese General Zhang Zhazhong described it as a "cabbage strategy: assert a territorial claim and gradually surround the area with multiple layers of security, thus denying access to rival."<sup>58</sup> Accordingly, the cabbage strategy entails gradual encirclement of the territorial area by using multiple layers of security in order to prevent other claimants from gaining access.<sup>59</sup> These multiple layers of Chinese security are composed of civilian maritime vessels, deployed to protect Chinese fishermen in disputed waters. The PLA Navy or Coast Guard maintains the outer layer of the protection forces. In this set-up, all non-Chinese fishermen are forced to seek permission from these Chinese security forces to access the encircled area.

Chellaney further illustrates this strategy on the PRC's effective seizure of the Scarborough Shoal after a standoff with the RP in 2012. The standoff happened after the

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<sup>57</sup> Joseph Cao, "CAO: China's Salami-Slicing Strategy," *The Washington Times*, June 16, 2014, accessed November 11, 2014, <http://www.washingtontimes.com/news/2014/jun/16/cao-chinas-salami-slicing-strategy/>

<sup>58</sup> Brahma Chellaney, "Creeping China," *Project Syndicate*, November 28, 2013, accessed November 11, 2014, <http://www.project-syndicate.org/commentary/brhma-chellaney-picks-apart-china-s--cabbage--strategy-for-securing-hegemony-in-east-asia>.

<sup>59</sup> Brahma Chellaney, "China's Creeping "Cabbage" Strategy," *Taipei Times*, December 1, 2013, 8, accessed October 1, 2014, <http://www.taipeitimes.com/News/editorials/archives/2013/12/01/2003578036>.

Chinese naval forces prevented Filipino maritime authorities from apprehending Chinese fishermen caught fishing in Philippine waters. Since then, PRC has maintained its Chinese maritime vessels in the area. In the same incident, PRC displayed what western analysts call “reactive assertiveness.” The PRC explained that its seizure of the Scarborough Shoal was a compulsory response to RP’s use of naval vessels to arrest Chinese fishermen.<sup>60</sup> The Chinese maritime vessels have not left and incidents in the Scarborough Shoal have increased.

In all these situations, ASEAN and the US can only issue statements encouraging a peaceful resolution of the dispute and de-escalation of conflict. Yet, apparently, the PRC has already altered the status quo to its advantage. The PRC only proved that it could continue to pursue its incursive activities, to which the PRC only risks at most an armed clash with a militarily weaker claimant.

The RP and Vietnam, aware of the PRC’s significance to their respective economies and the PRC’s strong military capability, continue to maintain cordial relations with their biggest neighbor in the SEA region.<sup>61</sup> Both countries are also leveraging China’s military might by undergoing defense reforms themselves and diverting their economic activities to mitigate their dependence on China.<sup>62</sup> The claimants, except the PRC, are open to multilateral negotiations to resolve the disputes.

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<sup>60</sup> Ely Ratner, “China Undeterred and Unapologetic,” *War on the Rocks*, June 24, 2014, accessed November 1, 2014, [http://warontherocks.com/2014/06/china-undeterred-and-unapologetic/#\\_](http://warontherocks.com/2014/06/china-undeterred-and-unapologetic/#_).

<sup>61</sup> Abraham M Denmark, “Could Tensions in the South China Sea Spark a War?,” *The National Interest*, March 31, 2014, 2, accessed October 7, 2014, <http://nationalinterest.org/feature/could-tensions-the-south-china-sea-spark-war-10572?page=2>.

<sup>62</sup> *Ibid.*

They also submit to international legal procedures, specifically the UNCLOS, on matters pertaining to maritime boundaries. Prior to the RP's submission to international arbitration, claimants participated in several dialogues and negotiations regarding a COC in the SCS, a bid for a more binding agreement with China.

### Potential Security Outcomes

The SCS disputes display the evolving dynamics of international relations. As Sarah Raine and Christian Le Mière describe, the SCS is a “crucible for the unfolding geopolitics of Southeast Asia.”<sup>63</sup> Significantly, realists, liberalists, and constructivists examine, decipher, and predict the outcomes of the SCS disputes focusing on various factors based on the principles each theory represents.

John Rourke concluded, “Realism is the view that world politics is driven by competitive self-interest.”<sup>64</sup> The realists' basic tenet is that the states are the actors in an anarchic international system. States are rational actors. They maximize power to promote their respective national interests. Survival and security are not subservient to international rule. Hence, realists focus on strategic, economic, and military interactions of state actors as they struggle to achieve a balance of power. As Mearsheimer posited, “Great powers...are always searching for opportunities to gain power over their rivals, with hegemony as their final goal.”<sup>65</sup> Kaplan concluded, “Just as German soil constituted

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<sup>63</sup> Raine and Le Mière, *Regional Disorder*, 179.

<sup>64</sup> John Rourke, *International Politics on the World Stage*, 12th ed. (Boston: McGraw-Hill, 2008), 20.

<sup>65</sup> John Mearsheimer, *The Tragedy of Great Power Politics* (New York: W. W. Norton, 2001), 29.

the military front line of the Cold War, the waters of the South China Sea may constitute the military front line of the coming decades.”<sup>66</sup>

On the other hand, “Liberals reject the realists’ contention that politics is inherently and exclusively a struggle for power.”<sup>67</sup> The liberalists interpret the international system as a process, not a structure. They believe that changes in relationships and norms arise out of interaction among nations, as trade and other economic and socio-cultural exchanges progress. Actors include not only the territorial states but multinational corporations and other regional and international organizations as well. The existence of the ASEAN, ARF, UN and other regional and international institutions involved in the SCS prove this. Further, for the liberalists, the “increased economic integration raises the opportunity costs of conflict and promotes openness and frequent contact between states.”<sup>68</sup> The regional economic interdependence of SCS countries has intensified over the years. The increasing economic integration extends beyond the region. The liberalists claim that this economic significance is enough disincentive for claimants to engage in conflict or war.

Lastly, constructivists see military power, trade relations, international institutions, and domestic preferences not as objective facts but as manifestations of

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<sup>66</sup> Robert D. Kaplan, “The South China Sea Is the Future of Conflict,” *Foreign Policy*, August 15, 2011, accessed March 30, 2014, [http://www.foreignpolicy.com/articles/2011/08/15/the\\_south\\_china\\_sea\\_is\\_the\\_future\\_of\\_conflict](http://www.foreignpolicy.com/articles/2011/08/15/the_south_china_sea_is_the_future_of_conflict).

<sup>67</sup> Rourke, *International Politics on the World Stage*, 23.

<sup>68</sup> Oriana Skylar Mastro, “The Problems of the Liberal Peace in Asia,” *Survival: Global Politics and Strategy* 56, no. 2 (April 1, 2014), accessed November 11, 2014, <http://www.iiss.org/en/publications/survival/sections/2014-4667/survival--global-politics-and-strategy-april-may-2014-3f8b/56-2-10-mastro-09b4>.

social meaning and beliefs. Constructivists believe that international relations are reflections of how actors view and perceive friends and foes, inner-groups and outer-groups, and fairness and justice. Alternatively, how a state views itself with respect to the world emanating from a complex and dynamic combination of history, ideas, social norms, and beliefs. Constructivists focus on the interactions that influence an actor's behavior. Constructivism does not limit its analysis to individual events but on results of interaction and ongoing trends. It fosters the view that "conditions such as anarchy and power politics are not permanent or "organic" features of international relations, but are socially constructed."<sup>69</sup> This means that anarchy and power politics are but choices or the result of how international actors interact whether deliberately or not. As such, they are not permanent and can be changed. International relations can be shaped and are shaped through the norms developed as different international actors interact either by choice or because of the interactions. Constructivism is more likely to accommodate the security outcomes as arising from diplomatic approaches like multilateralism and preventive diplomacy. The DOC and ASEAN's engagement with the PRC is what the constructivists would claim as evidence of international social norming.

However, no single international theory can adequately account for all the events and circumstances that surround the South China Sea. These theories are helpful in understanding the events but one must be cognizant the way these theories interpret and predict the security outcomes in the SCS. This is important to be able to approach the

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<sup>69</sup> Amitav Acharya, "Theoretical Perspectives on International Relations in Asia," in *International Relations of Asia*, eds. David Shambaugh and Michael Yahuda (Lanham, MD: Rowman and Littlefield Publishers, 2008), 69, accessed September 30, 2014, [http://www.academia.edu/5419761/INTERNATIONAL\\_RELATIONS\\_OF\\_EDITED\\_BY](http://www.academia.edu/5419761/INTERNATIONAL_RELATIONS_OF_EDITED_BY).

SCS disputes more objectively. With these in mind, the study now focuses on the current security outcome of the SCS disputes. Understanding the disputes, the tensions arising from the disputes, and how claimants manage these issues are key in establishing mechanisms that promote stability and security in the region

## CHAPTER 3

### METHODOLOGY

This qualitative research is largely based on primary and secondary data analysis. The primary data is derived from official documents and government policies.

Secondary data analysis include various documents such as critical incidents from various media. These contain studies and research on the security situation in the SCS and the prevalent means of conflict management. Information is evaluated and analyzed to establish patterns to indicate emerging mechanisms that promote favorable security outcomes.

This research observes prudence in the selection of references and sources of information. To determine the high value data set, factors such as the currency of the reference research/study, the methodology, and sources of data be carefully evaluated, including the verifiability, validity and acceptability of the research findings. The credibility of authors and media sources is also considered.

## CHAPTER 4

### ANALYSIS

The South China Sea issue is not just about competing claims; it's about peace and stability in the region.<sup>70</sup>

— ASEAN Secretary General Le Luong Minh, April 25, 2013

#### Overview

The chapter presents the findings on the emerging mechanisms that promote security and stability in the South China Sea (SCS). The first part presents the nature of the SCS disputes and is divided into two sections. The first section begins with the presentation of the core issues of the disputes, describing the claimants, the basis of their respective claims and the international legal remedy they seek to foster their claims. The second section presents other actions that the claimants take to strengthen these claims as they await the legal remedies. These include exercise of jurisdiction on occupied territories often manifested by military/paramilitary and economic actions. In many occasions, these actions have led to tensions and incidents at sea. Some of the significant incidents at sea are then presented and studied to understand the nature of the incidents, what drives these tensions, and how they are managed. The first part ends with a summary of these concerns.

The second part presents the current security outcomes and the mechanisms that promote security and stability in the SCS. This presents an analysis of how the claimants

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<sup>70</sup> Statement of ASEAN Secretary General Le Luong Minh during the 22nd ASEAN Summit, Bandar Seri Begawan, Brunei, April 25, 2013, accessed October 1, 2014, <http://www.philstar.com/world/2013/04/25/934898/sec-gen-asean-enter-south-china-sea-talks-china-group>.

manage the tensions. A closer look on the steps, arrangement, and agreements that the actors pursued, the roles they played, and the challenges that ensued in managing the tensions establish the trends and patterns of their interactions and the security outcomes. This discussions end with the summary of the mechanisms that promote security and stability in the SCS.

### The Nature of the South China Sea Disputes

The SCS disputes are essentially a complex maritime territorial issue. They involve several littoral states. Each has a different basis for their claims and the ambiguity of the claims involving the disputed groups of islands complicate the issues. The different ways the direct actors intend to settle disputes with their neighbors are also problematic. Among the three island groups, the most contested are the Spratly and Parcel Islands chains.

A U.S. Energy Information Administration (EIA) report<sup>71</sup> indicated that although Brunei has not made any formal claim regarding the Spratly Islands, with reference to its continental shelf, Louisa Reef falls within its 200 nautical miles EEZ. Malaysia has claims to three islands. The Philippines (RP) claims portions of the Spratly Islands and Scarborough Shoal. Vietnam, claims portions of the Spratlys and all of the Paracels. The People's Republic of China (PRC) claims the Paracels, Spratlys, and Scarborough Reef.

In sum, the PRC and the RP have competing claims over Scarborough Shoal. The PRC and Vietnam have competing claims over the Parcel group of islands. The PRC,

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<sup>71</sup> United States Energy Information Administration, "South China Sea."

Vietnam, and the RP have competing claims over the Spratly Islands, to which Brunei and Malaysia have partial claims too.

### The Ambiguity of Claims

The scope of PRC's claims in the SCS remain ambiguous. It has not officially expressed that the nine-dash line categorically represents the totality of its SCS claims. The nine-dash line became the customary graphical reference of the PRC's claim in the SCS when it attached a map with a nine-dash line on its Note Verbales CML/17/2009 to the United Nations (UN). This is PRC's protest on the joint submission of Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf (CLCS), where the PRC claimed that it has indisputable "sovereignty over the islands in the South China Sea and adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as seabed and subsoil thereof."<sup>72</sup> The PRC, however, has clearly presented its territorial claim over the Huangyan (Bajo de Masinloc–Scarborough Shoal), Nansha (Kalayaan Island Group) Islands, and Spratly Islands, in a communication sent to UN on April 13, 2009. Relatedly, on May 8, 2009, Vietnam issued a note verbale to reiterate its claim over the Spratlys and Paracels in reaction to the PRC's claims.

Recently, the PRC's claims over the Paracels became clearer. In May 2014, tensions increased in the Paracels when the PRC put up a deep-water oilrig in the area. This resulted to exchanges of position papers (i.e. A/68/870, A/668/887, A/68/897, etc.), between PRC and Vietnam submitted to the UN. Yet, this only clarified some of the

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<sup>72</sup> This was indicated in a letter to UN Secretary General, H. E. Mr. Ban Ki-Moon, dated May 7, 2009, accessed November 11, 2014, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf).

disputed portions of the Paracels. The PRC and Vietnam still needs to clarify the full extent of their respective claims in the Paracels. The RP has clarified its claims on the Spratlys, particularly on the Kalayaan Island Group (KIG), and Scarborough Reef. Brunei has not officially filed any claim.

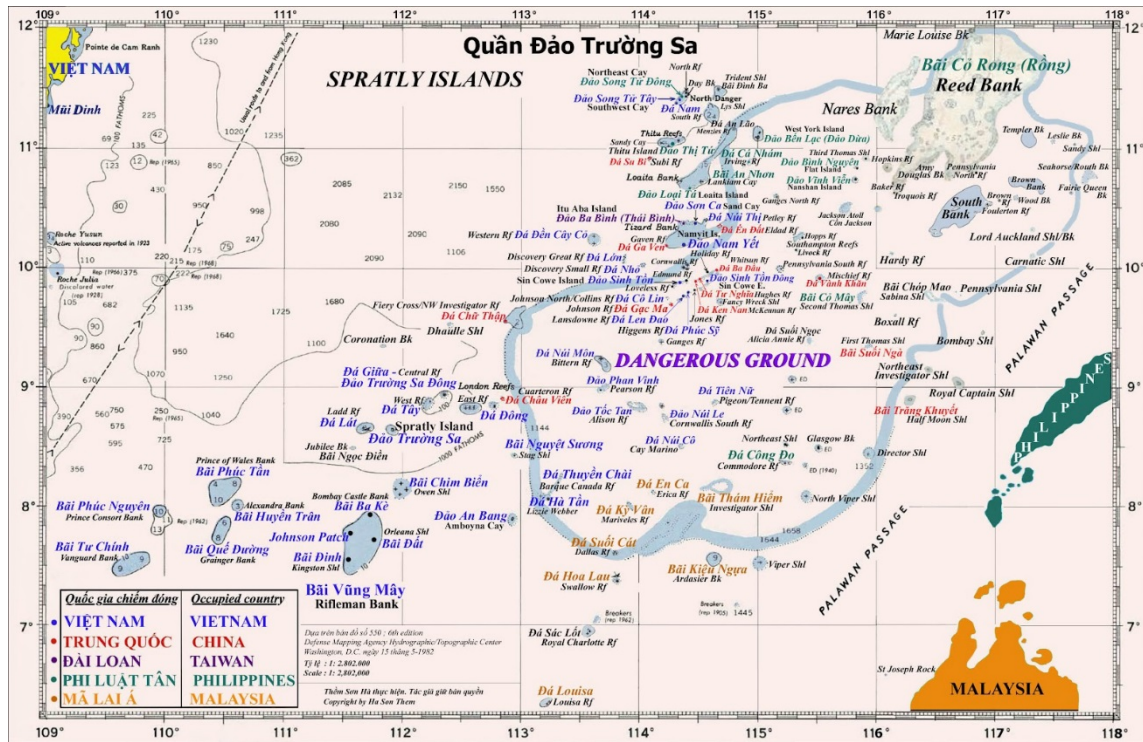


Figure 5. Territorial Claims in the Spratly Islands

Source: Chinh's News, "Spratly Islands," September 9, 2012, accessed November 3, 2014, <http://chinhdangvu.blogspot.com/2012/09/tension-rises-over-chinas-disputed-sea.html>.

### Varying Claims and Bases of Claims

The PRC frames its SCS claims on territorial sovereignty. The PRC asserts that it has exclusive rights to exercise power over the SCS based on alleged historical rights and actual occupation of some of the islands. Similarly, Vietnam's claims in the Paracels and Spratlys can both be issues of territorial sovereignty and maritime boundary since both are based on alleged historical evidence and the UNCLOS EEZ provisions. Malaysia positions its claims similarly with Vietnam. Malaysia, Vietnam, and the RP claim a 200 nautical miles EEZ starting from the mainland. However, the RP treats the KIG in the Spratlys as a "special regime of islands" distinct from the Philippine Archipelago. It justifies legality of its claim to the KIG based on the principle of terra nullius (no one's land) upon the occupation of some islands in 1956. Further, the RP claims a 200 nautical mile EEZ with reference to the islands. Malaysia and Vietnam did not make an EEZ based from the disputed islands in the Spratlys.

The ambiguities surrounding the competing claims and the base of the claims have legal implications that further complicate the SCS disputes. Disputes arising from maritime boundaries are less complicated than issues arising from territorial sovereignty. Maritime boundary issues can be resolved within the legal domain of the UNCLOS and can be easily clarified with its provisions. Further, arbitration proceedings in maritime boundary disputes submitted to UNCLOS can proceed even without the participation of all the claimants. However, differences in interpretation of UNCLOS provisions on EEZ and regime of islands complicates the claims. Vietnam and Malaysia submit that their EEZ claims extend from the mainland and that the islands in the Spratlys are not entitled to a 200 nautical miles EEZ but to a 12 nautical mile territorial sea. However, the RP

frames its claims to KIG on the “regime of islands,” as such the islands are entitled to a 200 nautical mile EEZ. If the Spratlys have a 200 nautical mile EEZ, overlapping territories will further exist given the proximity of the islands to each other. These varying interpretations that serve as basis of claims need clarification. The international arbitration case submitted by the RP against the PRC is an attempt to do this. But then again, these proceedings can only succeed if the issues fall under maritime boundaries and not territorial sovereignty.

All claimants are UNCLOS signatories. As such, the provisions for dispute settlement are binding. This can unilaterally be invoked on disputes over maritime boundaries, which provides that arbitration can proceed even if some parties do not agree to participate. However, if the dispute is about territorial sovereignty, it falls under the jurisdiction of international customary laws. In the past, states settled sovereignty disputes through war, enactment of a treaty, or through a decision by the International Court of Justice (ICJ). But unlike the UNCLOS, international legal disputes within the ICJ’s purview cannot proceed without the participation of all parties in the dispute.

Malaysia, the RP, and Vietnam are predisposed to resolve the disputes through the UNCLOS. On the other hand, the PRC, with its claim on territorial sovereignty, refuses to participate in international arbitration and maintains its position to resolve the disputes bilaterally with the claimant states.

Indeed, the ambiguity of claims, varying interpretations on the UNCLOS provisions, differences in preferred means of dispute settlement, and international legal requirements and procedures on resolving the dispute have resulted in a stalemate. The

international legal system seems inadequate to provide an immediate solution and there appears to be no means to resolve these protracted SCS disputes anytime soon.

### Strengthening their Claims

As the resolution of the SCS disputes remains elusive, claimants have taken actions to strengthen their respective claims. These actions come in many forms. They are often unilateral, and are permitted within the powers and jurisdictions of each state. One such action is enacting national laws pertaining to SCS claims. While other nations may not accept this approach (unless concurred and recognized by a higher international legal institution), it is a proactive means to strengthen a claimant's internal position and to legitimize its actions regarding disputed territories.

Claimants have enacted national laws pertaining to their claims in the SCS. In 1992, the PRC enacted the Law on Territorial Sea and the Contiguous Zone of the People's Republic of China to assert its sovereignty over various maritime territories. This was followed by the June 1998 People's Republic of China Exclusive Economic Zone and Continental Shelf Act, and the recent Declaration of Sansha City that exercises administrative jurisdiction over Paracel Islands.

In response to Beijing's initiatives, Vietnam passed the Vietnam Maritime Law in 1992 that declared Vietnam's sovereignty and jurisdiction over the Paracel and Spratly Islands. The PRC opposed Vietnam's actions in a ministry statement stating that the act was "a serious violation of China's territorial sovereignty."<sup>73</sup>

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<sup>73</sup> Jane Perlez, "Vietnam Law on Contested Islands Draws China's Ire," *New York Times*, June 21, 2012, accessed October 20, 2014, <http://www.nytimes.com/2012/06/22/world/asia/china-criticizes-vietnam-in-dispute-over-islands.html>.

In the case of the RP, Presidential Decree No. 1596 of 1978 articulated the RP's sovereignty claims over the KIG. In the same decree, the RP also identified the 200 nautical mile EEZ from the baseline of its territorial sea. The Filipino government strengthened its unilateral approach with the enactment in 2009 of Republic Act (RA) No. 9522. This act claimed Filipino control over the KIG and Scarborough Shoals. Lastly, Administrative Order (AO) No. 29 in 2012 declared the area in the SCS within its 200 nautical mile EEZ as the West Philippine Sea (WPS). In all these undertakings, all claimant states aligned their national laws pertaining to their SCS claims within UNCLOS guidelines.

Moreover, claimants exercise their jurisdiction over occupied islands. Claimants have attempted to secure their competing claims in the SCS by effective occupation of the various islands and the surrounding waters in the disputed areas. These actions have included the establishment of structures in occupied and claimed islands, deployment of military and civilian maritime law enforcers to protect and establish strongholds, and the conduct of limited economic activities such as fishing and energy exploration. Some of the structures were constructed on the bigger islands occupied by claimants during the early years of occupation. But structural developments, specifically in the Spratly Islands, have also been observed in recent years. In fact, photos taken by the RP's Department of Foreign Affairs surveillance planes showed that the PRC has been involved in reclamation activities in the Spratly Islands.<sup>74</sup> China has been turning these reefs into

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<sup>74</sup> Jiji Ap, "China Building up More Land at Spratly Reefs, Manila Says," *The Japan Times*, June 6, 2014, accessed November 11, 2014, <http://www.japantimes.co.jp/news/2014/06/06/asia-pacific/land-reclamation-underway-china-held-spratlys/#.VGmPrDTF9lp>.

artificial island structures strong enough to sustain large buildings and the necessary infrastructure to support human habitation. Other activities have included military surveillance and defense.<sup>75</sup> These actions have caused alarm and increased the tensions in the SCS.

Taiwan (considered as part of the PRC) has controlled Itu Aba in the Spratlys since 1952. The RP followed suit in 1970 and initially occupied five islands in this geographic area. For its part, Malaysia occupied three islands in 1983. In 1988, the PRC occupied Johnson Reef after a skirmish with Vietnam. In July 1992, Chinese Marines built a stone boundary marker on a rock at Da Lac Reef, a Spratly Island group that the RP and Vietnam also claim. In 1995, China occupied the Filipino-claimed Mischief Reef in the Spratly Islands. The RP regained control of Mischief Reef in 1996 after its military expelled the Chinese. In the Paracel Islands, PRC's active occupation of this island chain started in 1970 when it expelled South Vietnamese personnel and thereafter established Chinese control.

Meanwhile, the inclusion of the Scarborough Shoal among the disputed islands in the SCS only became clear in 1997 when Filipino authorities apprehended Chinese fishermen who were illegally inside RP territorial waters. The RP has considered the Bajo de Masinloc or the Scarborough Shoal part of the Province of Zambales since the Spanish colonial era. Chinese naval ships prevented Filipino arrest attempts. The RP has since maintained a lighthouse and raised its flag in the area.

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<sup>75</sup> Edward Wong and Jonathan Ansfield, "To Bolster Its Claims, China Plants Islands in Disputed Waters," *New York Times*, June 16, 2014, accessed October 22, 2014, [http://www.nytimes.com/2014/06/17/world/asia/spratly-archipelago-china-trying-to-bolster-its-claims-plants-islands-in-disputed-waters.html?\\_r=0](http://www.nytimes.com/2014/06/17/world/asia/spratly-archipelago-china-trying-to-bolster-its-claims-plants-islands-in-disputed-waters.html?_r=0).

### South China Sea Incidents

A review of some publications regarding the timeline of the SCS disputes showed that tensions have risen and fallen between and among claimant and non-claimant states in the SCS. Brad Kaplan's study<sup>76</sup> on significant confrontations involving naval forces, fishing vessels, and military aircrafts in the SCS from 1974 to 2012 showed that of the 30 recorded confrontations, the PRC was involved in 25 incidents (83 percent). The RP accounted for 13 incidents (43 percent), Vietnam had 12 (42 percent), the US had three (10 percent), Indonesia had two (7 percent), and Malaysia had one (3 percent) as did Taiwan (3 percent). Indonesia and the US are not claimants to the SCS disputes but have been involved in the confrontations. Among the islands, the Spratlys have generated the greatest number of confrontations with 11 incidents; the Scarborough Shoal has had four; the Paracels, Vietnam's EEZ, and Hainan Island each had three; there has been one each within the RP, Indonesian, and Malaysian EEZ; and one in Reed Bank.

The PRC, the RP, and Vietnam were involved in violent confrontations. Nevertheless, the use of deadly force accounted only for 10 percent of these incidents. Harassment of naval ships and fishing boats, including collisions, has been the most prevalent confrontations comprising 70 percent of the incidents. One air collision involved the US, while three air incidents involved Indonesia. In addition, incidents at sea occurred more frequently from 1995 to 1999 with eleven incidents, and in the period from 2010 until April 2014 with nine incidents. The twenty year period from 1974-1994 only registered four incidents while six incidents occurred between the years 2000 and 2009. Of these incidents, a few caused heightened tensions and alarmed the international

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<sup>76</sup> Kaplan, "Rich Regions, Strong States."

community. These occurred in the recent twenty-five years (1988-present). Also worth noting is that most incidents occurred from 1998-1999 (eight incidents) and 2010-April 2012 (nine incidents).

#### Spratly Skirmishes of 1988 and the Johnson Reef Incident

The years 1987 and 1988 marked the beginning of the initiatives to claim the islands in the Spratly Archipelago. China ignored Vietnam's protests as it occupied the Fiery Cross Reef and started to construct a permanent base on the reef. Vietnam occupied four additional islands as China continued to occupy more reefs. By May 1988, the PRC had seized six islets while Vietnam seized three more.

During the same period, Taiwan strengthened and reinforced its troops in Itu Aba. The RP and Malaysia strengthened their position by issuing a warning to the PRC and Vietnam pertaining to their respective claims in the area. This also included apprehension of non-Filipino or Malaysian fishing vessels in their claimed territories. The Philippine authorities apprehended four Taiwan fishing boats while Malaysia arrested forty-nine Filipino fishermen. Malaysia later released these fishermen.<sup>77</sup>

On March 14, 1988, the Johnson Reef incident occurred. The PRC and Vietnam were entangled in a battle that resulted in the sinking of three Vietnamese vessels. This also resulted in the death of 74 Vietnamese sailors. The PRC and Vietnam have accused each other of provoking the fight.

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<sup>77</sup> Global Security, "Spratly Skirmish-1988," accessed October 22, 2014, <http://www.globalsecurity.org/military/world/war/spratly-1988.htm>.

## Mischief Reef Tension

In 1995, tensions between the PRC and the RP increased over the Mischief Reef. Based on Raman's accounts,<sup>78</sup> the RP accused the PRC of establishing military structures in the islands. Beijing argued that the structures were shelters for fishermen in the area.

On February 6, 1995, the RP and Vietnam issued a joint statement urging restraint and the peaceful resolution of the disputes. The RP explored diplomatic means by putting forward an interim concept of stewardship, which stipulated that a state that is geographically closest to the disputed island, becomes the steward of the island and that they provide shelter and anchorage to other claimants. Manila sent a representative to Beijing, but the talks failed. In response, the Filipino government strengthened its military's position in the area. Also, the RP destroyed the structures the PRC built and started apprehending foreign fishermen to assert its territorial jurisdiction. Further, the RP attempted to take foreign journalists to the Mischief Reef to show the Chinese military structures but Chinese frigates prevented their arrival. China issued a statement saying, "as it safeguards its sovereignty over its claims, it shall keep within the international law."<sup>79</sup> The PRC also sent a letter to the RP offering joint development options but a warning and a call for negotiations for dispute settlement followed the letter. As tensions increased, other countries reiterated concerns over freedom of navigation and safe passage and they emphasized peaceful resolution of the disputes. "Tensions over the occupation subsided by midyear, when the Philippines and China sign a nonbinding code

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<sup>78</sup> B. Raman, "The Battle for Mischief Reef," Warfighter, accessed October 21, 2014, <http://www.warfighter.org/mischief.html>.

<sup>79</sup> Ibid.

of conduct that call[ed] for a peaceful resolution to the territorial dispute and the promotion of confidence-building measures.”<sup>80</sup>

### Scarborough Shoal and Spratly Islands Skirmishes

The period from 1998-1999 was replete with skirmishes. The tension between the PRC and the RP over Scarborough Shoal started when the RP arrested 22 Chinese fishermen and sank a Chinese fishing vessel. In the Spratly Islands, the Chinese harassed a grounded RP naval vessel, the Vietnamese fired on a Filipino naval vessel, and air incidents occurred between the RP and Malaysia, and with the RP and Vietnam. Amidst all these skirmishes, claimants resorted to diplomatic means to prevent the escalation of conflict while seeking peaceful means to resolve the disputes. Confidence building measures also continued and the US signed a Military Maritime Consultative Agreement with the PRC. “The accord aims to promote defense dialogue between the countries’ naval forces to prevent misunderstanding.”<sup>81</sup>

### Hainan Island Air Collision

In 2001, an unfortunate incident took place with the collision of a U.S. Navy aircraft and a Chinese F-8 interceptor off Hainan Island. The Chinese pilot died while the US pilot and crewmembers landed safely on Hainan Island. Chinese authorities detained the US crew. After a series of diplomatic communications and negotiations, and release

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<sup>80</sup> Council on Foreign Relations, “China’s Maritime Disputes,” accessed October 20, 2014, [http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/#/](http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/).

<sup>81</sup> Ibid.

of media statements, the PRC released the crewmembers after the twelfth day of the incident.<sup>82</sup>

In 2009, the US Congress issued a resolution “Condemning any action of the PRC that could necessarily escalate tensions between our two countries, including actions taken on March 8, 2009, relating to the USNS *Impeccable* and the subsequent rejection of the United States protest to the incident.”<sup>83</sup> This was in response to the USNS *Impeccable* incident where Chinese vessels apparently harassed US Navy vessels in international waters. Congress urged the US President to secure the Chinese President’s commitment that China would not take similar actions in the future and to improve bilateral military-to-military communications to deter unnecessary escalation of conflict between the two countries. China maintained that it did nothing more than safeguard its territorial integrity and its maritime rights.<sup>84</sup> Meanwhile, a similar incident took place on August 19, 2014, “when an armed Chinese fighter jet conducted a dangerous intercept of a U.S. Navy P-8

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<sup>82</sup> Congressional Research Service, RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications* (Washington, DC: The Library of Congress, October 10, 2001), accessed October 20, 2014, <http://fas.org/sgp/crs/row/RL30946.pdf>.

<sup>83</sup> US House of Representatives, Congressional Bills, 111th Congress, H Res 72, March 12, 2009, accessed October 22, 2014, <http://www.gpo.gov/fdsys/pkg/BILLS-111hconres72ih/html/BILLS-111hconres72ih.htm>.

<sup>84</sup> Jonathan G. Odom, “The True “Lies” of the Impeccable Incident: What Really Happened, Who Disregarded International Law, and Why Every Nation (Outside of China) Should Be Concerned,” *Michigan State Journal of International Law* 18, no. 3 (2010), accessed October 1, 2014, <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1025&context=ilr>, 420.

Poseidon aircraft.”<sup>85</sup> The US issued a statement declaring this unprofessional while China’s defense ministry issued a statement that US accusations were groundless. The Chinese stated, “the U.S. large-scale and highly frequent close-in reconnaissance against China is the root cause of accidents.”<sup>86</sup> The more recent incidents at sea (2009-2014) already involve vessels engaged in exploration and survey of energy resources in the disputed areas.

### Reed Bank

On March 2011, Chinese patrol boats ordered the MV *Veritas Voyager*, a Singapore-registered French-owned survey vessel operating in the Reed Bank, to leave the area. The Philippines deployed an OV-10 aircraft but the Chinese had departed and no confrontation occurred. The Philippines lodged a formal protest with the Chinese Charge d’Affairs in Manila, but China has not replied. China has denied many reports, though some are unverified, on its incursions in the Philippines claimed territories.<sup>87</sup>

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<sup>85</sup> Zachary Keck, “China’s ‘Dangerous Intercept’ of US Spy Plane,” *The Diplomat*, August 23, 2014, accessed October 1, 2014, <http://thediplomat.com/2014/08/chinas-dangerous-intercept-of-us-spy-plane/>.

<sup>86</sup> Dave Urbanski, “China Rejects U.S. Accusations, Calls Its Fighter Jet Intercept ‘Professional’,” *The Blaze*, August 23, 2014, accessed October 1, 2014, <http://www.theblaze.com/stories/2014/08/23/china-rejects-u-s-accusations-calls-its-fighter-jet-intercept-professional/>.

<sup>87</sup> Carlyle A. Thayer, *China’s New Wave of Aggressive Assertiveness in the South China Sea* (Washington, DC: CSIS 2011), accessed October 1, 2014, [http://csis.org/files/publication/110629\\_Thayer\\_South\\_China\\_Sea.pdf](http://csis.org/files/publication/110629_Thayer_South_China_Sea.pdf).

## Gulf of Tonkin and the Oil Rig Incident

Several reports from 2011-2012 identified incidents where China harassed PetroVietnam's oil and gas exploration activities in the Paracels and near the Gulf of Tonkin. Vietnam accused China of cutting PetroVietnam's seismic cables.<sup>88</sup> Lastly, during the first half of 2014, the China National Petroleum Corporation erected an oilrig in the disputed waters near the Paracels in July. This action triggered diplomatic protests and violent riots against the Chinese in Vietnam. Diplomatic communications have resumed between China and Vietnam since the incident occurred.

A careful analysis of these incidents provides three distinct characteristics. First, the limited use of deadly force characterizes these incidents. Most confrontations involved civil maritime enforcement agencies and fishing vessels with military forces playing a limited role. There have been a few incidents in the past where lives were lost but those were during the early years of the SCS disputes. Confrontations are highly localized, usually involving only two claimant states and do not persist for long. The confrontations are often contained within the disputed territories. However, in the recent case between Vietnam and China, some significant anti-Chinese protests became violent riots that forced some Chinese businessmen out of Vietnam.

Second, most of the incidents occurred when claimant states exercised jurisdiction over their claims in the disputed territories. These are manifested by military/paramilitary

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<sup>88</sup> Jane Perlez, "Dispute Flares over Energy in South China Sea," *The New York Times*, December 4, 2012, accessed October 4, 2012, <http://www.nytimes.com/2012/12/05/world/asia/china-vietnam-and-india-fight-over-energy-exploration-in-south-china-sea.html>.

and economic activities. Tensions increased when claimants took unilateral actions that other claimants perceived as hostile.

Third, the tensions that occurred between the US and China were borne out of the issue on regulating foreign military activities within the 200 nautical miles of the EEZ. The air and naval incidents occurred when the PRC prevented the US from conducting what Beijing perceived as military activities (mostly surveillance) within its territorial seas. The US is not a signatory to UNCLOS and it maintains interest on the freedom of navigation and flight of its military aircraft and ships in the disputed waters.

Technically, the US will only be drawn into the SCS disputes if war between the Philippines and any of the other claimants escalates because of the RP-US Mutual Defense Treaty. However, in the many instances that tension has escalated in the SCS, the US has issued statements regarding the freedom of navigation and peaceful resolution of disputes and respect for international law. Despite its recent “pivot” to Asia, the US has consistently stayed neutral on SCS sovereignty issues.

#### The Drivers of Tension

In sum, each nation sees the various claimants’ unilateral actions taken to assert or to bolster their claims in the islands as altering the status quo. This includes national legislation, the exercise of jurisdiction over the occupied areas as manifested by unilateral exploration of energy resources, the denial of access to previously occupied areas, and the apprehension of other claimant states’ citizens who enter claimed territories.

## Managing Tensions in the SCS.

When tensions increase, the affected parties tend to exhaust diplomatic means to manage the tensions. When confrontations and incidents occur in the SCS, parties are predisposed to exhaust diplomatic means to de-escalate the tension. Claimant states often resort to diplomatic protests. Though most diplomatic protests and responses are often characterized by accusations and counter accusations, diplomatic communication continues thus providing the chance for a peaceful dispute resolution.

Moreover, claimant states tend to practice military restraint during confrontations. The use of verbal warnings and water cannons in lieu of guns and ammunitions has been more prevalent. The fact that the incidents at sea are characterized by limited use of deadly force also indicates military restraint. Further, all states involved in the conflict have complied with accepted behavior in the international community. The RP and Vietnam filed diplomatic protests immediately after incidents occurred. The PRC, while not regularly issuing official statements, remains engaged in discussions over incidents. Moreover, the PRC's denial of alleged incursive actions may be indicative that China is also careful that its actions are perceived to fall within acceptable legal international standards.

Regional and international actors also play key roles in managing the SCS conflicts. As a major sea line of communication, a guaranteed freedom of navigation means the unimpeded flow of the world's trade. Hence, the stability in the SCS is regionally and internationally important. This is why, other than the US, regional and international institutions play an active role in ensuring the stability and security in these

disputed waters. The ASEAN, as the most significant regional influence, has actively pursued peaceful means to resolve the SCS disputes.

#### ASEAN and the “ASEAN Way”

A major accomplishment of the ASEAN pertaining to the SCS dispute is the signing of the Declaration on the Conduct of Parties in the SCS (DOC) in 2002. It reduced the tension and risks of military conflict. Its provisions proved critical in promoting SCS stability. These included encouraging cooperation and building trust, seeking understanding and pursuing peaceful means to resolve the disputes, and the commitment to the exercise of self-restraint. China, which is the only non-ASEAN member among the claimants, has been engaged in promoting common regional goals of security and economic development. Although the DOC lacks a Code of Conduct (COC), the ASEAN has successfully engaged China in other cooperative arrangements involving non-traditional security threats such as China’s participation in Maritime Cooperation Building Measures.

In 2012, during the Scarborough Shoal standoff between the PRC and the RP, ASEAN member countries once again saw the urgency to pursue a COC in the SCS. In the ASEAN Foreign Minister’s Meeting, the ASEAN failed to issue a joint communiqué for the first time. This is because Cambodia, the RP, and Vietnam were not able to reach a compromise regarding the inclusion of the Scarborough and EEZ issues pertaining to the SCS disputes in the joint communiqué.<sup>89</sup> The SCS dispute became a test of ASEAN’s

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<sup>89</sup> Ernest Z. Bower, “China reveals its hand on ASEAN at Phnom Penh,” East Asia Forum, July 28, 2012, accessed November 11, 2014, <http://www.eastasiaforum.org/2012/07/28/china-reveals-its-hand-on-asean-in-phnom-penh/>.

credibility as a regional bastion of cooperation, peace, and solidarity. Indonesia took the initiative to mend ASEAN relations and facilitated the drafting of a COC in the SCS. Then again, contentious issues and conflicting interests remained major impediments in coming up with a COC. Yet, amidst rising tensions, the ASEAN issued the joint communiqué in August 2014 urging, “all parties concerned to exercise self-restraint and avoid actions which would complicate the situation and undermine peace, stability, and security in the South China Sea and to settle disputes through peaceful means, without resorting to the threat or use of force.”<sup>90</sup> The DOC, the Treaty of Amity and Cooperation (TAC), and the “ASEAN Way” are mechanisms that foster peaceful conflict resolution in the region. Though the ASEAN has not been able to resolve the SCS disputes, it has engaged the claimants, particularly the PRC, to pursue more peaceful means to resolve the dispute. The “ASEAN Way” of consultation, consensus, and non-interference has encouraged less adversarial interaction among the claimants.

As Amitav Acharya<sup>91</sup> explains, the “ASEAN Way” is a process of regional interactions and cooperation based on discreteness, informality, consensus building, and non-confrontational negotiating styles that evolved in the uniquely diverse South East Asian environment. This differs from the Western approach involving formal, legalistic, and confrontational negotiation based on majority rule. In a study by Gillian Goh,<sup>92</sup> she

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<sup>90</sup> Association of Southeast Asian Nations, “Text of the Treaty of Amity and Cooperation in Southeast Asia and Related Information.”

<sup>91</sup> Acharya, *Constructing a Security Community in South East Asia*, 5-8.

<sup>92</sup> Gillian Goh, “The ‘ASEAN Way:’ Non-Intervention and ASEAN’s Role in Conflict Management,” *Stanford Journal of East Asian Affairs* 3, no. 1 (Spring 2003): 115, accessed March 30, 2014, <http://web.stanford.edu/group/sjeaa/journal3/geasia1.pdf>.

compared how the Organization of American States approached the conflict in Haiti with the way ASEAN approached the conflict in Cambodia. The study showed that the Organization of American States approached the Haitian conflict independently and aggressively, utilizing military force that resulted to a violent conflict. ASEAN, on the other hand, approached the Cambodian conflict by actively pursuing the involvement of the international community and in a less confrontational manner. ASEAN used a combination of “direct and indirect measures of restraint, pressure, diplomacy, communication and trade-offs.”<sup>93</sup> The Cambodia conflict did not result in violence. Goh concluded that the ASEAN Way is a viable means of conflict resolution.

The ASEAN has become central to managing relations in the region. The ASEAN Regional Forum (ARF) has also been host to dialogue about security issues between and among claimants, including the PRC. The ARF provided a venue where claimants can exchange views and discuss issues about the SCS disputes without the pressure to reach an agreement. These exchanges and interactions build mutual confidence between claimants. Also, the ARF has been instrumental in forging cooperative arrangements and agreements in security issues outside of the SCS disputes.

While the SCS disputes has not been resolved, the efforts to manage the tension arising from these disputes has resulted in security arrangements and dynamics that now largely defines the current security situation in the SCS. Based on the preceding discussions, tensions have been managed several ways. One, when incidents occur, claimants exhaust diplomatic means to address the situation. Amidst tense situations, actors seek opportunities for talks and negotiation. Two, actors maintain military restraint

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<sup>93</sup> Ibid., 118.

when confrontations occur. They do not immediately resort to the use of force and generally limit the role of their militaries. Three, the claimants also submit their disputes to international legal institutions and limit their actions to what is customarily acceptable in the international community. Four, the ASEAN, has actively engaged the claimants and fostered seeking peaceful resolution of disputes among claimants. The ASEAN continuously engaged the claimants in various fora. All these has prevented a serious armed conflict in the SCS.

### Security Outcomes

Yet again, despite the fact that no serious armed conflict has occurred in the SCS, it remains a security concern. It would be interesting to look at the security outcomes achieved so far. Current security outcomes simply refers to the existing security arrangements and conditions. These “security outcomes” are such arrangements and conditions that either propel or deter war in the region. These include patterns of actors’ behaviors, official agreements or institutions, and events that generally characterizes security situation in the region.

A security dilemma continues to exist in the region. It centers on the unresolved SCS disputes and sporadic tensions. Diplomatic and military tension occur every time a claimant acts unilaterally and asserts its claim on the SCS that is perceived by other claimants as a change to the status quo. While it is true that these confrontations and incidents could lead to war, the military restraint observed by each party and the diplomatic approaches they pursued has thus far prevented the escalation of conflicts.

In recent years, the record of “incidents at sea” showed two significant findings. One is the limited use of deadly force. As previously discussed, claimants have limited

the use of military forces in the SCS. Two, the PRC emerged as the most assertive of all the claimants. Though PRC has not changed the basis of its claims, it has become more active in altering the physical status quo by engaging in the disputed territories that it did not previously occupy nor exercise jurisdiction. These include the Scarborough Reef, Reed Bank, and the Paracels. These actions by the more powerful PRC drive claimants to seek ways to leverage power. Unilateral actions, whether by the PRC or the other claimants, propagate a general milieu of mistrust, thus causes insecurity and destabilizes the SCS situation.

The PRC, Vietnam, Malaysia, and the RP maintain open communications despite confrontations and incidents at sea. These diplomatic processes have resulted in several bilateral and multilateral agreements that have eased tensions without necessarily resolving the root cause of the disputes.<sup>94</sup>

For the PRC and the RP, the bilateral talks related to the Mischief Reef incident in 1995 resulted in an agreement between the two countries. Each agreed to “work to resolve the matter in a friendly manner, pursue confidence-building measures while refraining from using force, and settle the dispute in accordance with the principles of international law.”<sup>95</sup> The Joint Statement between the Government of the People's Republic of China and the Government of the Republic of the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century reaffirmed this process

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<sup>94</sup> Clive Schofield and Ian Storey, *The South China Sea Dispute: Increasing Stakes and Rising Tensions* (Washington: Jamestown Foundation, 2009), 42.

<sup>95</sup> Carl Baker, *China-Philippines Relations: Cautious Cooperation* (Honolulu, HI: Asia-Pacific Center for Security Studies, October 2004), accessed October 21, 2014, <http://www.apcss.org/Publications/SAS/AsiaBilateralRelations/China-PhilippinesRelationsBaker.pdf>.

in 2000.<sup>96</sup> Both countries re-affirmed their commitment to promote peace and stability in the region. They agreed to abide by international laws and seek peaceful means to resolve disputes. Both country agreed to pursue confidence-building measures through a China-Philippines Working Group and “positively contribute toward the formulation and adoption of the regional Code of Conduct in the South China Sea.”<sup>97</sup>

Similarly, the extensive, highly structured, and tiered bilateral talks and negotiations between the PRC and Vietnam have resulted in significant agreements. Two agreements are noteworthy. The Land Border Treaty in 1999 and the Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin have helped settle border disputes.<sup>98</sup> Regarding SCS disputes, the agreement on basic principles guiding the settlement of sea issues between Vietnam and China is also in place.

These bilateral negotiations between PRC and the RP, and between PRC and Vietnam were further embodied in the multilateral agreement that is the Declaration on

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<sup>96</sup> Ministry of Foreign Affairs of the People’s Republic of China, “Joint Statement Between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century,” November 15, 2000, accessed October 21, 2014, [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/2649\\_665393/t15785.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t15785.shtml).

<sup>97</sup> People’s Daily Online, “China, Philippines Sign Joint Agreement,” May 17, 2000, accessed October 20, 2014, [http://english.peopledaily.com.cn/english/200005/16/eng20000516\\_40943.html](http://english.peopledaily.com.cn/english/200005/16/eng20000516_40943.html).

<sup>98</sup> Ramses Amer and Li Jianwei, “Recent Developments in the South China Sea: Assessing the China-Vietnam and the China-Philippines Relationship” (Paper, National Institute for South China Sea Studies, Haikou, December 2012), accessed October 22, 2014, [http://www.nanhai.org.cn/include\\_lc/upload/UploadFiles/201313016181097137.pdf](http://www.nanhai.org.cn/include_lc/upload/UploadFiles/201313016181097137.pdf).

the Conduct of Parties in the South China Sea (DOC) in 2002. The DOC signaled the advent of PRC's engagement with the multilateral approach to security issues.

Meanwhile, the PRC and the US are also pursuing a US-China Military Maritime Agreement<sup>99</sup> that should prevent the occurrence of incidents involving both parties. This consultation mechanism increases maritime safety through consultative meetings, joint working groups, and other such military interactions between American and Chinese naval and air forces.

Another significant development in the SCS was reached in 2005 when the PRC, the RP, and Vietnam entered into a Joint Marine Seismic Undertaking (JMSU), a tripartite agreement that raised hopes for a possibility of joint development ventures among the three countries in the SCS. A period of peace and stability in the SCS ensued when the JMSU was in place. Although China and the Philippines have not pursued similar initiatives after the agreement expired, China and Vietnam “announced the two sides would formally establish a bilateral workforce for maritime exploration and consultation, strive to achieve substantive progress in the joint development in the waters outside the mouth of the Beibu Gulf before the end of 2013, and also discuss further development in a wider range of waters.”<sup>100</sup>

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<sup>99</sup> “Agreement Between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety,” Beijing, January 19, 1998, accessed October 24, 2014, <http://fas.org/nuke/control/sea/text/us-china.pdf>.

<sup>100</sup> Hua Yiwen, “Three Ideas to Make a Breakthrough on South China Sea Issue,” *People's Daily*, October 18, 2013, accessed October 22, 2014, [http://www.china.org.cn/opinion/2013-10/18/content\\_30335530.htm](http://www.china.org.cn/opinion/2013-10/18/content_30335530.htm).

These developments clearly establish that despite their differences, the claimants continued to pursue diplomatic means to relieve tensions. Though they have not reached concrete steps to resolve the SCS disputes, they exhibited the general predisposition towards arrangements that reduce the risk of conflict. These include continued communication and economic relations even when incidents at sea occur. Further, claimants continue to pursue cooperative approaches like joint development of disputed areas and cooperation in many aspects of international relations other than security.

#### Regional and International Institutions

The increased involvement of regional institutions and other actors such as ASEAN, the US, and Indonesia in the SCS disputes have also been evident in recent years. The ASEAN facilitated the signing of the DOC and continues to pursue the establishment of the COC. As discussed, although the DOC has not resolved the issue, claimants are committed to practice self-restraint and seek peaceful means to resolve conflict. Also, the DOC embodies the commitment of claimants to seek cooperative arrangements and confidence-building measures. ASEAN has continuously engaged the PRC considering that the PRC is the only non-ASEAN claimant.

Other institutions that foster consultation and cooperation among militaries in the region include the ARF, the ASEAN Maritime Forum (AMF), and the ASEAN Chiefs of Armies Multilateral Meeting (ACAMM). Collectively, these regional groups offer the promise of peaceful conflict resolution for years to come.

Other regional institutions such as the Asia-Pacific Economic Cooperation (APEC), East Asia Summit (EAS), Trans-Pacific Partnership (TPP), and the Regional Comprehensive Economic Partnership (RCEP), though primarily focused on economic

cooperation, proved to be instrumental in implementing actions that can prevent conflict escalation. The APEC, EAS, and ASEAN provided communicative and constructive opportunity regarding SCS disputes. “The ASEAN-ARF and ASEAN-AMF44 are two official research and study centers that foster constructive dialogue and consultation on political and security issues of common interest and concern.”<sup>101</sup>

The two countries that are actively involved in the SCS are the US and Indonesia. The US has consistently asserted the importance of the freedom of navigation. Despite its differences with the PRC on US SCS military activities, the US remained neutral in confrontations involving the PRC and other claimants. The US repeatedly affirms its conviction to promote the rule of international law and peaceful resolution of the disputes. Despite its neutrality, the US remains a balancing power in the SCS in the sense that its defense treaty with the RP binds it to defend the RP should a war occur between the PRC and the RP. Thus, other than their economic relations, it is still more preferential for both the US and the PRC to avoid an armed conflict.

Relatedly, Indonesia has been one of the more active peace brokers in the region. It pioneered the South China Sea Workshops on Managing Potential Conflicts in the SCS (MPCS). Though originally intended as a research platform, it has become a fertile ground for developing SCS policies. Funded by Canada, these MPCS provided a formal and informal setting where participants discuss security issues in the region. These are facilitated elite interactions and exchanges of opinions. Different opinions and positions

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<sup>101</sup> Guan-Jiun Jeff Jang, “Conflict Prevention and Confidence Building Measures in the South China Sea” (Strategic Research Project, United States Army War College, Carlisle Barracks, PA, 2013), 16.

on issues are presented and discussed without pressure to resolve or commit to a resolution.

In terms of the resolution of the disputes, the UN is critical. Claimants continue to enact national legislation that bolsters their respective claims. Claimants also invoke international customary laws to strengthen their positions. These evidently present the need for a clear and common standard for internationally acceptable actions and national expectations pertaining to the SCS disputes. Hence, there is an increasing need to clarify the issues arising from interpretations of provisions in the UNCLOS and jurisdiction over the disputes. The UN and the international courts continue to be critical in providing the international legal system and mechanisms that prevent conflict and promote international peace.

So far, the more dominant theme pertaining to how actors approach the SCS dispute is conflict prevention and not conflict resolution. The mechanisms deter but do not resolve conflict.

To date, the DOC remains to be the only multilateral agreement that involves all the claimants. Though continuous incidents at sea challenge the effectiveness of the DOC to maintain stability and security in the SCS, it has limited the assertive actions of claimants. The DOC embodies the ASEAN Way. Mikael Weissman<sup>102</sup> attributes the PRC's acceptance of multilateralism and the institutionalization of peaceful relations as key. The "ASEAN Way," he says, worked as a structure on international relations and conduct of diplomatic practices in the region. In the same study, Weissman attributes the

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<sup>102</sup> Mikael Weissman, "The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building," *Asian Perspective* 34, no. 3 (2010), accessed November 11, 2014, <http://www.ui.se/upl/files/49747.pdf>.

relative peace in the SCS to two interlinked types of processes that exists in the region: the proliferation of elite interactions and the regionalization that has become the framework for ASEAN-China relations. He argues that as the ASEAN engages the PRC and the PRC in turn pursues the “soft power” approach to its neighbors, positive relations increase. These are conducive for building trust and instrumental in attaining stability and peace in the region. He also argued that US policies on engaging the PRC, and its limited role in the SCS disputes has been instrumental in maintaining regional stability.

## CHAPTER 5

### CONCLUSION

Based on the foregoing discussions, this study offers the following conclusions. The main drivers of diplomatic and military tension in the SCS are unilateral actions that other claimants perceive as altering the status quo. Tensions in the SCS increase when claimants exercise jurisdiction over disputed islands and waters where they have not previously claimed jurisdiction. This includes actual occupation of disputed islands and waters that they have not previously occupied, reclamation of islands and building of structures and military garrisons, and the deployment of civil marine authorities and military surveillance groups in the disputed territories. Diplomatic tensions also escalate when claimants enact national laws to support jurisdictional claims. Therefore, the SCS dispute lacks a clear and common standard for internationally acceptable actions and national expectations pertaining to the SCS disputes.

Despite these tensions, escalation has been avoided. During tense situations, claimants usually practice military restraint. The use of military means has largely been limited even during confrontations. The claimants usually resort to diplomatic means to de-escalate tensions. Bilateral and multilateral talks and negotiations occur continuously. The active involvement of other states and institutions such as the ASEAN, the US, and Indonesia continuously encouraged the claimants to pursue peaceful resolution. All of this resulted in conflict de-escalation, but it has not resolved the SCS disputes.

The resolution of the SCS disputes does not seem to be imminent due to their complexity. The ambiguity of claims, differences in the basis of those claims, and the international legal requirements and procedures proved to be major impediments in

resolving the disputes quickly. A security dilemma continues to exist in the SCS. The threat of conflict arising from the unresolved disputes remains. Moreover, the escalation of conflict still rely heavily on the commitment of the claimants not to alter the status quo while seeking dispute resolution. Compared to other claimants, the PRC is involved in most of the tense situations. This, coupled with PRC's economic and military might, encourage other claimants to seek an advantage in the regional and international community and through military alliances. This leads to the regionalization and internationalization of the SCS disputes.

The increased ASEAN, US, Indonesian and other country involvement as brokers of peace has been evident. Undoubtedly, the DOC remains ASEAN's major accomplishment in engaging claimant parties towards seeking peaceful resolution. Though the DOC may not be effective in preventing tensions from occurring, it has been effective in preventing such from escalating into serious armed conflict. This is evident on how claimants refer to the agreements in the DOC when entangled in SCS tensions. Undoubtedly, belligerent claimants do tread within the limits of "acceptable conduct" and they adopt actions that de-escalate conflict. Further, claimants have explored cooperative arrangements pertaining to disputed territories. The DOC captures all of these approaches. Indonesia has played a critical role in promoting regional cooperation. It hosted the South China Sea conferences for Managing Potential Conflict in South China Sea. Indonesia also took the initiative to mend ASEAN relations that reached an impasse over SCS dispute issues in 2012. The policies adopted by the US on the SCS have also proven helpful in maintaining security and stability in the region. While continuously expressing its national interest on the freedom of navigation in the SCS, it also

continuously upheld the respect for international law. It has remained neutral and has not interfered militarily in SCS confrontations. The less militarily capable claimants, such as the RP and Vietnam, are left to explore international legal means to remedy the SCS situation. The mutual defense treaty between the US and the RP, and the US interest in the freedom of navigation in the SCS remain factors that may lead to a US-China conflict. This predicament appears to have become a deterrent as well.

In sum, the SCS security situation is currently characterized by four circumstances. These include:

1. A continuing security dilemma arising from unresolved disputes, and an increased need for a clear standard and framework that will govern the resolution of the disputes;
2. Diplomacy continues to be the preferred means of addressing tensions and the peaceful resolution of disputes continue to be core;
3. An increased involvement of regional and international actors; and
4. Development of cooperative arrangements and agreements that promote the peaceful resolution of the disputes.

The primary mechanisms that promote the relative security and stability in the SCS are conflict prevention mechanisms that focused on managing the tensions, and not on resolving the disputes. One of these is the ASEAN Way. The ASEAN Way of informality, consensus, cooperation, and non-interference promoted a conducive environment for peaceful resolution of conflict. Claimants settled the SCS disputes among themselves. The ASEAN Way of non-intervention/non-interference relieves the claimants of the external pressure to come up with an immediate resolution of the

disputes. Further, the ASEAN way promotes consensus, cooperation, and informality that facilitated positive interaction between and among claimants in various fora.

Moreover, the ARF has proven to be an effective mechanism that effectively led the PRC into multilateral dialogues on security issues in the SCS, including the SCS disputes. Amidst conflicting interests, claimants and other ASEAN members freely engage in discussions about regional security issues, and in the process develop a collective interest on regional security and stability. The MPCS is another mechanism that put the SCS disputes as a regional security agenda. As the issues surrounding the SCS disputes arose, claimants explored the implications of the SCS disputes on the regional security and stability. This further fostered a collective interest for cooperation. Both the ARF and MPCS served as “pre-negotiation” fora that allowed claimants to frame their respective claim with an understanding of the other claimants’ positions and pursue them utilizing more peaceful means. In addition, both the ARF and MPCS promoted confidence-building measures that proved critical in fostering SCS security and stability.

Lastly, Chinese, American and ASEAN policies have maintained the stability and security in the region. The PRC’s “peaceful rise” and “set aside dispute, pursue development” policies were congruent with US and ASEAN policies that encouraged the PRC towards becoming a responsible power in the region. With peace and stability being central to these policies, the relative stability and security in the SCS continues.

APPENDIX A

Maps and Charts



Figure 6. China's Nine-Dash Line Map of South China Sea

Source: Chinese Defense Website, "Official Chinese Map of the South China Sea with the Nine-Dotted Line," The Traffic and Tourist Map of Hainan, 1999, accessed October 1, 2014, <http://www.chinesedefence.com/forums/vietnam-defence/5545-no-dispute-chinas-1948-nine-dash-line-map-plus-article-15-unclos-clear.html>.

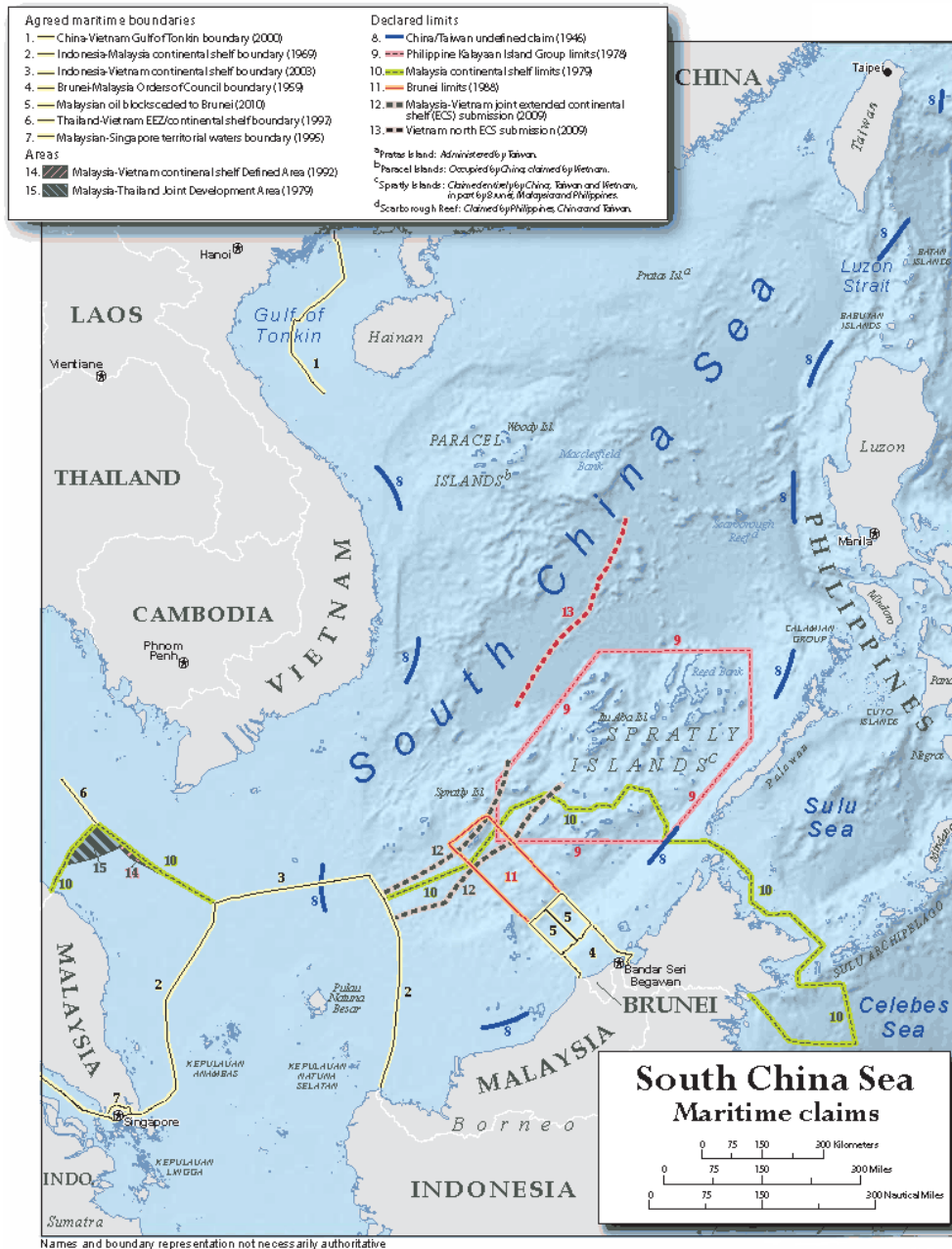


Figure 7. South China Sea Maritime Claims

Source: US State Department, "South China Sea Maritime Claims," February 7, 2013, accessed October 1, 2014, [http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).

## APPENDIX B

### Spratly Islands Distribution

Country	English Name	Local Name
China	1. Fiery Cross Reef	- Da Chu Thap
	2. Cuarteron Reef	- Da Chau Vien
	3. Johnson Reef	- Da Gac Ma
	4. Hughes Reef	- Da Hu-go
	5. Gaven Reef	- Da Gaven
	6. Subi Reef	- Da Su-bi
	7. Mischief Reef	-
Philippines	1. North East Cay	- Parola (Dao Song Tu Dong)
	2. West York Island	- Likas (Dao Dua / Ben Lac)
	3. Thitu Island	- Pag-asa (Dao Thi Tu)
	4. Flat Island	- Patag (Dao Bhin Nguyen)
	5. Nansham Island	- Lawak (Dao Vinh Vien)
	6. Commodore Reef	- Rizal (Dao Cong Do)
	7. Lamkian Cay	- Panata (Con San Ho Lan Can)
	8. Laoita Island	- Kota (Dao Loai Ta)
Vietnam	1. Ladd Reef	- Da Lat
	2. Spratly Island	- Dao Truong Sa
	3. West London Reef	- Da Tay
	4. Central London Reef	- Sa Guia
	5. East London Reef	- Da Dong
	6. Amboyan Reef	- Dao An Bang
	7. Barque Canada Reef	- Thuyen Chai
	8. Pearson Reef	- Da Phan Vinh
	9. Alison Reef	- Bai Toc Tan
	10. Cornwallis South Reef	- Da Nui Le
	11. Tennent Reef	- Da Tien Nu
	12. Great Discovery Reef	- Da Lon
	13. Landsdowne Reef	- Da Len Dao
	14.	- Da Hi Gen
	15. Sin Cowe Island	- Dao Sinh Ton
	16.	- Da Gri-san
	17. Namyit Island	- Dao Nam Yet
	18. Sand Cay	- Dao Son Ca
	19. Petley Reef	- Da Nui Thi
	20. South West Cay	- Dao Song Tu Tay
	21. South Reef	- Da Nam
Taiwan	1. Itu Aba Island	- Dao Ba Binh (Taiping Dao) Island
Malaysia	1. Mariveles Reef	- Da Ky Van (Terumbu Mantanani)
	2. Ardasier Reef	- Da Kieu Ngua (Terumbu Ubi)
	3. Swallow Reef	- Da Hoa Lau (Terumbu Layang)
Brunei	1. None	-

*Source:* Created by author based from U.S. Energy Information Administration, “Country Analysis Brief, South China Sea,” February 7, 2013, accessed September 28, 2014, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

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