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THE SOUTH CHINA SEA DISPUTE AND THE SEARCH FOR PEACEFUL RESOLUTION



*International Association of Democratic Lawyers
International Fund "The Way for Peace"*

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IADL, International Association of Democratic Lawyers, is a Non- Governmental Organization (NGO) with consultative status to ECOSOC and represented at UNESCO and UNICEF. The IADL was founded in 1946 by a gathering of lawyers who had survived the war against fascism and participated in the Nuremberg Trials.

The International Review of Contemporary Law is a digital legal journal published by IADL. It does not follow the mainstream, but instead analyzes legal questions in their cultural, economical, political and social context.

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INTRODUCTION

The South China Sea is a semi-enclosed sea located in South East Asia, bridging the Indian and Pacific oceans. It lies at a crossroad of many of the busiest international sea lanes. It is known as one of the most bio diverse areas in the world. Fishery is a major and important industry, feeding millions of people in various communities adjacent to the South China Sea. Aquatic products are also exported worldwide. Numerous attractions along the sea as well as coastal areas make tourism one of the top industries of regional countries.

In the South China Sea, different types of disputes over sovereignty, sovereign rights and jurisdiction negatively affect the relations between coastal countries and undermine regional peace and stability. Furthermore, more and more external stakeholders have claimed that they have interests in maintaining stability and peace in the South China Sea. From the legal perspective, those disputes are linked to the interpretation of many definitions in international law, including the definition of islands, maritime entitlement, historic rights, straight baselines, etc. In July 2016, the Arbitral Tribunal, established by the Annex VII of the United Nations Convention on the Law of the Sea 1982, issued the final award in the South China Sea case which was initiated by the

Philippines against China. This ruling is of extreme importance to the seeking of peaceful solutions for maritime disputes in and beyond the region. It provides a clear interpretation and application of the international law of the sea, including the 1982 UN Convention on the Law of the Sea. Therefore, a state's compliance with the award shows how that state is responsible to the international community. This ruling will also strengthen the integrity of international law.

The International Association of Democratic Lawyers (IADL) is an organization established with the aim of promoting the UN Charter. For that purpose, the IADL has actively contributed to the peaceful settlement of the disputes in the South China Sea. It has organized two international conferences, in 2017 and 2018, in order to shed more light on the South China Sea situation and its implications on the international law. The third conference in 2019 is a necessary follow-up because, since 2018, the situation of the South China Sea has become more complicated. These complications including increasing assertive and coercive activities; the occurrence of more high-risk incidents; the participation of the so-called maritime militia; and disregard of the arbitral award, particularly by China. A very recent example is that immediately

following the 2019 conference, while this Review was being edited, despite the call of conference participants for demilitarization, China reportedly violated Viet Nam's exclusive economic zone and continental shelf, which creates further tensions and destabilizes the region.

The third IADL international conference on the South China Sea in 2019 aimed to clarify the complexity of the disputes and to seek different

avenues to achieve peaceful settlement of those disputes in accordance with international law.

In this issue of the Review, the Editorial Board presents selected articles, speeches and reports from the 2019 conference into two categories:

1. *Recent developments in the South China Sea*
2. *Proposals for confidence building and dispute resolution.*

OPENING SPEECH

Jeanne Ellen Mirer *

On behalf of the International Association of Democratic Lawyers (IADL) I welcome you to this important conference. We are very grateful to our partner in this conference the Center for The Law for Peace, and Irina Umnova and I want to thank all of our friends, especially in the Viet Nam Lawyers Association for all their hard work in bringing together all of the people who will be participating in this Conference as speakers and participants on the important topic of searching for a Peaceful resolution of the disputes in the South China Sea.

This is a very important topic to IADL. The South China Sea hosts one third of all global shipping traffic and accounts for \$5.3 trillion in total trade. It is one of the world's busiest sea route. Given its importance, peace in the South China Sea region is essential. We are very happy that we have experts at this conference from this region. This is our second conference on this very important topic. The first was last September here in Moscow.

For those of you who do not know, IADL since its founding in 1946 has advocated for the goals of the United Nations Charter. In fact one of its very purposes was to uphold and implement

the Charter's provisions to create conditions to promote and keep peace. The Charter produced a new international law under which many international human rights and other instruments have been given life.

For our purposes the Constitution of the law of the Sea, the 1982 UN Convention on the law of the Sea or UNCLOS has become the prime instrument through which we seek peaceful resolution of all maritime disputes. IADL has long been interested and active in trying to promote peace in the South China Sea. For example, IADL protested when in 2014 China placed an oil rig in area claimed by Viet Nam as part of its Exclusive Economic Zone as an effort to stoke tensions and confrontation. We requested China to justify its actions. We supported the 2013 filing for arbitration by the Philippines to settle various disputes with China and saw the ruling in 2016 as providing an opening to find peaceful resolution given the conclusions of the Tribunal with respect to the ruling on the entitlements of various maritime features in the Sea and the China's claim with respect to the Nine-Dash Line. With the United States pivot to Asia we see the US exacerbating geopolitical tensions in the area and using the disputes among the Coastal States to escalate the

* IADL President

militarization of SCS conflict which could involve a US confrontation with China.

In January 2017 IADL and its affiliate in Japan, the Japanese Lawyers for International Solidarity (JALISA) held a conference in Tokyo to discuss the impact of the 2016 ruling of the Permanent Court of Arbitration on the Philippine case and how it could provide a basis for peaceful resolution of the disputes in the South China Sea despite China's objection to the ruling. In December 2017 the IADL Bureau met in Ho Chi Minh City after attending the annual conference held by Vietnamese diplomatic agencies on this issue as well. We decided at that bureau to continue to monitor the issue and to actively seek to use our good offices to promote peace. Last September we met here in Moscow for the first time, and in December the IADL published an issue of our Review

of Contemporary International Law devoted to the subject of the South China Sea.

We believe that in these perilous times which have seen the rise of nationalisms and an attempt especially by the United States to weaken multilateral institutions and their effectiveness it is critical for the peoples of the world to work for peace and to turn the tide back to international cooperation and improvement of the living conditions in all countries as the way to eliminate the root causes of international conflict.

It is in that spirit that we convene this conference today. Today we take the next steps to get an update on the situation in the SCS since our last meeting and discuss some specific forms methods or mechanisms for peaceful resolution of disputes. I am sure it will be a very productive meeting.

PART I

RECENT DEVELOPMENTS IN THE SOUTH CHINA SEA

**PHILIPPINE FOREIGN POLICY SHIFT ON THE SOUTH CHINA SEA
DISPUTE: GENUINE SHIFT OR SOUND BYTES?¹**

*Neri Colmenares **

While Pres. Rodrigo Duterte has remained intractable on what is called in the Philippines as his –Kowtowing|| foreign policy stance favoring China on the South China Sea (SCS) dispute, he recently made statements that show deviations from this foreign policy position. He has recently warned China not to take –all of the South China Sea||² and has suddenly threatened to send

soldiers on a –suicide mission||³ against China in the Kalayaan (Thi Tu) island. Strong words for one who has expressed his –love for China||⁴ several times in the past. The question among foreign policy watchers now is, whether these portends a shift in foreign policy thinking or just another sound bite that Pres. Duterte regularly dishes out but without any intention of following through.

This paper posits that such –deviations|| were forced response to a growing antagonism in the Philippines against his pro-China policy, not only from the opposition but even those who support his administration. These –deviations|| did not result from a well thought out foreign policy study on the

* Chairman-National Union of People's Lawyers (NUPL)

¹ This talk will discuss updates on the current situation on the ground in the Philippines and developments on Philippine foreign policy with regards the South China Sea dispute. Neri Colmenares is a human rights lawyer and was a three-term member of the Philippine Congress. He is also a Convenor of PINAS, an association advocating for the respect of Philippine sovereignty and has delivered various talks and papers in universities, conferences and Continuing Legal Education (CLE) seminars for lawyers, on the implications of Pres. Rodrigo Duterte's foreign policy. He is the Chairman of the National Union of People's Lawyers.

² –Is it right for a country to claim whole ocean?': Duterte frustrated with Beijing over South China Sea conduct|| Agence France-Presse, 31 May, 2019 <https://www.scmp.com/news/asia/southeast-asia/article/3012670/south-china-sea-frustrated-rodrigo-duterte-ticks-beijing>.

³ –Duterte threatens 'suicide mission' if Beijing oversteps in South China Sea||, Ben Westcott and Brad Lendon, CNN April 5, 2019, <https://edition.cnn.com/2019/04/05/asia/south-china-sea-duterte-beijing-intl/index.html>.

⁴ Interview with Presidential Spokesperson Salvador Panelo, Presidential Communications Operations Office, November 20, 2018, <http://pcoo.gov.ph/wp-content/uploads/2018/11/20181120-Interview-with-Presidential-Spokesperson-and-Presidential-Legal-Counsel-Secretary-Salvador-Panelo-by-Karen-Davila-Headstart-ANC-21.pdf>.

ramifications of the Philippine-Chinese relations on the SCS dispute, but rather, an effort to stem the growing protest movement against China and ultimately, Pres. Duterte. Two other factors impact as foreign policy consideration for Pres. Duterte—the growing dependence of the Philippines on Chinese loans and, the chances of the candidate he has selected to succeed him when his term ends in 2022.

Whether these deviations will lead to the total abandonment of the current kowtowing Philippine policy position depends largely and mainly, however, on whether the movement against Pres. Duterte's Kowtowing foreign policy gains larger and broader adherents.

Kowtowing Foreign Policy

The current foreign policy of the Philippine government on the South China Sea dispute contends that it is not to the Philippines' interest to assert the Permanent Court of Arbitration (PCA) South China Sea arbitral award favorable to the Philippines as it will escalate the dispute into a full blown attack on the Philippines. Pres. Duterte harps on the capacity of Chinese missiles to reach the Philippines in —seven minutes||⁵ and the

⁵ —China just wants to be friends with Philippines — Duterte||, [Christina Mendez, Edith Regalado](https://www.philstar.com/headlines/2019/04/04/1907099/china-just-wants-be-friends-philippines-duterte) (The Philippine Star) - April 4, 2019, <https://www.philstar.com/headlines/2019/04/04/1907099/china-just-wants-be-friends-philippines-duterte>.

inability of the Philippine armed forces to withstand an invasion from China.

Instead of protesting against or opposing China's continued expansion in the disputed area, Pres. Duterte has taken the path of least resistance by acquiescing to and even trivializing China's expansionism. When told that China has built missiles in the SCS, *Malacanang* (the media term which connotes the President or the Presidential Office) assured the Filipinos not to worry since, —anyway, the missiles are not pointed at us.||⁶

In exchange for this acquiescence, bilateral negotiations between China and the Philippines, with emphasis on trade and a possible —joint|| exploration, have been seriously undertaken as the most practical and effective approach to the dispute.

TIMELINE: China's aggressive actions and Philippine Responses⁷

Then Mayor Rodrigo Duterte ran for elections in May 2019. During the campaign period he publicly declared his —Jet ski foreign policy|| which essentially

⁶ —Palace _concerned_ over reef missiles||, [Alexis Romero](https://www.philstar.com/headlines/2018/05/05/1812309/palace-concerned-over-reef-missiles#y6k5UfDcoimvGH8d.99) (The Philippine Star), May 5, 2018 <https://www.philstar.com/headlines/2018/05/05/1812309/palace-concerned-over-reef-missiles#y6k5UfDcoimvGH8d.99>.

⁷ The timeline herein were mainly and substantially taken from the Time Line report of Rappler <https://www.rappler.com/newsbreak/iq/209026-timeline-philippines-china-relationship-duterte-administration>

commits to vigorously assert Philippine claims in the South China Sea dispute against China. On June 30, 2016 Pres. Rodrigo Duterte was sworn into office after winning the presidential elections. Whereupon, he suddenly abandoned his foreign policy position and made a complete turnaround for yet unclear reasons.

It is noteworthy that Chinese Ambassador Zhao Jianhua met with Pres. Duterte twice in May and June of 2016. Ambassador Zhao Jianhua again met Pres. Duterte a few days before the PCA ruling on July 12, 2016 deciding in favor of the Philippines against China.

When the PCA announced its ruling practically nullifying China's 'nine-dash-line' claim, Malacanang's response was a strangely weak message that *—our experts are studying the Award with the care and thoroughness that this significant arbitral outcome deserves. We call on all those concerned to exercise restraint*||.

On September 27, 2016 the Philippine National Security Council reported that Chinese Coast Guard were harassing Filipino fishermen in Scarborough Shoal. There was no response from the normally combative President. In December 2016 Malacanang publicly admitted to being helpless to stop the Chinese expansion.⁸

⁸ —Yasay on China's deployment of military equipment in Spratlys: 'There is nothing that we

On October 20, 2016 Pres. Duterte secures US\$ 24 Billion worth of deals with China⁹ during a 4-day state visit. Pres. Duterte and Chinese President Xi Jinping also agreed to pursue bilateral talks on the South China Sea dispute. Both also signed [13 bilateral cooperation agreements](#).

On March 24, 2017 reports showed China constructing more infrastructures on the disputed waters. Pres. Duterte reiterated that he is helpless to stop China from building at the Scarborough Shoals because *—we will lose*||¹⁰ in a war against China.

Two months later, Pres. Duterte visits China again and signs 3 Memoranda of Understanding (MOU) with President Xi Jinping. On November 12-16, 2017 China Premier Li Keqiang visit the Philippines and signs 14 deals with Pres. Duterte including a US\$ 21 Million donation for war torn city of Marawi.

can do about that now||, CNN December 17, 2016, <http://nine.cnnphilippines.com/news/2016/12/17/Yasay-on-Chinas-deployment-of-military-equipment-in-Spratlys.html>.

⁹ —Duterte bringing home \$24B worth of deals from China||, Rappler Pia Ranada, October 21, 2016, <https://www.rappler.com/business/149886-duterte-business-deals-contracts-china-visit>.

¹⁰ —Duterte stresses Philippines not equipped to wage war with China||, Alexis Romero (Philstar.com), March 10, 2019, <https://www.philstar.com/headlines/2019/03/10/1900300/duterte-stresses-philippines-not-equipped-wage-war-china>.

On January 24, 2018 Malacanang grants China a permit to conduct research on the –West Philippine Sea|| including Benham Rise. There were protests when Malacanang stated that Filipinos are not capable of conducting research without China's help.¹¹

On February 5, 2018 media publishes footages revealing China's construction of air bases, naval facilities and communications system in the Spratlys. Malacanang declared that it is not worried because China promised that it will not conduct reclamation in any other feature in the West Philippine Sea. The protests grew larger as Filipinos grew wary of China's –continuing process of incremental takeover||.

On February 15, 2018 in stark contrast to his normally pro-China position, Pres. Duterte uncharacteristically declared he would –go to war|| to defend the Philippine Rise (Benham Rise). This is one of the first major foreign policy –deviations|| of Pres. Duterte.

On April 9, 2018 Pres. Duterte again flies to China for the Boao Forum for Asia (BFA) and expresses the need for China's assistance in key infrastructure

¹¹ –China allowed to conduct research in Benham Rise, Cayetano confirms||, By CNN Philippines Staff, January 20, 2018, <http://nine.cnnphilippines.com/news/2018/01/19/Philippines-allows-China-research-Benham-Rise-Cayetano-confirms.html>.

program. He declared that –I need China. I will not say something which is not good||¹² and that he will continue to rely on China's –word of honor|| on its reclamation activities.

On April 26, 2018 Pres. Duterte formally proposes a –60-40 joint exploration|| of the West Philippine Sea with China citing the 2005 Joint Marine Seismic Undertaking (JMSU) signed between the Pres. Gloria Arroyo and China¹³. The opposition was critical of this plan as it could effectively negate the PCA decision and violate the Philippine Constitution.¹⁴

On May 11, 2018 the Philippine Navy reported acts of harassment by a Chinese helicopter near the Ayungin Shoal (Second Thomas Shoal). This

¹² –Philippine-China ties a model for 'positive engagement', says President Duterte||, Apr 10, 2018, Raul Dancel, <https://www.straitstimes.com/asia/se-asia/philippine-china-ties-a-model-for-positive-engagement-says-president-duterte>.

¹³ The author was counsel in a Petition against the constitutionality of the JMSU filed against then Pres. Gloria Arroyo with the Philippine Supreme Court in 2008. The petition remains pending up to the present and could derail future joint exploration between Philippines and China should the Supreme Court decide in favor of the Petitioners.

¹⁴ –Planned PHL-China joint exploration stirs –caution' call||, Butch Fernandez, Bernadette D. Nicolas, BusinessMirror, August 2, 2018, <https://businessmirror.com.ph/2018/08/02/planned-phl-china-joint-exploration-stirs-caution-call/>.

time, the Philippines filed a diplomatic protest over the –incident|. This is in stark contrast to the President's pronouncement a few days before when he trivialized the deployment of Chinese missiles being deployed in the South China Sea.¹⁵

On May 19, 2018, Chinese media showed the deployment of Chinese bomber planes at Woody Island. According to reports "nearly all of the Philippines falls within the radius of the bombers, including Manila."¹⁶ Pres. Duterte remained silent amidst condemnation by Filipino legislators of China's actions.

On May 21, the Philippine Department of Foreign Affairs (DFA) breaks its two-day silence on the issue, saying that it is –taking the appropriate diplomatic action necessary|. The administration maintained a similar position when US network CNBC reported earlier in May that Beijing had installed missiles in Spratlys.¹⁷

¹⁵ –Philippines 'confident' Chinese missiles 'not directed at us', Al Jazeera, May 4, 2018, <https://www.aljazeera.com/news/2018/05/philippines-confident-chinese-missiles-directed-180504101427158.html>.

¹⁶ –Chinese bombers capable of hitting Philippines land on South China Sea reef|, Ian Nicolas Cigaral (Philstar.com), May 19, 2018 <https://www.philstar.com/headlines/2018/05/19/1816708/chinese-bombers-capable-hitting-philippines-land-south-china-sea-reef#e6YAtrq7HT02qrqA.99>.

¹⁷ Copied from Rappler Timeline Report.

Malacañang, while concerned about the matter, was –confident|| that the missiles were not directed at the Philippines. These pronouncements fueled more protests in the Philippines.

Malacanang eventually files a note verbale on May 26, 2018.

On June 8, 2018 Philippine media showed footages of Chinese Coast Guard taking the catch of Filipino fishermen. In the face of fierce condemnation of the incident, Duterte justifies the incident merely as unbalanced "barter" trade.¹⁸

On July 14, 2018 a Philippine survey group found that [4 out of 5 Filipinos](#) say it is wrong for the Duterte administration to do nothing about China's militarization of the West Philippine Sea. Another nagging issue among Filipinos is the number of loans which Pres. Duterte signed with China giving fears that the Philippines will fall into a debt trap with China. This fueled protests.

On July 17, 2018 Chinese Ambassador to the Philippines Zhao Jianhua publicly denied that the Philippines is in danger of falling into a debt trap with China. Pres. Duterte joined him saying that –China has [never](#)

¹⁸ –Duterte: Chinese Coast Guard, Filipino fishermen engaged in __barter‘ at Scarborough||, [The Manila Times](#), June 18, 2018, <https://www.manilatimes.net/duterte-chinese-coast-guard-filipino-fishermen-engaged-in-barter-at-scarborough/409703/>.

[asked for any piece of real estate](#) in the Philippines in exchange for financial assistance. The government, however, has failed to make public copies of these loan agreements despite demands. The China loans considered onerous by Filipinos and Chinese expansion in the SCS fueled more protests both in the streets and social media.

On July 23, 2018 Pres. Duterte during his 3rd State of the Nation Address, vowed to defend the West Philippine Sea stating that "Our improved relationship with China, however, does not mean that we will waver in our commitment to defend our interests in the West Philippine Sea." There is a noticeable shift in tone in the Presidential address to the nation.

On February 28, 2019, former congressman Neri Colmenares was given a copy of the Chico River Loan Agreement with China by an unidentified government official.

He exposes the onerous terms in the loan which stirred up more protests among Filipinos. Malacanang initially contested Colmenares' allegations claiming the loans were vetted by government experts. Due to massive protests however, Malacanang later agreed to review all loan agreements with China.

On March 22, 2019, Neri Colmenares published a video showing interviews with fishermen who

experienced intimidation and harassment by Chinese coast guard when fishing in Panatag Shoal (Scarborough shoal). The government initially claimed that the video was accurate and demanded that Colmenares show proof of harassment. On March 22, the government relented and agreed to investigate the claims of harassment.¹⁹ On March 30, the government indirectly backtracked when its Fisheries Bureau advised Filipino fishermen to avoid fishing at Panatag Shoal.²⁰

On April 3, 2019, reports of hundreds of Chinese vessels –swarming near Pagasa Island (Thi Tu) generated protests as Filipinos fear that China may take over Pagasa. Malacanang was forced to make a strong rebuke amidst the protests:

"The presence of Chinese vessels near and around Pagasa and other maritime features ... is illegal," the department said in a statement. "Such actions are a clear violation of Philippine sovereignty,

¹⁹ AFP verifying reports on Chinese harassing Filipino fishermen in Panatag
By: [Frances G. Mangosing](#) Philippine Inquirer, March 26, 2019 <https://globalnation.inquirer.net/173865/afp-verifying-reports-on-chinese-harassing-filipino-fishermen-in-panatag#ixzz5qzo1zPBn>.

²⁰ BFAR advises fishermen to avoid Panatag Shoal, Karen Galarpe, March 30, 2019 <https://www.msn.com/en-ph/news/world/bfar-advises-fishermen-to-avoid-panatag-shoal/ar-BBVpvNy?li=AAb28oR&%3Bocid=DELLDHP>.

sovereign rights and jurisdiction as defined under international law."

The department said it has lodged diplomatic protests and raised concerns in meetings with Chinese officials, and that the presence of Chinese military, fishing or other vessels in the area would "continue to be the subject of appropriate action by the Philippines."²¹

On April 5 Pres. Duterte warned China to lay off Pagasa Island otherwise he could send "Filipino soldiers on suicide mission" against China.

On June 9, 2019, a major shift in tone took place when a Chinese vessel reportedly rammed a Philippine fishing boat near Recto (Reed) Bank, and abandoned 22 Filipino fishermen on the sinking boat. A fatal tragedy was averted when a Vietnamese vessel rescued the fishermen and delivered them to the Philippine navy.

Philippine Defense Secretary Delfin Lorenzana says the government *"condemns in the strongest terms the cowardly action of the Chinese fishing vessel and its crew for abandoning the Filipino crew"* adding that abandoning

the fisherment is *"not an expected action from a responsible and friendly people."*

The Defense Secretary also called for an investigation and diplomatic action in response to the incident. The DFA reported that it filed a diplomatic protest. As of this writing, the protests against this latest incident continues amidst calls for cutting diplomatic relations with China and filing of complaint against China under the UNCLOS and Convention for the Suppression of Unlawful Acts (SUA).

The protests escalated because of this incident that Pres. Duterte's official spokesman was forced to declare the possibility of cutting diplomatic ties with China:

Metro Manila (CNN Philippines, June 13) - The Philippines could end diplomatic relations with China if it is proven that a Chinese fishing vessel "intentionally" sank a Filipino boat in the West Philippine Sea, the presidential spokesman said Thursday as he talked about possible scenarios arising from the boat ramming incident.

"If it's intentional, it's an act of aggression... E ano pang step (What will be the next step)? E 'di we will cut off diplomatic relations," Presidential

²¹ –Philippines issues strongly worded rebuke vs China flotillas||, Jim Gomez, Associated Press, April 4, 2019, <https://www.bostonglobe.com/news/world/2019/04/04/philippines-issues-strongly-worded-rebuke-china-flotillas/4ATg2k33udRB2DYLK4NXcL/story.html>.

*Spokesperson Salvador Panelo said in a media briefing on Thursday.*²²

China Loans

A recent tack in the China-Philippine relationship is the growing amount of loans given by China to Pres. Duterte's –Build, Build, Build|| program. When Pres. Xi Jinping went to the Philippines in November 20, 2018, the Philippine China Joint Communique listed a total of 29 Bilateral Agreements and Memoranda of Understanding.ⁱ However, despite various requests from various sources, Malacanang refused to give a copy of agreements involving loans from China.

These came to the fore when in February 2019 the author was handed a copy by an anonymous government official of the Chico River Loan and exposed to the public its onerous terms. The *expose'* stirred massive protests when it was found to contain the following:

a) Confidentiality Clause, essentially prohibiting the Filipino people from accessing a copy of the agreement.

b) Waiver, where the Philippines irrevocably waives the immunity of its –patrimonial assets|| in case of an arbitral

award or tribunal decision against it. This will allow China to take over government property and assets similar to its takeover in Sri Lanka and Ecuador for delinquency in debt payments.

c) Disputes, unless settled amicably, will be governed by the laws of China and will be decided by a Chinese arbitration commission in Beijing.

d) China selects the contractor of the loan agreement despite the 2% per annum interest imposed on debtor Philippines.

Due to mounting protests, Pres. Duterte began to backtrack on the issue agreeing to review the loans, something he tried to avoid doing before it was exposed as onerous. There is a growing clamor for the Philippines to void the loans from China. The Chico River loan is one of the billions worth of loans that until now have not been officially quantified by the Duterte administration.

Conclusion

The Philippines, after its victory in the arbitral tribunal, was in a good position to lead the opposition against China's expansionism in the SCS. Its shift towards a Kowtowing foreign policy substantially dampened the legal basis for the opposition to China's claim in the South China Sea. Additionally, the Philippine position may make the search for a peaceful resolution of the dispute more difficult as China has not only

²² –Duterte spokesman says cutting PH-China ties possible if boat ramming is 'intentional||, Eimor Santos, CNN Philippines, Jun 13, 2019, <https://www.cnnphilippines.com/news/2019/6/13/china-philippines-boat-ramming-.html>.

taken on its side a disputant but has forced the disputant to abandon its legal victory in the tribunal.

Some contend that this foreign policy helps increase the power disparity among disputants with China continuing to expand its military and even political power, in the disputed area. The stronger China gets in the South China Sea only hardens its uncompromising position and could escalate the tension between China and the other disputants. It is, therefore, imperative for the Philippines to abandon its Kowtowing foreign policy if the search for a peaceful resolution of the dispute is to advance.

The question is: what is the possibility of Pres. Duterte abandoning his current Kowtowing foreign policy and shift to an independent foreign policy of continuing the efforts for a peaceful resolution of the dispute without abandoning the PCA decision and Philippine claims against China?

Pres. Duterte has not totally abandoned the foreign policy course he has taken since he took office. However, he recently showed a degree of variation from his Kowtowing Foreign Policy when he surprisingly and gradually began to criticize China's actions in some

of his officials statements. The recent

incident where a Filipino vessel was sank and its crew subsequently abandoned by the Chinese vessel has generated not only protests but also strong words from Philippine officials.

Why this sudden foreign policy variation? His change of tone was actually sourced from the groundswell of opposition to his Kowtowing Foreign Policy from the Filipino people themselves. A survey conducted in June 2018 found that more than 70% of the Filipinos want Pres. Duterte to assert the arbitral award:

Majority of Filipinos want Duterte to assert sovereignty in West PH Sea: poll²³

MANILA - Seven out of 10 Filipinos want the Duterte administration to assert Manila's 2016 victory in an international arbitral court and the country's sovereignty over its exclusive economic zone (EEZ) in the disputed South China Sea, results of a survey released Thursday showed.

A Pulse Asia poll conducted from June 15 to 21 this year revealed that 73 percent of Filipinos believe that President Rodrigo Duterte should assert Manila's rights to the West Philippine Sea, the country's EEZ within the contested waters.

The poll results were released as the Philippines marked the second anniversary of its landmark 2016 victory in the Permanent Court of Arbitration,

²³ – *Majority of Filipinos want Duterte to assert sovereignty*||, ABS CBN TV, July 12, 2018, <https://news.abs-cbn.com/news/07/12/18/majority-of-filipinos-want-duterte-to-assert-sovereignty-in-west-ph-sea-poll>.

which invalidated China's sweeping nine-dash line claim to the waters.

The survey found that 46 percent of Filipinos strongly agreed that the Duterte administration must assert the court ruling while 27 percent somewhat agreed.

Only 3 percent strongly disagreed with asserting the court ruling, while 4 percent somewhat disagreed. Seventeen percent, meanwhile, were in the middle. Some 2 percent of Filipinos said they do not have enough knowledge of the issue to give an opinion, while less than one percent (0.4) had zero knowledge of the matter.

Should the 27% –somewhat agreeing|| with Pres. Duterte whittle down or the fence sitting 17-19% join the opposition to his foreign policy, the impact would be devastating on him—and could foment a momentous policy shift.

This paper posits that Pres. Duterte backtracks when protests or opposition to his China policy grows. This was shown by his statements during the height of protest actions, notably:

i) “Readiness to go to war against China statement”

On February 15, 2018 Pres. Duterte made a strong statement against China saying that he would –[go to war](#)|| to defend the Philippine Rise (Benham Rise) when pressured by protests amidst Chinas aggressive actions in the disputed area.

ii) “Filing a diplomatic protest against harassment by the Chinese navy”

On May 11 2018 the Philippines filed a diplomatic protest when protests against the harassment of a the Philippines navy ship by a Chinese helicopter on May 11, 2018. This is the first known diplomatic protest filed by the Philippine government under Pres. Duterte.

iii) “Official commitment to the Philippine Congress to defend the West Philippine Sea”

On July 23, 2018 Pres. Duterte declared in his State of the Nation Address that he will –defend our interests in the West Philippine Sea||. This important official declaration came at the heels of a Survey showing that 4 out of 5 Filipinos are against his China policy.

iv) “Officially reviewing whether China loans are onerous or not”

The government was forced to declare a review of all China loans when protests took place after the expose of the China loans by former Congressman Neri Colmenares.

v) “Admission that Chinese boats are harassing Filipino fishermen and filing a diplomatic protest”

In April 2019, then Senatorial candidate Neri Colmenares interviews fishermen who experienced intimidation and harassment by China when fishing

in Scarborough shoal. Despite, initial government denial, the Philippine Coast Guard surprisingly admitted that harassment Chinese boats indeed took place.

vi) “Threatening to cut off diplomatic ties with China”

The ramming of a Filipino fishing boat by a Chinese vessel on June 9, 2019, generated massive protests. The Defense Secretary gave a strongly worded statement calling for an investigation and diplomatic action in response to the incident. A diplomatic protest was immediately filed.

While the shift in Philippine foreign policy language cannot be deemed as an abandonment of the Kowtowing foreign policy, it is substantial and may be a movement towards that direction if the protests continue to escalate. The problem is Pres. Duterte has also equated the support of China as a means to thwart any possible ouster plot when he admitted that China has assured him of support in case he goes the way of other President Ferdinand Marcos who was ousted via People Power I and President Joseph Estrada who was

ousted via People Power II:

MANILA (UPDATE) - President Rodrigo Duterte on Tuesday said Chinese President Xi Jinping gave him assurances that he would not let him get ousted, as the Filipino leader again touted Manila and Beijing’s blooming

ties under his leadership. –The assurances of [President] Xi Jinping were very encouraging... _We will not allow you to be taken out from your office, and we will not allow the Philippines to go to the dogs,‘|| Duterte quoted Xi as saying [ABS CBN May 15, 2018].²⁴

No self-respecting leader of a sovereign country will admit to encouraging foreign intervention to protect his political fortunes-except Pres. Duterte. More importantly, the inclusion of personal motivation as a factor in the Kowtowing Foreign Policy only increases the difficulty that will be encountered by efforts at reshaping Philippine posture on the South China Sea dispute.

On the other hand, this fear of people’s protest, even if it is not intended for his ouster, could also be the precursor of his foreign policy shift. After all, why would he hold on to a foreign policy if it generates the very storm he seeks to avoid by being too friendly with China. Whatever the reason for his surprising turn-around, from the –Jet Ski|| to the –Kowtowing|| foreign policy, is no longer relevant. In the end, his fear of protest and dissent

²⁴ – Duterte: China won't let me get
ousted||, [Joanna Belle Deala, Philippine
Canadian Inquirer](https://www.canadianinquirer.net/2018/05/16/duterte-china-wont-allow-me-to-be-ousted/) on May 16, 2018
[https://www.canadianinquirer.net/
2018/05/16/duterte-china-wont-allow-
me-to-be- ousted/](https://www.canadianinquirer.net/2018/05/16/duterte-china-wont-allow-me-to-be-ousted/).

could not be matched by any of those reasons.

Additionally, of major consideration for Pres. Duterte is that his term ends in 2022 and he wants an ally to be his successor to protect him from possible prosecution once his presidential immunity ends. His candidate may not win if he persists on his current foreign policy course. The opposition on the other hand, while committed to the peaceful resolution of the SCS dispute, has clearly opposed his Kowtowing foreign policy and has made it clear that it will not be so accommodating to China's expansionism. This factor would impact on whether Pres. Duterte will adjust his foreign policy course to the sentiments of the majority of the Filipino people.

—The current path undertaken by Pres. Rodrigo Duterte is a self-serving foreign policy that does not consider the complexity of the issue and the possible escalation of conflict. Allowing one disputant to gain so much power in the South China Sea will petrify its position and create obstacles to the search for a peaceful but just solution to the dispute.

The Philippines could have stood by its victory at the arbitral tribunal without necessarily resorting to war. The Philippines should have used a multilateral approach to the issue by cooperating with other disputants to actively search for a peaceful resolution of the dispute with China, without

abandoning their opposition to China's militarization and expansion in the area.

If the Philippines pursue its current path, it will not only make the search for a peaceful resolution more difficult but could even escalate the conflict in the region. It is imperative that the Philippines be convinced to abandon this road and consider the interest of the Filipino people as well as peace and stability of the region.

Since the people have become a major factor in Pres. Duterte's foreign policy consideration, it is imperative that raising their awareness on the issue, ensuring their participation in the discourse and harnessing them in the search for peace must immediately be undertaken. In the Philippines, the debates must no longer be confined in the courts or the legal or academic conferences, but must be brought to the streets and the communities. Peace advocates must, therefore, support any effort towards this end and grab the new arena that could succeed where others failed—forcing Pres. Rodrigo Duterte to abandon his Kowtowing Foreign Policy and contribute to the region's search for peace.||²⁵

Philippine foreign policy aids China in entrenching itself in the South China Sea and makes the search for a peaceful

²⁵ Quoting from the author's previous paper submitted during the 2018 Moscow Conference on the Peaceful Resolution of the South China Sea dispute.

resolution of the dispute more difficult. Any effort must be undertaken to convince Pres. Duterte of the need for an independent foreign policy that seeks the peaceful resolution of the dispute without acquiescing to China's expansion in the disputed area. A

massive outpouring of protest by the Filipino people could bring about that policy shift in the Philippines. The battle for the peaceful resolution of the South China Sea dispute need not only be waged in conferences and courts, but also in the streets.

ⁱ List of Bilateral Agreements and MOUs contained in the Philippine-China Joint Communiqué and listed by the Philippine Department of Foreign Affairs:

1. Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the People's Republic of China on Cooperation on the Belt and Road Initiative
2. Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the Republic of the Philippines and the Government of the People's Republic of China
3. Agreement on Economic and Technical Cooperation between the Government of the Republic of the Philippines and the Government of the People's Republic of China
4. Infrastructure Cooperation Program between the Government of the Republic of the Philippines and the Government of the People's Republic of China
5. Program for Cooperation on Industrial Parks Development between the Republic of the Philippines and People's Republic of China
6. The Exchange of Letters on the Davao River Bridge Project (Bucana) between the Government of the Republic of the Philippines and the Government of the People's Republic of China.
7. The Exchange of Letters on China Aid Bridge and Road Project in Marawi between the Government of the Republic of the Philippines and the Government of the People's Republic of China
8. Exchange of Letters on Project of Container Inspection Equipment between the Government of the Republic of the Philippines and the Government of the People's Republic of China
9. Handover Certificate of Emergency Humanitarian Cash Assistance between the Government of the Republic of the Philippines and the Government of the People's Republic of China
10. Executive Programme of the Cultural Agreement of the Government of the Republic of the Philippines and the Government of the People's Republic of China for 2019-2023
11. Memorandum of Understanding on Basic Education between the Department of Education of the Republic of the Philippines and the Ministry of Education of the People's Republic of China
12. Memorandum of Understanding between the Department of Information and Communications Technology of the Republic of the Philippines and the Ministry of Industry and Information Technology of the People's Republic of China
13. Memorandum of Understanding between the Cooperative Development Authority of the Republic of the Philippines and the Ministry of the Agriculture and Rural Affairs of the People's Republic of China on Strengthening the Building of Agricultural Cooperatives

14. Memorandum of Understanding on Jointly Promoting the Cooperation in Key Infrastructure Projects in Davao Region between the Department of Finance of the Republic of the Philippines and the Ministry of Commerce of the People's Republic of China
15. Implementation Agreement of the Feasibility Study of Panay-Guimaras-Negros Island Bridge
16. Implementation Agreement of the Feasibility Study of Davao City Expressway Project
17. Memorandum of Understanding on Renminbi Clearing Arrangement
18. Protocol of Phytosanitary Requirements for Export of Fresh Young Coconuts from the Philippines to China between the Department of Agriculture of the Republic of the Philippines and the General Administration of Customs of the People's Republic of China
19. Protocol of Sanitary and Phytosanitary Requirements for Export of Frozen Fruits from the Philippines to China between Department of Agriculture of the Republic of the Philippines and the General Administration of Customs of the People's Republic of China
20. Memorandum of Understanding on Supporting the Feasibility Study of Major Projects between the Department of Finance of the Government of the Republic of the Philippines and the China International Development Cooperation Agency of the Government of the People's Republic of China
21. Memorandum of Understanding between Foreign Service Institute of the Republic of the Philippines and the China Foreign Affairs University of the People's Republic of China
22. Preferential Buyer's Credit Loan Agreement on the New Centennial Water Source-Kaliwa Dam Project between Metropolitan Waterworks and Sewage System (MWSS) and Export-Import Bank of China
23. Memorandum of Understanding on Panda Bonds Issuance
24. Commercial Contract of the New Centennial Water Source-Kaliwa Dam Project between Metropolitan Waterworks and Sewage System (MWSS) China Energy Engineering Corporation
25. Framework Agreement for Industrial Park between Bases Conversion and Development Authority and Gezhouba
26. Contract for the Project Management Consultancy of the Philippine National Railways South Long Haul Project (North-South Railway Project) between the Department of Transportation of the Republic of the Philippines and China Railway Design Corporation
27. Commercial Contract of Safe Philippines Project, Phase I
28. Letter of No Objection to the Organization of the Renminbi-Philippine Peso Foreign Exchange Trading Market
29. Certificate of Authority to Operate for the Industrial and Commercial Bank of China (ICBC) Limited - Manila Branch.

NEW DEVELOPMENTS IN THE SOUTH CHINA SEA

*To Anh Tuan**

Overview of the South China Sea

The South China Sea (SCS) is a semi-closed sea covering an area of about 3,4 million square kilometer. It locates in the Southeast Asia to the south of China. There are 9 countries/territories around the sea, namely, China, Taiwan (China), Viet Nam, the Philippines, Malaysia, Brunei, Indonesia, Thailand, Cambodia, and Singapore. The SCS has a geo-political importance as it links the Indian Ocean with the Pacific. The SCS lies on the second most-important sea lane of the world. About one-third of the total volume of global maritime shipment transit through the sea; economic development of regional countries and other countries including China, Japan, and Korea depends on trade through this area.¹ The SCS also has a high volume of oil and gas as well as other natural minerals. It is estimated that the SCS has a reserve of 11 billion barrels of oil and 190 trillion cubic feet of gas.² Aquatic production in the SCS is

also high; the fishery industry in the SCS brings a revenue of billions of dollars for local consumption and exports. The SCS, therefore, helps to provide food security and livelihood of millions of people inside and outside the region.³

There are complicated disputes on sovereignty and sovereign rights in the SCS. China and Viet Nam both are claiming sovereignty on the Paracels; China, Taiwan (China), Viet Nam, the Philippines, Brunei, and Malaysia are claiming sovereignty on the Spratly (Viet Nam and China are disputing for the whole Spratly while other claimants are claiming sovereignty on some features). Among regional countries, there are also disputes about sovereign rights in overlapping areas (such as continental shelves or EEZs).

Recent developments on the SCS

The SCS has recently seen a calm situation with no major outbreaks of conflicts. However, there have a number

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¹ CSIS, –How Much Trade Transit the South China Sea?,|| accessed June 15, 2019, <https://chinapower.csis.org/much-trade-transits-south-china-sea/>.

² Lin Shu-yuan and Jamie Wang, –U.S. Report Details Rich Resources in South China Sea,||

Focus Taiwan News Channel, February 9,
2013,
[http://focustaiwan.tw/news/aip1/
201302090013.aspx](http://focustaiwan.tw/news/aip1/201302090013.aspx).

³ James Borton and Jackson Ewing,

—As Nations Fight for Control, South China
Sea Coral Reefs Are Dying in Silence,|| *South
China Morning Post*, December 29, 2018.

of alarming and complicated developments.

On political and legal issues, there have been a number of efforts to solve the disputes bilaterally and multilaterally. The results, however, are limited.

- Some countries have reached bilateral agreements on delimitations of some overlapping areas, such as the agreement on delimitation of maritime boundary between Viet Nam and Thailand in the Gulf of Thailand (1997), the agreement on delimitation of territorial waters boundary between Singapore and Malaysia (1995); the agreement on boundaries of territorial seas between Singapore and Indonesia (2009); the China-Viet Nam agreement on maritime boundary in the Gulf of Tonkin (2000), the agreement on demarcation of continental shelves between Viet Nam and Indonesia (2003). Recently, Viet Nam and Indonesia are negotiating on the delimitation of the EEZs.

- At multilateral forums, China and ASEAN agreed on the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002. This is an important document to enhance confident-building and promote regional cooperation through holding dialogues and exchanges of views between defense and military officials, ensuring humane treatment of persons in danger or in distress, exchanging voluntarily relevant

information. Pending a comprehensive and durable settlement of the disputes, the DOC also promotes cooperation on marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operations, and combating transnational crimes.⁴ However, there are a number of weaknesses in the DOC. For example, it is not legally binding and does not have mechanisms for solving conflicts.

- ASEAN and China have started to negotiate the Code of Conducts of Parties in the South China Sea (COC) since 1996. The negotiations have recently seen positive developments. ASEAN and China have agreed to negotiate on a single draft negotiating text of the COC. They all emphasize on the importance of maintaining an environment conducive to negotiations. Last year, Chinese Premier Li Keqiang expressed his hope that the negotiation of the COC would be concluded in 3 years (the end of 2021).⁵ We hope that the COC will be signed so that peace and cooperation in the region will be promoted. However, the COC is not a document to solve disputes on sovereignty and sovereign rights while the disputes in the SCS are extremely

⁴ –DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA,|| n.d.

⁵ Lee Chyen Yee, –Chinese Premier Li Says Talks on South China Sea Code Should End in Three Years,|| *Reuters*, December 13, 2018.

complicated. Therefore, the negotiation of the COC will not be easy.

- The Award of the Permanent Court of Arbitration (PCA) in 2016 on the South China Sea case between the Philippines and China is an important legal foundation for solving disputes in the SCS. The award affirms that all features in the Spratly are rocks or low-tide elevations, which do not have exclusive economic zones and continental shelves. It, therefore, reduces the overlapping areas in the SCS. The court also refuses China's claims on historic rights with the U-shape dotted lines, and renounced unlawful actions by China in the SCS such as the island-building activities on China-occupied features and fishery activities that created harms to the environment in the SCS.⁶ Meanwhile, China always dismisses the jurisdiction of the Court, announces that it will not implement or recognize the Award. The Duterte administration of the Philippines does not say much about the ruling, but has never refused the validity of the Award.

⁶ Permanent Court of Arbitration, –AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA between THE REPUBLIC OF THE PHILIPPINES and THE PEOPLE'S REPUBLIC OF CHINA,|| July 12, 2016, <https://pcacases.com/web/sendAttach/2086>.

On the ground, all claimants maintain their outposts, but some accelerate the militarization of their occupied features.

- China occupies all features in the Paracels, 7 features in the Spratly and the Scarborough Shoal (or Bai Vanh Khan as Viet Nam called); Viet Nam holds positions in 21 features; Malaysia in 5 features; the Philippines in 10 features; and Taiwan occupies the Itu Aba (Taiping or Ba Binh). Since 2015, China has expanded their 7 features to 3,200 acres, outnumbering the total land occupied by other claimants.⁷ China continues to have a lot of militarization activities and controlling activities in the area.

- Since late 2018, the Philippines has shown the intention of improving some constructions in Thitu, a feature that the Philippines had occupied since 1970. China reportedly has sent a large number of vessels to block the Philippines' activities. It is estimated that 600 Chinese vessels since the beginning of the year and 90 vessels at a time have been present there in the so-called –cabbage strategy) to prevent the Philippines.⁸ Tension has been built up.

⁷ Asia Maritime Transparency Initiative, –OCCUPATION AND ISLAND BUILDING,|| n.d.

⁸ The Maritime Executive, –Philippines Protests _Maritime Militia' Buildup Off Thitu Island|| (The Maritime Executive, n.d.), <https://www.maritime->

However, it seems that the situation has recently abated.

On natural resources, the SCS has a great potential of aquatic production and natural resources. However, fishery activities have many complications. Since 1995, China has unilaterally had annual fishing bans on a half of the SCS, which are opposed by other claimants. There has been a considerable increase in the number of cases in which littoral countries seized fishing boats or confiscated fishing gears from other countries in overlapping areas. The situation of IUU fishing, therefore, has become a hot topic.

- Last 27 April, an Indonesian navy vessel seize and towed away a Vietnamese fishing boat at high speed, causing the Vietnamese boat to sink. A Viet Nam Fisheries Resources Surveillance's vessel tried to rescue 2 fishermen falling into water. That created a skirmish between the Vietnamese boat and the Indonesian navy vessel.⁹

- Indonesia renews its policy of sinking foreign fishing vessels it captured. Indonesia has recently sunken 51 fishing boats from China, Malaysia, the Philippines, Thailand, and Viet Nam. In 2018, Indonesia sank 125 foreign fishing boats, including 86 Vietnamese boats, 20 Malaysian ones, and 14 Philippino ones. Indonesia said that action is necessary to show that Indonesia is serious about illegal fishing.¹⁰

-On 9 June 2019, a fishing boat from the Philippines was reportedly rammed and sank by a Chinese boat. The Philippino crew was abandoned at sea and later rescued by a Vietnamese fishing boat, which returned to the crew to the Philippines' authority. At the beginning, officials from the Philippines reacted strongly with the incident. However, the government later said it was possibly an accident and agreed to a joint investigation with China.¹¹

- Regarding oil and gas exploration and exploitation, in December 2018, China and the Philippines signed an MOU on joint exploration and

[executive.com/article/philippines-protests-maritime-militia-buildup-off-thitu-island](https://www.executive.com/article/philippines-protests-maritime-militia-buildup-off-thitu-island).

⁹ Dieu An, –VN Yêu Cầu Indonesia Thả Ngay 12 Ngư Dân, Bồi Thường Tàu Cá Chìm [Viet Nam Requests Indonesia to Release 12 Fishermen and Compensate for Sunken Vessels], || *Tuoi Tre Online*, April 30, 2019, <https://tuoi tre.vn/vn- yeu-cau-indonesia-tha-ngay-12-ngu-dan-boi- thuong-tau-ca-chim-20190430185607646.htm>.

¹⁰ Staff and agencies, –Indonesia Sinks 51 Foreign Boats to Fight Illegal Fishing, || *The Independent*, May 4, 2019.

¹¹ Paterno Esmaguel II and Rambo Talabong, –TIMELINE: Sinking of Filipino Boat in West PH Sea by Chinese Ship, || *Rappler*, n.d., <https://www.rappler.com/newsbreak/iq/233394-timeline-chinese-sinking-filipino-boat-gem-ver-west-philippine-sea>.

exploitation of oil and gas. This MOU attracts great attention from outside because it does not clearly define the location as well as activities of cooperation.¹²

On marine environment, the SCS is showing clear signs of environmental degradation. Littoral countries are among the top countries which produce the largest amount of marine plastic debris in the world. It is reported that China's island-building activities have destroyed coral reefs, which are home to fishes in the SCS.

Recently, there are reports that Chinese companies start to harvest giant clams near the Scarborough Shoal again. The harvest of giant clams produces many negative impacts to the environment. The giant clam is an important species which help make the ocean clean, provide shelters for small fishes, and is also a healthy source of nutrients for other marine creatures. It has been one of threatened species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The harvest of the giant clams by trawler at the bottom

of the sea creates severe consequences for flora and fauna at sea.¹³

Regarding the involvement of outside countries

Due to the importance of the SCS on maritime navigation and natural resources, many countries outside the region also have keen interests in maintaining peace and stability in this sea. It is the reason why many countries such as the United States, Japan, India, Australia, the UK, France, Germany etc. has paid attention to this region.

The United States is developing the Free and Open Indo-Pacific Strategy while China is implementing the –Belt and Road|| Initiative. The SCS, therefore, is placed on the competition between the United States and China.

The United States, the United Kingdom, Australia, Japan, and France have conducted different forms of operations to affirm the freedom of navigation at sea under international law. The United States has the highest number of –freedom of navigation|| operations (FONOPs). Meanwhile, China views such FONOPs as intervention from outsiders to the

¹² Pia Ranada, –DOCUMENT: Oil, Gas Development Deal between Philippines, China,|| *Rappler*, November 26, 2018, <https://www.rappler.com/nation/217559-memorandum-understanding-philippines-china-oil-gas-development-deal>.

¹³ Jetline Malasig, –Why China's Poaching of Giant Clams around Scarborough Is Concerning|| (Interaksyon, April 22, 2019), <http://www.interaksyon.com/politics-issues/2019/04/22/147633/giant-clam-poaching-scarborough-shoal-china-philippines/>.

region's peace and stability. In September 2018, the USS Decatur, a destroyer of the US navy, almost collided with Chinese destroyer Lanzhou.¹⁴

Future prospects

The picture of the SCS has both bright and dark areas. The darkness is complications in disputes among claimants, and incidents that build up tensions. The bright part is signs of cooperation and the aspiration for dispute settlements.

The future will depend on the way relevant parties want to solve the issues. To defuse tensions and look for solutions to the problem, parties concerned need to keep in mind the followings:

- No use or threat to use of force. Parties concerned should be aware that only when they put peace and stability as their priority, can they promote cooperation, reduce differences and settle disputes. Any act of military or paramilitary forces will not help solving problems but put more fuel to disputes, tensions, and even lead to conflicts. Therefore, they should not have any activity that makes the situation more complicated, should try to manage issues that may lead to conflicts and wars, and should have confident-

building measures in order to solve disputes.

- Promote dialogues and cooperation on the basis of respects for independence, sovereignty, legitimate rights and interests of all parties. We should keep in mind that finding solutions to the disputes in the SCS is a long and complicated process in which we should show strong determination and collaboration of all parties. Cooperation should not only focus on conflict settlement but can expand to other areas and thus help promote mutual understanding and dialogues.

- Multilateral forums, especially ASEAN and ASEAN-led mechanisms such as ARF, EAS, ADMM+, have important contributions to the reduction of instability, promotion of confident building, and prevention of conflicts. The COC will not be the solution for the disputes, but an substantive, legal-binding, and effective COC will help maintain peace, stability, marine safety and security in the SCS.

- In the process of dispute settlement, parties should observe international law, particularly the 1982 UNCLOS. Disputes in the SCS stem from complicated reasons and they have many geographical overlaps. Therefore, each dispute need to be dealt with by appropriate approaches which should ensure interests of all parties concerned, the interests of the region, and the interests of the entire world. Major

¹⁴ Ryan Gaydos, 'Chinese Warship Warned USS Decatur It Would "suffer Consequences" during near-Collision in South China Sea,' *Fox News*, November 5, 2018.

powers have bigger role and responsibilities in the settlement of disputes and conflicts.

Conclusion

The SCS lies at an important geopolitical area. In this sea, there are various disputes which have different geographical scopes. The SCS attracts attentions not only from littoral countries but also from countries in other parts of the world. The situation in the SCS has recently witness alarming

signs. It is time for parties concerned to promote dialogues, build dispute management mechanisms, and strive to solve disputes in the SCS. Those actions should be based on international law, particularly the 1982 UNCLOS, respond to legitimate rights and interests of parties inside and outside the region. The trend toward militarization or power politics will not be beneficial for anyone, but just increase the possibility of conflict.

TOWARD THE RULE-BASED ORDER IN THE SOUTH CHINA SEA: A JAPANESE PERSPECTIVE

Hideshi Tokuchi *

1. Introduction - Importance of the South China Sea for Japan

Japan is an island nation on the periphery of the Asian continent. It is scarce in natural resources and dependent on foreign trade for its survival and prosperity.

Today, international trade depends much on sea transport, and thus Japan has great interests in the peace and stability of maritime space. Japan is a natural resident of the huge seascape of the Asia-Pacific as a maritime nation.

Until very recently, we often used the term –Asia-Pacific|| in order to express the vast and dynamic region, but now the term is rapidly being replaced by a new term, –Indo-Pacific.|| The old term –Asia-Pacific|| connects land and sea, whereas the new term –Indo-Pacific|| literally connects the two oceans: the world's largest and third largest ones. In this sense, the term –Indo-Pacific|| has two significances: first it connotes that the regional dynamism is generated by the maritime connectivity of the region; and second, it highlights the

strategic importance of the South China

Sea, which geographically connects the two oceans.

In fact, the importance of the South China Sea for the maritime transit involving Japan could not be overstated. Maritime commerce through the South China Sea occupies about one third of the world's annual trade in value. Around 23% of the crude oil and 57% of the natural gas transported through the South China Sea are headed to Japan, for example.¹

In addition to the maritime transportation perspective, food security perspective is also important when we look at the South China Sea. A large amount of the catch of fishery resources from the South China Sea, which is around 10% of the world total, is a proof of importance of the marine environment of the sea for the Asians including the Japanese and even for the Chinese.

From a military point of view, the Japanese have been paying attention to the South China Sea region because of a number of reasons, one of which is the

¹ 「数字が語る南シナ海
争い招く豊かさ」 [The South China Sea in

(GRIPS)

numbers: Fertility that invites conflict],
日本経済新聞[Nikkei], September 19, 2016,
<https://vdata.nikkei.com/datadiscovery/17socialsciences/>.

depth of the South China Sea. It is more than 1,000m deep in average. The depth adds a strategic importance to the South China Sea with regard to China's submarine operations. A Japanese expert draws an analogy between the Sea of Okhotsk in the Cold War era and the South China Sea in today's world. Even apart from the issue of the depth, the stability of the South China Sea is indispensable to ensure free and unimpeded flow of forces between Japan and the Gulf of Aden, in which Japan, together with other like-minded countries, has been engaged in counter-piracy operations for a decade.

Therefore, the Japanese pay close attention to the statements and behaviors of China on the South China Sea. If I refer to a problematic statement made by the Chinese Government, a spokesman of China's State Oceanic Administration said on October 25, 2012 that protection of China's interests in the South China Sea was a matter of China's —core interest.||² As China's President Xi Jinping said that China would never sacrifice its national core interests and that no foreign state should have any hope of China's trading away its core interests,³ China will never

² 日本経済新聞[Nikkei], October 26, 2012, www.nikkei.com/article/DGXNASGM26055_W2A021C1FF2000/.

³ The National Institute for Defense Studies, *East Asian Strategic Review*, The Japan Times, 2015, p. 115.

give up its claim over the South China Sea. Presumably, such position led to China's tough and unilateral behaviors in the South China Sea. Later on October 18, 2017, in his report at the 19th National Congress of the Communist Party, President Xi referred to the —steady progress|| of the construction on islands and reefs in the South China Sea as one of the major achievements in economic development of the past five years.⁴ According to China's Military Strategy of 2015, one of the principles which China's armed forces will uphold is to strike a balance between rights protection and stability maintenance.⁵ Rights protection and stability maintenance are the two principles of China's foreign policy as well,⁶ but it seems to be more tilted toward rights protection and it has

⁴ Xi Jinping, *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese characteristics for a New Era*, October 18, 2017, www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_3411212.htm.

⁵ The State Council Information Office of the People's Republic of China, *China's Military Strategy*, Foreign Language Press, 2015, p. 11.

⁶ National Institute for Defense Studies, *NIDS China Security Report 2019 – China's Strategy for Reshaping the Asian Order and Its Ramifications*, 2019, p. 6.

become more assertive particularly in the South China Sea.

2. Japan's position on the South China Sea disputes

The Japanese Government's view and position on the South China Sea dispute is summarized as follows:

—The peaceful development of China should be welcomed by Japan and the entire international community.||

—However, China continues actions and unilateral attempts to change the status quo by force or coercion at sea and in the airspace in areas such as the East and South China Sea based on its own assertions which are incompatible with the existing international law of the sea.||

—In the South China Sea, China has conducted large-scale and rapid land reclamation and built outposts on the disputed features, and utilized them for military purposes. From 2016 to 2017, there were developments seen such as test flights to the Spratly Islands carried out by private Chinese aircraft, the deployment of surface-to-air missiles on Woody Island, patrols in the airspace

above Scarborough Shoal carried out by bombers and other aircraft and the sailing of an aircraft carrier of the Chinese Navy to the South China Sea.||

—With respect to the dispute between the Philippines and China over the South China Sea, China continues to

make its own assertions concerning its territorial rights in the South China Sea, including rejecting the legally binding force of the final award rendered by the Arbitral Tribunal, which confirmed the illegality of China's land reclamations and other actions in July 2016.||⁷

In the Sino-Japanese summit meeting soon after the historic Award of the Permanent Court of Arbitration, Japan's Prime Minister Shinzo Abe urged China's President Xi to seek peaceful settlement of the disputes based on international law, but President Xi told Prime Minister Abe that Japan was not a party to the South China Sea issue and should exercise caution in its words and deeds in regard to that matter.⁸

It is true that Japan is not a claimant of any territories in the South China Sea region, but as already noted, Japan has a huge interest in the peace and stability of the region. That is exactly why Japan has a say in this regard.

In the meanwhile, we cannot find any specific reference to the South China Sea issue in the readouts of the recent summit and high-level meetings

⁷ Ministry of Foreign Affairs of Japan,
Diplomatic Bluebook 2018, 2018, pp.
5-6, <https://www.mofa.go.jp/files/000401241.pdf>.

⁸ Hideshi Tokuchi, –The Defense
Force of Japan Awakens to Address
the Contemporary Security
Environment,|| *CSCAP Regional
Security Outlook 2017*, 2017, pp.
13-14.

between Japan and China, e.g., the meeting between Japan's Prime Minister Abe and China's Prime Minister Li Keqiang on October 26, 2016,⁹ the meeting between Prime Minister Abe and President Xi on the same day,¹⁰ and the meeting between Japan's Foreign Minister Taro Kono and China's Foreign Minister Wang Yi on April 15, 2019,¹¹ presumably reflecting both sides' willingness to improve the bilateral relationship and because of other security issues of immediate common concern, i.e. the East China Sea and North Korea.

However, it is wrong to assume that the basic position of Japan on this issue has shifted. It remains unchanged. Japan's new national defense policy released at the end of 2018 states, —Chinese military and other developments, coupled with the lack of transparency surrounding its defense policy and military power, represent a

⁹ Ministry of Foreign Affairs of Japan, —Overview of the Meeting with Premier Li Keqiang on October 26, 2018,|| https://www.mofa.go.jp/a_o/c_m1/cn/page3e_000958.html.

¹⁰ Ministry of Foreign Affairs of Japan, —Overview of the Meeting with President Xi Jinping on October 26, 2018,|| https://www.mofa.go.jp/a_o/c_m1/cn/page3e_000958.html.

¹¹ Ministry of Foreign Affairs of Japan, —Japan-China Foreign Ministers' Meeting and Working Lunch,|| April 15, 2019, https://www.mofa.go.jp/a_o/c_m1/cn/page3e_001007.html.

serious security concern for the region including Japan and for the international community,|| referring to China's behaviors in the South China Sea as one example of such developments. It points out, —In the South China Sea, China has forcibly conducted large-scale, rapid reclamation of maritime features, which are being converted into military foothold. China in the South China Sea is also expanding and intensifying its maritime and air activities.||¹²

Similar concern is expressed, though not specifically referring to China, also in a number of recent international documents which Japan was involved in. For example, the Joint Press Statement of the Australia-Japan-US Defense Ministers Meeting on the margins of the Shangri-La Dialogue on June 1, 2019 states that the three ministers discussed the importance of adherence to international law and their shared commitment to upholding freedom of navigation and overflight in the South China Sea, and that the ministers remained seriously concerned about any action including militarization of disputed features in the South China Sea that are destabilizing or dangerous.¹³ For another example,

¹² The Government of Japan, *National Defense Program Guidelines for FY2019 and beyond*, December 18, 2018, p. 5.

¹³ —Australia-Japan-United States Defense Ministers Meeting Joint Press Statement,|| June 1, 2019,

the Joint Statement of the Ministry of Defense of Japan and the Department of National Defence of Canada on Defense Cooperation states that the two defense ministers expressed their serious concerns regarding the situation in the East and South China Seas, and strongly opposed unilateral actions that could escalate tensions and undermine regional stability and the rules-based maritime order, including the militarization of disputed features in the South China Sea.¹⁴ Japan's commitment to these recent statements clearly expresses consistency of the Japanese position on the South China Sea issue.

3. Japan's approach to Southeast Asia in international security terms

The relationship between Japan and Southeast Asia is not only about maritime security in the South China Sea. Southeast Asia has a lot of significance for the peace and prosperity of Japan. In fact, Southeast Asia is an engine of growth in today's world. Diversity of Southeast Asia generates such dynamism in the region. Based on the common interests, values and principles, Japan is trying to enhance its

relationship with Southeast Asian countries, including in security terms.

Security cooperation with foreign countries has been a pillar of Japan's national security policy. The Japanese Government has a policy to strategically promote multifaceted and multilayered security cooperation in line with the vision for a Free and Open Indo-Pacific. It has also expressed its policy to continue to support ASEAN's efforts for strengthening the organization's centrality and unity, and to promote practical bilateral and multilateral cooperation with Southeast Asian nations, including joint training and exercise, defense equipment and technology cooperation and capacity building assistance.¹⁵ Security cooperation with Southeast Asian countries was put as the sixth priority next to the US, South Korea, China and Russia in Japan's previous defense policy, but now it has been promoted to the fourth priority next to the US, Australia and India.

The Ministry of Defense and the Defense Forces of Japan seem to focus on their exchanges and cooperation with the littoral states around the South China Sea in particular. Recent examples includes: visit to Japan of Senior Lieutenant General Phan Van Giang, Chief of the General Staff and Vice-Minister of National Defense of

https://www.mod.go.jp/e/d_act/exc/area/docs/2019/0601_j-usa-australia_iiss.html.

¹⁴ —Joint Statement of the Ministry of Defense of Japan and the Department of National Defence of Canada on Defense Cooperation,|| June 3, 2019, https://www.mod.go.jp/e/d_act/exc/area/doc/2019/0603_j-ca_js_e.html.

¹⁵ The Government of Japan, *National Defense Program Guidelines*, pp. 2, 15-16.

Viet Nam in March 2019¹⁶; visit to Japan of Retired Brigadier General Raymundo Elefante, Undersecretary of Defense for Finance and Materiel and Lieutenant General Rozzano Briguez, Commanding General of the Philippine Air Force also in March 2019¹⁷; visit to Japan of Defense Secretary Delfin Lorenzana of the Philippines in April 2019¹⁸; Japanese officers' participation in Pacific Partnership 2019 to visit Southeast Asia including Viet Nam in March-May 2019¹⁹; and sending the Chief of Japan's Maritime Staff Office and the Maritime Defense Force's destroyers –Izumo|| and –Murasame|| to IMDEX Asia 2019 in Singapore in May 2019²⁰; friendship exercise with

¹⁶ Press release of the Ministry of Defense of Japan, March 1, 2019, <https://www.mod.go.jp/j/press/news/2019/03/01a.html>

¹⁷ Press release of the Ministry of Defense of Japan, March 11, 2019, <https://www.mod.go.jp/j/press/news/2019/03/11a.html>.

¹⁸ Press release of the Ministry of Defense of Japan, April 16, 2019, <https://www.mod.go.jp/j/press/news/2019/04/16b.html>

¹⁹ Press release of the Ministry of Defense of Japan, March 1, 2019, <https://www.mod.go.jp/j/press/news/2019/03/01b.html>

²⁰ Press release of the Maritime Staff Office of Japan, May 10, 2019, <https://www.mod.go.jp/msdf/release/201905/20190510.pdf>; Press release of the Maritime Staff Office of Japan, May 12, 2019, <https://www.mod.go.jp/msdf/release/201905/20190512.pdf>

Malaysian Navy in May 2019.²¹ In 2018, Japan's Maritime Defense Force submarine –Kuroshio|| made a friendship visit to Cam Ranh Bay, Viet Nam.²² As far as capacity building assistance is concerned, Japan is assisting all the ASEAN members except Singapore in a variety of subjects. Capacity building assistance activities toward these countries in 2017 include: air rescue to Viet Nam; civil engineering to Cambodia; international law of the sea to Indonesia; aviation meteorology and HA/DR to Myanmar; vessel maintenance to the Philippines; HA/DR to Malaysia and to Laos; aviation safety to Thailand; and, HA/DR and SAR to Brunei.²³ Most of these assistance activities are relevant to maritime security.

4. Marine environmental issues involving the South China Sea

The marine environment of the South China Sea is also a matter of serious concern. Deputy Director-General Wang Xining of China's Ministry of Foreign Affairs called the land reclamation –a green project|| in a meeting on May 10, 2016. He told a

²¹ Press release of the Maritime Staff Office of Japan, May 29, 2019, <https://www.mod.go.jp/msdf/release/201905/20190529.pdf>.

²² Press release of Maritime Staff Office of Japan, September 17, 2018, <https://www.mod.go.jp/msdf/release/201809/20180917-1.pdf>

²³ The Ministry of Defense of Japan, *Defense of Japan 2018*, 2018, p. 354.

group of journalists that all land reclamation and construction activity in the region –is carefully designed, carefully built, [to] try to minimize ecological effect.||²⁴

However, the Permanent Court of Arbitration found soon after his statement in the Award on the South China Sea arbitration that –China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species.||²⁵

After this Award was rendered, the author of this paper had a number of opportunities to ask questions on this issue to security experts of China. Their response to my question about their recognition of the ramification of the reclamation activities on the natural environment of the South China Sea and about what kind of specific measures China had taken to protect marine environment in the reclamation activities is summarized as follows: first, the Chinese Government asked

²⁴ Bethany Allen-Ebrahimian, –Beijing Calls South China Sea Island Reclamation a ‘Green Project’,|| *FP*, May 26, 2016, <https://foreignpolicy.com/2016/05/26/china-calls-south-china-sea-island-reclamation-a-green-project-spratlly-islands/>.

²⁵ Permanent Court of Arbitration, *Press Release: The South China Sea Arbitration (The Republic of the Philippines V. The People’s Republic of China)*, July 12, 2016, p. 2, <https://pca-cpa.org/wp-content/uploads/sites/6/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.

environment experts for advisory opinions and took appropriate measures accordingly; second, damage to the coral reef was caused not by the reclamation but by global warming; third, reclamation was made not using dying corals but using dead corals and therefore it did not cause damage to the environment; fourth, the Chinese Government enforced moratorium on fishing in the South China Sea to conserve fishery resources; and fifth, fishes may go away because of the reclamation, but they will return in 30 years. However, there is a report that John McManus, a marine biologist who looked at satellite photos of Mischief Reef in the Spratlys had said that strands of white silt streaming visibly into the lagoon were evidence of the mucus emitted by millions of dying corals smothered by sediment. According to the report, he also said, –The sand and silt stirred up by the dredgers covers most of the lagoon and is settling out on most of the remaining reef.||²⁶ There is also a very recent report on the return of Chinese clam harvesting fleets to the South China Sea. According to it, these fleets destroy vast swath of coral reef in order to extract endangered giant clams, leaving scars in the Paracels by the harvesters’ props and using a high-pressure water pump like salvagers to create enough suction

²⁶ Allen-Ebrahimian, –Beijing Calls South China Sea Island Reclamation a ‘Green Project’.||

to quickly remove sediment from the seabed in the Scarborough Shoal.²⁷

As the South China Sea is a large source of food protein necessary for mankind, the international community should pay much more attention to this issue and China should be accountable to the environmental issue in the South China Sea. China should face this issue squarely and in good faith. It will be in China's interests.

5. Recommendations on the crisis management at sea

The peace and stability of the South China Sea is indispensable for ensuring maritime connectivity of the world. However, the South China Sea is full of security concerns. Robert Kaplan reports that Asians are new to modern nationalism rather than sick and tired of it and that they fight not over ideas but over space on the map.²⁸ It is true in the South China Sea as well. Because of the strategic importance of the South China Sea, security interests of a number of the countries, particularly maritime nations in and out of Asia are also involved. Thus, the South China Sea is in a fragile security environment.

²⁷ Asia Maritime Transparency Initiative, —China's most destructive boats return to the South China Sea,|| May 20, 2019, <https://amti.csis.org/chinas-most-destructive-boats-return-to-the-south-china-sea/>.

²⁸ Robert Kaplan, *Asia's Cauldron: The South China Sea and the End of a Stable Pacific*, Random House, 2014, p. 33.

As competition and conflict will continue to be inevitable in this environment, regional countries, no matter if they are claimants of any portion of the South China Sea region or not, must make serious efforts for crisis management so that competition and conflict do not turn to confrontation or contingency.

From a Japanese perspective, two recent developments are concerns.

First, China Coast Guard (CCG) completed its merger into the military command structure through its subordination to People's Armed Police as of July 2018.²⁹ The CCG also has a mission to protect China's sovereignty at sea. China primarily uses paramilitary maritime law enforcement agencies in maritime disputes, selectively using its Navy to provide overwatch in case of escalation. Observers points out the possibility of a certain impact of the merger on the South China Sea disputes.³⁰ There is a concern about whether the merger would lead the CCG's more assertive operations.

Second, operations of China's maritime militia are reported. For example, there is a report that an Australian naval helicopter over the

²⁹ Office of the Secretary of Defense of the USA, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2019*, 2019, p. 53.

³⁰ The National Institute for Defense Studies, 東アジア戦略概観2019 [*East Asian Strategic Review 2019*], 2019, p. 64.

South China Sea was targeted by lasers from nearby fishing vessels during the night flight. According to the report, China's maritime militia is believed to be behind the attack.³¹ There is another report that since early March 2019, Chinese fishing vessels – apparently part of China's maritime militia force – have been operating near two Philippine-held features in the Spratly Islands: Loaita Island and Loaita Cay, called Kota and Panata Islands by Filipinos. According to this report, the Philippine press began to report this militia presence in early April, prompting the Philippine Government to say it would protest to Beijing and also four Chinese trawlers' riding at anchor less than half a nautical mile from the Philippine outpost at Loaita Cay must be particularly provocative for the Philippine detachment on the cay.³² China's maritime militia is an armed reserve force of civilians available for mobilization, and the US points out that China's maritime militia plays a major role in coercive activities to achieve China's political goals in the South

³¹ Mike Yeo, –Testing the waters: China's maritime militia challenges foreign forces at sea,|| *Defense News*, May 31, 2019, <https://www.defensenews.com/global/asia-pacific/2019/05/31/testing-the-waters-chinas-maritime-militia-challenges-foreign-forces-at-sea/>.

³² Asia Maritime Transparency Initiative, –Still under Pressure: Manila Versus the Militia|| April 16, 2019, <https://amti.csis.org/still-under-pressure-manila-versus-the-militia/>.

China Sea without fighting,³³ but there are a lot of unknowns about it.

With these in mind, I would like to conclude this paper with the following three recommendations on maritime crisis management:

First, a maritime crisis management procedure which covers both military and law enforcement organizations should be developed. Applying appropriate elements of the naval CUES (Code for Unplanned Encounters at Sea), which was adopted by the regional navies in the WPNS (Western Pacific Naval Symposium), to coast guards would be worth exploring.

Second, regarding maritime militia, it is important for China to enhance transparency of the organization, roles and missions, and operations of its maritime militia force.

Third and finally, the authority of existing international law, norms, and principles must be reasserted and clarified. International law is the bedrock institution of the –rules-based|| order, and thus its rules must be more clearly articulated and given strong political and diplomatic support.

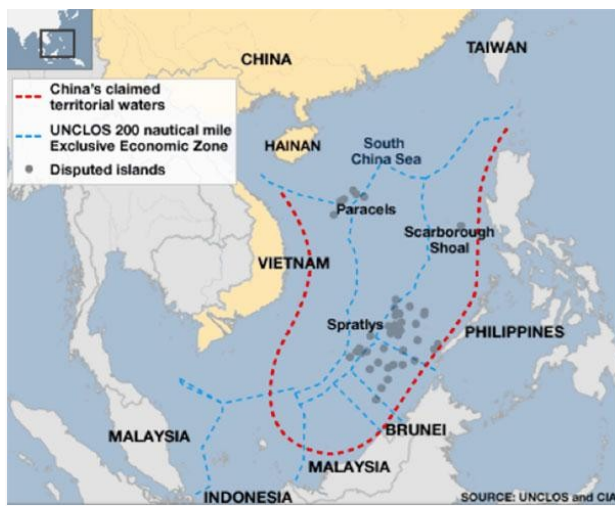
³⁴

³³ Office of the Secretary of Defense, *Annual Report to Congress*, p. 53.

³⁴ The first and third points are based on Hideshi Tokuchi, –Grey zone warfare at sea and Japan's response,|| *Griffith Asia Insights*, April 30, 2018, <https://blogs.griffith.edu.au/asiainsights/grey-zone-warfare-at-sea-and-japans-response/>.

CHINESE POLICY AND PRACTICE IN THE SOUTH CHINA SEA

*Lokshin Grigory Mikhailovic **



China's Territorial Claims in the South China Sea

1. Hotbed of international tension

In recent years, events in the Middle East and South-East of Ukraine remain at the center of world politics.

At the same time, it is already quite clear that they are unlikely to become a detonator of world war, as happened in the Balkans a hundred years ago. The paradox is that, for all their explosiveness, the main line of geopolitical tension is already far from here, namely in East Asia and the APR (Asia Pacific Region). Along with the relocation of the center of the world economy and politics, serious contradictions and problems came here.

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The main difference between the APR and all other regions is –the presence of a systemic, growing in strength contradiction between the two

–superpowers||- the USA and the PRC. Moreover, both states consider him (the world?) "their". The –old|| (US) leader fiercely struggles to maintain his dominant positions until recently, and the new, –young|| (China) is no less vigorously trying to oust him and take his place.

The relations of the United States and China - the two largest world powers that are in a state of strange symbiosis - political, and gradually military rivalry with indissoluble financial and economic interdependence - determine the situation in the APR in general and in the South China Sea region, in particular. Recently, it is increasingly turning into one of the most conflicting regions in the world, where the territorial demands of China, Viet Nam, the Philippines, as well as Malaysia, Brunei, and Indonesia collide and impose on each other. They should add and Taiwan, mainly separating the claims of China

And, as in the recent past, divided Germany for many years became the front line in the –cold war||, so the front line of the new –cold war|| for the coming decades can pass through the water area of the SCS.

Naturally, it will be a completely different –cold war||, without the former ideological antagonism, but also very dangerous for all mankind.

In an article published in December 2018. The American National magazine, The National Interest, named the SCS as one and 5 places in the world where the third world war could begin. And on January 29th of this year, authoritative Singaporean newspaper The Straits Times cited estimates of American intelligence that predicted the build-up of the Chinese Navy's military presence in the SCS and the construction of its new military bases there, which former US Pacific Fleet Commander Admiral Harry Harris called the new –Great Wall of Sand|| in the SCS.

2. Asian doctrine of President D. Trump

The coalition of entrepreneurs and politicians who have consistently lobbied to establish good relations with China in the last century has dissolved over the past ten years, giving way to Beijing critics, who do not allow them to enter their market and shamelessly steal their intellectual property. The US determination to maintain its leadership in the APR, as well as its considerable investments in the countries of the region, is shaping their increasingly tough stance towards China.

All the major initiatives of recent years (the –turn|| of Barack Obama in the APR, the trans-Pacific partnership of 12 APR

states and others) were aimed at containing China and preventing its dominance in Asia. The same goal has been rented by D. Trump from the Japanese Prime Minister S. Abe's doctrine of the quadrilateral alliance ("quartet") of the USA, Australia, India and Japan.

In 2007, speaking in the Indian parliament, S. Abe insistently called for the partnership of these four countries in the construction of the so-called. "Axis of freedom and prosperity". In response to the rise of authoritarian China, he said, the richest democracy in Asia (Japan), the largest in terms of population (India) and the largest in territory (Australia), together with the United States, should begin regular security consultations. Such consultations, as is known, more than once led to the creation of military alliances.

Then China managed to prevent the formation of this "quartet." But after 10 years it decided to return to this initiative. S. Abe was the first of all heads of state to meet with D. Trump in February 2017 immediately after taking office. He failed to change Trump's decision to withdraw from the Trans-Pacific Partnership Agreement, but he easily managed to convince him of the need to build US policy in Asia on a close alliance with Japan.

So the old Japanese sake turned out to be in a new American jug. On

November 10, 2017, at the APEC summit in Da Nang, the President began his speech with the words: –I arrived in Viet Nam - in the very center of the Indo-Pacific region ...|| This new name instead of the long-familiar Asian-Pacific region (APR) immediately attracted the attention of observers. The name change became the ideological cover for the inclusion of the second largest power of Asia - India - in opposition to China.

Thus, at the APEC summit in Danang, D. Trump announced his doctrine of regional security, based on the four-way union of the United States, Japan, India and Australia. Since then, several consultations have taken place between representatives of the Quartet, several joint naval exercises have been held, but the whole process has stalled due to the position of India, which is clearly not in a hurry to abandon its traditional non-alignment policy, and also because of the restrained position of the ASEAN countries, the majority who took the position of watchful waiting.

A whole series of documents adopted recently by the D. Trump administration testifies that the United States is leaning in this direction towards a –zero-sum game. The 2017 National Security Strategy said that China poses a serious challenge to "American power, influence and interests" in the Indo-Pacific region and around the world. "

The same approach is expressed in the subsequent 2018 National Defense

Strategy. Both documents do not regret the toughest expressions to underline the –Chinese threat||. This was followed by the famous speech of Vice President Pence, a series of statements by Secretary of State Mike Pompeo, Security Adviser John Bolton and others. Everything started and ended with one thing - the ships and aircraft of the United States went and flew and will walk and fly where it is allowed by international law and required by the interests of the United States, and American firms produced and will extract oil and gas on the SCS shelf in accordance with the 1982 Convention.

The Pentagon strengthened the deployment of forces in the Western Pacific and significantly intensified its deterrent actions in the SCS. FONOP operations were noticeably more active. In 2017 there were only 4 of them. In 2018, it has already become more, and since the beginning of 2019 they have become almost monthly. From October 2015 to May 2019 15 such operations have already passed. To this should be added the frequent flights over the SCS of American B-52 bombers. So there is a constant –muscle play||. In 2018, the United States conducted the world's largest international naval exercises, the RIMPAC. In 2014 and 2016 China participated in them. Last year, the administration of D. Trump recalled the invitation to China, considering his actions in the SCS as –incompatible with

3. Strategic interests of China in the SCS

The increased tensions in the SCS in the current decade, in the views of Chinese political scientists and propagandists, were the result of the –reversal|| of the US in the APR, started under B. Obama's presidency and the fact that small and medium-sized states of the region allegedly felt encouragement from the United States and began to show their overvalued rights and territorial requirements for China. Although it is well known that the territorial claims of China to the SCS were made long before the –turn to Asia|| declared by B. Obama.

The proclaimed US –turn to Asia||, of course, pushed China to take precautions against possible troubles from the US in the SCS. Militarily, the western part of the Pacific Ocean is of particular importance for China, which is trying to break out of a closed box

(zone) with US dominance at sea and in the air. From this, to a large extent, many conflicts arise in the SCS.

The key interest is Taiwan. China is determined to block the actions of the US military courts, which could potentially hinder its possible reunification with Taiwan, if this requires a forceful influence, and also block its shipping traffic with the countries of the Middle East and Central Asia through the SCS.

The Chinese strategy is aimed at neutralizing the threats of attack from the sea and from the air. It is based on the creation of closed areas for attack - Anti-Denial / Anti Access Strategie. The PLA is tasked with 2020–25. to push the US warships outside the so-called. –The first chain of islands, which runs from Japan through Taiwan to the Philippines. Further, we are talking about the release of the open ocean and the "second chain" of islands from the same Japan to about Guam. The goal is to deprive the United States of the possibility of carrying out operations in these zones with impunity, where they should always be within reach of Chinese coastal and ship-borne missiles.

China's strategic interests cover all controversial issues of law and sovereignty in the SCS area. At the same time, the economic and energy aspects are also great and are not removed from the agenda at all.

The significant natural resources of this region, which can significantly accelerate the rise of China, if they become its property, remain an important factor in the Chinese strategy in the region. First of all, we are talking about the fish resources of SCS (12% of all world seafood production is carried out here), as well as already discovered and prospective oil and gas fields.

In order to reduce dependence on highly polluting coal, which has already become the most dangerous problem in many cities of the country, China is increasing its consumption of natural gas, which led to an increase in its consumption in 2018 by 16.6%. These needs will continue to grow. The confirmed and estimated oil reserves in SCS amount to about 11 billion barrels, which can replace all the country's crude oil imports in 5 years, and 190 trillion m³ of natural gas, which is equal to its imports in 102 years.

In response to the "rebalancing" of the United States in the APR, China sharply intensified its actions in the seas surrounding it, giving them a more offensive character. One of such actions was the establishment of an air defense zone (ADIZ) in the East China Sea in 2013. Also repeated in May 2014, in the form of the introduction of the Chinese drilling platform 981 into the exclusive economic zone of Viet Nam immediately after Barack Obama's visit to the countries of East Asia and the conclusion

of the Agreement with the Philippines on the right of entry of ships and landing of airplanes at former US military bases.

Since 2014, the Chinese military has been building reefs in the Spratly archipelago on islands that were illegally occupied by them in the 70s and 90s, deploying islands, depots, radar, missile launchers and other modern weapons on them. Beijing argues that all this is being done solely for peaceful purposes and denies that all constructed structures can be used for monopolistic control over all communications in the SCS. But all these statements convince few.

SCS is several hundred miles wide and does not seem at first sight to be a bottleneck, like the Suez Canal or the Strait of Malacca. But China has already built on 3 of the 7 artificial islands of the runway for its bombers, installation to launch anti-ship missiles and air defense missiles. For example, on the reef of the Fire Cross in the western part of the Spratly archipelago all work has long been completed. And they allow Beijing to seize the strategic key to one of the most important trade routes on the planet.

Chinese fishermen have been waging a hybrid –people's war|| in the SCS for more than a year. This is the third element of the Chinese Navy - an armed armada of fishing vessels - The largest maritime police in the world. A significant part of Chinese conscripts, preparing in the army as future

"fishermen." This is the new incarnation of the idea of Mao's –people's war||. So far, the United States and its allies are only developing methods of struggle against these forces. Viet Nam creates its similar forces.

The gradual build-up of power pressure by China in the SCS is part of its strategy. First, this gradual gradualness is supported by tactics, which stipulates that all forceful measures remain in the –gray zone||, i.e. below the threshold of ordinary military conflict. Secondly, such an approach minimizes international intervention, localizes all problems and provides a favorable outcome for China. For smaller players in the region, this entails serious challenges to security, sovereignty and the economy, especially because of their limited ability to withstand China's sophisticated and integrated methods.

A recent example of such actions was the recent events around Tithu Island, which is located in the Philippine EEZ, and they consider it their own and call it Pagasa. At the beginning of this year they planned to strengthen their positions there. But China sent there 275 small fishing vessels, much of which were in fact armed and belonged to the forces of the China's Marine Police. They prevented Filipino builders from going there, and also drove all Filipino fishermen out of the region. And this after all the meetings with President

Duterte and the declarations of friendship and cooperation.

China's military construction on artificial islands in the SCS has already reached, as many experts believe, the –point of no return||. All this is preparing for the possibility of the declaration of the SCS in whole or in part by the ADIZ zone, as was the case in the East China Sea in 2012. In the USA, Japan and other countries fear that China may turn the SCS into its strategic strait under its control, marking out enough funds on both sides.

And although, on the whole, the actions of China in the view of Chinese politicians, scholars and propagandists are defensive in nature, **they infringe upon the vital interests of the neighbors in the region, especially Viet Nam and the Philippines. They contradict the interests of equal security and the balance of interests of states. This is an attempt to achieve the satisfaction of their interests at the expense of the vital interests of other peoples and states.**

Beijing advocates compliance with international law, but only when it is in its interests. China actively promoted the 1982 UN Convention on the Law of the Sea, ratified it in 1994, but categorically rejected the decision of international arbitration when, on the basis of this Convention, the claims of the PRC for certain –historical rights|| to almost all SCS were declared invalid.

4. Principle "Three No"

The policy of China until recently boiled down to the principle of three –No,|| which means:

- No - conflict internationalization;
- No - to multilateral negotiations and any international structures, including ASEAN;
- No - specifications and designation of territorial requirements in SCS.



Fiery Cross Reef 2017

China has consistently been the strongest resistance to any attempt to internationalize the solution of the conflict by involving outside regional states or allowing any regional body (for example, ASEAN + 1 or ASEAN + 3), not to mention the ASEAN Regional Peace Forum (ARF), and more about the UN or the International Court of Justice, to intervene in this case.

The ASEAN unity in Beijing's view should be weakened so as to prevent the regionalization of the dispute, i.e. common confrontation of 10 ASEAN countries to China alone

China constantly states that it will discuss all disputes in the SCS only on a bilateral basis, individually with each of the interested states. And while this

Last year, China demanded to stop the work of the Spanish company Repsol in the exploration of oil deposits on the Vietnamese shelf, threatening to use force against the Vietnamese islands in Spratly. The same requirements have been obvious that China does not want to lose its advantages in negotiations with partners, who are much weaker in all respects, and each has its own specific interests in relations with it.

The principle of "Three No" remains the same, but it becomes more difficult to maintain it. It is increasingly difficult to avoid discussing these disputes at the East Asian Summits (EAC) and other forums under the auspices of ASEAN. And after the PCA verdict in July 2016, China went into negotiations regarding the Code of Conduct of the Parties to the SCS, promising to complete them now in 2020-21.

The third "No" refers to the notorious "line of 9 segments." Its coordinates are not indicated until now. One can only assume that they will be determined in future negotiations with each interested country.

already been put forward more than once by the Russian companies Gazprom and Rosneft.

The controversy in the SCS, in the opinion of the Chinese leadership, should be preserved so far in the so-called –gray zone||, i.e. at the level of political and moral pressure on opponents, which will not cause direct US intervention and will remain one of the means of strategic pressure on them.

This gives rise to the so-called “salami” tactic, which means cutting off the water area of the SCS in pieces and moving forward gradually, step by step, winning back our positions and putting our opponents before the accomplished facts, but not bringing the matter to a military conflict.

Prospects for the foreseeable future

Under Xi Jinping, China has become unpredictable for American politicians. By his actions in the SCS, he raised serious doubts in his peaceful intentions, caused China to be perceived as a security threat among neighboring states and among the American establishment. Accelerated modernization of the armed forces, increased military training, new doctrines, expanded capabilities of the deployment of the Navy in China Eastern Sea and SCS - all this taken together - significantly reduced the gap in military power between China and the United States.

A working group from a number of leading American sinologists, last year prepared a report for the new Administration, which proposes a "smart competition" strategy. It provides for the creation of an international coalition to put pressure on China to force it to comply with the developed norms and rules, but to continue cooperation wherever it is in the common interest. The report highlights the difference in relations with Russia and with China. Russia, in their opinion, is undermining democracy in the West. China does nothing of the kind; it only convinces the West to accept its one-party authoritarian regime.

Russia is no longer a serious competitor, but also not a partner in the economy. China is simultaneously a competitor, but also an economic partner. Therefore, it is necessary to be extremely careful to break economic and political ties. If in the relations with the USSR the principle of the MED (guaranteed mutual destruction) used to work, then in the relations with China the principle of the EMER was affirmed - guaranteed mutual economic destruction.

The United States can do almost nothing against China's calls, except for loud rhetoric. Chinese leaders have repeatedly stated that China attaches paramount importance to the freedom and safety of merchant shipping in the SCS. They always insisted that freedom of navigation should be ensured and

alliances of the countries of the region with the United States, playing on the constantly emerging contradictions between the United States and its allies.

The strategic rivalry between China and the United States is intensifying against the background of the ongoing trade war between them, and both countries are moving towards hostility in the spirit of the Cold War, which is characterized by intense challenge to each other's areas of influence and to a lesser degree of military superiority. The only important difference is the absence of ideological antagonism (China does not think about the victory of communism throughout the world). In addition, both sides deliberately avoid excessive confrontation, at least for the foreseeable period of time, due to their complex interdependence in the economy.

Chinese leaders are pragmatic enough to soberly assess their strength and capabilities. Naturally, as China grew, its influence in Asia also grew, but still very, very far from ousting US hegemony from there. ASEAN elites do not accept the Chinese model of society and economy. They want to trade with China, but keep the US military presence. Therefore, assertions that China "is challenging US hegemony in Asia" is largely a myth used by supporters of heightening tension and an arms race in the US, especially among the "neo-conservatives" in the Republican party and in the US military-

Practically none of the serious observers expect China in the coming period to give up its territorial claims in the SCS. At the same time, they are also pursued several goals at once, and one of them is to undermine the reliability of the

industrial complex in the new election campaign that has already begun.

Experts believe that in the short term to 2020-25. The United States will retain its absolute strategic domination in the APR, but will be forced to put up with the introduction of China into the military-strategic space, which until recently the United States considered exclusively its own.

The most obvious trend in the coming decade will be increased use of various paramilitary law enforcement services in China to exercise jurisdiction in the disputed areas of both seas. However, since last summer, the number of PLA Navy ships heading for the calculations that ASEAN will play a more active role in resolving the crisis in the coming years are unlikely to be justified.

D. Trump's position was a gift for China. Negotiations on the Code of Conduct of the Parties in the SCS between China and ASEAN, although advanced after the PCA verdict in The Hague on July 12, 2016, but inevitably, because of the contradictory positions of the parties, they will take years to complete, since but he needs only the process of negotiations on it, which excludes the intervention of other players, primarily the United States.

disputed areas of the SCS has been growing. The probability of a collision of military fleets here is still small. The tactics are also already obvious: to provoke Viet Nam and the Philippines to be the first to use force to protect their fishermen and research vessels and, as it were, only in response to establish their full control in the SCS.

Nevertheless, the authoritative representatives of the PRC at the expert forums held in various countries declare that China is in favor of preserving the status quo at the SCS, without specifying what this means. And this means confirmation of the policy of fait accompli.

Observers agree that disputes in the SCS cannot be resolved by a simple territorial delineation. They expect China to put forward such a plan that will be feasible and in fact will be able to extinguish the storm in the region. Disputes in the SCS are difficult to resolve, but rather generally intractable on the basis of existing international law and the economic and political situation in the world. No country, including China, will succeed in gaining full sovereignty in the SCS in the foreseeable future. Therefore, for China, the most practical is to maintain the current status quo. But at the same time, it will have to reckon with the rights and interests of the countries of Southeast Asia, especially the applicants for sovereignty in the SCS

First of all, it will need to recognize all territories outside of his territorial

waters and the 200-mile EEZ as an –open sea|| and abandon the notorious –line of cow's tongue||.

The first step in this direction could be an agreement on fishing in the SCS in order to avoid conflicts and preserve the rapidly diminishing resources of the SCS and create favorable conditions for fishing instead of pursuing fishermen in their traditional fishing grounds.

For this, joint fishing zones can be established outside the 200-mile EEZ of all coastal states. Similar agreements are already in force with Japan and South Korea. Some principles can be taken from the existing agreement between Viet Nam and China in the Gulf of Bac Bo. In addition to this agreement, you can create a Regional Committee on Fisheries, which will establish standards of conduct for all fishing vessels.

The second necessary measure is to create a mechanism for cooperation between the marine police of China and Viet Nam, as well as all coastal states, to prevent conflicts and to ensure compliance with the Codes of conduct adopted by all in unplanned meetings of ships at sea and airplanes in the air. To do this, it is necessary to establish a

the parties and the selection of the competent authorities for contact. Such a cooperation mechanism is already in place in Bac Bo Gulf (Gulf of Tonkin). The same mechanism can be created with other countries of the SCS.

Thirdly, the time has come to seriously begin meaningful negotiations on the Paracel Islands. All the meetings of China and Viet Nam at the highest level do not give anything so far. Leaving this problem to future generations will fail. Any delay in solving it will only make it more difficult in the future. Concentration of all efforts only on conflict management in this case is equivalent to treating the disease with painkillers. Seeds of discord remain, and the conflict zone will only expand. In the meantime, the fishermen of Viet Nam and China should be allowed to fish in the Paracel Islands, because this region is not demarcated and is the place of their traditional fishing. All attempts to monopolize this area are contrary to international law.

China's refusal of repression can be the main measure of trust that will help relieve tension and open the way to substantive negotiations.

PART II

PROPOSALS FOR CONFIDENCE BUILDING AND DISPUTE RESOLUTION

THE SOUTH CHINA SEA DISPUTE: BREAKING THE MYTHS TOWARDS AN EFFECTIVE APPROACH AT CONFLICT RESOLUTION ^(*)

*Neri Colmenares **

The South China Sea (SCS) dispute has been festering for decades. Various solutions have been discussed and explored to resolve the same such as those¹ tackling shared sovereignty, stewardship, the cooperation and development approach, confidence building measures (CBM), third party adjudication, and demilitarization. The fundamental dispute among claimant countries in the South China Sea,

however, has remained unresolved. While the various multilateral initiatives through conferences have advanced the dialogue for a peaceful resolution of the dispute, the aggressive actions of China in the last few years, have exacerbated the dispute.

This paper points out that it is best to dispose of possible misconceptions or myths on the SCS dispute to help pave the way for the search of a more effective approach. While we need to continue pursuing any and all proposed dispute resolution approaches, this paper points out that a third party sponsored demilitarization project should be fully explored. A just and peaceful resolution of the SCS dispute cannot be achieved while China has disparate military superiority in the area.

Shared Sovereignty Approach

The shared or agreed sovereignty approach consists of various proposals that are premised on a joint recognition by the disputants that they are at a disadvantage if the dispute continues to fester, and it is to their interest that this be resolved even at the expense of sharing their respective jurisdictional claims with the other claimants. –Confidence Building Measures|| (CBM)

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(*) This talk will discuss the third party sponsored demilitarization needs to be fully explored as an effective approach to the peaceful resolution of the SCS dispute. Neri Colmenares is a human rights lawyer and was a three-term member of the Philippine Congress. He is also a Convenor of PINAS, an association advocating for the respect of Philippine sovereignty and has delivered various talks and papers in universities, conferences and Continuing Legal Education (CLE) seminars for lawyers, on the implications of Pres. Rodrigo Duterte's foreign policy. He is the Chairman of the National Union of People's Lawyers of the Philippines.

¹ Scott, David. –Conflict Irresolution in the South China Sea.|| *Asian Survey*, vol. 52, no. 6, 2012, pp. 1019–1042. *JSTOR*, www.jstor.org/stable/10.1525/as.2012.52.6.1019.

which consists of a combination of various proposals but substantially informed by transparency and consultation is important in various *shared sovereignty* approaches in order to build trust and enhance positive outcomes.

The *shared sovereignty* concept is premised on disputants voluntarily agreeing among themselves on the creation of different types of joint sovereignties in the disputed area. This proposal could partake of the nature of –Agreed Sovereignities|| or –Joint Sovereignty|| for the peaceful exploitation of South China Sea resources. The shared sovereignty approach in the –Spitsbergen Archipelago in the Arctic and the Neutral Zone between Saudi Arabia and Kuwait||² are noteworthy subject of the shared development and sovereignty approach.

The –Stewardship Concept|| is akin to the shared or pooled sovereignties. This concept does not involve the issue of

sovereignty, but is rather, based on a principled claim of joint obligation to steward the area's resources for the

benefit of all disputants. This was advocated by then Philippine President Fidel Ramos and actively espoused by his then National Security Adviser Jose Almonte:³

–In 1995, when China's encroachment on Mischief Reef came to light, Philippines President Fidel Ramos proposed, first, the –freezing|| of troop strengths on the disputed islet, followed by the demilitarization of the Spratlys, and then by cooperative efforts by the rival claimants to assure safe passage for all shipping in order to preserve the maritime environment and exploit its sea- and sea-bed resources judiciously under a joint authority. President Ramos then also proposed that, until an agreement is reached, each disputed islet should be placed under the stewardship of the claimant-country geographically closest to it.||

A variation of the stewardship proposal is the –Joint Cooperation and Development|| agenda such as the –Fish for Peace|| proposal⁴ which provided

[idUSKBN0GR16620140827](https://www.reuters.com/article/us-southchinasea-oil-kemp/east-and-south-china-sea-disputes-need-creative-diplomacy-kemp-idUSKBN0GR16620140827), (accessed June 20, 2019).

² David Kemp, –East and South China Sea disputes need creative diplomacy||, Reuters, August, 27, 2014, <https://www.reuters.com/article/us-southchinasea-oil-kemp/east-and-south-china-sea-disputes-need-creative-diplomacy-kemp-idUSKBN0GR16620140827>

³ Snyder, Glosserman, and Cossa,
– Confidence Building Measures in the
South China Sea || Pacific Forum Issues &
Insights No. 2-01, Pacific Forum CSIS
Honolulu, Hawaii August 2001, [https://
csis-prod.s3.amazonaws.com/s3fs-
public/legacy_files/files/publication/
issuessinsightsvo1no2.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/issuessinsightsvo1no2.pdf).

⁴ Tønnesson, Stein (2019) Fish for Peace
in the South China Sea, *Asia Maritime
Transparency Initiative (AMTI)
Update*, Center for Strategic and
International

seven steps to achieve a peaceful resolution to the dispute.

Third Party Intervention

In the *third party intervention* approach, the disputants recognize that it is extremely difficult for the disputants themselves to arrive at an agreed sovereignty approach or any conflict resolution approach, and the intervention of a third party is required to resolve the impasse. This approach is inherently multilateral since it needs a credible ‘other’ party to facilitate steps towards confidence building and dispute resolution. The proposed ASEAN project for the –Code of Conduct on the South China Sea|| with China forms part of this approach.

Another variant is the *third party adjudication* which involves a non-disputant party, acceptable and credible to the disputants, to formulate a binding resolution to settle the dispute. The most promising, at least initially, was the resolution of the dispute through arbitration which the Philippines resorted to in 2012 after China reneged⁵ on the bilateral commitment by both parties to withdraw from Scarborough

shoal. The Permanent Court of Arbitration (PCA) promulgated a ruling, which should have settled, from an international law perspective, many of the claims made by China. The refusal of China to recognize the jurisdiction of the PCA, however, made the implementation of the award extremely difficult.

The difficulty is compounded by the shift in Philippines foreign policy under Pres. Rodrigo Duterte in 2016, towards accommodation of China’s expansionism in the SCS. The assertion of the arbitral award is not in the Philippine foreign policy agenda, at least while Pres. Duterte is in power.

Another variant is the *third party* sponsored demilitarization approach. While many have advocated for the *demilitarization* of the South China Sea, the exact parameters of this proposal have not been fully explored.

For many years, there have been calls that –all claimants should halt further military construction or force build-ups in disputed territories or, preferably, return to the *status quo* at the time of the 1992 ASEAN Declaration on the South China Sea.||⁶ Japan, together with

Studies, Washington, DC, 11 January,
<https://amti.csis.org/fish-for-peace-south-china-sea/>.

⁵ While Chinese and Philippine ships simultaneously left the shoal to diffuse the stand off, Chinese ships subsequently returned. China claimed there was no agreement to vacate the shoal.

⁶ Snyder, Glosserman, and Cossa,
–Confidence Building Measures in the
South China Sea|| Pacific Forum Issues &
Insights No. 2-01, Pacific Forum CSIS
Honolulu, Hawaii August 2001, [https://
csis- prod.s3.amazonaws.com/s3fs-
public/legacy_files/files/publication/
issuins ightsv01n02.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/issuins ightsv01n02.pdf). (accessed
June 15, 2019)

other countries attending the East Asia Summit in 2017 also called for demilitarization concerned that the SCS dispute could escalate.⁷

In 2016 the European Union has also expressed a similar concern, although, it fell short of calling for complete demilitarization:

—The EU is concerned about the deployment of missiles on islands in the South China Sea. The temporary or permanent deployment of military forces or equipment on disputed maritime features which affects regional security and may threaten freedom of navigation and overflight is a major concern. The EU therefore calls on all claimants to refrain from militarisation in the region, from the use or threat of force, and to abstain from unilateral actions.||⁸

Demilitarization, *inter alia*, was also one of the proposals by the latest Joint Communique of the G7 Nations:

⁷ Yukako Ono, —South China Sea dispute toned down at Asean Meeting||, Nikkei, November 14, 2017, <https://asia.nikkei.com/Politics/South-China-Sea-dispute-toned-down-at-ASEAN-meeting>. (accessed June 24, 2019)

⁸ Council of the EU, Press release, 11/03/2016 Declaration by the High Representative on behalf of the EU on Recent Developments in the South China Sea, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/11/hr-declaration-on-behalf-of-eu-recent-developments-south-china-sea/>.

—We reiterate our commitment to the freedoms of navigation and overflight and other rights, freedoms, and internationally lawful uses of the seas.

—We remain concerned about the situation in the East and South China Seas. We emphasize the fundamental importance of building trust and security and of the peaceful management and settlement of maritime disputes in good faith and in accordance with international law, including through internationally recognized legal dispute settlement mechanisms, including arbitration. We reiterate our strong opposition to any unilateral actions which increase tensions, such as the threat or use of force, large scale land reclamation, building of outposts, as well as their use for military purposes **and urge all parties to pursue demilitarization of disputed features and to comply with their obligations under international law.** We consider the July 12, 2016 award rendered by the Arbitral Tribunal under the UNCLOS as a useful basis for further efforts to peacefully resolve disputes in the South China Sea. We encourage dialogues based on international law towards early finalization of an effective Code of Conduct in the South China Sea (COC) and we welcome efforts to advance in this direction. We call for the full and effective implementation of the Declaration on the Conduct of Parties in

the South China Sea (DOC) in its entirety.||⁹[underscoring supplied]

Unfortunately, none of the proposed approaches have so far resulted in the expected resolution of the dispute. These proposals have been unable to make substantial headway, mainly because of China's growing aggressiveness and rhetoric on the South China Sea issue increases as its military power in the area consolidates. This does not, however, mean that the search for a peaceful resolution of the dispute ends. Socialization of the dispute has definitely made dialogue possible, and conferences and workshops among all the disputants, including China, must be encouraged. The search for a more effective resolution of the dispute, however, continues.

Before we delve deeper into proposed solutions, however, it is necessary to apprise ourselves of the concrete conditions on the ground—including the myths that surround the nature of the dispute. Breaking these myths will hopefully instill the imperative for both the disputants and the international community to act urgently before the tension escalates into another full blown shooting war.

The Myths

The Myths that have hindered the disputants' search for effective resolutions must be addressed in order to move forward. Views that do not contribute, but actually create illusory hindrances and fear must be cast aside so that parties to the issue and all stakeholders realize that the current state of the dispute requires not just immediate action, but also bold conflict resolution approaches. In order to come at an effective resolution of the dispute, myths must be set aside in order to move forward.

Stalemate

Some view that the dispute, for failure to agree to a compromise and promulgate an effective code of conduct amongst disputants, have resulted in a —stalemate||. This is utterly false. While it may be possible that a _stalemate' was achieved in the early 1990s, the —tolerable|| stalemate¹⁰ then may no longer be true:

The current stalemate is tolerable for the contending claimants for the time being, however. It does not seem likely to be disturbed in the near future which is every reason for seeking a resolution sooner rather than later. Should that stalemate be disturbed for one reason or another, then the consequences for regional order could

⁹ —The G7 Foreign Ministers' Communiqué||, Toronto, April 23, 2018, <http://www.g7.utoronto.ca/foreign/170411-communicue.html>.

¹⁰ Michael Leifer, – Stalemate in the South China Sea,|| in *Perspective in the Conflict in the South China Sea: Workshop Proceedings*, ed. Snildal.

well be revolutionary. But, for the time being, a stalemate persists which has not been affected substantively by the economic adversity, which has afflicted East and South-East Asia from the middle of 1997.

Stalemate is defined as *a [situation](#) in which neither [group](#) [involved](#) in an [argument](#) can [win](#) or get an [advantage](#) and no [action](#) can be taken*¹¹. It is a situation in which *neither side in an argument or contest can win or in which no progress is possible*.¹² This state of –equilibrium|| no longer holds true in the SCS dispute.

China has the upper hand in the dispute and continues to daily stack up its advantage while the dispute –stalemates||. Its expansion continues through the artificial building of islands, the building of military infrastructures and the introduction of heavier weaponry in the area.

Worse, China's aggressiveness escalates as its military power increases, further entrenching its intransigence on the search for an acceptable and peaceful resolution of the dispute.

China in fact has gradually used stronger language in recent years, the latest of which was the statement of Chinese Defense Minister Wei Fenghe on the issue of Taiwan and the South China Sea during the 2019 Shangri-la

Dialogue in Singapore. Not only did Minister Fenghe declared that China's expansion in the SCS as legitimate but he also gave a warning against any underestimation of the resolve of the –Peoples Liberation Army|| against any threat to what China consider its territory.

In the same forum, Lieutenant General Shao Yuanming, deputy chief of the Joint Staff Department, openly declared that *–China has indisputable sovereignty of the islands, reefs and nearby sea territory in the South China Sea. We have deployed necessary defence facilities in accordance with the security situation the islands and reefs are facing ... in response to these provocative actions.*||¹³

It is unrealistic to think that avoiding serious challenge to China's expansion will lead to a peaceful resolution of the dispute. This view is the basis of the Philippines current foreign policy thrust on the dispute - that refusing to challenge Chinas actions will decelerate the tension and lead to a peaceful resolution of the dispute. On the contrary, it can actually increase tension once China has substantially completed

¹¹ Cambridge English Dictionary.

¹² Collins English Dictionary.

¹³ [Tham Yuen](#), – Shangri-La Dialogue: 'Actors' that undermine rules-based order pose greatest threat to region, says US defence chief|| Singapore Strait Times, June 1, 2019, <https://www.straitstimes.com/singapore/in-swipe-at-china-us-defence-chief-patrick-shanahan-warns-of-asia-instability>

its military positions in the area. In fact, while China is engaged in this –peace or war|| dual tactics, the latest tough words during the Shangrila Dialogue were a sign of its hardening position on the issue.

[the-rule-of-law.](#)

There must be recognition that China may in fact be preserving the –stalemate|| until such time as it is strong enough to –break|| it:

China’s mantra under its self proclaimed –Good Neighbor Policy|| remains __shelving disputes and conducting joint development’, but with the proviso that –to set aside dispute does not mean giving up sovereignty||. Other South China Sea claimants remain anxious that China is ready to avoid conflict resolution negotiations __now‘ because it hopes to eventually settle the matter from a stronger position. x x x¹⁴

Former Philippine Foreign Affairs Secretary Albert del Rosario declared recently that this perceived stalemate is detrimental to the interest of disputants other than China:¹⁵

¹⁴ Scott, David. –Conflict Irresolution in the South China Sea.|| *Asian Survey*, vol. 52, no. 6, 2012, pp. 1019–1042. *JSTOR*, www.jstor.org/stable/10.1525/as.2012.52.6.1019.

¹⁵ Former Philippine Foreign Affairs Secretary Albert del Rosario, –The Rule of Law||, Speech at the Ateneo de Manila University, September 25, 2018, <https://news.abs-cbn.com/blogs/opinions/09/27/18/opinion->

So where are we in this respect?

Objectively speaking, are we at a stalemate? I would submit that we are not. China has not only rejected the Arbitral Ruling, but has steadily moved to consolidate its presence and power projection in the South China Sea. This can only be to the disadvantage of the Philippines and other regional claimant states.

In short, China increases its strength daily under the current –stalemate|| conditions and this will inevitably increase the tension in the area and the possibility of a full blown conflict as its military positions harden. The state of –false stalemate|| that has allowed China’s continuing expansion has to be reversed.

Irreversible Chinese Position

The second myth is that China’s military infrastructures are in place, and a return to the *status quo ante* is no longer possible. In an article entitled

–*Perpetual Stalemate: China Can Neither Be Dislodged From the South China Sea Nor Control It*||, Sir Angus Houston former head of the Royal Australian Air Force and Admiral Jonathan Greenert, former Chief of the US Naval Operations are of the opinion that it is now –too late|| to stop China in the South China Sea:¹⁶

¹⁶ [Steven Stashwick](#), –Perpetual Stalemate: China Can Neither Be Dislodged From the South China Sea Nor Control It||, The

It is too late to reverse or undo [Chinese] occupancy, without risking a conflict. China cannot credibly deter the U.S. Navy from operating in the South China Sea and the U.S. cannot compel China to –dig up the artificial islands it has constructed,|| because the only opinion on the South China Sea that the Communist Party cares about is the Chinese peoples’. For all the attention and political rhetoric that the South China Sea garners, the best outcome either China or the United States may be able to expect is a stalemate.

The dismantling of these military infrastructures towards a demilitarized South China Sea, however, is not entirely impossible. Of course, there must be a recognition that a complete demilitarization of the South China Sea is decisive in the search for a peaceful resolution of the dispute. Demilitarization not only takes out the possible flash points, but, additionally, a huge disparity in the military power among disputants makes a just and fair negotiation impossible to achieve. Once the disputants, however, agree to the imperative that the demilitarization of the South China Sea is decisive in any effort to achieve the peaceful resolution of the dispute, attaining *status quo ante* is no longer impossible. The UN

experience in various areas with serious conflicts around the world would show the successful dismantling of hard military installations in the demilitarized zones.

The question is how can many, if not all, of the disputants be convinced to agree to a demilitarization project. There is a need to dispel the third myth espoused by China and even other disputants.

Multilateral and International

The third myth is that the dispute is a disagreement among individual disputants, and not an international or a multilateral issue. While Viet Nam and the Philippines have previously asserted that the SCS dispute is of international concern, there are countries that continue to hold the belief that the issue is entirely –local||.

The SCS dispute is, by its nature, beyond a bilateral or even regional concern. The dispute constitutes a threat to international peace in the sense that China’s control of the SCS has and will definitely impact on the freedom of navigation of all countries. It threatens to escalate into a full blown conflict that will necessarily involve the international community. The refusal of China to seriously and concretely explore the peaceful resolution of the dispute while continuing its military build up in the contested areas despite the decision of the PCA against its nine-dash-line

Diplomat, February 06, 2017, <https://thediplomat.com/2017/02/perpetual-stalemate-china-can-neither-be-dislodged-from-the-south-china-sea-nor-control-it/>.

claims, has transformed the nature of the dispute into an international one.

While some disputants propose the internationalization of the dispute through the involvement of multilateral international mechanisms and approaches, China continues to insist on localizing the dispute through bilateral negotiations. The problem with the framing of this discourse, however, is that it views the dispute as basically an issue of each individual claimant against a stronger individual claimant in China, when in fact it has become an international concern which obligates the international community to intervene lest it escalates into a serious armed conflict. A weaker disputant country wants to internationalize the dispute by acquiescing to and asking for the involvement of the international community. The involvement of the international community, however, in light of China's continuing military expansion and violations of international law, cannot be subject to the acquiescence or request of a disputant and the refusal of another disputant to the same. The dispute has become an international concern and it is the international community's obligation to step in and actively involve itself in peaceful resolution of the dispute. Framed in this context, China is no longer in a position to dictate whether to employ a bilateral or a multilateral approach.

In sum, there must be a realization that the so called –stalemate only further entrenches China's power in the South China Sea and prolonging the stalemate only makes the search for solutions more elusive as Chinese superiority in the area is further consolidated. Unless the other disputants will relinquish their claims, the growing power of China will likely lead to a full blown conflict. There should be a recognition by both the international community and the disputants that only through the demilitarization of the area by all the disputants and other countries as well such as the United States, can there be a fair and equitable negotiation of the dispute. Lastly, the complete demilitarization of the South China Sea, mainly because of the growing disparity in power relations between China and the other disputants, can only be undertaken with the active involvement of the international community.

The need for effective resolution: Demilitarization

There is no stalemate in the South China Sea dispute, as China's power continues to grow each year. While the complete demilitarization of the area requires deeper discussions even among disputants, it is not impossible. Conferences and workshops focused on this simple theme could lead clarify points on its benefits as wells as its feasible implementation. A study of the

demilitarization projects of the United Nations could serve as a starting point of these initiatives.

Convincing the international community to support a demilitarization initiative, under international law and within the framework of the search for a peaceful resolution of the dispute, may not be difficult as expected as long as the legal and political basis for such an involvement is clearly laid down. The answer lies in the UN Charter itself.

Chapter I, Article 1 of the United Nations (UN) Charter provides that among the purposes of the UN is:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Additionally, Article 94 (1) of the said UN Charter provides the theoretical compliance framework and places the obligation of member states straightforwardly that –each member of the United Nations undertakes to comply with the decisions of International Courts in any case to which it is a party||.

The UN Security Council is empowered under Article 94 (2) as the principal political organ for maintaining peace and security, as responsible for ensuring compliance – [i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.||

On the other hand, Article 11 of Annex VII of the UNCLOS dictates that the –award...shall be complied with by the parties to the dispute.|| Article 34 (2) of the 2012 Permanent Court of Arbitration (PCA) Rules states that all awards –shall be final and binding on the parties. The parties shall carry out all awards without delay||.

While China's recalcitrance to implementing the decision was never in the UN Security Council agenda, mainly because China has veto power, the legal basis for a UN intervention on the dispute is clear. Furthermore, a UN project for the demilitarization of the South China Sea need not necessarily be founded on the PCA decision but rather, on the UN's purpose under Article 1 –*to take effective collective measures for the prevention and removal of threats to the peace*||.

While the legal basis may be clear, there must be a recognition on the

majority if not all of the disputants that the internationalization of the dispute is a necessary component of the solution. While it is understandable that all the disputants need to study this option thoroughly, the obstacle is more pronounced when it comes to China and the Philippines.

Unfortunately, the Philippines play a crucial role in gathering the support of the international community towards the demilitarization project, for after all it is the party that won the tribunal decision against China. While a UN demilitarization project is based on the UN's function to ensure peace, the tribunal decision plays an important part in the involvement of the international community. The decision of the Tribunal, amputating China's claims in the South China Sea and China's continuing violations of various international law norms, bolsters the international community's basis for active involvement in the search for peace. The active role of the Philippines in gathering international support for the peace effort is crucial.

The Philippines, however, under Pres. Rodrigo Duterte has refused to assert the tribunal decision. It is expected to avoid participation in any initiative that could antagonize China. The Philippines is becoming more and

more dependent on China's military aid and bilateral loan agreements. China is gradually becoming a dominant

economic and political power in the Philippines, and these would be more than magnified should Philippines fail to pay its onerous loans with China.

Considering Pres. Duterte's public position in favor of China, the possibility of a Philippine involvement in this initiative will come in 2022 when Pres. Duterte's term ends and if, the new President with a contrary position will succeed. This paper, however, posits that despite his public posturing, Pres. Duterte is not actually intractable especially when faced with opposition from his own followers and the Filipino people. Pres. Duterte's is beginning to backtrack on his previously hard position on the South China Sea issue as the opposition against it in the Philippines grows.¹⁷

He recently –advised|| China not to take –all of the South China Sea||, and expressed concern over China's –intrusions|| on Philippine sovereignty in the Scarborough shoal. The growing reaction of Filipinos against his China policy could soften, if not reverse, Pres. Duterte's foreign policy and pave the way for his agreement to the demilitarization project.

The more difficult obstacle to demilitarization is China itself. While China continues to espouse the principle

¹⁷ Discussed in the First Session Paper –Philippine Foreign Policy Shift: Genuine shift or Sound Bytes||.

of setting aside dispute towards more cooperation with other countries, its action do not match its words. China will not agree to a demilitarization, unless it realizes that it faces a strong rejection from the international community. The international community, through the UN or its treaty bodies, can lay down the legal basis for its involvement in the search for a peaceful resolution and convince China that such is the beneficial road ahead.

The case of *US vs Nicaragua* and *Netherlands vs. Russia* may provide a path to convince China to a demilitarization project:¹⁸

In the *Nicaragua* case, the International Court of Justice (ICJ) found in 1986 that the US had breached its obligations to Nicaragua for supporting the Contra rebellion against the Sandinista administration and for laying mines in Nicaraguan harbors. The US vowed not to comply. It had already withdrawn from the merits phase of the proceedings (after losing in the jurisdiction phase, which it had participated in), and after the release of

¹⁸ Ibarra, Edcel. – Probing the (Im)possibility of China's Compliance with the South China Sea Arbitration Award||, Foreign Service Institute, DFA FSI, Vol. 4, No. 2, July 2017, <http://www.fsi.gov.ph/probing-the-impossibility-of-chinas-compliance-with-the-south-china-sea-arbitration-award/>. (accessed June 22, 2019)

the ruling, it further withdrew from the ICJ's compulsory jurisdiction altogether. Nicaragua went to the UN Security Council to demand the implementation of the ruling, but the US vetoed the proposal. Nicaragua appealed to the UN General Assembly to secure a resolution calling for compliance, and it succeeded.

The US Congress eventually aligned itself with the ICJ and cut off funding for the Contra rebels, as required by the ruling, but the US President then, Ronald Reagan, did not – he even continued to extend support covertly. But with the electoral win of George W. Bush in 1989 and the electoral defeat of the Sandinistas in 1990, the US subsequently lifted its trade embargo against Nicaragua, also as required by the ruling. It also started giving substantial economic aid, even though it still would not pay Nicaragua a compensation.

In the *Netherlands* case, the International Tribunal for the Law of the Sea called upon Russia, through a provisional ruling in 2013, to release the Dutch-flagged *Arctic Sunrise* vessel it had seized from Greenpeace International and the 30 persons onboard it had detained after a protest against oil-drilling in the Arctic. Russia vowed not to comply. It had not participated in the hearings at all and had instituted domestic legal proceedings against the crew for piracy, which was eventually reduced to

hooliganism. A month after the release of the ruling, however, the Russian parliament extended the amnesty decree to include those charged with hooliganism, thereby allowing the Russian authorities to drop the charges and release the detainees, as required by the ruling. In 2014, Russia also released the *Arctic Sunrise*, again as required by the ruling. Nonetheless, Russia still has not paid the Netherlands a compensation.

China, has used cost-benefit analysis in charting its international actions including its implementation of World Trade Organizations decisions.¹⁹ Considering that its opposition to an international demand for demilitarization is difficult to justify, it may allow for its implementation if only avoid the notoriety of being in the gallery of rogue nations. Most likely, however, once a General Assembly demilitarization resolution is filed, China could be forced to stop its military expansion in the SCS.

Demilitarization is necessary not just

to stop further Chinese expansion in the South China Sea but also pave the way for a fair and inclusive negotiation among disputants towards a peaceful resolution of the conflict dispute. Such demilitarization can not be achieved without the participation of the international community, through the UN or its relevant treaty bodies. While China may exercise its veto in the Security Council to block such an initiative, it risks becoming an international pariah. That risk could soften its position towards accepting an internationally sanctioned demilitarization.

While demilitarization is complicated and difficult, it is very possible. It may be a bold idea, but the current conditions in the South China Sea require boldness. Any solution without demilitarization will only strengthen China's advantages, and because of the disparity in power, will only make the search for the peaceful resolution of the dispute elusive.

¹⁹ *ibid*, See Ibarra.

FISHERIES MANAGEMENT: AN OPTION FOR COOPERATION IN THE SOUTH CHINA SEA

*Nguyen Thi Lan Huong**

1. Need to cooperation in the South China Sea

The South China Sea accounted for 12% of global fish catch in 2015. More than 50% of fishing vessels in the world operate in this enclosed sea. Its fisheries officially employ around 3.7 million people and unofficially many more. But the South China Sea has been dangerously overfished. Total stocks have been depleted by 70-95 percent since the 1950s, and catch rates have declined by 66-75 percent over the last 20 years¹. The depletion of fish stocks is caused by several reasons, mostly from human activities as over-fishing, destructive fishing, IUU fishing and marine pollution. Chinese massive land reclamation and island buildings has a negative impact on marine environment as in the Tribunal ruling 2016 in the South China Sea case. In March 2019, a group of Filipino fishermen and two former high-ranking officials have filed a case against Chinese President before the International Criminal Court because China's aggressive island-building affected fishermen.²

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¹ <https://ocean.csis.org/spotlights/illuminating-the-south-china-seas-dark-fishing-fleets/>

² <https://www.asiaone.com/asia/philippines-politicians-sue-chinas-xi-icc>

The ASEAN Action of Plan on cooperation on fisheries 2016-2025 highlighted the importance of fisheries in the South China Sea as: –Fisheries is an important sector within ASEAN, contributes across the 3 pillars of the ASEAN communities||; –main source of protein for the population of ASEAN MS, important role in national and regional economies as livelihood support for millions of the region's poor||; –critical to ASEAN food security and major focus of regional cooperation||.

The South China Sea disputes are known to be complicating: one is over sovereignty, relating to the claims over the features in the Paracels and the Spratlys. On the other hand, there are overlapping claims over the maritime zones under international law, relating to sovereign rights over marine resources as hydrocarbon and living resources as fish. China's U-line claim and its unilateral fishing ban make the South China Sea a troubled water. There are many incidents at sea, fishermen are detained and their fishing vessels are captured, burned or/and sank.

2. Fisheries cooperation: Legal framework

There is an international legal framework for cooperation on fisheries.

- First, the duty to cooperate is provided in the United Nations Convention of the Law of the Sea 1982³ and applicable in different maritime zones, from international waters (the Area, high sea) to enclosed or semi-enclosed seas and different fields as marine environment, scientific research...The preamble of the

–constitution of the Ocean|| highlights spirit of understanding and cooperation and this Convention aims to contribution to –the strengthening of peace, security, cooperation||. Those are the provisions relating to cooperation between States in conserving and managing living resources.

+ In Article 63 and 64 UNCLOS, the coastal States and high seas fishing States are required to cooperate directly or through the appropriate existing international organizations to conserve and manage highly migratory fish stocks (as in the Annex 1 of UNCLOS).

+ In Part VII (High Seas), Art. 118:

–Article 118: Cooperation of States in the conservation and management of living resources

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall

enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish sub-regional or regional fisheries organizations to this end||.

+ In Part IX (Enclosed or semi-enclosed seas)

Art. 123: –Article 123: Cooperation in Semi-Enclosed Seas (Part IX)

–States bordering an enclosed or semi-enclosed sea should cooperate with each other and with relevant international organizations respect to:

(i) Conservation and management of living resources

(ii) protection and preservation of the marine environment

(iii) marine scientific research||

- Second: The agreement for the implementation of the provisions of the United Nations convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (abbr. UNFSA 1995)⁴. This Agreement is to –improve cooperation between states|| to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks. (Preamble of the UNFSA 1995).

³ Most of South China Sea coastal states are

members of the UNCLOS 1982.

⁴Membership of 1995 UNFSA: Indonesia,
Philippines, Thái Lan, Việt Nam, Trung Quốc

The UNFSA 1995 is a forum for

international cooperation and favor regional fishery management organization or arrangement (RFMO/A) as a preferred mechanism for States to pursue cooperation in the conservation and management of straddling fish stocks and highly migratory fish stocks.⁵ There are different articles covering cooperation between States, such as: cooperation for the optimum utilization of highly migratory fish, by consultations, by becoming member of RFMO/A or by establishing a RFMO/A⁶.

⁵ Andre Tahindro, Sustainable Fisheries: the legal regime of the 1995 United Nations Fish Stocks Agreement and its contribution to subsequent developments promoting Sustainable fisheries, Chapter 15, Legal order in the world, Brill: 2018.

⁶ Part II: Conservation and management of straddling fish stocks and highly migratory fish stocks,

Art 7.1.b. –with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region **shall cooperate, either directly or through the appropriate mechanisms for cooperation** provided for in Part III, with a view to ensuring conservation and promoting the objective of **optimum utilization of such stocks** throughout the region, both within and beyond the areas under national jurisdiction||

2. – Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory

fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have **a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks**”

3. –In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures **within a reasonable period of time**||.

Part III: Mechanisms for international cooperation between straddling fish stocks and highly migratory fish stocks.

Art 8.1: –1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, **pursue cooperation** in relation to straddling fish stocks and highly migratory fish stocks either **directly or through appropriate sub-regional or regional fisheries management organizations or arrangements**, taking into account the specific characteristics of the sub- region or region, to ensure effective conservation and management of such stocks||

Art 8.2. cooperation by consultations

Art 8.3. cooperation by becoming member of regional fisheries management organization

–States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by **becoming members of such organization or participants in such arrangement**, or by **agreeing to apply the conservation and management measures established by such organization or arrangement.**||

Art 8.5: cooperation by establishing a RFMO

–Where there is no sub-regional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish

- Third, the Convention on Biological Diversity 1992 does not cover directly fisheries. However, the Nagoya COP 2010 has adopted Aichi target, including Target 6: –By 2020 all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem based approaches, so that overfishing is avoided, recovery plans and measures

stock, relevant coastal States and States fishing on the high seas for such stock in the sub-region or region **shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock** and shall participate in the work of the organization or arrangement||.

Art 13: –States **shall cooperate to strengthen existing sub-regional and regional fisheries management organizations and arrangements** in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks||.

Art 20: international cooperation in enforcement

–States **shall cooperate**, either directly or through sub-regional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of sub-regional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Art 25: Forms of cooperation with developing states

Art 26: Cooperate to establish special funds to assist developing States in the implementation of this UNFSA

Art 27: Cooperate in order to prevent dispute

are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits||.

There are also fisheries –soft law|| without legally binding, but universally adopted as FAO guidelines and documents. The Code of Conduct of responsible fisheries 1995⁷ adopted by more than 170 members of the FAO, the Code is entirely voluntary, a single, consistent, non-mandatory set of guidelines for the management and development of fisheries. One of objective of this Code is: –facilitate and promote technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development;|| (article 2.e). art 7.3.4: international cooperation and coordination in all matters related in fisheries, including information gathering...

At the regional level, ASEAN member states adopted different documents on fisheries cooperation which are non-binding force.

- In the Declaration on the Conduct of Parties in the South China Sea 2002 and the Guideline for the

⁷ <http://www.fao.org/3/v9878e/V9878E.pdf> ; <https://thefishsite.com/articles/twenty-years-of-the-fao-code-of-conduct-for-responsible-fisheries>

implementation of the DOC 2011 fisheries is not mentioned explicitly in the DOC 2002 but may be considered as a cooperative activity

+ Paragraph 6 DOC 2002:

–Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following: (a) marine environmental protection; (b) marine scientific research; (c) safety of navigation and communication at sea; (d) search and rescue operation; and (e) combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.||

+ Guideline for the implementation of the DOC 2011: –possible cooperative activities...||.

- There are other ASEAN documents covering cooperation on fisheries:

+ Strategic plan of action on ASEAN

cooperation on fisheries 2016-2020⁸

+ Resolution and Plan of Action on sustainable fisheries for food security for the ASEAN region towards 2020 (RES & POA)⁹.

–8. Foster cooperation among ASEAN MC and with international and regional organizations in combating IUUF

16. Promote cooperation among Member Countries and with international and regional organizations in encouraging responsible aquaculture practices through joint research, technology transfer and human resource development.

This Plan is adopted to be used as a guideline for sustainable fisheries, including promoting cooperation in fisheries management, marine fisheries, aquaculture, fish trade.

+ ASEAN guidelines for preventing the entry of fish and fisheries products from IUU fishing activities into the supply chain 2015 (in the framework of SEADFEC)¹⁰

3. Current situation of fisheries cooperation in the South China Sea

In the region, there is a small state practice on fisheries cooperation. At the

⁸ <https://asean.org/wp-content/uploads/2016/10/Strategic-Plan-of-Action-on-ASEAN-Cooperation-in-Fisheries->

<http://www.seafdec.org/download/resolution-and-plan-of-action-2011/>

¹⁰ https://www.asean.org/wp-content/uploads/images/2015/November/A_MAF/App%209%20-%20ASEAN%20Guidelines%20IUU%20SSO_M36th%20AMAF%20final.pdf

bilateral level, China and Viet Nam signed Fishery Agreement in the Gulf of Tonkin in December 2000, separately and in the same day with the Agreement on Delimitation in the Gulf of Tonkin. China and Philippines signed the MOU on Fisheries cooperation relating on fishing, sea water aquaculture, and aquatic product processing in 2004. Other examples are China-Japan fisheries agreement in 1997, China-South Korea fisheries agreement in 2000...

At the multilateral level: many ASEAN member states are actively participating in the various RFMOs implementing regulations to combat IUUF: Commission for the Conservation of Southern Bluefin Tuna¹¹ (CCSBT), Indian Ocean Tuna Commission¹² (IOTC), Western and Central Pacific

Pacific Fisheries Commission¹³ Micronesia, Fiji, France, **Indonesia**, Japan,

¹¹ Membership: Australia, EU, Fishing Entity of Taiwan, **Indonesia**, Japan, Republic of Korea, New Zealand and South Africa.

¹² Membership: Australia, Bangladesh, **China**, Comoros, Eritrea, European Union, France, India, **Indonesia**, Islamic Republic of Iran, Japan, Kenya, Republic of Korea, Madagascar, **Malaysia**, Maldives, Mauritius, Mozambique, Sultanate of Oman, Pakistan, **Philippines**, Seychelles, Sierra Leone, Somalia, Sri Lanka, Republic of South Africa, Sudan, United Republic of Tanzania, **Thailand**, United Kingdom and Yemen.
<http://www.agriculture.gov.au/fisheries/international/iotc>

¹³ Members: Australia, **China**, Canada, Cook Islands, European Union, Federated States of

(WCPFC), Asia-Pacific fish commission¹⁴ (APFIC)

SEAFDEC (Southeast Asian Fisheries Development Center) was established in 1967. The mission of SEAFDEC considered and adopted by the Special Meeting of the SEAFDEC Council 2017:

–To promoted and facilitate concerted actions among the Member Countries to ensure the sustainability of fisheries and aquaculture in Southeast Asia||. The SEAFDEC is a effective multilateral institution, but focus on scientific research, particularly on the biology of pelagic resources. (All SCS claimants except China).

Until now, there is not an existing regional or sub-regional fishery management organization, exclusive only for the South China Sea. Many of fish stocks in the South China Sea are in

Kiribati, Republic of Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, **Philippines**, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu. Cooperating non-members: Ecuador, El Salvador, Nicaragua, Panama, Liberia, **Thailand**, **Viet Nam**.

¹⁴ APFIC was established in 1948 by FAO. Current membership: Australia, Bangladesh, **Cambodia**, **China**, France, India, **Indonesia**, Japan, **Malaysia**, **Myanmar**, Nepal, New Zealand, Pakistan, **Philippines**, Republic of Korea, Sri Lanka, Timor Leste, **Thailand**, United Kingdom, United States of America, **Viet Nam**.

the list of highly migratory species as in the Annex I UNCLOS 1982: bigeye tuna, skipjack tuna, yellowfin tuna, frigate mackerel... The fish stocks in the region are being depleted, meanwhile, UNCLOS 1982 and UNFSA 1995 provide the duty to cooperate by establishing a new

RFMO in order to conserve and manage highly migratory species. So that, establishing a RFMO may be an option for coastal states in this region to think about and a way for promoting cooperation on fisheries./.

DEVELOPMENT COURSE OF CONFLICT ON SOUTH CHINA SEA CHALLENGE AND THREATS

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Nowadays, the situation of South China Sea (SCS) has the most significant differences compared to the situation not long ago. The conflict in the area initially was of regional matter, which covered China and neighboring nations in the SCS. However, recently, the drastic changes have occurred in this region, showing the worrisome degree of its instability of the future and the extend of its danger to the global security. The two facts we would like to describe here and all analysts' forecast on the future development directions in this region, on the possible compromises based on the proximity of the cultures and psychologies of disputants are completely wrong. The future development directions are in fact very different from their assumptions.

1. The first fact, its impact can be felt now and is increasing in the future, was the award by the Permanent Court of Arbitration the Hague (PCA). As we all know already, the PCA made the ruling in July 2016, not recognizing the legal base of China to 80% of the SCS territorial waters, rejecting the —historic rights|| which China used as a base to

build the justification of the legitimacy of their actions. The PCA also ruled that that the only way to legally resolve the conflict could only be a path based on the current international laws. Although China and some other countries, including Russia, did not recognize the PCA award, because the ruling is not totally objective, the legal bases and the basic principle for the judgement, as well as the well-known UNCLOS 1982, are the only foundation based on the international law to resolve the conflict.

It is obvious that if the peaceful resolution process is taking place, it will not be based on the historic rights, but only on current international law, and this will immediately simplify the process of conflict resolution.

2. Another event not less important, or even more important, leading to the reality that all structure of the current conflict has changed drastically in quality, and the forecasts of the analysts have not been realized on the actual transformation of the US into the official disputants of the conflict. This has not happened in instance. I still clearly recall that at the meetings with ASEAN leaders in early 2000, the US officials stated that they should seek to compromise with China, that the US had no intention to take part in resolving the existing conflicts between China and

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ASEAN countries in the South China Sea. Moreover, this serious conflict arose between the US and ASEAN on Myanmar perspective to hold the chairmanship of the association in 2006 regulated on the rotation procedure endorsed by ASEAN. With regard to this matter, Washington DC accused the military regime governing the country dictatorial and terrorist, suppressing the rights of freedom and democracy, and the US made a series of warnings, including direct threats. The US pointed out that such a decision would complicate seriously the approach and relations between the US and ASEAN. As an act in confirming this, in May 2005, US Secretary of States Condoleezza Rice boycotted the annual meeting of the ASEAN Regional Security Forum (ARF). Then came a new US threat that if ASEAN retain its stance and the Myanmar military government holds the ASEAN chairmanship, the US would refuse to support ASEAN's economy.

However, this hard approach to ASEAN changed in 2009 when US Secretary of States Hillary Clinton attended the ASEAN Ministers' Conference and Summit of the ASEAN Regional Security Forum on Phuket Island, Thailand. At that time, during the Press Conference, the US Secretary of States firmly stated that the US –returning to Southeast Asia|. The US also announced its intention to open a permanent representative to ASEAN, headed by a permanent ambassador.

After the meeting, the first important step was taken for the new UU-ASEAN relationship, a document signed on the US joining the Treaty of Amity and Cooperation in Southeast Asia, which was an unwritten and necessary rule for countries wishing for a closer relationship with ASEAN.

The main reason why the Americans were forced to change their approach to ASEAN is that the policy of expansion is, in a way, increasingly independent, by China on the islands and territorial waters in the SCS. China claims about 80 % of its waters to be its territory, started to build artificial islands,, militarizing islands. Their patrol boats started to attack local fishermen, those people in history always caught fish in the waters that China claims to be theirs. Therefore, the situation in the region becomes much more tense, and the Americans started intervening in the process of events.

At the moment, the US is taking active involvement in the conflict in the SCS, with their ships crossing the areas China claimed to be closed to other ships in the area of artificial island built by China in recent years, putting the world at risk of a direct clash between the two powers. American politicians are making increasing harsh statements on China's action in the SCS. For example, at the annual Shangri-La Dialogue on politics and military issues that just ended in Singapore, acting US Secretary of

Defense Mr. Patrick Shanahan said that the US would no longer –look around|| China’s actions in Asia. He said Washington DC –always warned Beijing that the US was opposed to militarizing artificial islands in disputed waters||. Besides, Mr. Shanahan also accused China of sabotaging the maritime freedom in the SCS. China’s reaction to the statements is very tough. Chinese admiral Shao Yuanming also spoke at Shangri-La –We put the necessary defensive facilities in line with international on the islands and reefs of the SCS. This is the absolute right of a sovereign state and a necessary response to provocative actions–.

The confrontation between the US and China in the SCS has changed the security structure of the whole region and turned the perpetual conflict of neighboring countries, for a long time less interested in the world, into the confrontation of modern super powers. And interestingly, events have occurred as if they were copied from the political textbooks, when a conflict arose on a basis of small, least-known contradictions. Then, if it didn’t stop, it developed with its own logic, and eventually it draws into the conflict all new countries and people. The conflict in the SCS had experienced some levels of bilateral disputes and clashes between China and Viet Nam over the little-known islands and coral reefs, then it moved to regional one, between China and ASEAN countries, mainly Viet Nam,

Malaysia, the Philippines, Brunei and Indonesia later. The conflict has developed into current level after 2009, as we have noted, China declared nearly 80% SCS territory to be theirs, and thus causing striking response from ASEAN countries.

Currently, with the involvement of Americans in disrupted in the SCS, the conflict has no longer been regional and had turned into a global one, therefore threatening peace and security on only in the SCS, but the whole world. In fact, any military clash between US and Chinese forces could cause a major war among the world’s leading powers. Such threat may occur very often, cause over and over again, either US planes fly over Chinese anti-aircraft guns in the area China claims to be restricted areas, or a US destroyer would pass over the shooting range of Chinese guns in the artificial areas that China also claims to be forbidden areas. Just looking at the latest data in May 2019, 2 US navy vessels cruised near the Spratly Islands in the SCS, 2 US destroyers Preble and Chung Hoon passed in the 12 miles areas, from the Gaven and Johnson Reefs. Chief Commander of the US 7th Fleet, Admiral C. Doss, had claimed that the appropriate US ship’s routes aimed to challenge China’s excessive maritime claims and also to maintain the access the maritime routes according to international laws. Earlier, at the end of May, 2018, the US destroyer Higgins and Missile cruiser Entity also crossed the 12

nautical miles areas near the disputed islands in the SCS. In this matter, the Ministry of Foreign Affairs of China stated that Beijing was forced to send its vessels and planes in to request the US vessels to leave the territorial area. The ministry also the US to stop such actions. In response, the US B-52 Strat fortress strategic bomber had publicly challenged by flying near disputed islands in the SCS. According to the Pacific Air Forces, subordinate to Headquarters of the US Air Force. The plane flew from the Anderson air base on Guam Island on March, 04.

Chinese Defense Minister Wei Fenghe declared at the intergovernmental the Shangri-La Dialogue Security Forum held in Singapore that China strongly condemned all hostile acts against its security.

We have seen that the current situation leads to the context that any unauthorized or unexplained shooting from one of the claimants in the conflict may change everything completely. The tension in the region has been further increased due to the fact that the military confrontations in the SCS are normally in parallel with the trade war, when US President D. Trump introduced a series of taxes on Chinese goods, and in response, Beijing imposed taxes on US goods. The American obviously are on the path to making the situation more tensed, and nowadays there have been announcement that US Senators from

both Parties have prepared a bill that would force the US Government to punish the Chinese individuals and legal entities who got involved in illegal and dangerous activities in the SCS and East China Sea.

That bill, according to South China Morning Post, a Chinese newspaper, would require the US Secretary of States to submit every six month to the Congress a report showing the activities of any Chinese individuals or companies participating in construction or development projects in the SCS, where there are disputes with ASEAN countries. The activities in the proposed bill include land reclamation, island construction, lighthouse building, and mobile information infrastructures.

The political and cultural competitions are in increase as Beijing and Washington DC call on countries in the region to seek their support. I have to say here that the US soft power, based on cultural myth, is spread well about the role of the US mission in the world, is clearly prevailing the Chinese legend of historical and cultural communities, the ability of better mutual understanding and resolve existing conflicts by peaceful means. The emergence of the Americans with energy, aggression, strong cultural myths have changed almost everything. The counterbalance to China's political and cultural dominance has pushed diverse and modern forces in Southeast

Asia countries to start promoting the spread of American culture, as if preparing for national communities to create a closer relation to the US. Right in front of our eyes, under the influence of this conflict and other forces out of ASEAN countries, there was a certain disruption in ASEAN unity, as some countries tend to lean towards their ally - the US, while some others - to China. In this regard, ASEAN now faces the most important task of preserving its unity despite all existing challenges. However it is still a question how to achieve it. In case of the Philippines, it could agree to recognize the status quo and seek cooperation with China based on this ground. In contrary, Viet Nam, like Indonesia and Malaysia, all have legal grounds for claiming disputed

water in the SCS, clearly disagree with this approach. Therefore, the development of the region's future situation, despite all possible concessions of the countries in the region, remains dangerously unstable for Southeast Asia nations, and like a dark cloud, it just waits for the right time to turn the world around into a dangerous and uncontrollable element.

In such an increasing unstable environment, Russia's stance is very important, whereby Russia explicitly declares that all disputes in the SCS should be resolved by peaceful measures based on current international laws. It undoubtedly would be a long, hard journey, but that is the only way to maintain peace and relative stability in the region.

THE EURASIAN PERSPECTIVE OF ASEAN SECURITY MULTILATERALISM AND ITS IMPLICATIONS FOR THE SOUTH CHINA SEA ISSUE

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*Anastasia Efremova***

Abstract. The ASEAN-led cooperative security system in the Asia-Pacific region, exemplified by the multilateral dialogue platforms the ASEAN Regional Forum (the ARF), the ASEAN Defense Ministers Meeting Plus Eight (ADMM+8) and the East Asia Summit (the EAS), is developing in a similar direction with the evolution of the South China Sea issue. In both cases, the influence of the mega-projects – the US-led Indo-Pacific Region and the China-led Belt and Road Initiative (the BRI) are exerting increasing influence. The puzzle is why the adaption of the ARF, the ADMM+8 and the EAS to the BRI can keep the South China Sea issue in a manageable state. Outlining directions of cooperation in Eurasia as the function of the experience obtained by the ARF, the ADMM+8 and the EAS in the Asia-Pacific region, the authors argue that the ASEAN-led security multilateralism

should shape the Eurasian milieu conducive to the peaceful evolution of

the South China Sea issue rather than directly influence upon the issue.

Key words. ASEAN, ARF, ADMM+8, EAS, South China Sea, Indo-Pacific region, Belt and Road Initiative, security, Eurasia.

The well-known quotation of George Box –All models are wrong, but some are useful¹|| can be rightfully applied to the South China Sea issue. On the one hand, all approaches to the issue are wrong, as it will remain a hot topic of the Asia-Pacific geopolitics irrespective of the on-going geopolitical circumstances. On the other hand, some approaches are useful as they allow elaborating on possibilities to keep the issue manageable in the short-term perspective, being aware that the instruments should be permanently changed, or at least upgraded.

Among these instruments, the ASEAN-led cooperative security, exemplified by the dialogue platforms ASEAN Regional Forum (the ARF),

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¹ Box G.E.P., Hunter W., Hunter S. (2005) Statistics for Experimenters. John Wiley & Sons. New Jersey. P. 440.

ASEAN Defense Ministers Meeting Plus Eight (the ADMM+8) and East Asia Summit (the EAS) are of particular importance. Having been unable to resolve the issue after the advent of this system a quarter a century ago, at present they can be revitalized by enlarging their scope from the Asia-Pacific to the Eurasian perspective as the Chinese mega-strategy Belt and Road Initiative gains momentum.

Starting from a review of the ASEAN-led multilateral dialogue platforms, the paper proceeds to specifying the present state of the South China Sea issue to finally turn to outlining the contours of the new approach to the South China Sea issue from the ASEAN-centric institutional perspective. The conclusion summarizes the foregoing analysis

The ASEAN-led Cooperative Security: Mounting Challenges

The interplay of the ARF, the ADMM + 8 and the EAS is known as the Asia-Pacific cooperative security system which provides venues to discuss the Asia-Pacific security challenges including the South China Sea issue. Stating that the results of these discussions have been unsatisfactory so far, the challenges which this system is currently encountering are of particular importance.

First, these negotiations have demonstrated insufficient capacity to both resolve the regional security challenges and harmonize the relations

between Asia-Pacific major powers, mainly China, the US, India and Japan. More importantly, at the meetings of the EAS, a platform tasked to make decisions that would shape the strategic landscape of the Asia-Pacific region, China and the US are apparently reluctant to develop the common vision of the regional architecture. Washington prefers to approach the problems within the format of its hub-and-spoke system while Beijing – at the bilateral level. The participants discuss issues irrelevant to the geographical coverage of ASEAN-led cooperative security system simultaneously paying little attention to Northeast Asia.

Second, these multilateral dialogue platforms are internally imbalanced. While the ARF is too geographically expanded, which hampers the harmonization of interests of its participants, most member states of the ADMM+8 and the EAS develop close cooperation with the US, which generates China's concerns. In the years to come, the recurrences of what happened at the Manila session of the ADMM+8, when the negotiating parties did not adopt the final declaration owing to Sino-US differences on the South China Sea issue², are likely to take place.

² Parameswaran P. (2015) China Blocked ASEAN Defense Meeting Pact Amid South China Sea Fears: US Official. The Diplomat. 4 November. URL: // <https://thediplomat.com/2015/11/china->

Third, the conceptual foundation of the ARF activity requires improvement. According to the ARF concept, the discussions focus on three directions: confidence-building confidence, preventive diplomacy and creating a conflict-resolution mechanism. However, ASEAN, as the –driving force|| of the ARF, was unable to specify the difference between confidence-building measures and preventive diplomacy. This further undermined the credibility of the association as the agenda-setter of the Asia-Pacific cooperative security system.

ASEAN's efforts to develop this system are not accompanied by a secure economic foundation. The Regional Comprehensive Economic Partnership (RCEP) project, launched within the framework of the EAS, does not include the US and Russia, while the negotiations are far from completed.

These circumstances generate increasing disappointment at the ASEAN-led security multilateralism. The criticism of ASEAN as its –driving force|| is growing. China is dissatisfied with the American policy to reconsider the parameters of the attempts made by the current US administration at these meetings to reconsider the parameters of resolving the South China Sea issue.

India, Japan and the US disapprove of ASEAN's principles of cooperation – the preference to move too slowly and voluntary rather than obligatory implementation of the practically-oriented projects.

Aware of these developments, ASEAN is taking steps aimed at strengthening its positions in the ARF, ADMM+8 and the EAS. Although ASEAN is not planning to revise its principles of cooperation, its bid to strengthen its positions as the driving force of the Asia-Pacific political-security multilateralism, as well as to offer its partners a consolidating agenda of cooperation, is perfectly clear. Specifically, ASEAN experts concentrate on the following narratives.

One of the key points concerns ASEAN's relationship with the US and China. As the priorities of the D. Trump administration center on the Middle East, China, Russia and North Korea, the ASEAN states fear that Southeast Asia may lose in significance. The US withdrawal from the Trans-Pacific Partnership signals a decrease in US interest in multilateral cooperation in the Asia-Pacific region, including in the Asia-centric dialogue platforms³. The US-China trade war as a result of D. Trump's protectionist stance generates

[blocked-asia-defense-meeting-pact-amid-south-china-sea-fears-us-official/](https://www.asia-focus.com/news/blocked-asia-defense-meeting-pact-amid-south-china-sea-fears-us-official/)

³Tang Siew Mun. (2017) Uncertainties Ahead, but No Cause for Panic. // ASEAN Focus. Issue 2. P. 4-5.

concerns in the ASEAN political and expert communities⁴.

An important part of ASEAN's current political narrative is the evolution of the US-led Asia-Pacific alliances. Prospects for increased cooperation between Washington and Tokyo, as well as between Tokyo and Canberra as the northern and southern flanks of the Asia-Pacific hub-and-spoke system may well decrease the manageability of the regional politics with potentially negative implications for ASEAN.

In the present relations with China, the main question asked by experts from Southeast Asian countries is whether Beijing will adhere to international rules as the Belt and Road Initiative further develops. With sobering expectations for the economic aftereffects of the BRI⁵, the Southeast Asian elites were disillusioned about China's readiness to resolve controversies in international legal venues, as Beijing's reaction on the PCA verdict amply demonstrated.

Realizing that the PRC's GDP is several times larger than the aggregate

GDP of ten ASEAN countries and will further strengthen as the BRI develops, the ASEAN member states are not sure that China will take into account their concerns. The more so since the Sino-Indian differences over the BRI (fueled by India's shift from the Look East to the Act East policy and China's decision intensified as China changed the India-Bangladesh-Myanmar-China economic corridor to China-Myanmar economic corridor⁶) may well be projected into Southeast Asia. If so, while ASEAN is now —trapped|| between the United States and China on geopolitical issues, the same aftereffect is possible in its relations with from the geo-economic perspective.

If the present trends continue, both the Indo-Pacific region and the Belt and Road Initiative can marginalize the ASEAN-led multilateral security venues.

As the Indo-Pacific region proceeds, given its politicization and assertiveness, the Asia-Pacific international milieu will be only deteriorating. If so, ASEAN will find it increasingly difficult to perform the function of the driver of the Asia-Pacific cooperative security as a stable

⁴ (2019) Spotlight: The US-China Trade War and Impacts on ASEAN. // ASEAN Focus. Issue 1. P. 17-31.

⁵ Hiep L.H. The Belt and Road Initiative in Viet Nam: Challenges and Prospects // ISEAS Yusof Ishak Institute Perspective. March 29, 2018. No 18. URL: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_18@50.pdf

⁶ Nan Lwin. (2018) Gov't Signs MoU with Beijing to Build China-Myanmar Economic Corridor. The Irrawaddy. 13 September. URL: <https://www.irrawaddy.com/news/burma/govt-signs-mou-beijing-build-china-myanmar-economic-corridor.html>

regional milieu is among the key prerequisites for coping with this task.

In its turn, the Belt and Road Initiative can be the foundation for the Sino-centric system of common security. Conceptually, China links two terms – development and security. Stemming from the former, China criticizes the US alliances in the Asia-Pacific region – by developing relations with its partners, Washington makes Beijing divert its resources from economy to security, because of which China cannot use its economic possibilities to the greatest advantage of its partners. Regarding the latter, China criticizes the ASEAN-led multilateral dialogue platforms which have been unable to contribute to resolving urgent security challenges whose disruptive potential increases. With this in view, China positions itself as the real, rather than declaratory, security provider as it offers its partners possibilities to maintain long-term and sustainable development and, by implication, strengthen their security (understood in economic rather than military terms)⁷.

⁷ Kuik Cheng-Chwee (2015) An Emerging 3rd Pillar in Asian Architecture? AIIB and Other China-Led Initiatives. Asia-Pacific Bulletin. N. 305. URL: <https://www.eastwestcenter.org/publications/emerging-3rd-pillar-in-asian-architecture-aiib-and-other-china-led-initiatives>

Against the rise of the global projects, the ASEAN-led instructions have been upgraded from the theoretical and institutional perspective. As before, it is unclear where the line between the confidence-building measures and the preventive diplomacy lies. ASEAN's principles of cooperation are the same as they were a quarter of century ago. The conflict-resolution mechanism has not been elaborated on. The afore-mentioned questions are just few that require ASEAN's urgent attention.

On the whole, the reputation of the ARF, the ADMM+8 and the EAS is suffering. The negotiations on the regional security proceed year after year, but are not accompanied by tangible results. If left unattended, in the future these venues are likely to remain just tribunes from which the Asia-Pacific actors will voice their positions on international issues.

The South China Sea: between the US' and the PRC'S Mega-Projects

Since the establishment of the ASEAN-led cooperative security system, the South China Sea issue has undergone a profound transformation. While initially, it focused upon the contradictions between individual claimants, in the late 1990s this shifted to China-ASEAN dialogue on the Code on Conduct of Parties in the South China Sea (COC), which resulted in the adoption of the Declaration on Conduct

of Parties in the South China Sea (DOC) in 2002. After the US declared its pivot (later on marked as rebalancing) to the Asia-Pacific region, the South China Sea became a focal point of the China-US contradictions. At present, as the mega-projects Indo-Pacific Region and Belt and Road Initiative gain momentum, the specificity of the issue can be described as follows.

Located in the epicenter of the emerging Indo-Pacific region, the South China Sea is affected by the US attempt to prevent a revision of the liberal international order. Formed after the end of the Second World War, the system of American-centered alliances and partnerships was adapted to the realities of the post-bipolar world. American alliances ensured international stability, which has become one of the key factors behind the development of the NIE of the –first|| and –second|| wave. Japan would hardly have become the leader of the –flying geese model|| if its East Asian partners had been concerned about the revival of Japanese militarism (which the military alliance with the US efficiently prevented), and Tokyo had not delegated to Washington the task to ensure its defense. The United States provided non-communist countries in East Asia with preferential access to their markets and technologies, even in spite of a growing trade deficit. According to G. Ikenberry, "East Asian countries export goods to America and America exports

security to the region"⁸. With this in view, the US "liberal leadership" was beneficial to all regional players, and none of them attempted to challenge it.

In the first post-bipolar years, the situation favorable to the United States, despite the reduction of its military presence in the Asia-Pacific region and the search for a consolidating agenda in relations with its partners, did not undergo radical changes. Having established APEC, Washington, in fact, blocked M. Mahathir's proposals on the formation of East Asian multilateral economic dialogue platforms. This ensured the Asia-Pacific elites that the –old normal|| would continue. As a result, despite the reputational losses incurred by two financial and economic crises - the Asian of 1997–1998 and the global of 2008–2009 - as well as growing problems in relations with its East Asian partners on the bilateral and multilateral tracks - Washington did not perform an intellectual revision of its Asia-Pacific strategy. Later on, under the Trump administration, the US put forward the Indo-Pacific narrative along with the US' inability to add substance to the Obama administration's policy of –rebalancing||. The American withdrawal from the TPP, trade wars with China, anti-North Korean tweet diplomacy and the de facto

⁸Ikenberry G.J. (2004) American Hegemony and East Asian Order. *Australian Journal of International Affairs*. Vol. 58. N. 3. P. 353-367. P. 353.

recognition of the ineffectiveness of the previous US and NATO policies in Afghanistan demonstrated that Washington's resources to shape the Asia-Pacific economic, political and security landscape are depleting.

Specifically, the implications of the Indo-Pacific narrative for the South China Sea can be clearly negative. As the Quadrilateral Defense Cooperation (the Quad) remains the only institutional framework of the Indo-Pacific Region, the US allies and India, both individually and collectively, can join the US in the patrolling of the South China Sea waters as part of the FONOP (Freedom of Navigation Operations) framework⁹. As China will hardly leave this unattended, the increasing militarization of the South China Sea becomes a likely scenario.

The evolution of the South China Sea issue is influenced upon by the Chinese mega-strategy the Belt and Road Initiative. China links it with the nascent Sino-centric security system based upon the BRI. Providing its partners with resources for sustainable development, debt trap, Beijing is highly likely to raise the question of their concessions on political issues, among which the South

China Sea issue comes first. This logic is relevant to the evolution of relations between China and the Philippines under the Duterte administration, as Manila for a relatively long time tried to dissociate itself from any contradictions with Beijing on the South China Sea issue changing its tone only recently¹⁰.

The example of Viet Nam is no less representative. Although the SRV has its reservations on the BRI and tries to balance China's economic influence by developing cooperation with Japan and other partners, China increases its presence in the neighboring Laos and Cambodia by means of investing in their infrastructure¹¹.

This –enveloping strategy|| underpinned by the PRC's rhetoric on the inclusive development, narrows the spectrum of Viet Nam's policy choices in relation to the South China Sea issue.

The institutions and ideas to shape the issue have been exhausted. To start with, the Philippines' case in the Permanent Court of Arbitration, initiated in 2013, was politically

⁹ Valencia M. (2017) 'Quad' cooperation in the South China Sea? The Japan Times. 14 December. URL: <https://www.japantimes.co.jp/opinion/2017/12/14/commentary/japan-commentary/quad-cooperation-south-china-sea/#.XQ-5VzjVKM8>

¹⁰ (2019) Philippines' Duterte warns over South China Sea 'flashpoint'. France 24. 31 May. URL: <https://www.france24.com/en/20190531-philippines-duterte-warns-over-south-china-sea-flashpoint>

¹¹ Loveard K. (2019) Little Laos Struggles to Swallow Chinese Debt. UCA News. 26 March. URL: <https://www.ucanews.com/news/little-laos-struggles-to-swallow-chinese-debt/84781>

motivated and aimed to disadvantage China. The PRC's refusal to accept the PCA decision meant completing the vicious circle, as the international law as a mechanism to influence upon the claiming parties demonstrated its ineffectiveness. At the Asia-Pacific level, the inability of institutions to achieve satisfactory results became clear at the Brunei session of the ASEAN Regional Forum in 1995. Since then, the ASEAN-led security multilateralism has been largely absent from the negotiating process between China and ASEAN on both the COC and DOC.

Lastly but importantly, the present negotiations of the COC do not include either the regional expert networks like the Council for Security and Cooperation in the Asia-Pacific or the regional brightest intellectuals like Mark Valencia or Carlyle Thayer. The academic conferences focusing upon the South China Sea issue are conspicuously unable to offer novel ideas compared with those discussed a decade or two ago.

At the same time, the South China Sea issue is moving global. The SLOCs through this maritime area allow the passage of increasing volumes of international trade. The present resource nationalism galvanizes the interest to develop the energy and food resources of the South China Sea waters, which influences upon the global economic and ecological trends. The intensification of

the US-China contradictions in the South China Sea suggests that the issue has outgrown its previous dimension while the projects Indo-Pacific Region and the Belt and Road Initiative may further galvanize it.

This globalization of the issue coupled with the deficiencies of regional and global mechanisms to keep it manageable requires elaborating on a new approach to the South China Sea contradictions based upon nuanced understanding of what can and cannot be achieved.

Contours of a New Approach

In the present circumstances, a logical question is whether the ASEAN-led multilateral dialogue platforms are necessary while they remain far from effectively performing its functions. The answer is affirmative for several reasons.

The first reason is *institutional*. The ARF, the ADMM+8 and the EAS operate on the basis of neutrality and inclusiveness. In case they disappear, possibilities to discuss this issue will be limited to only the American-led alliances (likely strengthened by the Quadrilateral Defense Cooperation as part of the Indo-Pacific narrative) and the afore-mentioned bilateral track of negotiations that China prefers.

More importantly, these dialogue platforms are attended by many actors, while the discussions themselves embrace three levels: the diplomatic, the

military, and the highest. This allows making the negotiations of the South China Sea issue neutral and comprehensive.

The second reason has the *functional* dimension. Negotiating the issue at the ASEAN-led multilateral venues, their participants expand cooperation in –technical|| spheres with the focus on anti-piracy exercises, humanitarian assistance and disaster relief (HADR), environmental issues etc.

The third reason is *reputational*. The ASEAN-led multilateral dialogue platforms were established to a considerable extent in order to shape the evolution of the South China Sea issue in a peaceful way. The hypothetical disappearance of this issue from the ARF, the ADMM+8 or the EAS agenda would severely damage the Asia-Pacific cooperative security system, as well as the reputation of ASEAN as its coordinator. The much-discussed advent of the Asian Century would be problematic without ASEAN and its negotiating venues.

Arguably, the South China Sea issue can re-energize the ASEAN-led multilateral dialogue platforms. While initially the ASEAN Regional Forum as the foundation of the ASEAN-led cooperative security system aimed to find ways to resolve the issue itself, later on the task shifted to forming the international milieu conducive to keeping the issue manageable as an

essential prerequisite for its peaceful evolution.

The rise of confrontation in the global economy, politics and security incentivizes ASEAN to participate in forming –the geopolitical milieu around the Asia-Pacific international milieu|| by means of adapting its multilateral dialogue platforms to the forthcoming Eurasian security system.

Summing up the reasons behind integrating the ARF, the ADMM+8 and the EAS into the Eurasian security system, their functional, institutional and practical aftereffects can be distinguished.

In the functional realm, of note is the operational experience of the ARF, the ADMM+8 and the EAS, because of which real possibilities and constraints of cooperation are more or less clear. At the initial approximation, the emphasis should be placed on joint actions to relieve the consequences of national disasters and technological accidents, restore the economic life in disaster-affected countries etc. As the results of the ASEAN-led cooperative security system demonstrates, this can provide a foundation for more nuanced discussions of security challenges and the subsequent implementation of timely initiatives. At the same time, to extensively discuss politically-sensitive issues related to national sovereignty is not expedient.

The institutional component of its experience is no less important. The discussions are held among the top-level diplomats and military figures, as well as among heads of states and governments. Although in reality this is not always the case, ideally, the ARF and the ADMM+8 are to elaborate on approaches to the regional security challenges while the EAS is to make decisions shaping the evolution of the situation at the macro-level. The mechanism of vertical (within each of these venues) and horizontal (between them) communication is already in place.

The third - practical - dimension is close to the functional, but deserves mentioning separately. The forthcoming Eurasian security system should be comprehensive and inclusive. On the one hand, this means all-embracing, without dividing lines between countries. In this specific respect, of particular note is the participation of the DPRK in the ARF. On the other hand, the ARF, the ADMM+8 and the EAS include the US. By fostering relations with Washington

at the operational and strategic levels,

this can prevent the institutionalization of the current global confrontation modeled on the Cold War as the Eurasian security system takes shape¹².

This system, underpinned by ASEAN-led multilateral dialogue platforms, can exert restraining influence on the South China Sea issue. The development of transport and logistics corridors can partially redirect the trade flows between Asia and Europe from SLOCs to land routes, and by means of this reduce the present China-US controversy over the freedom of navigation. More than that, cooperation can be extended to the Arctic where China plans to develop the Polar Silk Road¹³. While not resolving contradictions about the South China Sea issue, these factors will contribute to keeping the situation manageable.

Arguably, this aftereffect will be advantageous to all the parties with stakes in the South China Sea issue. China will not be apprehensive about the presumable pressure from the US and its allies (as well as about the project Indo-Pacific Region). ASEAN will define the initial parameters of this system, as well as shape its subsequent development. The other parties will be ensured in the

¹² Канаев Е. А., Шумкова В. А. Евразийские приоритеты асеаноцентричных диалоговых форматов по вопросам безопасности // Вестник Российского университета дружбы народов. Серия: Международные

отношения. 2017. Т. 17. № 3. С. 458-468. (Kanaev, E.A., Shumkova, V.A. (2017). ASEAN-Led Multilateral Security Dialogue: Eurasian Priorities. Vestnik RUDN. International Relations, 17 (3), 458—468. (in Russian))

¹³ For more detail, see: Kanaev E., Korolev A. (2018) Re-Energizing the Russia-ASEAN Relationship: the Eurasian Opportunity. // Asian Politics and Policy. Vol. 10. N. 4. P. 732- 751.

peaceful evolution in the South China Sea issue, as the Eurasian security system further develops.

If this scenario materializes, keeping the issue in a relatively manageable state becomes possible. But even under these circumstances, this approach needs to be adopted to the evolving situation both in the South China Sea and in the area all over the Eurasian continent.

Conclusion

The analysis of the South China Sea issue through the prism of the ASEAN-led institutional possibilities reveals several conclusions. Practice amply demonstrated that to resolve the South China Sea issue is impossible. The suggestions have been in overabundance, but their influence on the evolution of the issue remains minimal. With this understanding in mind, the conclusion that the maximum that can be achieved is to keep it in a manageable state seems to be reasonable and well-substantiated. More than that, even this scenario will almost certainly be short-living while the instruments to maintain this fragile stability should be constantly upgraded.

From the institutional perspective, the present specificity of the South China

Sea issue is its shift from multilateral dialogue formats to global mega-projects. As in the years to come, this paradigm is likely to continue, to adapt the ASEAN-led multilateralism to the project with the consolidating rather than the dividing potential becomes an important task.

Making its choice in favor of the cooperation in Eurasia, which is suggested by the Belt and Road Initiative, ASEAN can re-invigorate its presently stagnating multilateral dialogue formats the ARF, the ADMM+8 and the EAS. Arguably, this hybrid of China's agenda of Eurasian development and the experience of ASEAN-centric cooperative security system, while not resolving the South China Sea issue, can generate additional instruments to keep it in a relatively manageable state.

Along with the present de-institutionalisation of international politics, exemplified by a deepening crisis of global regulatory institutions, ASEAN-led multilateral dialogue platforms can move beyond a relatively narrow focus on the South China Sea issue to extend its valuable assets to the Eurasian continent. ASEAN's partners in Eurasia will welcome this.

CLOSING SPEECH

Jeanne Ellen Mirer *

Dear colleagues,

First of all, I would like to congratulate all of the participants on the success of today's conference. On behalf of IADL, I express my profound gratitude to all distinguished guests and participants for your active participation in the conference and sharing suggestions that can help resolve the conflicts in a peaceful manner. We have had a very effective working day with many presentations from various experts on the law of the sea from Japan, Philippines, Viet Nam and Russia. We also had a fruitful discussion among all the conference participants with lots of interesting and helpful ideas, including a proposal for the full demilitarization of the South China Sea. I believe these will be valuable contributions to the process of peaceful settlement of the SCS disputes.

In the first session of the conference, we obtained a clear picture of the situation in the SCS. We know that the situation continues to be a matter of concern not only for the region, but also for the international community as a whole. The land reclamation and

militarization acts in the SCS not only affect the peace and security of the region, but also affect the international

freedom of navigation as well as the

maritime environment. We recognized that the Philippine Government's foreign policy toward SCS disputes also potentially creates more tension and may make the search for a peaceful resolution of the dispute more difficult.

In session 2, we gathered great ideas and suggestions to contribute to calming down the situation and slowly settling the dispute in a peaceful way. These include developing effective maritime crisis management procedures, demilitarization of the occupied features in the SCS, full demilitarization of the South China Sea, strengthening fisheries cooperation in the SCS by establishing a regional fisheries management organization in the SCS, enhancing transparency of China's operation of maritime militia forces in the SCS and mobilizing any possible peaceful methods of settlement based on the UNCLOS and 2016 Arbitration Award. I believe these all are good suggestions that will help bring peace and security to the region and

*IADL President

need to be further seriously explored and taken into consideration by related Governments.

IADL, for many years, has called for the peaceful resolution of disputes in the South China Sea in accordance with international law and will continue to monitor the situation to ensure the region is moving toward peace and security. I therefore encourage all experts at this conference to go back to their respective countries and report the results to their governments for consideration. I also request IADL to post the conclusions of the conference on its website and bulletin to widen the impact of our work today.

While the COC is shaping up, we strongly urge parties to soon cease the illegal reclamation of artificial islands and stop the deployment of military equipment and vehicles and other acts of militarization which escalate tensions. We urge all concerned parties to start the process of trust building that will help preserve regional security and the environment.

IADL asks the concerned parties to respect and completely adhere to the Declaration of Conduct in the SCS (DOC) as well as to establish and implement the COC, which should be legally-binding and based on international law, including the 1982

United Nations Convention on Law of the Sea (UNCLOS). The code of conduct should include legal obligations of related parties to secure freedom of navigation and aviation in the South China Sea region. It should also require parties to resolve disputes by peaceful means on the basis of international law that prohibits the use of force or threat of force. SCS should be closely monitored so that we can timely raise our concerns and consultations. We should convene an early meeting to continuously assess the situation in SCS and discuss necessary subsequent actions.

Finally, I would like to extend my gratitude and thankfulness to our Russian host - the International Fund - the Way for Peace, especially President Irina Umnova, who spent significant time and energy working for peace in general and for this conference in particular. I also thank experts from Japan, the Philippines, Viet Nam and Russia for their presentations at the conference and I hope to have your further support in the future.

Thank you as well to all lawyers, legal experts and guests who participated in this conference. I hope to see you all in the next SCS conference with positive reports.