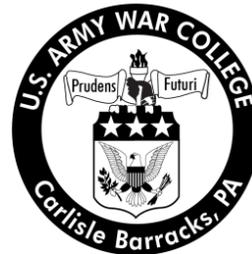


Challenges in the South China Sea: Opportunities Through ASEAN

by

Colonel Jeffrey A. Klein
United States Army



United States Army War College
Class of 2014

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REPORT DOCUMENTATION PAGE

Form Approved--OMB No. 0704-0188

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.**

1. REPORT DATE (DD-MM-YYYY) 15-04-2014		2. REPORT TYPE STRATEGY RESEARCH PROJECT		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Challenges in the South China Sea: Opportunities Through ASEAN				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Colonel Jeffrey A. Klein United States Army				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Professor Alan L. Orr Department of Military Strategy Planning and Operations				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College, 122 Forbes Avenue, Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Approved for Public Release. Distribution is Unlimited.					
13. SUPPLEMENTARY NOTES Word Count: 7765					
14. ABSTRACT This paper posits that the South China Sea (SCS) maritime dispute between an increasingly coercive China and the four Association of Southeast Asian Nations (ASEAN) claimants has reached a tipping point. First, ASEAN appears as unified as ever with its core states of Indonesia, Thailand, and Singapore wedded with its most vocal SCS claimants of Vietnam and the Philippines in pressing for a quick conclusion to the problem. Second, China has demonstrated an increased willingness to engage with ASEAN on the topic, departing from its usual demands for bilateral talks, in order to better relations with the bloc. Finally, a reasoned U.S. policy is providing resilience to ASEAN through a whole-of-government effort. These conditions offer tremendous opportunity for U.S. military support to efforts designed to strengthen ASEAN's position vis-à-vis China. These military approaches include: active support to the establishment of a effective ASEAN Political Security Community; creation of opportunities for ASEAN to proselytize their views on a peaceful, multilateral solution; and, direct engagement with China and its military in order to influence its views on what constitutes an acceptable solution addressing its interests.					
15. SUBJECT TERMS Regional Security, Southeast Asia, U.S. Pacific Command, Security Cooperation					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 41	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UU	b. ABSTRACT UU	c. THIS PAGE UU			19b. TELEPHONE NUMBER (w/ area code)

USAWC STRATEGY RESEARCH PROJECT

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Colonel Jeffrey A. Klein
United States Army

Professor Alan L. Orr
Department of Military Strategy Planning and Operations
Project Adviser

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U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

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Title: Challenges in the South China Sea: Opportunities Through ASEAN
Report Date: 15 April 2014
Page Count: 41
Word Count: 7765
Key Terms: Regional Security, Southeast Asia, U.S. Pacific Command, Security Cooperation
Classification: Unclassified

This paper posits that the South China Sea (SCS) maritime dispute between an increasingly coercive China and the four Association of Southeast Asian Nations (ASEAN) claimants has reached a tipping point. First, ASEAN appears as unified as ever with its core states of Indonesia, Thailand, and Singapore wedded with its most vocal SCS claimants of Vietnam and the Philippines in pressing for a quick conclusion to the problem. Second, China has demonstrated an increased willingness to engage with ASEAN on the topic, departing from its usual demands for bilateral talks, in order to better relations with the bloc. Finally, a reasoned U.S. policy is providing resilience to ASEAN through a whole-of-government effort. These conditions offer tremendous opportunity for U.S. military support to efforts designed to strengthen ASEAN's position vis-à-vis China. These military approaches include: active support to the establishment of a effective ASEAN Political Security Community; creation of opportunities for ASEAN to proselytize their views on a peaceful, multilateral solution; and, direct engagement with China and its military in order to influence its views on what constitutes an acceptable solution addressing its interests.

Challenges in the South China Sea: Opportunities Through ASEAN

The decades long dispute over sovereignty and maritime boundaries in the South China Sea (SCS) is one of the most worrisome security challenges in Asia and beyond. There is significant tension between the six major claimants— China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei –who have yet to agree on a common approach to resolving their disagreements. Despite efforts since 1992 to develop a multilateral Code of Conduct (COC) as a means of conflict resolution, China and the four Association of Southeast Asian Nations (ASEAN) claimants of Vietnam, the Philippines, Malaysia, and Brunei are still far from an acceptable solution.¹ Complicating the problem is the relative national power asymmetry presented by China vis-à-vis the much smaller ASEAN claimants. China has taken full advantage of the disparities. It engages in coercive behaviors and insists on working SCS issues on a strictly bilateral basis.² China's behavior is a conundrum not only for the four ASEAN claimants but also for ASEAN as a whole. It is a hint of the future ASEAN – China relationship and a glimpse into the future potential of regional dominance.

The outcomes in the SCS are of critical importance to U.S. foreign policy for a number of reasons. First and most obvious is the economic importance of the Sea Lines of Communication and trade in the SCS. Over a quarter of the world's trade traverses through this maritime body every year, including upwards of 90 percent of the oil bound for China and Japan.³ U.S. economic stability is directly dependent on the free flow of goods and services through the SCS. Any disruption in this movement of commerce due to instability in the SCS will have an associated deleterious effect on the U.S. economy. Second, the U.S. has commitments to our allies and friends in the region. We have a defense treaty obligation with the Philippines and burgeoning relationships with

the other three ASEAN claimants in the SCS. Additionally, Japan, another treaty ally, is vitally dependent on resources moving through this region. Failing to act, whether directly or indirectly, sends a clear message as to our reliability as a partner. Lastly, the SCS issues represent a mensuration on our foreign policy approaches in the Pacific.⁴ The old Cold War alliance system in Southeast Asia anchored by treaties with Thailand and the Philippines supporting a system designed to contain communism is no longer a useful paradigm. The U.S. has recognized a need to modernize these alliances as part of a strategy that seeks not to contain but to manage China's growth as part of the existing international order.⁵ Outcomes associated with the SCS challenge are strategic indicators of success or failure in our overall national strategy for Asia. Our current foreign policy approach emphasizes multilateral efforts through ASEAN to ensure peaceful resolution of the issues in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).⁶ The question remains, can ASEAN play a constructive role in resolving the challenges of competing claims of sovereignty in the South China Sea and ameliorate China's unilateralist behaviors? And, if so, what roles can U.S. military power play?

This paper will examine the complexities associated with ASEAN's efforts in working with China on a multilateral basis to develop a lasting conflict resolution mechanism in the SCS and the supporting role the U.S. military can play in creating space for ASEAN to operate.⁷ This paper is divided into four sections. The first section will attempt to frame the environment in order to highlight germane details guiding behaviors of the key players by looking at the history of the SCS dispute, the nature of the competing claims, stakeholder interests, and finally, a brief overview of U.S. policy

on this issue. The second section will then attempt to clearly define the problem in terms of a preferred end-state derived from U.S. national strategy documents contrasted with some less desirable alternatives. The third section will take a short look at the centers of gravity where potential approaches need to focus, and specifically pinpoint where the proximate issues lie and what in the dynamic system needs addressing. The last section will offer some potential military approaches along operational lines of effort in support of an overall whole-of-government effort.⁸

Based on the analysis, this paper proposes China's recent aggressiveness in the SCS is creating consensus for ASEAN to confront China in a multilateral fashion. It will also argue a carefully fashioned U.S. military strategy will assist in generating the diplomatic and informational power necessary to bring about an agreement on a COC for the SCS as part of the greater whole-of-government effort.

Framing the Environment

The rise of the modern, sovereignty conscious, Westphalian nation-state in Southeast Asia created the impetus for contestation in the SCS. For hundreds of years, the SCS was a shared commons traversed freely by Asian traders and fisherman of all nationalities. Prior to the arrival of European colonizers, the great empires of Asia were geographically fluid polities exerting influence over populations rather than control over territory.⁹ None of the pre-Modern Asian empires ever demonstrated effective, enduring control over the waters and diminutive land features in the SCS, as it was simply not their goal.

The story of modern conflict in the SCS is really one of China and its focus on the region. It begins in 1956 when the Philippines informally claimed a portion of the Spratly Islands as their territory, claiming sovereignty based on the proximity of the islands to

their shores.¹⁰ China immediately responded to this claim by asserting sovereignty using historical claims to islands and their return after Japanese capitulation at the end of World War II.¹¹ Too focused on defending its coastline and looking toward Taiwan at the time, China made little physical effort to deny the Philippines and other SCS claimants the ability to physically secure the diminutive landmasses in this maritime domain.¹² China's readiness and willingness to use force in the SCS evolved in 1974 with the seizure of a large portion of the Parcel Islands by Chinese forces from South Vietnam. Weakened by conflict with the communist North, Saigon was unable to defend the outpost in the northern part of the SCS.¹³ After a relatively calm interlude, conflict broke out again in 1988 when Chinese and Vietnamese forces clashed over Johnson Reef in the Spratly Island chain. This episode was followed several years later by the Chinese occupation of the Philippine claimed Mischief Reef in 1995.¹⁴

The pattern of increasingly coercive Chinese activities in the SCS continues today. Over the past few years, China engaged in an assertive diplomatic confrontation over oil lease rights with Vietnam¹⁵ and harassed Philippine forces near the Philippine occupied Scarborough Shoals.¹⁶ China has shown no reluctance to confront U.S. military forces in the region when it felt its sovereignty threatened.¹⁷ Most recently and rather provocatively, China's administrative headquarters for the SCS implemented a new requirement for all fishermen in the SCS regardless of nationality to register with it prior to fishing.¹⁸ Increasingly, China is resorting to coercive measures as a way to achieve control in the SCS and demonstrate effective sovereignty.

Each of the six SCS claimants' approaches to extending sovereignty over the SCS and various, reefs, shoals, islets, and islands is a little different. The ASEAN

claimant states of Vietnam, Brunei, Malaysia and the Philippines generally support their claims using the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS not only gives legal definition to the boundaries of the ocean through concepts like Territorial Sea, Contiguous Zone, Exclusive Economic Zone (EEZ), and Extended Continental Shelf, it also provides a means of dispute resolution through the International Tribunal of the Law of the Sea (ITLOS) when states cannot agree on the interpretation of UNCLOS. One of the key principles of UNCLOS is the demonstration of physical control over landforms.¹⁹ This fact, among others, continues to encourage the occupation of numerous, barely habitable island chains in the SCS. Further, UNCLOS does not solve all the internal discordance within ASEAN concerning the SCS. Until very recently, disagreements on the role of the U.S., the balance between sovereignty and cooperation in any solution, and the scope of a potential COC hampered the pursuit of any genuine solution.²⁰ Still, UNCLOS appears to present an opportunity to provide context for a claim under accepted international law. An example of the potentially useful role of UNCLOS is demonstrated by the joint claim filed by Vietnam and Malaysia on the reach of their respective continental shelves in the SCS as part of the formal UNCLOS Commission on the Limits of the Continental Shelf process.²¹ The key point in mentioning the role of UNCLOS is the willingness of the four ASEAN countries, unlike China, to use this instrument of international law as a means to resolve disputes.

China's claims in the SCS are by far the most expansive and problematic due to its mixed basis claim, opaqueness in decision-making, and ability to project physical control.²² China's irredentist claims of "historical title" are based on assertions that China

held tributary authority over the whole of the SCS through a “long-standing and dominant history of fishing, navigation, and other activities.”²³ China supports these claims by making reference to an eleven-dashed line map produced by Chiang Kai Shek’s Nationalist Chinese in 1947 that encompasses a vast majority of the SCS. Communist China adopted this map in 1949 and later erased two dashes in the Gulf of Tonkin to create the existing nine-dashed line map that forms the foundation for its ongoing historical claims.²⁴ While heavily relying on the moral weight of its historical claims, China pursues its interests in the SCS half-heartedly through UNCLOS processes. Maritime international law as expressed through UNCLOS give little weight to historical claims and fails to provide substantial support to China’s primary arguments based on historical control.²⁵ Even though China is a signatory to UNCLOS, China rejected the treaty’s primary enforcement mechanism by issuing a note rejecting the authority of ITLOS in resolving disputes.²⁶ When the Philippines lodged a claim with ITLOS in 2012 over Scarborough Shoals, China refused to acknowledge the action and choose to simply ignore the ongoing action.²⁷

The sweeping nature of China’s claims reflects intent to establish sovereignty as an almost vital national interest regardless of the argument’s sturdiness in the international fora. Chinese officials have repeatedly stated China’s “indisputable” sovereignty over the SCS²⁸ and have continued to insist negotiations over the SCS do not include a surrender of this claim. China views the SCS as a security buffer against the U.S. and other growing regional powers, as a vital waterway ensuring the two-way flow of goods between it and some of its key economic markets, and as an economic bread-basket of fish and potentially large hydrocarbon reserves.²⁹ Moreover, the SCS

has become intermeshed with China's nationalist rhetoric that envisions China's rightful place as a global power. The historical narrative coming out of Beijing justifying claims over large swaths of the SCS fuel public sentiment that control over this vast maritime domain is a corollary to China's hegemonic status in the region.

In order to achieve its objective of gaining control of the SCS, China engages in a number of strategies designed to gradually strengthen its position in the South China Sea. First, China participates in a diplomatic strategy of delaying while it consolidates effective control over the SCS. Second, China uses administrative actions to rationalize physical enforcement of control over the SCS through the uses of Chinese law. Third, China employs its paramilitary maritime enforcement agencies supported by People's Liberation Army – Navy (PLAN) to conduct actual enforcement activities.³⁰ Finally, China insists the much smaller ASEAN stakeholder nations in the SCS negotiate with it in a bilateral fashion so as to take advantage of relative power inequities. In response to China's comprehensive strategy, the ASEAN claimants have tried to internationalize the issue and balance multilaterally against China. For a variety of reasons, their strategy has been largely ineffective to date.

Promoting multilateral security in the context of Southeast Asia has always been a challenge. The historical impacts associated with internecine fighting, colonial occupation and Cold War great power conflict have created a lasting environment of uncertainty, distrust and fear.³¹ Competing territorial claims, disparate political systems, and inequities in economic development all conspire to encumber the growth of a viable regional security apparatus with the ability to influence external actors. Despite these troublesome dynamics, the ten ASEAN nations of Vietnam, the Philippines, Indonesia,

Brunei, Malaysia, Laos, Cambodia, Singapore, Thailand, and Burma are pushing toward an ambitious goal of creating an integrated ASEAN Political-Security Community (ASPC) by 2015 in response to globalization and the rising regional hegemons of India and China.³² The goal is ambitious; nothing in ASEAN's history or organizational ethos would indicate such a lofty objective is remotely achievable in this aspirational timeframe.³³

For approximately two decades now the ASEAN claimants in SCS have attempted to mitigate their innate weaknesses by attempting to engage China in a dialogue through ASEAN. Unfortunately, the political culture of the organization with its quixotic foundational principles has left it vulnerable to an increasingly globalized and interconnected world.³⁴ The ASEAN or Bangkok Declaration of 1967, which formed the organization, was little more than a statement of principles and had no legal requirements placed on its original signatories (Singapore, Indonesia, Thailand, Malaysia, and the Philippines). Communiqués and other statements of ambition emanating out of the organization almost universally lacked a means to internally exert discipline within the group.³⁵ The organization made the challenge of integration even more difficult in the 1990s with the admission of four politically closed, and economically challenged states: Communist Vietnam and Laos, the international pariah state of Myanmar, and the dictatorship of Cambodia under Hun Sen. By inviting these pronounced contrasts in political systems and levels of development within the organization, ASEAN's road toward true regional unity seemed dubious at best.

As the nature of its variegated membership would suggest, the "ASEAN Way" is hallmarked by the principles of non-interference, respect for territorial integrity, and state

sovereignty over regional priorities.³⁶ Scholars argue ASEAN steers toward “lowest common denominator” solutions due to its consensus-oriented consultative processes.³⁷ The ability of one member to veto or delay movement on issues means the organization does not readily embrace controversial or thorny issues.³⁸ Leadership in the organization is equally problematic; rotating on a biannual basis, the effectiveness of the group is dependent on the willingness of the current ASEAN Chair to follow through on issues. The rotational nature of the leadership also leads to a lack of continuity in issue focus as one nation’s term as Chair may lead to differing priorities from the previous nation’s term. Likewise, the differing levels of development and diverse forms of governance further hamper this consensus-based organization.³⁹ This dynamic of consensus and non-interference leads to an unwillingness of member states to engage in internal critiques of each other’s positions. Finally, there is a heavy reliance on Track 2 or informal dialogues over more substantial and binding Track 1 formal negotiations. In short, there is a general aversion of ASEAN states to surrender elements of their sovereignty in support of organizational goals unless there is a clear and demonstrated benefit to the individual state.

Despite the difficulties in creating an integrated and effective ASEAN, there have been a number of successes and it appears there is progress toward greater integration in the near future. First and foremost is the indisputable fact that since the formation of ASEAN, there has been no major conflict between ASEAN member nations. Dialogues and informal discussions have led to restraints on action through cooperative efforts and the transmission of normative guidance.⁴⁰ Networked engagement has diminished cognitive dissonance between member states resulting in common understandings on

issues.⁴¹ Second, ASEAN solidified the regional identity of Southeast Asia in the international relations lexicon giving these relatively small states (Indonesia excepted), diplomatic and informational power. While ASEAN has not achieved the status of a “supra-national entity” like the European community, it has certainly generated a distinctive Southeast Asia with greater collective influence than might otherwise be achieved individually.⁴² Third, ASEAN has been a key generator of multilateralism in Asia. Through its initiatives, ASEAN spawned a number of influential and constructive multiparty organizations such as the ASEAN Regional Forum, or ARF, consisting of 27 countries with national interests in-and-around Asia.⁴³ ASEAN was also responsible for creating the East Asian Seminar (EAS) and a number of other high-level multilateral dialogues to include the ASEAN Defense Ministerial Meetings or ADMM. These inclusive forums have been critical in building rapport among Asian states and other interested parties. Fourth, some argue ASEAN creates space for ASEAN members to transition their closed economic and political systems to market-led and politically open ones. Notably, Myanmar’s emergence from isolation and movement away from the influential orbit of China seems a partial result of its accession into ASEAN, providing Myanmar a political alternative to outsider state status in a suzerain relationship with China.⁴⁴ Fifth, ASEAN is at the forefront of “market-led” integration⁴⁵ and is actively strengthening this trend by moving to create an integrated ASEAN Economic Community by 2015.⁴⁶ ASEAN has already taken substantive steps toward achieving this goal by concluding a Free Trade Agreement with China in 2010 and with the current negotiations on a Regional Comprehensive Economic Partnership with Australia, China, India, Japan, South Korea and New Zealand.⁴⁷ Finally, and most indicative of the

movement toward greater integration, was the 2009 adoption of a blueprint for a creation of an ASEAN Community in 2015 based on the three pillars of Economics, Socio-Cultural, and Political Security. While ASEAN still experiences many structural weaknesses, there is a discernable trend toward addressing issues of mutual concern through ASEAN.

Turning the focus back to the SCS problem, ASEAN's ongoing search to find an acceptable solution reflects a gasping and unimpressive effort. This is largely attributable to the differing interests and national concerns among the ASEAN states. Support for pursuing this issue in the context of ASEAN is divided into distinct blocks. Vietnam and the Philippines represent the vociferous claimants, actively pressing the issue within ASEAN and in the international community, especially in direct contestation with China. Malaysia and Brunei represent the passive claimants who are willing to pursue a course of docile acceptance of the current status quo and ignore the increasingly intrusive activities in the areas they claim as sovereign.⁴⁸ While not directly involved in the conflict, the states of the ASEAN core consisting of Thailand, Singapore, and Indonesia see the ongoing dispute as a threat to regional stability. There is a keen sense of China's attempt to unilaterally scope the issue as a threat to their freedom of action in the region. Then, there is Laos and Cambodia who support China's efforts indirectly by attempting to deny the issue a voice in ASEAN deliberations. Finally, Myanmar appears indifferent to the matter, as domestic issues consume them. A clear effect of the incongruent perspectives on this subject is to make it one not easily addressed through the consensus-oriented ASEAN framework.

While ASEAN has not embraced the issue of instability in the SCS in any practical way, it has not ignored it. ASEAN first addressed this issue in a substantive manner in 1995 when the Philippines first proposed a Code of Conduct (COC) in the South China Sea after its confrontation with China over the occupation of Mischief Reef. The proposal remained relatively dormant until March of 2000 when China and ASEAN submitted competing proposals for a COC. Unable to come to an agreed upon compromise,⁴⁹ China and ASEAN signed a Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002 outlining areas of agreement and calling for the implementation of Confidence Building Measures as an interim step toward a binding COC.⁵⁰ While the DOC was a step forward in the process it made no mention of “mechanisms” to enforce the signatories to act in consonance with the principles of the DOC or a potential COC.⁵¹ From 2002 until 2011, there was limited progress on working toward a fully implemented DOC with Confidence Building Measures and an agreed-upon COC, with enforcement mechanisms for two major reasons. First, ASEAN lacked a unified approach to the matter and restrained itself in terms of pressing China on the matter.⁵² Second, China engaged in a delaying strategy by engaging with ASEAN only tangentially on the matter, just enough to maintain an appearance of negotiating in good faith.⁵³ Further, China maintained a policy of keeping the issue a state-to-state concern further dividing ASEAN through the adroit use of bilateral negotiations.⁵⁴ This dynamic of ineffectual ASEAN prodding of a resistant China took a sharp turn in 2011 with the rise of Indonesia as Chair of ASEAN.

Indonesia took the Chair of ASEAN with an activist agenda that included addressing the issue of rising tension in the SCS.⁵⁵ In November 2011 at the ASEAN-

sponsored EAS, Indonesia introduced the subject of the SCS as part of the discussions over the objections of China.⁵⁶ This coincided with a major policy speech by President Obama outlining the United States' major interest in regional maritime security that, while not referencing China's activities, clearly supported Indonesia's initiative.⁵⁷ By the July 2012 ASEAN Ministerial Meetings in Cambodia, China appeared to have relented and agreed to work on both the COC and DOC in earnest. Cambodia's refusal to allow mention of the SCS in the meeting's final communiqué- a first for ASEAN in its 45-year history –marred the achievement. China took advantage of this “disarray” and attempted to renege on the agreement.⁵⁸ Once again Indonesia, supported by Thailand and Singapore, stepped into the fray conducting a forceful shuttle diplomacy between ASEAN capitals and Beijing in order to salvage the talks. By September, Indonesia not only brought China back to the table but also released what it called a “non-paper” on the COC with suggested rules and norms, and most importantly, a proposed dispute resolution mechanism through the ASEAN High Council and UNCLOS.⁵⁹ Indonesia's role as a mediator and primary interlocutor between ASEAN and China were critical in creating an opening for progress.

The future prospects for a functional COC in the SCS appear increasingly promising but not a forgone conclusion. ASEAN's push toward consensus on this issue continues as a result of common concerns over China's intentions.⁶⁰ SCS claimant Brunei is now the Chair of ASEAN and a new Secretary General from Vietnam leads the organization. Thailand has spoken out in favor of a quick resolution of the issue and Cambodia ceased its obstructionism.⁶¹ Moreover, China increasingly cannot afford to ignore the important ASEAN core lead by the emerging regional power Indonesia,

supported by Thailand and Singapore.⁶² Impediments remain, though; China agreed only to consultations at this point and will not back away from its insistence on the primacy of bilateral negotiations in pursuit of a solution.⁶³ The new Chinese narrative of promoting cooperation and friendship in Southeast Asia appears tempered by its continued insistence on the immutability of its claims in the SCS.⁶⁴ It remains to be seen whether there is substance behind the words of reconciliation.

As for the United States position on the SCS, it exists in a clear and purposeful articulation of U.S. policy for approaching the problematic issues associated with maritime disputes in Asia. According to Assistant Secretary of State for East Asian and Pacific Affairs, David R. Russel, in his recent testimony to Congress, the United States “continue(s) to support efforts by ASEAN and China to develop an effective Code of Conduct,” and that the Obama administration is going to invest significant diplomatic effort at developing international institutions as a way of bolstering this effort. Secretary Russel further defined the U.S. position by outlining three principles: 1) the U.S. takes a “strong position” on the issue of the use of “intimidation, coercion, or force to assert a territorial claim”; 2) the U.S. also takes a “strong position” that maritime claims must be in accordance with international maritime law and “derived from land features”; and 3) the U.S. continues to reject claims “that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.” Secretary Russel rejected China’s efforts to incrementally gain effective “control” over the SCS on the basis of the “so-called ‘nine-dash line’” with no foundation in international law. The Secretary concluded his remarks by re-emphasizing the need for ASEAN and China to conclude a COC as soon as

possible and that the U.S. would continue to apply a “strong diplomatic and military” presence to push the issue.⁶⁵

The SCS maritime dispute has arguably reached the point of what one might call a soft, punctuated equilibrium. ASEAN is more unified than ever before with its core states of Indonesia, Thailand, and Singapore united with its most vocal SCS claimants of Vietnam and the Philippines desiring the quick conclusion of a COC.⁶⁶ China, for its part, has demonstrated an increasing willingness to engage ASEAN in a multilateral manner and agreed, though with many conditions, to work toward a COC in the near future. Some scholars argue that dialogue may become so entangling to China it will soon be too diplomatically costly for China to undo the momentum toward resolution.⁶⁷ Finally, a reasoned U.S. policy is providing impetus for efforts to strengthen ASEAN as a regional institution. The conditions, such as they are, offer a tremendous opportunity for U.S. military support to national policy with activities designed to strengthen ASEAN’s security ties moving toward a lasting stability in the SCS.

Potential Strategic End-States to Support U.S. Policy

Of the myriad of potential future outcomes in the SCS, some augur better than others in terms of alignment with U.S. national interests. The most likely scenario based on the current environment is a multilateral joint use agreement for the SCS with an effective dispute resolution mechanism closely aligned with the current COC and DOC modalities, and consistent with international law.⁶⁸ This end-state would avoid the sticky issues of sovereignty and keep the status quo in the Parcels and Spratlys. It would also continue to allow for freedom of the high seas⁶⁹ along the Sea Lanes of Communications without restrictions. While this end-state is not optimal, as it does not

resolve the issue of sovereignty, it does fulfill the basic interests of the U.S. in the region. Of course, this end-state is not the only possible result.

Two other competing end-states situated at opposite ends of the desirable - undesirable scale have the potential to materialize. First is the desirable end-state scenario where the SCS issues resolve themselves with an agreed upon equitable delineation of sovereignty and EEZ boundaries in accordance with the principles of UNCLOS.⁷⁰ While this end-state is desired, it is not likely. The complexity of the competing sovereignty claims is probably too difficult to disaggregate; and, there is exiguous indication the claimants would willingly relinquish sovereignty even in the context of an internationally recognized mediation mechanism in the current environment. A final competing end-state is the least desirable outcome characterized by China's *de facto* and effective control of the SCS through coercive means. This end-state would result from a breakdown in the current international security order and represent a major setback to U.S. power not just in the region but also on a global scale. It would significantly impact U.S. influence and dent the credibility of the U.S. as a guarantor of global security.

So the proximate problem comes down to how to influence China enough for it to approve a negotiated solution in the SCS through ASEAN consistent with the principles of UNCLOS and agreeable to the other claimants in the SCS. In order for this to happen, China will have to stop engaging in aggressive behavior using its "material advantage" to "create an impression of sole legitimacy and, in time, sovereignty."⁷¹ China will have to begin to favor multilateral approaches through ASEAN over using its positional advantage in bilateral negotiations. Also, there will have to be recognition of

the appropriateness of using international law as a foundation for the principles inherent in a long-term solution. China cannot continue to insist on the pre-eminence of its domestic laws and historical claims to justify the actions it is taking to acquire sovereignty in the SCS.⁷² China will also have to overcome domestic pressures making conciliation difficult. The requirement for resources combined with a fervent Chinese nationalism that leaves little room for discussion over issues of sovereignty make it difficult for Chinese officials to compromise on this issue.⁷³ Finally, it will take easing China's suspicions on U.S. intentions in the region as it seeks proof that ASEAN's efforts are not a surrogate for U.S. foreign policy. These are extremely vexing problems to overcome for ASEAN as it attempts to negotiate a COC with China.

Another piece of this problem is moving ASEAN toward an unassailable consensus on the need for a multilateral solution. As described earlier, ASEAN is an unusual regional institution in that the member states have not ascribed to its supranational authorities. There is no legislative forum, and member states are loathed to surrender any of their sovereignty to support organizational decisions.⁷⁴ ASEAN is contrarian in nature; it is a multilateral institution bounded in realist design as member states seek to further individual interests as the paramount purpose of affiliation. Reaching an efficacious consensus on an issue as delicate as sovereignty in the SCS that places member states at odds not only with each other but also with the major regional hegemon is not easy. It requires leadership and "vitality" from the core of the institution- the member states of Thailand, Indonesia, and Singapore.⁷⁵ In an effort to build ASEAN institutional strength, the U.S. needs to construct approaches that shape

the environment in a way that provides these three non-claimants the confidence to champion the drive toward conflict resolution.

Centers of Gravity for the SCS Dispute

The environment described in the previous section makes manifest two main centers of gravity (COG) requiring U.S. attention: China and ASEAN. In this context, China is the key COG. Without China's assent to an agreement, it does not matter what ASEAN or any of the ASEAN claimants might or might not do in the SCS. China possesses too much national power through its military capability and economic might for ASEAN to balance effectively. The other COG, ASEAN, while not a decisive center in the Clausewitzian sense, is also a critical player in the overall U.S. military strategy to ensure a "rules-based international order that ensures underlying stability and encourages the peaceful rise of new powers, economic dynamism, and constructive defense cooperation."⁷⁶ U.S. Policy efforts designed to bolster multilateral institutions as a way to manage China's rise are intrinsically related to ASEAN's attempt to develop a COC in the SCS.

Clearly, China has the capability to unilaterally impose its will in the SCS without considering the interests of other claimants.⁷⁷ The relative power of its gargantuan economy and significant paramilitary and military capabilities in the SCS give it significant advantage over Malaysia, Brunei, Vietnam, and the Philippines. As a result, China predictably wishes to engage in negotiations over the issue in a bilateral manner as one of its critical requirements where it can employ Melian techniques to ensure one-sided outcomes. In contrast, China's claims and activities in the SCS are vulnerable in multilateral fora where it might be asked to observe internationally accepted norms. As already identified, China's claims are primarily historical and UNCLOS "by and large"

does not consider historical claims as a basis to claim sovereignty.⁷⁸ If China agreed to international mediation or accepted a compromise solution through a multilateral forum like ASEAN, it is doubtful the outcome would coincide with its ambitions. China would then have a choice to either comply with its commitment or violate its obligations and suffer the loss of standing and national influence in the international community. The potential damage in reputation and prestige would seriously hamper its ability to achieve its goal of great power status. Because China has already agreed to discuss the issue in the context of a multilateral institution (ASEAN) and reluctantly agreed to pursue a COC, it is now faced with the dilemma of how to shape the process in its favor without appearing to reject acceptance of international behavioral norms. So far, it has used bilateral means and delaying actions to disrupt progress in pursuit of a COC. How long it can continue these tactics is relative to the strength of ASEAN's diplomatic and informational power. ASEAN is vulnerable to obstructionist behaviors within the group and from outside influences working on a bilateral basis to shape the consensus in line with their interests. ASEAN requires strong, broad-based impetus to act cohesively; the SCS dispute is providing the cause *du jour* to act in a unified manner against the increasingly hegemonic actions of China. A successful strategic approach would be to strengthen ASEAN's diplomatic and informational efforts while limiting China's military and economic influence.

Approaches to Shaping: Military Lines of Effort

There are a number of prospective lines of effort to consider when fashioning a comprehensive military approach to building ASEAN's capacity to respond to the maritime disputes in the SCS. Following the dialectic as presented in this paper's review of the environment, three fundamental propositions become readily apparent. First,

ASEAN and its member states must create a meaningful institutional response mechanism to security threats. This does not imply the creation of a defense treaty organization like NATO but rather a standing, consensus-based security apparatus focusing on common security interests to include Humanitarian Assistance/Disaster Relief, Counter Terrorism, Maritime Security, Information Sharing, and Peacekeeping that are in consonance with the political identity of ASEAN. Existing forums such as the ADMM and the ARF proved insufficient in their ability to provide even the perception of common security goals. Influencing the form and function of the proposed APSC is a start point for this effort. Next, ASEAN needs to act as a moral voice to the cause of the rule of law and balance against China's propensity for unilateral coercion. ASEAN as a consensus-based, normative forming multilateral organization provides a deontological resilience that validates the legitimacy of any potential conflict resolution mechanism. The SCS DOC and COC, if concluded, present documents of significant moral suasion mitigating the great power asymmetry of China. Providing ASEAN with security forums for pressing the narrative of the rules-based DOC and COC and the principles of acceptable maritime behavior is critical. Finally, China will have to accept a reorientation of the perceived immutability of its EEZ claims. Accepting the assumption China will never give up its claims to sovereignty, there is still opportunity to reach an accord where China's vital interests are met without disadvantaging the other claimants, thereby ensuring peace and stability. Key to this effort is engaging China on what it believes are its interests- sovereignty, security, and access to economic resources – with a concomitant resolve to engage in military activity denying China the ability to unilaterally exercise effective control of the SCS. This will ensure China's best option is

to negotiate an agreement rather than continue their strategy of gradualism.⁷⁹ The following are ways in which PACOM's military strategy should focus: strengthening ASEAN's security apparatus in the form of an effective APSC; enabling ASEAN's ability to proselytize its positions through a myriad of settings; and engaging with China in order to influence its perceived options.

There are a number of possible activities that hold potential for success in moving the APSC forward as a cohesive, durable and effective organization. They include the continuation of traditional Security Cooperation events like joint and service multilateral exercises with carefully crafted ASEAN interagency structures (proposed and existing) embedded and funded as part of the exercise. Another potential option for shaping this line of effort is to request support from our NATO allies in facilitating engagement with ASEAN. Bringing NATO support does two things in strengthening the APSC. First, it takes the U.S. out of the discussion and relieves the pressure on ASEAN as it naturally attempts to try and balance the U.S. and China. There is a self-evident polarity within ASEAN; some states are in the sphere of the U.S. and some in the sphere of China. This brings the potential of shattering ASEAN "into competing sides" when either China or the U.S. appears to dominate an event.⁸⁰ A NATO-led contingent organizing an engagement event or exercise obviates this dynamic. The second important aspect to promoting a NATO-led engagement is the fact NATO members are an effective regional security organization and are predisposed to coalition and multinational operations. They are acolytes of the collective security paradigm and would provide an appropriate example for ASEAN to emulate. It is also imperative to contemplate a focus on the ASEAN core of Indonesia, Thailand, and Singapore along

this line of effort. When crafting the country strategies for these three hub nations, planners and strategists need to identify not only military but informational activities that bolster their common cause toward an enhanced APSC. An example of one such effort might be to support efforts to vanguard the formation of an ASEAN Standby Force.⁸¹ An ASEAN Standby Force focused on non-controversial mission sets like HA/DR and Peacekeeping would introduce multinational and coalition concepts into the ASEAN vernacular and provide the basis for further integration. These are just a few of the potential ideas for moving this line of effort forward. The critical point is maintaining a focus on developing concepts and ideas for strengthening security relationships within ASEAN proper.

The second line of effort associated with providing space for ASEAN to proselytize a rules-based solution to the SCS issue is relatively straightforward. It relies on strengthening ASEAN's influence and helping to build for the organization a cogent narrative on the clear logic for an arrangement that respects international law, and more specifically, the principles of maritime sovereignty as charted by UNCLOS. There are two types of activities PACOM needs to consider as it shapes along this line of effort. The first type of activity is one designed to edify ASEAN states on the appropriateness of UNCLOS principles and influence them to build their own narrative supporting maritime law as provided under international law. These kinds of activities are already underway in multilateral dialogues like the Expanded ASEAN Maritime Forum⁸² and the ADMM-Plus Maritime Security Field Training Exercises.⁸³ Bilaterally, the U.S. is engaged in an aggressive maritime security regimen highlighted by the U.S. Pacific Fleet's Cooperation and Readiness Afloat program that engages seven of the ten

ASEAN countries including the core countries of Indonesia, Thailand, and Singapore as well as SCS claimants Malaysia, Brunei, and the Philippines.⁸⁴ PACOM and its components should continue to place emphasis on participating in all available dialogues, exercises, and forums addressing maritime security and maritime law with standardized talking points based on detailed, well-constructed legal arguments. It needs to leverage organic Professional Military Education (PME) organizations like the partner nation-focused Asia-Pacific Center for Security Studies (APCSS) as a means to amplify and expand the message. PACOM may even want to consider adding a separate PME school focusing on maritime issues. The second type of activity to consider in supporting this line of effort is the creation of forums and expanded audiences for ASEAN and its member states to publicly discuss sovereignty, maritime law and maritime customs as generally accepted under international law. Again, there are a multitude of existing opportunities for this dialogue to occur; it requires PACOM and other interagency partners to make a conscientious effort to influence agendas and fashion scenarios that generate ASEAN-led discussion on the merits of a SCS COC based on international law. Principle targets for these types of activities are once again the ASEAN core countries. As non-claimants to the SCS, their support to an UNCLOS-type solution as proposed in the COC is critical to maintaining ASEAN's appearance of objectivity. ASEAN requires a persuasive, homogenized argument and an expansive bully pulpit in order to successfully provide enough diplomatic pressure on China to come to the negotiating table.

The final military line of effort for PACOM should focus on discouraging China from using coercive means to aggrandizing control over geography in the SCS. This line

is by far the most delicate and complex. U.S. policy inconsistencies place PACOM in a dichotomous position. PACOM must not heighten China's perception of U.S. intent to contain China⁸⁵, while at the same it must dissuade China from pursuing a course incongruent with the current regional security order and international law. Part of the answer lies in a robust regimen of military Confidence Building Measures with China. The U.S. DOD and PACOM are making some headway after a number of setbacks in recent years. In August 2013, discussions between U.S. Secretary of Defense Chuck Hagel and Chinese Minister of National Defense General Chang Wanquan concluded with agreements for additional high level talks and joint exercises focusing on Humanitarian Assistance/Disaster Relief between the two militaries.⁸⁶ Another important milestone in building trust and cooperation is the acceptance by China and the People's Liberation Army Navy of an invitation to participate in the biannual Rim of the Pacific multilateral naval exercise in Hawaii.⁸⁷ Still, it is not clear these types of Confidence Building Measures are enough. China may continue to act as if its SCS sovereignty claims are tantamount to a core interest and not relent on its current unilateralist strategy. For this reason, this line of effort must include an element of persistent military presence in the SCS and include the potential for coercive means. It should include a continuation of partner building capacity with the Philippines as well as focusing additional resources on improving Vietnam's ability to employ its nascent Anti-Access/Area Denial capabilities.⁸⁸ If ASEAN is going to have success in concluding a COC, it will need the assistance of the U.S. to convince China it cannot succeed in its quest to control the entire SCS.

In addition to working along the three proposed lines of effort mentioned above, PACOM should balance its resources toward engaging with Indonesia directly and indirectly on the issue. Indonesia is the primary influencer in ASEAN because of its “moral force” in advocating for peace and stability as an independent party.⁸⁹ Beyond its tremendous size, significant population and vibrant democratic politics, Indonesia is a nation that embraces liberal institutionalism as evidenced by the fact it was not only a founding member of ASEAN but of the Non-Aligned Movement as well.⁹⁰ As mentioned previously, Indonesia was critical in saving the COC discussion in 2012 and put forth the draft concept paper that is the current basis for future talks between ASEAN and China. The APSC was Indonesia’s idea and it has a significant stake in ensuring the concept comes to full maturity.⁹¹ While it is difficult to definitively assert Indonesia’s success in bringing the SCS COC issue to fruition, it is hard to build a scenario where Indonesia does not play a central role. Indonesia has too much to lose in the way of diplomatic prestige and influence if negotiations on the DOC and COC fail.

Conclusion

There is no panacea for definitively resolving the conflicting claims of sovereignty and overlapping EEZs in the SCS. The myriad of stakeholders involved each with a varying interpretation of UNCLOS, competing basis’s for maritime claims, differentiated approaches to problem solving and competing interests make the SCS the very definition of a “wicked problem.”⁹² The ASEAN-China COC with its focus on outlining behaviors and putting rules into place for sharing the appearances of sovereignty is the best, most readily available mechanism for peacefully resolving these issues. China has resisted, delayed and derided attempts to conclude a COC as it expands and consolidates its unilateral claims. Previously, ASEAN has not had the unity of purpose

to force the issue with China. The dynamics are shifting ever so slightly; it appears there is now opportunity to fortify ASEAN's attempts to place this issue at the forefront of its relations with China. There is an increasingly unified ASEAN, backed by its core of Indonesia, Thailand and Singapore. Equally encouraging, there is new leadership in China who appear intent on mending a fraying relationship. As part of the U.S. policy to support multilateralism in Southeast Asia, the U.S. government is well positioned to implement a whole-of-government strategy designed to create space for ASEAN so that it can bring diplomatic and informational pressure on China to conclude a COC.⁹³ In this U.S. government strategy, the military in the form of PACOM has a significant role to play in supporting these efforts. PACOM has the means to build ASEAN security capacity through a robust engagement regimen; proselytize the expectations of a modern, professional military in order for ASEAN to win the war of ideas in this dispute, and, finally continue to engage China and the PLA in a constructive manner but challenge them to moderate their behaviors and adhere to accepted international norms. PACOM will have to take great care; an aggressive, ham-fisted military strategy void of nuance and reflection will not productively assist in success of the larger U.S. regional strategy. In the end, the SCS represents a major challenge for the U.S. to address as part of its comprehensive Indo-Pacific strategy. The U.S. cannot afford to acquiesce on the SCS unless it is willing to accept a new paradigm in Pacific that is not necessarily in its interests.

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⁷⁹ Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin Group, 2011), 99-107. This chapter discusses the concept of a Better Alternative Than Negotiated Agreement or BATNA. China will have to accept there is a better alternative to its current strategy of unilateral gradualism and commit to negotiating a solution for the SCS issues.

⁸⁰ Brad Nelson, "Can Indonesia Lead ASEAN?" *The Diplomat*, December 5, 2013, <http://thediplomat.com/2013/12/can-indonesia-lead-asean/?allpages=yes?allpages=yes&print=yes> (Accessed February 7, 2014)

⁸¹ Bharat Tientongdee, *ASEAN Standby Force: Taking Southeast Asia Security to the Next Level*, Strategy Research Project International Fellow (Carlisle Barracks, PA: U.S. Army War College, March 2013), 20 – 24. ASEAN rapid reaction force conceived by COL Tientongdee (Royal Thai Army) as part of his SRP from the USAWC. <http://www.dtic.mil/dtic/tr/fulltext/u2/a590240.pdf> (Accessed February 14, 2014)

⁸² "Secretary Del Rosario Calls for an Expanded ASEAN-U.S. Cooperation on Maritime Security." *Targeted News Service*, July 2, 2013, <http://search.proquest.com.ezproxy.usawcpubs.org/docview/1373394248/citation?accountid=4444> (Accessed February 14, 2014)

⁸³ "US PACOM Reaffirms Commitment to Deepen Cooperation with ASEAN." *Targeted News Service*, February 7, 2014, <http://search.proquest.com/docview/1495984450?accountid=4444> (Accessed February 14, 2014)

⁸⁴ Commander, U.S. Naval Surface Force, Pacific Fleet, "CARAT 2013," <http://www.public.navy.mil/surfor/Pages/CARAT2013.aspx#.Uv-5ykJdXmU> (Accessed February 15, 2014) .

⁸⁵ Hagel. During the Q&A period after the Secretary's speech, a Major General from the People's Liberation Army state in a question to Secretary that China "was not convinced" the rebalance of the U.S. to the Pacific was not intended to contain China.

⁸⁶ Daniel Wasserbly, "US, Chinese Officials Seek to Bolster Defence Relationship," *Janes Defence Weekly* 46, no. 8 (August 8, 2013): <https://janes.ihs.com.ezproxy.usawcpubs.org/CustomPages/Janes/DisplayPage.aspx?DocType=News&ItemId=+++1583705&Pubabbrev=JDW> (Accessed February 15, 2014)

⁸⁷ Yang Yi, "China to Attend RIMPAC 2014: State Councilor," Xinhua New Service, June 9, 2013. http://news.xinhuanet.com/english/china/2013-06/09/c_132443566.htm (Accessed February 15, 2014)

⁸⁸ McDevitt, "The South China Sea and U.S. Policy Options," 185.

⁸⁹ Evan A. Laksmana, "Indonesia's Rising Regional and Global Profile: Does Size Really Matter?" *Contemporary Southeast Asia* 33, no. 2 (2011): 162.

⁹⁰ *Ibid.*, 161.

⁹¹ *Ibid.*, 164.

⁹² Sam Bateman, "Solving the "Wicked Problems" of Maritime Security: Are Regional Forums Up to the Task?" *Contemporary Southeast Asia* 33, no. 1 (April 2011): 1-3, <http://search.proquest.com/docview/876073005?accountid=4444> (Accessed February 14, 2014)

⁹³ Scott, "Conflict Irresolution in the South China Sea," 1040-1041.