

## Strategic Peace in the South China Sea

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### Abstract

The research provided in this paper examines the Philippines, China and United States interests in the South China Sea. It presents a challenging question: Given the complexities of the Philippines-China maritime tensions in the South China Sea, how can the US maintain its alliance with the Philippines while avoiding a conflict with China in the Philippine-China maritime dispute in the region? It unfolds the longstanding Philippines-China maritime dispute and proposes possible diplomatic and legal settlements. The analysis will show that America can maintain security in the SCS in three ways: by supporting a new Philippines-China relationship, by empowering the Association of Southeast Asian Nations as a collective security body, and by maintaining a productive relationship with China. Finally, it offers recommendations for the US to strengthen its alliance with the Philippines and to build a partnership with China to achieve America's strategic goals in the region.

## **Strategic Peace in the South China Sea**

Let us pray now that peace be restored to the world, and that God will preserve it always.

—Douglas MacArthur<sup>1</sup>

Contentious issues have engulfed the regional and international actors in the South China Sea (SCS). In 2009 China marked its SCS maritime rights using its so-called “Nine-Dash Line” claiming areas of the surrounding nations in the region. With this, Beijing started activities on the ocean floor tampering with the natural features of the SCS and began man-made construction on various rock formations including the Cuarteron Reef, Fiery Cross Reef and the Johnson Reef.<sup>2</sup> The Philippines, Vietnam and Malaysia have unresolved disputes with China and argue that based on the rules stated under the United Nations Convention on the Law of the Sea (UNCLOS) the activities are illegal and are a threat to the freedom of navigation and security. Despite a high-profile maritime dispute with China, the Philippines is showing interest in strengthening a relationship with China while weakening ties with the United States (US).<sup>3</sup> Given the complexity of the Philippines-China maritime tensions in the SCS, how can the Philippines, China and the US peacefully resolve this conflict and work together to ensure security, stability and prosperity?

China, the Philippines, and the US have all signaled that they wish to avoid any further escalation of the SCS disputes. The People’s Republic of China (PRC) and the Philippines can take some bold steps starting with resolving their dispute regarding the Scarborough Shoal that can set a precedent for other countries with similar disputes. As new leaders, this is an opportune time for Philippines President Rodrigo Duterte, and Chinese President Xi Jinping to reconsider legal and diplomatic policy options that

intersect their national interests. Through the Association of Southeast Asian Nations (ASEAN), regional states can also find ways to cooperate with China to maintain their own interests. The US can be supportive towards the efforts of our allies and partners by making appropriate adjustments to existing foreign policy. At a time when cooperation in the region is becoming more complicated, effective engagement with the Philippines and China remains vital for the advancement US policy and the peaceful resolution of disputes in the SCS.

The research in this paper is organized in the order in which events occurred beginning in 2009. First, it provides an overview of the longstanding maritime dispute between the Philippines and China that has led to legal actions. Next, the study explores opportunities for a new relationship between the Philippines and China that could propel efforts to resolve disputes peacefully. Third, the analysis explores a diplomatic approach that Manila and Beijing may consider to help facilitate negotiations to resolve disputes. And finally, the evidence provided herein provides an overview of the America's influence in sustaining its national interests in the SCS.

The mutual interests of the states surrounding the SCS are maritime boundaries, territorial sovereignty, the development of its natural resources and ensuring open and secure lines of communications (SLOC). The surrounding sea is also both a major shipping route for all the neighboring countries and a major fishing place that people from the surrounding areas depend on. Every year about 5.3 trillion dollars of ship cargo travels through the SCS.<sup>4</sup> In addition, about half of the world's sea trade passes through the SCS and offers passage to more than half of the world's natural gases and crude oil shipments. Robert Kaplan describes the South China Sea as the "throat of global sea

routes” because it is the busiest international sea route in the world.<sup>5</sup> Activities in the SCS include sea trade, navigation and exploitation, and exploration of natural resources such as oil, fish and natural gas.<sup>6</sup> The surrounding states involved in this trade include the Philippines, Vietnam, Indonesia, Brunei, Malaysia, China and Taiwan. Other countries in the international sphere that benefit from this trade route include the US, United Kingdom, Canada, Russia, India and Australia.<sup>7</sup>

As the dominant regional power, China’s independent and vague borderline claim through its Nine-Dash Line has caused, what some believe is a response to mounting tensions, the longstanding territorial disputes. It first appeared in 1947 on a nationalist China map, but was only officially introduced to the international community in 2009.<sup>8</sup> It is a political declaration which extends beyond the Exclusive Economic Zones (EEZ) of four of the 10 ASEAN member states (Brunei, Malaysia, the Philippines, and Vietnam) and immediately raised objections amongst China’s neighbors.<sup>9</sup>

The SCS argument presents a case where if all the islands and rocks that several countries claim are granted the prescribed 200 nautical mile EEZ, it would be almost impossible for other states in the region, to implement the freedom of navigation because of the overlapping zones of sovereignty.<sup>10</sup> Under international law, the traditional maritime law maintains that the nation that owns the land next to the sea also owns exclusive rights to the resources of the sea surrounding it up to 200 nautical miles EEZ. International law is defined as “the constantly evolving code of ethics that summarizes states’ expectations of one another and of the international system to which they belong”.<sup>11</sup> Unfortunately, China’s Nine-Dash Line claim is not interpreted the same way by other ASEAN states in the Asia-Pacific locality. The UNCLOS has

established important principles on the allocation of ocean resources and how disputes should be settled.<sup>12</sup> This treaty is the sole international agreement that provides a unified legal reference to states involved in disputes who are signatories to the treaty and base their maritime claims either fully or partially on it.

The SCS is one of the most politically sensitive areas in the world and in the past there have been several continuing disagreements between the Philippines and China that have threatened the tranquility that the area is known for. A recent incident involving maritime sovereignty was the 2012 stand-off between a Philippine Navy warship and Chinese ships at the Scarborough Shoal.<sup>13</sup> Since a 1995 incident at Mischief Reef the Philippines foreign policy toward China stressed diplomatic engagement and economic cooperation rather than engaging in confrontation to address territorial disagreements.<sup>14</sup> Administrations in the past avoided any perception or rhetoric that could provoke the Chinese. However in 2010, under the new administration of then-President Benigno Aquino III, policy changed to confront ongoing Chinese aggression. The Philippine government made efforts to modernize its naval capabilities, strengthen its US-Philippine alliance, and most significant, it openly challenged PRC's belligerent behavior. In 2013, Manila's actions to take Beijing to a tribunal, authorized in the UNCLOS, added more tension to an already fragile situation ripe for potential conflict.

Through an international tribunal organized under the UNCLOS, the Philippines asked the Permanent Court of Arbitration (PCA) to define certain geographic features including an island and a low tide elevation or a rock. As an intergovernmental organization, the PCA is a non-United Nations agency located at the Hague in the

Netherlands. It provides services of tribunal settlement to resolve disputes regarding legal issues such as territorial and maritime boundaries and sovereignty between parties of various entities. Under the rule passed, islands that can sustain economic and human life would be granted 200 nautical mile EEZs. However, low tide elevations would not be granted any territorial waters. Manila also requested that the court rule on the validity of China's claims using the exact territorial petitions of the SCS. Another request to the PCA was to determine whether Beijing had violated any rules through conducting fishing activities in the SCS. The arbitration court was therefore responsible for providing a decision to clarify Manila's challenges to China's activities and maritime claims in the SCS. The judgment passed could help ease regional tensions and also eliminate the territorial sovereignty disputes.<sup>15</sup>

In July 2016, the PCA ruled in favor of the Philippines in its case against China regarding the SCS disputes. The verdict ruled that "there was no evidence that China had exercised exclusive control over the waters and resources of the SCS and therefore had no legal basis to claim historic rights to sea areas within the Nine-Dash Line."<sup>16</sup> The court also declared that China had severely harmed the natural coral reefs at the SCS by constructing artificial islands. Despite the fact that the rules are obligatory, the PCA does not have powers to enforce them. The key findings of the tribunal declared that:

- The PRC had interfered with the disputed Scarborough Shoal area where fishermen from both countries had the right to access.
- The PRC had tampered with the natural features of the SCS which was essentially part of the disagreement.

- The use of features which were above the land, did not necessarily constitute inhabitation. This was an important condition to claim rights of land that as an island would be given a 200 nautical mile EEZ rather than the normal 12 nautical mile zone given for rocks visible at the high tides.<sup>17</sup>

During the proceedings, the Philippines held the position that it did not have any diplomatic problems with China over the Scarborough Shoal and the Spratly Islands.<sup>18</sup> However, it contested that the Nine-Dash Line is unlawful under the UNCLOS. The disputed features are largely uninhabited, yet they are believed to have natural resource reserves. China, nevertheless, is standing firm and reasserting its claim on the SCS. The Beijing government has reported that its territorial sovereignty in the SCS will not be affected by the ruling of the PCA and considers the tribunal verdict as “null and void”.<sup>19</sup> The tribunal’s verdict is the authoritative statement on China’s legal responsibility in this dispute, however it cannot enforce the ruling.<sup>20</sup> China maintains that it is committed to solving issues amicably through healthy negotiations. However, the Philippines retains that the court made a clear and unanimous judgment that upholds the rule of the law and the rights of the Philippine people. Analysts have argued that Beijing’s disregard of the PCA rulings, would have serious implications to the stability of the entire region. In addition, this could be a threat to maintaining peace amongst the regional states. The US determined the decree an important contribution to the peaceful resolution of disputes in the SCS.<sup>21</sup>

The ruling is a major loss for China where the government maintains its historical territorial sovereignty in the area dating back to two-thousand years. However, it is equally important to know what the ruling was and what it was not. The judgement does

not address the fundamental issue of the claims to the sovereignty of the features, nor does it declare the Nine-Dash Line illegal.<sup>22</sup> In addition, since the Spratly Islands did not qualify as true islands, the ruling imposed limitations on the maritime privileges of those who control the islands.<sup>23</sup> The SCS community can expect China to disregard the ruling entirely. Instead the PRC wants to dialogue directly with the states concerned, proposing joint development of the maritime areas.

The recent ruling by the PCA on the dispute between Beijing and Manila may have provided incentives for both nations to seek alternate forms of settlement. In theory, the ruling that the Spratly Islands were not real islands but rather rocks supports the recognition of EEZ boundaries around the “rocks”.<sup>24</sup> According to one analyst, the importance the tribunal attached to EEZ jurisdiction may reinforce the nationalistic attitude the littoral states attach to their EEZs. The Philippines and the PRC may decide to strengthen their relationship to that of mutual sovereignty, joint ownership of resources, and functional cooperation and cooperative management of the SCS.

In the meantime, the US efforts should continue to help resolve the maritime disputes over land features, and rightful jurisdiction over the waters in the SCS. Some options available to US policy makers are to encourage the Philippines and China to establish a new relationship and pursue their claims peacefully in accordance with international law, empower the ASEAN as a collective security body, and maintain a productive relationship with China.

#### Philippines-China Relationship

The Philippines and China can take some bold diplomatic measures to resolve their dispute through joint resource exploration of the Scarborough Shoal and recognizing each other’s sovereignty claims while improving relations with regional

states. The first proposal is a solution that has always existed between the two countries, yet avoided. However, both leaders recognize that their common interests in the SCS will serve their constituents well. Duterte and Xi can agree to administer and develop the disputed waters into an ecological and biological exploration station for regional and international scientists and engineers to explore life beneath the SCS. At a minimum, this effort could ease regional anxiety which would reassure nervous neighbors that peaceful solutions are possible. Both countries could also provide the maritime security necessary to protect their national interests.

#### Joint Resource Development

To promote cooperation and avoid further conflict in the disputed area, both the Philippines and Chinese governments can pursue joint resource development by converting all disputed territorial features as “reserves” and declare them as demilitarized joint property. This action would be employed in a bid to promote joint development of SCS resources. Joint cooperative activities such as scientific research and protection of the marine environment, maritime navigation and communications safety, search and rescue operations, and combating transnational crimes are favorable considerations. The agreement for joint development defines the limits to the disputed areas and a means to share the resources. This also includes areas that have had existing complaint appeals, but which have not been previously occupied, thus have no historical attachment to any state.<sup>25</sup> Such initiatives would be beneficial in promoting peace, security and stability in the region and will provide immense economic advantages to the countries as well. This would enhance long-term peace and stability in the SCS region.

## Mutual Sovereignty and Improving East Asia Relationships

The second proposal is a duo-purpose solution that is revolutionary and progressive, and would require the Philippines and China to agree to mutually recognize each other's sovereignty claims over the Scarborough Shoal, while improving East Asia relationships. Throughout history, the major cause of interstate wars is for the control over land territory. In this case, claims over land territory are used to claim maritime boundaries. These two countries are looking for "fences in the sea" rather than recognizing that maritime boundaries are not an end in themselves, but rather a means of effectively managing maritime space.<sup>26</sup> Using the old saying that "good fences make good neighbors" would not apply in this case because it is not possible to build "fences" in the sea.<sup>27</sup> The concept could take perhaps one of the most attractive forms in the exploitation of the underwater and fishing resources in place of a boundary lane and avoid the distraction of "fences in the sea." Although realists may initially perceive this as a radical approach, if it is successful it can set a historical precedent for other countries with similar disputes.

In July 2016, the PCA favored Manila over Beijing in the disputed SCS case. In the same month, the Philippines celebrated its 40th anniversary of the establishment of diplomatic relations with Vietnam.<sup>28</sup> Due to China's assertiveness in the SCS, Vietnam and the Philippines have enjoyed closer ties in recent years. Their undertaking to enhance security and cooperation culminated when the two countries signed the Joint Statement on the Establishment of a Strategic Partnership (JSESP) in November 2015.<sup>29</sup> Partnership between the two nations is aimed at promoting peace and stability in the highly unstable Asia-Pacific region characterized by changing political, economic

and security issues. When the tribunal's decision was announced, Vietnam welcomed the ruling which was considered as the foundation for peaceful dispute settlement.

However, despite the fact that the July 2016 PCA decision is final and legally binding, the court does not have the jurisdiction to enforce the ruling. To achieve peace and stability in the region, the Philippines must reconsider its relations with neighboring states including China and Vietnam. While seeking to engage Beijing, Manila must also maintain its strategic partnership with Vietnam to meet its interests. JSESP can therefore play an important role in reducing the tensions in the SCS area. Through this framework, the states can share their dispute management mechanisms, such as the use of bilateral agreements.

Under their different defense establishments, the states can also share and exchange their experiences during bilateral discussions and activities. These forms of engagements have certain limitations hence there should be open communication networks to help repair relations and also enhance negotiations in times of crisis. These methods can also be used to minimize misinterpretations that may adversely affect the states relationships. The Philippines and Vietnam are also committed to enhance cooperation in their military and defense departments under the JSESP.

Manila and Hanoi can also cooperate in the exchange of information on coastal defense. JSESP states that the two countries will improve each other's capacities to prevent traditional and non-traditional security threats. As an example, in a bid to improve its military modernization program, Vietnam enhanced its coastal defense through the procurement of anti-ship artillery batteries.<sup>30</sup> If China and other countries are engaged in peaceful talks, the stability of the SCS would be enhanced. It is obvious

that the Philippines and Vietnam are at the receiving end of China's assertiveness on the SCS dispute. Despite the fact that several of the ASEAN countries have overlapping claims on the SCS, there is hope that their differences will cease in the near future. The JSESP will definitely play a great role in managing and ending the dispute.<sup>31</sup>

#### Empowering ASEAN as a Collective Security Body

A second effort the US should continue to help resolve the Manila-Beijing maritime dispute. The intent of the US policy in the Asia-Pacific region is for the US to "play a larger and long term role in shaping the region and its future." Thus, Washington should consider assisting ASEAN in its attempts to manage disputes through legal avenues, political negotiations and empowering a High Council. The ASEAN serves as the convening power, and is considered an unbiased player in the SCS region.<sup>32</sup> ASEAN's relationship with the US has evolved through global changes and has strengthened its political unity with the 10 countries that make up the ASEAN. These nations seem to agree that although a settlement to the dispute would not be reached anytime soon, maritime security is welcomed by both SCS claimants and ASEAN states.

Despite sentiments from the Aquino administration indicating that the Philippine government has explored and exhausted all the possibilities of a negotiated settlement with China, President Rodrigo Duterte is leading the move toward President Xi Jinping to broaden foreign policy away from the US. Through the ASEAN, states within the region might explore other avenues to cooperate with China to find a peaceful settlement to the issues and to maintain their own interests. Against this backdrop some recommendations are provided that discusses how collective security can be used as a potential approach for resolving the SCS maritime dispute.

## Legal Avenues

All ASEAN states are not only parties to the UNCLOS, but to continue to favor and recognize it as the legal framework in disputes and consider the UNCLOS as the best entity to address unresolved issues. The Philippines was the first country to follow a legal framework by serving China with a formal claim at the PCA.<sup>33</sup> The July 2016 case presented by the Philippines to the PCA is far from its conclusion.<sup>34</sup> The most contradicting aspect is the fact that there are two sets of laws governing the SCS. The first is the Territorial Acquisition law which is agreed upon by customary international law. The second law is the UNCLOS which is under international law. The application of the law will require an enforcement body which does not currently exist. If diplomatic efforts towards a new Philippines-China relationship are successful, other ASEAN partners such as Malaysia and Vietnam may follow suit. It could be the inauguration for PRC and claimants to exchange ideas in proposing joint development of the maritime areas.

But the legal means only benefits economically powerful China. ASEAN's largest trading partner is Beijing and it is heavily dependent on China for economic stability. The lack of economic power in some nations may deter them from seeking legal redress in SCS disputes and may also affect the bilateral relations between specific states and China. As such, it is highly unlikely that ASEAN nations would generate a strong legal claim against Beijing. Keeping the unity of ASEAN nations involved in joint development activities with the PRC will be a key for success.

## Political Negotiations

ASEAN could serve as a channel to enforce international laws and it could also manage the resolutions of the persisting disputes in the SCS. During the 48th ASEAN

Foreign Ministers meeting in 2015, the PRC stated that it was committed to maintain peace and stability in the SCS, solve disputes peacefully through negotiation and consultation, and engage other nations so that they can mutually gain through cooperation.<sup>35</sup> These political negotiations would be fundamental towards the settlement of the ongoing disputes and ASEAN will achieve substantial advantages.

Discussions leading to the implementation of the 2002 Declaration of Code of Conduct (DOC) and the conclusion of a Code of Conduct (COC) have made little progress. In 2013, Chinese authorities and ASEAN officials met several times to review draft versions of a COC that appealed to terminate military exercises in disputed waters, endorsed total freedom of navigation in the region, and rules to prevent accidents at sea. China's response to this proposal was met with resistance because China's navy regularly conducts exercises in disputed areas and its Coast Guard also patrols the waters as a way of asserting Chinese control of the area.<sup>36</sup>

On the other hand, this could prove impossible since some ASEAN states have little interest in becoming entangled in disputes involving China. Attempts to negotiate terms and conditions of a code of conduct are problematic by the fact that not every ASEAN member state is involved in maritime disputes. The PRC has for a long time been reluctant to discuss the SCS dispute, and even when it does, it lacks commitment and consistency. ASEAN as a group, therefore needs to address the issue through bilateral negotiations with China showing its impartiality regarding the dispute between the Philippines and China.<sup>37</sup>

### Empowering the High Council

The establishment of a High Council – empowered by the Article 14 of ASEAN's 1976 Treaty of Amity and Cooperation (TOC) – to adjudicate and debate disagreements

is a viable option as an extension of diplomatic efforts to resolve disputes peacefully.<sup>38</sup> The TOC is an agreement among Southeast Asian countries to commit to resolving all regional controversies in a peaceful manner. Although the rules and procedures for the High Council were established in 2001, a High Council has yet to be established. According to the treaty, the High Council can convene if border dispute negotiations have been attempted, but have failed.<sup>39</sup> This ministerial body can also recommend suitable means of settlement of the dispute and offer mediation or reconciliation if the parties to the dispute agree. ASEAN is considered a legal personality meaning that it has lawful characteristics of an entity, and therefore possesses the rights and obligations of international law which includes putting into effect legal claims. The ASEAN is therefore mandated to amend its policies and procedures through implementing actions that empower the High Council to provide an ending solution to the SCS dispute.

The ongoing developments in the SCS are a source of serious concerns and tensions in the region. The South China Sea disagreement has exposed ASEAN member states to some challenges which could affect the organization's efforts in maintaining reliability in the area."<sup>40</sup> ASEAN is currently addressing China's political maneuvers in the SCS region, but in the past the typical response was to embrace multilateral diplomacy and avoid any opposition with the larger, more powerful nation. In the July 2013 ASEAN conference, the PRC agreed to discuss a code of conduct with ASEAN officials with the intent to agree to seek "gradual progress and consensus through consultations".<sup>41</sup> Alas progress has been slow and any evidence of agreements amongst the state members is lacking.

Further complicating the disparity is the reality that less than half of the ASEAN member states are involved in territorial disputes with China. For example, the Philippines, Vietnam, Malaysia, and Brunei claim territory that fall within China's nine dash line, but only Manila and Hanoi are protesting China's activities. Meanwhile Kuala Lumpur and Bandar Seri Begawan are avoiding any outspoken sentiments directed against Beijing. The remaining states avoid interfering in the affairs between China and the claimants particularly because of their profitable economic trade relationship with the PRC. These are indications of internal divisions in the ASEAN which affect its decision making process, but has also served as a signal to engage China with its policies.

15 years ago China and ASEAN signed the DOC that asked each party to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes and effect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner."<sup>42</sup> This accord demonstrates ASEAN's good faith effort to appeal to the PRC through diplomatic means rather than using force to address conflicts. The Philippines is willing to test the waters with this treaty in pursuit of its national interests. China's consistent position is to resolve relevant disputes with sovereign states directly concerned, through consultations and negotiations and is consistent with the consensus in the DOC.

Such an arrangement gives credibility and assurance to China's efforts to pursue peaceful measures to resolve regional disputes. For example, in 1998 the PRC established a joint cooperative agreement with Japan to settle a dispute over

hydrocarbon reserves in the East China Sea. Beijing and Tokyo committed to mutual discussions over joint development in oil and gas fields with the understanding that the concept did not influence the legal position of either state concerning final maritime demarcation.<sup>43</sup> The 2005 Joint Marine Seismic Undertaking was another joint development agreement between China, the Philippines and Vietnam that provided a period of research in seismic activity in order to isolate areas to explore oil and gas reserves in the South China Sea.<sup>44</sup> PRC's history in establishing some degree of cooperation and collaboration with neighboring states is a positive signal towards a stable future for the region as well as the United States.

With much of Europe, the Middle East and North Africa in crisis management, America's responses to activities in the SCS have become an indicator of perceived US commitment to allies and partners in the region. A stronger intramural cohesion amongst ASEAN member states will balance the regional anxiety of China's rise and the perception of uncertainty in America's role in the SCS. While America continues to take no position on sovereignty or territorial disputes in the SCS region, it must maintain that disputes be resolved in a peaceful fashion and according to international law. Remaining neutral allows the United States the flexibility to defend its interests and international rules and norms, while reassuring its allies and partners of its commitment to stability and security in the region.<sup>45</sup>

Therefore, it is important to review the US-Philippine policy treaties to understand America's policy objectives as it relates to the SCS. The two countries have a formal agreement that addresses security requirements. The Mutual Defense Treaty (MDT) that was signed on August 30, 1951 commits Washington to its diplomatic, military and

economic support to Manila, and creates options for the government of the Philippines to invest in modernizing its military or rely on US security.<sup>46</sup>

The overlooked and vague US interpretation of Article V of the MDT could be the cause of the frustrations of the Duterte administration that has made China an attractive prospect for Manila's security. For all intents and purposes the MDT basically states that an armed attack in the region on either state is an attack on the other, however the US did not support the Philippines with military forces during armed territorial and maritime disputes. This amplifies the perception that the Philippines is not important to the US and if Manila initiated aggression with Beijing to address the longstanding dispute, US response is questionable. Thus, to reassure a US ally, further clarification on Article V, even a comprehensive reassessment of the MDT is necessary to clarify the level of support America will provide to the Philippines.

In late 2016, the Philippines president announced the ban of all foreign military troops in the country within two years, reserving the right to revoke base-hosting agreements with the US. One such treaty is the Enhanced Defense Cooperation Agreement (EDCA) created to augment the MDT. EDCA allows US military troops, civilian personnel and defense contractors, vehicles, vessels and aircraft to be stationed in the country, barring the establishment of permanent presence on the island nation. The US can also build structures and store defense supplies (including weapons). In return Manila will receive modernization of the Armed Forces of the Philippines, humanitarian assistance and disaster response, joint military training and maritime security and domain awareness.<sup>47</sup> The partnership between the Philippines and the United States is broad-based, opening fresh avenues for greater cooperation.

America's national interests in the SCS are: maintaining stability and peace in the South China Sea; ensuring free movement on the international waters and the air space above it; and demonstrating US strength and its commitment of support to its strategic partner nations. However, its hallmark as the guarantor of peace in Asia-Pacific resonates dimly with its allies and partners as it wrestles to maintain a guarded relationship with China. While America continues to address strategic issues that influence international and global security, America will gradually realize that China can be both a competitor as well as a global partner. Nonetheless, the US takes a strong position on protecting the rights, freedoms and lawful uses of the sea and airspace guaranteed to all nations.

#### US Relationship with China

The third and final effort the US should continue to help resolve the Philippines-China maritime dispute is to maintain a productive relationship with China. The US needs a sustainable strategy to respond effectively to enforce international law, uphold alliances and partnerships and maintain a productive relationship with China. First, the US could encourage Manila and Beijing to settle maritime disputes through international law, or through negotiations. Washington could support a new Philippines-China relationship that would benefit from joint sovereignty over disputed areas allowing the two states to share the resources, waters and airspace. This approach also increases the opportunities to strengthen relations between the two countries and may even garner support from other ASEAN states.

Although this approach will draw mixed reactions among key players, it increases the opportunities to strengthen relations between the US, China and ASEAN states, and may garner support from the international community. This option is ambitious and

direct which runs the risk of being counterproductive as it may cause opposition amongst ASEAN states while in the process of endorsing and supporting international law. It can be feasible if US Congress ratifies the UNCLOS and once passed as law, America can officially either lead the charge, or share the duty, to provide creative considerations for peaceful solutions to regional unrest.

Secondly, America's efforts to strengthen its alliances and partnerships in the SCS are already being pursued through its rebalance strategy. The US has played a critical role in promoting confidence-building and capability-building with its allies and partners to improve their deterrence capabilities against low-level Chinese coercion. This allows US military forces to focus on deterring high-level contingencies.<sup>48</sup> Visible US leadership in the SCS is important and will build confidence in allies and partners, and will show Washington's commitment to the security of the SCS. Confidence-building increases opportunities for military partnerships and trade between regional states and the US and makes better use of the methods and practices that are already in place.

Lastly, America's broader Asia policy is not designed to counter China's growing power, but rather to encourage the peaceful rise of the PRC, which should be acceptable to all ASEAN nations. The US and China maintain high-level exchanges in military-to-military relations to promote mutual trust and avoid conflict. A way to improve contacts is by relaxing the restriction on contact between US and Chinese forces in designated areas. The 2000 National Defense Authorization Act prohibits US forces from engaging with Chinese counterparts in certain areas, including joint combat operations.<sup>49</sup> Lifting this ban will promote a more robust Chinese engagement in future

joint exercises. As China extends its naval presence in the SCS, improved ties between Washington and Beijing militaries are fundamental to keeping peace in the region.

### Conclusion

The escalating SCS dispute may need a change in policy implementation which will benefit the ASEAN countries, especially China, the country which claims the biggest area in the disputed region. China's strategic position as an emerging world power has fostered the challenge of arriving at a long-term settlement to the problem. ASEAN's recent diplomatic efforts and developments do not seem to bear any meaningful fruits. Another deterring factor to ASEAN's peaceful coexistence has been the fact that the Philippines consulted an international court to settle the differences. This shows that there is a level of distrust among the members of the ASEAN on its reliability on providing satisfactory solutions for its member states. Keeping the unity of ASEAN nations involved in joint development activities with the PRC will be a key for success. It is essential that the Philippines continue its negotiations with China in the creation of a binding code of conduct. While the United States can continue to defend international rules and norms, support regional alliances and partnerships, and maintain a productive relationship with the Philippines and China, Washington needs to adjust its strategy to reverse current trends and avoid the trap of reactive and ineffectual policymaking. Said another way, it is necessary for the US to explore an incremental calibration of a Philippine-China relationship towards regional and international stability. It is also important that ASEAN involve all its member states during the proceedings since China holds the dispute as a matter between the PRC and specific ASEAN member states. As such, ASEAN should come up with new policies and instruments that will help improve the existing dispute and advance strategic peace in the South China Sea.

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