

# THE SOUTH CHINA SEA: REALITIES AND RESPONSES IN SOUTHEAST ASIA



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EDITED BY ELINA NOOR



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## EXECUTIVE SUMMARY

**Over the past five years, tensions in the South China Sea have persisted at a rolling boil.** Clashes at sea have recruited state, quasi-, and non-state actors, from law enforcement and military personnel to militias and fisherfolk sometimes all acting in concert. On numerous occasions, standoffs and stare downs have precipitated the firing of water cannons, ramming, and the sinking of vessels. This maritime discord has also increasingly been flanked by airborne intimidation and long-running cyber campaigns. Even though the territorial dispute involves six parties with overlapping claims, China's outsized presence, heft, and mounting forcefulness in these multiple domains present a unique challenge to its smaller neighbors.

This report takes stock of the South China Sea dispute through the lens of expert analysts from the four Southeast Asian claimant states – Brunei, Malaysia, the Philippines, and Vietnam. Also included is an examination of Indonesia's stance, as an interested party. Although Indonesia does not stake a territorial claim, part of its exclusive economic zone in the North Natuna Sea overlaps with China's assertion of a "nine-dash line," resulting in incursions and confrontations familiar to claimant states.

The essays in this report evaluate the countries' basic positions as well as their approaches to conflict management and dispute resolution in the contested waters of the South China Sea. Writing in their personal capacity, the authors evaluate the following:

- Allowances and constraints of domestic politics in their respective countries;
- Major risks and best practical outcome(s) in light of ongoing developments;
- Role of the Association of Southeast Asian Nations (ASEAN) in mitigating conflict; and
- Impact extra-regional players can or do have on the dispute.

**Basic positions:** The disturbing trend line of growing muscularity in the South China Sea means that all five affected states recognize the increased urgency of carving out a suite of options individually and collectively through ASEAN. For Southeast Asian countries with limited resources strained even further due to COVID-19, maintaining bilateral diplomatic channels with one another and with China and committing to multilateral processes such as the ASEAN Code of Conduct negotiations, while preserving or expanding defense cooperation with partners remain preferred approaches. In July 2021, Vietnam's Minister of National Defense General Phan Văn Giang invited the United Kingdom's Secretary of State for Defense Robert Ben Wallace to Hanoi to mark the 10th anniversary of their defense memorandum of understanding. Even Brunei, long viewed as a silent claimant, released its "two-step approach" to dealing with the dispute: peaceful, bilateral engagement "by the countries directly concerned" alongside multilateral conclusion of an "effective and substantive" Code of Conduct (CoC).

**Domestic politics:** Politics and personalities can heavily influence how a country navigates the dispute even if its policies remain unchanged in substance. Although the Permanent Court of Arbitration (PCA) decided overwhelmingly in favor of the Philippines in the latter's case against China, President Rodrigo Duterte's muted response to the award sharply contrasts with his predecessor Benigno Aquino's vocal challenges to China's claim. The change in presidential attitude toward the PCA award, coupled with mixed messaging by the foreign affairs and defense agencies, has undermined the weight and potential impact of the ruling at the regional and international levels.



A government's domestic political legitimacy can also significantly hinge on a delicate balance of relations with China. In Vietnam, historical animosity toward China and nationalistic sentiments surrounding the South China Sea among Vietnam's domestic population as well as the Vietnamese diaspora make for a highly combustible mix that Hanoi must carefully manage. For Indonesian leaders, the challenge is how to effectively deal with China's maritime muscularity, especially in the North Natuna Sea, while maintaining domestic political legitimacy. President Joko Widodo's government cannot be too confrontational toward Beijing; however, being labelled pro-Beijing would be a political death knell for any Indonesian leader. In Malaysia, while the South China Sea dispute receives some media coverage, discussion on the topic has largely been the preserve of the policy and academic elite. This has largely helped insulate the topic from jingoism, affording leaders some political and diplomatic breathing space to negotiate. Recent reports of continued Chinese bullying, however, may change the status quo.

**Best practical outcome(s):** With little prospect of a resolution to the complex territorial dispute in the near term, the essays suggest an array of interim outcomes. For Brunei, these would converge around joint coordination mechanisms among claimant states to enhance state capacity and maritime security. Examples include a jointly coordinated interoperational maritime security platform, the already existing Code for Unplanned Encounters at Sea, and a regional fishery management organization. For the Philippines and Indonesia, a best-case scenario would start at home – at the polls, for the former, and with a structural overhaul in Jakarta's policymaking and governance mechanisms, for the latter. Vietnam's preference is for a long-lasting settlement of the dispute to be negotiated or adjudicated, if necessary, in accordance with international law.

Southeast Asian claimants would also do well to clarify and align their claims with UNCLOS while accelerating maritime delimitation talks among themselves and with non-claimants. Operationally, coordinated patrols and maritime exercises with and among Southeast Asian states could bolster cooperation and communication at sea.

**Role of ASEAN:** Although many ASEAN member-states lament the lack of the group's effectiveness, the authors in this report remain at least nominally committed to the CoC process even if claimants are guarded on the prospects of ultimately concluding an agreement that would be both effective and enforceable. The reality is that ASEAN member-states have differing levels of interest in the dispute and competing priorities; in addition, rotating ASEAN chairs may dilute the group's focus. However, other options within the ASEAN framework beyond the CoC can be leveraged further. These include the ASEAN Defense Ministers Meeting (ADMM) and ADMM Plus as well as the possibility of establishing an ASEAN depository of key international law resources and legal experts. Moreover, the platform that ASEAN offers to states to speak and be heard – among themselves and to rest of the world – should not be underestimated or dismissed.

**Impact of extra-regional players:** Southeast Asian reception to the involvement of major powers in the South China Sea dispute is mixed. While the Philippines and Vietnam welcome increased engagement and naval presence by the United States, Japan, Australia, the United Kingdom, and European countries, Malaysia and Indonesia are more circumspect. Their concern lies with the fact that littoral countries will be the first to bear the fallout of any situational escalation. Additionally, in an even more crowded sea of bigger armed vessels challenging each other, the space for frontline states to lead and optimize ASEAN-led mechanisms will become narrower. The key is for engagement to be measured and supportive of regional cooperative mechanisms. The greatest value of external players lies in helping empower the strategic, economic, and even social capacity of regional states to determine their own policy choices.

## INTRODUCTION: ROUGHER SEAS

Between 2013 and 2016, the seascape of the South China Sea changed drastically in pace and acreage. From the Spratlys to the Paracels, the seabed was dredged, artificial islands were constructed, natural maritime features were fortified, and military installations were erected. This intensity at sea was matched by the case the Philippines brought against China in January 2013 before the Permanent Court of Arbitration (PCA) under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). In 2016, the PCA found overwhelmingly in favor of the Philippines.

Although public sentiments settled after the award, tensions continue to bubble below the surface. For the littoral states of the South China Sea, three strands of development over the past few years particularly distinguish themselves: the scale and nature of intimidation by Chinese assets at sea and, of late, in the air; long-running cyber campaigns; and the growing interest of major powers in the dispute against the backdrop of U.S.-China relations.

**It is the tactical combination of harassment at sea and in the air that is especially unsettling.**

The swarming and anchoring of large Chinese fleets of fishing and maritime militia vessels in other claimants' exclusive economic zones (EEZs) as well as the harassment of Southeast Asian energy survey vessels in the South China Sea are unrivaled in scale and nature. To be sure, illegal, unreported, and unregulated (IUU) fishing remains a serious challenge among even Southeast Asian nations themselves. Depleting fish stocks in the South China Sea means that boats are increasingly driven to stray farther from their originating coastlines into other countries' overlapping maritime zones.<sup>1</sup>

However, the pressures of China's expansive fishing fleets raise the stakes by several orders of magnitude. These Chinese vessels are often several times larger than the traditional or even commercial fishing boats of coastal Southeast Asian states and are purposely built with steel hulls. The Chinese ship *Yuemaobinyu 42212* that rammed and caused the sinking of the Philippine fishing boat *F/B Gem-Ver* in June 2019 at Reed Bank measured 44 meters long and 8 meters wide.<sup>2</sup> By contrast, the *F/B Gem-Ver* was 19 meters long and 1.8 meters wide. Its hull was constructed of wood.<sup>3</sup>

Chinese trawlers, usually equipped for longer and farther journeys at sea, have also been known to swarm – sometimes by the hundreds – and anchor in the EEZs of Southeast Asian states for months, accompanied by Chinese Coast Guard (CCG) vessels. In March 2016, between 80 and 100 fishing vessels, accompanied by the CCG, encroached into Malaysia's EEZ around the Luconia Shoals.<sup>4</sup> Sustained Chinese presence – fluctuating between tens of vessels to 200 – was also detected around Union Banks, including at Whitsun Reef, for more than a year beginning in February 2020.<sup>5</sup>

Tensions surrounding energy resources in the South China Sea have been equally well documented over the years. But it is the tactical combination of harassment at sea and in the air that is especially unsettling. In 2014, the standoff between Vietnam and China over an oil rig in the Paracel Islands not only escalated into collisions and ramming at sea but Hanoi also reported the Chinese mobilization of “dozens of aircraft.”<sup>6</sup> In 2021, 16 People's Liberation Army Air Force (PLAAF) planes flew in tactical formation as close as

60 nautical miles off the Sarawak coast.<sup>7</sup> Malaysia had to scramble its jets after failed attempts to communicate with the Chinese planes. This incident happened on May 31, the 47th anniversary of Malaysia-China relations and a day before the Royal Malaysian Air Force's 63rd anniversary. Incidentally, the ramming of the *F/B Gem-Ver* happened on June 9, 2019, on the 44th anniversary of diplomatic ties between the Philippines and China.<sup>8</sup> In the near future, the larger hazard of increased aerial projection by China over the South China Sea is made more probable by China's extensive military buildup and fortification on features across the Paracels and Spratlys.<sup>9</sup>

Less discussed but no less disturbing are South China Sea-related cyber campaigns that have been unfolding for nearly two decades, largely by way of sophisticated advanced persistent threat (APT) actors. Breaches that were initially focused on collecting information on oil and gas interests have evolved over the years into a more comprehensive exercise targeting key individuals and domestic agencies in Southeast Asian claimant states as well as the ASEAN Secretariat. These APT groups, believed to be based in China (APT 30, Naikon, Spring Dragon) and Vietnam (APT 32, Ocean Lotus), have persistently mined government, commercial, and media targets for key political, economic, and military information, occasionally proving particularly active around the time of Association of Southeast Asian Nations (ASEAN) meetings.<sup>10</sup> A 2014 report by ThreatConnect indicated that APT perpetrators targeting Southeast Asia were "likely the direct operational result of the People's Republic of China (PRC) government's interest in gaining intelligence connected to the deep-rooted, multi-national disputes that are ongoing in the South China Sea region."<sup>11</sup> The South China Sea focus was echoed in another report released by F-Secure two years later that revealed targets to be "government and private-sector organizations that were directly or indirectly involved in the international territorial dispute centering on the South China Sea."<sup>12</sup>

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Although these cyber operations seem to have peaked between 2013 and 2016, the APTs have in fact remained active under the radar merely changing tactics, techniques, and procedures. In 2020, Check Point Research observed that the Naikon threat group has continued to target several governments in Southeast Asia, namely Brunei, Indonesia, the Philippines, Thailand, and Vietnam, by breaching one to try and infect another.<sup>13</sup> Of course, these are the known incidents. There may be others involving different actors yet to be disclosed.

The growing truculence by China, in particular, is perhaps an indication of its own frustrations with what it perceives to be the intransigence of its Southeast Asian neighbors in the South China Sea.<sup>14</sup> Its shows of force whether at sea or in the air have signaled displeasure for what it considers to be unilateral moves by other claimants even if those actions occur within the latter's EEZs. These developments in the maritime, air, and cyber domains have correspondingly drawn the concern and involvement of extra-regional powers from as far away as Europe and the United Kingdom. The fact that the South China Sea is a major maritime artery of seaborne trade makes this inevitable.<sup>15</sup> However, although the interests of claimant states in keeping the South China Sea a peaceful and secure area anchored by international law align with those of the major powers, the overlay of intensifying U.S.-China rivalry both benefits and complicates Southeast Asian agency, choices, and approaches.

The rising frequency of the U.S. freedom of navigation operations (FONOPs) in the South China Sea

over the past few years, the U.S. Department of State's alignment with the 2016 PCA decision, and U.S. blacklisting of Chinese companies involved in the construction and militarization of artificial islands in the South China Sea may have been privately welcomed by Southeast Asian claimants, but public responses remained largely silent.<sup>16</sup> In fact, when the U.S. Navy sent ships close to the West Capella standoff involving Chinese, Malaysian, and for a time Vietnamese vessels in April and May 2020, Malaysia's then-foreign

minister, Hishammuddin Hussein, simply called for the avoidance of "unintended, accidental incidents in these waters." He also cautioned against the hazard of miscalculations from "the presence of warships and vessels in the South China Sea."<sup>17</sup> The U.S. Navy's presence may have been intended as a show of support for Southeast Asian countries and a message of deterrence for Chinese incursions in the South China Sea, but intentions can sometimes be lost in translation. Given the differences in risk tolerance among Southeast Asian

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states, effective coordination between these littoral countries and the United State as well as with other partners hinges on improved communication and understanding among all.

The set of essays in this publication teases out the positions and policies of the Southeast Asian states most directly affected by the maritime and territorial dimensions of the South China Sea dispute. Asia Society Policy Institute (ASPI) is grateful for the insights of Asyura Salleh, Sumathy Permal, Peaches Lauren Vergara, Deryk Matthew Baladjay, Florence Principe, Nguyen Hung Son, and Evan Laksmana. ASPI also appreciates the assistance of Chaeri Park, Christopher Cooper, Eric Li, and Arthur Xie in producing this publication.

# BRUNEI DARUSSALAM / ASYURA SALLEH

At the geographic center of the rapidly evolving South China Sea dispute is Brunei - a claimant state that straddles a coastline that faces the vast expanse of the South China Sea while laying claim to the Louisa Reef, Owen Shoal, and Rifleman Bank. Since the release of the 2016 United Nations arbitral tribunal award, Brunei has been actively crafting its position. This paper seeks to reflect on Brunei's position based on official statements and to provide pragmatic options for regional stakeholders to mitigate rising tensions surrounding this dispute.

## The Two-Way Approach

Increasing militarization activity in the South China Sea has incentivized Brunei to review and clarify its position as a claimant state. Even though the COVID-19 pandemic resulted in contracted defense budgets and a redirection of national spending toward containment measures across the region, assertive behavior persisted at sea.<sup>18</sup>

In 2020, China declared two administrative districts in the South China Sea, employed maritime militia to enforce sovereign claims, and harassed exploration and fishing vessels off the Borneo Island.<sup>19</sup> In 2021, China conducted 20 naval exercises in the first half of the year and deployed groups of military aircraft into other sovereign airspaces.<sup>20</sup> Other external partners also maintained a military presence through the United Kingdom's Carrier Strike Group led by the HMS *Queen Elizabeth* aircraft carrier and the US destroyer *USS Curtis Wilbur*.<sup>21</sup>

Given escalating naval activity in their maritime backyard, Southeast Asian states are determined to expand their defense and foreign policy options by strengthening national defense capabilities through enhancing their naval presence and navigational skills. Indonesia and the United States recently held their largest island joint drill exercise and completed the construction of a joint maritime training center.<sup>22</sup> Meanwhile, Vietnam launched a new squadron – the Permanent Maritime Militia Unit – to conduct para-military operations in its southern province.<sup>23</sup>

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Brunei is no exception to this regional trend of gaining greater strategic autonomy, described as the ability to set priorities and make independent defense and foreign policy choices.<sup>24</sup> Recent statements from Brunei reflect this; they describe the country's decision to employ a "two-step approach" while enhancing defense capabilities. In July 2020, the Brunei Ministry of Foreign Affairs outlined this two-step approach favoring both bilateral and multilateral resolutions; it called for issues to be "addressed bilaterally by the countries directly concerned through peaceful dialogue and consultations" while stressing the "importance of working actively towards the early conclusion of an effective and substantive Code of Conduct (CoC) in the South China Sea."<sup>25</sup>

The statement was one of Brunei's very few publicly released postures toward the South China Sea dispute. Significantly, Brunei's statement was released in tandem with other diplomatic pronouncements from the Philippines, China, the United States, and Vietnam. The document also represented a united front

with other claimant states, as the norms upheld in the statement evoked similar sentiments of regional dialogue, peace, and stability evident in the diplomatic notes released by the Philippines and Vietnam.<sup>26</sup>

Brunei's recognition of the value of both bilateral consultations and collective dialogue is an outcome of the country's realistic assessment of its strategic environment and national priorities. Its long-anticipated Defense White Paper released in May 2021 provides an indication of the country's threat perception, demanding greater maritime security capabilities. Previously published in 2011, the White Paper in its updated form acknowledges that Brunei's maritime environment is beset with non-conventional security threats and growing tensions surrounding maritime claims in the South China Sea.<sup>27</sup> The White Paper recognizes that

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“nations seek to dominate and influence in the region” and points out the militarization of maritime features beyond mainland shorelines and recognized exclusive economic zones (EEZs).<sup>28</sup> In declaring Brunei's “most significant” threat in the maritime domain, the White Paper highlights the “risk of miscalculation and the ensuing spiraling of regional instability.”<sup>29</sup>

Like the statement released by the Ministry of Foreign Affairs, the White Paper calls for a resolution to the South China Sea dispute in accordance with international law. The White Paper emphasizes the

need to clearly define accepted norms and behavior according to the United Nations Convention on the Law of the Sea (UNCLOS), implement the 2002 Declaration on the Conduct of Parties in the South China Sea, and support the early conclusion of the CoC.<sup>30</sup>

Interestingly, the White Paper adds an operational element to Brunei's position by calling for nations to build an effective, integrated, and cross-domain maritime security capability to protect the integrity of the South China Sea.<sup>31</sup> This recognition of the need to strengthen integrative platforms quickly materialized; not long after the release of its Defense White Paper, Brunei announced the acquisition of at least one Insitu Integrator unmanned aerial drone to enhance maritime surveillance and reconnaissance.<sup>32</sup>

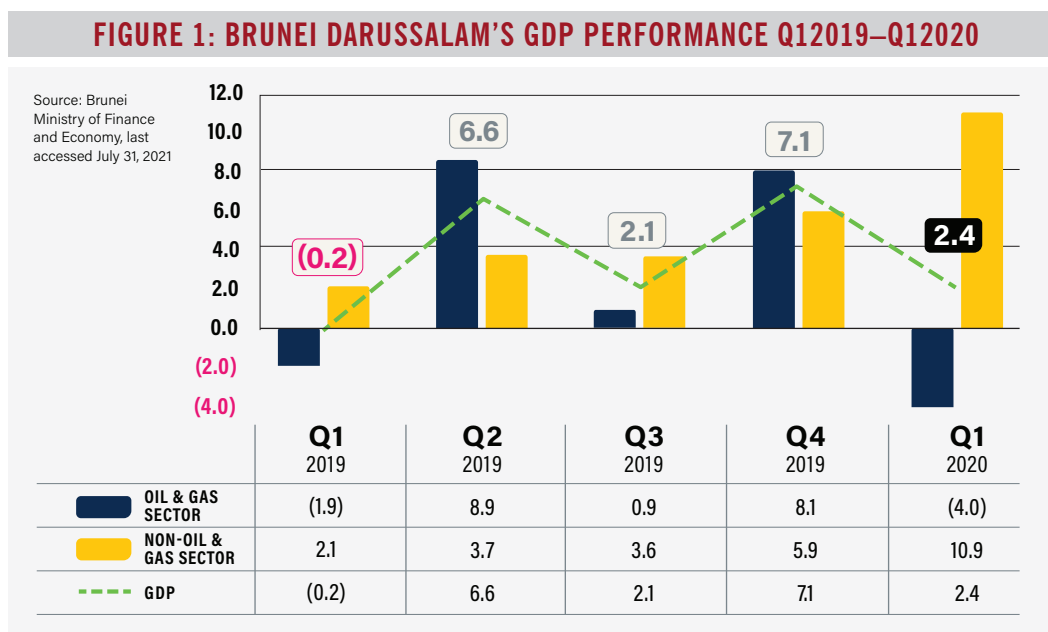
Brunei has long been described as a “silent claimant state” in the South China Sea dispute.<sup>33</sup> However, claimant states, including Brunei, are becoming increasingly vocal against escalating behavior at sea. The release of the statement by the Brunei Ministry of Foreign Affairs and the White Paper demonstrate the country's careful consideration of its position in the South China Sea dispute. For now, Brunei will be advocating a two-step approach while building its maritime security capabilities, beginning with surveillance and reconnaissance.

### **An Economy in Transition Demands New Opportunities**

Brunei's emphasis on the two-way approach is rooted in the country's recognition of its volatile environment and the need to preserve its strategic autonomy. Often overlooked is a third factor that is the country's economic experience. As an oil-producing country, Brunei's economy sharply contracted following the plunge in global oil prices in 2014, which has been described as one of the largest oil price declines since the end of World War II.<sup>34</sup> Petroleum prices dropped from USD107.95 a barrel in mid-June 2014 to USD44.08 in January 2015 – a fall of 59.2% in seven months.<sup>35</sup> Seven years on, the country's economy has yet to fully

recover.<sup>36</sup> To create a buffer and reduce Brunei’s dependency on fluctuating oil prices, there has been an active push toward diversifying the country’s industries away from oil and gas.

However, this diversification drive is easier said than done. As of 2020, Brunei’s economy continues to remain significantly dependent on its oil and gas sector. According to recent figures from the Ministry of Finance and Economy, the oil and gas sector, which includes oil and gas mining and the manufacturing



of liquefied natural gas (LNG), experienced a decline of 4% compared with the first quarter of 2019 due to a drop in the production of both crude oil and natural gas. Nevertheless, this sector continues to account for a majority of the total gross value added (GVA) at 52.3%.<sup>37</sup>

As seen in Figure 1, Brunei’s non–oil and gas sector experienced a growth of 2.4% since the first quarter of 2019, although a majority of this increase was attributed to downstream activities such as the manufacturing of petroleum and chemical products under this sector.<sup>38</sup>

China has extended several proposals to support Brunei’s diversification efforts and assist the economic transition. Among the many initiatives is the Brunei-Guangxi Economic Corridor, which establishes a direct supply chain between Brunei and the Guangxi Zhuang Autonomous Region.<sup>39</sup> Hailed as a “flagship project,” this corridor is estimated to bring in more than USD500 million worth of joint investments in developing industry sectors in Brunei.<sup>40</sup> Under this initiative, Brunei has been able to export 78% of its aquaculture products to China since 2019, which has boosted the value of the aquaculture industry.<sup>41</sup> In 2015, the aquaculture sector was valued at BND10 million (about USD7.4 million) but skyrocketed to BND32.4 million (about USD24 million) in 2020, translating to a 223% increase.<sup>42</sup> Brunei is also set to witness further cooperation with China under the Muara Port Company Sdn Bhd, a joint venture designed to modernize and manage the Muara Fish Landing Complex. A Chinese fishery firm, Hai Shi Tong Fishery Co., which has gained fishery rights in a 2,000-hectare zone off the coast of Brunei, supports the development of this port.<sup>43</sup>

China's engagement with Brunei also extends to the energy sector. The development of the oil refinery project under Hengyi Industries Sdn Bhd, a petrochemical joint venture between Brunei and China, is now entering its second phase to expand its upstream refining capacity. Located on an island in Brunei Bay, this oil refinery and petrochemical project is expected to have received an investment of about USD13.654 billion for this second stage.<sup>44</sup> Under this initiative, 70% of the shares will be accorded to China's Zhejiang Hengyi Group, while 30% will go to Damai Holdings, a wholly owned subsidiary under Brunei's Strategic Development Capital Fund. Nevertheless, the project has been well received and described as an "important stabilizer" for Brunei's declining economy as well as an opportunity to boost employment and economic growth.<sup>45</sup>

With China's investments, Brunei is now slowly regaining its economic momentum. Adopting a singular position that rejects bilateral consultations on the South China Sea dispute would therefore run a high risk of retaliation on existing and prospective trade that a positive relationship with China offers.<sup>46</sup>

### Best-Case Scenario

The slow progress toward the conclusion of the CoC has led regional countries to shift their focus toward preserving the status quo instead. Without a resolution in sight, enhancing maritime security through joint coordination mechanisms remains the most feasible best-case outcome, as it assists claimant states

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in developing the capacity they need to enhance their strategic autonomy. However, to achieve this, countries must first begin by working together through these mechanisms.

Although often labeled as "low-hanging" fruits of cooperation to develop confidence and trust, regional capacity-building coordination mechanisms add real value to national security capa-

bilities when genuinely implemented.<sup>47</sup> These mechanisms are essential in building strategic autonomy, as they enhance state capacity while offering more alternatives to incorporate into foreign and defense policies. Some mechanisms that have already been proposed include a jointly coordinated interoperational maritime security platform, upholding rules of engagement such as the Code for Unplanned Encounters at Sea (CUES) and a regional fishery management organization.<sup>48</sup> These mechanisms address common regional interests such as the development of a common operational picture of events at sea, ensuring safe vessel transit and preserving the fishery stock.

### Value of ASEAN and External Partners

The Association of Southeast Asian Nations (ASEAN) and external partners have a role to play in preserving maritime security in Southeast Asia. As a regional platform that facilitates dialogue, ASEAN helps ensure that participating states are heard. As deliberations on the CoC experience a generational change in the cohort of negotiators, diplomats, and lawyers in the region, ASEAN can support a region-wide initiative to "pass the torch" of knowledge to succeeding cohorts. This could be done by offering an easily accessible depository of key international law resources and renowned international legal experts. To provide continuous general training in international law, regional universities could offer foundational courses to diplomats and negotiators to provide them with a common baseline when discussing the interpretation of UNCLOS and the CoC with their counterparts.



Meanwhile, external partners can look to expand their engagement beyond military maneuvers and diplomatic condemnation by supporting regional cooperative mechanisms related to maritime security. The value of partners is in ensuring that Southeast Asian states are equipped with the strategic, social, and economic capacity to make their own foreign and defense policy choices.

A particular area that requires urgent assistance is curbing the sharply declining fishery stocks in the South China Sea. In the past two decades, fish stocks have dropped by at least 66% in this area.<sup>49</sup> Although unregulated fishing practices are identified as the main perpetrators of this problem, the lack of shared information surrounding the type and availability of fish species in the region is a growing concern. States that are unable to accurately determine the health levels of their marine ecosystem cannot ensure that their fishery resources are sustainably exploited by commercial and artisanal fisherfolk.

As the South China Sea contributes 12% of global fishery stock, this issue clearly impacts both regional and global food security interests.<sup>50</sup> External partners could consider supporting joint scientific research collaborations by working with think tanks and organizations such as the Southeast Asian Fisheries Development Centre (SEAFDEC) in developing a common active database of fishery stock easily accessible by fishery departments in regional countries such as Brunei.

### **Charting the Future**

As more maneuvers take place in the South China Sea, Brunei is finding itself in an increasingly complex security environment. To preserve national sovereignty, Brunei and its neighboring countries have been actively developing their strategic autonomy. While some countries are able to form a more assertive position against China, Brunei has domestic factors to take into consideration. Since China's injection of investment projects into the country, Brunei's economy is now on a steady road to recovery since the 2014 global oil price crash. In moving forward, Brunei's priorities are to ensure its national security and economic stability. The near future calls for pragmatism, and that can be found in the two-way approach and upgraded maritime security capabilities.

# MALAYSIA / SUMATHY PERMAL

**The South China Sea presents a daunting mix of concerns, from potentially grave maritime security challenges** amid the ongoing COVID-19 pandemic to overlapping claims involving China and five other disputants. For Malaysia, the situation is now even more urgent given China's harassment of seismic surveys, dispatch of militia movements, presence of warships and coast guard vessels, as well as intrusion into Malaysia's exclusive economic zone (EEZ).

The first part of this paper examines Malaysia's approach and policies in the South China Sea in managing the conflict. It outlines Malaysia's basic position and reliance on diplomacy and defense, as well as legal mechanisms to resolve conflicting claims. The second part identifies major risks impacting Malaysia and the region, while the third part examines the rules-based framework and the conduct of parties in promoting maritime cooperation in the South China Sea.

## Diplomacy as the First Line of Defense

Malaysia's maritime claims are based on international law, particularly as set out under the 1982 United Nations Convention on the Law of Sea (UNCLOS). The *Peta Baru Malaysia* or New Map of Malaysia 1979<sup>51</sup>, which lays out the country's maritime boundaries and continental shelf, includes its internal waters, territorial sea, continental shelf, EEZ, and air space over applicable maritime zones. Given Malaysia's offshore economic interests in its EEZ and continental shelf in the South China Sea, the nation's military – particularly, naval – strategy, is to maintain a presence, defend against external threats and aggression, and deter or deny any hostile acts toward these interests. Ultimately, Malaysia's aim is to preserve sovereignty over its territorial seas and sovereign rights over its EEZ.

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**Despite multiple changes in government since February 2020, the country's policy has not significantly changed; it remains focused on avoiding unintended incidents and accidents in the area.**

In general, Malaysia's maritime strategic priorities include two key elements. The first involves

comprehensively managing the safety and security of sea-lanes, upholding the country's sovereignty over features within its jurisdiction, and ensuring that external entities do not compromise or threaten the well-being of the country. As a second element, Malaysia strongly promotes cooperation as the basis for stability in the conduct of its foreign affairs with its immediate neighbors and beyond.

Since the 2016 decision by the Permanent Court of Arbitration, Malaysia has focused on two approaches to the dispute. First, on the diplomatic and foreign policy front, Malaysia has identified the South China Sea as a potential flashpoint to be handled carefully. The Ministry of Foreign Affairs' "Foreign Policy Framework 2019 of the New Malaysia" highlights that management of the South China Sea depends on close cooperation with Association of Southeast Asian Nations (ASEAN) member-states and major powers.<sup>52</sup> The document also advocates that Malaysia voice its position on emerging international matters including security in the South China Sea. Despite multiple changes in government since February 2020, the country's policy has not significantly changed; it remains focused on avoiding unintended incidents and accidents in the area.<sup>53</sup> Although Malaysia's leaders are concerned about the presence of warships and vessels increasing tensions and chances of miscalculation, they also acknowledge that international law

guarantees freedom of navigation at sea.

Additionally, Malaysia's South China Sea discourse is based on the spirit of cooperation between ASEAN and China. It reiterates the importance of ASEAN-led processes such as the ASEAN Regional Forum (ARF) and the ASEAN-China Dialogue as the primary fora for addressing common political and security issues. The enhanced importance of economic, security, safety, and environmental preservation issues in maritime Southeast Asia also requires a strengthening of mechanisms such as the ASEAN Maritime Forum, the ASEAN Regional Forum, as well as the ASEAN Transport Ministers' Meeting.

Malaysia supports the establishment of a rules-based framework with a set of norms to guide the conduct of parties and promote maritime cooperation in the South China Sea. Malaysia has continuously called for the full implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC) and the conclusion of the Code of Conduct in the South China Sea (CoC) as the way forward to manage the area's issues.<sup>54</sup> The government also supports the application of the Code for Unplanned Encounters at Sea (CUES) and the Declaration for a Decade of Coastal and Marine Environmental Protection in the South China Sea (2017–2027) (ASEAN China Strategic Partnership Vision 2030).

### Avoiding Conflict and Protecting Interests in Malaysian Waters

Malaysia's defense of its vital interests in its territorial seas, the EEZ and airspace above it, Strait of Malacca, as well as sea lines of communication (SLOCs) adjoining the South China Sea began to be enforced in 1974 with the Royal Malaysian Navy's (RMN) presence in the Spratly Islands.<sup>55</sup>

As a part of maintaining continued presence in the South China Sea, the RMN and the Royal Malaysian Air Force (RMAF) monitor the movements of any foreign vessels coming into their areas. Any incursions or sightings of vessels entering illegally are recorded, and actions such as escorting them out are normally practised. In May 2021, the RMAF scrambled its jet fighters in response to China's intrusion into airspace off the coasts of Sabah and Sarawak.<sup>56</sup> The RMN's Eastern Command has increased its presence and focus on foreign vessel intrusions into Malaysian waterways in the South China Sea. It is also establishing its fourth naval command off the coast of Bintulu to increase its presence and patrol along the Sarawak coast.<sup>57</sup>

**Frictions in the South China Sea over the last five years have relegated dispute management [...] to a secondary focus. Instead, parties seem increasingly interested in capturing strategic advantage.**

Frictions in the South China Sea over the last five years have relegated dispute management through the DoC, CoC, and negotiations to a secondary focus. Instead, parties seem increasingly interested in capturing strategic advantage. China's decision to militarize the South China Sea points to the country's interest in the area as more than just about access to resources like fish, gas, and oil.<sup>58</sup> In Malaysia's view, the fact that the South China Sea has turned into a potential flashpoint warrants immediate consideration of conflict prevention. The maritime and territorial disputes have not changed, but recent, more aggressive developments could potentially alter the status quo in the area. Despite this development, Malaysia remains consistent in its formal position that disputes should be settled through peaceful means, diplomacy, and mutual trust.

Internally, the debate on national responses and approaches toward the South China Sea has been limited to the strategic think tank and academic community, although developments are occasionally reported in the news. This reflects the cautious manner in which Malaysia has been proceeding because the stakes in the dispute are high. Consequently, this has given the government greater policy space to manage tensions at the interstate level without the pressures of nationalist sentiments from the Malaysian public.

The government has had to balance firmly defending its claims and maintaining good relations with China. So, Putrajaya issues diplomatic protests concerning Chinese intrusion into Malaysia's maritime zone, but it also engages in regular dialogues with the Chinese government to avoid unintended problems at sea.<sup>59</sup>

Over the past two decades, Malaysia's diplomatic initiatives have been largely personality driven from the top, heavily influenced by a mix of personal relationships and geopolitical interests. This approach has led to changes in the pace of policy execution and ad hoc decisions at all levels of government, from federal to state administrations.

China's insistent and increasingly assertive challenges to Malaysia's claims, particularly off the coast of Sabah and Sarawak – key states of domestic political significance – will test Putrajaya's quiet approach. Previous reports of CCG ships intimidating Malaysian fisherfolk around South Luconia Shoal prompted calls to action by the Miri Fishermen Association.<sup>60</sup> In October 2021, acknowledging the complexity of the situation, Sabah's deputy chief minister nevertheless pressed the Malaysian government to "immediately request ... a United Nations Security Council meeting to find a solution to the South China Sea emerging military conflict." Silence, he cautioned, could be misinterpreted by multiple parties: "If China is wrong, then they are wrong. No more of this nonsense entering our seas or airspace. The world's superpowers, including those from the West, must stop using our region as a proxy to fight their war."<sup>61</sup>

### Major Risks to Claimants in the South China Sea – Threats by Law Enforcement Vessels

Even though the roles and practices of the CCG have generally been in line with those of other coast guards around the world, China's new CCG law poses a formidable risk to other claimants in the South China

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Sea.<sup>62</sup> It expands the role of the CCG by allowing it to fire on what China considers foreign vessels illegally present in its so-called jurisdictional waters, including the highly contested areas in the South China Sea.<sup>63</sup>

Article 46 of Chapter VI of the CCG law provides that the maritime police agency may use police equipment or any other equipment or tool on the spot; however, Article 48 states that weapons used may also be shipborne or airborne.<sup>64</sup> The permission to use weapons against foreign ships at reefs claimed by China and the authorization to destroy structures built by other claimants have serious implications for other disputants and users of the South China Sea.

Furthermore, in August 2021, China's Maritime Safety Administration released a new rule on reporting requirements for foreign vessels, which came into effect on September 1, 2021.<sup>65</sup> As with the CCG law,

this will raise additional operational complications for other vessels, including those of the Malaysian Maritime Enforcement Authority (MMEA) and the RMN, sailing in disputed areas.

### The Conduct of Parties and Players in Managing Conflict

The South China Sea dispute is tied to China's interest and, therefore, its maritime strategy. Guided by its 1982 active defense strategy, China has consistently sought to assert ownership over the maritime features of the area.<sup>66</sup> This impedes ASEAN-China cooperation in the South China Sea. Although immediate and short-term measures to reduce tensions through bilateral diplomacy with China have yielded some success, these have only afforded temporary relief. The overflight of Chinese military aircraft near the coast of Sarawak in June and the operation of CCG vessels around the Kasawari gas field off Sarawak in 2020 illustrate the constraints of quiet, direct talks.<sup>67</sup> ASEAN and China should remain committed to resolving or at least managing the South China Sea territorial dispute. Otherwise, the region could face a major risk of military miscalculation.

**ASEAN should communicate openly with the United States and other partners about converging or diverging approaches to challenging China's dominance in the South China Sea.**

In launching the *ASEAN Outlook on the Indo-Pacific*, Malaysia, together with other Southeast Asian nations, emphasized several principles and guidelines. These cover openness, transparency, inclusivity, a rules-based framework, good governance, respect for sovereignty, nonintervention, complementarity with existing cooperation frameworks, equality, mutual respect, mutual trust and benefit, and respect for international law.

The *Outlook* provides guidance and direction for Malaysia in the near to mid-term in navigating the complexities of great power rivalry. It may also serve as a longer-term guide to Malaysia in formulating its strategic plans concerning the South China Sea. The *Outlook* maintains that ASEAN should be central in dealing with security challenges in the South China Sea. As such, ASEAN should collectively address the emergence of a dominant China attempting to control the maritime domain. At the same time, however, ASEAN should communicate openly with the United States and other partners about converging or diverging approaches to challenging China's dominance in the South China Sea.

Although the overlapping claims primarily involve China and five parties, recent frictions have involved the United States and its advocacy of freedom of navigation in the area. As alluded to by Beckman, the United States has heightened tensions with China by focusing on its freedom of navigation operations (FONOPs) in the South China Sea.<sup>68</sup> As such, ASEAN should discuss the ramifications of this geopolitical dimension rather than only aiming for low-hanging fruits such as environmental protection and issuing joint declarations to uphold peace and stability.

All parties to the South China Sea, including China, agree to a rules-based order. Even though there is no clear definition for a rules-based order, its framework has been anchored by the United Nations system, including various treaties and institutions, international law, and regional arrangements such as ASEAN-led mechanisms.<sup>69</sup> However, China's rejection of the 2016 decision by the Permanent Court of Arbitration is disappointing. It suggests that big powers like China prefer a power-based order and the selective application of rules that benefit their national interest alone.

## Effect of External Players

Since the South China Sea is a transit point and an operating area for navies and air forces in Asia, non-claimants or user-states depend on the freedom of navigation in the conduct of their activities in the South China Sea. The area is also of major interest to naval powers because it offers the shortest route from the Pacific Ocean to the Indian Ocean and facilitates the movement of naval fleets for global strategic purposes or for cooperation with allies in the region.

Whereas commentaries on the maritime strategic environment in the South China Sea seem to revolve around U.S.-China relations, there has also been increased attention on Japan, Australia, the United Kingdom, France, and Russia. In particular, FONOPs and other military developments have generated much strategic interest and concern.<sup>70</sup> The South China Sea has largely figured within the Indo-Pacific strategies of countries like Japan and the United States. The U.S. Free and Open Indo-Pacific strategy specifically mentions the dangers to sovereignty posed by China's dominance over many nations in the Indo-Pacific,

**The naval activities of non-claimant states aimed at ensuring freedom of navigation, if not properly communicated or coordinated, could potentially create mistrust among parties to the dispute including ASEAN and China.**

which may require the United States to sustain its presence in the area to maintain regional order.<sup>71</sup> As well, the revival of the Quadrilateral Security Dialogue and its shared elements of an Indo-Pacific strategy have fanned perceptions of the group's interest in containing or managing the rise of China.

However, the naval activities of non-claimant states aimed at ensuring freedom of navigation, if not properly communicated or coordinated, could potentially create mistrust among parties to

the dispute including ASEAN and China. In response to a sharpening divide between the United States and like-minded states, on the one hand, and China, on the other, ASEAN's *Outlook on the Indo-Pacific*<sup>72</sup> attempts to balance and reduce the power contestation.

## Final Assessment

Malaysia still sees ASEAN as central to managing the dispute despite ASEAN's limited effectiveness in demilitarizing the South China Sea. Several ASEAN-China mechanisms are available to manage activities in the South China Sea – namely the nonbinding 2002 DoC, the CoC, and the 2011 Guidelines on the Implementation of the DoC. Parties to the DoC, in particular, should press for discussion on issues such as the expansion of the CCG law and the use of force by law enforcement against other claimants in the South China Sea.

Parties should also employ all relevant crisis management tools such as CUES and the ASEAN Crisis Management Mechanism to prevent incidents arising from the CCG's enforcement of its new powers in the South China Sea. It is important that China conforms to international laws and norms so that its laws do not threaten or infringe on the rights of other nations. It has become more urgent for parties to revisit efforts undertaken by ASEAN, the Council for Security Cooperation in the Asia Pacific, and expert working groups to increase confidence-building measures and practical cooperation in the South China Sea.

Additionally, ASEAN platforms such as the ASEAN Defense Ministers Meeting (ADMM) and ADMM Plus with regional partners should also openly discuss the strategic rivalry between the United States and China spilling over into the South China Sea.

# PHILIPPINES / PEACHES LAUREN VERGARA

**The Republic of the Philippines asserts two basic claims in the South China Sea (SCS),** or what the Philippines refers to as the West Philippine Sea (WPS): sovereignty over the Scarborough Shoal and sovereignty over features in the Spratly Islands. China and Taiwan dispute the Philippines' claims over Scarborough Shoal, while China, Vietnam, Malaysia, and Brunei contest parts of the Philippines' claims in the Spratlys.<sup>73</sup>

The Philippines' territorial sovereignty and jurisdiction claims over Scarborough Shoal, locally named Bajo de Masinloc and legally classified as part of the Philippine province of Zambales, are premised on its occupation and jurisdiction over the area since its independence in 1946. It references the Philippine government's survey, defense, and law enforcement activities at Scarborough Shoal in the 1950s and 1960s.<sup>74</sup> The feature is 124 miles off the west coast of Luzon province and is well within the 200-nautical mile (nm) claimed exclusive economic zone (EEZ) and continental shelf (CS) of the Philippines.<sup>75</sup> A standoff in 2012 has since seen Chinese vessels block the entry into the shoal's lagoon, a traditional fishing ground for Filipino fisherfolk.<sup>76</sup>

The Philippines likewise claims sovereignty over 53 features in the Spratly Islands that it designated as the Kalayaan Island Group (KIG), 9 of which it occupies.<sup>77</sup> Vietnam, China, and Taiwan each assert sovereignty over the whole of the Spratlys, and Malaysia parts of it. Vietnam occupies 27 features; China, 8; Taiwan, 1 (the largest island, Itu Aba); and Malaysia, 5.

The Philippines' KIG claims are anchored on historic and legal rights. Since the 1930s, Filipino legislators have demonstrated interest in the KIG area on grounds of national defense and geographical proximity to the main archipelago.<sup>78</sup> Between 1968 and 1971, the Philippines began sending troops to the KIG, eventually occupying some islands, citing national security reasons.<sup>79</sup> In 1971, it demonstrated sovereignty and jurisdiction over the area with the establishment of a municipal government, the conduct of local elections, and the settlement of a small population.<sup>80</sup> In 1978, President Ferdinand Marcos officially asserted sovereignty over the KIG by establishing the Municipality of Kalayaan through the promulgation of Presidential Decree 1596.<sup>81</sup>

In January 2013, then-President Benigno Aquino III challenged China's expansive claims in the SCS in the Permanent Court of Arbitration (PCA). In July 2016, only weeks after the inauguration of President Rodrigo Duterte, the PCA overwhelmingly ruled in favor of the Philippines.<sup>82</sup>

## Duterte's Foreign Policy in the South China Sea

### *Resolving Disputes with China*

The Duterte administration's muted response to the award was unexpected given the Philippines' compelling victory in the arbitration. Former Foreign Affairs Secretary Perfecto Yasay's statements urged "restraint and sobriety,"<sup>83</sup> matching President Duterte's measured and conciliatory declarations of "no taunt—no flaunt" policy,<sup>84</sup> promising no "hard impositions" on China while making deferential remarks such as the award taking "a back seat"<sup>85</sup> and acceding to how or when Chinese President Xi Jinping would mention the dispute.<sup>86</sup>

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In perspective, Duterte recalibrated Aquino's posture challenging China's claims to one that can be characterized as appeasement.<sup>87</sup> This is designed to further economic relations with China and avoid violent confrontation with its military, pursued three ways: (1) downplaying the award; (2) distancing the Philippines from its long-standing ally, the United States, while forging closer ties with China; and (3) acquiescing to China's bilateral approach of resolving disputes.

Consistent with statements minimizing the award, President Duterte has failed to raise the ruling in regional engagements. The Philippines' 2017 position as chair of the Association of Southeast Asian Nations (ASEAN) was a significant lost opportunity to reiterate the value of the decision that extends to other Southeast Asian claimants and to help galvanize the region's recognition of the award.<sup>88</sup> In 2019, Duterte disclosed an agreement he made with Xi to disregard the ruling in exchange for a joint exploration deal.<sup>89</sup> In May 2021, Duterte said the award was "just a piece of paper that can be thrown into the bin."<sup>90</sup>

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Duterte has also vowed to pursue an "independent foreign policy."<sup>91</sup> He repeatedly quips that the Philippines will "chart its own course" and disengage from its alliance with the United States in handling the SCS disputes. In effect, the Philippines' shift away from the United States is seen as an act of placating China. For instance, in September 2016,

Duterte ordered the Philippine Navy to limit its joint patrols with the United States to the Philippines' territorial waters to avoid provoking China.<sup>92</sup> In September 2017, Duterte announced that Philippine-U.S. mutual exercises would cease following the 2016 Philippine Amphibious Landing Exercise because China opposed joint military drills.<sup>93</sup> Further, Duterte announced the Philippines' separation from the United States in his 2017 state visit to China.<sup>94</sup>

The Philippines has also embraced China's position that the award is a bilateral matter between the Philippines and China. A glaring manifestation was Duterte's labeling of the PCA decision as a bilateral issue and his endorsement of Cambodia's and Laos's veto against a joint declaration at the September 2016 ASEAN Summit in Laos.<sup>95</sup> During President Duterte's October 2016 state visit to China, both countries likewise affirmed their pursuit of bilateral negotiations.<sup>96</sup> Following this visit, the Bilateral Consultative Mechanism (BCM) was organized early in 2017 as a dialogue platform for dispute management and a confidence-building measure.<sup>97</sup>

### ***Domestic Politics in South China Sea Issues***

President Duterte's appeasement strategy is premised on three interlacing domestic issues and narratives. First, Duterte leverages the country's PCA victory to gain economic concessions from China. The award was an opportunity for the administration to reinvigorate diplomatic and economic ties with China after a decline ensuing from Aquino's hard balancing approach. Second, Duterte assumes that confrontationally engaging China in a war is the only way to reclaim the SCS from Beijing.<sup>98</sup> He maintains that the Philippines would lose the war if faced with China's aggressions in the SCS.<sup>99</sup> He also insists that the Philippines is in no position to assert its rights in the SCS because China is already in possession of the disputed area as its "owner."<sup>100</sup>



Given the wide gap between the countries' military forces and defense spending,<sup>101</sup> the logic of losing to China seems partly justified. However, the "war threat" and China's possession/ownership of the SCS narratives are not and are, at best, over-exaggerations. Law and maritime experts, including Philippines' former Supreme Court Justice Antonio Carpio and Professor Jay Batongbacal have rebuked these conjectures. Carpio maintains that a war is unaligned with China's interests because it would invite U.S. intervention in the dispute.<sup>102</sup> Batongbacal reasons that other countries' challenge to China did not lead to war; more importantly, for as long as Manila's actions are within the ambit of law, the international community and the court of international opinion will side with the Philippines' position.<sup>103</sup> They also strongly clarify that China is not in possession of the SCS, with Carpio stating that China's occupied features in the Spratlys (and Scarborough Shoal) represent less than 7% of the total SCS area.<sup>104</sup>

Third, Duterte's "U.S. snub," which has influenced his China realignment, is multilayered. Duterte's anti-imperialist beliefs and notions of residual colonialism from the Philippines' former colonizer, coupled with anecdotal experiences,<sup>105</sup> form part of Duterte's negative perception of the United States. Duterte has also questioned America's reliability as an ally, commenting on its failure to come to its aid when China started its reclamation activities in the Philippines' claimed territory,<sup>106</sup> and its inaction over China's renegeing on the deal the United States brokered between Manila and Beijing to withdraw from Scarborough Shoal in 2012.<sup>107</sup> Duterte expresses doubt over the U.S. commitment to back the Philippines in the event of China aggression in the SCS.

**Duterte's appeasement approach compromises national security and undercuts the Philippines' claims.**

Until March 1, 2019, the United States had not given its reassurance that SCS disputes would be covered by mutual defense obligations under the U.S.-Philippines Mutual Defense Treaty.<sup>108</sup> In addition, Duterte views any "meddling" in domestic affairs unacceptable. U.S. lawmakers' public criticism and sanctions on state elements embroiled in human rights abuses and extrajudicial killings under Duterte's drug war have inflamed the president's anti-American mind-set, triggering the Philippines' termination of the Visiting Forces Agreement (VFA) with the United States in 2020.<sup>109</sup> For almost a year, the status of the VFA remained uncertain as Duterte continued threats of abrogation.<sup>110</sup> This changed following the recent visit of U.S. Defense Secretary Lloyd Austin to Manila in July when Duterte decided to fully restore its defense pact with the United States.<sup>111</sup>

Additionally, there is the issue of competing and confusing messaging of the Philippine government. The views of the Foreign Affairs (DFA) and Defense (DND) Departments often diverge from those of the Office of the President's policy stance, with DFA and DND adopting a more assertive, if not inflexible, position on the award, and a more confrontational approach toward China's belligerence. This divergence is quite unprecedented. It highlights Duterte's personalistic foreign policy style and the efficacy of his authoritarian tendencies. Owing to his massive popularity and huge political capital, Duterte has been able to pursue his own foreign policy direction without directly being challenged by allies.<sup>112</sup>

### **Major Risks in Duterte's South China Sea Approach**

Duterte's appeasement approach compromises national security and undercuts the Philippines' claims. China's continued reclamation activities, including its advanced construction of systems and facilities in the Spratlys since 2016<sup>113</sup> and significant point-defense fortifications in the Fiery Cross, Mischief, and Subi Reefs<sup>114</sup> are an increasing concern. The former enhances China's ability to monitor surface and air traffic and control most of the sea lines of communication in SCS, while the latter reflects its seriousness in

defending its artificial islands. Meantime, the recently built structures<sup>115</sup> in Mischief Reef, found to be part of the Philippines' EEZ and CS violate the Philippines' sovereign rights for construction in the area.<sup>116</sup> With regard to the recent swarming of Chinese militia vessels in Whitsun Reef, Batongbacal surmises that even with China's withdrawal of its fleet, the inroads it has established and the network of bases it maintains there cannot be canceled out.<sup>117</sup>

China's reported increased presence<sup>118</sup> and plan for an air defense identification zone in the SCS has triggered unease about the possible construction of air and naval bases.<sup>119</sup> It has also heightened suspicions about reclamation at Scarborough Shoal. A persistent security threat to Manila, the potential of bases in the area would complete a triangle of bases – covering most of the SCS and the Philippines – where China could strike.<sup>120</sup> A strategic triangle engulfing the SCS would similarly allow China to consolidate its capacity to monopolize control over maritime activities in the SCS.<sup>121</sup> Possible reclamation here is also feared to lead

to permanent occupation, which would diminish the Philippines' existing sovereignty claims. Despite China's denial, its continued control over the area represents a lingering threat of future reclamation.<sup>122</sup>

**Economic benefits for Filipinos have been forgone, and ecological threats disregarded**

The SCS contributes 27% of the country's total fisheries production.<sup>123</sup> Due to unceasing incursions, approximately 627,000 fisherfolk, who belong to the

Philippines's second most impoverished sector,<sup>124</sup> may have lost their livelihood.<sup>125</sup> Moreover, amid China's illegal fishing moratorium<sup>126</sup> at Scarborough Shoal and the intense competition for fish in the Spratlys, varying estimates of local catch decline have been reported, with some by as much 80%.<sup>127</sup>

The threat that China will move to fish in the KIG area also looms as the Spratlys' fish stock diminishes.<sup>128</sup> This is perilous not just for the Philippines' future but also that of the region. The KIG provides coral and fish larvae to reef systems in the Sulu Sea and Indo-China.<sup>129</sup> The destruction of coral reefs due to China's large-scale reclamation and poaching in the Spratlys aggravates the exhaustion of the fisheries sector. The Philippines is estimated to be losing Php1.3 trillion a year (US\$26 million) from reef damage.<sup>130</sup>

Opportunities from oil exploration have similarly come at risk. Since the 1970s, the Philippines had been undertaking petroleum exploration in the resource-rich SCS. Tensions with China in the past decade, beginning with China's harassment of the Philippines' survey ship in Reed Bank in 2011,<sup>131</sup> have added to the challenges hindering further exploration. Such actions have limited the country's scale and rate to about one-tenth of that of Malaysia and Vietnam.<sup>132</sup> This has serious repercussions for the country's ability to achieve energy security as its main source of natural gas for electricity supply – Malampaya – nears depletion.<sup>133</sup>

**Best Possible Scenario and the Role of the Region and Its Allies**

After five years, Duterte's "warmer" personal relations with China have not worked as planned. China remains engaged in aggressive activities in the SCS,<sup>134</sup> and its promised investments have yet to materialize.<sup>135</sup> Yet, Duterte is expected to continue to pay lip service<sup>136</sup> to honoring the award without a substan-

**After five years, Duterte's "warmer" personal relations with China have not worked as planned. China remains engaged in aggressive activities in the SCS, and its promised investments have yet to materialize.**

tive shift in its China policy in his remaining months as president. The most favorable scenario for the Philippines would be a change in the mindset of the elected leader in May 2022: one whose reconfiguration of the Philippine-China balance would clearly set a strategic direction that is contrary to the defeatist attitude displayed by the current leadership, and that which is forward-looking and firmly anchored on the country's interests as well as the protection of its citizens and resources in the maritime domain. The Philippines should maintain the approaches led by the DFA and DND challenging China's encroachment. Additionally, domestic public pressure on Duterte should be intensified.

Apart from filing diplomatic protests, maintaining robust maritime patrol mechanisms in the Spratlys and Scarborough Shoal is key. Overwhelming public support for DFA Secretary Teodoro Locsin's and DND Secretary Delfin Lorenzana's strong statements on the Whitsun incident likely pressured Duterte to follow their lead. Duterte's order to conduct patrols and maritime exercises in these disputed areas was a welcome development. The Philippines should also consider conducting coordinated patrols and maritime exercises with its ASEAN neighbors like Vietnam, Malaysia, Indonesia, and Brunei within their respective EEZs. EEZs are subject to high-seas freedoms, with due respect to the coastal state's rights.<sup>137</sup> Therefore, they may enter into arrangements for cooperation, coordination, or communications among their ships.

With the ASEAN Code of Conduct (CoC) negotiations facing many hurdles, ranging from convening virtually due to COVID-19 to China's unlikely accession to negotiating terms, it is impracticable to imagine an agreement coming to fruition anytime soon. Myanmar's assumption from the Philippines as coordinator of ASEAN-China relations in August 2021 will make it even more difficult in the next three years given Myanmar's close relations with China.

**The most favorable scenario for the Philippines would be a change in the mindset of the elected leader in May 2022.**

It is also worth noting that despite abandoning Aquino's adversarial posture toward China, Duterte retained Aquino's strategy to build a credible defense posture. The Philippines' National Security Policy and Strategy includes the vow to reinforce the capabilities of the navy (PN) and the coast guard (PCG).<sup>138</sup> The United States provided assistance to the Armed Forces of the Philippines' modernization goals, including in its maritime security efforts. Amid rising SCS tensions in 2015, Washington gave Manila US\$79 million to support its maritime initiatives, in addition to a coast guard cutter and a maritime research vessel.<sup>139</sup> Even when the VFA was on hold, the United States maintained its commitment to enhance the Philippines' maritime domain awareness and border security capabilities.<sup>140</sup> Duterte's recent VFA restoration is viewed positively as removing the American foothold in the country would be strategically advantageous to China.<sup>141</sup> Lorenzana confirmed that the presence of American troops helped deter China's transformation of the Scarborough Shoal into an island in early 2016 by stationing 18 warthogs first and then F-18s for a few months.<sup>142</sup>

Allies in the Indo-Pacific likewise played important roles in deterring China from escalating actions in the disputed region. Japan and the Philippines recently held their first joint air exercises July 5–8, 2021, at Clark Air Base in Pampanga, as Beijing continues to step up its aggressive actions in the maritime domain.<sup>143</sup> The joint exercises mainly focused on interoperability in humanitarian and disaster relief operations but was a significant step in Japan-Philippine defense relations.

Meanwhile, as the Philippines engaged Beijing in a series of formal diplomatic protests in the first

quarter of 2021, Japan likewise ramped up its joint military drills with regional allies as well as with the United States and France.<sup>144</sup> In late 2019, the governments of Australia and the Philippines inked more military exercises for the coming years.<sup>145</sup> Together with the United States and Japan, Australia sailed through the Philippine Sea, a prelude to Exercise RIMPAC in Hawai'i.<sup>146</sup> With the security of the 1998 U.S.-Philippine VFA in place,<sup>147</sup> Australia and the Philippines can proceed with strengthening defense ties.<sup>148</sup>

The European Union's (EU) increased naval presence in the region, as outlined in its new Indo Pacific strategy, is another encouraging development. Whether or not the strategy is a paper tiger owing to the EU's past ambivalence toward China remains to be seen. However, the EU joining allies in issuing strong

## Allies in the Indo-Pacific likewise played important roles in deterring China from escalating actions in the disputed region.

statements<sup>149</sup> against unilateral actions in the SCS following the Whitsun Reef incident and including referencing the award are optimistic strides toward its identified goals.

India is also playing its part in the SCS region. Despite being locked in a contest with Beijing along

the line of control bordering India-administered Kashmir in the Ladakh Region, New Delhi previously increased its commitment in the SCS region through its "Look East" policy.<sup>150</sup> However, since then it has revised its position through a calibrated outlook of the evolving disputes that would "not impinge upon China's sentiments."<sup>151</sup> Whether or not this regional strategy would play to its full effect would largely depend on Manila's commitment to deter China through its alliance with the United States and/or regional partners and stakeholders.

Domestically, the Philippines should enact a legal measure that would assert its maritime rights and entitlements under the award and harmonize the country's domestic maritime laws with the United Nations Convention on the Law of the Sea (UNCLOS) provisions.<sup>152</sup> The Philippine Maritime Zones Law establishes the maritime areas over which the Philippines exercises sovereignty, control, or sovereign rights and jurisdiction, as well as the legal powers that it could enforce in those areas. It does so based on preexisting territorial sovereignty, building on the Philippine Archipelagic Baselines Law.<sup>153</sup> Importantly, it also addresses Beijing's arbitration claims against Manila that point to the lack of clarity in the latter's maritime zones from which it bases its maritime claims.<sup>154</sup> This law then strengthens the claims and operationalizes the Philippines' victory in the arbitration.

While China has employed its "Three Warfares"<sup>155</sup> strategy in which information weaponization and media manipulation figure prominently, the Philippines is engaged in its own disinformation and propaganda campaigns. Unfortunately, as cited earlier, this emanates from the top with Duterte leading the dissemination of false narratives. Certain supporters of Duterte amplify his message of war and anti-U.S. sentiments, as well as the weakness of the SCS claims through their commentaries on blogs and YouTube videos.<sup>156</sup> These are widely followed because they are explained in simple terms using the Filipino language.

The general public is normally impervious to foreign policy matters, which are often left to state officials because they involve highly complex issues, the details of which are often confidential. However, China's growing aggressiveness over the years, not to mention Duterte's subservience to China, has propelled SCS issues into the limelight. In fact, an average of 70% of Filipinos want to assert the country's SCS rights.<sup>157</sup> There is now greater effort to obtain accurate information on the SCS from foreign policy and

maritime experts who champion the Philippines' cause. There have also been moves to conduct SCS forums in the local vernacular to reach a wider audience. With the 2022 elections drawing closer, educating the general public on foreign policy related to the South China Sea has become exceedingly more important than ever.

## Conclusion

This paper undertook to explain three core discussions on the Philippines' stake in the South China Sea region: (1) the Philippines' basic position on its SCS claims, (2) President Duterte's foreign policy in the SCS, and (3) potential outcomes.

First, the Philippines' basic position on its SCS claims is anchored in legal and historic rights to access the said features. Moreover, a legal and historical exploration of these claims is congruent with its boundary delineation over time (i.e., Philippine Treaty Limits). Prior to the disputes of the 21st century, the Philippines had already exercised jurisdictional function over the KIG, the basis for which has been enshrined in domestic law since 1970s. It had also effectively occupied Scarborough Shoal, legally part of Zambales province, since the Philippines' independence in 1946.

**With the 2022 elections drawing closer, educating the general public on foreign policy related to the South China Sea has become exceedingly more important than ever.**

Second, President Duterte's erratic foreign policy in the SCS, vis-à-vis China and its traditional allies, belies several internal challenges. These include a dismal strategy that shelved the PCA award, downplaying the threat China poses to both the Philippines' economic survival and the status of its claims and the administration's mixed responses and rebuffs to China. Moreover, Duterte believes that the SCS is a bilateral issue between Manila and Beijing. This risks the false option of an alleged war with China, the propagation of disinformation against the Philippines' legal rights over SCS claims, and the escalation of Chinese activities in the disputed region, which has led to reclamation and loss of livelihood among Filipino fisherfolk.

Last, while the Philippines is left with limited outcomes, it does have strategic options. Gaining international support and approval is desirable but also a tall order considering China's burgeoning global influence. Maintaining a balance between consistent and robust messaging and actions against China's aggression, working with regional partners and traditional and nontraditional allies, and applying necessary legal solutions are the next viable approaches. However, the Philippines will have some work to do: Manila must revise its China policy; call out China's illegal actions in the SCS; bolster the merits of the award rather than diminish them; and enhance its defense posture either through help from its allies and partners or on its own, or if circumstances permit, both. Manila's China policy could allow cooperative mechanisms with Beijing on the condition that China would reciprocate Manila's sincerity in pursuing mutual goals under such mechanisms, and that cooperation would not be at the expense of the Philippines' SCS claims. At this stage, however, these remain inconceivable as China fails to keep its end of the bargain.

## VIETNAM / NGUYEN HUNG SON

**The South China Sea dispute is one of the most serious traditional security challenges Vietnam faces today.** The Vietnamese Communist Party's 13th Congress, the country's most important political event involving its policy-setting body, met in January 2021 and highlighted in its political report that "territorial and maritime disputes have become more tense, contentious and complicated," and that "peace and stability in the East Sea [the South China Sea] is under threat, and conflict is probable."<sup>158</sup> Further, few other topics are considered as emotionally charged as the South China Sea among Vietnam's near 100 million population. Successive Vietnamese politicians and governments have found themselves pressured from both within and without in handling the dispute.

### Vietnam's Position on the South China Sea Claims

Vietnam has two types of claims in the South China Sea: sovereignty and maritime. Vietnam believes its sovereignty claims to the Paracel and Spratly Islands in the South China Sea date back to the 17th century when these hazardous areas in the middle of the ocean were to be avoided by navigators and offered no value to most states. In today's legal terminology, these territories would have been considered *terra nullius*, or no-one's land. The fact that regional fisherfolk fished in the shallow seas surrounding the islands and occasionally took shelter on them did not imply the establishment of title over these features, under prior and current interpretations of international law.<sup>159</sup> Vietnam believes that China, as a massive land power that culturally favored land over the sea throughout its history, had no logical reason to want these remote

**Few other topics are considered as emotionally charged as the South China Sea among Vietnam's near 100 million population.**

little rocks or submerged sand banks, contrary to what China claims now.

The feudal Vietnamese state, however, had a reason to risk its way to the Paracels and Spratlys since at least the 17th century: to find luxurious

commodities it could not otherwise afford in merchant shipwrecks, many of which were European. The 1988 Vietnamese White Paper on the Paracels and Spratlys indicated that the state of Vietnam had sent annual voyages to the area to "retrieve from wrecked ships in the vicinity of these archipelagos such commodities as gold and silver, coins, guns and ammunition, tin, porcelain and glass wares, etc."<sup>160</sup> Vietnam believes these publicly recorded and continuous acts directed by Vietnam established its title over these archipelagos. Vietnam also believes that successive Vietnamese states, including the protectorate French colonial government, continuously and effectively maintained those titles until the eastern part of the Paracels and six reefs and atolls in the Spratlys were forcefully, hence illegally, taken by China in 1974 and 1988, respectively. Further, Vietnam argues that the complex series of historical events during most of the 20th century leading up the country's unification and independence did not strip it of its legal rights under international law.

Vietnam's official position, therefore, is that it has the legal and historical foundation for sovereignty over the Paracels and Spratlys, that others' claims are either weaker or unfounded legally and historically, and that all current foreign occupation in the Paracels and Spratlys is illegal and a violation of Vietnam's sovereignty.<sup>161</sup>

Vietnam's other claim in the South China Sea is that of maritime zones established under the 1982

UN Convention on the Law of the Sea (UNCLOS). Aside from clashes on sovereignty, Vietnam also faces maritime disputes derived from legitimate yet overlapping claims of states with opposite coastlines. The disagreement is exacerbated by illegitimate maritime claims, such as that of the nine-dash line. Vietnam only recognizes a dispute if the claims causing the dispute are based on UNCLOS. As a consequence of discrepancies in the interpretation and application of UNCLOS, disagreement exists over whether there are, indeed, legitimate disputes in several areas of the South China Sea.

Vietnam's approach is that sovereign disputes over the Paracels and Spratlys should be managed and resolved peacefully, without the threat or use of force, and in accordance with international law, especially the principles under the U.N. Charter. If a dispute is bilateral in nature, such as that in the Paracels, it would best be handled bilaterally. However, other peaceful means, such as third-party assistance through good offices, mediation, arbitration, or adjudication should not be precluded. If a dispute is between more than two parties, such as those in the Spratlys, it should be managed multilaterally. Maritime disputes, on the other hand, should be resolved in full compliance with international law, particularly the 1982 UNCLOS. These principles and approaches have been frequently stated by Vietnam's Ministry of Foreign Affairs spokespersons and also reflected in an agreement between Vietnam and China on the occasion of the visit by Nguyen Phu Trong, secretary-general of the Communist Party of Vietnam, to China in 2011.<sup>162</sup>

**The interaction between the Vietnamese people, both inside and outside the country, and the government has been a key factor in influencing the government's actions on the South China Sea.**

### **Vietnam's Domestic Politics on the South China Sea**

The South China Sea is a highly emotional topic among the domestic population in Vietnam as well as the Vietnamese diaspora community. The interaction between the Vietnamese people, both inside and outside the country, and the government has been a key factor in influencing the government's actions on the South China Sea. As in other countries across the region, nationalism has been rising amid heightening territorial tensions. Pressure for government transparency is high, as the population actively participates in discussions among themselves and with the government on how Vietnam should respond.

Given the country's historical interaction with its northern neighbor, the Vietnamese are especially sensitive about how their leaders handle relations with China. Any sign of weakness or compromise is deemed intolerable. Government legitimacy is dependent on the state's ability to protect national interests, with territorial integrity being a core interest. The Vietnamese diaspora, especially those formerly associated with the fallen South Vietnam government, whose regular objective is to delegitimize the Communist Party and the current Vietnamese government, has also found the South China Sea a good pretext to unite and to criticize the government for not doing enough to stand up to China.

In response, Hanoi has been making efforts to demystify and desensitize, as well as socialize, the issues related to the South China Sea among the public with the aim of maintaining national unity and managing nationalism. In contrast to its previous treatment of the dispute as a highly sensitive issue that the uninformed public might not be welcomed to openly discuss, the government has steadily encouraged public awareness and participation. It has started feeding information to the public through various

channels including opening an official website on Vietnam's territorial issues,<sup>163</sup> encouraging the media to carry columns on the subject, and soliciting policy recommendations from various think tanks.

The resulting public awareness and attendant patriotism have provided the backing for the government's resolve in times of need, such as during the HD981 oil rig standoff in 2014 when Vietnam's economy suffered a setback due to suspended ties with China. Conversely, however, this patriotism has also bound the government's hands and reduced its flexibility in searching for breakthroughs or innovative ideas to move forward.

The risks to Vietnam's interests in the South China Sea are to both its sovereignty and its maritime claims. Having been subjected to aggression twice in recent history – the first time in 1974 resulting in the Chinese occupation of the Paracels and the second in 1988 leading to the Chinese occupation of Gạc Ma (Johnson Reef), Co Lin (Collins Reef), and Len Dao (Lansdowne Reef) – Vietnam considers the defense of its current outposts its highest priority. Vietnam currently holds 33 outposts in 21 features in the Spratlys.

The second and related priority is to maintain the status quo, which is to prevent other claimants from occupying currently unoccupied features. Since all the high-tide features (features that are above water at high tide) are already occupied, the risk now lies with the submerged features. When China gathered a large number of fishing boats in Whitsun reef in March 2021, concerns arose that this might have been a prelude to China's taking control of, and occupying, this submerged feature.<sup>164</sup>

The most serious risk to Vietnam's maritime claims, however, is Chinese activities within Vietnam's exclusive economic zone (EEZ) in violation of Vietnam's sovereign rights. Vietnam has seen repeated encroachment into its EEZ in recent years. The most prominent incident was in 2014 when China sent its

**As with other claimant states, Vietnam is concerned China will use its asymmetrically larger power to intimidate smaller neighboring states into giving up their rights or settling these disputes on China's terms.**

largest oil rig to an area near Tri Ton Island southwest of the Paracels, which is only around 80 miles off the coast of Vietnam, well within what Vietnam considers its 200-nautical mile EEZ. The standoff lasted more than two months with dangerous encounters and even physical confrontations on the water, such as boat ramming and sinking and the use of high-pressured water cannons. In 2019, China deployed a research vessel to conduct a seismic survey in the central part of Vietnam's EEZ. In addition, several Chinese coast guard ships interfered with Vietnam's

oil exploratory activities in the Tu Chinh area in the southern part of Vietnam, which China calls Vanguard Bank. Vietnam views the Tu Chinh area completely within its continental shelf, far from any land feature in the Spratlys, which would otherwise only afford it 12 nautical miles of territorial sea at most under the 2016 ruling of the Permanent Court of Arbitration (PCA).

As with other claimant states, Vietnam is concerned China will use its asymmetrically larger power to intimidate smaller neighboring states into giving up their rights or settling these disputes on China's terms. Nevertheless, Vietnam is still hoping for an equitable, peaceful, and long-lasting dispute settlement mechanism in accordance with international law. This would preferably manifest through negotiation or,



if necessary, through other means, such as garnering the assistance of third parties, including through adjudication.

Though this seems unlikely given the current state of affairs in the South China Sea, it is nevertheless still possible to reach such a scenario. In 2000, Vietnam and China negotiated the delimitation of the Gulf of Tonkin to the satisfaction of both sides based on the principles of international law, particularly UNCLOS.

For such textbook dispute resolution mechanisms to be successfully extended to other parts of the South China Sea, a few conditions need to be met. First, China must be convinced its nine-dashed line and now “four-sha claim,”<sup>165</sup> based on the concept of archipelagic baseline of outlying archipelagos of a continental state, has no place under UNCLOS. Vietnam must contend that this behavior is not established state practice, contrary to China’s official claim in its *note verbale* to the UN secretary-general in September 2020.<sup>166</sup> As long as China thinks its claims merit sympathy or are grounded in international law, it will likely hold on to and fold this narrative into its campaign to mislead the uninformed public. The exchange of *notes verbales* in 2020 – a series of more than 20 official notes to the UN by a dozen countries to express their legal opinions on the South China Sea – has legally assessed and clarified many of the Chinese claims by both regional and extra-regional countries. The consensus was clear: Beijing’s claims have no legal ground, as was authoritatively determined by the 2016 PCA ruling. This consensus needs to be repeatedly underscored by the international community.

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Second, there needs to be strong and continued international presence in the South China Sea to ensure multipolarity and a dynamic equilibrium in the regional security architecture. This is to avoid regional countries from being overly dependent on China for either security or economic reasons and, therefore, from being less susceptible to pressure from China.

Third, the Association of Southeast Asian Nations (ASEAN) needs to coordinate member states’ positions more effectively to collectively promote established regional norms, such as dialogue and the renouncing of the threat or use of force in settling disputes. A united ASEAN will also serve as a legitimate platform to engage external players in regional cooperation to strengthen those norms.

### **ASEAN Neutrality on Sovereignty Claims but Not on Maritime Claims or Their Resolution**

The main barrier to a united ASEAN voice on the matter is that several members of the group are not claimants or even bordering states of the South China Sea. Moreover, all ASEAN member states value their relationship with Beijing, and most would not want the dispute to stand in the way of growing ties. A diplomat from the region even observed that “China has very cleverly got every ASEAN country thinking first of its own relationship with Beijing”<sup>167</sup> in their approach to the South China Sea issue. This phenomenon became even more pronounced after ASEAN’s expansion to include the continental Southeast Asian states of Laos, Myanmar, and Cambodia, which have no direct interests in the South China Sea. ASEAN’s divergent views

are further exaggerated by the very different approaches of even the four claimant states.<sup>168</sup>

ASEAN changed its perception and approach in the South China Sea after China officially declared its nine-dashed line claim in May 2009.<sup>169</sup> This prompted fierce diplomatic responses from several ASEAN countries. Indonesia, for example, retorted that the claim “clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982.”<sup>170</sup> That same year, Hilary Clinton, then–U.S. secretary of state, announced at the ASEAN-U.S. Post- Ministerial Conference in Phuket in July that the “United States is back in Southeast Asia.”<sup>171</sup> In 2010, Secretary Clinton also mentioned that the United States had a “national interest” in freedom of navigation in the South China Sea.<sup>172</sup> ASEAN then realized the South China Sea was no longer just a territorial issue among a few claimant states but also a theater of geopolitical competition ASEAN could not afford to ignore.

Since 2010, prompted by Vietnam’s chairing of ASEAN that year, ASEAN has repeatedly expressed its views on the South China Sea issue. The only exception was in 2012 when the ASEAN Ministerial Meeting failed to agree on a joint communiqué. In 2020, with Vietnam the chair again, ASEAN further strengthened those views. ASEAN does not take a position on sovereignty claims over the Paracel and Spratly Islands. However, ASEAN does have views on the principles on which maritime claims should be made and how sovereign disputes and overlapping maritime claims should be resolved. ASEAN’s consistent position is

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that disputes, both sovereign and maritime, must be peacefully settled “in accordance with the universally recognised principles of international law, including the 1982 UNCLOS.”<sup>173</sup> In 2020, ASEAN also insisted that “the 1982 UNCLOS is the basis for determining maritime entitlements, sovereign rights, jurisdiction and legitimate interests over maritime zones, and the 1982 UNCLOS sets out the legal framework within

which all activities in the oceans and seas must be carried out.”<sup>174</sup> This is the most explicit statement yet that ASEAN has made on the merit of maritime claims and activities in the South China Sea.

To Vietnam, ASEAN’s usefulness is not the hard power it possesses to stop or deter Beijing’s excessive claims and assertiveness in the South China Sea but its soft power to clarify and delegitimize China’s claims and activities that are in contravention of international rules and norms, thus providing a reference point for the international community to assess China’s behavior.

Vietnam believes the international community has vested interests in the South China Sea not just because of the amount of trade it carries through annually – which at US\$3 trillion is the value of nearly half of global tonnage by sea – but because precedents set in the South China Sea will have ramifications elsewhere and in other areas of international relations. British Secretary of State for Defense Ben Wallace said at the Diplomatic Academy of Vietnam that the United Kingdom believes the South China Sea issue is “not just a regional issue, nor is it even just a maritime issue” because “if the terms of a law-making international treaty, bearing the signature of 168 parties, can be junked on a whim, it becomes not just an attack on one or other article or treaty but a wholesale assault on the international system.”<sup>175</sup> Vietnam therefore believes international engagement on the South China Sea, including by the United Kingdom, should be welcomed as long as such engagement is for the purpose of strengthening the international rules-based order in the region and globally.<sup>176</sup>

## Conclusion

Vietnam's approach to the South China Sea dispute especially since the 2016 PCA ruling, has rested on regional diplomacy, particularly through ASEAN; promotion of the rules-based international system, especially UNCLOS; and management of international engagement in the region. Vietnam does not seek to proactively internationalize the issue, as it already became a center of worldwide attention owing to China's expansionism. Vietnam, however, welcomes the measured engagement and support of external players to uphold international rules and norms in the South China Sea and to help regional countries build capacity to better enforce those rules and norms themselves. Although specific views may differ, there is more convergence than divergence within ASEAN on that approach.

# INDONESIA / EVAN A. LAKSMANA

While Indonesia has a strategic interest in a peaceful and stable South China Sea, it does not stake a claim in the disputed Spratlys and therefore has limited options to solve the dispute as a non-claimant state in the South China Sea. Indonesia's default diplomatic option has been to push for the conclusion of the Association of Southeast Asian Nations (ASEAN)–China Code of Conduct (CoC) process. For one thing, this nearly two-decades-old process ensures that the South China Sea dispute remains separate from Indonesia's own potential problem with China in the North Natuna Sea. For another, the CoC process ensures the ASEAN remains the primary tool for tension management in the South China Sea. The CoC negotiating process reduces the need for Indonesia to spend strategic resources to deal with China directly to manage the tension. On the one hand, Indonesia's economic growth and prosperity are increasingly dependent on—and thus vulnerable to—China's engagement. On the other hand, China's acrimonious past with Indonesia means that political leaders concerned about their legitimacy will be cautious at publicly siding with China on major issues. Investing in the CoC process thus shifts the spotlight away from Indonesia and onto ASEAN.

However, China's recent incursions into the North Natuna Sea may have threatened Indonesia's default position and undermined the latter's buck-passing habit to ASEAN. China's deployment of fishing vessels and maritime militias—occasionally with its coast guard—to engage in illegal, unreported, and unregulated (IUU) fishing in Indonesia's exclusive economic zone (EEZ) is more than a law enforcement problem. China has broader geostrategic aims that include getting Indonesia to implicitly or inadvertently strengthen Beijing's wider illegal South China Sea claims. Specifically, China hopes that its regular incursions into the North Natuna Sea will eventually get Indonesia to “negotiate” an agreement that implicitly

acknowledges China's illegal claims in the area. This nexus between operational and strategic maritime challenges means that Indonesia's insistence on separating the problems in the North Natuna Sea and South China Sea may be unsustainable.

Indonesia thus cannot afford to be a bystander that passes on the burden of leadership to ASEAN. Ideally, Indonesia should develop a more robust

**Ideally, Indonesia should develop a more robust response to China's behavior in the North Natuna Sea as well as a push for both ASEAN and non-ASEAN options in managing the dispute.**

response to China's behavior in the North Natuna Sea as well as a push for both ASEAN and non-ASEAN options in managing the dispute. This essay explains why this ideal condition remains unlikely to materialize. It examines Indonesia's multilayered problem in the South China Sea and North Natuna Sea and highlights three conditions undermining Indonesia's possible robust response: its fractured maritime authority, the domestic polarization of Indonesia-China relations, and the lack of non-ASEAN foreign policy options. Overall, Jakarta's risk aversion in both the North Natuna Sea and South China Sea has led to a performative set of responses that placates domestic constituents but remains strategically hollow and unlikely to fundamentally change the outcomes in those two areas.

## Locating Indonesia in the South China Sea

Indonesia's interests and policies stem from its multilevel but interlinked problems in both the South China Sea and the North Natuna Sea. First, Indonesia's fractured maritime governance complicates its

operational effectiveness at sea. How well Indonesia governs its waters determines how well it can manage the North Natuna Sea's IUU fishing problem, for example. One of the central problems here is the fractured authority and capability of Indonesian agencies tasked with maritime law enforcement.<sup>177</sup> While around a dozen agencies are tasked with different facets of maritime governance, three are generally tasked with and have the basic capability to patrol Indonesia's EEZ: the Indonesian navy (TNI-AL), the Indonesian coast guard (BAKAMLA), and the law enforcement units of the Ministry of Fisheries and Maritime Affairs. Collectively, these three only have the bare minimum of assets to patrol Indonesia's vast EEZ. Theoretically, each is tasked with safeguarding all of Indonesia's EEZ. In practice, these agencies, to put it simply, have to essentially "take turns" to patrol some parts of the EEZ at any given time.

Furthermore, Indonesia does not have an integrated maritime command or an institution akin to a national security agency. Consequently, not only are daily maritime security responses fractured among the three agencies, Indonesia's strategic policymaking process is also incoherent. Indonesia has two coordinating ministries salient to the North Natuna Sea: one for Maritime Affairs and Investment and another for Political, Legal, and Security Affairs. The TNI-AL and BAKAMLA as well as the foreign ministry fall under the coordination of the latter, while the fisheries ministry falls under the former. Coordinating Minister for Maritime Affairs and Investment Luhut Pandjaitan is also the "special liaison" for Indonesia-China relations. Overall, Indonesia struggles to govern its maritime domain and to coherently develop and implement strategic policies, especially when China is involved.<sup>178</sup>

**Indonesia's fractured maritime governance complicates its operational effectiveness at sea.**

Second, Indonesia faces significant maritime challenges in the North Natuna Sea. Indonesia has to deal with IUU fishing in the area; China has not been the only perpetrator. Fishing vessels from Malaysia, Vietnam, and occasionally Thailand have been the more frequent violators of the country's EEZ.<sup>179</sup> The challenge of maritime law enforcement is therefore related to the broader maritime governance problem noted above. In addition, however, while China presents less of a frequent law enforcement problem, its incursions into the area are more strategically challenging compared with those of others.<sup>180</sup>

Under the United Nations Convention on the Law of the Sea (UNCLOS), Indonesia has overlapping claims with Vietnam and Malaysia around the North Natuna Sea. While the IUU fishing remains a challenge with these two neighbors, it represents a legitimate legal dispute. China, on the other hand, has no legal basis whatsoever for its "historic fishing rights" within the Indonesian EEZ in the North Natuna Sea, especially now that the 2016 International Tribunal for the Law of the Sea (ITLOS) tribunal has effectively outlawed the "nine-dash line" map. It is strategically imperative therefore that under no circumstances should Indonesia acknowledge China's dubious claims over the Natuna waters.

Nevertheless, the fact that there is no Indonesia-China legal maritime dispute is a double-edged sword. So long as UNCLOS remains in force, Indonesia's position will always be firmly rooted in international law and, therefore, legitimate. However, Indonesia cannot formally codify any arrangements to solve the recurrent crises or incursions, lest it implicitly acknowledges China's rights. Indeed, an informal understanding has held the positions of both China and Indonesia on the Natunas together since the mid-1990s. In essence, Beijing has not called into question Indonesia's sovereignty over the Natuna Islands and has assumed that Indonesia, conversely, has been fine with China's assertion of sovereignty over the

Nansha (Spratly) Islands. Nevertheless, Jakarta and Beijing have had different interpretations of this implicit understanding. For Jakarta, if China accepts Indonesia's sovereignty over the Natuna Islands, then it should also accept the sovereign rights (i.e., the EEZ) that come with it.<sup>181</sup>

This brittle, informal understanding is one of the reasons why Indonesia has tried to strategically decouple the South China Sea from the North Natuna Sea. China is unlikely to want to seize and occupy the Natuna Islands, but it is interested in shifting the balance of international legal standing on the South China Sea in its favor. The Natuna incursions are thus strategic leverage to get Indonesia to implicitly acknowledge China's maritime rights and, by implication, its illegal claims in the South China Sea. For this tactic to succeed, however, Beijing needs to economically draw Indonesia closer while driving a wedge within the Jakarta political elite, discussed below. In any case, Beijing has been uneasy, for example, about Indonesia's efforts to speedily conclude its maritime delimitation with Vietnam and Malaysia. The stronger

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and clearer the maritime boundaries are in the North Natuna Sea among the three countries, the weaker China's illegal claims in the South China Sea could become.

Third, Indonesia faces the diplomatic challenge of (1) deepening strategic engagement with China while pushing back on its behavior in the North Natuna Sea, as well as (2) ensuring that ASEAN

remains the primary tension management tool for the South China Sea. On the latter, Indonesia is wedded to the notion of ASEAN centrality in its own foreign policy lexicon. Indonesia does not have the strategic resources or diplomatic ingenuity to seriously invest in non-ASEAN options to shape the regional environment. Sustaining the CoC process thus ensures ASEAN's process-oriented centrality while allowing Indonesia to shift the responsibility of strategic leadership. Indonesia's convening of track 1.5 workshops in the 1990s involving non-government experts and government officials participating in their personal capacity that led to the principles of the 2002 Declaration on Conduct of the Parties in the South China Sea (the baseline of the CoC process) provides the cover of legacy for Jakarta to rely on ASEAN as the primary actor in managing tensions.

However, Indonesia's growing economic ties with China have hindered a stronger response on the North Natuna Sea. China is now Indonesia's top trading partner and among the country's top five investors. Joint projects and cooperation between the two countries' state-owned enterprises (SOEs) have also increased in recent years. Interactions between the Chinese Communist Party and major Indonesian political parties have also grown. In Indonesia's oligarchic political system, party-to-party ties in combination with commercial and economic ties mean that many key political and economic actors are privately attuned to Chinese interests. While some may be critical of Chinese behavior, others are likely to call for "calm and composure" so as to not jeopardize the bilateral economic relationship. China has been adept at finding the wedges within these competing voices and exploiting them. Beijing's dream scenario would be if one of those elite groups succeeds in getting policymakers to agree to peacefully discuss overlapping maritime rights in the Natunas, inadvertently acknowledging China's "historic rights."

Furthermore, China is now perhaps Indonesia's most "domesticated" foreign relations topic; issues involving China's presence and interaction with Indonesia are easily politicized and weaponized by

domestic political forces. There is bigger political damage, for example, in labeling President Joko Widodo, or any Indonesian politician, a “Chinese lackey,” compared with, say, an “American stooge.” Part of the problem is the troubled—and politically distorted—history of communism in Indonesia, as well as the precarious position of ethnic Chinese Indonesians.<sup>182</sup> Attacking an Indonesian politician as being pro-Beijing is effectively accusing them of having affinities or affiliations with communists or ethnic Chinese Indonesians—both groups (mis)presented as somehow inimical to Indonesia’s unity and interests.

The challenge for any Indonesian administration in dealing with China is how to sustain profitable economic ties while safeguarding its own domestic legitimacy. For the Widodo administration, this is particularly challenging. On the one hand, his entire policy agenda revolves around economic and infrastructure development.<sup>183</sup> China is certainly a key partner in this effort. On the other hand, the administration cannot afford to be seen as being a Chinese lackey. Doing nothing in the South China Sea and North Natuna Sea is therefore not a viable option. The administration needs to be seen as performing and strongly responding to Chinese behavior in these two areas. Yet it cannot go too far in confronting Beijing, either. The result is a risk-averse set of policies that plays to the domestic public while keeping China economically engaged with Indonesia and regionally invested in ASEAN-led mechanisms.

### Risk Aversion and Strong Performance

Taken together, Indonesia’s position in the South China Sea is driven by a mixed bag of oligarchy-shaped domestic political interests, fractured maritime governance, and the lack of non-ASEAN strategic options. The resulting policy playbook for the South China Sea and North Natuna Sea is thus an example of what scholars call “performative governance,” the theatrical deployment of policies or gestures to give the appearance of “working to solve the problem.”<sup>184</sup> In this instance, Indonesia’s North Natuna Sea and South China Sea playbook is designed less to robustly and strategically confront China and more to give the appearance of a firm response. Indonesia’s strong performance in those two waters consists of several elements.

**Indonesia’s position in the South China Sea is driven by a mixed bag of oligarchy-shaped domestic political interests, fractured maritime governance, and the lack of non-ASEAN strategic options.**

First, Indonesia relies on UNCLOS for diplomatic positioning and engagement. In the North Natuna Sea, Indonesia regularly sends diplomatic protest notes following each public incident to ensure Chinese behavior and claims are not left unchallenged. Indonesia has also reiterated the illegality of the nine-dash line in various international forums since at least 2010. While it initially gave an underwhelming response to the 2016 UNCLOS tribunal ruling, it has subsequently referred to it in official statements and notes. Relying on and invoking international law is a necessary step; Jakarta needs to secure its legitimacy while giving a less confrontational posture against China. But international law alone is insufficient to change Beijing’s calculus. China now has the strategic resources to simply pick and choose which parts of international law to comply with. In other words, international law is not a strategic panacea.

Second, Indonesia encourages the speedy conclusion of the ASEAN–China Code of Conduct (CoC) process. As a tension-management mechanism, the CoC final document should ideally include, for example, an outline of binding enforcement steps or a clearly defined geographic scope. Only then can the CoC create the constructive conditions necessary for future equitable maritime delimitations among the

claimants. At this point, it remains unclear whether the process will produce an impactful document that may take longer to negotiate in the midst of the pandemic or whether ASEAN and China will agree to rush through a low-quality document. In any case, Indonesia has very few options beyond the CoC.

Meanwhile, China has dangled the CoC carrot for almost two decades, as it gradually shifts the regional balance of power. The CoC process has given China time to grow its military power and implement what analysts call “salami slicing”: engaging in maritime encroachments while gradually controlling and militarizing disputed features. The CoC process has also given China the breathing space to build a better economic relationship with Southeast Asia. This, in turn, has strengthened China's economic growth while leaving the region's prosperity entangled with—and, therefore, vulnerable to—Beijing's good graces. When China holds the upper hand—which it now does—it will seek to dictate terms for the South China Sea, with or without the CoC. China has also continued its incursions in the North Natuna Sea, despite public reporting implying otherwise.

Third, Indonesia does not have a military option for the South China Sea, but it has engaged in military posturing and has sought to boost military facilities within and around the Natuna Islands.<sup>185</sup> This posturing includes publicized deployment of assets like warships and fighter jets as well as joint exercises in the area. The plan to develop military facilities and create new combat units was developed in the mid-to-late 2000s.<sup>186</sup> The recurrent Natuna crises have thus far helped Indonesia's defense establishment justify pre-existing plans and push through the budgetary process. President Widodo even visited the Natuna during both the 2016 and 2020 crises in the area.

The 2016 cabinet meeting aboard the warship is a perfect example of performative governance. The theatrics conveyed the image of a strong Indonesia safeguarding its sovereignty, when in fact the problems spurring the crisis were left unaddressed. The visit placated domestic concerns and was meant to solve the

## Indonesia's military response in the Natunas remains strategically hollow but domestically appealing.

immediate crisis—it was not designed to nor could it prevent the next one. After all, Indonesia seemed unwilling to deploy its strong diplomatic capital—and even President Widodo's personal rapport—in Beijing to make a stronger demand to change

China's behavior in the Natunas. Furthermore, the kinds of military posturing and performance—fighter jets roaming the skies, for example—are ill-suited to the daily IUU fishing and grey zone challenge. In fact, Beijing could play the victim card if Indonesia uses warships and fighter jets to drive out fishing vessels. Either way, Indonesia's military response in the Natunas remains strategically hollow but domestically appealing.

Fourth, Indonesia seeks to boost local development around the Natuna Islands and facilitate the migration of fisherfolk from Java to the area.<sup>187</sup> Jakarta assumes that if the local communities are developed and if investments from multiple countries like Japan, Australia, and the United States are present in key projects (e.g., fishing or natural gas facilities), then China might back off. Meanwhile, fisherfolk from Java would bring major fishing vessels to operate in the Natuna EEZ and establish effective fisheries. As noted, however, the problem of IUU fishing remains largely about Indonesia's fractured maritime governance, rather than the lack of domestic fishing vessels. While foreign investment projects in the fisheries sector benefits local and national businesses, it remains unclear how exactly that will change Beijing's strategic calculus. This underscores Indonesia's strong performance in the Natunas despite its risk aversion.



Taken together, these policy responses look comprehensive and reasonable. However, they have not been effective at changing China's behavior in the Natunas; neither have they changed Beijing's calculus in the South China Sea. Indonesia's strong performance, whether through UNCLOS, ASEAN, or military posturing and economic development, has not tackled the problems in the two waters head on. Indonesia remains unable to bring about an ideal CoC or push for a non-ASEAN option for the South China Sea, even as its North Natuna Sea policies remain strategically wanting. Its diplomatic strategy is too legalistic and bounded by multilateral constraints. Jakarta has been unwilling or unable to consider other diplomatic escalatory steps if necessary, like recalling the Indonesian ambassador in Beijing.

### What Lies Ahead

It is unlikely that Beijing will stop its maritime encroachments in both the South China Sea and the North Natuna Sea. After all, the ambiguities surrounding the Natunas and the ASEAN-China CoC process work to Beijing's advantage in the long run given the overwhelming imbalance of power. For the North Natuna Sea, Indonesia needs to fundamentally overhaul its strategic policymaking system and its overall maritime governance model. So long as its maritime law enforcement authority and capability remain divided, it is unlikely to effectively manage its daily operational challenge in the North Natuna Sea or formulate better strategic options to deal with China's broader strategic challenge. Indonesia also needs to rethink its insistence on separating the North Natuna Sea problem from the South China Sea issue. Indonesia, in short, needs to abandon its performative approach and gradually shed its risk aversion.

**External parties like the United States or European powers have some role in these processes but not a fundamentally critical one.**

While the prospects for a high-quality CoC to govern the South China Sea remain uncertain, Southeast Asian claimants should strive to better clarify and align their claims with UNCLOS while accelerating their maritime delimitation talks with both other claimants and non-claimants. These steps will strengthen their overall position in future delimitation talks with China in the long run but will also it is hoped push China to commit to a more concrete CoC in the meantime. However, as long as ASEAN remains focused on pandemic recovery, Myanmar, great power politics, and a whole set of other challenges, it is unlikely that member-states will want to stretch their limited diplomatic resources to finalize a high-quality CoC. Indonesia is unable to forcefully push for CoC completion or develop non-ASEAN options to stabilize the South China Sea.

External parties like the United States or European powers have some role in these processes but not a fundamentally critical one. One possible route is for these external parties to reduce, not increase, the intensity of great power politics in the region. The higher the great power tension, the harder for Southeast Asian states to feel collectively secure enough to take on the difficult steps in the South China Sea or lead and maximize ASEAN-led mechanisms to the fullest.

# CONCLUSION

**There are no easy or immediate solutions to the South China Sea dispute.** With six parties, complex and overlapping claims, and an increasingly militarized seascape in one of the world's most strategic regions, the stakes are particularly high for the littoral states of Southeast Asia.

China is the largest, most powerful, and most aggressive party by far in the dispute. It has extensively dredged artificial islands and heavily fortified them as military outposts. Additionally, its sustained harassment – often, en masse – of other claimants in the South China Sea reinforces a modus operandi of “salami-slicing.” Salami-slicing describes a series of individual provocations that, on their own, would not be worth the costs of a confrontation but over time, lead to a significantly strategic change.

Beijing may be demonstrating apparent earnestness in negotiating a full Code of Conduct (CoC) with all 10 members of the Association of Southeast Asian Nations (ASEAN). However, for Southeast Asia's frontline states, China's “slicing and swarming” tactics, mockery of the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC), and disregard of the Permanent Court of Arbitration's 2016 decision all undermine trust, confidence, and stability in the region.

As a result of China's test of wills in the South China Sea, Southeast Asian claimants have largely welcomed the counter-vailing force of external players such as the United Kingdom and France. The papers in this publication affirm that outlook despite the risks of escalating tensions and notwithstanding Southeast Asia's aversion for great power rivalry.

Although the September 2021 Quadrilateral Security Dialogue (Quad) summit only mentioned the South China Sea once – in the context of reinforcing adherence to international law and particularly the UN Convention on the Law of the Sea (UNCLOS) – it is highly likely that meeting “challenges to the maritime rules-based order” will result in more coordinated encounters at sea. After all, the maritime forces of all four Quad partners – Australia, India, Japan, and the United States – already routinely operate together. The first phase of this year's annual Malabar series involving the four countries took place in the Philippine Sea in August 2021 and there has been talk of expanding Malabar to include other countries, including the United Kingdom.

Additionally, the recently announced trilateral partnership between Australia, the United Kingdom, and the United States (AUKUS) makes clear that preserving the maritime rules-based order will entail a broader effort to enlist critical and emerging technologies in enhancing naval capabilities and sharpening a common operational picture. The U.S. and U.K. decision to share nuclear submarine technology with Australia as an initial step within AUKUS exemplifies this. Within Southeast Asia, there has been a range of responses to AUKUS – from vocal concern by Indonesia and Malaysia about the potential for an arms race in the South China Sea to guarded openness by Singapore and Vietnam. Yet, there are potential opportunities that Southeast Asia can build on from minilateral arrangements such as the Quad and AUKUS to manage the South China Sea dispute, especially in technological capacity-building.

Resolving the territorial claims through negotiation or legal arbitration may be a long way off given the complexity of the dispute. Indeed, given China's long-term determination to change the status quo in the South China Sea, it may not be possible at all. However, in the interim, the authors in this publica-

tion offer some ways ahead for dispute management by Southeast Asian countries, subject to the unique domestic constraints of each claimant state. There is also room for Southeast Asia's littoral states to assert foreign policy agency through the critical sphere of technology. Some recommendations for consideration by ASEAN states are as follows:

1. **Enhance joint security coordination mechanisms.** Mechanisms such as a jointly coordinated interoperational maritime security platform, the Code for Unplanned Encounters at Sea, and a regional fishery management organization all address common regional interests. They also build stronger state capacity that can, in turn, augment Southeast Asian claimants' strategic autonomy. ASEAN's littoral states could start by improving cooperation through these planned and existing mechanisms then by harmonizing with other ASEAN member-states for more credible, collective impact.
2. **Establish a repository of key international law resources and international legal experts.** A regional, maritime order premised on rules and international law could be complemented by a readily-accessible and up-to-date collection of materials and list of experts in Southeast Asia and beyond.
3. **Provide foundational courses in international law to diplomats and negotiators.** Regional universities could offer introductory courses to diplomats and negotiators, especially at the entry-level, to provide them with a common baseline of understanding when discussing the interpretation of UNCLOS and the CoC with their counterparts.
4. **Educate the general public.** There is value in governments explaining their position, strategy, and goals on the South China Sea to their domestic constituencies. Done carefully without inflaming nationalist fervor, a nuanced debate among political leaders, lawmakers, as well as a wider public audience could encourage greater government transparency and rally public support for policy changes.
5. **Discuss implications of developments in the South China Sea in existing ASEAN-led platforms.** Parties to the DoC could press for discussion on and response to the expansion of the China Coast Guard law as well as the use of force by law enforcement against claimants in the South China Sea. The ASEAN Defense Ministers Meeting (ADMM) and ADMM Plus platforms could also discuss the military and strategic impact of U.S.-China rivalry spilling into the South China Sea for Southeast Asian states.
6. **Coordinate ASEAN member-states' policy positions on the South China Sea.** ASEAN member-states could coordinate their positions to effectively advance established regional norms, such as renouncing the threat or use of force in settling disputes. This could be led by one of the claimant states working closely with the ASEAN chair. Southeast Asian disputants could also make a concerted effort to clarify and align their claims with UNCLOS while accelerating maritime delimitation talks with claimants and non-claimants. These measures could strengthen ASEAN states' collective position in future delimitation talks with China and facilitate a more concrete CoC. A united ASEAN will also serve as a credible platform to engage external players in underscoring regional norms. A common ASEAN position should not necessarily require an agreed position of all ten states. An agreement among the ASEAN 7, 8 or 9 would also enhance ASEANS' and individual member-states' negotiations with China,

particularly given China's long-standing position on preventing the emergence of a complete ASEAN consensus.

7. **Reinforce the Permanent Court of Arbitration's (PCA) 2016 ruling.** ASEAN member-states often recall and invoke the importance of international law in preserving the region's security, stability, and prosperity. Countries have even relied on international legal organs to settle territorial disputes among themselves. Underscoring the PCA's binding decision could emphasize commitment to the processes and substance of a rules-based order, especially in a highly-politicized and contested seascape.
8. **Conclude an effective Code of Conduct.** The CoC negotiating process aims at defusing tensions at sea. It seeks to address the trust and confidence deficiencies currently prevailing among parties. It also tests ASEAN's role and relevance in managing the South China Sea flashpoint. It is crucial, therefore, that the CoC process culminates in outcomes that are substantive and effective. Such an agreement would demonstrate sincerity and build goodwill. Negotiations may continue to be plagued by COVID-related delays or political complications in Myanmar, which assumed the country coordinator role for ASEAN-China relations for 2021 – 2024. However, it remains that the substance of the CoC should include an outline of binding enforceable measures and a clearly-defined geographic scope. This would lay the basis for certainty and predictability of actions as well as other constructive conditions for future equitable maritime delimitations among claimants.
9. **Improve coordination among regional and external players.** Without compromising operational security, greater forewarning, communication, and coordination on maritime movements by non-claimant partners such as the United States, Australia, Japan, India, and European countries could go a long way in clarifying intentions and reducing misunderstanding with Southeast Asian states. It could help avoid perceptions of unilateralism by larger powers while reinforcing a sense of trust and cooperation among regional and external players, thereby mitigating rather than exacerbating the intensity of great power contestation in the South China Sea.
10. **Leverage partnerships for technological autonomy.** Beyond existing efforts to enhance maritime domain awareness, ASEAN coastal states, in particular, could expand and deepen partnerships with external players to bolster the region's capacity and capabilities in cyber and other emerging technologies. At the operational level, these could include building resilience against cyber intrusions through regular cyber range exercises and sharpening a common operational picture of the maritime and cyber domains of the South China Sea. At the policy level, ASEAN states could begin deliberations among themselves and with dialogue partners about available measures and responses to cyber operations related to the South China Sea, within evolving frameworks of norms and international law. This way, ASEAN states could place themselves on a firmer footing over the longer-term to manage the multi-domain contestation that the South China Sea dispute has evolved to become.

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