

## Conflict and Diplomacy in the South China Sea

### *The View from Washington*

#### ABSTRACT

Disputes over sovereignty and freedom of navigation in the South China Sea (SCS) involve both the claimants and major maritime powers. Two starkly different approaches to the SCS conflict are discussed: (1) diplomacy among the claimants either bilaterally or multilaterally; (2) if diplomacy fails, the claimants are building their militaries to assert their rights through force.

**KEYWORDS:** SCS, ASEAN, Code of Conduct, maritime security

#### INTRODUCTION

There has been a general consensus for some time that only two confrontations in eastern Asia could lead to conventional war: a blowup on the Korean Peninsula and/or war between China and Taiwan across the Taiwan Strait. While the probability of either contingency thankfully is low—at least in the short to mid-term—should either occur, there is a high probability that the great powers would become involved, specifically, the U.S. and Japan. These potential hot spots are located in Northeast Asia. However, another East Asian conflict venue looms on the horizon—this time in Southeast Asia. Over the past two decades, the South China Sea (SCS, or Sea) has been the source of politico-economic-military disputes among several of the region's littoral states (Malaysia, Vietnam, the Philippines, Brunei) as well as China and Taiwan. At the same time, the U.S., Japan, Australia, and India as maritime powers have professed a vested interest in freedom of navigation and potential exploration and exploitation of the seabed's petroleum and natural gas. Moreover, all nations that trade within or with East Asia—South Korea,

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Hong Kong, Taiwan, some Latin American and European countries, and importers from the Middle East and the People's Republic of China (PRC) itself—have an interest in regional peace and stability and freedom of navigation and overflight with respect to the SCS.

The SCS is semi-enclosed and bounded by China on the north, the Philippines in the east, Vietnam in the west, East Malaysia and Brunei in the southeast, and Indonesia and Malaysia in the southwest. One-third of world trade and half of its oil and gas pass through its waters, hence the importance of freedom of navigation. The SCS is also rich in marine life, a staple for Asian diets and a major source of employment for millions of inhabitants in coastal communities. The Sea is ostensibly governed by international law, particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS), to which China, Japan, South Korea, and all 10 Association of Southeast Asian Nations (ASEAN) countries have adhered. Geographic features within the SCS are subject to competing claims of sovereignty, the most contentious being the Spratly Islands in the center. All claimants occupy some portion of the Spratlys. Vietnam claims sovereignty over all the Spratly Islands, while China and Taiwan claim sovereignty over all the territorial features in the SCS. There has been no judicial test of these claims, meaning that they are yet to be resolved through negotiation, arbitration, adjudication—or the use of force.

China's claim is the most extensive and the most ambiguous. Where other claimants base their descriptions on specific geographical features and their adjacent waters, Beijing insists on ownership of the entire SCS. In an official submission to the U.N. in May 2009 on the outer limits of its continental shelf, China attached a map with nine dashed lines forming a U-shape that enclosed most of the waters of the SCS. If China is claiming the totality of the Sea based upon historical discovery and use, the claim is not consistent with the 1982 Law of the Sea convention. Further complicating this situation are the characteristics of the features in the Sea. They encompass small islands, rocks, low-tide elevations, and artificial islands. Of these, only islands and rocks are entitled to 12-nautical-mile territorial seas. In addition, only islands are entitled to 200-nautical-mile exclusive economic zones (EEZ) and a continental shelf. The UNCLOS treaty states that the difference between a rock and an island is that the latter is capable of sustaining human habitation or economic activity. In its 2009 submission to the U.N., Indonesia contends that all the features in the SCS are rocks, not islands, and therefore, may

not be the basis for 200-nautical-mile territorial sea claims.<sup>1</sup> Although not a Spratly claimant, Indonesia's submission is designed to foreclose any Chinese argument that China's territorial waters include the rich fishery and seabed natural gas area north of Indonesia's Natuna Islands.

Although the issue of sovereignty in the SCS is fundamentally bilateral among state contenders, ASEAN—a multilateral organization—has become involved, primarily through its efforts to promote the peaceful development of SCS resources while sovereignty claims are sidelined. Within ASEAN, the features claimed by Malaysia, the Philippines, and Brunei are also claimed by Vietnam. So, not only are these claimants arrayed against China but also against each other. Moreover, ASEAN states take varying positions on the SCS dispute: Laos, Cambodia, and Myanmar (Burma) lean toward China; Malaysia and Indonesia are cautious about U.S. involvement; Thailand and Singapore are neutral; while both Vietnam and the Philippines welcome an American role.<sup>2</sup> ASEAN has played a diplomatic role in efforts to resolve the standoff. The Association was instrumental in negotiating the 1992 ASEAN Declaration on the South China Sea among the claimants, and subsequently backed the creation of a China-Philippines-Vietnam Joint Marine Seismic Undertaking (JMSU). The JMSU was an agreement among the three to explore seabed resource potential in some of the overlapping areas they claimed. It lapsed in 2008, and no results have been made public. As for the declaration on how claimants could develop the features they occupied so that conflict among them would be minimized, no meaningful implementation was ever reached. (More on the various declarations is below.)

#### CONFLICT AND DIPLOMACY: ALTERNATIVE APPROACHES TO THE SCS

Sam Bateman, an eminent Australian naval strategist, has labeled the SCS a “wicked problem” for maritime security. By that he meant that many states were involved holding different interpretations of the Law of the Sea; they

1. For more elaboration on SCS features and territorial claims, see Tommy Koh, “Mapping Out Rival Claims to the South China Sea,” *Straits Times* (Singapore), September 13, 2011; and Clive Schofield and Ian Storey, *The South China Sea Dispute: Increasing Stakes and Rising Tensions* (Washington, D.C.: Jamestown Foundation, 2009).

2. See the discussion in Sam Bateman, “Managing the South China Sea: Sovereignty Is Not the Issue,” Rajaratnam School of International Studies (RSIS), *RSIS Commentaries*, no. 136/2011, September 29, 2011; and Subathra R. Periyaswamy, “The South China Sea Dilemma: Options for the Main Actors,” in *ibid.*, no. 137/2011, September 29, 2011.

have conflicting sovereignty claims and were trying to manage the risks of greater naval activity in the region.<sup>3</sup> Essentially, there are two ways for states with SCS claims to manage these risks: building their own naval and air capacities to enforce their interests, and/or negotiating with their rivals either bilaterally or through regional arrangements. In this paper, first we examine hard-power capabilities among the SCS Southeast Asian claimants, then the diplomatic venues available to them, before turning to China's position in the dispute. Finally, we assess the actions of external stakeholders—the United States, Japan, and India.

Southeast Asian armed forces over the past decade have acquired “fourth generation” fighter aircraft, submarines, air-to-air and air-to-ground weapons, frigates, amphibious assault ships, anti-ship cruise missiles, and new command-control-communications-computing-intelligence-surveillance-and-reconnaissance (C4ISR) systems.<sup>4</sup> Arms imports to Indonesia and Malaysia have gone up 84% and 722%, respectively, between 2000 and 2010. Vietnam has spent US\$2 billion on six state-of-the-art *Kilo*-class Russian submarines and \$1 billion on Russian jet fighters. Malaysia just opened a submarine base in Borneo. The Philippines committed \$118 million in 2011 to purchase a naval patrol vessel and six helicopters to provide a security perimeter for a joint natural gas venture with Shell Philippines.<sup>5</sup> Though primarily a land power, Thailand has considerable maritime interests, including the protection of offshore oil and gas resources. Bangkok has acquired frigates from the U.S. and Britain, off shore patrol vessels (OPV) from China, and is negotiating with Germany for the purchase of refurbished submarines.<sup>6</sup> Thailand participates in the Malaysia-Indonesia-Singapore “Eye in the Sky” component of the anti-piracy Malacca Straits Patrols. That is, Thailand is now part of the littoral countries’ airborne anti-piracy surveillance of the Malacca Straits. Additionally, in September 2011 Indonesia and Vietnam agreed to establish joint patrols on their maritime borders to improve their SCS monitoring capabilities. Indonesia’s EEZ overlaps China’s claim within the nine-dash line.

3. Sam Bateman, “Solving the ‘Wicked Problem’ of Maritime Security: Are Regional Forums Up to the Task?” *Contemporary Southeast Asia* 33:1 (April 2011), p. 2.

4. Richard Bitzinger, “A New Arms Race? Explaining Recent Southeast Asian Arms Acquisitions,” *ibid.* 32:1 (April 2010), pp. 50–69.

5. Robert Kaplan, “The South China Sea Is the Future of Conflict,” *Foreign Policy* (September/October 2011), p. 83; Agence France-Presse (AFP), Hong Kong, September 8, 2011.

6. Bitzinger, “A New Arms Race?” p. 58.

The larger questions are whether the Southeast Asian acquisitions are sufficient to balance China's growing naval presence in the region and whether they can be interpreted as an arms race. In fact, the new ships and aircraft acquired by Southeast Asian armed forces are relatively few in number and hardly a match for China's People's Liberation Army's (PLA) growing air and naval assets. Moreover, elements of an arms race also seem to be absent. An arms race requires mutually acknowledged public hostility among the actors, leading to the acquisition of weapons based on anticipated military operations against one another. The purchases are made on an escalating tit-for-tat basis designed to neutralize any temporary advantage the adversary possesses. Although Southeast Asian arms buildups may in part be a function of China's behavior, a more plausible explanation is found in the normal modernization of obsolete systems and in greater attention to maritime interests because of the need to protect EEZs that are created under UNCLOS. Nevertheless, these states are acquiring standoff precision-strike, air-borne, and undersea attack capabilities as well as some expeditionary amphibious warfare vessels and improved C4ISR networks. None of these, however, is designed to achieve superiority but rather to maintain the status quo. There is, therefore, an arms dynamic but not an arms race.<sup>7</sup>

Southeast Asian Spratly claimants have also confronted each other: Malaysian air force fighters drove off Filipino military aircraft near Investigator Shoal in 1999; Malaysian and Indonesian ships clashed over the Sipadan and Ligatan Islands in the Celebes Sea in the 1990s and more recently over the Ambalat Islands in 2008–09. Both countries have increased their deployments in these waters off Sabah.<sup>8</sup>

#### MULTILATERAL DIPLOMACY

With so many overlapping maritime zones, unsurprisingly several Southeast Asian regional forums have addressed these issues, including ASEAN itself as well as the ASEAN Regional Forum (ARF), the ASEAN Defense Ministers Meeting Plus (ADMM+), and the East Asia Summit (EAS). Discussions within these groups have revealed a lack of agreement on key Law of the Sea

7. *Ibid.*, pp. 60–66; and Bernard Loo, "Arms Races in Asia?" *Eurasia Review*, November 19, 2010.

8. J. N. Mak, "Sovereignty in ASEAN and the Problem of Maritime Cooperation in the South China Sea," Working Paper, no. 156, RSIS, Singapore, April 23, 2008, pp. 6–8, 16.

issues, including innocent passage based on EEZ rights and obligations.<sup>9</sup> The PRC views its EEZ as an extension of its national waters, meaning that no country's naval ships have the right to transit them without China's permission, nor may they engage in military surveillance. Beijing's is an idiosyncratic interpretation of the EEZ provision that does not conform to that of the vast majority of UNCLOS signatories, who agree that the 200-nautical-mile zone stretching from a country's baseline can be regulated by its littoral state only with respect to economic activity, not military movement or surveillance.

The Philippines, Vietnam, and Indonesia have been particularly keen to use ASEAN-derived regional diplomacy to embed China in a regional maritime consensus. While cooperation has increased on non-traditional security concerns such as humanitarian assistance, disaster relief, and counter-piracy, consensus on the SCS has been elusive.<sup>10</sup> In 2010, China became more assertive in its SCS sovereignty claims, clashing with both Philippine and Vietnamese fishing boats and an oil exploration vessel. Philippine President Benigno Aquino III responded diplomatically, filing letters with the U.N. delineating Philippine sovereignty claims and in June launching a new initiative calling for the SCS to become a Zone of Peace, Freedom, Friendship, and Cooperation where disputes could be cooperatively addressed. The president also pledged in July to bring his country's SCS dispute before the U.N. International Tribunal on the Law of the Sea. Vietnam joined the Philippine U.N. submission.<sup>11</sup> Hanoi and Manila also joined hands to call for a meeting of ASEAN maritime law experts in Manila where, in September 2011, they agreed that UNCLOS should be the basis for resolving territorial disputes.

The Philippine plan centers on marking out disputed areas of the SCS where claimants could agree on joint development, while setting sovereignty claims aside. Areas not in dispute would be the exclusive preserve of the country owning them. Manila specifically cites the Reed Bank, where it

9. Bateman, "Solving the 'Wicked Problem' of Maritime Security," pp. 17–21.

10. Carlyle Thayer, *Southeast Asia: Patterns of Security Cooperation* (Barton, Australia: Australian Strategic Policy Institute, 2010), pp. 25, 30.

11. Idem, "China-ASEAN and the South China Sea," paper prepared for the "Major and Policy Issues on the South China Sea Conference," co-sponsored by the Institute of European and American Studies and the Center for Asia-Pacific Studies, Academia Sinica, Taipei, Taiwan, October 6–9, 2011, pp. 3–6, 13–14. Also see Robert Sutter and Chia-Hao Huang, "China-Southeast Asia Relations: Managing Policy Tensions in the South China Sea," *Comparative Connections: Triennial E-Journal on East Asian Bilateral Relations*, Pacific Forum, Honolulu, September 2011, p. 68; and Huy Duong, "Negotiating the South China Sea," *The Diplomat: ASEAN Beat*, <<http://thediplomat.com/asean-beat/>>, July 20, 2011.

has granted oil and gas exploration permits. The Reed Bank is within the 200-nautical-mile EEZ of the Philippines. The ASEAN experts' report was presented at the November 2011 Bali EAS. In an attempt to preempt expected PRC opposition, Philippine Foreign Secretary Esteban Conejos stated that the proposal is designed to separate sovereignty claims from exploration opportunities.<sup>12</sup>

The ASEAN states agree that the crux of the SCS dispute centers on China's nine-dash line claim, officially sent to the U.N. in 2009. Writing to Secretary-General Ban Ki Moon in April 2010, Beijing asserted that China was "fully entitled" to a "Territorial Sea" extending 22 kilometers from the baselines of the Spratly Islands and an EEZ out to 370 kilometers from these baselines, as well as a continental shelf possibly extending further. These claims would give China extensive national security rights and control over natural resources throughout the SCS.

In making these demands, Beijing invoked not only the 1982 UNCLOS but also two of its own laws: the 1992 Law on the Territorial Sea and Contiguous Zone and the 1998 Law on the EEZ and Continental Shelf. Moreover, when Beijing ratified UNCLOS in 1996, its reservations rendered that ratification largely meaningless because, as one of the disclaimers stated, China reaffirmed "sovereignty over all archipelagoes and islands" listed in its 1992 law. These assertions about the Paracel and Spratly Islands, as well as other SCS features, mean that little of the SCS would remain outside some form of Chinese jurisdiction. PRC policy abjures any negotiation on sovereignty and confines diplomacy to the joint development of the SCS resources, with the understanding that these arrangements would be temporary because China retains sovereignty.<sup>13</sup>

According to leaked U.S. diplomatic cables released by Wikileaks, China pressured international oil companies as early as 2006 not to sign exploration contracts with Vietnam. These companies included Chevron, Exxon-Mobil, ConocoPhillips, Japan's Idemitsu, British Petroleum (BP), and Malaysia's Petronas. All were told that such contracts would violate China's sovereignty. Only Exxon-Mobil decided to stay on. Chevron noted that in abandoning its exploration plans with Vietnam, it obtained in turn a large natural gas

12. "Philippines Seeks ASEAN Help to Blunt China," AFP, November 22, 2011; and *ibid.*, November 23, 2011.

13. "Alarm Bells over the South China Sea," *ibid.*, August 3, 2011; and Huy Duong, "Negotiating the South China Sea."

concession agreement from China within the interior province of Sichuan—considered by Chevron to be a significant opening into China for the U.S. oil company.<sup>14</sup>

### THE U.S., THE CODE OF CONDUCT, AND SCS DIPLOMACY

Diplomacy in the SCS disputes has dominated U.S. actions in Southeast Asia over the past two years.<sup>15</sup> Beginning with the ARF meeting in July 2010, the Obama administration decided to play a major role in promoting resolution of the Spratly Islands imbroglio, while laying down a marker that SCS stability for maritime commerce constituted a significant U.S. interest. ASEAN's first ever declaration on the SCS was issued long ago in 1992. This declaration was signed by ASEAN's then-six members. Ten years passed before ASEAN and China agreed on the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea. This was a set of principles that was supposed to stabilize the status quo, though it was non-binding and lacked any enforcement mechanism. The 2002 Declaration was initialed by ASEAN's current 10 members as well as the PRC. ASEAN's 2011 leader, Indonesian President Bambang Susilo Yudhoyono, stated at the Association's 44th Ministerial Meeting in July that the ARF should "finalize the long overdue guidelines because we need to get moving to the next phase, which is identifying elements of the Code of Conduct."

The U.S. backed the ASEAN initiatives with respect to the Code of Conduct, when at the July 2010 ARF, Secretary of State Hillary Clinton stated: "The United States, like every other nation, has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the SCS. We share these interests not only with ASEAN members and ASEAN Regional Forum participants but with other maritime nations and the broader international community."<sup>16</sup> In effect, Clinton articulated what she believed was the consensus among most of the world's maritime powers. She also proposed that ASEAN serve as a multilateral venue for SCS negotiations—a prospect supported by the four ASEAN claimants

14. *South China Morning Post*, Hong Kong, September 23, 2011.

15. This section draws extensively from Sheldon Simon, "U.S.-Southeast Asia Relations: Deep in South China Sea Diplomacy," *Comparative Connections: Triennial E-Journal on East Asian Bilateral Relations*, September 2011, pp. 55–57.

16. Cited in *ibid.*, p. 56.



(Malaysia, the Philippines, Vietnam, and Brunei) but vigorously opposed by China.

The Obama administration has emphasized the importance of Asian politico-security organizations led by ASEAN, the ARF, the EAS, and the ADMM+. U.S. secretaries of State and Defense have attended the ministerial meetings, and the president attended the EAS in November 2011. Washington sees ASEAN as an institution essentially supportive of international law, the peaceful settlement of disputes, and, implicitly, the territorial status quo under which maritime commerce and resource exploitation can be peacefully conducted. While the U.S. insists that it does not take sides in territorial disputes and has no stake in them, it also holds that they must be reconciled according to customary international law. This means the 1982 UNCLOS, which has rules for fixing maritime boundaries via EEZs. Application of these principles would invalidate China's claims to most of the SCS in favor of the littoral states.<sup>17</sup>

Despite current U.S. economic problems and the prospect of a significant decline in its defense budget over the next decade, military officials insist that Washington will maintain a "continuous presence" in Asia and will sustain its exercises with and assistance to ASEAN states' defense forces, according to U.S. Pacific Command (PACOM) Commander Admiral Robert Willard, as reported in the July 18, 2011, issue of *Defense News*. The Obama administration's relatively relaxed "steady-as-she-goes" assessment of SCS tension probably reflects its belief that Southeast Asia is a pro-U.S. region and that U.S. reassurance depends on Washington upgrading its diplomatic activity alongside an already robust security presence. Increasingly, PACOM features its unparalleled humanitarian relief capabilities as a form of military diplomacy. More generally, the Defense Department is also assisting ASEAN states in developing coastal monitoring and patrol capabilities. If one adds capacity building to internationalizing the SCS disputes, these constitute an easy and low-cost way for the U.S. to inject itself into Southeast Asian regional politics.

U.S. diplomacy designed to implement the foregoing Southeast Asian strategy was displayed at the ASEAN Summit in May, the Shangri-La Dialogue in June, and the ARF in July 2011. U.S. Ambassador to the Philippines Harry Thomas endorsed the SCS statement issued at the ASEAN Summit on

17. The author is grateful to an anonymous reviewer for pointing out that an additional reason Washington emphasizes "customary" international law is that the U.S. Senate has refused to ratify the 1982 UNCLOS, although the U.S. insists that it supports UNCLOS's principles.

May 18, which averred that ASEAN consultations are perfectly appropriate before any meeting with China on territorial disputes and that “all claimants should sit down at the negotiating table.” In effect, this was a confirmation of an independent ASEAN role in the SCS negotiations separate from the bilateral negotiations with each claimant preferred by China. The ASEAN approach was also endorsed by then-U.S. Secretary of Defense Robert Gates at the Shangri-La Dialogue on June 4. In late June, U.S. Assistant Secretary of State Kurt Campbell at the inaugural U.S.-China Asia-Pacific Consultations in Hawaii repeated American support for “strengthening the role of regional institutions on the challenges facing the region.”<sup>18</sup>

Although the July ARF meeting in Bali did not see a replay of the previous year’s China-U.S. acrimony over an ASEAN role in resolving the SCS disputes, Clinton reiterated the need for ASEAN participation as well as a U.S. “strategic stake in how issues there are managed.” When China and the 10 ASEAN members announced an agreement at the Forum on a set of guidelines to advance the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea, Assistant Secretary Campbell called them “an important first step . . . [but] clearly it’s just that: a first step.” The guidelines cover the easiest issues for cooperation: maritime environment, infectious diseases such as SARS (Severe Acute Respiratory Syndrome), transnational crime, and navigation safety—collectively known as nontraditional security. They fail to address the most critical issues—energy exploration and military tensions.

In the aftermath of the guidelines agreement, Clinton called on the SCS rivals to back their claims with legal evidence—a challenge to China’s declaration of sovereignty over vast stretches of the SCS. More specifically, she urged that they “clarify their claims . . . in terms consistent with customary international law . . . derived solely from legitimate claims to land features.”<sup>19</sup> (However, China has never specified what its exact claims are.) As stated above, this means that the claims should be delineated according to the 1982 UNCLOS, by which EEZs could be extended only 200 nautical miles from the land borders of littoral countries. (Ironically, Washington itself has not yet ratified the UNCLOS, though U.S. authorities have stated that they will abide by its provisions.) Clinton went on to praise Indonesia’s leadership role in ASEAN, looking forward to its help in settling the conflicts.

18. Cited in Simon, “U.S.-Southeast Asian Relations: Deep in South China Sea Diplomacy,” pp. 56–57.

19. Cited in *ibid.*, p. 57.

In fact, the guidelines do not create a proper Code of Conduct for navies or air forces involved in the SCS disputes. There are no provisions for how contending ships or aircraft should behave toward one another, nor are communications channels established in the event of such contact. In the past year, the U.S. has engaged in joint naval and air exercises with all the Southeast Asian claimants—Vietnam, Malaysia, the Philippines, and Brunei. Some of these exercises include protocols for appropriate military relationships.

Washington's emphasis on multilateral diplomacy for the SCS underlines the point that ASEAN as a whole as well as other states have significant interests in the region that go beyond the territorial disputes between the five states and China. Secretary Clinton has established the U.S. as a *de facto* party in the facilitation of a peaceful settlement. After all, Washington has a security treaty with one of the claimants, the Philippines, which could potentially draw the U.S. into the conflict. Hence, it is understandable that the U.S. prefers a negotiated future that takes into account the interests of maritime trading states, China, and the ASEAN countries. These concerns will continue to dominate Washington's Southeast Asian diplomatic agenda as well as ASEAN's politico-security relationships with both China and the U.S.

#### THE U.S. AND THE PHILIPPINES: A SPECIAL SCS RELATIONSHIP

Of the four ASEAN states with claims to some of the SCS islets, the Philippines has the weakest enforcement capability.<sup>20</sup> Its armed forces are underfunded, ill equipped, and with the exception of its special forces, poorly trained. The air force flies virtually no combat aircraft worth that designation, and the navy's ships are Vietnam War vintage and barely seaworthy. While the current Aquino government and its predecessor devised plans to modernize the armed forces, emphasizing the navy and air force, so far little has changed. Manila's alternative is to strengthen defense ties with the U.S., encourage Washington to reiterate its commitment to freedom of the seas, support Clinton's call for a multilateral negotiated settlement to the disputed maritime claims, and insist that the U.S. honor its mutual security treaty with the Philippines.

Washington has assisted the Philippines in establishing the Coast Watch South program, helping fund 17 coastal watch stations in southern Philippine

20. *Ibid.*, pp. 58–59.

waters. The U.S. is also discussing the construction of an additional 30 coastal watch stations to prevent smuggling, drug trafficking, and terrorist movements between Mindanao and Borneo. The U.S. Coast Guard has refurbished a 40-year-old *Hamilton*-class cutter for the Philippines. It is the biggest ship ever acquired by the Philippine navy, is now designated as its flagship, and is deployed off Palawan near the Spratly Islands. Additional retired *Hamilton*-class ships will also be sold to the Philippines.

In early June 2011, the Philippine Embassy in Washington announced that it was shopping for excess U.S. defense equipment under the Foreign Military Sales (FMS) program. Ambassador Jose Cuisa, Jr., asked his country's Department of National Defense and Armed Forces to provide him with a wish list of military equipment needed to shore up the country's defenses. In late June, Philippine Foreign Secretary Albert Del Rosario, speaking at the Center for Strategic and International Studies in Washington, presented a new approach to acquiring U.S. military items by leasing rather than buying them. At a subsequent joint news conference, Clinton stated that the U.S. is "determined and committed to supporting the defense of the Philippines [and exploring] what are the additional assets that the Philippines needs and how we can best provide them."<sup>21</sup> Philippine President Aquino has allocated \$254 million to upgrade the navy, and the visiting foreign secretary noted that "an operational lease [of] fairly new equipment" would permit his country to stretch the purchasing power of that sum. (However, the United States has not leased military equipment to other countries since the end of World War Two.) Manila's wish list includes frigates, modern combat aircraft, and two submarines. While the U.S. regularly provides military assistance to the Philippines, local critics complain that the equipment is frequently "third hand" after being extensively used in Thailand and South Korea. Washington has also agreed to boost Philippine intelligence capabilities in the SCS by sharing U.S. intelligence.

In January 2012, Philippine officials announced that they favored more American troop and ship deployments as long as they rotated periodically and were formally designated to be temporary. The model in mind was probably the 600 U.S. Special Operations forces in Mindanao deployed on a training mission there to enhance the Philippine military's ability to defeat the Abu Sayyaf, an al-Qaeda-affiliated jihadist group in the southern Philippines that engages in assassinations and kidnapping for ransom. Joint exercises involving

21. Ibid., p. 58.

1,500 U.S. and Philippine marines took place in March-April around Reed Bank within the Philippine-claimed areas of the Spratlys and the country's 200-nautical-mile EEZ. One of the exercise scenarios focused on protecting an oil and gas platform from imaginary enemies or "terrorists." Reed Bank is claimed by both the Philippines and China.<sup>22</sup>

In addition to acquiring more military hardware to defend its SCS claims, Manila is also seeking an unequivocal U.S. commitment to defend the Philippines in the event of a military confrontation with China. Philippine legislators and media commentators emphasize that U.S. statements about Washington's obligations under the 1951 Mutual Defense Treaty between the Philippines and the U.S. are ambiguous. Manila's argument is based on a letter exchanged between Foreign Affairs Secretaries Cyrus Vance and Carlos Romulo in 1979, in which the Philippines asserts that an armed attack on Philippine forces anywhere in the Pacific, including the SCS, will trigger a U.S. response. The American commitment, according to this interpretation, is not confined to Philippine metropolitan territory.

In recent months, the U.S. position has seemed to stop short of automatic involvement by U.S. forces. In late May 2011, Ambassador Thomas stated on board the visiting aircraft carrier USS *Carl Vinson* that "[we] are dedicated to being your partner whenever you are in harm's way." Nevertheless, on June 12, embassy spokesperson Rebecca Thompson responded to a Malacañang Palace statement that the U.S. would honor the Mutual Defense Treaty if Manila's spat with China escalated to war by saying, "The U.S. does not take sides in regional territorial disputes." After Philippine media pushback that Washington was renegeing on its commitment, Thompson attempted to smooth the troubled diplomatic waters by saying, "When I said, 'The U.S. does not take sides in regional territorial disputes,' I was talking about the current dispute over boundaries—an issue separate from what the U.S. would do in the hypothetical event of conflict." President Aquino put a positive spin on the discussion by asserting, "Perhaps the presence of our treaty partner, the United States of America, ensures that all of us will have freedom of navigation (and) will conform to international law."<sup>23</sup>

22. John H. Cushman, Jr., and Floyd Whaley, "Philippines Negotiates Broader Military Ties with U.S.," *New York Times*, January 27, 2012; Al Labita, "Russian Wrinkle in the South China Sea," *Asia Times Online*, <<http://www.atimes.com>>, accessed February 13, 2012; and Randi Fabi and Manuel Mogato, "Insight: Conflict Looms in South China Sea Oil Rush," Reuters, February 28, 2012.

23. Simon, cited in Simon, "U.S.-Southeast Asian Relations: Deep in South China Sea Diplomacy," p. 59.

Washington's interpretation of the scope of the Mutual Defense Treaty seems to be that the Spratlys are located in a part of the Pacific Ocean. Therefore, Manila could invoke the treaty if its forces were attacked in the area it claims. This would lead each signatory to consult and determine what action, if any, it might take. The implication is not that the U.S. would be required to use force. Rather, because the U.S. is a treaty partner with the Philippines, China cannot assert that events in the SCS, including the contested islands, are not any of Washington's business. Moreover, the U.S. stake arises not only from formal, legal obligations to the Philippines but more broadly from Washington's general interest in the peaceful settlement of disputes, freedom of navigation and overflight, and its activities as an East Asian actor.

## OTHER SIGNIFICANT EXTERNAL ACTORS: JAPAN AND INDIA

### Japan

For Japan, the East Asian seas serve two strategic goals: by monitoring its sea and air spaces, Japan engages in burden sharing with the U.S. and reinforces the American commitment to Japan's own security. By extending anti-piracy assistance to Southeast Asia, Tokyo protects its own sea lanes and demonstrates that it is also a regional security partner to other littoral states. Since 2000, Tokyo has concluded anti-piracy training agreements with several Southeast Asian states. The Japan Coast Guard holds training exercises annually with Southeast Asian counterparts as well as with India. In the past few years, Tokyo has provided grants to Indonesia, the Philippines, and Malaysia to enhance maritime security.<sup>24</sup>

Japan has also established "strategic partnerships" with India and Australia that include cooperation in disaster relief operations and an acquisition and cross-servicing agreement with Canberra. Possessing two helicopter carriers, Japan could play a significant role in containing China's expanding submarine capabilities. And Tokyo's plans for a new fifth-generation F-X fighter are also designed to prevent China from gaining air superiority in Japan's vicinity.<sup>25</sup>

24. James Manicom, "Japan's Role in Strengthening Maritime Security in Southeast Asia," in James Bradford, James Manicom, Sheldon W. Simon, and Neil A. Quartaro, *Maritime Security in Southeast Asia: U.S., Japanese, Regional, and Industry Strategies*, National Bureau of Asian Research (Seattle), Special Report #24, November 2010, pp. 35–37, <[http://www.nbr.org/publications/specialreport/pdf/Preview/SR24\\_preview.pdf](http://www.nbr.org/publications/specialreport/pdf/Preview/SR24_preview.pdf)>.

25. Interview with Japan security specialist Professor Christopher Hughes, National Bureau of Asian Research, Seattle, September 13, 2011.

In September 2011, Japanese and Philippine officials discussed the creation of a “permanent working group” to coordinate their policies pertaining to Asian maritime disputes. Undoubtedly, Manila has the SCS claims in mind. A Philippine spokesman said: “Just like the U.S., Japan is also a stakeholder in the quest for peace and stability in the (SCS). So this is a matter of common interest to the two countries.”<sup>26</sup> In a Tokyo meeting with ASEAN defense officials at the end of September, Japanese Vice Minister of Defense Nakae Kimito stated that the Japan-ASEAN security relationship has matured to the point where Japan can play “a more specific cooperative role” on regional security issues. Nakae also said that resolving maritime problems requires stronger cooperation from Japan, the U.S., and others.<sup>27</sup>

These combined security concerns in the SCS led to a September 2011 military cooperation agreement between Japan and the Philippines to expand joint naval exercises. China’s recent assertive behavior in the SCS constitutes not only a direct challenge to Philippine claims but also an implicit threat to Japan’s oil and raw materials lifeline. (Japan’s dependence on foreign oil sources is nearly 100%; close to 90% of its supply passes through the SCS.) Tokyo now regularly voices concerns about China’s dominance in these waters at ASEAN-sponsored gatherings. Both Japan and the Philippines have endorsed a multilateral approach to the SCS, compliance with freedom of navigation, and a binding Code of Conduct under established international law. All of this is a none-too-veiled riposte to Beijing’s insistence on exclusively bilateral negotiations to resolve disputes in the region.<sup>28</sup>

## India

India’s naval extension from the Indian Ocean into the SCS may be understood along several dimensions. First, it desires to become an Asian power, not just an Indian Ocean actor. Second, India, after considerable investment in its navy, now has the capability to deploy to eastern Asia and balance China—not only along the Sino-Indian land border but on the sea as well. Third, India is investing in SCS energy exploration for its rapidly developing economy. Within the decade, India will have three aircraft carriers equipped with fourth generation MiG 29-K supersonic strike aircraft. On the other hand, the carriers’ total air

26. “China Sea Claims to Top Japan-Philippine Summit,” AFP, September 27, 2011; and “Japan Steps into South China Sea Territorial Feud,” Associated Press (AP), September 21, 2011.

27. “Asian Bloc Agrees to Counter China Heft,” *Wall Street Journal Online*, September 30, 2011.

28. “Japan Taking New Role in the South China Sea,” *STRATFOR*, September 30, 2011, <<http://www.stratfor.com>>.

complement would be only 92 fighters—a very limited land bombardment capacity. Moreover, a three-carrier fleet means that only one will be deployed at all times, hardly sufficient for both the Indian Ocean and SCS. Additionally, aircraft carriers are normally protected by surface combatants, and most of India's surface ships are old and obsolete. Even more problematic is the Indian air force. To operate in the SCS region would require in-flight refueling, for which it has only six aircraft. An expeditionary strike force of 60 planes would need at least 15 tankers. Finally, there is no strategic plan for aircraft acquisition; they have been purchased piecemeal, without coordinating weapons types or refueling aircraft. In short, while India clearly dominates the Indian Ocean, its capability to be a significant military actor in the SCS is insufficient.<sup>29</sup>

One method by which India can enhance its military clout involves deepening ties with the U.S. and its regional allies and partners. Relations with Japan, Indonesia, and, most recently, Vietnam, are illustrative. A “strategic partnership” between Japan and India was announced in 2005. Expanded to the notion of an “Arc of Freedom and Prosperity,” values-oriented diplomacy links India, Japan, Australia, and the U.S. In 2007, then-Prime Minister Abe Shinzo proposed a “Quadrilateral Initiative” through which the U.S., India, Japan, and Australia would create a formal security dialogue. In both 2007 and 2009, trilateral exercises were held in the Indian Ocean and western Pacific among Indian, Japanese, and American navies.

A joint Security Declaration in 2008 pledged Japan and India to coast-guard cooperation and consultation within existing regional multilateral institutions, as well as sharing experiences from non-traditional security activities such as peacekeeping and disaster management. The emphasis here is on political rather than military cooperation, reflecting Japan's prohibition under its “peace constitution” against becoming involved in collective defense (though military collaboration with the U.S. is a notable exception). From Delhi's perspective, Japan-Indian security ties help to legitimize an Indian role in eastern Asia. In turn, Tokyo obtains an implicit Indian pledge to provide security for Japanese shipping in the Indian Ocean, an understanding that also seems to be endorsed by the Obama administration.<sup>30</sup>

29. Walter Ladwig, III, “India and Military Power Projection: Will the Land of Gandhi Become a Conventional Great Power?” *Asian Survey* 50:6 (November/December 2010), pp. 1174–79.

30. David Brewster, “The India-Japan Security Relationship: An Enduring Security Partnership,” *Asian Security* 6:2 (May-August 2010), pp. 97, 99, 110. Also see the article by the secretary of state, Hillary Clinton, “America's Pacific Century,” *Foreign Policy*, November 2011.



For India to sustain an active maritime security role in the SCS, it also needs approval from the Southeast Asian littoral. Indonesia, which benefits from India's help in developing its naval capabilities, has given its blessing. Beginning in 2002, the two countries have undertaken coordinated patrols through the Andaman Sea at the northern entrance to the Malacca Straits, involving both ships and aircraft. These patrols are directed from an Indian command in the Andaman Islands. By categorizing itself as a "funnel state" to the Malacca Straits, India justifies a greater security role for itself. The U.S. appears comfortable with this growing role.<sup>31</sup>

The most striking evidence that India intends to be an SCS security participant is found in its deepening ties with Vietnam. By seeking docking rights for its warships and posting long-term naval instructors at both Cam Ranh Bay and Nha Trong, Delhi is entering into China's strategic backyard. India has also agreed to help Vietnam ready a new fleet of submarines and is engaged in talks with Hanoi over hydrocarbon exploration off Vietnam's coast. India's largest oil company, ONGC Videsh, plans two oil exploration projects with Petro Vietnam in SCS waters also claimed by China. Beijing has labeled what it sees as India's meddling in the region an attack on China's sovereignty.<sup>32</sup>

Indicative of India's commitment to become a South and Southeast Asian naval power is the navy's 2013 budget, which will grow by 74% over 2012 to \$4.77 billion, up from \$2.74 billion. Significant navy purchases include seven more *Shirak*-class frigates and six diesel-electric submarines, for a sum of \$21 billion. In total, the Indian Navy plans to build 46 warships over the next several years. Its destroyers and frigates will have stealth capabilities.<sup>33</sup>

## IMPLICATIONS FOR THE U.S. AND CONCLUSION

In October 2007, the U.S. issued a new maritime strategy, "A Comprehensive Strategy for 21st Century Seapower" (CS21). It averred that "[c]redible combat power will be continuously postured in the Western Pacific and Arabian Gulf/Indian Ocean" to protect "vital interests" and assure friends and allies of America's commitment to regional security and open sea-lines of

31. David Brewster, "The Relationship between India and Indonesia: An Evolving Security Partnership?" *Asian Survey* 51:2 (March/April 2011), pp. 231, 235, and 240–42.

32. "Is This How Wars Start? India and China Now Feud over the South China Sea," *Time*, September 19, 2011; also see "India, Vietnam: Testing China's Patience," *STRATFOR.com*, September 26, 2011.

33. "India's Navy Boosts Spending 74 Percent," *Defense News*, Washington, D.C., March 26, 2012.

communication and commerce. In recent years, the U.S. has modified its Asia-Pacific defense posture to bring forces closer to Asian sea lanes. It has also upgraded its Pacific Fleet surface combatants, deployed *Los Angeles*-class submarines to Guam, and is shifting vessels from the Atlantic Fleet to the Pacific Fleet. Some of the new Littoral Combat Ships are also scheduled to be stationed permanently in Singapore. These developments are components of the Obama administration's plan to enhance its Pacific presence as American forces leave Iraq and Afghanistan.<sup>34</sup>

The strategic principle behind this plan is the Air-Sea Battle doctrine described in the 2010 Quadrilateral Defense Review (QDR). Air-Sea Battle combines air and naval assets to deter or defeat China's anti-access strategy within the latter's "first island chain." That is, the PLA Navy is building a combination of surface combat ships and submarines to deter any opponent from deploying along the island chain that goes from the west of Taiwan down through the Philippines and Indonesia. The doctrine also foresees a closer integration of allies in this enterprise, specifically mentioning Japan and Australia. To be implemented, then, the Air-Sea Battle doctrine requires deeper alliance commitments from Tokyo and Canberra. Washington is also engaged in building the capacities of Southeast Asian armed forces (Malaysia, the Philippines, Indonesia, Vietnam) through joint exercises that assist these states in developing multilateral strategic cooperation.<sup>35</sup>

Moreover, Australia and the U.S. are building additional military ties through provision of new bases for the U.S. on the continent's northern and western coasts, close to the SCS. The new bases combined with possible pre-positioning of U.S. equipment for joint exercises and the probable sale of up to 100 new American combat aircraft will make the U.S.-Australian alliance capability in Southeast Asia the strongest it has ever been.<sup>36</sup>

In a recent article written for *Foreign Policy*, Secretary of State Clinton spelled out the essentials of America's Asia position: "We are the only power

34. John Bradford, "The Maritime Strategy of the United States: Implication for the Indo-Pacific Sea Lanes," *Contemporary Southeast Asia* 33:2 (August 2011), pp. 182, 192–93.

35. See the discussion in Andrew Davies and Benjamin Schreer, "Whither U.S. Forces? U.S. Military Presence in the Asia-Pacific and the Implications for Australia," published by the Australian Strategic Policy Institute, September 8, 2011, p. 4; and Schofield and Storey, *The South China Sea Dispute*, p. 40.

36. The September 15, 2011, Australian-U.S. Ministerial Meeting is previewed by Ernest Bower and Xander Vagg, "CSIS Southeast Asia: Critical Questions—Australia-U.S. Ministerial," Center for Strategic and International Studies, Washington, D.C., September 14, 2011.

with a network of strong alliances in the region, no territorial ambitions, and a long record [of] providing for the common good. Along with our allies, we have underwritten regional security for decades—patrolling sea lanes and preserving stability. . . .<sup>37</sup>

Clinton's Assistant Secretary Campbell in Bangkok pointed to the American repositioning of resources "from the Middle East and South Asia . . . to Asia and East Asia as a whole." For the Asia-Pacific, the Air-Sea Battle concept is about close coordination of air and maritime forces for which stealthy weapons are key. These include the F-22 and F-35 combat aircraft, navy submarines, and even the future air force long-range bomber. These low-signature assets would be designed to counter China's developing anti-access strategy along the PRC periphery. Aegis cruisers would support the air forces. Allies and partners could provide air and naval ports, command and control cooperation, intelligence and surveillance sharing, and locations for prepositioned supplies. Crafting these arrangements requires substantial military diplomacy, especially as the U.S. reduces the numbers of forces stationed in Asia and closes some bases in the region.<sup>38</sup> In effect, ally and partner facilities and cooperation become more important for America's Asian security posture.

While more U.S. hard power is shifting to Asia, the soft power of diplomacy is also in play. With respect to the SCS, Washington has become a strong backer of ASEAN's multilateral negotiation posture, primarily because it fits best with the U.S. goal of open sea-lines of communication. Thus, Campbell speaks of the importance of the ARF "for discussions . . . of maritime security" and says that maritime sovereignty issues "need to be resolved using the criteria carefully set up in the law of the sea"—referring to UNCLOS and its 200-nautical mile EEZ.<sup>39</sup> At the November 2011 EAS, to which the U.S. now belongs, President Barack Obama called for a broadening of the dialogue to include strategic and security challenges. He encouraged all parties to accelerate efforts to agree on a full Code of Conduct for the SCS. He also committed the U.S. to accede to the Southeast Asia Nuclear Weapons Free Zone Treaty, although his ability to get it through the U.S. Senate for

37. Clinton, "America's Pacific Century."

38. "U.S. Strategy," *Defense News*, October 20, 2011, p. 10; Dave Majumdar, "U.S. AirSea Battle Takes Shape amid Debate," *ibid.*, October 10, 2011; Kurt Campbell, "U.S. Engagement in Asia," public lecture, Washington, D.C., U.S. Department of State, Institute of Security and International Studies, Bangkok, October 10, 2011.

39. *Ibid.*, pp. 4, 5, 8.

ratification is problematic. Finally, the president emphasized America's ability to contribute to disaster response and humanitarian assistance by proposing that the EAS create a Rapid Disaster Response Agreement, which would provide a procedural framework for deploying personnel, supplies, and services when actual disasters strike.<sup>40</sup>

Meanwhile, China continues to stonewall ASEAN efforts to negotiate a multilateral Code of Conduct on the SCS sovereignty disputes. Instead, Beijing has proposed more discussions with ASEAN on such issues as navigation safety. Meeting in Bali in July 2011, ASEAN senior officers crafted draft guidelines for their ministers that emphasized the right of Southeast Asian claimants to consult among themselves about a Declaration of Conduct. This is an ASEAN arrangement that the PRC opposes because it would violate China's insistence that ASEAN is not a party to the dispute and that China is prepared to negotiate island ownership only bilaterally with other claimants. Nevertheless, ASEAN foreign ministers have decided to proceed without China by forming a working group that will draft a Code of Conduct.<sup>41</sup> As naval strategist Sam Bateman points out:

[D]ue to the complex geography of the SCS and the multiple bordering states, a conventional system of straight-line maritime boundaries will be impossible to achieve in many parts of the sea. This situation is aggravated by the difficulties of resolving the sovereignty disputes, including agreement on which insular features qualify as "islands" under international law, entitled to a full set of maritime zones.<sup>42</sup>

Bateman goes on to say that settlement of the SCS disputes requires a "change in mind-sets" from sovereignty, sole ownership of resources, and seeking "fences in the sea" to one of cooperative management of the waters and their resources. This shift in orientation can only be achieved multilaterally, using ASEAN-derived institutions such as the ARF as venues for collaboration. Not coincidentally, should the ARF undertake this task, the Forum would move directly from its current focus on confidence-building into the next

40. Ralph Cossa and Brad Glosserman, "Regional Overview: A Pivotal Moment for U.S. Foreign Policy," *Comparative Connections: Triennial E-Journal on East Asian Bilateral Relations*, January 2012, p. 5.

41. Carlyle Thayer, "China-ASEAN and the South China Sea," pp. 25–27; Barry Wain, "China Faces New Wave of Dispute," *Jakarta Post*, October 17, 2011; and Christine Tjandraningsih, "ASEAN Working Group to Draft South China Sea Code of Conduct," *Kyodo News Agency*, Tokyo, October 4, 2011.

42. Bateman, "Managing the South China Sea," p. 2.

stage of its maturation, “preventive diplomacy,” and perhaps over time to the ultimate goal of “dispute resolution”—though that achievement may come many years in the future, if at all.

The reality of ASEAN-centric security cooperation is that it overlaps the security objectives of individual members. Thailand and the Philippines are treaty allies of the U.S.; Malaysia and Singapore are members of the Five Powers Defense Arrangement; while Singapore is also a strategic partner of the U.S. Practical guidance to ASEAN defense ministers to address maritime security issues is nonexistent, and the prospect for cooperation by ASEAN navies beyond bilateral maritime border patrols does not appear promising. ASEAN’s dogged focus on promoting confidence-building measures with China on the SCS may be a misplaced priority because it divides ASEAN into claimants and non-claimants, preventing the creation of a common position.<sup>43</sup> It also permits China to play off these differences.

Instead, ASEAN should adopt a Code of Conduct on Southeast Asia’s maritime domain that deals more broadly with sovereignty and resource concerns in the sea and on the continental shelf. The Code would provide rules for state behavior pending the settlement of disputes over sovereign rights. ASEAN could place the Code within its new Political-Security Community and encourage dialogue partners to accede to it. In this way, ASEAN could link Southeast Asian maritime issues to UNCLOS, making the SCS part of the global oceanic order.

#### CODA: ASEAN STUMBLES

Many commentators on international affairs expressed surprise that the July 9, 2012, 45th annual ASEAN Ministerial Meeting (AMM) in Phnom Penh for the first time issued no formal communiqué.<sup>44</sup> The dominant explanation was that no agreement could be reached on a proposed Code of Conduct on the SCS—an issue that has roiled Southeast Asian countries for the past 20 years. In fact, according to Philippine Foreign Affairs Undersecretary Erlinda Basilo in a July 19 press release, the ASEAN members had agreed on the key elements of a Code but Cambodia—then the ASEAN chair—objected to any

43. See the discussion in Carlyle Thayer, “Efforts to Ensure Maritime Security,” paper presented to the 2nd Tokyo Defense Forum Seminar organized by the Japan Ministry of Defense, March 16, 2012, p. 8.

44. This section draws from Sheldon Simon, “U.S.-Southeast Asia: ASEAN Stumbles,” *Comparative Connections* 14:2 (September 2012).

mention of the conflict over Scarborough Reef in the communiqué, as well as proposals by Hanoi and Manila that the document should reference marine incidents involving their ships and China.<sup>45</sup> Cambodia insisted that bilateral disputes with an outside power were not an appropriate subject for an ASEAN communiqué, although such disputes have been discussed at ASEAN meetings. So, not only was ASEAN's position on the SCS not formalized, neither were numerous other matters discussed at the AMM—among them the establishment of an official ASEAN Community in 2015.

In retrospect the absence of ASEAN agreement on such a politically sensitive topic as the SCS should not have been surprising—disappointing perhaps, but not surprising. ASEAN is not a unitary actor on matters of political sensitivity. Its 10 members have 10 different sets of security interests. When it comes to dealing with China, they vary considerably, all the way from serving as a diplomatic surrogate for Beijing (Cambodia) to being willing to directly confront the PRC and attempt to obtain the open military support of the U.S. (Philippines) to points in between, where keeping a low profile and adopting a hedging strategy is followed (Malaysia). The other point to keep in mind is that ASEAN procedures are designed to protect dissenters. That is, no votes are taken in ASEAN negotiations, and policies are adopted through consensus. It takes only one of the 10 members to veto an outcome. These considerations mean that ASEAN rarely takes a unified position on any issue deemed politically sensitive. Again, not surprisingly, ASEAN's most prominent member—Indonesia, not a claimant to the Spratly Islands—seized the initiative to recover the Association's voice. Foreign Minister Marty Natalegawa visited five ASEAN states, including Cambodia, following a letter sent by Indonesian President Yudhoyono to his ASEAN colleagues urging their support for Indonesia's efforts. Natalegawa carried with him an Indonesian draft statement on the SCS code that distilled the essence of the earlier ASEAN foreign ministerial discussions. More important, its acceptance and publication by Cambodia, the incumbent ASEAN chair, on July 20 underlined ASEAN's founding principle going back to its 1967 inception that Southeast Asia's regional security is the fundamental responsibility of the countries of the region themselves and not the great powers.

45. The incidents to which Manila and Hanoi referred were efforts by Chinese Coast Guard and Marine Patrol vessels to block Philippine and Vietnamese fishermen's access to waters that they normally use and that they claim are within their EEZs.

The brief six point Statement on the SCS is, in fact, a lowest common denominator that invokes past ASEAN agreements pertaining to the rule of international law, self-restraint, the non-use of force, and the peaceful resolution of disputes. In essence, these stipulations can be found in ASEAN's 1976 Treaty of Amity and Cooperation, which both China and the U.S. have signed. Nevertheless, the SCS Statement contains no mention of Scarborough Reef, nor is it a substitute for a joint communiqué, which would have covered the ministerial discussions on topics that looked toward the creation of an ASEAN Community in 2015. The Code of Conduct appeared again on the agenda of the ASEAN summit in November 2012. However, there is some question on whether China would be willing to negotiate a Code of Conduct with ASEAN as a whole or would prefer to shelve the draft and deal only bilaterally on rules for the SCS with each of the other claimants. Beijing insists that SCS conflicts are exclusively bilateral and, therefore, inappropriate for multilateral venues—in effect dismissing the dispute resolution provisions of the UNCLOS. Although the original ASEAN five (Malaysia, Thailand, Singapore, Philippines, Indonesia) plus Vietnam agreed that ASEAN should speak with one voice, there was no evidence that Laos or Myanmar (Burma) agreed. Their apparent silence at the AMM suggests tacit support for Cambodia's decision to exclude the SCS conflicts from the final document.

Seen from Washington not only as predominately an aggregation of economic high performers deeply committed to maintaining their members' autonomy, ASEAN also fits the American vision of friends and allies with whom the U.S. can collaborate to maintain regional stability. On July 11, 2012, at the AMM, Secretary Clinton averred that "ASEAN plays an indispensable role in holding this region's institutional architecture together." In effect, this was an American recognition that a variety of Asian regional organizations not only embedded ASEAN states but also the Association's consensus and agenda setting procedures. Meeting with the ASEAN foreign ministers, Clinton insisted that the SCS claims must be resolved "without coercion, without threats, and without use of force"—language clearly directed at China. Indonesia's Foreign Minister Natalegawa praised Clinton for "showing interest but giving space" in the effort to reach agreement.

The secretary of state also indirectly expressed disappointment that no ASEAN communiqué was issued at the conclusion of the AMM, when she had hoped that ASEAN would speak with "one voice" on issues of strategic importance. Earlier at a May ASEAN-U.S. dialogue and a meeting with

ASEAN defense officials, American diplomats urged ASEAN to move forward with a Code of Conduct and even provided some input on provisions that might be included, according to a report by the International Crisis Group, *Stirring Up the South China Sea (II): Regional Responses*, released on July 24.<sup>46</sup> In an August 3, 2012, press statement, the U.S. Department of State again endorsed “ASEAN efforts to build consensus on a principles-based mechanism for managing and preventing disputes.” The statement cited the Scarborough incidents and deplored “the use of barriers to deny access”—a reference to PRC vessels blocking Philippine fishing boats’ access. Looking forward, the State Department urged all claimants “to explore new cooperative arrangements for managing the responsible exploitation of resources in the SCS.”<sup>47</sup> Joint management of these maritime resources, while postponing sovereignty decisions, would be the most effective way of reducing tensions, though such compromises do not appear on the horizon.

46. International Crisis Group, *Stirring Up the South China Sea (II): Regional Responses*, Asia Report, no. 229, Brussels, July 24, 2012, <<http://www.crisisgroup.org/en/regions/asia/north-east-asia/china/229-stirring-up-the-south-china-sea-ii-regional-responses.aspx>>.

47. Patrick Ventrell, acting deputy spokesman, Office of Press Relations, U.S. Department of State, *Press Statement on the South China Sea*, Washington, D.C., August 3, 2012.



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