



universität
wien

MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

„A New Approach?
China's Approach towards the Philippines
over the South China Sea Dispute after
the Arbitral Tribunal's Ruling 2016”

verfasst von / submitted by

Yoshiko Hatanaka

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master (MA)

Wien, 2017 / Vienna 2017

Studienkennzahl lt. Studienblatt /
degree programme code as it appears on
the student record sheet:

A 067 805

Studienrichtung lt. Studienblatt /
degree programme as it appears on
the student record sheet:

Individuelles Masterstudium:
Global Studies – a European Perspective

Betreut von / Supervisor:

Mag. Dr. Alfred Gerstl, MIR

MASTERARBEIT / MASTER THESIS

Titel der Masterarbeit / Title of the Master Thesis

**A New Approach?
China's Approach towards the Philippines
over the South China Sea Dispute after
the Arbitral Tribunal's Ruling 2016**

Verfasser / Author

Yoshiko Hatanaka

angestrebter akademischer Grad / academic degree aspired

Master (MA)

Wien, 2017 / Vienna, 2017

Studienkennzahl / degree programme code:

A 067 805

Studienrichtung / degree programme:

Individuelles Masterstudium:
Global Studies – a European Perspective

Betreuer/Supervisor:

Mag. Dr. Alfred Gerstl, MIR

ABSTRAKT

Yoshiko Hatanaka: A New Approach?
China's Approach towards the Philippines over the South China Sea
Dispute after the Arbitral Tribunal's Ruling 2016

Diese Masterarbeit wird untersuchen, ob China seine Herangehensweise in dem SCS Konflikt mit den Philippinen in folge der Entscheidung des Schiedsgerichts zu Gunsten der Philippinen im Juli 2016 verändert hat. Ein Bericht des Mischief Reef Vorfalles in 1995 und dem 'Joint Marine Seismic Undertaking' in dem Vereinbarungsgebiet in der Süd-Chinesischen See-Vereinbarung von 2005, liefert den Hintergrund zu China's SCS Position. Diese wurde durch die politischen Interaktionen zwischen China, den Philippinen, den ASEAN Staaten, den USA und auch Chinas internen politischen Faktoren beeinflusst. Eine Untersuchung von Chinas' Position nach der Entscheidung verglichen mit den Handlungen vor der Schiedsentscheidung zeigt, dass China zumindest auf kurze Sicht die Herangehensweise von einem aggressiven zu einem friedlicheren Ansatz verändert hat. Aufgrund von Chinas bekannter Taktik seine Position je nach Ausgangslage von klarem Durchsetzungswillen hin zu diplomatischen Vorgehen zu verändern, kann zu diesem Zeitpunkt nicht bestätigt werden, dass China in Zukunft auf seine Durchsetzungsfähigkeit verzichten wird.

ABSTRACT

Yoshiko Hatanaka: A New Approach?

China's Approach towards the Philippines over the South China Sea
Dispute after the Arbitral Tribunal's Ruling 2016

This thesis will examine whether China has changed its approach over the SCS dispute with the Philippines, after the arbitral tribunal's ruling in favor of the Philippines in July 2016. A review of the Mischief Reef incident in 1995 and the Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea agreement in 2005 provides context to China's SCS position, which was influenced by the dynamics of political interaction between China, the Philippines, ASEAN and the U.S, as well as China's domestic political factors. An examination of China's position after the ruling compared with its actions before shows that China has modified its approach from an assertive one to a more peaceful position, at least in the short term. Given China's previous pattern of shifting between positions of assertiveness and diplomacy, in the long term, we cannot say that China will not take an assertive approach again.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	vi
1. Introduction.....	1
2. Background	5
2.1. The importance of the SCS	5
2.2. China v. the Philippines.....	8
2.2.1. China's claims over the SCS.....	8
2.2.2. The Philippines' claims over the SCS.....	10
3. The previous Chinese approaches	12
3.1. Mischief Reef incident of 1995.....	12
3.1.1. China.....	13
3.1.2. The Philippines	15
3.1.3. ASEAN	19
3.1.4. The United States.....	22
3.1.5. Summary	24
3.2. Joint Maritime Seismic Undertaking agreement	25
3.2.1. China.....	26
3.2.2. The Philippines	30
3.2.3. ASEAN	33
3.2.4. The United States.....	34
3.2.5. Summary	37
4. The South China Sea Arbitration	39
4.1. An overview of the Philippines filing of the dispute to PCA	39
4.2. China's position about the tribunal.....	43
4.3. The award on the South China Sea arbitration	45
4.4. Impact of the tribunal's award.....	47
5. China's approach following the arbitral tribunal's ruling	51
5.1. China.....	51
5.2. The Philippines.....	55
5.3. ASEAN.....	58
5.4. The United States	61
6. Discussion and conclusion.....	66
BIBLIOGRAPHY.....	70

LIST OF ABBREVIATIONS

ADMM	ASEAN Defense Minister Meeting
AFP	Armed Forces of the Philippines
AIIB	Asian Infrastructure Investment Bank
ASEAN	Association of South-East Asia Nations
ASEAN-China FTA	ASEAN-China Free Trade Area
AMM	ASEAN Ministerial Meetings
ARF	ASEAN Regional Forum
CCP	Chinese Communist Party
CNOOC	China National Offshore Oil Corporation
COC	Code of Conduct
CUES	Code for Unplanned Encounter at Sea
DOC	Declaration on the Conduct of Parties in the South China Sea
ECS	East China Sea
EEZs	Exclusive Economic Zones
IMF	International Monetary Fund
JMSU	Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea
MBA	Military Bases Agreement
NSBC	National Statistics of Bureau of China
ODA	Official Development Assistance
PACOM	U.S. Pacific Command
PCA	Permanent Court of Arbitration
PLAN	People's Liberation Army Navy
PN	Philippine Navy
PNOC	Philippine National Oil Corporation
RCEP	Regional Comprehensive Economic Partnership
SCS	South China Sea
SLOC	Sea-Line of Communication
TPP	Trans-Pacific Partnership
UNCLOS	United Nations Convention on the International Law of the Sea
U.S.	United States of America

1. Introduction

On July 12, 2016, the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in The Hague issued an award on the South China Sea Arbitration Case (The Philippines v. China), which was initiated in 2013 by the Republic of the Philippines against the People's Republic of China.¹ The arbitral tribunal's award was favorable to the Philippines on almost every count, and ruled that China's territorial sovereignty claim, the "nine-dash line" and its accompanying claims to historic rights in the South China Sea (SCS), are incompatible with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).²

The South China Sea is a flashpoint in East Asia. Due to its geographical features and perceptions of abundant hydrocarbon and fishery resources, littoral states, China, Taiwan, Vietnam, Brunei, Malaysia and the Philippines have been disputing territorial sovereignty and rights over the maritime features of the SCS.³ In particular, tensions between China and the Philippines are high. Also, due to a role of the SCS as a critical Sea Line of Communication, the conflicts over the SCS have also drawn third parties' attention, including Japan and the United States of America (U.S.).⁴ Further, since the SCS disputes are related to the changing power structure in Asia where economic development will be expected to grow exponentially in the foreseeable future, the SCS disputes is also relevant to the international community.⁵

China has changed its approach to the Philippines over the SCS dispute on several occasions in the post-Cold War era. From the mid-to-late 1990s, China adopted a more assertive approach; however in the

¹ Court of Arbitration Permanent, "The South China Sea Arbitration (the Republic of the Philippines V. The People's Republic of China)," news release, 12 July 2016, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.

² Alfred Gerstl, "The Award of the Permanent Court of Arbitration on the South China Sea, July 2016," ed. Mária Strašáková Alfred Gerstl, *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality* (Leiden, Brill: La Vergne, MyiLibrary, 2017), <http://lib.mylibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>. xvi. ; Ankit Panda, "International Court Issues Unanimous Award in Philippines V. China Case on South China Sea," *The Diplomat* (2016), <http://thediplomat.com/2016/07/international-court-issues-unanimous-award-in-philippines-v-china-case-on-south-china-sea/>.

³ Tridib Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome," *China Report* 48, no. 3 (2012): 285.; Leszek Buszynski, "Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue," *Security Challenges* 6, no. 2 (2010): 85,86,89.

⁴ Chakraborti, 286.

⁵ Zhou Fangyin, "Between Assertiveness and Self-Restraint: Understanding China's South China Sea Policy," *International Affairs*, July 2016, Vol.92(4), pp.869-890: 869. ; Chakraborti, 283.

beginning of the 2000s, it introduced a more relaxed approach, only to become more assertive again from 2010 to 2012.⁶ Even though Beijing has changed its attitude over the dispute, in principle, Beijing prefers bilateral negotiations with the Philippines for resolving the SCS dispute, while insisting on its territorial sovereignty claims without any compromise. Although Beijing signed a Declaration on Conduct for the SCS (DOC) with the Association of South-East Asia Nations (ASEAN) in 2002, which was the first agreement in a multilateral framework that Beijing has accepted, it still resisted multilateral dialogue and US involvement in the dispute.⁷ Additionally, China was unwilling to refer the dispute to the tribunal and to make clear who was right or wrong. The dispute was politically sensitive and natural resources were at stake.⁸ However, the dispute was brought to PCA by the Philippines and an unfavorable award to China was rendered. Despite China's refusal to participate in or accept the jurisdiction of the arbitration, this decision is final and binding.⁹

Here the questions arise as to whether China has changed its approach towards the Philippines over the SCS dispute to resolve the dispute since the award was issued. If China changed its approach, how has it changed? This thesis will seek to answer this question.

The SCS disputes are analyzed from broad perspectives and in various academic fields, such as political economy, diplomacy and international relations, history, security, regional cooperation, energy, marine environmental preservation, etc. Regarding China's approach over the dispute, past studies examine it through certain key incidents. Ian James Storey writes in his essay, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, that Sino-Philippine territorial disputes are formed by several factors: domestic political factors, military capacities, involvement of ASEAN with the dispute and the Philippines' ally the U.S.' commitment by examining the incident.¹⁰ He states that the terms of the U.S.'s commitment encourages China to act more assertively, whereas ASEAN's lack of common voice against China refrain it from being more assertive. Daojing Zha and Mark J. Valencia also analyze the Mischief Reef incident and the Scarborough Shoal dispute in the

⁶ Fangyin, 869.

⁷ Leszek Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2003, Vol.25(3), pp.343-362: 343.; Tridib Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," *China Report*, 2012, Vol.48(3), pp.283-301: 288.

⁸ Robert C. Beckman, "Joint Development in the South China Sea: Time for Asean and China to Promote Cooperation?," in CO07046, ed. RSIS Commentaries (Singapore: The S. Rajaratnam School of International Studies (RSIS), NanYang Technological University, 2007).

⁹ Gerstl, xvi.

¹⁰ Ian James Storey, "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute," *Contemporary Southeast Asia*, 1 April 1999, Vol.21(1), pp.95-118.

context of dynamic political interaction between China, the Philippines, ASEAN and the U.S. in their study *Mischief Reef: Geopolitics and implications*.¹¹ This work contends that the SCS dispute between China and the Philippines is not only a territorial issue but also a matter of regional strategic relationships in Asia. They assess Chinese diplomacy through its grand design to be a hegemonic regional power. Leszek Buszynski looks at the effect of a power balance in his work *ASEAN, the Declaration on Conduct, and the South China Sea*.¹² He argues that in a situation where a smaller country faces a dominant country, a balance of power is required to force the dominant power to accept international norms of behavior. Here, the Philippines involved the U.S. in the SCS dispute and China had to accept norms of behavior to discourage involvement of the external power. Renato Cruz De Castro's work, *Facing Up to China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-off and Its Aftermath* covers the Scarborough Shoal standoff and examines China's application of realpolitik to resolve the dispute and, conversely, the Philippines' balancing strategy drawing in the U.S. and Japan.¹³ Zhou Fangyuzin's *Between assertiveness and self-restraint: Understanding China's South China Sea policy* provides us with a Chinese perspective on the Chinese approach to the SCS dispute.¹⁴ The author argues that the Chinese approach is not shaped only by the Chinese grand strategy but, to a large extent, by the dynamics of the overall relations between China and ASEAN.

As past studies show, China's previous approaches were shaped in the context of the dynamics of political interaction between China, the Philippines, ASEAN and the U.S. Past studies addressed the two key incidents, the Mischief Reef incident in 1995 and Joint Maritime Seismic Undertaking (JMSU) agreement in 2005, as turning points of Sino-Philippines relations over the SCS dispute in the post-Cold War era. By examining these two incidents based on secondary literature review, this thesis will first clarify the previous Chinese approaches. Also, by focusing on both international and domestic factors such as the actors' domestic policy, economic power, military power, and alliances with other actors simultaneously, factors which shaped Chinese approaches will be analyzed. Then, this thesis will figure out the Chinese approach after the arbitral tribunal's ruling by examining the dynamics of important actors. Comparison with the past and current Chinese approaches will help to find answers to the research question. In addition,

¹¹ Daojiong Zha and Mark J. Valencia, "Mischief Reef: Geopolitics and Implications," *Journal of Contemporary Asia*, 01 January 2001, Vol.31(1), p.86-103.

¹² Buszynski, "Asean, the Declaration on Conduct, and the South China Sea."

¹³ Renato Cruz De Castro and Alexander C. Tan, "Facing up to China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-Off and Its Aftermath," *Journal of Asian Security and International Affairs*, 2016, Vol.3(2), pp.157-182.

¹⁴ Fangyuzin.

examining the factors which shaped the different approaches provide an insight to the potential Chinese responses to the SCS dispute with the Philippines in the near future.

This thesis is divided into four parts. First, the thesis will discuss background to the SCS dispute including the importance of the SCS, and China and the Philippines' respective territorial sovereignty claims over the SCS maritime features. Second, the thesis will examine past Chinese approaches as seen in the Mischief Reef incident and JMSU agreement. By examining China's approach in the context of interaction of both international and domestic factors, this thesis will examine what kind of approach China has adopted after the ruling. Finally, the thesis will discuss whether China has changed its approach over the SCS dispute or not, by comparing past approaches with the current policy since the tribunal ruling.

2. Background

2.1. The importance of the SCS

The SCS, covering approximately 3.5 million square kilometers, is a semi-enclosed area bordered by China, Taiwan and all ASEAN member countries except Laos and Myanmar (Brunei Darussalam; Cambodia; Indonesia; Malaysia, the Philippines; Singapore; Thailand; and Vietnam).¹⁵ In the SCS, the maritime borders are still uncertain.¹⁶ Due to the SCS's semi-enclosed character, which Article 122 of UNCLOS defines as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States", the maritime claims of littoral states: China, Taiwan, Vietnam, Malaysia, Brunei, the Philippines, and Indonesia overlap with one another.¹⁷ As early as the 1970s, these countries began to lay claim over maritime features and maritime borders in the SCS. The overlaps of the maritime claims triggered disputes among those states over their territorial sovereignty.¹⁸ This area encompasses a large and diverse number of insular features and this made the maritime jurisdictional scenario complicated in accordance with UNCLOS.¹⁹ For example, the Paracel Islands consist of approximately 130 "islands" (here "islands" does not mean the legitimate islands.), the Pratas Islands consist of a circular coral reef and lagoon, the Scarborough Shoal consists of a large coral atoll and rock-covered lagoon, only some of which are visible above water during high tide. The Spratly Islands comprise of more than 150 small "islands", islets, rock, reefs and low-tide elevations, and the Natuna islands consists of more than 200 "islands".²⁰ Among these insular features, UNCLOS treaty gives every state the right to establish a 12 nautical mile territorial sea measured from islands and rocks.²¹ On the other hand, it gives the right to set up a 200 nautical miles Exclusive Economic Zones (EEZs) and a continental shelf measured only from islands but not from

¹⁵ Stephen M. Walt, "International Relations: One World, Many Theories," *Foreign Policy*, 1 April 1998, Issue 110, pp.29-46: 31.

¹⁶ Clive Schofield, "Increasingly Contested Waters? Conflicting Maritime Claims in the South China Sea," (2013), <http://nsc.anu.edu.au/documents/occasional-5-brief-2.pdf>.

¹⁷ Alfred Gerstl and Mária Strašáková, "Introduction," ed. Mária Strašáková Alfred Gerstl, *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality* (Leiden, Brill: La Vergne, MyiLibrary, 2017), <http://lib.mylibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>. 1.; Schofield. 9.; "United Nations Convention on the Law of the Sea," ed. Office of Legal Affairs The Division for Ocean Affairs and the Law of the Sea, United Nations.

¹⁸ Leszek Buszynski, "The South China Sea Maritime Dispute: Legality, Power, and Conflict Prevention," *Asian Journal of Peacebuilding*, 2013, Vol.1(1), p.39: 39-40.

¹⁹ "Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue," 85-86.

²⁰ Schofield. 9.

²¹ Ibid.

rocks.²² Rocks which are not able to sustain human habitations or economic activities cannot be entitled to EEZs from the continental shelf.²³ Whether the features are islands or not is therefore a crucial issue for maritime claims. Territorial sovereignty over all above-mentioned islands group in the SCS, except the Natuna Islands which are governed by Indonesia, is contested between two or more parties: China and Vietnam for the Paracel Islands; China and Taiwan for the Pratas Islands; China, Taiwan and the Philippines for the Scarborough Shoal; China, Taiwan and Vietnam for the entire Spratly Islands; Malaysia, the Philippines and Brunei for a part of the Spratly Islands.²⁴ The territorial disputes in the SCS are not only ASEAN countries versus China, which is extensively featured by the mass media and scholars, but also between each ASEAN countries.²⁵ Unfortunately the UNCLOS treaty does not provide a clear guidance to solve the overlapping claim of sovereignty over territory, islands and Exclusive Economic Zones (EEZs).²⁶

Furthermore, considerations of access to hydrocarbon resources and fishery resources are intensifying the disputes among the claimants. Concerns over securing freedom of navigation and the Sea-Lines of Communication (SLOC) are drawing attention not only from the disputed countries but also from third parties.

While global demand for energy has risen, the perception that the South China Sea contains substantial hydrocarbon resources has increased the tensions among the claimants. The existence of substantial oil and gas reserves is enticing key consideration for the disputed countries some of whom are facing great concerns over energy security.²⁷ Specifically, for China whose consumption of oil in 2011 was the second largest after the U.S. and is expected to be the largest by 2030. Seeking new energy sources is necessary to sustain its further economic development.²⁸ In 2011, China depended on imported oil for approximately 54% of its total demand.²⁹ To reduce their dependency on imported oil and protect the energy security, China has increased its interest in hydrocarbon resources in the SCS.³⁰ Among various projections for possible hydrocarbon reserves in the SCS, China has estimated

²² Sheldon W. Simon, "Conflict and Diplomacy in the South China Sea," *Asian Survey* December 2012, Vol.52(6), pp.995-1018: 996.

²³ Ibid.

²⁴ Ibid.

²⁵ Schofield. 9.

²⁶ Gerstl and Strašáková, 1.

²⁷ Schofield. 9.

²⁸ Ibid., 10.

²⁹ Leszek Buszynski, "The South China Sea: Oil, Maritime Claims, and U.S.–China Strategic Rivalry," *The Washington Quarterly*, 01 April 2012, Vol.35(2), p.139-156 (2012): 141.

³⁰ "The South China Sea Maritime Dispute: Legality, Power, and Conflict Prevention," 40.

them very optimistically, often higher than international oil companies.³¹ According to some Chinese estimates, the area contains oil equivalent to 80% of Saudi Arabia's oil reserves.³² However the U.S. Department of Energy refutes Chinese estimates since there is not enough evidence supporting China's claim that the area accommodates substantial oil reserves. Additionally, the department declared that 60% to 70 % of the hydrocarbon resources in the SCS is natural gas.³³

Abundant fishery resources in the SCS also escalate the dispute among the littoral states. The SCS contains abundant and diverse fishery resources.³⁴ The SCS is essential to socio-economic development in coastal countries and regions. Fisheries are major sources of animal protein for people in Indonesia, Thailand and the Philippines. There are more than 186 million inhabitants in the coastal area. Further, fishery is important not only as a food source but also as an employment generator. The total catch amount in the sea is around 6.5-7.5 million tons annually. The SCS is one of the most important fishery spots for Chinese tropical fishery. While its population is growing and fishing industry continuing to develop, China has a continued interest in securing fishery resources in the SCS.

The SCS is a pivotal geographical point, both commercially and strategically.³⁵ The SCS lies between the northern Pacific Ocean and the Indian Ocean.³⁶ The sea plays an important role as SLOC for the maritime trades between Northeast Asian countries (China, Japan and South Korea) and the rest of the world.³⁷ Crude oil is imported from Middle East to East Asia through the SCS and commercial goods are exported from Northeast Asia to the west through the SCS.³⁸ Approximately 30% of world trade goods and 50% of oil and gas are transported through SCS.³⁹ Accordingly, free and safe navigation is imperative to those trading countries, and is vital for national security. For instance, regarding Japan, more than 90% of its imported oil is transported through this water, and so dominance over this area could be a serious threat to its economic prosperity and defense.⁴⁰ Securing safe and free

³¹ Ibid. ; Schofield. 10.

³² Buszynski, "The South China Sea Maritime Dispute: Legality, Power, and Conflict Prevention," 40.

³³ Ibid.

³⁴ Ibid.

³⁵ Yuhuan Jiang and Xiongzi Xue, "Building a Cross-Strait Cooperation Mechanism for the Conservation and Management of Fishery Resources in the South China Sea," *Ocean and Coastal Management*, November 2015, Vol.116, pp.318-330: 318.

³⁶ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," 286.

³⁷ Gerstl and Strašáková, 5.

³⁸ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," 286.

³⁹ Ibid., 287.

⁴⁰ Simon, 996.

navigation in the SCS is also highly relevant for global and regional naval powers such as the U.S., China, Russia, India and Australia.⁴¹ It is important for those naval powers to show naval presence in this area for securing SLOC as well as limiting the others' dominance in the area.⁴² Therefore the SCS disputes draw attention from, not only the disputed countries and neighboring countries, but also from many other third parties.

2.2. China v. the Philippines

2.2.1. China's claims over the SCS

The Chinese officials claim the nine-dash line as its territorial border, which is not confined to provisions of UNCLOS which China participated in and ratified in 1996.⁴³ Initially, the Republic of China (Taiwan) publicized an eleven-dash (island) line after World War II.⁴⁴ Later, in the 1950s, the People's Republic of China (China) started to refer the nine-dash line removing two dashes (islands). According to Wu Shicun, president of the National Institute for South China Sea Studies, (which is sponsored by China's Ministry of Foreign Affairs and Hainan Province), the nine-dash line claim consists of sovereignty over the features within the line, sovereign rights and jurisdiction over water permitted by UNCLOS, and "historic rights" including mainly fishing rights and the rights to explore and exploit various natural resources in the area.⁴⁵ Although the Chinese government has not formally defined the nine-dash line to date, this belief is a mainstream view among Chinese scholars.⁴⁶

Regarding the first component, the claim includes the sovereignty over four main "islands" in the SCS: the Pratas islands (*Dongsha* in Chinese); the Paracel islands (*Xisha*); Macclesfield islands (*Zhongsha*); and the Spratly islands (*Nansha*).⁴⁷ The Spratly islands are the most contested islands over sovereignty between China and ASEAN countries

⁴¹ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome," 287.

⁴² Gerstl and Strašáková, 6.

⁴³ Ibid.; Bill Hayton, "China's 'Historic Rights' in the South China Sea: Made in America?," *The Diplomat* (2016), <http://thediplomat.com/2016/06/chinas-historic-rights-in-the-south-china-sea-made-in-america/>.

⁴⁴ Zheng Wang, "China and Unclos: An Inconvenient History," *ibid.*, <http://thediplomat.com/2016/07/china-and-unclos-an-inconvenient-history/>.

⁴⁵ F. Yang and M. Li, "Comparing Chinas Claims and Policies in the East and South China Seas: Implications for Regional Security," *Journal of Asian Security and International Affairs* 3, no. 2 (2016): 139.

⁴⁶ Hayton.

⁴⁷ Yang and Li, 139-40.

including the Philippines, as previously mentioned.⁴⁸ China argues that the sovereignty over these islands is attributed to the discovery and the exercising of jurisdiction.⁴⁹ According to China, the first discovery and the first exercising of jurisdiction over the islands can be traced back to the second century BC and the Song Dynasty (960 to 1279 AC) respectively.⁵⁰ Although many scholars doubt the veracity of China's claims based on pre-modern historical records, China rejects the other states' ownership claims over these features. Meanwhile, other countries cast doubt on China's legal basis for claiming maritime boundary, sovereign rights and the historic rights based on the nine-dash line.⁵¹ In this regard, the Chinese government seeks its legal grounds from other customary international laws. China asserts that it had been exercising its jurisdiction and rights long before UNCLOS concluded in 1982 and became effective in 1994, and thus UNCLOS does not affect China's historic rights. However, even though China had been given opportunities to explain the legal grounds for the nine-dash line, referring to them legally has been consciously avoided.⁵² Yang and Li regard Chinese reluctance to officially define its position as a sign of its lack of confidence on the claims based on the nine-dash line.⁵³ That is, Chinese analysts might not agree with its historic rights and maritime boundary interpretations of the nine-dash line. Nevertheless, China cannot renounce the claims based on the nine-dash line because of a variety reasons. First, China has adopted and has been developing the interpretation of the nine-dash line since the 1930s in order to respond to the other countries claims and actions which impair China's profit over the SCS. Second, leaving the nine-dash line ambiguous could enable China to utilize the line to defend its claims in imminent maritime boundary demarcation in the SCS. China also leaves the extent of waters which the nine-dash lines cover undefined because government officials and specialists haven't reached any consensus on the best way of clarifying the claims in order to magnify its profit in the SCS disputes. Finally, Chinese people's perception towards the SCS dispute refrains policy-makers from making the nine-dash line clear, and potentially giving up territory that is seen as part of China. Due to the geographical education and the narratives of the media in China, people stretch China's claims in the SCS as "*the SCS is China's sea*".⁵⁴ Even a small reduction in the claims could trigger nationalist discomfort in Chinese popular opinion.

⁴⁸ Ibid., 138.

⁴⁹ Ibid.

⁵⁰ Buszynski, "Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue," 86.

⁵¹ Yang and Li, 139.

⁵² Ibid., 140.

⁵³ Ibid., 140-41.

⁵⁴ Ibid.

2.2.2. The Philippines' claims over the SCS

Originally the Philippines claimed the sovereignty to the Spratly based on a Filipino adventurer, Tomas Cloma's rediscovery of the Spratly Islands, which he named the islands Kalayaan in May 1956. The president of the time Carlos Garcia declared that the Tomas Cloma claim was based on the *res nullius status* ("nobody's property") of the islands. While China insisted on its historic rights and continuous and effective occupation over the Islands, the Philippines claimed that the islands became *res nullius* when Japan renounced "all right, title, and claim to the Spratly Islands and to the Paracel Islands" in the San Francisco Treaty of 1951.⁵⁵ Buszynski and Sazlan state that the failure of the allied powers to identify who was entitled to the sovereignty over the islands, when Japanese sovereignty was driven out from the region after the Pacific War, temporarily left the islands without political and legal ownership, and allowed littoral countries to raise their claims over the islands.⁵⁶

Not until 1971 did the Philippines officially affirm its territorial claim to the Spratly Islands based on Cloma's claim.⁵⁷ In 1971, the Philippines occupied eight islands and included them into the province of Palawan in the following year.⁵⁸ In that same period, it was discovered that there were substantial oil and gas reserved in the area and the Philippines also began to occupy the islands by deploying the military there and intensified the military presence there until the end of the 1970s.⁵⁹ Although the Cloma claim was key to the Philippine position, the argument might be ill-grounded in terms of occupation.⁶⁰ Now the Philippines requires legal grounds for the claims of 1971 after UNCLOS concluded in 1982. In 2009, the Philippine parliament passed the Archipelagic Baselines Act domestically.⁶¹ It is technically possible to include the Kalayann Islands group within the archipelagic baselines system under Article 47 of UNCLOS.⁶² The Act however recognizes the Kalayaan Islands as the islands located outside of its archipelagic baseline and laid down in Article 121 of UNCLOS, "Regime of Islands".

⁵⁵ Zhao Hong, "The South China Sea Dispute and China-Asean Relations," *Asian Affairs*, 01 March 2013, Vol.44(1), p.27-43: 29-30.; *ibid*.

⁵⁶ Leszek Buszynski and Iskandar Sazlan, "Maritime Claims and Energy Cooperation in the South China Sea," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2007, Vol.29(1), pp.143-171: 144-51.

⁵⁷ *Ibid*.

⁵⁸ De Castro and Tan, 163.

⁵⁹ Nguyen-dang Thang and Nguyen Hong Thao, "China's Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes between the Philippines and China," *Ocean Development & International Law*, 2012, Vol.43(1), p.35-56: 37.

⁶⁰ Buszynski and Sazlan, 144-51.

⁶¹ Thang and Thao, 37-39.

⁶² *Ibid*.

Thus, the Philippines claims that the Kalayaan islands generate the territorial sea, the contiguous zone, the EEZs and the continental shelf in Article 121 (2) of UNCLOS.⁶³ However the maritime features are certainly not entitled to those rights immediately through practical occupation.⁶⁴ In order to be entitled to them, the maritime features must not be "*Rocks which cannot sustain human habitation or economic life of their own*", according to Article 121 (3) of UNCLOS. Thus, whether the maritime features correspond to the Article 121 (3) or not is an important question in the disputes. Charney interprets that Article 121 (3) does not deny that rocks can be entitled aforementioned maritime zones.⁶⁵ Rather, whether the features can sustain "economic life" or not might be interpreted widely. Only if a rock is used for fishing or temporary shelter repeatedly is it interpreted as having an economic life of its own. Considering small island states' argument during the negotiation for UNCLOS that uninhabited offshore features should not be recognized as islands which create the maritime zones unless offshore waters are not used for fishing on a regular basis, the Philippines might insist in a wider interpretation.⁶⁶

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ "United Nations Convention on the Law of the Sea."

⁶⁶ Buszynski and Sazlan, 144-51.

3. The previous Chinese approaches

Due to political, economic, strategic and security reasons, the SCS claimants had disputed over the SCS in the past three decades.⁶⁷ During the period from the Cold War to post-Cold War era, there were three major skirmishes between China and its counter-claimants over the SCS.⁶⁸ The first collision occurred with the Republic of Vietnam Navy on the Paracel Islands in 1974.⁶⁹ As a result of this collision, China established *de facto* control over the entire group of islands. The second clash took place with Vietnam over the Spratly Islands in 1988.⁷⁰ These skirmishes indicated China's firm territorial sovereignty claim over the SCS and its naval superiority over Vietnam.⁷¹ The third conflict took place with the Philippines over Mischief Reef in 1995, which will be discussed in the following section.

3.1. Mischief Reef incident of 1995

In 1995, China occupied Mischief Reef, which is a disputed small rocky outcrop located in the Spratly Islands and which fell within the Philippines-claimed EEZ, while the Philippines was forced to pause naval patrols on Mischief Reef due to a monsoon.⁷² China then began to construct the structures on the Reef. Although it insisted that the purpose of the structures on the Reef was to shelter its fishermen from a monsoon in the area, the structures erected looked like a garrison, and included four concrete guard posts with satellite communication equipment, and naval vessels stationed in the immediate vicinity of the Reef.⁷³ The occupation of the Reef and the construction of the structures greatly increased the tensions in the region.

Such assertive behavior was without precedent in Sino-Philippines relations. The Chinese government, which was tackling the modernization of its economic system under the open-door policy in 1978, emphasized economic cooperation with ASEAN countries to support its own economic development. Sustaining a peaceful regional environment was necessary for the success of economic cooperation initia-

⁶⁷ Ibid.

⁶⁸ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome," 286.

⁶⁹ Ibid., 287.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid. ; Leszek Buszynski, "What's Happening in the South China Sea?," (2015), <https://www.aspistrategist.org.au/whats-happening-in-the-south-china-sea/>. ; "Why China's South China Sea Strategy Will Fail," *The Diplomat* (2015), <http://thediplomat.com/2015/05/why-chinas-south-china-sea-strategy-will-fail/>.

⁷³ Storey, 97. ; *ibid.*

tives.⁷⁴ In 1988, Chinese leader, Deng Xiaoping promised Philippine President Maria Corazon Aquino that they would pause the dispute and work on joint oil and gas exploration and exploitation, and seek a peaceful settlement for the dispute.⁷⁵ In addition, China signed the 1992 Manila Declaration elaborated by ASEAN, which pledges all claimants to pursue the peaceful settlement over the territorial disputes in the SCS. Thus, China's assertive action at the Mischief Reef incident was recognized as a remarkable reversal in the Sino-Philippines relations.

The action however was not a coincidence. This was a part of the Chinese dual strategy of occupation and negotiation over the SCS disputed area. While China insisted on the sovereignty of the islands without any compromise, China was expanding its physical presence in the SCS and, at the same time, sought for a peaceful settlement, such as shelving the dispute and a joint development of the mineral resources in the waters through negotiations. The strategy was shaped not only by a relationship with the Philippines but also through other factors, such as Chinese domestic political factors, U.S. policy to the Philippines and the regional and ASEAN-level policy.⁷⁶ The dispute between China and the Philippines is a tangled geopolitical issue reaching far beyond the territorial sovereignty issue between two countries.⁷⁷ Thus China's approaches need to be examined in the context of the dynamics of interactions between China, the U.S., the Philippines and ASEAN states in order to understand China's intentions of its approaches and its possible course of actions. Chinese approaches also drew in other actors' successive reactions. The following section introduces the key factors which shaped the Chinese dual strategy, and reactions of other international actors.

3.1.1. China

Chinese assertiveness in the Mischief Reef incident derived from several domestic factors. The occupation of Mischief Reef was carried out in China's political situation of power-struggles after the end of the Deng Xiaoping era.⁷⁸ In addition, China's eagerness to see reactions of the U.S. and ASEAN towards China's proactive action was also deciding factor of the Mischief Reef occupation.⁷⁹

Some scholars suggest that the decision of undertaking the occupation was made by the People's Liberation Army (PLA) alone, or by low-

⁷⁴ Glen S. Hearn and William G. Stormont, "Managing Potential Conflicts in the South China Sea," *Marine Policy*, 1996, Vol.20(2), pp.177-181: 178.

⁷⁵ Storey, 98.

⁷⁶ Ibid., 97.

⁷⁷ Fangyin, 869.

⁷⁸ Storey, 98-101.

⁷⁹ Ibid.

ranking PLA officers without informing their superior officers about undertaking the occupation.⁸⁰ In support of the latter, the following two reasons lend credibility to the idea. Firstly, the Chinese government had apparently admitted in the early stage of the confrontation that the Mischief Reef occupation had been initiated by low-ranking PLA officers, who neither informed the Chinese government nor obtained the consensus from the government. Secondly, criminal behavior of the certain Chinese navy cohorts operating under PLA leadership, such as smuggling and piracy in the SCS, were repeatedly reported.⁸¹ In contrast however, Ian James Storey casts doubt on the idea that the occupation of Mischief Reef was the result of extreme patriotism or rogue acts by PLA officers.⁸² He doubts a possibility that low-ranking officers could construct the structures with military facilities on the Reef, located significantly far from mainland China, without approval or endorsement from higher-ranking PLA officers. He also argued that there are no obvious benefits for low-ranking officer to build the structures on the Reef. The Philippines government also rejected the notion that the occupation was a unilateral action of low-ranking PLA officers and it suspected higher level Chinese government involvement.

Is it possible for a higher-ranking PLA officer to have initiated the occupation by themselves? According to Michael D. Swaine, PLA high-level officers had a role in engaging foreign and national security policymaking.⁸³ John W. Garver further points out a great influence of the PLA high-level officers on the SCS strategy making.⁸⁴ Storey argues that it was possible for PLA high-level officers to initiate the Mischief Reef occupation by PLA's decision alone, without the knowledge and approval of civilian officers of the government.⁸⁵ He sees the Mischief Reef incident as a consequence of internal political maneuvers in the post-Deng leadership struggle. During the period 1994-1996, while China's former leader Deng Xiaoping had been losing his power and influence on the government and his chosen successor Jiang Zemin had still not been able to centralize the government under his leadership, power struggles arose. In order to consolidate his position as a leader and establish entire control of the central government, Jiang Zemin needed the support of the PLA. To gain this support however, he needed to demonstrate his nationalist credentials by adopting more assertive foreign policies including the SCS strategy. Although he appar-

⁸⁰ Zha and Valencia, 88.

⁸¹ Storey, 100.

⁸² "Hye Mieko Attack Triggers Upsurge in Piracy," *The South China Sea Morning Post*, 28 June 1995.

⁸³ Storey, 100.

⁸⁴ Michael D. Swaine, "The Role of the Chinese Military in National Security Policymaking," (Santa Monica, California: RAND's National Defense Research Institute, 1998).

⁸⁵ John W. Garver, "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests," *The China Quarterly*.

ently did not command the PLA to conduct the occupation of the Mischief Reef, he may have given the action retrospective approval to display his assertive attitude towards the SCS dispute.

Secondly, the Chinese assertive actions related to the Mischief Reef incident were derived from its intention of testing the reactions of the other stakeholders, particularly the U.S. and ASEAN, towards China's new foreign policy.⁸⁶ Although China had also contested maritime features in the SCS with Vietnam as mentioned in the beginning of this chapter, the Mischief Reef incident is the first case that China occupied territory disputed with ASEAN member states. As for ASEAN, China specifically wanted to test if ASEAN would take any collective actions towards Chinese assertiveness as a bloc for one of its member nations. Not all ASEAN member nations had disputes with China over the SCS, and there were wide discrepancies among member nations' perceptions and expectations of China and relationships with China. China apparently did not assume that ASEAN would react to Chinese assertiveness as a bloc to secure its regional interests. Additionally, the Mischief Reef incident gave a chance for China to see the U.S.'s attitude towards the SCS disputes and to what extent the U.S. would commit to its ally the Philippines. China allegedly assumed that the U.S. would not commit to the Philippines to defend the Mischief Reef, which was not crucial for the U.S. national interests.⁸⁷ The economic importance of the ASEAN countries for China had continuously been growing in the 1990s, and any assertive actions would have damaged the favorable economic regional environment for Chinese economic modernization projects.⁸⁸ Considering these aspects, the purpose of testing other states' responses was apparently momentous for China. Those factors motivating China to take assertive actions were basically backed by a growing nationalism and confidence attributed to its strong economic development.

3.1.2. The Philippines

The Philippine's changing strategic environment has also shaped the assertiveness of China's SCS policy.⁸⁹ Specifically, the state of the Armed Forces of the Philippines (AFP) and the withdrawal of the U.S. military from the Philippines in 1992 gave China the confidence to pursue assertive actions as a part of its SCS strategy.

Since its independence from the U.S. in 1946, the Philippines' government has been afflicted by various domestic insurgencies.⁹⁰ The

⁸⁶ Storey, 100.

⁸⁷ Ibid., 101.

⁸⁸ Ibid., 110.

⁸⁹ Zha and Valencia, 92.

⁹⁰ Storey, 101-02.

Philippine government had been forced to concentrate all its efforts and security budget on combatting communist insurgents and other separatist movements. Specifically, during the 1970s under President Ferdinand Marcos, the role of the AFP was completely politicized by imposition of martial law in 1972.⁹¹ The role of the AFP shifted from defending the country from external threats to enforcing internal security and supporting the Marcos' authoritarian regime.⁹² The politicization of the AFP and its intimate connection between the AFP and the Marcos regime had produced a negative perception of the AFP among the population.⁹³ Further, a series of coup attempts against the successive Aquino administration, which was carried out by members of the AFP around the end of the 1980s, further deepened the distrust of the military among Filipinos. As the military's unfavorable perception was reinforced, a large number of people began to voice demands for budget cuts and a reduction in the army's influence. Meanwhile, the AFP had deteriorated from a lack of operational capability to defend the country's national security from external threats.

While the AFP had little capacity to handle external issues because of the internal threats such as communist rebellions and separatist movements, the U.S. military had been *de facto* responsible for the Philippine's external security defense for several decades.⁹⁴ Since independence, the Philippines have predominantly depended on the U.S. for their national security. The Philippines' dependence on the U.S. military was one of the reasons why the Philippines' government neglected to build up its own military.⁹⁵ Manila and Washington had built and strengthened interdependence and mutual trust in this aspect through several treaties beginning with a Military Bases Agreement (MBA) signed in 1947, which allowed Washington to use military bases in the Philippines. In 1951, the two nations consented to a Mutual Defense Treaty which stipulated that both nations shall recognize an attack in the Pacific Area on either party as a danger to their own peace and safety, and in such a situation the U.S. shall take actions against the attack. In 1954, both parties signed the Manila Pact which led to the creation of a defensive alliance, the Southeast Asia Treaty Organization (SEATO), which was later dissolved in 1977. Based on the mutual trust around security relations, the U.S. had two major bases in the Philippines, Clark Air Force Base and Subic Bay Naval Base respectively.

⁹¹ Renato De Castro, "The Philippines Confronts China in the South China Sea: Power Politics Vs. Liberalism-Legalism," *Asian Perspective*, 2015, Vol.39(1), pp.71-100: 76.

⁹² Storey, 103.

⁹³ Shang-su Wu, "Aquino's Military Modernization: Unprecedented but Insufficient," *The Diplomat* (2016), <http://thediplomat.com/2016/03/aquinos-military-modernization-unprecedented-but-insufficient/>.

⁹⁴ Storey, 103.

⁹⁵ Ibid., 102.

They were the largest U.S. military bases overseas and played a crucial role as important hubs for the global defense network of the U.S.

The presence of the U.S. military bases has always caused political tensions inside the country and in the U.S.-Philippines relations.⁹⁶ Although the bases provide the national security and increase the capital inflows into the Philippines' economy, political discourse also developed objecting to the presence of the U.S. bases in the Philippines. Anti-U.S. base activists raised the objection against the presence of the bases on the grounds of several arguments, including: the increased possibility of being target of a Soviet Union nuclear attack, negative effect of crimes committed by the U.S. soldiers on Philippine society, and the poor working conditions of Filipino workers employed in the bases. Filipino nationalists also strongly castigated the U.S. bases in their country for being a symbol of its dependency on the U.S. The dissipation of threat from the Soviet Union at the end of the Cold War reinforced nationalists' objection against the presence of the U.S. bases in their country, and their claim that the Philippines should be independent. In 1991, Clark Air Force Base was rendered unusable by the eruption of an active volcano Mount Pinatubo, and the U.S. military was forced to withdraw. In regard to Subic Bay Naval Base, despite the desire of the U.S. military to remain there, the Philippines Senate resolved to terminate its lease contract of Subic Bay in 1991. Washington had a possibility of re-negotiating with Manila but in the end decided not to, as the withdrawal of the U.S. base matched the trend of downsizing the U.S. forces overseas with the end of the Cold War. As a result, Subic Bay was handed over to the Philippines and the U.S. forces departed from the Philippines in 1992.

With the withdrawal of the U.S. army, the Philippines' government recognized the necessity for urgent modernization of the AFP for the country's external security.⁹⁷ Because of the political and social environment around the AFP, Manila's defense investments had been insufficient upgrade and replace the aging military equipment.⁹⁸ Also, because the AFP shifted to the role of an internal security force, it had not been necessary to upgrade and replace the military equipment. In 1990, President Aquino appealed to the Philippines Congress for backing a U.S. \$1billion military modernization program over ten years, to upgrade the AFP, particularly its air force and navy.⁹⁹ The AFP also lobbied for more advanced equipment including aircrafts and fighters. Nonetheless, Congress did not pass the bill as the program did not obtain the support from both Filipinos and members of the Congress. The Philippines economic situation, already damaged in the Marcos' era, also influenced political desires to prioritize the provision of public ser-

⁹⁶ Ibid., 103.

⁹⁷ Ibid., 102-03.

⁹⁸ Ibid., 103.

⁹⁹ Wu.

vices and reduce poverty, rather than spend money on the AFP's upgrade. While the Philippines' difficult economic situation was raised as a key reason for the limited budget for the AFP, other developing countries in the region spent much more on military expenses in the 1990's.¹⁰⁰ Moreover, politicians did not recognize any external threat under the favorable diplomatic situation that the Philippines had cultivated, including good relationships with ASEAN countries, the U.S., Japan and China.¹⁰¹ China was not actively considered as a possible threat, even though it had been expanding its military expenditure. In addition, the defense treaty between the U.S. and the Philippines was still valid. Thus, the Philippines' military modernization was suspended.

Aquino's successor, Fidel Ramos, was elected in 1992. President Ramos, who was a United States Military Academy graduate, former AFP Chief of Staff and Vice-President of the Aquino administration, paid attention to national security issues and was deeply concerned about the inability of the AFP to defend the country after the U.S. army withdrawal.¹⁰² He believed that the withdrawal of the U.S. army would expose the Philippines to external threats. His administration appealed to the necessity of urgent modernization of the AFP, and stressed that without modernization the Philippines could hardly protect its country from the external attacks. Ramos was also well aware of the Philippines' weakness in defending its territorial claims over the South China Sea from other claimants. He recognized the importance of the SCS for the Philippines' economic development because of its abundant natural resources, such as fish, oil and gas. While he was fearful of the possibility of a military confrontation over the SCS disputes, the Chinese National People's Congress adopted the Territorial Law of the Sea declaring its territorial sovereignty over the Paracel and Spratly Islands in February 1992. This event generated concern about China among Filipinos citizens. Further, the withdrawal of Russian troops from the region and the downsizing of the U.S. military overseas generated a "power vacuum" in the region in the post-Cold War era.¹⁰³ The power vacuum, which China was expected to fill, brought on further geopolitical ambiguity. The Philippines' fear of external threats was intensified by these events. Despite this, it wasn't until December 1996, the following year of the Mischief Reef incident, that the Philippines congress passed a five-year US\$12.6 billion defense modernization program.

For Manila, the only feasible option to defend its claims in the SCS was diplomacy.¹⁰⁴ In 1993, Ramos officially visited Chinese president, Jiang Zemin and opened negotiations for a solution to the SCS dispute. During his visit, Jiang Zemin assured him of a peaceful settlement of

¹⁰⁰ Storey, 104.

¹⁰¹ Wu.

¹⁰² Storey, 104.

¹⁰³ Ibid., 104-05.

¹⁰⁴ Ibid.

the SCS conflict. Jiang Zemin also affirmed that China's defense modernization program was not a cause for alarm for neighboring countries. Despite the engagement between both presidents, the Mischief Reef occupation occurred only two years later. For Manila, diplomacy was the only option for resolving the confrontation. Beijing and Manila agreed on the code of conduct in August 1995, which stipulated that both countries should avoid another confrontation and initiate cooperation projects in the SCS. Specifically, it highlighted securing the freedom of navigation, avoiding the use of force and conducting joint maritime programs such as joint exploitation of oil and gas in the area between the two countries. The Philippines could not compel Beijing to demolish the structures on the Reef but the two parties agreed to retain the *status quo*, which meant that building of another structure and upgrading the current structure in the Spratly Islands was banned. Manila's relief about Chinese amicable attitude was momentary. Its expectation was however undermined by China's continuous infractions of the code of conduct, beginning with the incident between Chinese naval vessels and the AFP in January 1996, extending structures on the Mischief Reef in May 1996, installing a seeming new structure on Loaita Island in April 1997, sending research vessels to Scarborough Shoal, and further upgrading the structure on Mischief Reef.¹⁰⁵

3.1.3. ASEAN

The weakness of the Philippine armed forces and diplomacy efforts drove Manila to appeal to the regional organization ASEAN to challenge China.¹⁰⁶ Bringing the SCS dispute to ASEAN could increase international community's awareness of the SCS dispute.¹⁰⁷

The support of ASEAN as a unit was crucial for the Philippines to compete against China over the SCS dispute.¹⁰⁸ ASEAN's support encouraged the Philippines to contend with confidence that the Mischief Reef occupation constituted a regional concern, and that China's assertiveness would undermine the peace and the stability of the region. Stability of the region was essential for the ASEAN countries as well as China, which was pursuing economic modernization plan. The Philippines president recommended that ASEAN censure China for its assertive actions in the SCS, and to support the Philippines' standpoint over the confrontation after the Mischief Reef incident. In 1992, ASEAN issued a Declaration on the South China Sea which emphasized rejection

¹⁰⁵ Ibid., 106-07.; *ibid.*

¹⁰⁶ Alexander L. Vuving, "South China Sea: Who Occupies What in the Spratlys?," *The Diplomat* (2016), <http://thediplomat.com/2016/05/south-china-sea-who-claims-what-in-the-spratlys/>.

¹⁰⁷ De Castro, 71-73.

¹⁰⁸ Zha and Valencia, 91.

of the use of force in resolving the disputes.¹⁰⁹ During the aftermath of the Mischief Reef incident, the ASEAN foreign ministers released a joint communiqué on March 18, 1995, calling for restraint from all claimants from taking part in activities that could destabilize the region and for abiding by the Manila declaration.¹¹⁰ China wasn't named in the statement however it was a clear message to Beijing. The Philippines also succeeded in building on this ASEAN consensus at the first China-ASEAN Forum in Hangzhou in April 1995. Although the SCS issue was not on the agenda of the formal sessions, ASEAN and Chinese officers discussed it informally on the eve of the formal sessions. ASEAN officials affirmed that Chinese series of assertive behavior negatively affected the stability of the region, and the issue should be resolved by peaceful negotiations in accordance with the Manila declaration. They also underlined that Chinese assertive behavior would decrease trust building between Beijing and ASEAN nations. On the one hand, ASEAN's "one voice" supporting the Philippines satisfied Manila, but also disappointed Beijing as it was unexpected.

Vietnam's obtaining membership of ASEAN in 1995 also strengthened Manila's position in ASEAN towards Beijing.¹¹¹ Vietnam who had overlapping claims and had armed confrontation with China on a couple of occasions, was also willing to use ASEAN to deal with China over the SCS dispute and was preparing to encourage ASEAN to take collective actions against China by the mid-1990s.¹¹²

The Philippines under the Ramos administration tried to take further steps to internationalize the issue by taking it to multilateral frameworks such as ASEAN Regional Forum (ARF) established in 1994, which includes other regional actors such as Australia, China, Japan, Russia, South Korea and the U.S. ARF's purpose was to promote constructive dialogue and consultation on member states' common political and security concerns and interests in the Asia-Pacific region.¹¹³ Although ASEAN's collective challenges to China could moderate China's attitude over the SCS dispute, the Philippines strategy to obtain the ASEAN's collective support over the SCS dispute was not successful because of the vulnerability of the ASEAN's solidarity.¹¹⁴ Each member certainly had its own interests related to the issue, and the tan-

¹⁰⁹ Storey, 107-09.

¹¹⁰ Scott Edwards, "Why Asean Must Remain Neutral on the South China Sea," *The Diplomat* (2016), <http://thediplomat.com/2016/03/why-asean-must-remain-neutral-on-the-south-china-sea/>.

¹¹¹ Storey, 107-09.

¹¹² Ralf Emmers Sam Bateman, ed. *Security and International Politics in the South China Sea : Towards a Co-Operative Management Regime*, China's South China Sea Dilemma (London and New York: 2008).

¹¹³ Frank Frost, "Vietnam's Membership of Asean: Issus and Implications," (The Department of the Parliamentary Library, 1995), 8.; Storey, 107-09.

¹¹⁴ ASEAN Secretariat, "Asean Regional Forum," <http://aseanregionalforum.asean.org/about.html>.

gled interests of member states made ASEAN unity fragile.¹¹⁵ For example, Indonesia sought to build its reputation and capacity as a leader of the region by leading the SCS dispute to a peaceful solution. China doubted Indonesia's neutral position among the members, since Indonesia and China's territorial claims over Natuna Islands overlap and Indonesia and the American company ExxonMobil signed a contract for US\$35 billion to explore and develop gas and oil resources around the Islands in February 1995. Indonesia preferred resolving the dispute in the multilateral framework which China and other supportive member states eschew. Indonesia also expressed frustration about China's ambiguity of their claims over the SCS dispute.

Contrary to Indonesia, Malaysia had affinity with China as well as Singapore. It disapproved of the dispute settlement in the multilateral framework since it was concerned that China's proposal of joint development of resources in the SCS could encompass Malaysia's claims, and it did not want to give credibility to either the claims made by China or others states. More importantly, Malaysia prioritized the relations with China over the solidarity with ASEAN. These differences among member states' interests undermined the group solidarity within ASEAN and made it difficult to raise "one voice" against China. The differences among ASEAN member states' interests gave China the opportunity to divide ASEAN in support of its SCS interest.

As detailed, China favored bilateral rather than multilateral negotiations over the SCS disputes. ASEAN members maintain different attitudes against China depending on their relations with China. Some countries were reluctant to release a joint communiqué as ASEAN members worried about confronting an emerging regional power such as China and impairing their relations with Beijing. China also tried to divide ASEAN unity by using economic tactics. This was seen especially after the 1997 Asian financial crisis, when the Chinese yuan's devaluation resulted in the increase of the competitiveness of Chinese products in international markets compared to the Southeast Asian exports. While this negatively affected ASEAN countries, China legitimized its financial tactics as a contribution to economic wellbeing of ASEAN countries. Some ASEAN members believed that they could make better deals with China by negotiating bilaterally, and they gave priority to relations with China rather than upholding ASEAN solidarity on the SCS issue.

At the ARF first working session in Brunei in May 1995, the Undersecretary of Foreign Affairs of the Philippines, Rodolfo Severino wanted ASEAN to discuss the issue collectively with China, but he faced objections from other ASEAN member states who were afraid of antagonizing China and endangering the forum.¹¹⁶ A leader of ASEAN

¹¹⁵ Storey, 107-09.

¹¹⁶ Zha and Valencia, 95.

delegation, Lim Jock from Brunei advised the ASEAN members to avoid confrontations with China. Although the Philippines was disappointed, the newly established ARF avoided the possibility of increased friction between ASEAN and China at its developmental stage. China also indicated its unwillingness to discuss the Mischief Reef incident at the ARF meeting. Similarly, at the second ARF meeting in August 1995, China's objections kept the Mischief Reef off the meeting agenda. Meanwhile at the Hangzhou meeting, ASEAN was able to discuss the issue with China, albeit informally. The chair of the meeting, Indonesian Foreign Minister Ali Alatas, conveyed ASEAN's apprehension about the SCS territorial dispute and the possible strife which could endanger the stability in the region. In response to this, Qiang Qichen, Chinese Foreign Minister declared China's willingness to solve the SCS disputes with the other claimants based on the provisions of UNCLOS. Alatas saw this as China's willingness to discuss the issue in the multilateral framework and to accept UNCLOS with gratitude. However, the Chinese government again frustrated ASEAN members when it declared the extension of its baseline claim to the Paracel Islands in May 1996, thereby expanding its territorial claim in the SCS based on the provisions of UNCLOS as it applied to archipelagic states. The Philippines immediately condemned the Chinese announcement, arguing that the provision should not be applied to a non-archipelagic country such as China, asserted that Chinese actions could endanger the stability and hinder cooperative behaviors in the Southeast Asian region.¹¹⁷

ASEAN was finally able to raise the SCS issue collectively with China at the second China-ASEAN Forum in Indonesia in June 1996. Likewise, at the first ASEAN-China summit meeting in Kuala Lumpur in December 1997, ASEAN was able to request China to reaffirm abiding by the code of conduct between China and the Philippines from 1995. However, at the ASEAN summit in 1998, ASEAN failed to collectively denounce the disturbance of the status quo in the contested area.¹¹⁸

3.1.4. The United States

The United States' commitment to the Philippines regarding the SCS dispute was ambiguous. Even after the withdrawal of the U.S. military personnel from Clark Air Force Base and Subic Bay Naval Base, the Philippines believed that the U.S. would aid the Philippines in the case of an emergency according to the 1951 Mutual Defense Treaty. Filipinos also believed that it would surely apply to the Spratly Islands case. Defense Secretary of the Philippines, Renato de Villa showed the Phil-

¹¹⁷ Storey, 107-09.

¹¹⁸ Ibid.

ippines' belief about the U.S.' commitment to security of the Philippines in his statement in 1992.¹¹⁹

Whether the U.S. would come to aid the Philippines military or not when the Spratly Islands were in danger was uncertain. Based on the Mutual Defense Treaty, Washington seemed likely to help the Philippines in the case of a crisis. U.S. ambassador to the Philippines, Frank Wisner stated that this understanding was not always true about the Spratly Islands. U.S. Assistant Secretary of State for East Asian Affairs, Richard Salomon, declared that regardless of the Mutual Defense Treaty, in the case that armed incidents would occur, or if U.S. national interests and the security of its allies and partners were at stake, the U.S. would take actions to protect them. However, the U.S. had never indicated its definite commitment to assist the Philippines military when the Spratly Islands were in danger. In fact, the U.S. showed a possible understanding that the 1951 defense treaty did not cover the Spratly Islands, which was not officially incorporated into the Philippines until 1978. Thus, the U.S. may have interpreted the treaty to mean that only if national interests of both countries were endangered would the U.S. take action.

Regarding the Mischief Reef incident, the structures were built sometime between June and December 1994. The existence of the structures was reported to the Philippines coastguard in February 1995. The U.S. allegedly knew about the existence of the structures before it was reported to the Philippines but did not inform the Philippines of it. The Philippines officials suspected that Washington was intentionally withholding the information after the withdrawal of the U.S. military from the Philippines. In fact, the Pentagon refused the Philippines' request for further information about it. The reason why the U.S. failed to warn Manila about the Chinese constructing the structures on the Mischief Reef was not clear. One theory is that some gaps in the U.S. intelligence network were created due to the termination of the U.S. military bases contract in the Philippines. Another possibility is that the U.S. wanted to make the Philippines keenly aware that they needed access to the U.S. military. The U.S. might have thought the incident was not vital to the U.S. national interests, since the U.S. was most interested in securing the freedom of navigation, and the possibility of an armed conflict between China and the Philippines was quite low.¹²⁰

The U.S. allegedly thought that the Philippines and ASEAN members should work together to control or limit the Chinese aggression in the SCS. The U.S. was interested in avoiding an increase in the possibility of a reckless clash between China and the U.S. brought on by U.S. involvement in the incident. The resulting increase of tensions between

¹¹⁹ Zha and Valencia, 95-97.

¹²⁰ Storey, 109-12.

the two nations would negatively affect other important issues, such as further expansion of the Chinese market.

This incident subsequently drew people's attention to the necessity of a U.S. base in the Philippines. However, the issue was still very sensitive in the Philippines. Congress was divided into two groups. One side appealed to the necessity of intimate defense relations with the U.S. and the other suspected that President Ramos, who opposed the termination of the U.S. bases in the Philippines, tried to take advantage of the Mischief Reef incident to get the U.S. bases back to the Philippines.

3.1.5. Summary

The Mischief Reef incident represents China's dual strategy approach - occupation and negotiation - towards the Philippines over the SCS dispute. Insisting on sovereignty rights over the Spratly Islands without any compromise, China had been increasing its physical presence in the Spratly Islands through continuous construction of structures on the Reef while at the same time pursuing a peaceful settlement of the dispute through joint cooperation in exploring and developing oil and gas in the area. Specifically, the Mischief Reef incident demonstrated China's growing assertiveness. Since the end of the Cold War, China had fostered good relationships with Southeast Asian countries including the Philippines for its own economic development. Despite Chinese leader Deng Xiaoping's promise to President Aquino in 1988 and the 1992 Manila ASEAN declaration promising a peaceful settlement of disputes, China followed the assertive actions in the Mischief Reef incident by occupying the Reef and constructing apparent military structures on it. The Mischief Reef incident is recognized as a turning point of Sino-Philippines relations. In the aftermath of the incident, while China showed its dual attitude of seeking settlement of the dispute through peaceful negotiations in the code of conduct and some ASEAN summit meetings, while continuing to upgrade the structure on the Reef.

China's dual strategy approach was shaped by a range of factors, including Chinese domestic politics, Philippine political and military conditions, ASEAN's standpoint to the SCS dispute, and the U.S.' commitment to the Philippines.¹²¹ The strategy was also influenced by the context of changing power structures in the region after the Cold War, where China aimed to be a regional hegemon.

Firstly, the incident occurred in a period of political power struggle in China following the-Deng Xiaoping era. Although the incident was seemingly caused by PLA alone, Deng Xiaoping's successor Jiang Zemin gave his blessing to the Reef incident to show his nationalistic

¹²¹ Ibid.

qualities, and thereby obtain PLA's support. In addition, China seemingly caused the incident with the intent of testing the reactions of regional actors such as ASEAN and the U.S. to its efforts step forward as a more assertive regional power. China, which had increased its confidence and influence in the region based on its rapidly developing economy, wanted to see other actors' reactions, and Beijing might have thought the time was ripe. The Philippines did not have comparable military power with China for national security. Furthermore, the Philippines' government had been forced to concentrate all its efforts on fighting continuing insurgencies since its independence from the U.S. in 1947. Meanwhile, it had lost its ability to defend the country from an attack outside. Instead of the AFP, the U.S. military had played an important role for the Philippines' national security since 1947. With the end of the Cold War, as the Soviet threat disappeared and nationalism was increasing in the Philippines, local opposition to the U.S. military in the Philippines increased. The U.S. military use of Clark Air Force Base and Subic Bay Naval Base was terminated and all U.S. military personnel left the bases by 1992. Even with the U.S. bases closed however, Manila expected Washington to defend it from any attack from outside based on the 1951 Mutual Trust Treaty. However the U.S.'s commitment to the Philippines was ambiguous especially on the SCS territorial matter. Unless the U.S.' national interests or freedom of navigation were at stake, the U.S. was not inclined to get involved in the SCS dispute. Those factors might have given China confidence to take assertive actions. On the other hand, China was still seeking to resolve the SCS dispute through peaceful means, such as pausing the dispute and conducting joint cooperation projects, especially after ASEAN reacted to China's assertiveness as a group as requested by the Philippines. This was not an action China expected nor wanted, because good relationships with ASEAN countries and regional stability were vital for further development of Chinese economy. Solidarity of ASEAN could help moderate Chinese attitudes; however this was uncertain because of disparities in member states' interests. Some nations favored good relations with China over the solidarity of ASEAN. China, who preferred bilateral over multilateral negotiations, was trying to divide ASEAN taking advantage of these different interests. All these factors influenced Chinese approach to the Philippines over the SCS dispute.

3.2. Joint Maritime Seismic Undertaking agreement

In September 2004, the China National Offshore Oil Corporation (CNOOC) and the Philippine National Oil Corporation (PNOC) signed an agreement for "Joint Marine Seismic Undertaking in Certain Areas in the South China Sea", and in March 2005 Petro Vietnam joined the agreement, creating a "Tripartite Agreement for Joint Marine

Seismic Undertaking in an agreed area of the South China Sea (JMSU)".¹²² This agreement was to jointly explore and develop the oil and gas reserved in the SCS and shelving the question of sovereignty rights over the SCS.¹²³ This implied cooperation with claimants over the SCS disputes.¹²⁴ Specifically for the Philippines, this agreement was concluded in a series of exchanges such as frequent mutual visits of officials, evolving bilateral trade, and joint actions to combat terrorism and transnational crimes as part of moves to form a new and friendly relationship between China under its new leader Hu Jintao, and the Philippines under the President Gloria Macapagal Arroyo.¹²⁵ JMSU served as a mechanism to maintain the peace and stability in the Southeast Asian region, and also symbolized Chinese cooperative approaches and peaceful settlement over the SCS dispute.¹²⁶

How was the Chinese approach shaped? To explore this question further, the following section will examine Chinese peaceful strategy in the context of the dynamics of interactions between China, the US, the Philippines and ASEAN states.

3.2.1. China

While China had never compromised its stance on the territorial sovereignty claim over the SCS, escalating the dispute over the SCS was also not desired.¹²⁷ Beijing believed that the stability of Southeast Asia was essential to its further domestic economic development.

China had achieved astonishing economic growth during the period from 1980 to 2000.¹²⁸ According to the National Statistics of Bureau of China (NSBC), its international trade expanded from US\$20.6 billion in 1978 to US\$1,154.8 billion in 2004, and its foreign currency reserves increased from US\$170 million in 1978 to US\$609.9 billion in 2004. Its GDP rose to US\$1.93 trillion in 2004 and it became the 6th biggest economy in the world. As China's influence on the region increased

¹²² Ibid., 95-114. ; De Castro and Tan, 165.

¹²³ Melissa H. Loja, "Is the Rule of Capture Countenanced in the South China Sea? The Policy and Practice of China, the Philippines and Vietnam," *Journal of Energy & Natural Resources Law*, 01 November 2014, Vol.32(4), p.483-508: 495.

¹²⁴ Ibid.

¹²⁵ De Castro and Tan, 165.

¹²⁶ Ibid.

¹²⁷ Truong-Minh Vu, "The Logic of Strategic Restraint and Prospects for Joint Development in the South China Sea," ed. Mária Strašáková Alfred Gerstl, *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality* (Leiden, Brill: La Vergne, MyiLibrary, 2017), <http://lib.mylibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>. 237.

¹²⁸ Fang Yang, Mingjiang Li, and Alexander C. Tan, "Comparing China's Claims and Policies in the East and South China Seas: Implications for Regional Security," *Journal of Asian Security and International Affairs*, 2016, Vol.3(2), pp.135-156: 144.

with its rapid economic development, Beijing felt that it is deserved to become a regional power.¹²⁹ China's economic development gave Southeast Asian countries two options, either to side with the existing regional power the U.S. or the emerging power China, without making any commitment to either of them.¹³⁰ Having economic and political power, Beijing began to concern itself about its perception among Southeast Asian states, which was a possible threat to its interests in the region.¹³¹ This encouraged Beijing to adopt a good neighbor policy. The increase in Chinese leaders' attention to the perceptions of neighboring countries can be seen in remarks at the Chinese Communist Party (CCP) Congress.¹³² At the CCP Congress in 1992, it was stated that China and its neighboring countries held the best relations since establishment of China, while at the CCP Congress in 1997 Beijing declared that it would continuously adopt the good neighbor policy as its primary stance.¹³³ At the CCP Congress in 2002, it was declared that China would further enhance the relations with neighbors and promote exchanges and cooperation with the region and with neighboring countries to further levels.¹³⁴

China's unprecedented economic development in the last two decades of the twentieth century intensified its economic interdependence with neighboring countries and the world.¹³⁵ The consequences of this development made Chinese high-level officials conscious that improving relationships with neighboring nations would positively affect its further economic development. The Chinese Ministry of Foreign Affairs therefore conducted "economic diplomacy".¹³⁶ The notion of economic diplomacy involved Beijing enhancing diplomatic relations with other countries through economic cooperation, and diplomatic relations would in turn deepen economic relations further. The economic diplomacy was officially referred by Chinese leader, Wen Jiabao at the 3rd Plenary Session of the 10th National People's Congress in March 2005, although it had been adopted in practice many years prior. The successful experience of domestic economic modernization encouraged Chinese leaders to carry out with confidence such economic diplomacy for external affairs. Along with the good neighbor policy, China's economic diplomacy had been expressly targeted on neighboring countries. Beijing had been making efforts to improve its relationships with ASEAN countries including the Philippines through practical measures,

¹²⁹ Jing Men, "The Construction of the China-Asean Free Trade Area: A Study of China's Active Involvement," *Global Society*, 01 April 2007, Vol.21(2), p.249-268: 249. ; *ibid.*, 250.

¹³⁰ Chakraborti, 165

¹³¹ De Castro and Tan, 165. ; Men, 250.

¹³² De Castro and Tan, 166.

¹³³ Men, 251.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*, 250-51.

such as expanding trade, investment and Official Development Assistance (ODA). Further, China and ASEAN announced that they would establish an ASEAN-China Free Trade Area (ASEAN-China FTA) within ten years as a framework for regional cooperation, at the Brunei ASEAN-China summit in 2001.¹³⁷

Despite its preference for bilateral negotiations, China had been improving economic and political ties with ASEAN countries and had been discussing the SCS disputes in multilateral framework such as the ARF.¹³⁸ Negotiations with ASEAN states resulted in the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002. The DOC declared the following:

*"The claimants will settle the disputes by peaceful means complying with UNCLOS and International Law; they will restrain from occupying currently inhabited maritime features in contested areas; they will respect the freedom of navigation in and overflight above the SCS; they will refrain from escalating the disputes; and they will initiate cooperative activities on common interests."*¹³⁹

The DOC mainly placed emphasis on de-escalating the territorial sovereignty disputes and preventing possible future clashes in the SCS.

In a cooperative atmosphere, the JMSU agreement was signed by the Philippines and China in 2004, then, additionally, by Vietnam. By this time, China and ASEAN countries had enhanced their relations enough to shelve the territorial sovereignty issue and cooperate in exploring and developing oil, gas and other projects in the SCS, due in large part to Chinese policy and diplomacy.¹⁴⁰ The main notion of JMSU, "*setting aside dispute and pursuing joint development*", was originally introduced by the Chinese leader Deng Xiaoping in another territorial dispute with Japan, in the East China Sea in the 1970s.¹⁴¹ JMSU brought a sense of ease to the region.¹⁴² Robert Beckman pointed out China's rising energy needs and its astounding economic development as a reason for China to adopt such a pragmatic method.¹⁴³ He further

¹³⁷ Ibid.

¹³⁸ ASEAN, "Framework Agreement on Comprehensive Economic Co-Operation between Asean and the People's Republic of China, Phnom Penh, 4 November 2002," Association of Southeast Asian Nations, http://asean.org/?static_post=asean-china-free-trade-area-2; De Castro and Tan, 165.

¹³⁹ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," 289.

¹⁴⁰ De Castro and Tan, 165.

¹⁴¹ Beckman.

¹⁴² the People's Republic of China Ministry of Foreign Affairs, "'Set Aside Dispute and Pursue Joint Development'," Ministry of Foreign Affairs, the People's Republic of China, http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18023.shtml.

¹⁴³ Henry Curtis, "Constructing Cooperation: Chinese Ontological Security Seeking in the South China Sea Dispute," *Journal of Borderlands Studies*, 24 July 2015, p.537-549: 539.

argued that there is no successful option other than JMSU “*setting the dispute aside and pursuing joint development*” in order to resolve the problems such as rising needs for energy, sustaining fishery resources, protecting the marine environment and maintaining order in the SCS.¹⁴⁴ Considering the intensified political and economic ties and increased economic interdependence between China and the ASEAN claimants, it is considered less likely that claimants will use force to resolve the disputes. Considering the political sensitivity of the disputes and the national interests at stake, the claimants are also unlikely to agree to bring disputes to an international court or tribunal and letting them decide a winner and a loser. In the same way, it is not likely that the claimants will be able to reach agreed settlement of the dispute through negotiations.

China had been repairing its bilateral relations with the Philippines applying the good neighbor policy and the economic diplomacy after the Mischief Reef Incident.¹⁴⁵ During the period from 1996 to 2000, relations had been carefully restored through continual high-level talks and official visits, including President Joseph Estrada’s state visit to Beijing in May 2000. During President Estrada’s visit, the two countries agreed to the “Joint Statement on the Framework of Bilateral Cooperation in the 21st Century” which set out their comprehensive vision for bilateral cooperation. The constant visits resulted in the normalization of diplomatic relations between China and the Philippines. China further enhanced ties with the Philippines by strengthening economic relations between the two countries during President Arroyo’s administration (2001-2010).¹⁴⁶ Bilateral trade enormously expanded, from US\$2 billion in 1998 to US\$30 billion in 2007. As bilateral trade grew, the huge Chinese market also became very important for Filipino products. Later, bilateral ties developed not only in economic field but also in joint development in the SCS and even security matters. Between 2005 and 2008, China, the Philippines and Vietnam jointly carried out their first seismic survey in the SCS based on above-mentioned JMSU in 2005.¹⁴⁷ Frequent bilateral visits of high-ranking military officials from China and the Philippines also took place during this period. In 2004, Beijing and Manila signed a memorandum of understanding on defense cooperation which laid down more frequent exchanges of military officials, conducting of joint military exercises and tackling terrorist and common threats together. In addition to this, China promised to give the Philippines military US\$1.25 million financial assistance. In the following two years, China provided military equipment and supplies which were equivalent to total US\$2.50 million. Further, in October

¹⁴⁴ Beckman.

¹⁴⁵ Ibid.

¹⁴⁶ Wu Shicun, “5 - China’s Dispute with the Philippines over the Nansha Islands,” in *Solving Disputes for Regional Cooperation and Development in the South China Sea* (Chandos Publishing, 2013), 135.

¹⁴⁷ De Castro and Tan, 165.

2009 China and the Philippines agreed on a joint action plan to cooperate for promoting sustainable development. Improvements in bilateral economic relations brought about an increasingly friendly relationship between the Philippines and China.¹⁴⁸ The friendly relationship lowered tensions over the SCS dispute. Moreover, China succeeded in changing its perception among Southeast Asian countries from being a regional security threat to a sympathetic great power.¹⁴⁹ It is noteworthy that China continued expanding its military spending and military facilities even while adopting the good neighbor policy.¹⁵⁰

3.2.2. The Philippines

The Mischief Reef incident prompted Manila to revive military ties with the U.S., after the closure of U.S. military bases in the Philippines in the early 1990s.¹⁵¹ The incident showed that only if core national interests such as freedom of navigation were at stake would the U.S. get involved over the SCS dispute, as per the 1951 Philippines-US Mutual Defense Treaty. Manila believed that the U.S. presence in the region would act as a deterrent to China. Manila negotiated and agreed the "Visiting Forces Agreement (VFA)" with Washington on February 10, 1998, which increased military cooperation between the two countries.¹⁵² The Philippines Senate ratified the VFA in 1999.¹⁵³ A series of incidents such as clashes between the Philippines coast guard vessels and Chinese fishing boats contributed to this decision.¹⁵⁴ Although the Philippines Senate previously recognized the U.S. military in the country as something that hurt Philippine national pride, when it decided to close the U.S. military base in Subic Bay in 1991, after the Mischief Reef incident the Senate reassessed U.S. presence as a deterrent to China, which was expanding its power in the region. The Commander in Chief of the U.S. Pacific Command stated that the VFA normalized military ties between the U.S. and the Philippines, which cooled after the withdrawal of the U.S. forces, although it did mean that the VFA was conducted based on the 1951 mutual defense treaty.¹⁵⁵ U.S. Ambassador Thomas Hubbard affirmed that in case of attacks in the SCS, the U.S. forces would fight for the Philippines based on the expanded

¹⁴⁸ Shicun, 136.

¹⁴⁹ De Castro and Tan, 165.

¹⁵⁰ Ibid., 166.

¹⁵¹ Shigeo Hiramatsu, "China's Advances in the South China Sea: Strategies and Objectives," *Asia-Pacific Review*, 01 May 2001, Vol.8(1), p.40-50: 46.

¹⁵² Shicun, 133.; Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 352.

¹⁵³ Zha and Valencia, 93.

¹⁵⁴ Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 352.

¹⁵⁵ Zha and Valencia, 93.

1951 treaty.¹⁵⁶ However Manila suspected the completeness of U.S. guarantees to defend the Philippines based on the 1951 treaty if attacked in the SCS area, since the disputed area was not previously covered by the treaty. Nevertheless, the U.S.- Philippines military relationship was strengthened in the wake of the commencement of VFA. In January 2000, the Philippines and the U.S. conducted a joint military exercise nearby Spratly Islands in the SCS.¹⁵⁷ Some Filipino media speculated that the exercise was launched to make international observers aware of the U.S. commitment to the Philippines' national security. In contrast, the Chinese government refrained from comment. Daojing Zha and Mark J. Valencia interpreted Beijing's silence on the joint exercise as its refusal of American support to the Philippines.¹⁵⁸ Since the joint exercise in 2000, joint exercises had been frequently carried out by the U.S. and the Philippines in the contested waters of the SCS.¹⁵⁹

While the Philippines had restored military ties with the U.S., it had simultaneously improved economic ties with China as mentioned in the previous section. This tendency was seen more clearly during the period of the Arroyo administration. She adopted a diplomatic policy of equal balancing of China and the U.S. to ensure national objectives.¹⁶⁰ The Arroyo administration seriously needed American aid to combat insurgencies and terrorism, because of the AFP's lack of capacity.¹⁶¹ While the tension between China and the Philippines over the SCS lessened during the Arroyo administration, the government faced continuous insurgencies primarily caused by three groups, namely the Communist Party of the Philippines-New People's Army, the Moro Islamic Liberation Front in Mindanao, and terrorist groups such as Abu-Sayaff. President Arroyo commanded the AFP to focus on counter-insurgency operations, and in June 2001, Executive Order No.21 creating the Cabinet Oversight Committee was issued by the President Arroyo to eliminate insurgent groups with a holistic approach. Just two months later, the September 11 2001 attacks occurred, and the U.S. created a broad-based coalition to combat terrorism.¹⁶² This allowed the Arroyo administration to secure Washington's wide support for internal security matters.¹⁶³ The Arroyo administration offered full support to the American "war on terror" through providing the American army with access the

¹⁵⁶ Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 352.

¹⁵⁷ Ibid., 352-53.

¹⁵⁸ Zha and Valencia, 94.

¹⁵⁹ Ibid.

¹⁶⁰ Shicun, 132.

¹⁶¹ R. C. De Castro, "The Aquino Administration's Balancing Policy against an Emergent China: Its Domestic and External Dimensions," *Pacific Affairs*, 2014, Vol.87(1), pp.5-27: 5.

¹⁶² Ibid., 8-9.

¹⁶³ Jusuf Wanandi, "A Global Coalition against International Terrorism," *International Security*, 2002, Vol.26(4), pp.184-189.

military facilities inside the country, and allowing U.S. Special Forces to carry out joint drills with the AFP in Basilan, Mindanao. Later, the Philippines became one of the largest recipients of U.S. military assistance, and played an important role in the front line of America's actions against al-Qaeda in Southeast Asia. President Arroyo depended on an external power, the U.S., to resolve difficult domestic security issues.

At the same time, the Arroyo administration further strengthened its ties with the Chinese economy.¹⁶⁴ President Arroyo promoted a Chinese flagship infrastructure project, the North Luzon Railway project, which was the biggest financial project in the Philippines at the time, as a symbol of the China-Philippines relationship. President Arroyo further agreed with Chinese President Hu Jintao to build strategic and cooperative relations pursuing peace and development. Since then, cooperation, exchanges and collaborative activities in a wide range of fields were promoted as mentioned in the previous section 3.2.1. By enhancing economic ties with China which achieved spectacular development and prioritized economic ties with ASEAN member countries, the Philippines obtained access to a massive market for Filipino exports.

Although JMSU was signed based on such enhanced friendly relationships between China and the Philippines, the Philippines decided to withdraw itself from JMSU.¹⁶⁵ Thus, it was not renewed in 2008. JMSU became controversial domestically due to the political disagreement, allegations of corruption and rising nationalism.¹⁶⁶ The Philippines congress opposed JMSU because, according to the Philippines, 80 percent of the designated joint development area was within in the area where the Philippines claimed and thus allowing China and Vietnam to involve in the joint development implied weakening its sovereignty claim over the area.¹⁶⁷ Also, its sovereignty claim was closely linked to its national pride and the joint development may cause the national discomfort.¹⁶⁸ Further, a lot of allegations of corruption made the Filipino's perception of JMSU unpleasant.¹⁶⁹ Thus, no one was willing to renew the agreement.

¹⁶⁴ De Castro, 8-9.

¹⁶⁵ Ibid.

¹⁶⁶ Jeremy Maxie, "Philippines Faces Post-Arbitration Dilemma over Reed Bank," *The Diplomat* (2016), <http://thediplomat.com/2016/07/philippines-faces-post-arbitration-dilemma-over-reed-bank/>; ibid.

¹⁶⁷ Nong Hong, *Securing the Safety of Navigation in East Asia* (Elsevier Ltd, 2013), 227.

¹⁶⁸ Yang, Li, and Tan, 144.

¹⁶⁹ Hong, 227.

3.2.3. ASEAN

Like the Philippines, ASEAN was also interested in strengthening political and economic ties with China.¹⁷⁰ The U.S. used to be recognized as a hegemonic power in East Asia. As China emerged as a regional power this restructured regional politics to some degree, as peace and stability in the region became dependent on the balance of power between the U.S. and China. To achieve their own development, it was necessary for ASEAN countries to maintain fair relations with both the U.S. and China.

While China had been conducting economic diplomacy for its own interests, specifically enhancing economic ties with China was also of great interest for ASEAN. The 1997 Asian financial crisis was one key factor promoting greater economic cooperation between China and ASEAN.¹⁷¹ Countries affected by the crisis were disappointed by the U.S.-led International Monetary Fund's (IMF) handling the crisis. Disappointment in the IMF made ASEAN aware of the need for an alternative way to promote its economic development. Since then, most affected ASEAN countries have become economically dependent on the rapidly growing Chinese economy. China played a big role in stimulating the economic recovery of ASEAN countries through access to its own huge market and increased demand for imports. This was a good opportunity for China which wanted to earn a good reputation among ASEAN countries and to enhance political and economic ties with ASEAN countries, and its value as a potential regional leader. Further, economic stagnation in the U.S. and its ally Japan previously the *de facto* regional leader, encouraged ASEAN to move closer to China. Because of the stagnation in American and Japanese economies, the exports from ASEAN to these countries declined, which further increased the attraction of building good relationships with China to ASEAN countries. The bloc tried to remain neutral between the U.S. and China. In the Hainan Island incident in April 2001, where an American navy spy plane collided with a Chinese fighter jet, ASEAN states were willing to act as mediators in the incident but didn't support the U.S. ASEAN countries were in an advantageous position from which they could maintain cooperative relations with both influential powers. As an ASEAN official stated that considering risk management, they should diversify the risk by building economic ties with other important actors such as China, instead of depending solely on the U.S.¹⁷² The afore-

¹⁷⁰ Young China Watchers, "The South China Sea Disputes: Past, Present, and Future," *The Diplomat* (2016), <http://thediplomat.com/2016/04/the-south-china-sea-disputes-past-present-and-future/>.

¹⁷¹ Men, 254.

¹⁷² Ibid., 249-68.

mentioned ASEAN-China FTA was another form of strategic cooperation, which intensified economic ties between ASEAN and China.

As China's economic capacity grew, cooperation and trade with ASEAN also continued to steadily develop from the 1990s.¹⁷³ China's total foreign trade grew from US\$280.3 billion in 1995 to US\$1154.8 billion in 2004. China achieved outstanding economic development however ASEAN-China trade expanded even more proportionally. Total ASEAN-China trade increased from US\$20.37 billion in 1995 to US\$105.88 billion in 2004. ASEAN's share of China's foreign trade increased from 8% before 2000 to 9% in 2003. At the same time, China's position among ASEAN's trading partners rose steadily from 7th in 2000, 6th in 2002 to 5th in 2004. Its share further increased from 5.2% in 2000 to 5.9% in 2004. Since ASEAN and China signed the framework agreement to establish the ASEAN-China FTA in 2002, the two parties trade has flourished. Mutual trade was US\$78.25 billion in 2003, an increase of 42.8% from the previous year. Chinese exports to ASEAN were approximately US\$31 billion, an increase of 31.7% from the previous year, whereas ASEAN's exports to China were US\$47 billion, an increase of 51.7%. Chinese leader Wen Jiabao welcomed the rapid development of bilateral trades between ASEAN and China, and proposed a target of US\$100 billion in 2005 at the ASEAN-China summit meeting in 2003. However such was the growth that the target was achieved one year earlier than planned, with a total bilateral trade of US\$105.88 billion in 2004. Among it, Chinese exports reached US\$42.9 billion, an increase of 38.7% and ASEAN's exports was US\$62.98 billion, an increase of 33.1%. In 2005, ASEAN became the 5th biggest foreign trading partner for China, a ranking one higher from the previous year. By deepening economic interdependence and intensifying economic and political ties, a cooperative atmosphere was created in the region.

3.2.4. The United States

The Mischief Reef incident also triggered a change of the U.S. attitude on the SCS dispute. Tridib Chakraborti describes this change from "*passive neutrality*" to "*active neutrality*".¹⁷⁴ The change of its SCS policy was caused by its adjustment of China policy.¹⁷⁵ For the U.S., its strategies towards Taiwan and the SCS issue were connected. The U.S. had been increasing its military presence in the region. This was spurred not only

¹⁷³ Ibid., 255.

¹⁷⁴ Ibid., 255-57.

¹⁷⁵ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," 92.

by China's growing assertiveness over the SCS dispute, but also its disproportionate aggression against Taiwan.¹⁷⁶ China's missile tests in the Taiwan Strait during the run-up to the 1996 presidential election prompted Washington to order two fully armed aircraft carriers to pass through the Taiwan Strait, to de-escalate the tensions between Beijing and Taipei.¹⁷⁷ Chinese continued assertiveness could result in the strengthening of U.S.-Taiwan military ties. Given such a situation, the U.S. signed the aforementioned VFA with the Philippines in February 1998, which was the first military agreement between Washington and Manila since the withdrawal of the U.S. forces from Subic Bay.¹⁷⁸ The purpose of increasing the U.S. military presence in the SCS based on the VFA was to constrain China's activities and check China's rising power in the region. In addition to this, the U.S. had been working hard to urge Southeast Asian countries to strengthen military cooperation with it to counter China in regards to the SCS dispute and the broader increase of Chinese power. In January 1998, Singapore disclosed that it would allow the U.S. carriers to land and use its port for repair and maintenance, and constructed dock and port facilities to accommodate U.S. carriers.¹⁷⁹ Malaysia and the U.S. commonly carried out joint exercises since 1994. Under the Five Defense Arrangements including Britain, Singapore and Malaysia, joint exercises were operated in the SCS. In February 2002, the Commander in Chief, U.S. Pacific Commander visited Hanoi and requested the U.S. naval access to Cam Ranh Bay, a deep-water bay in central Vietnam facing the SCS, which the then-Soviet Union had leased during the Vietnam War.¹⁸⁰ Hanoi however, declined the American request, considering the potential response from Beijing.¹⁸¹ Washington also appealed to ASEAN member countries to raise the SCS issues on the agenda of the ARF, a multilateral framework, while China preferred to pursue bilateral negotiations with the claimants.¹⁸² China calculated that having some ASEAN countries and Japan

¹⁷⁶ Shicun, 133. ; Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome," 92.

¹⁷⁷ Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 353. ; Jaw-Ling Joanne Chang, "Why China's Taiwan Approach Is Counterproductive," *The Diplomat* (2017), <http://thediplomat.com/2017/01/why-chinas-taiwan-approach-is-counterproductive/>.

¹⁷⁸ Vasilis Trigkas, "Aircraft Carriers in the Taiwan Strait," *ibid.* (2014), <http://thediplomat.com/2014/12/aircraft-carriers-in-the-taiwan-strait/>.

¹⁷⁹ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome," 92.

¹⁸⁰ Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 353. ; *ibid.*

¹⁸¹ Prashanth Parameswaran, "Us Not Seeking Base in Vietnam's Cam Ranh Bay: Envoy," *The Diplomat* (2016), <http://thediplomat.com/2016/06/us-not-seeking-base-in-vietnams-cam-ranh-bay-envoy/>.

¹⁸² Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 353.

on its side could bring about a favorable discussion and its preferred outcome.

The shift in U.S. position over the SCS has changed the situation in the SCS, and the Chinese assertive approaches over the SCS dispute.¹⁸³ Beijing was made aware from U.S. responses that its assertive actions were highly likely to push Southeast Asian countries closer to the U.S., enabling the U.S. Navy to gain greater access to ports in the region and enhance military cooperation with regional countries. Further, allowing the U.S. to gain greater access to the Southeast Asian countries would provide the U.S. with a favorable environment to implement its military strategy regarding Taiwan, thereby allowing the U.S. military to counter China. Getting rid of U.S. involvement in the SCS disputes became a main concern for the Chinese government when it appealed to Southeast Asian countries. In fact, a Chinese ambassador to the Philippines warned Manila against the U.S. and cautioned that a third country should not interfere in the SCS disputes. Chinese officials repeatedly cautioned ASEAN against involving the U.S. over the SCS issues. At the ASEAN-China Senior Official Meetings, held in Cham, Thailand in March 2000, a Chinese senior official cautioned ASEAN countries against military cooperation with the U.S. At the same time, China changed its attitude to the Southeast Asian countries. A Chinese general Chie Haotian expressed an intention to change China's perception of an enemy or a threat among the ASEAN countries, at the meeting with the Malaysia's Defense Minister.¹⁸⁴ China also settled several issues with Vietnam over land borders, and the delimitation of territorial waters and right of fishing activities in the Gulf of Tonkin, in December 1999 and December 2000 respectively. The shift of Chinese attitudes from assertiveness to negotiation indicated that Beijing was wary of encouraging ASEAN members to take side of the U.S. The idea of the shift of Chinese attitude was indicated in a "new security concept" announced in 1996.¹⁸⁵

The U.S., further adjusting its China policy, began to actively involve itself in the SCS disputes. The US Department of Defense expressed concern over the PLA's modernization and indicated a desire to equalize the balance of power in the region in *the Annual Report to Congress: Military Power of the People's Republic of China 2005*, issued by the US Department of Defense.¹⁸⁶ The national defense strategy in 2008 stressed the necessity of limiting Chinese rising power and its influence in East Asia. Enhancing military cooperation with regional allies brought the U.S. success in holding back China. Based on its attitude to

¹⁸³ Chakraborti, "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict-Peace-Trepidation' Syndrome," 92.

¹⁸⁴ Buszynski, "Asean, the Declaration on Conduct, and the South China Sea," 353.

¹⁸⁵ Ibid., 354.

¹⁸⁶ Ibid.

China, the U.S. showed its active interest in the SCS disputes. At the ARF held in Hanoi in July 2010, US Secretary of State, Hillary Clinton stated the U.S. primary interests in maintaining freedom of navigation, open access to Asia's maritime commons, and compliance with international law in the SCS. It would not take the side of any claimants over the SCS disputes; and it required all claimants to solve the dispute over the territorial sovereignty and maritime rights according to UNCLOS. Further, Secretary of State Clinton reaffirmed the strong military ties between the Philippines and the U.S., and expressed great concern for a peaceful settlement of the SCS dispute between the Philippines and China in her speech at the sixtieth anniversary of the US-the Philippines Mutual Defense Treaty, held on an American warship in Manila Bay before the East Asia Summit in November 2011. Floyd Whaley argues that Mrs. Clinton's appearance on the American warship and use of the locally coined "West Philippine Sea" were gestures of U.S. support to the Philippines over the SCS dispute with China.¹⁸⁷

3.2.5. Summary

The JMSU signed by CNOOC and PNOC in September 2004, and by Petro Vietnam in March the following year, stipulated that the claimants shall set aside the territorial sovereignty issue and pursue joint oil and gas exploration and development in the SCS. Contrary to the Mischief Reef incident in 1995, the JMSU in 2005 represented Chinese cooperative approaches and support for a peaceful settlement over the SCS dispute. This cooperative strategy had been formed in response to the change of regional actors' situations, policy and interests.

China, which achieved rapid economic growth in the last two decades of the 20th century, became the most influential economic and political actor in East Asia matched only by the U.S. Simultaneously, China gained confidence in presenting itself as a regional hegemonic power. On the other hand, the Southeast Asian countries had two options to side with one of the regional powers, either the U.S. or China. In order to be a regional leader, China began to keenly concern itself about its perception in the Southeast Asian countries. It wanted to change its perception from a national threat to a valuable partner for Southeast Asian countries. Thus, Beijing adopted the good neighbor policy and made efforts to maintain good relations with the Southeast Asian countries. Beijing also realized that in a deeply interdependent global economy, maintaining good relationships with other countries and maintaining stability in the region were vital for its further development. Beijing used economic diplomacy which enhanced diplomatic ties, and eco-

¹⁸⁷ Ibid.

conomic ties with other countries synergistically. Along with the good neighbor policy, Beijing preferentially cooperated with ASEAN countries through expanding trade, investment and Official Development Assistance (ODA).

Economic ties with China were very attractive to the ASEAN countries too. The 1997 Asia financial crisis led the ASEAN countries to distrust of the U.S.-led IMF and its financial system. ASEAN countries were seeking an alternative for the IMF and relied on the rapidly-growing Chinese economy. Further, the stagnated growth of American and Japanese economies caused a decline of the Southeast Asian countries' exports to these countries in the late 1990s. Expanding economic ties with China was very attractive for the ASEAN countries as the rapidly developing Chinese economy could stimulate their own growth and allowed access the huge Chinese markets. This was also seen in the Philippines. The ASEAN countries including the Philippines dramatically expanded economic relations with China through mutual trade, foreign investment and the creation of the ASEAN-China FTA.

On the other hand, the Philippines revived military ties with the U.S. in the wake of the Mischief Reef incident where China took assertive action, while also improving economic relations with China. The incident made Manila realize the necessity of American military presence in the SCS as a deterrent to an emerging power China. Washington, which saw Chinese assertiveness in the Mischief Reef incident and the 1996 Taiwan Strait Crisis, changed its position and began to get more involved in the SCS dispute to constrain Chinese power. It increased its presence in the SCS thorough joint military drills with the AFP in disputed waters in the SCS, and also enhanced military ties with Southeast Asian countries. These American movements made Beijing concerned about its image among the neighboring countries and its relations with them. Overall, the increase of American presence in the SCS, the resurgence of the military ties between the U.S. and the Philippines, and Chinese awareness of its perception in the region and its importance to pursuing its further development and being a regional leadership ambitions shaped China's cooperative approach over the SCS. This, along with China's energy needs to further economic development, encouraged China to take a pragmatic approach in the SCS such as JMSU. However the Philippines pulled itself out from JMSU because of political disagreement, allegations of corruption and rising nationalism inside the country. Eventually JMSU lapsed in 2008.

4. The South China Sea Arbitration

4.1. An overview of the Philippines filing of the dispute to PCA

In January 2013, the Philippines filed a dispute in the SCS to the PCA as a countermeasure against China, while China was taking assertive actions by expanding its territorial claim and engaging in “*de facto* occupation” of the disputed area following the Scarborough Shoal standoff in the SCS, from April to June 2012.¹⁸⁸

The Scarborough Shoal standoff was also one of the turning points of the Sino-Philippines relations over the SCS dispute.¹⁸⁹ The Scarborough Shoal is located in the northern Spratly Islands, 124 nautical miles from Luzon and included within the Philippines’ EEZ which the Philippines established.¹⁹⁰ On April 10, 2012, a Philippines reconnaissance aircraft discovered several Chinese fishing boats in the lagoon at the Scarborough Shoal (The number of fishing boats varied in different media articles from five to twelve.) which were engaged in illegal fishing of species such as giant clams, coral and sharks, which are protected under Philippines law and the Convention on International Trade in Endangered Species of Wild Flora and Fauna.¹⁹¹ The Philippine Navy’s (PN’s) flagship, the *BRP Gregorio Del Pilar*, attempted to apprehend the Chinese fishing boats, however two Chinese marine surveillance vessels arrived the scene shortly and blocked the PN’s attempt to arrest the Chinese fishermen.¹⁹² In the immediate aftermath of the incident, the Philippines replaced the *BRP Gregorio Del Pilar* with a smaller Coast Guard cutter in order to defuse the tension of the confrontation.¹⁹³ Following this, China reinforced its presence in the area by deploying the *Yuzheng 310*, its largest and newest patrol vessel which was well-equipped with weapons. The incident eventually resulted in a two-months standoff between China and the Philippines.¹⁹⁴ Both countries claimed their own territorial sovereignty over the shoal. In response to

¹⁸⁸ Shicun, 133.

¹⁸⁹ Floyd Whaley, "Clinton Reaffirms Military Ties with the Philippines," *The New York Times*, 16 November 2011. ; Permanent.

¹⁹⁰ Fangyin, 880. ; De Castro and Tan, 157.

¹⁹¹ Fangyin, 879. ; De Castro and Tan, 158.

¹⁹² Carlyle A. Thayer, "Standoff in the South China Sea," *YaleGlobal Online* (2012), <http://yaleglobal.yale.edu/content/standoff-south-china-sea>. ; Jason Miks, "China, Philippines in Standoff," *The Diplomat* (2012), <http://thediplomat.com/2012/04/china-philippines-in-standoff/>.

¹⁹³ Fangyin, 879.

¹⁹⁴ De Castro and Tan, 158.

Manila's protest against China's acts in the incident, Beijing claimed its "*indisputable sovereignty*" over the shoal and entitled rights around the shoal according to its historical rights claim.¹⁹⁵ In the beginning of June 2012, the Philippines declared that it agreed with China that both countries would withdraw their vessels from the contested area owing to the typhoon season.¹⁹⁶ Although Beijing never mentioned the existence of the agreement, both governments withdrew their own vessels from the contested area. Chinese vessels, however, returned to the site and seized effective control over the shoal and the surrounding waters in the absence of the Filipino ships. Despite China's cooperative approach over the SCS dispute and improved Sino-Philippines relations in the beginning of the 21st century as observed in the previous chapter, Beijing resumed provocative action against the Philippines over the SCS dispute. The following section introduces the background of the shift of Chinese attitude, and the Philippines' raising of the issue to the PCA.

Behind China's expansive maritime claims and assertive approach over the SCS dispute was China's increasing nationalism and confidence in its naval capability. With a booming economy, China had gradually improved the capability of its military power. In fact, China had increased its military expenditure by a double-digit rate annually since 2006. China also modernized its armed forces of the People's Liberation Army Navy (PLAN) in the early 21st century. The upgrading capability of PLAN enabled it to enlarge its operational limit from the so-called "First Island Chain", a range from features running Japan-Okinawa-Taiwan to the Philippines, to the "Second Island Chain", a range from Japan, Northern Marianas Island, Guam to Palau. The broadening of PLAN's operational range was aimed at limiting the U.S.'s access to the area. With expanded naval power, China expanded its territorial claim and increased the tensions of its conflicts with other SCS claimants. Its naval movements also showed China's desire to pursue hegemony in the region.

In contrast to China's investment in PLAN, the Philippines had weakened the AFP under the Arroyo administration's equal balancing policy between the US and China.¹⁹⁷ While anxiety and the sense of hostility towards China's rise were successfully eased among Southeast Asian states including the Philippines by Beijing's good neighbor policy, under the Sino-Philippines entente Manila lost a sense of crisis that it might face an external threat. The Arroyo administration focused the AFP's efforts on the internal security instead of external territorial defense. All military resources such as a tight budget and a modernization project of the AFP facilities were designed for internal security opera-

¹⁹⁵ Thayer.

¹⁹⁶ Fangyin, 879.

¹⁹⁷ Thayer.

tions. Meanwhile, the AFP had lost its capability to defend its country from external threats.

There was also great discontent among the Chinese public at government's reactive and cooperative approach to claim its territorial sovereignty.¹⁹⁸ If the Chinese government had not taken a more assertive and proactive approach to protect its territorial sovereignty claim, public opinion against the government would likely have been heated. Contrary to international observers which regarded the Chinese approach over the SCS dispute as already assertive, Chinese public opinion considered that the governments' approach was too conciliatory and passive. Beijing took viable assertive actions over the SCS dispute fully considering national sentiment of its citizens.¹⁹⁹

Zhou Fangyin states another factor which shaped China's assertive actions.²⁰⁰ Chinese analysts and scholars presented a view that the Chinese approach in early of the 21st century would just bring an unfavorable result to China such as damaging its sovereignty rights and national interests, and disadvantaging China. They believed that China should take another approach, which forces the claimants into bilateral negotiations with China.

China's more assertive behavior could be seen from late August 2010. China informed other SCS claimants such as Vietnam and the Philippines, and the U.S. that China's sovereignty claim over the waters and entitled rights was "*indisputable*".²⁰¹ PLAN then carried out a live-fire exercise in the SCS using the specific equipment to display its military might. Chinese aggression in the SCS continued to be seen afterwards. On March 2, 2011, a Philippines survey vessel for oil exploration was harassed by two Chinese patrol vessels in Reed Bank, in the adjacent waters of the Spratly Islands. In response to the Manila's protest against the incident, a Chinese foreign affairs official again insisted that its sovereignty over the Spratly Islands and its adjacent waters was indisputable.

In June 2011, the Philippines spotted China Marine Surveillance and PLAN ships in the adjoining waters of the Spratly Islands. The secretaries of defense and foreign affairs of the Philippines expressed its concern over the China's incursion into the Philippines' EEZ purporting to show publically its sovereignty and constructing an oil platform on the uninhabited maritime feature, and declared that these Chinese acts offended against the 2002 DOC. Conversely, Beijing criticized the Philippines for hampering China's sovereignty and entitled rights, and further

¹⁹⁸ M. Taylor Fravel, "China's Island Strategy: 'Redefine the Status Quo,'" *The Diplomat* (2012), <http://thediplomat.com/2012/11/chinas-island-strategy-redefine-the-status-quo/>.

¹⁹⁹ De Castro, 9-11.

²⁰⁰ Fangyin, 881.

²⁰¹ *Ibid.*, 873.

requested Manila to ask China for permission before carrying out oil exploration even in the Philippines EEZ. Chinese bullying tactics towards the Philippines led to the Scarborough Shoal standoff. During the standoff, Beijing exerted pressure on Manila through pronouncements, diplomatic measures and economic sanctions to persist with its territorial claim over the SCS.

The shift of the Chinese attitude over the territorial dispute brought about the overwhelming electoral victory of a rival Philippine Presidential candidate, Benigno Simeon Aquino III.²⁰² Contrary to his immediate predecessor President Arroyo's policy of equally balancing China and the U.S., President Aquino adopted a more assertive policy. As soon as he assumed office as president he began to modernize the AFP, while also changing its main purpose from counter-insurgency to external threats. The Chinese assertive behavior in the SCS in 2011 further accelerated efforts to improve the AFP's capability for territorial defense. Further, Chinese hard diplomatic attitude and the economic sanctions encouraged Filipino citizens to support the Aquino's AFP modernization projects.

In addition to this, before the standoff the Aquino administration sought additional support from the ASEAN against Chinese assertiveness.²⁰³ The Philippines and the other claimant, Vietnam, tried to raise the SCS disputes on an agenda of the ASEAN summit held in Cambodia on April 3-4, 2012. Beijing put pressure on the host country not to raise the SCS disputes on the summit agenda. As a result, ASEAN failed to issue a communiqué against Chinese assertiveness.²⁰⁴ Further, at the 6th ASEAN Defense Minister Meeting (ADMM) on May 29, 2012, SCS concerns were also not raised again.

The Aquino administration sought support from its ally, the U.S. to face China militarily. During the stand-off, Washington sent attack submarines, the *U.S.S. North Carolina* and the *U.S.S. Luisville* separately to Subic Bay to make it known that the U.S. was ready to defend the Philippines based on the 1951 mutual defense treaty, in the event that the standoff develop into an armed confrontation. In the aftermath of the standoff, the Philippines negotiated with the U.S. to seek deeper security relations between the two countries. The Philippines relied on the U.S. to boost the AFP's capabilities, including training the AFP and providing equipment and to serve as deterrence against Chinese power in the region based on the 1951 mutual defense treaty. Similarly, the Aquino government promoted a security partnership with Japan that was also an ally of the U.S. and a rival to China in Asia. Through greater involvement of the U.S. and Japan, Manila aimed to keep a power

²⁰² Ibid., 881.

²⁰³ De Castro, 13.

²⁰⁴ Ibid.

balance in the contested waters. However, whether Washington would automatically take action to defend its ally the Philippines if an armed conflict would occur was not certain. The U.S. kept its position silent. Although President Aquino asked President Barack Obama in person for a specific security assurance in the event of an armed clash in the SCS on June 8, 2012, President Obama merely addressed that the US will follow the 1951 mutual defense treaty. The involvement of the U.S. in the SCS dispute was still ambiguous. Even if the U.S. wanted to make clear its definite commitment to the Philippines over the dispute, it was sensitive that it might cause friction against China who was a major American trade partner. Moreover, in order to obtain immediate and timely assistance from the U.S. in the case of an armed conflict, Manila had to allow American access and physical positioning in the country. This allowed the U.S. to gain a critical strategic base for the global security network and also prevent Manila from moving closer to China's through their trade relations. Meanwhile, further intensification of the security ties with the U.S. would negatively affect the vigorous Sino-Philippines economic relations, and would simultaneously cause anti-American protests in the country.

From the beginning of the second decade of the 21st century, China began to adopt more assertive approach towards the Philippines over the SCS dispute, against backdrop of rising nationalism and its growing military capacity. The Philippines, as a smaller power economically, militarily and politically, under President Aquino adopted the balancing policy against China. This balancing policy against China, however, was unstable. The Philippines could not totally rely on the US as security guarantor based on the 1951 treaty. Although the U.S. under the Barack Obama administration expressed its support to the Philippines, its support was uncertain as the U.S. was wary of a confrontation with China which was also a major U.S. trading partner. Further, the Philippines appealed to ASEAN for support but it could not receive this because of China's pressure on other ASEAN members. For the Philippines with a limited military standing, an uncertain U.S. security guarantee and unreliable support of ASEAN, the most reliable approach was liberal-legal approach. Thus, Manila appealed to international law, specifically UNCLOS to constrain China's assertive actions by filing the case with PCA in January 2013.

4.2. China's position about the tribunal

China has continuously said *"it will neither accept nor participate in the arbitration unilaterally initiated by the Philippines."*²⁰⁵ China also revealed its po-

²⁰⁵ De Castro and Tan, 168-69.

sition that the tribunal does not have jurisdiction over the case, through a position paper in December 2014 and in other official statements.²⁰⁶ In its position paper, China argued the following: that the core subject matter of the arbitration concerns territorial sovereignty over maritime features in the SCS, and this is outside the scope of UNCLOS; China and the Philippines already agreed to resolve the disputes between them by bilateral negotiation and the Declaration on the Conduct of Parties in the South China Sea; and that even assuming that the subject matter of the arbitration concerns UNCLOS and constitutes an essential part of the maritime delimitation in the SCS, China excludes the maritime territorial disputes from the compulsory arbitration and the other compulsory dispute settlement procedures in the declaration of 2006.²⁰⁷

Like China in this arbitration, non-participation of a party to an international court or a tribunal is not unusual.²⁰⁸ In the past, some parties elected not to participate in UNCLOS settlement dispute bodies.

Is Chinese non-participation in the arbitration process illegal? Although international law demands states to fulfill a legal obligation to pursue a peaceful settlement of disputes, regarding international adjudication or arbitration states have the right to make decisions whether or not they will participate.²⁰⁹ The Chinese decision of non-participation in the legal proceedings is a reflection on its good faith. Nevertheless, the Chinese non-participation is legal.

Per Article 9, Annex VII to UNCLOS, however, even in the case that one of the parties does not appear before the arbitral tribunal or fails to defend itself, this does not prevent from continuing the legal proceedings and the tribunal still needs to ascertain both parties' views.²¹⁰ Was it acceptable for China not to explain its view during the tribunal proceedings? In fact, China did not take a hands-off approach towards the arbitral proceedings.²¹¹ While China declared that it would not participate in the proceedings, China has kept clarifying its view on the dispute publicly through various formal and informal channels. It was unusual that a state, which declared that it would not participate in the tribunal proceedings, instead chose to explain its detailed positions through communications outside the tribunal. The Chinese government officially explained its position on why it believes that the arbitration tribunal does not have the jurisdiction over the case in a position paper

²⁰⁶ Nguyen Manh Hung, "Asean's Scarborough Failure?," *The Diplomat* (2012), <http://thediplomat.com/2012/06/aseans-scarborough-failure/>; De Castro.

²⁰⁷ Permanent, 1.

²⁰⁸ Ibid.

²⁰⁹ Mincai Yu, "The South China Sea Dispute and the Philippines Arbitration Tribunal: China's Policy Options," *Australian Journal of International Affairs*, 03 May 2016, Vol.70(3), p.215-234: 217.

²¹⁰ Permanent, 6.

²¹¹ Lan Nguyen, "South China Sea: Philippines V. China," *The Diplomat* (2015), <http://thediplomat.com/2015/07/south-china-sea-philippines-v-china/>.

issued in December 2014. In addition to this, books and articles arguing for the Chinese position, on the jurisdiction of the tribunal over the case, and the case itself were also actively published by Chinese scholars around this time. Those publications represent the Chinese government's official position. Indeed, the tribunal ascertained the Chinese position in proceedings based on its public statements and diplomatic correspondence including the position paper.²¹² China made the tribunal aware of its arguments, while it maintaining its position that it would not participate the tribunal as the tribunal did not hold the jurisdiction over the case. However, it was uncertain as to what extent China could make the tribunal aware of its standpoint. The party's absence cannot be made up completely by communications outside of the tribunal. It seemed that China's absence was favorable to the Philippines initially, however China's absence created a lack of sufficient evidence to make the decision. Nguyen suggests a possibility that the judges felt sympathy to the Philippines' standpoint because the judges could only hear from one side.²¹³

China firmly maintained its policy of "*deliberate ambiguity*" regarding its claims over the SCS dispute in the tribunal case.²¹⁴ Besides, all of China's arguments through various channels concerned the tribunal's jurisdiction over the case only. None of the arguments explained its detailed claims over the SCS case. China might have assumed that the tribunal found jurisdiction over the case and it proceeded to the tribunal.

4.3. The award on the South China Sea arbitration

On July 12, 2016, the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in The Hague constituted under Annex VII to UNCLOS issued a unanimous award on the arbitration filed by the Philippines against China in January 2013.²¹⁵ Emphasizing that questions of sovereignty over maritime features and determining the maritime borders between the parties does not fall within its jurisdiction, the Tribunal concerned its findings to China's insisting of historic rights and the "nine-dash line", the "status of features" and the entitlements which they are allowed to generate, and the lawfulness of Chinese actions according to UNCLOS. The award was in favor of the Philippines on almost every count.²¹⁶ Even though China neither accepted nor participated in the arbitration, the award is final and binding with Annex VII,

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Permanent.

²¹⁶ Nguyen.

Article 296 of the UNCLOS and Article 11 of Annex VII.²¹⁷ The following is a summary of the Tribunal's decision:

- “Historic Rights and the nine-dash line”²¹⁸: The tribunal denied legal grounds for China's claim of “historic rights” to resources within the waters encompassed by the nine-dash line. First, the tribunal made clear that it has jurisdiction to consider the historic rights and sources of the maritime entitlements. UNCLOS allocated the maritime rights in waters and considered if the pre-existing rights were protected in it, but it did not adopt them. Accordingly, as far as China's historic rights and the EEZs provided in UNCLOS are incompatible, China's historic rights are not approved. The tribunal also concluded that there was no evidence that China had been historically and exclusively exercising its jurisdiction over the waters or resources in the disputed area.
- “Status of features”²¹⁹: The tribunal concluded that neither some of the Spratly Islands nor the Spratly Islands as a unit are entitled to generate maritime zones. The tribunal also found that some sea areas fall within the EEZs of the Philippines and the areas are not overlapped with any possible entitlements of China. The tribunal rejected classifying the features claimed by China, which were reclaimed and constructed, as islands which are capable of generating maritime zones because the features should be above water at high tide on their natural conditions. Also, the tribunal rejected that the features' capacities of sustaining human habitation or economic activities as they should not be depending on resources outside of islands on their natural conditions.
- “Lawfulness of Chinese actions”²²⁰: The tribunal found that certain areas are within the EEZs of the Philippines, and the Chinese activities in the areas: obstructing the Philippines fishing and exploitation of the mineral resources; building artificial islands; and neglecting to avoid Chinese fishermen's fishing in the Philippines' EEZs; violated the Philippines' maritime sovereign rights in the EEZs. The tribunal also concluded that Filipino fishermen as well as Chinese fishermen had traditional fishing rights at Scarborough Shoal, and China impaired their rights by restricting access to the area. Further, the tribunal found that Chinese operating law enforcement vessels illicitly caused serious risks of collision to Filipino vessels.

²¹⁷ Thang and Thao, 37-39.

²¹⁸ Permanent.

²¹⁹ Gerstl, xvi.

²²⁰ Permanent.

- “Harm to marine environment”²²¹: The tribunal concluded that despite the obligations for environmental conservation and preservation of endangered species, China caused serious environmental damage to the coral reef by reclaiming and creating artificial islands to seven features in the Spratly Islands. The tribunal also noted that China didn’t fulfill the obligation to prevent its fishermen from catching at large-scale endangered species in the SCS, such as sea turtles, coral and giant clams.
- “Aggravation of dispute”²²²: The tribunal concluded that China aggravated the disputes by continuing large-scale land reclamation and construction of artificial islands which resulted in harm to the marine environment, violated the Philippine’s EEZs and destroyed evidence of the natural condition of features in the SCS, even after the commencement of the arbitration.

4.4. Impact of the tribunal’s award

Despite China’s refusal to participate or accept the tribunal, the award is final and binding.²²³ UNCLOS however does not have any enforcement system to settle disputes. It means that if China should ignore the award, there is no system to ensure its conformity. There are various ways that non-appearance countries could take in the aftermath of the eventual award. In the past while some non-appearance countries eventually complied with the decision after the award, others defiantly refused to comply with the decision. The arbitrations reach varied levels of success.

Does this mean that the arbitration is pointless? Why do states pursue arbitration which is costly and time consuming despite the possibility that the award would be eventually ignored by the parties? First, as previously mentioned the Philippines utilized the arbitration as a measure to draw public attention to China’s claims and behavior internationally, and to put political pressure on China to change its standpoint in the face of international pressure.²²⁴ Taking account of the Philippines’ official statement that the arbitration is not the end of the SCS dispute but the beginning, the Philippines appears to realistic of the extent to which the arbitration may settle the SCS dispute. The Philippines utilized the arbitration as a measure to force China to clarify its position and claims, and to comply with the international law. The arbitration is a first step which enables the Philippines to stand on an equal footing with China to begin resolving the SCS dispute.

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

Unsurprisingly China remained adamant in its view that the tribunal does not have the jurisdiction over the dispute and declared that the award was “*null and void*”, reacting to the issue of the award against China’s interests.²²⁵ Some scholars see China’s non-compliance with international law as the typical behavior of a great power when its interests are at stake.²²⁶ Realists states that a great power is not necessarily restricted by international law.²²⁷ Should China really take some actions based on its view that the award was “*null and void*”, it would indeed raise concerns about peace and stability in the region, as well as the rule of law in international relations.²²⁸ Neighboring countries reacted to the SCS arbitral tribunal award as follows.²²⁹

Vietnam: “*Vietnam strongly supports the resolution of the disputes in the East Sea by peaceful means, including diplomatic legal processes and refraining from the use or threats to use force, in accordance with international law.*” (Ministry of Foreign Affairs Spokesperson Le Hai Binh)

Malaysia: “*Malaysia cherishes peace and stability of the South China Sea and believes that China and all relevant parties can find constructive ways to develop healthy dialogs, negotiations and consultations while upholding the supremacy of the rule of law for the peace, safety and security for the region.*” (Ministry of Foreign Affairs statement)

Indonesia: “*Indonesia also calls on all parties to continue their shared commitment to uphold peace, and demonstrate friendship and cooperation. Indonesia will continue to encourage the creation of a zone of peace, freedom and neutrality in the region.*” (Ministry of Foreign Affairs statement)

Singapore: “*We strongly support the maintenance of a rules-based order that upholds and protects the rights and privileges of all states. We urge all parties to fully respect legal and diplomatic processes, exercise self-restraint and avoid conducting any activities that may raise tensions in the region.*” (Ministry of Foreign Affairs statement)

Taiwan: “*The award...is completely unacceptable to the government of the Republic of China.*” “(The ROC’s entitlement) *to all rights over the South China Sea islands and their relevant waters is beyond dispute.*” (Ministry of Foreign Affairs statement)

²²⁵ Nguyen.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Santosh Sharma Poudel, "The South China Sea Ruling: Reinforcing China's Negative Image in Japan," *ibid.* (2016), <http://thediplomat.com/2016/07/the-south-china-sea-ruling-reinforcing-chinas-negative-image-in-japan/>.

²²⁹ CNN, "South China Sea Ruling: Neighbors React," CNN, <http://edition.cnn.com/2016/07/13/asia/gallery/south-china-sea-regional-reax/index.html>.

Japan: *"As the Tribunal's award is final and legally binding on the parties to the dispute under the provisions of UNCLOS, the parties to this case are required to comply with the award. Japan strongly expects that the parties' compliance with this award will eventually lead the peaceful settlement of disputes in the South China Sea."* (Japanese Foreign Minister Fumio Kishida)

Australia: *"The Australian Government calls on the Philippines and China to abide by the ruling, which is final and binding on both parties."* *"It is an opportunity for the region to come together, and for claimants to re-engage in dialogue with each other based on greater clarity around maritime rights."* (Australian Minister for Foreign Affairs Julie Bishop)

India: *"Sea lane of communication passing through the South China Sea are critical for peace, stability, prosperity and development. As a state party to the UNCLOS, India urges all parties to show at most respect for the UNCLOS, which establishes the international legal order of the seas and oceans."* (Ministry of External Affairs statement)

All ASEAN countries except the Philippines and Vietnam expressly avoided becoming involved in the issue.²³⁰ Vietnam stood to benefit from the ruling, as it was expected that Vietnam could obtain exclusive sovereign rights and jurisdiction over the extensive EEZ generated from its mainland coast. Contrary to ASEAN member states, seven countries - Australia, Canada, Japan, New Zealand, the Philippines, the U.S. and Vietnam - officially called on the claimants to respect the award. Additionally, New Zealand and Japan released a statement on the South China Sea issue after Japanese Prime Minister Shinzo Abe's meeting with New Zealand Prime Minister Bill English during a bilateral visit in May 2017.²³¹ The statement called on all parties in the disputes to settle the dispute following the award of July 2016.

Santosh Sharma Poudel discusses that China's refusal of the award creates a negative image among other countries, which in turn affects its soft power and its aim to be recognized as responsible and law-abiding leader.²³² According to him, the tribunal's decision and China's reaction reinforces China's negative image beyond the SCS issue in Japan.²³³ Although trusting relationship had not been built between China

²³⁰ Prashanth Parameswaran, "Japan, Philippines to Finalize New Military Aircraft Deal for Five Tc-90s," *The Diplomat* (2017), <http://thediplomat.com/2016/05/japan-philippines-to-finalize-new-military-aircraft-deal-for-five-tc-90s/>.

²³¹ Santosh Sharma Poudel, "The South China Sea Ruling: Reinforcing China's Negative Image in Japan," *ibid.* (2016), <http://thediplomat.com/2016/07/the-south-china-sea-ruling-reinforcing-chinas-negative-image-in-japan/>.

²³² *Ibid.*

²³³ Nguyen Ba Son, "A New Legal Landscape in the South China Sea," *ibid.*, <http://thediplomat.com/2016/08/a-new-legal-landscape-in-the-south-china-sea/>.

and Japan, there was no time previously when both countries had trusted each other less than now. Japan, which similarly has a dispute with China over the Senkaku/Diaoyudao islands, observes seriously the series of actions in the SCS arbitration tribunal case, as China's behavior could easily be applied to the Senkaku/Diaoyudao dispute too. Japan perceives China's self-centered behavior as using international law and norms when they are in its favor, and disregards them when they are against China's national interests. A perception that China is an "assertive" or a "bully" country has been growing in Japan.²³⁴

On the other hand, opposing the New Zealand – Japan statement, a Chinese Foreign Ministry Spokesperson mentioned in a statement that China would improve and stabilize the SCS situation by joint efforts with other parties in the disputes. She also expressed a distrust of Japanese intention of the statement and resisted third parties' intervention in the SCS disputes.²³⁵ In addition, Wang Wen and Chen Xiaochen state that the ruling has evoked almost unanimous public opposition inside China.²³⁶ They also affirm that more than 66 countries in all parts of the world express their support Chinese position over the SCS dispute.²³⁷

²³⁴ Santosh Sharma Poudel, "The South China Sea Ruling: Reinforcing China's Negative Image in Japan," *ibid.*, <http://thediplomat.com/2016/07/the-south-china-sea-ruling-reinforcing-chinas-negative-image-in-japan/>.

²³⁵ Ankit Panda, "China Pushes Back on Japan, New Zealand Statement on South China Sea," *ibid.* (2017), <http://thediplomat.com/2017/05/china-pushes-back-on-japan-new-zealand-statement-on-south-china-sea/>.

²³⁶ Chen Xiaochen Wang Wen, "Who Supports China in the South China Sea and Why," *ibid.*, <https://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/>.

²³⁷ *Ibid.*

5. China's approach following the arbitral tribunal's ruling

5.1. China

Immediately after the ruling, Beijing, unsurprisingly, declared that the ruling was “*null and void*” and it would not affect its South China Sea claims. China persisted in its previous position.

The diplomacy over the dispute outside the country is always linked to domestic political goals.²³⁸ China's actions and behaviors over the SCS disputes in the short- and long- term are formed by its developing maritime strategy.²³⁹ Domestically, the necessity of integrating a maritime strategy with broader national interests has been demanded by Chinese rulers for a long time. The ruling made the importance of this to Beijing's elites even more urgent. Soon after this, China's Communist Party's Central Committee, State Council, and Central Military Commission agreed that all efforts to protect maritime sovereignty and rights should be shaped by the Beijing's grand strategy.

In October 2013, Chinese new leader Xi Jinping declared the establishment of the Silk Road Economic Belt and 21st Century Maritime Silk Road (“One Belt, One Road”) as a China's new strategic foreign policy.²⁴⁰ This policy has a vision of promoting infrastructure development, opening new markets, and promoting trade and capital flow in areas of Asia, Europe and Africa to bring mutual benefits to all countries in this area. This vision is apparently driven by China's needs of securing energy resources, national security especially along borders, and creating new markets for Chinese products and goods. This policy is also aimed at generating a favorable external environment for China to attain its national development, national security and higher status in the region, and conceivably in the global community. To fulfill the plan China has established the Silk Road fund with US\$40 billion, supplemented by US\$100 billion from the Asian Infrastructure Investment Bank (AIIB), which was established in 2015 to foster sustainable economic development, develop infrastructure and promote regional cooperation in Asia.²⁴¹ Regarding the reasons for this assertive policy, some scholars state that a political chance arose for China it became the second largest economy while Western countries suffered from the global financial crisis in 2008, while others propose that “One Belt, One Road” was created as a counter-strategy for the U.S.’ “*Rebalance to*

²³⁸ Santosh Sharma Poudel, "The South China Sea Ruling: Reinforcing China's Negative Image in Japan," *ibid.* (2016), <http://thediplomat.com/2016/07/the-south-china-sea-ruling-reinforcing-chinas-negative-image-in-japan/>.

²³⁹ *Ibid.*

²⁴⁰ Yang and Li, 140-41.

²⁴¹ Aileen S. P. Baviera, "China's Strategic Foreign Initiatives under Xi Jinping," *China Quarterly of International Strategic Studies* 02, no. 01 (2016): 63.

52 China's approach following the arbitral tribunal's ruling

Asia" described below.²⁴² Other observers explain that Chinese President Xi launched the policy as a personal vision to consolidate his position in his early stage of office. Regardless of the underlying motives for generating "One Belt and One Road", China is attempting to exert strong influence over its neighbors through those projects in order to develop in a global power.

To be a regional leader or even a global leader through the "One Belt, One Road" strategy, it is essential for China to cultivate its supporters and followers.²⁴³ Specifically, gaining support and trust from its neighbors Southeast Asian countries is a key step to strive for the achievement of its grand strategy. When development of the "One Belt, One Road" and preparations for establishing the AIIB entered a critical stage in early 2014, Beijing recognized that its proactive approach over the SCS dispute would lose its substantive support and even negatively impact on fulfilling its most important national strategy. With this backdrop, China has since restrained itself from taking an assertive approach over the SCS dispute and pledged to promote cooperation between China and the Southeast Asian countries to maintain regional peace and stability. China has continued to discuss with ASEAN a framework for a legally binding Code of Conduct (COC).²⁴⁴ As discussed in the following sections, by the ruling and, in addition, by the shift of the Philippines foreign policy, a momentum for cooperation on the SCS issue has increased among China and ASEAN countries. Finally, the ASEAN countries and China endorsed the framework of the COC in August 2017.

The approved COC, however, does not mention a legal binding to future disputes.²⁴⁵ While the U.S. strongly supported the legally binding COC, China tried to avoid setting up the provision of the legal binding in the COC. Further, while China engaged in negotiation with ASEAN on the COC in a cooperative atmosphere, it has kept asserting its "*in-disputable sovereignty*" and entitled rights in the SCS, deployed its coast guard in the contested waters, and continued to construct military structures on the Spratly Islands.²⁴⁶

Chinese elites have claimed and launched the projects in the SCS based on its historical claims for years.²⁴⁷ Specifically, the counterproductive effect of the tribunal ruling fueled further Chinese national-

²⁴² Ibid., 59-62.

²⁴³ Tuan N. Pham, "China's Maritime Strategy on the Horizon," *The Diplomat* (2016), <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>.

²⁴⁴ Baviera, 62-63.

²⁴⁵ Ibid., 71.

²⁴⁶ Ibid., 74. ; Mark J. Valencia, "Is America Losing the Soft Power Contest in Southeast Asia?," *The Diplomat* (2017), <http://thediplomat.com/2017/08/is-america-losing-the-soft-power-contest-in-southeast-asia/>.

²⁴⁷ Prashanth Parameswaran, "Beware the Illusion of South China Sea Calm," *ibid.*, <http://thediplomat.com/2017/07/beware-the-illusion-of-south-china-sea-calm/>.

ism.²⁴⁸ Now Chinese leaders may feel pressure from their own people if they cannot satisfy national sentiments by making what they have claimed, territorial sovereignty in the SCS, into reality.²⁴⁹

Regarding Chinese construction, China have reclaimed maritime features and been building up military infrastructure and capacities on reclaimed land.²⁵⁰ China's expanding military capacities have concerned many international observers up to now, however, China has recently started to shift its direction towards the "civilization" of military facilities.²⁵¹ Beijing has been increasing civilian facilities on military sites in the contested islands in the sea. China is aiming for its national development, national security and higher status in the international community. Although China has been seeking opportunities to build up maritime power and to strengthen national security, these issues are one half of the grand strategy. The new maritime strategy also contains a comprehensive approach on maritime economic, diplomatic, environmental and legal affairs. Considering China's grand strategy with an emphasis on national security and economic prosperity, the new maritime strategy would balance them by intensifying economic initiatives in the region, and complement other important foreign policy aims including "One Belt, One Road" and AIIB. Thus, its maritime strategy would also enhance economic activities over maritime issues.²⁵²

At the beginning of 2017 China announced its intention to integrate military capacity with its expanding economic development.²⁵³ The idea is to secure military resources efficiently for defense purposes by utilizing market forces, and at the same time leading a long-term national economic development. Collected resources will be allocated for both military and civilian needs. On January 8, 2017, a new industrial alliance was established in Beijing as a platform for this purpose, with support of the National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology. In addition, Beijing specifically mentioned that it would utilize this mechanism for the furthering of SCS maritime policy over the disputes. Beijing is already taking steps to put these plans into practice.

²⁴⁸ Baviera.

²⁴⁹ Zhibo Qiu, "The 'Civilization' of China's Military Presence in the South China Sea," *The Diplomat* (2017), <http://thediplomat.com/2017/01/the-civilization-of-chinas-military-presence-in-the-south-china-sea/>.

²⁵⁰ Feng Zhang, "Breathtaking but Counterproductive: The South China Sea Arbitration Award," *The Strategist*, no. The Strategist (2016), <https://www.aspistrategist.org.au/breathtaking-counterproductive-south-china-sea-arbitration-award/>.

²⁵¹ Qiu.

²⁵² Tuan N. Pham, "China's Maritime Strategy on the Horizon," *ibid.* (2016), <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>.

²⁵³ Zhibo Qiu, "The 'Civilization' of China's Military Presence in the South China Sea," *ibid.* (2017), <http://thediplomat.com/2017/01/the-civilization-of-chinas-military-presence-in-the-south-china-sea/>.

54 China's approach following the arbitral tribunal's ruling

Beijing has also begun a legal approach. In order to bridge a legal gap between its claims over the disputes and its domestic legal situation, which may impede its claims internationally, and to provide justification for its activities over the SCS, Beijing created a legal basis for its disputed SCS territories in China.²⁵⁴ China domestically legitimizes the legal status of the contested islands by setting up a provincial-level city, Sansha, in Hainan Province in July 2012.²⁵⁵ Beijing conferred jurisdiction over the contested features, including the Paracel islands and the Spratly islands, on Sansha city. Beijing has also incorporated the status of islands in its political system legally. It is noteworthy that the island where the city government is located in is Woody (Yongxing) island, which is also a center for China's increasing military capacity. Setting up Sansha city is an important step to integrate its "militarization" and "civilization" based on its overarching grand strategy.

From Sansha city, China has further set about promotion of the disputed islands as popular destination for patriotic tourists and private investors.²⁵⁶ Cruise tours to the disputed islands have operated since April 2013. Sansha city is also planning to promote further visitors by offering various tourist services, such as weddings and marine sports. Further, according to Mayor Xiao Jie, it is planning to open a military airport for tourism purposes.²⁵⁷ In addition to tourism, the city passed a regulation to promote human habitation in the city, and has plans to develop infrastructure to improve a living environment and attract permanent residents. Furthermore, it is trying to attract private investors. By giving of a preferential tax measure, it attracted 119 companies and 110 individual businesses in total so far and approximately \$106.6 million U.S. dollars were collected as taxes in 2015. Qiu assumes that these tourism, infrastructure and financial approaches will steadily attract not only domestic private investors but also international ones, and this will further legitimize China's presence in the SCS.²⁵⁸

The economic prosperity in the SCS area would build a solid foundation for Beijing to confront the U.S.²⁵⁹ In addition, China's military action is seemingly shielded by the various civilian projects in the ar-

²⁵⁴ Tuan N. Pham, "China's Maritime Strategy on the Horizon," *ibid.* (2016), <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>; Zhibo Qiu, "The 'Civilization' of China's Military Presence in the South China Sea," *ibid.* (2017), <http://thediplomat.com/2017/01/the-civilization-of-chinas-military-presence-in-the-south-china-sea/>.

²⁵⁵ Qiu.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ Tuan N. Pham, "China's Maritime Strategy on the Horizon," *ibid.* (2016), <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>.

China's approach following the arbitral tribunal's ruling 55
ea.²⁶⁰ China is apparently waiting for opportunities to compete the
U.S. and rebalance in the region, while also weakening American re-
gional supremacy through lasting economic partnerships and political
agreements based on its strategy of the national economic prosperity. It
is uncertain if the U.S. commits the region in a way that matches Chi-
na's resolve, while China has geographical advantages compared to the
distant U.S.

5.2. The Philippines

Philippines President Rodrigo Duterte, who assumed office on June 30, 2016, adopted an independent foreign policy marking a marked shift from his predecessor.²⁶¹ According to the new Philippines ambassador to China, Jose Sta. Romana, the independent foreign policy is shaped against the backdrop of the emerging regional power shift: "*China's rise and the U.S. decline*" in the Asia-Pacific. Mindful of the current dynamics of international affairs, Duterte's independent foreign policy consists of three major elements. The policy requires firstly "*improvement of relations with China*", secondly the "*separation of Philippine foreign policy from the U.S.*", and "*the improvement of relations with non-traditional partners*" such as Russia, Japan and India.²⁶² Sta. Romana said that the Philippines is looking for a middle ground between old regional power the U.S. and emerging power China to maximize its own national interests.

President Duterte, who has been seeking economic aid from China, actively sought to repair tense relations with China.²⁶³ Thus he downplayed the ruling, despite the fact that the ruling was a huge legal victory for the Philippines, and opened bilateral negotiations with China over the SCS dispute, instead of continuing the Aquino administration's approach. The shift of the approach towards China evolved into independent foreign policy.²⁶⁴ In the Philippines where there are severe infrastructure shortcomings, promising to develop infrastructure is a necessity for politics and economy.²⁶⁵ Although the Aquino administra-

²⁶⁰ Zhibo Qiu, "The 'Civilization' of China's Military Presence in the South China Sea," *ibid.* (2017), <http://thediplomat.com/2017/01/the-civilization-of-chinas-military-presence-in-the-south-china-sea/>.

²⁶¹ Tuan N. Pham, "China's Maritime Strategy on the Horizon," *ibid.* (2016), <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>.

²⁶² Zhibo Qiu, "The 'Civilization' of China's Military Presence in the South China Sea," *ibid.* (2017), <http://thediplomat.com/2017/01/the-civilization-of-chinas-military-presence-in-the-south-china-sea/>.

²⁶³ Mico A. Galang, "Us, China, and Duterte's 'Independent Foreign Policy'," *ibid.*, <http://thediplomat.com/2017/04/us-china-and-dutertes-independent-foreign-policy/>.

²⁶⁴ *Ibid.*

²⁶⁵ "Analysis: South China Sea Ruling Has So Far Fueled Tensions," *University Wire*, 23 Jul 2016 2016.

56 China's approach following the arbitral tribunal's ruling

tion also focused on infrastructure development for its economic agenda, it failed to achieve it. A campaign promise of developing infrastructure was a decisive factor for Duterte to win the election. In order to fulfill his campaign pledge, he needs great resources to implement his infrastructure development agenda. Thus, he is seeking ways to improve the Philippines' relations with China despite the contentious SCS issue. It takes time to resolve the territorial sovereignty issue, hence the Duterte administration adopted an approach to separate the contentious territorial sovereignty issue in the SCS from the non-contentious issue such as trade, investment and people exchanges.²⁶⁶ The administration is trying to deepen bilateral cooperation with China in these fields. According to Sta. Romana, this new approach enabled China and the Philippines to increase bilateral trade and investment. Also, since the tensions between two countries decreased over the SCS dispute, China allowed Filipino fishermen who had been driven away to access Scarborough Shoal. Furthermore, China also lifted the military blockade it had been enforcing on the contingent of Filipino soldiers, who had been placed on contested features in the SCS. Furthermore, at the Duterte's first official visit to Beijing in October 2016, Beijing granted him a huge amount of financial aid. Outside of economic cooperation, China provided Manila with assistance to combat the Maute terrorist group, which is an Islamic State-linked group, in Marawi, Mindanao. In accordance with Sta. Romana, while the Philippines benefits greatly from the new approach on one side, it adheres to its territorial sovereignty claim over the SCS without any compromise.

One of the other major components of the Philippines' new independent foreign policy is to separate its foreign policy from the U.S., which was declared in Duterte's speech in China. Duterte has been outspoken in taking up anti-American rhetoric since he assumed control of the government.²⁶⁷ For instance, he had said that he would give its long-standing ally the U.S. a notice that the joint military exercise between two countries would be over soon.²⁶⁸ He also affirmed that he was planning to expel all foreign military presence from the Philippines, that the U.S. interfered with the domestic matters of the Philippines, and that the U.S. provided the Philippines with defense assistance only when it is politically and economically advantageous to the U.S. Even more, he said that he was eager to newly form economic alliances with China and Russia.²⁶⁹ Given these his strong and blunt statements, it's

²⁶⁶ "Duterte's Innovative Approach to China Issue," (Makati City).

²⁶⁷ "Philippines: Infrastructure Needs More Private Money," *Oxford Analytica Daily Brief Service*, Apr 10, 2017, p.1.

²⁶⁸ "Duterte's Innovative Approach to China Issue."

²⁶⁹ Prashanth Parameswaran, "Where Are Us-Philippine Defense Relations under Duterte?," *The Diplomat* (2016), <http://thediplomat.com/2016/11/where-are-us-philippine-defense-relations-under-duterte/>.

China's approach following the arbitral tribunal's ruling 57 highly likely that his administration will downgrade the traditional U.S.-Philippines defense relation.²⁷⁰ Duterte's anti-American rhetoric, however, has not translated well into action.

Along the same lines, Sta. Romana indicated that "*separation from the U.S.*" means abating the Philippines' dependence on the U.S. while maintaining the traditional defense relations, instead of meaning rupturing the security relations with the U.S.²⁷¹ Indeed, Manila has not undertaken any legal procedure to terminate the alliance with the U.S. When U.S. Pacific Command (PACOM) commander Admiral Harry Harris visited President Duterte and other high-level officials in the Philippines on 23rd and 34th of August 2017, they ensured the ongoing cooperation being forged by two countries without any clear hindrance.²⁷² Even under the Duterte's "*separation from the U.S.*" policy, important collaboration between two countries on counter-terrorism and maritime security is still ongoing. On counter-terrorism, the AFP appealed to Washington more intensified support against the Marawi crisis which began in May. And on maritime security, American assistance for the AFP is still continuing in spite of the shift of the Philippines' policy over the SCS. At the end of August 2017, Washington transferred a new, high-tech radar system to PN to improve its maritime surveillance capabilities. Visits to the region by the American senior officials have also continued. Commander of the U.S. Pacific Fleet Admiral Scott Swift also visited the Philippines in June 2017 and reaffirmed the strong partnerships between the American Navy and AFP.²⁷³ Following these visits, President Trump's meeting with President Duterte is being planned at the next round of ASEAN summit in Manila later this year.²⁷⁴ Behind the Duterte's provocative behavior to the U.S., U.S.-Philippines ties and security cooperation has been covertly maintained.

Lastly, President Duterte occasionally expressed his willingness to strengthen the defense ties with Japan.²⁷⁵ After Duterte visited Beijing in October 2016 he also visited Tokyo, and was treated well there

²⁷⁰ "Recent Developments Surrounding the South China Sea," *University Wire*, 03 Oct 2016 2016.

²⁷¹ "Rodrigo Duterte to End Joint Us and Philippine Military Drills," *The Guardian*, 29 September 2016 2016.

²⁷² "Where Are Us-Philippine Defense Relations under Duterte?,"

²⁷³ Mico A. Galang, "Us, China, and Duterte's 'Independent Foreign Policy'," *ibid.* (2017), <http://thediplomat.com/2017/04/us-china-and-dutertes-independent-foreign-policy/>.

²⁷⁴ Prashanth Parameswaran, "What Did the Us Pacific Military Chief's Philippines Visit Accomplish?," *ibid.*, <https://thediplomat.com/2017/08/what-did-the-us-pacific-military-chiefs-philippines-visit-accomplish/>.

²⁷⁵ "U.S. Pacific Fleet Commander Reaffirms Commitment to Philippines, Strong Defense Ties with Philippine Leaders," U.S. Embassy in the Philippines, <https://ph.usembassy.gov/us-pacific-fleet-commander-reaffirms-commitment-to-philippines/>.

58 China's approach following the arbitral tribunal's ruling too.²⁷⁶ As one of the maritime countries to share common national interests with the Philippines, Japan is making great efforts to deepen defense ties with the Philippines. Historically the defense relations between two countries was enhanced by the Aquino administration and the Shinzo Abe administration.²⁷⁷ Significantly, two parties signed an agreement for defense equipment and technology transfer in 2016. Co-operative efforts of two countries continue into the Duterte administration. Based on the agreement, two countries have agreed that Japan will lease the Philippines at least five TC-90 aircraft surveillance plane to upgrade the AFP's capability, with the first two of five TC-90 delivered to the Philippines in March 2017.²⁷⁸ Further, although the details have not yet been disclosed, the two countries apparently agreed in the beginning of August 2017 that Japan would also contribute tens of thousands of helicopter spare parts to the Philippines.²⁷⁹

5.3. ASEAN

The ruling has not only indicated how provision of UNCLOS are applied in the complicated dispute in the SCS, but also made all concerned parties reaffirm the importance of UNCLOS when international society brings rule-based order in the oceans and seas.²⁸⁰ Part IX of UNCLOS requires states bordering enclosed or semi-enclosed sea like the SCS to cooperate with each other when they exercise their rights and perform their duties under UNCLOS. This applies particularly to the management of exploration and exploitation of the living resources, preservation of marine environment and joint scientific maritime research.²⁸¹ All littoral states of the SCS ratified UNCLOS thus they have an obligation to cooperate with each other to manage designated activities in the water. In the SCS, cooperation in the managing of shipping traffic, natural resources and maritime environmental protection is needed. The ruling provided the littoral states with a good opportunity to reactivate cooperation over the SCS.

²⁷⁶ "What Did the Us Pacific Military Chief's Philippines Visit Accomplish?".

²⁷⁷ Franz-Stefan Gady, "Philippines' Duterte First Head of State to Visit Japan's Largest Warship," *ibid.*, <http://thediplomat.com/2017/06/philippines-duterte-first-head-of-state-to-visit-japans-largest-warship/>.

²⁷⁸ Yuki Tatsumi, "Japan Rolls out Red Carpet for Philippines' Duterte," *ibid.* (2016), <http://thediplomat.com/2016/10/japan-rolls-out-red-carpet-for-philippines-duterte/>.

²⁷⁹ Prashanth Parameswaran, "A New Japan-Philippines Military Helicopter Deal?," *ibid.* (2017), <http://thediplomat.com/2017/08/a-new-japan-philippines-military-helicopter-deal/>.

²⁸⁰ *Ibid.*

²⁸¹ Sam Bateman, "Building Cooperation for Managing the South China Sea without Strategic Trust," *Asia & Pacific Policy Studies* 4, no. 2 (2017): 252.

Although the tension between all parties concerned was still high for a while after the award, it had been defused. ASEAN and China returned to a blank slate and began to build trust in each other and initiate cooperative projects to manage the SCS issue.²⁸² At the 49th ASEAN Foreign Ministers meeting on July 24, 2016, ASEAN was again divided and silenced by Chinese economic and political power.²⁸³ While appealing to ASEAN to make a statement mentioning the ruling, Cambodia, which was promised another huge grant in Chinese yuan nine days before the meeting (equivalent to more than half a billion U.S. dollars), prevented the other foreign ministers from even referring to the ruling in the statement. However, the new president Duterte has cleared the way for dialogues between China and the Philippine to initiate cooperative projects in the SCS.²⁸⁴ Although the ruling was an enormous victory for the Philippines, China's financial aid is also attractive to Duterte. Thus he played it down as part of his policy to ease their tense relations.²⁸⁵ The shift in diplomacy from his predecessors has changed the discourse of the SCS dispute and at the same time deescalated the tensions in the region. It also reduced the risk of a split within ASEAN and improved relations. In October 2016, President Duterte visited China where Beijing awarded funding equivalent to US\$25 billion in grants and loans. In return, the Philippines would accept bilateral negotiations to resolve the dispute instead of negotiations within ASEAN framework.²⁸⁶ Duterte, who is a host to the ASEAN summit in 2017 said that the ruling is a bilateral matter between China and the Philippines and should not be interfered with by ASEAN member states.²⁸⁷ Before the summit on April 29, 2017, he also said that there was no way for the other countries including the Philippines to prevent China from constructing artificial islands in the waters it claimed, thus there is no use protesting against in at the summit. As a result, the SCS issue was never raised on the agenda of the ASEAN

²⁸² Robert C. Beckman, "Game Changer in the Maritime Disputes," *CO16180* (2016), https://www.rsis.edu.sg/rsis-publication/rsis/co16180-game-changer-in-the-maritime-disputes/#.WZb0_ncjFtg; Sam Bateman, "U.S. Responses to the Arbitration Tribunal's Ruling—a Regional Perspective," *Journal of Chinese Political Science* 22, no. 2 (2017): 275-76.

²⁸³ 252-53.

²⁸⁴ Prashanth Parameswaran, "Beware the Illusion of China-Asean South China Sea Breakthroughs," *The Diplomat* (2016), <http://thediplomat.com/2016/08/beware-the-illusion-of-china-asean-south-china-sea-breakthroughs/>.

²⁸⁵ Donald Emmerson, "Asean between China and America: Is It Time to Try Horsing the Cow?," *TRaNS : Trans-Regional and -National Studies of Southeast Asia*, Jan 2017, *Vol.5(1)*, pp.1-23: 9.

²⁸⁶ Bateman, 252.

²⁸⁷ Ian Storey, "Roundtable: The Arbitral Tribunal's Ruling on the South China Sea — Implications and Regional Responses," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2016, *Vol.38(3)*, pp.337-338: 338.

60 China's approach following the arbitral tribunal's ruling summit.²⁸⁸ As with Duterte, Malaysian Prime Minister Najib Razak visited Beijing and also was also granted US\$35 billion. Now the Philippines under Duterte is also leaning towards China.²⁸⁹ Cambodia, Laos, Malaysia and Thailand amongst ASEAN countries have also been forming closer relations with Beijing. The regional tensions over the SCS disputes are decreasing.

The decrease of regional tensions and the removal of the potential split of ASEAN allowed the bloc to promote regional cooperation in the management of the SCS with the aim of endorsing a framework on a binding COC and of initiating cooperation in managing the activities within the SCS. At the 13th senior officials' meeting on the implementation of the DOC in the SCS in August 2016, China and ASEAN member states finally agreed to approve guidelines for an ASEAN-China hotline for use during maritime emergencies, a joint declaration applying the Code for Unplanned Encounter at Sea (CUES) to the SCS and to finish the draft framework of COC by the middle of 2017.²⁹⁰ Other practical cooperation in exploration of maritime resources, conduct of maritime scientific research and management of environmental protection is continuously evolving within the existing framework of DOC.²⁹¹ At the ASEAN summit in April 2017, although the SCS issue was not discussed by ASEAN leaders, the announcement that COC should be released at the very latest by the end of 2017 was made.²⁹² At the 14th senior officials' meeting of the implementation of the DOC held in Guiyang, China in May 2017, China and ASEAN member states finally came to an agreement on a framework for the COC.²⁹³ According to the framework, all parties are required to resolve the disputes, to develop functional maritime cooperation, promote the consultation of the code and cooperatively sustain peace and stability in the SCS based on the COC. At the ASEAN ministerial meeting on August 6th in Manila, foreign ministers from ASEAN countries and China endorsed the framework of the COC taking another step towards resolving the SCS disputes.²⁹⁴

²⁸⁸ Emmerson, 15-16.

²⁸⁹ "Asean: President Duterte Hosts His First Asean Leaders' Summit," *Asia News Monitor*, 03 May 2017 2017.

²⁹⁰ Cal Wong, "After Summit, Asean Remains Divided on South China Sea," *The Diplomat* (2017), <http://thediplomat.com/2017/05/after-summit-asean-remains-divided-on-south-china-sea/>.

²⁹¹ Bateman, 272.

²⁹² Prashanth Parameswaran, "Malaysia's Approach to the South China Sea Dispute after the Arbitral Tribunal's Ruling," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2016, Vol.38(3), pp.375-381: 378.

²⁹³ Aileen S. P. Baviera, "Arbitration over, Time for China to Lead Responsibly," *Global Asia* 11, no. 3 (2016).

²⁹⁴ Wong.

China's approach following the arbitral tribunal's ruling 61

The diplomacy to solve the SCS disputes has apparently progressed to a certain degree.²⁹⁵ Prashanth Parameswaran, however, casts doubt on the COC as an effective breakthrough on the highly contentious SCS disputes, given the process of finalizing the framework of the COC. Even though twenty-five years have already passed since ASEAN and China attempted to form a framework to regulate conduct in the SCS, a binding COC has not been formulated to date. Initially, a 1992 ASEAN declaration was disregarded by China, and ASEAN's pursuit of a binding COC in the mid- to late 1990s consequently resulted in a non-binding DOC in 2002. China's deliberately slowness has interfered with ASEAN's formulation of the binding COC. China has since been violating the existing 2002 DOC by continuously constructing seemingly military structures on the Spratly Islands. Whether the COC can be effective in resolving the SCS conflicts lies heavily on Chinese sincerity. Some ASEAN countries question China's good faith towards the COC.²⁹⁶ They are hoping for the best and at the same time, preparing for the worst to remain prepared.²⁹⁷ Indonesia made the decision to deploy extra weapons such as warships, fighter jets and missiles in a part of the SCS where it holds claims. Malaysia is also taking steps to modernize its navy.²⁹⁸ Military expenditure in regional countries around the SCS has been growing markedly in recent years.²⁹⁹

5.4. The United States

Expanding its territorial claim in the SCS, China had been increasing its presence and limiting American access.³⁰⁰ As a result, with China's growing power and influence backed by a rapidly developing economy and improving military capability, Southeast Asia is becoming a contested bipolar zone between the U.S. and China. Given Chinese assertive actions and vital interests in the SCS, the U.S. is apparently con-

²⁹⁵ Ankit Panda, "China, Asean Come to Agreement on a Framework South China Sea Code of Conduct," *ibid.*, <http://thediplomat.com/2017/05/china-asean-come-to-agreement-on-a-framework-south-china-sea-code-of-conduct/>.

²⁹⁶ Regine Cabato and JC Gotinga, "Asean, China Adopt Framework for South China Sea Code of Conduct," (CNN Philippines, 2017).

²⁹⁷ Prashanth Parameswaran, "Will a China-Asean South China Sea Code of Conduct Really Matter?," *The Diplomat* (2017), <http://thediplomat.com/2017/08/will-a-china-asean-south-china-sea-code-of-conduct-really-matter/>.

²⁹⁸ Cal Wong, "After Summit, Asean Remains Divided on South China Sea," *ibid.*, <http://thediplomat.com/2017/05/after-summit-asean-remains-divided-on-south-china-sea/>.

²⁹⁹ Emmerson, 8.

³⁰⁰ Prashanth Parameswaran, "Malaysia Launches First Littoral Combat Ship," *The Diplomat* (2017), <https://thediplomat.com/2017/08/malaysia-launches-first-littoral-combat-ship/>.

62 China's approach following the arbitral tribunal's ruling concerned that freedom of navigation and open skies over the SCS could become endangered. In November 2011, the U.S. under President Obama adopted a "*rebalance to Asia*" foreign policy to constrain the increasing dominance of China in both the SCS and East China Sea.³⁰¹

The "*rebalance to Asia*" was an integrated policy with both soft and hard power using multilateral and economic diplomacy, as well as military power to reassure the American allies and partners in the region.³⁰² Through multilateral diplomacy, Washington actively involved itself in the SCS dispute by encouraging ASEAN to raise its "one voice" against China, and backing up the ASEAN COC and international law such as UNCLOS.³⁰³ Since the announcement of the rebalance policy, the U.S. Department of State focused its efforts and time to reassure its allies and partners in the region.³⁰⁴ President Obama also attended the regional Summits on a regular basis in the last few years of his term of office. Under President Obama's leadership, the U.S. ratified the Treaty of Amity and Cooperation, appointed a resident ambassador to ASEAN as the first non-ASEAN country, institutionalized an annual U.S. – ASEAN summit and held its first-ever summit in the U.S.³⁰⁵ Secondly, regarding diplomacy using economic instruments, Washington had increased aid, trade and investment in the Southeast Asian countries since 2010 in order to maintain, or rather increase its influence in the region.³⁰⁶ The core strategy of the rebalance policy was the Trans-Pacific Partnership (TPP).³⁰⁷ The TPP was a free trade initiative with a purpose of building and intensifying relations with member countries through trade and investment in a multilateral framework.³⁰⁸ After the Obama administrations' five years of formal negotiations with member countries, the agreement was ultimately signed by twelve states (Australia, Brunei, Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the U.S. and Vietnam) in October 2015.³⁰⁹ All ASEAN member claimants over the SCS disputes were in-

³⁰¹ Henry Hing Lee Chan, "New Dynamics in Asean's Stance on South China Sea," *IPP Review* (2016), <http://ippreview.com/index.php/Blog/single/id/278.html>.

³⁰² Stephen F. Burgess, "Rising Bipolarity in the South China Sea: The American Rebalance to Asia and China's Expansion," *Contemporary Security Policy* 37, no. 1 (2016): 112.

³⁰³ *Ibid.*

³⁰⁴ Tuan N. Pham, "Why the Us 'Rebalance to Asia' Is More Important Than Ever," *The Diplomat* (2016), <http://thediplomat.com/2016/06/why-the-us-rebalance-to-asia-is-more-important-than-ever/>.

³⁰⁵ Burgess, 113.

³⁰⁶ *Ibid.*, 121.

³⁰⁷ Prashanth Parameswaran, "Trump's Real Asean Test," *The Diplomat* (2017), <http://thediplomat.com/2017/03/trumps-real-asean-test/>.

³⁰⁸ Burgess, 122.

³⁰⁹ Catherine Putz, "Trump Election Kills Tpp," *The Diplomat* (2016), <http://thediplomat.com/2016/11/trump-election-kills-tppt/>.

China's approach following the arbitral tribunal's ruling 63
 cluded in the TPP.³¹⁰ By promoting American private companies, ac-
 tive and free trade and investment within Asia in the TPP framework,
 Washington was able to increase American influence against the
 growing economic influence of China in the region.³¹¹ Thirdly, the re-
 balance in the military was conducted by increasing military presence
 and its engagement in the area. Washington adopted the "Air-Sea Battle"
 in 2009, which was part of the Joint Operational Access Concept in re-
 sponse to the global trend of anti-access and area-denial (A2AD) strat-
 egies.³¹² China had enhanced the capabilities of PLA over the past two
 decades, and it also adopted the A2AD strategy as a key strategy of
 PLA aiming to keep American military intervention away from the con-
 tested areas and adjacent waters.³¹³ In November 2011, the Secretary of
 Defense announced that carrier battles would be deployed in the Pacific
 as a high priority.³¹⁴ With the adoption of the Defense Strategic Guid-
 ance in January 2012, the American navy prominently focused on Asia.
 Furthermore, the U.S. military has carried out more joint military exer-
 cises with its allies and partners in the region since 2011. The joint mili-
 tary exercises also fostered confidence and cooperation between mili-
 taries of the U.S. and its partners. For instance, in 2014 the U.S. Pacific
 Command and the PN conducted a large-scale annual joint exercise in
 the proximity of Scarborough Shoals and Spratly Island where China's
 coast guards and PLAN were actively operating. Even after the exercise,
 the U.S. maintained its presence in the area by continuing to sail in the
 SCS, specifically around Spratly Islands and observing Chinese military
 equipment around the waters using surveillance flights to fly over Chi-
 nese constructions in the disputed waters. Moreover, the U.S. deployed
 more armaments in the Pacific area and allocated more budget for the
 joint exercise by 2014. In 2016, the most advanced aircraft carrier in the
 world, the USS General Ford was deployed in the Pacific.

Soon after the award was issued, the U.S. made a statement calling
 on China to respect the ruling and strongly opposing any coercive uni-
 lateral actions that could disrupt the status quo and heighten tensions in
 the region.³¹⁵ Washington's claims in the SCS disputes were maintaining

³¹⁰ Burgess, 122.

³¹¹ Catherine Putz, "Tpp: The Ratification Race Is On," *The Diplomat* (2016), <http://thediplomat.com/2016/02/tpp-the-ratification-race-is-on/>.

³¹² Emmerson, 1.

³¹³ Burgess, 122.

³¹⁴ Franz-Stefan Gady, "The Pentagon Just Dropped the Air Sea Battle Name," *The Diplomat* (2016), <http://thediplomat.com/2015/01/the-pentagon-just-dropped-the-air-sea-battle-name/>.

³¹⁵ Ngo Minh Tri, "China's A2/Ad Challenge in the South China Sea: Securing the Air from the Ground," *ibid.* (2017), <http://thediplomat.com/2017/05/chinas-a2ad-challenge-in-the-south-china-sea-securing-the-air-from-the-ground/>.

64 China's approach following the arbitral tribunal's ruling rule-based international order, securing the freedom of navigation and reassuring its allies and partners in the region.³¹⁶

While Washington is trying to preserve the current rule-based global order, it also believes that Beijing is trying to reconfigure and depart from existing norms for its own interests.³¹⁷ The current rule-based global order disproportionately benefits the developed world, particularly Western countries such as the U.S. On the other hand, China is struggling to alter the system which benefits the developing countries including itself. Although the U.S. and regional powers such as Australia and Japan call for China to adhere to the arbitration ruling and abide by UNCLOS, it cannot be said that these country equally follow the international rules. For example, the U.S. itself has not joined many important international agreements, including UNCLOS. Major powers have also been ignoring international law when their core national interests were at stake. The concept of rule-based global order, therefore, is vague. Furthermore, Washington is insisting on securing its flying, sailing and operating wherever the international law allows. However, what the applicable international law is and how the provision should be interpreted is ambiguous. UNCLOS has many gray zones, and is unclear as to which activities are allowed on the high sea.

As mentioned above, the U.S. carried out some strategies under the "*rebalance to Asia*" policy in order to reassure its allies and partners in Southeast Asia. Even after the ruling was issued however, although the U.S. suggested that ASEAN countries officially call on Beijing to respect the ruling, all ASEAN countries except the Philippines and Vietnam tried to avoid getting involved in the SCS dispute. Even at the ASEAN summit in Vientiane which was held after the ruling was issued, ASEAN did not mention the ruling in its statement, although it required all claimants to refrain from engaging activities which complicated the conflicts and increased tensions within the region.³¹⁸ While the Southeast Asian countries expect the U.S. to stay and serve as a deterrent to China in the region, they are reluctant to directly support Washington's proactive moves challenging China. The ASEAN countries do not want to sour China-U.S. relations by taking either side as the peace and stability in the region would be greatly disturbed. Thus the ASEAN countries have been concerned as to what degree they can expect Washington to make a commitment and express their willingness to engage as a leader in the region. This growing concern among ASEAN countries was attributed to the weakness of the Obama administration towards China's assertiveness over the SCS dispute.

³¹⁶ Burgess, 122.

³¹⁷ Bateman, 270.

³¹⁸ Ibid., 271.

Southeast Asian countries, as well as some scholars, believe that U.S. commitment and engagement in the region will be even more ambivalent under the administration of President Donald Trump, who assumed the presidency on January 20, 2017.³¹⁹ President Trump formally pulled his country out of the TPP process which had been signed but not yet ratified yet at the Congress.³²⁰ TPP aimed to disperse American influence in the region through greater regional economic activity, and was the central economic plank of the Obama administration's "*re-balance to Asia*".³²¹ Thus America's withdrawal from the TPP means that Obama's rebalance strategy has been almost completely unsuccessful. For ASEAN countries, it means that U.S. commitment and the presence in the region cannot be expected to continue indefinitely, and thus ASEAN countries' anxieties about whether they can depend on the U.S. as a regional leader has been growing.³²² On the other hand, ASEAN has intensified their relations with China through various economic arrangements such as the aforementioned ASEAN-China FTA, Asian Infrastructure Investment Bank (AIIB) and Regional Comprehensive Economic Partnership (RCEP) which is scheduled to conclude in the end of 2017. Given America's absence from all these frameworks, it is possible that China is ready and able to fill the power vacuum in economic diplomacy which the U.S. has left.

Outside of the anxiety and concerns of ASEAN elites and observers about the effect of Trump's withdrawal from the TPP and "America First" foreign policy on the Trump Administration's Asia strategy, his administration has remained active towards Asia in seven months since Trump assumed office.³²³ President Trump has already met a number of leaders of Asian countries, such as Japan, China, Australia, Vietnam and India. The Trump administration is also planning to hold other Asian summits and lower-level meetings with Asian countries. So far, the Trump administration strategy towards Asia is still unbalanced, unstable and unconnected, and a comprehensive Asia strategy has yet to be developed.

³¹⁹ Ibid., 272. ; *ibid.*, 270-71.

³²⁰ Ian Storey and Mustafa Izzuddin, "Roundtable: The Trump Presidency and Southeast Asia," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2017, Vol.39(1), pp.1-2.

³²¹ Emmerson, 1.

³²² Peter Baker, "Trump Abandons Trans-Pacific Partnership, Obama's Signature Trade Deal," *The New York Times*, 23 January 2017 2017.

³²³ Storey and Izzuddin.

6. Discussion and conclusion

In the aftermath of the issuing of the arbitration tribunal's ruling, which was overwhelmingly in favor of the Philippines, Beijing has apparently adopted a relatively restrained and peaceful approach towards the Philippines over the SCS dispute. China's reaching of an agreement with ASEAN member states on the framework of the COC in May 2017, and the endorsement of it in August 2017, represents a move towards a more restrained and peaceful approach. China has apparently shifted its approach over the SCS dispute from an assertive posture depicted in the Scarborough Shoal standoff, to the restrained and peaceful position after the ruling.

There are several factors which have shaped Beijing's newfound approach. Firstly, the Chinese important strategic "One Belt, One Road" policy which Chinese President Xi launched in 2013 greatly influenced the shift. China is striving to be a regional or even more so, a global hegemony by attaining national development, national security and higher status in the international community through this policy. "One Belt, One Road" is focusing on economic development by developing infrastructure in the targeted area leading from Asia, Europe and Africa, particularly in the neighboring countries of Southeast Asia. China is trying to exert its strong influences worldwide based on economic instruments to build the foundations to become a global superpower. The developing infrastructure in Asia is reinforced by the establishment of the AIIB. For those initiatives to succeed, it is necessary for Beijing to acquire friends and supporters especially in Southeast Asia. Beijing apparently realized that taking an assertive stance over the SCS territorial sovereignty issue, which cannot be resolved immediately, would be detrimental to its pursuit of his major "One Belt, One Road" policy. Thus, it restrained its proactive approach from 2014 when the initiatives entered the critical stage.

Secondly, the new cooperative atmosphere anew generated among ASEAN members by the arbitral tribunal's ruling and the shift of the Philippines' diplomacy have also encouraged Chinese to present a restrained and peaceful approach. The ruling made all related countries reaffirm the importance of UNCLOS and of a rule-based international order in the oceans and seas. Part IX of UNCLOS requires the bordering countries of the semi-enclosed South China Sea to cooperate with each other on the management of activities for resource exploration and exploitation, maritime scientific activities and environment preservation. The principal notion of UNCLOS to cooperate with each other provided ASEAN members with a good opportunity to negotiate and reactivate cooperation.

In addition, the change of the Philippines approach towards China over the SCS defused tensions among the claimants of the SCS dispute and enhanced the cooperative atmosphere in the region. The new Philippines President Duterte elected in June 2016 adopted a strategy to improve relations with China, which had deteriorated under the previous Aquino administration, for economic incentives. To repair the relations and benefit from the favorable relations with Beijing, he downplayed the ruling and undertook the bilateral negotiation with China over the SCS dispute instead of discussing it in the multilateral framework ASEAN. The host of the ASEAN summits in 2017, President Duterte denied the ruling being raised in the agenda of the summit. The change of the Philippines approach defused the tensions in the ASEAN countries and removed the risk of a split in the ASEAN. Duterte's strategy of "separation from the U.S." also apparently helped him to improve the relations with China.

Finally, the U.S.'s return to the Asia-Pacific region also has an affect on China's shift of approach from a more assertive restrained position. From 2010 to 2012, China has been seen to expand maritime territorial claims, and its assertive behavior in the SCS which included building structures and gaining *de facto* control on the contested maritime features, reflected its rising military and political power in the region. The U.S., which was afraid that its national interests would be at stake, declared the "*rebalance to Asia*" policy in 2011 to counter China's expansion of influence in the region. Some scholars state that Beijing launched the "One Belt, One Road" policy in response to the American "*rebalance to Asia*".³²⁴ In order to disperse their influence in the region more than their counterpart, they proposed the new policies. In contrast, "*rebalance to Asia*" set out to reassure American allies and partners in the region, through greater U.S. involvement in ASEAN and enhancing both economic and military ties. In particular, the main objective of the policy is to exert its influence through economic activities promoted by TPP. This a core instrument of the rebalance policy. The U.S. commitment in the region was asserted. However, when the newly elected President Trump proposed its drawing from TPP and the implementation of the "America First" policy, many scholars and the Southeast Asian countries became concerned about the U.S.' commitment to Southeast Asia. The Southeast Asian countries expect the U.S. to serve as a deterrent to China. Although Trump's comprehensive Asia strategy has yet to emerge, in contrast to their concern, the Trump administration seems to be focusing on the diplomacy in Asia so far.

From a short-term perspective, China changed its approach towards the Philippines over the SCS dispute from the more assertive and confident approach from 2010 to 2012 into a more restrained and peaceful

³²⁴ Baviera, 61.

approach after the ruling. However, based on a long-term reading of Chinese actions it remains to be seen whether or not China will hold to this more peaceful approach.

Through an analysis of past Chinese approaches in the post-Cold War era, it can be seen that China has repeatedly alternated between a more assertive and a more friendly and peaceful approach, depending on its strategic thinking and the dynamics of the regional actors. Until the early 1990s, China took a more friendly approach towards the Philippine over the SCS dispute to implement its economic modernization projects well. However, it adopted the assertive approach which was represented in the Mischief Reef incident in 1995. China, which obtained confidence due to its rapidly growing economy and influence, seemingly wanted to see the reaction of the U.S. and ASEAN as a unit against Chinese assertiveness. From the end of 1990s to 2008, Beijing returned to the friendly and cooperative approach again which is depicted in the JMSU agreement. Chinese leaders realized that development of neighboring countries was important for further development of their own country in this interdependent economy, and that building trust among the Southeast Asian countries is important for China pursuit of becoming a regional leader. However, again Beijing took an assertive approach, being backed by further developed economy and rapidly rising military capacity, which can be seen in the Scarborough Shoal standoff in 2012 in line with rise of nationalism in its own country.

The current Chinese restrained and peaceful approach is favorable for the regional peace and stability but this is nothing new. Given the tendency of its approach in the past, no one can say that China will not adopt assertive actions again to pursue its expansive claims. China might take an assertive approach in the SCS when the time is right, if specific factors support their goals and interests. Behind the cooperation with China, ASEAN countries including the Philippines have sustained the security relations with the U.S. and enhanced their respective military capacities. Indeed, some Chinese behavior allows us to presume China's possible intention of more expansive claims and assertive approaches. For instance, the welcoming COC which ASEAN and China reached in agreement is not a binding document. China has obstructive of concluding a legally binding COC. Also, Beijing has kept insisting its "*indisputable sovereignty*" and continued to increase its presence in the contested areas by building and developing facilities on the reclaimed islands and deploying surveillance vessels in the waters. These facilities appear to be military facilities, and thus international observers have been concerned about China's expanding military power in the SCS. However, Beijing has been trying to "civilize" these military facilities. In line with "One Belt, One Road" which is aiming to be a global hegemony by economic diplomacy, the military facilities on the re-

claimed lands are integrated with the economic activities. China seems to attempt to achieve economic prosperity in the SCS. If China succeeds in its “One Belt, One Road” strategy and disperse its influence worldwide from Asia to Europe and Africa, China might take a more proactive approach. At this moment, it is unsure to what extent the U.S. under Trump will commit to Asia and especially ASEAN, and how ASEAN countries see the U.S. and China from their future interests. Depending on the stance of the U.S. and ASEAN, the situation will vary but if and when China achieves its national goals, it is likely that no power may be able to prevent China from taking further assertive actions in the SCS area.

BIBLIOGRAPHY

- "Analysis: South China Sea Ruling Has So Far Fueled Tensions."
University Wire, 23 Jul 2016 2016.
- ASEAN. "Framework Agreement on Comprehensive Economic Co-Operation between Asean and the People's Republic of China, Phnom Penh, 4 November 2002." Association of Southeast Asian Nations, http://asean.org/?static_post=asean-china-free-trade-area-2.
- "Asean: President Duterte Hosts His First Asean Leaders' Summit."
Asia News Monitor, 03 May 2017 2017.
- Baker, Peter. "Trump Abandons Trans-Pacific Partnership, Obama's Signature Trade Deal." *The New York Times*, 23 January 2017 2017.
- Bateman, Sam. "Building Cooperation for Managing the South China Sea without Strategic Trust." *Asia & Pacific Policy Studies* 4, no. 2 (2017).
- . "U.S. Responses to the Arbitration Tribunal's Ruling—a Regional Perspective." *Journal of Chinese Political Science* 22, no. 2 (2017/06/01 2017): 269-82.
- Baviera, Aileen S. P. "Arbitration over, Time for China to Lead Responsibly." *Global Asia* 11, no. 3 (2016).
- . "China's Strategic Foreign Initiatives under Xi Jinping." *China Quarterly of International Strategic Studies* 02, no. 01 (2016): 57-79.
- Beckman, Robert C. "Game Changer in the Maritime Disputes." *CO16180* (2016). Published electronically 18 July 2016. https://www.rsis.edu.sg/rsis-publication/rsis/co16180-game-changer-in-the-maritime-disputes/#.WZb0_ncjFvg.
- . "Joint Development in the South China Sea: Time for Asean and China to Promote Cooperation?" In *CO07046*, edited by RSIS Commentaries. Singapore: The S. Rajaratnam School of International Studies (RSIS), NanYang Technological University, 2007.
- Burgess, Stephen F. "Rising Bipolarity in the South China Sea: The

American Rebalance to Asia and China's Expansion." *Contemporary Security Policy* 37, no. 1 (2016): 33.

Buszynski, Leszek. "Asean, the Declaration on Conduct, and the South China Sea." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2003, Vol.25(3), pp.343-362: 343.

———. "Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue." *Security Challenges* 6, no. 2 (2010): 85-104.

———. "The South China Sea Maritime Dispute: Legality, Power, and Conflict Prevention." *Asian Journal of Peacebuilding*, 2013, Vol.1(1), p.39: 39.

———. "The South China Sea: Oil, Maritime Claims, and U.S.–China Strategic Rivalry." *The Washington Quarterly*, 01 April 2012, Vol.35(2), p.139-156 (2012): 139.

———. "What's Happening in the South China Sea?" (2015). Published electronically 7 May 2015. <https://www.aspistrategist.org.au/whats-happening-in-the-south-china-sea/>.

———. "Why China's South China Sea Strategy Will Fail." *The Diplomat* (2015). Published electronically 13 May 2015. <http://thediplomat.com/2015/05/why-chinas-south-china-sea-strategy-will-fail/>.

Buszynski, Leszek, and Iskandar Sazlan. "Maritime Claims and Energy Cooperation in the South China Sea." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2007, Vol.29(1), pp.143-171: 143.

Chakraborti, Tridib. "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome." *China Report* 48, no. 3 (2012): 283-301.

———. "China and Vietnam in the South China Sea Dispute: A Creeping 'Conflict–Peace–Trepidation' Syndrome." *China Report*, 2012, Vol.48(3), pp.283-301: 283.

Chan, Henry Hing Lee. "New Dynamics in Asean's Stance on South China Sea." *IPP Review* (2016). Published electronically 11

- November 2016.
<http://ippreview.com/index.php/Blog/single/id/278.html>.
- Chang, Jaw-Ling Joanne. "Why China's Taiwan Approach Is Counterproductive." *The Diplomat* (2017). Published electronically 7 January 2017.
<http://thediplomat.com/2017/01/why-chinas-taiwan-approach-is-counterproductive/>.
- CNN. "South China Sea Ruling: Neighbors React." CNN, <http://edition.cnn.com/2016/07/13/asia/gallery/south-china-sea-regional-reax/index.html>.
- Curtis, Henry. "Constructing Cooperation: Chinese Ontological Security Seeking in the South China Sea Dispute." *Journal of Borderlands Studies*, 24 July 2015, p.537-549: 1.
- De Castro, R. C. "The Aquino Administration's Balancing Policy against an Emergent China: Its Domestic and External Dimensions." *Pacific Affairs*, 2014, Vol.87(1), pp.5-27: 5.
- De Castro, Renato. "The Philippines Confronts China in the South China Sea: Power Politics Vs. Liberalism-Legalism." *Asian Perspective*, 2015, Vol.39(1), pp.71-100: 71.
- De Castro, Renato Cruz, and Alexander C. Tan. "Facing up to China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-Off and Its Aftermath." *Journal of Asian Security and International Affairs*, 2016, Vol.3(2), pp.157-182: 157.
- "Duterte's Innovative Approach to China Issue." Makati City.
- Edwards, Scott. "Why Asean Must Remain Neutral on the South China Sea." *The Diplomat* (2016). Published electronically 31 March 2016. <http://thediplomat.com/2016/03/why-asean-must-remain-neutral-on-the-south-china-sea/>.
- Emmerson, Donald. "Asean between China and America: Is It Time to Try Horsing the Cow?". *TRaNS : Trans-Regional and -National Studies of Southeast Asia*, Jan 2017, Vol.5(1), pp.1-23: 1.
- Fangyin, Zhou. "Between Assertiveness and Self-Restraint: Understanding China's South China Sea Policy." *International*

Affairs, July 2016, Vol.92(4), pp.869-890: 869.

- Fravel, M. Taylor. "China's Island Strategy: 'Redefine the Status Quo.'" *The Diplomat* (2012). Published electronically 1 November 2012. <http://thediplomat.com/2012/11/chinas-island-strategy-redefine-the-status-quo/>.
- Frost, Frank. "Vietnam's Membership of Asean: Issues and Implications." 20: The Department of the Parliamentary Library, 1995.
- Gady, Franz-Stefan. "The Pentagon Just Dropped the Air Sea Battle Name." *The Diplomat* (2016). Published electronically 22 January 2015. <http://thediplomat.com/2015/01/the-pentagon-just-dropped-the-air-sea-battle-name/>.
- . "Philippines' Duterte First Head of State to Visit Japan's Largest Warship." *The Diplomat* (2017). Published electronically 5 June 2017. <http://thediplomat.com/2017/06/philippines-duterte-first-head-of-state-to-visit-japans-largest-warship/>.
- Galang, Mico A. "Us, China, and Duterte's 'Independent Foreign Policy'." *The Diplomat* (2017). Published electronically 6 April 2017. <http://thediplomat.com/2017/04/us-china-and-dutertes-independent-foreign-policy/>.
- Garver, John W. "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests." *The China Quarterly*: 999.
- Gerstl, Alfred. "The Award of the Permanent Court of Arbitration on the South China Sea, July 2016." In *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality*, edited by Mária Strašáková Alfred Gerstl Leiden, Brill: La Vergne, MyiLibrary, 2017. <http://lib.myilibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>.
- Gerstl, Alfred, and Mária Strašáková. "Introduction." In *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality*, edited by Mária Strašáková Alfred Gerstl Leiden, Brill: La Vergne, MyiLibrary, 2017. <http://lib.myilibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>.

- Gotinga, Regine Cabato and JC. "Asean, China Adopt Framework for South China Sea Code of Conduct." CNN Philippines, 2017.
- Hayton, Bill. "China's 'Historic Rights' in the South China Sea: Made in America?" *The Diplomat* (2016). <http://thediplomat.com/2016/06/chinas-historic-rights-in-the-south-china-sea-made-in-america/>.
- Hearns, Glen S., and William G. Stormont. "Managing Potential Conflicts in the South China Sea." *Marine Policy*, 1996, Vol.20(2), pp.177-181: 177.
- Hiramatsu, Shigeo. "China's Advances in the South China Sea: Strategies and Objectives." *Asia-Pacific Review*, 01 May 2001, Vol.8(1), p.40-50: 40.
- Hong, Nong. *Securing the Safety of Navigation in East Asia*. Elsevier Ltd, 2013.
- Hong, Zhao. "The South China Sea Dispute and China-Asean Relations." *Asian Affairs*, 01 March 2013, Vol.44(1), p.27-43: 27.
- Hung, Nguyen Manh. "Asean's Scarborough Failure?" *The Diplomat* (2012). Published electronically 16 June 2012. <http://thediplomat.com/2012/06/aseans-scarborough-failure/>.
- "Hye Miekko Attack Triggers Upsurge in Piracy." *The South China Sea Morning Post*, 28 June 1995.
- Jiang, Yuhuan, and Xiongzhi Xue. "Building a Cross-Strait Cooperation Mechanism for the Conservation and Management of Fishery Resources in the South China Sea." *Ocean and Coastal Management*, November 2015, Vol.116, pp.318-330: 318.
- Loja, Melissa H. "Is the Rule of Capture Countenanced in the South China Sea? The Policy and Practice of China, the Philippines and Vietnam." *Journal of Energy & Natural Resources Law*, 01 November 2014, Vol.32(4), p.483-508: 483.
- Maxie, Jeremy. "Philippines Faces Post-Arbitration Dilemma over Reed Bank." *The Diplomat* (2016). Published electronically 12 July 2016. <http://thediplomat.com/2016/07/philippines-faces->

post-arbitration-dilemma-over-reed-bank/.

- Men, Jing. "The Construction of the China–Asean Free Trade Area: A Study of China's Active Involvement." *Global Society*, 01 April 2007, Vol.21(2), p.249-268: 249.
- Miks, Jason. "China, Philippines in Standoff." *The Diplomat* (2012). Published electronically 11 April 2012. <http://thediplomat.com/2012/04/china-philippines-in-standoff/>.
- Ministry of Foreign Affairs, the People's Republic of China. "'Set Aside Dispute and Pursue Joint Development'." Ministry of Foreign Affairs, the People's Republic of China, http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18023.shtml.
- Nguyen, Lan. "South China Sea: Philippines V. China." *The Diplomat* (2015). <http://thediplomat.com/2015/07/south-china-sea-philippines-v-china/>.
- Panda, Ankit. "China Pushes Back on Japan, New Zealand Statement on South China Sea." *The Diplomat* (2017). <http://thediplomat.com/2017/05/china-pushes-back-on-japan-new-zealand-statement-on-south-china-sea/>.
- . "China, Asean Come to Agreement on a Framework South China Sea Code of Conduct." *The Diplomat* (2017). Published electronically 19 May 2017. <http://thediplomat.com/2017/05/china-asean-come-to-agreement-on-a-framework-south-china-sea-code-of-conduct/>.
- . "International Court Issues Unanimous Award in Philippines V. China Case on South China Sea." *The Diplomat* (2016). <http://thediplomat.com/2016/07/international-court-issues-unanimous-award-in-philippines-v-china-case-on-south-china-sea/>.
- Parameswaran, Prashanth. "Beware the Illusion of China-Asean South China Sea Breakthroughs." *The Diplomat* (2016). Published electronically 17 August 2016. <http://thediplomat.com/2016/08/beware-the-illusion-of-china-asean-south-china-sea-breakthroughs/>.

- . "Beware the Illusion of South China Sea Calm." *The Diplomat* (2017). Published electronically 21 July 2017. <http://thediplomat.com/2017/07/beware-the-illusion-of-south-china-sea-calm/>.
- . "Japan, Philippines to Finalize New Military Aircraft Deal for Five Tc-90s." *The Diplomat* (2017). Published electronically 4 May 2016. <http://thediplomat.com/2016/05/japan-philippines-to-finalize-new-military-aircraft-deal-for-five-tc-90s/>.
- . "Malaysia Launches First Littoral Combat Ship." *The Diplomat* (2017). Published electronically 30 August 2017. <https://thediplomat.com/2017/08/malaysia-launches-first-littoral-combat-ship/>.
- . "Malaysia's Approach to the South China Sea Dispute after the Arbitral Tribunal's Ruling." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2016, Vol.38(3), pp.375-381: 375.
- . "A New Japan-Philippines Military Helicopter Deal?" *The Diplomat* (2017). Published electronically 15 August 2017. <http://thediplomat.com/2017/08/a-new-japan-philippines-military-helicopter-deal/>.
- . "Trump's Real Asean Test." *The Diplomat* (2017). Published electronically 30 March 2017. <http://thediplomat.com/2017/03/trumps-real-asean-test/>.
- . "Us Not Seeking Base in Vietnam's Cam Ranh Bay: Envoy." *The Diplomat* (2016). Published electronically 10 June 2016. <http://thediplomat.com/2016/06/us-not-seeking-base-in-vietnams-cam-ranh-bay-envoy/>.
- . "What Did the Us Pacific Military Chief's Philippines Visit Accomplish?" *The Diplomat* (2017). Published electronically 29 August 2017. <https://thediplomat.com/2017/08/what-did-the-us-pacific-military-chiefs-philippines-visit-accomplish/>.
- . "Where Are Us-Philippine Defense Relations under Duterte?" *The Diplomat* (2016). Published electronically 24 November 2016. <http://thediplomat.com/2016/11/where-are-us-philippine-defense-relations-under-duterte/>.

- . "Will a China-Asean South China Sea Code of Conduct Really Matter?" *The Diplomat* (2017). Published electronically 5 August 2017. <http://thediplomat.com/2017/08/will-a-china-asean-south-china-sea-code-of-conduct-really-matter/>.
- Pemmaraju, Sr. "The South China Sea Arbitration (the Philippines V. China): Assessment of the Award on Jurisdiction and Admissibility." *Chin. J. Int. Law*: 265.
- Permanent, Court of Arbitration. "The South China Sea Arbitration (the Republic of the Philippines V. The People's Republic of China)." news release, 12 July 2016, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.
- Pham, Tuan N. "China's Maritime Strategy on the Horizon." *The Diplomat* (2016). <http://thediplomat.com/2016/11/chinas-maritime-strategy-on-the-horizon/>.
- . "Why the Us 'Rebalance to Asia' Is More Important Than Ever." *The Diplomat* (2016). Published electronically 28 June 2016. <http://thediplomat.com/2016/06/why-the-us-rebalance-to-asia-is-more-important-than-ever/>.
- "Philippines: Infrastructure Needs More Private Money." *Oxford Analytica Daily Brief Service*, Apr 10, 2017, p.1: 1.
- Poudel, Santosh Sharma. "The South China Sea Ruling: Reinforcing China's Negative Image in Japan." *The Diplomat* (2016). <http://thediplomat.com/2016/07/the-south-china-sea-ruling-reinforcing-chinas-negative-image-in-japan/>.
- Putz, Catherine. "Tpp: The Ratification Race Is On." *The Diplomat* (2016). Published electronically 5 February 2016. <http://thediplomat.com/2016/02/tpp-the-ratification-race-is-on/>.
- . "Trump Election Kills Tpp." *The Diplomat* (2016). Published electronically 11 November 2016. <http://thediplomat.com/2016/11/trump-election-kills-tpp/>.
- Qiu, Zhibo. "The 'Civilization' of China's Military Presence in the South China Sea." *The Diplomat* (2017). <http://thediplomat.com/2017/01/the-civilization-of-chinas->

military-presence-in-the-south-china-sea/.

"Recent Developments Surrounding the South China Sea." *University Wire*, 03 Oct 2016 2016.

"Rodrigo Duterte to End Joint Us and Philippine Military Drills." *The Guardian*, 29 September 2016 2016.

Sam Bateman, Ralf Emmers, ed. *Security and International Politics in the South China Sea : Towards a Co-Operative Management Regime*. Edited by Li Mingjiang, China's South China Sea Dilemma. London and New York, 2008.

Schofield, Clive. "Increasingly Contested Waters? Conflicting Maritime Claims in the South China Sea." (2013). <http://nsc.anu.edu.au/documents/occasional-5-brief-2.pdf>.

Secretariat, ASEAN. "Asean Regional Forum." <http://aseanregionalforum.asean.org/about.html>.

Shicun, Wu. "5 - China's Dispute with the Philippines over the Nansha Islands." In *Solving Disputes for Regional Cooperation and Development in the South China Sea*, 123-38: Chandos Publishing, 2013.

Simon, Sheldon W. "Conflict and Diplomacy in the South China Sea." *Asian Survey December 2012, Vol.52(6), pp.995-1018*: 995.

Son, Nguyen Ba. "A New Legal Landscape in the South China Sea." *The Diplomat* (2016). <http://thediplomat.com/2016/08/a-new-legal-landscape-in-the-south-china-sea/>.

Storey, Ian. "Roundtable: The Arbitral Tribunal's Ruling on the South China Sea — Implications and Regional Responses." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2016, Vol.38(3), pp.337-338: 337.

Storey, Ian, and Mustafa Izzuddin. "Roundtable: The Trump Presidency and Southeast Asia." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 2017, Vol.39(1), pp.1-2: 1.

Storey, Ian James. "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute." *Contemporary Southeast Asia*, 1

April 1999, Vol.21(1), pp.95-118: 95.

- Swaine, Michael D. "The Role of the Chinese Military in National Security Policymaking." 1-89. Santa Monica, California: RAND's National Defense Research Institute, 1998.
- Tatsumi, Yuki. "Japan Rolls out Red Carpet for Philippines' Duterte." *The Diplomat* (2016). Published electronically 25 October 2016. <http://thediplomat.com/2016/10/japan-rolls-out-red-carpet-for-philippines-duterte/>.
- Thang, Nguyen-dang, and Nguyen Hong Thao. "China's Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes between the Philippines and China." *Ocean Development & International Law*, 2012, *Vol.43(1)*, p.35-56: 35.
- Thayer, Carlyle A. "Standoff in the South China Sea." *YaleGlobal Online* (2012). Published electronically 12 June 2012. <http://yaleglobal.yale.edu/content/standoff-south-china-sea>.
- Tri, Ngo Minh. "China's A2/Ad Challenge in the South China Sea: Securing the Air from the Ground." *The Diplomat* (2017). Published electronically 19 May 2017. <http://thediplomat.com/2017/05/chinas-a2ad-challenge-in-the-south-china-sea-securing-the-air-from-the-ground/>.
- Trigkas, Vasilis. "Aircraft Carriers in the Taiwan Strait." *The Diplomat* (2014). Published electronically 29 December 2014. <http://thediplomat.com/2014/12/aircraft-carriers-in-the-taiwan-strait/>.
- "U.S. Pacific Fleet Commander Reaffirms Commitment to Philippines, Strong Defense Ties with Philippine Leaders." U.S. Embassy in the Philippines, <https://ph.usembassy.gov/us-pacific-fleet-commander-reaffirms-commitment-to-philippines/>.
- "United Nations Convention on the Law of the Sea." edited by Office of Legal Affairs The Division for Ocean Affairs and the Law of the Sea, United Nations.
- Valencia, Mark J. "Is America Losing the Soft Power Contest in Southeast Asia?" *The Diplomat* (2017). Published electronically 12 August 2017. <http://thediplomat.com/2017/08/is-america-losing-the-soft-power-contest-in-southeast-asia/>.

- Vu, Truong-Minh. "The Logic of Strategic Restraint and Prospects for Joint Development in the South China Sea." In *Unresolved border, land and maritime disputes in Southeast Asia bi- and multilateral conflict resolution approaches and ASEAN's centrality*, edited by Mária Strašáková Alfred Gerstl Leiden, Brill: La Vergne, MyiLibrary, 2017. <http://lib.myilibrary.com?id=972661>, <http://ubdata.univie.ac.at/AC13163638>.
- Vuving, Alexander L. "South China Sea: Who Occupies What in the Spratlys?" *The Diplomat* (2016). Published electronically 6 May 2016. <http://thediplomat.com/2016/05/south-china-sea-who-claims-what-in-the-spratlys/>.
- Walt, Stephen M. "International Relations: One World, Many Theories." *Foreign Policy*, 1 April 1998, Issue 110, pp.29-46: 29.
- Wanandi, Jusuf. "A Global Coalition against International Terrorism." *International Security*, 2002, Vol.26(4), pp.184-189: 184.
- Wang Wen, Chen Xiaochen. "Who Supports China in the South China Sea and Why." *The Diplomat* (2017). <https://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/>.
- Wang, Zheng. "China and Unclos: An Inconvenient History." *The Diplomat* (2016). <http://thediplomat.com/2016/07/china-and-unclos-an-inconvenient-history/>.
- Watchers, Young China. "The South China Sea Disputes: Past, Present, and Future." *The Diplomat* (2016). Published electronically 9 April, 2016. <http://thediplomat.com/2016/04/the-south-china-sea-disputes-past-present-and-future/>.
- Whaley, Floyd. "Clinton Reaffirms Military Ties with the Philippines." *The New York Times*, 16 November 2011 2011.
- Wong, Cal. "After Summit, Asean Remains Divided on South China Sea." *The Diplomat* (2017). Published electronically 3 May 2017. <http://thediplomat.com/2017/05/after-summit-asean-remains-divided-on-south-china-sea/>.
- Wu, Shang-su. "Aquino's Military Modernization: Unprecedented but Insufficient." *The Diplomat* (2016). Published electronically 23 March 2016. <http://thediplomat.com/2016/03/aquinos->

military-modernization-unprecedented-but-insufficient/.

- Yang, F., and M. Li. "Comparing Chinas Claims and Policies in the East and South China Seas: Implications for Regional Security." *Journal of Asian Security and International Affairs* 3, no. 2 (2016): 135-56.
- Yang, Fang, Mingjiang Li, and Alexander C. Tan. "Comparing China's Claims and Policies in the East and South China Seas: Implications for Regional Security." *Journal of Asian Security and International Affairs*, 2016, Vol.3(2), pp.135-156: 135.
- Yu, Mincai. "The South China Sea Dispute and the Philippines Arbitration Tribunal: China's Policy Options." *Australian Journal of International Affairs*, 03 May 2016, Vol.70(3), p.215-234: 215.
- Zha, Daojong, and Mark J. Valencia. "Mischief Reef: Geopolitics and Implications." *Journal of Contemporary Asia*, 01 January 2001, Vol.31(1), p.86-103: 86.
- Zhang, Feng. "Breathtaking but Counterproductive: The South China Sea Arbitration Award." *The Strategist*, no. The Strategist (2016). Published electronically 14 July 2016. <https://www.aspistrategist.org.au/breathtaking-counterproductive-south-china-sea-arbitration-award/>.