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THE SOUTH CHINA SEA DISPUTES:
REGIONAL SECURITY IMPLICATIONS AND AVENUES FOR COOPERATION[1]
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Introduction

It is extremely difficult to dissociate the South China Sea (SCS) from the territorial disputes over geographic features found within this large body of water - some 1,800 kilometers from north to south and over 900 kilometers from east to west - that is also semi-enclosed by land territories belonging to the member states of the Association of Southeast Asian Nations (ASEAN). This presentation will then take off from the SCS disputes, and analyze recent developments in the SCS that impact on these disputes, their regional security implications for East Asia and the broader Asia Pacific region, before offering some avenues for cooperation.

The SCS disputes involve conflicting and overlapping claims over small islands, islets, coral reefs, cays, rock formations, atolls, outcroppings of varying sizes, and sandbanks located in the Spratly Island group and the Paracels among Brunei Darussalam, China, Malaysia, the Philippines, Taiwan, and Vietnam. All the claimants except Brunei have occupied features within their claimed areas and established military outposts or bases; and all claimants have adopted domestic legislation related to their claims.

There are two important norm-setting documents governing the SCS. The first is the 1992 ASEAN Declaration on the South China Sea adopted in Manila by ASEAN member countries, and the second is the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) between China and ASEAN. Both contain principles of good inter-

state conduct including respect for national sovereignty and territorial integrity of states, the settlement of disputes by peaceful means, and non-interference in the internal affairs of other states. The DOC also includes the concept of 'no new occupation' in its paragraph 5 under which the parties commit to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including among others, refraining from the action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features…"[2] These documents are, however non-binding and provide no mechanisms for enforcement against violators. Thus, non-official attempts to avert conflict have been important features of regional activities relating to the SCS disputes.

Some sixteen (16) years ago, in an effort to call attention to the security implications of a putative conflict in the South China Sea (SCS) not only for claimants to this territorial dispute, but also for other states with interest in maintaining good order and peace in this area for commercial and other purposes, an initiative was launched by the Institute for Strategic and Development Studies (ISDS Philippines) and the Pacific Forum/CSIS (Honolulu) that focused on 'triggers' of conflict which needed to be avoided by all parties concerned. It recognized existing initiatives to avoid conflict such as the joint Indonesian and Canadian initiative called the Informal Workshops for Managing Conflict in the South China Sea (Informal Workshops) launched in 1990, but the new series sought to provide another venue for confidence-building especially for states in East Asia and the broader Asia Pacific region not involved in the Informal Workshops but have strategic interests in maintaining regional peace and stability. In 1995, that goal appeared to be at risk with the discovery by the Philippines that China had constructed what it originally claimed as 'fishermen's shelter' on Panganiban (Mischief) Reef that lies within the Philippine claim in the Spratly Islands.

Between 1995 and 1998, China had transformed this 'fishermen's shelter' into the naval base that exists at present. China's rise as the second largest economy in the world, its naval modernization that enabled it to acquire a blue water navy, and recent increasing

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[2] Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, 2002.

assertiveness in maritime areas in East Asia beyond the SCS in which it has territorial disputes with other states such as Japan and South Korea, diverse interpretations of the rights of littoral states over their exclusive economic zones (EEZs), and the risks inherent in power shifts that potentially can alter the regional strategic status quo have combined to bring us to this important conference on the SCS seeking to avoid conflict and to find ways of building peace, cooperation, and progress instead.

As already noted, this presentation focuses on the security implications of recent developments in the SCS for East Asia and the broader Asia-Pacific region and attempts to provide some ideas regarding possible avenues for cooperation. It leaves off the bases of individual claims to the disputed areas in the SCS, takes into account the assumption that the present international system of territorially-based sovereign and independent states prevents the resolution of these territorial disputes, and proceeds to find avenues for cooperation not only among the claimants to these territories, but also among other states and groups that seek peace and stability in the disputed areas including its waters used for international navigation.

Recent Developments in the SCS and Their Regional Security Implications

The SCS area has been seen as a regional 'hotspot'[3] where tension and conflict are more likely than cooperation and peace. The primary reasons for this view include the conjunction of strategic and economic interests of the great regional powers of the Asia-Pacific region – China, Japan, South Korea, the United States (US), Russia, India, and Australia - in the SCS, the world's second busiest sea lines of communication (SLOC). The SCS connects the Indian Ocean via the Strait of Malacca to the Pacific Ocean via the Taiwan Strait. These sea lanes are also seen as 'choke points' which any state dominating or controlling the SCS can use against opponents. The national interests of the great maritime countries in the world that use these SLOCs require respect for freedom of navigation in these waters, as well as over fight in the airspace above them.

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[3]Ralf Emmers, "Maritime security in Southeast Asia", in Sumit Ganguly, Andrew Scobell, and Joseph Chiyong Liow, editors, *The Routledge Handbook of Asian Security Studies* (London and New York, 2010), p. 241.

It is also through the SCS where over a quarter of global trade passes, including 70% of Japan's energy needs (before the nuclear leak in the Fukushima nuclear power facility following the March 2011 earthquake and tsunami disasters in Japan) and 65% of China's. East Asia's reliance on global trade for economic growth has also made the SCS a critical transport route for its exports and imports, a fact not lost on regional states.[4]

There are also other significant economic reasons over which states in the region could compete rather than cooperate. The SCS is believed to be rich in oil, gas, and marine-based minerals, apart from being one of the richest fishing grounds in the world.[5] Access to these resources is sought by all the claimants as well as their allies, especially as the SCS is sometimes seen as a 'second Persian Gulf'[6] in terms of energy source. The global search for energy sources in the light of the voracious consumption needs of fast-growing economies including China and India in the wider Asia-Pacific region heightens the economic and strategic importance of the SCS.

And the Association of Southeast Asian Nations has a huge stake in the peace and stability of the SCS whose stretches as a semi-enclosed sea from North to South and East to West are encircled by the national territory of its member states, four (4) of which are claimants in the SCS disputes, i.e., Brunei Darussalam, Malaysia, the Philippines and Vietnam.

Given the strategic and economic importance of the SCS and China's perceived 'assertiveness' and 'creeping occupation' during the second half of the 1990s, it was noteworthy that there was a period in the recent past when analysts on the SCS saw a 'de-

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[4] None of the country perspectives on the importance of the SCS failed to take this into account in the 1995 International Conference on the South China Sea in Manila. See these country papers in Carolina G. Hernandez and Ralph Cossa, editors, *Security Implications of Conflict in the South China Sea: Perspectives from Asia-Pacific* (Quezon City and Honolulu: Institute for Strategic and Development Studies and Pacific Forum/CSIS, 1997).
[5] David Rosenberg, "Fisheries management in the South China Sea", in Sam Batemanand, Ralf Emmers, editors, *Security and International Politics in the South China Sea: Towards a cooperative management regime* (London and New York: Routledge,2009), pp. 61-79.
[6] Erik Beukel, "China and the South China Sea: Two Faces of Power in the Rising China's Neighborhood Policy", DIIS Working Paper 2010:07, p. 9.

escalation' of the SCS disputes[7], a period that coincided with the launch by China of its 'charm' diplomacy. Writing in 2007, Emmers argued that while the SCS dispute remained in ASEAN's security agenda, it had nevertheless de-escalated to the point that it was "no longer perceived as a significant flashpoint capable of undermining order in the region and it has to some extent been shelved in Sino-Southeast Asian diplomatic relations".[8] There was naturally a cause for optimism when such de-escalation occurred.

However, in 2011, the SCS disputes have escalated once again., and is very likely to be put back into the bilateral diplomatic agenda of ASEAN and China, particularly because there has been no progress made in the adoption of implementing guidelines for the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) which an analyst recently observed as having "likely been overtaken by events"[9], a view quite unlike that held by a former ASEAN Secretary-General who laid the failure to adopt implementing guidelines for the DOC upon China's doorstep.[10]

That said, the roller-coaster pattern of Sino-Southeast Asian relations in regard to the South China Sea merely validates the truism that nothing can be permanent if it is political. It also demonstrates the primacy of the political and the strategic over other considerations in world politics, rhetorical protestations to the contrary notwithstanding.

Recent Chinese assertiveness in the East Asian maritime domains it claims is a major source of the current sense of unease in regard to the SCS. It is of course because China is a 'big country and all others are small' by comparison.[11] This assertiveness can be seen in a number of instances including over flight and navigation in its EEZ by foreign aircraft and vessels. That the 1982 United Nations Convention on the Law of the Sea

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[7] See for example Ralf Emmers, "The De-escalation of the Spratly Dispute in Sino-Southeast Asian Relations", RSIS Working Paper No.129, 6 June 2007.
[8] *Ibid*., p. 1.
[9] Aileen S.P. Baviera, "China and the South China Sea: Time for Code of Conduct?" RSIS Commentary 91/2011, p. 2.
[10] East West Centre Conference on East Asian Regionalism, Brussels, December 2010.
[11] Aileen S. P. Baviera, "China is a Big Country, Other Countries are Small Countries: Analyzing the Facts of Power Asymmetry", a presentation at the 25th Asia Pacific Roundtable, Kuala Lumpur, 30 May-1 June 2011, citing China's foreign minister Yang Jiechi.

(UNCLOS) is not helpful in regard to this matter, including over flight and navigation by military aircraft and naval vessels in the EEZ of littoral states suggests more room for tension and disagreement among concerned parties. The disagreements between China on the one hand, and other regional powers such as the US on the other, over issues such as for example the *USN Impeccable* and other related incidents are only among the more publicized.[12] Less known are incidents involving the arrest of and firing upon fisherfolk caught by Chinese naval officers and the use of naval power to prevent civilian activities such as scientific exploration by civilian agencies of rival claimants. It is also the case that although the islands and islets in the SCS are small, military presence has been boosted by the erection of bases in the occupied parts of the SCS. For example, the 'fishermen's shelters' on Mischief Reef were upgraded into a naval base by China as it also "established bases with various electronic support systems both in the Spratly group and the Paracels which are second in importance only to Hainan Island bases on the South China coast".[13]

The SCS's strategic importance as a major sea lane of communication inhibits its insulation from big-power interests and therefore, competition as argued by political realism. The controversial statement made by US Secretary of State Hilary Clinton at the 2010 meeting of the ASEAN Regional Forum (ARF) in Hanoi can be seen as a big-power reaction to a series of maritime incidents in East Asian waters over the past few years that go beyond the *USN Impeccable* and include the sinking of the *Cheonan,* allegedly by missiles from a North Korean vessel, as well as incidents in other contested islands in East Asia. In addition, the continuous contestations involving the arrest of fisherfolk going about their business, military action by China against civilian scientific explorations by the Philippines and Vietnam already noted above, and other similar incidents in the disputed areas in the SCS have only served to erode whatever confidence China has built with its neighbors including in Southeast Asia. They must have also shaped growing close relations between the US and Vietnam in recent times, as well as

[12] Mark J. Valencia, "Military Activities in Asian EEZs: Conflict Ahead?" a presentation at the 24th Asia Pacific Roundtable, hosted by ISIS Malaysia and ASEAN ISIS, Kuala Lumpur, 7-9 June 2010.
[13] Beukel, "China and the South China Sea", p. 11, citing Bruce A. Elleman, "Maritime territorial disputes and their impact on maritime strategy: A historical perspective", in Bateman and Emmers, editors, *Security and International Politics in the South China Sea,* p. 46f.

sent a wrong signal to other states regarding China's intentions in its post-peaceful rise phase.

China reportedly feels surrounded by unfriendly states in the region that are developing closer relations with the US.[14] This perhaps accounts for its increasing assertiveness in regional affairs as well as its desire for enhanced military capacity. It is also said to be concerned that the oceans could be used by enemies to attack it as in the past.[15] This perhaps drives it to achieve a degree of control over these waters. Yet its increasing assertiveness, the use of naval patrols to arrest Philippine and Vietnamese fisherfolk and prevent civilian scientific exploration, as well as continuing efforts to improve military structures it erected on contested areas drive some of these countries closer to the US. Thus, one can see a spiral of action-reaction among some of the claimants and other actors in the SCS.

Despite China's openness to multilateral institutions including the ARF, it prefers to deal with the SCS disputes bilaterally. While some specific areas of dispute might lend themselves to bilateral processes such as when there are only two claimants, where there are more than two (2) claimants nothing short of multilateral negotiations can lead to a reasonably lasting solution. This is the case in the disputes over the Spratly Island group. Intransigence over only a bilateral approach in dispute settlement in the SCS is therefore a non-starter.

It is also a dilatory tactic to wait until ASEAN has arrived at a consensus on the disputes. Other than a collective stand in regard to the 1992 ASEAN Declaration on the South China Sea, the DOC, and a Code of Conduct on the SCS, an ASEAN consensus is not likely due to the fact that four (4) of its member states are rival claimants, and the others have varying degrees of political, diplomatic, and economic closeness to China. In short, only when ASEAN's collective integrity is challenged can a consensus be expected to

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[14] From a track two meeting in Kuala Lumpur, 1 June 2011.
[15] Rodolfo C. Severino, "ASEAN and the South China Sea", *Security Challenges,* Volume 6, No. 2 (Winter 2010), p. 37.

emerge. The SCS disputes are not part of this collective integrity, since they involve individual member states.

Nonetheless, even if a resolution of the disputes is not in the offing, it is still important to find avenues for cooperation in order to reduce tension, avoid 'triggers' of conflict, and create a degree of regional stability that is good for peace, progress, and prosperity. Armed conflict is in nobody's interest. Every effort needs to be taken to find ways by which concerned parties can cooperate even as the disputes remain unresolved for the time being. The likelihood that they will remain unresolved is high given the built-in constraints of the current international system of territorially-based, independent, and sovereign states that continue to behave according to the norms of the 15th century Treaty of Westphalia.

Avenues for Cooperation

States will cooperate to avoid conflict (or for that matter for any other reason) if it is in their interest to do so. Hence, in the context of the SCS disputes, it must be made crystal clear that (1) the SCS is of strategic and economic interests not only to the states bordering this body of water, but to all other 'users', including those not territorially-based around the SCS, and that in a specific sense, the SCS is part of the 'global commons' into which there is freedom of peaceful access and use ; (2) the escalation of tension can be a trigger for conflict, even if those that escalate tension do not mean to do so, simply because in world politics, perception is a powerful – and often an overpowering - factor in state behavior; and (3) any attempt to break the peace will be much too costly even for big countries.

Among Claimant States

The starting point is for claimant states, large and small to respect and abide by the political declarations regarding their conduct individually and in relation to others to be observed in the SCS, especially non-use of force and no new occupation. Here, the

exercise of self-restraint is extremely important, an exercise that ought not to be regarded as a sign of weakness by others. With this overarching framework and mindful of the conflicting sovereignty claims that remain unresolved, the following might be considered:

(1) Joint activities to establish environmental protection and conservation zones;
(2) Adoption of enforceable mutual guarantees to ensure order in the exercise of freedom of navigation and over flight in accordance with existing international law, including the UNCLOS;
(3) Joint scientific exploration, surveys, and data collection in disputed areas without prejudice to include areas close to the claimants' national territory;
(4) Joint development of resources in the SCS, including the joint grant of concessions to private companies for oil and gas explorations, for example, with equitable distribution of gains;
(5) Prevention of the threat or use of force against fisherfolk of rival claimants; and
(6) Maintenance and respect for the present status quo in the disputed areas.

Among Maritime States in the Region

Since the SCS is a major SLOC, it is in a sense a kind of global commons where freedom of navigation and over flight well established in international law and practice should be observed by the littoral states and flag states of vessels and aircrafts passing through them. In this regard, the maritime states in the Asia-Pacific region should consider cooperation in the following areas:

(1) Prevention of the illegal use of the SLOCs, generally and particularly in the suppression of piracy, illegal trafficking in drugs, small arms and light weapons, natural persons, as well as the use of the SCS in contravention of international agreements related to Weapons of Mass Destruction (WMDs);
(2) Prevention of the threat or use of force by any and all states whose vessels and aircraft pass through the SCS;

(3) Adoption of mutual guarantees to observe and respect applicable international law on freedom of navigation and over flight in the SCS;

(4) Lead in further clarification of relevant UNCLOS provisions that can enhance peace and stability in relation to regimes such as the EEZ; and

(5) Accession to and ratification of the UNCLOS as a common applicable law on the uses of the oceans.

ASEAN-China

Much can be achieved to make the SCS a stable and peaceful area through ASEAN-China cooperation. Since an ASEAN consensus on the disputes is not feasible at this time, there are still avenues for cooperation between the two sides to promote stability in the SCS. Among them are:

(1) Adoption of an enforceable code of conduct on the SCS beyond the political DOC Beijing can make this its gift to the incoming ASEAN Chair, Cambodia, like its gift of the DOC during Phom Penh's last occupancy of the ASEAN Chair in 2002;

(2) Adoption of the SCS as a regular item in their bilateral agenda;

(3) Conversion of existing military facilities in the disputed areas into genuine fishermen's shelters accessible to all the fisherfolk plying the SCS for their livelihood;

(4) Prevention of provocative behavior by all claimants, including the arrest of and firing upon other countries' fisherfolk, expulsion of civilian agencies conducting scientific activities in the SCS by military and naval forces; and

(5) Search for conflict resolution mechanisms that can facilitate the achievement of lasting peace.

As the premier political-security dialogue mechanism in the Asia-Pacific region in which the most powerful actors in world politics participate, the ARF needs to become more relevant to its overall mandate. It needs to move away from a sequential to a comprehensive approach in its concept paper that identified three tasks for it: confidence building measures, preventive diplomacy, and measures for conflict resolution. Moreover, while its entry into non-traditional security cooperation is commendable, it appears to have moved further and further away from addressing hard security issues, including on the Korean Peninsula and the South China Sea. Due to recent developments involving the SCS, including the statement made by US Secretary of State Clinton at the 2010 ARF, this forum can no longer afford to ignore this matter and leave it to bilateral negotiations. Thus, it can consider undertaking the following:

(1) Since the SCS is discussed in the fringes of the ARF sessions, include the SCS as an area of increasing tension in the ARF agenda on a regular basis;

(2) Use of the Friends of the ARF Chair and other creative venues to bring the SCS into the ARF agenda;

(3) Prevention of piracy and other illegal activities in the SCS; and

(4) Prevention of infringements of pertinent international law and regional declarations regarding the SCS.

Concluding Remarks

No doubt, these avenues for cooperation are bound to be rejected by many. However, they also serve as a challenge to all concerned, particularly those that purport to be responsible stakeholders. I have often wondered what Northeast Asia, and now East Asia would have been like had the biggest resident country in this region taken the lead that Indonesia took in Southeast Asia in 1967? That act paved the way for the peace, stability, prosperity, central role in regionalism that Southeast Asia as ASEAN has become today. Now is a good time to square the rhetoric with the behavior for East Asia's biggest country. The testing ground is the South China Sea.