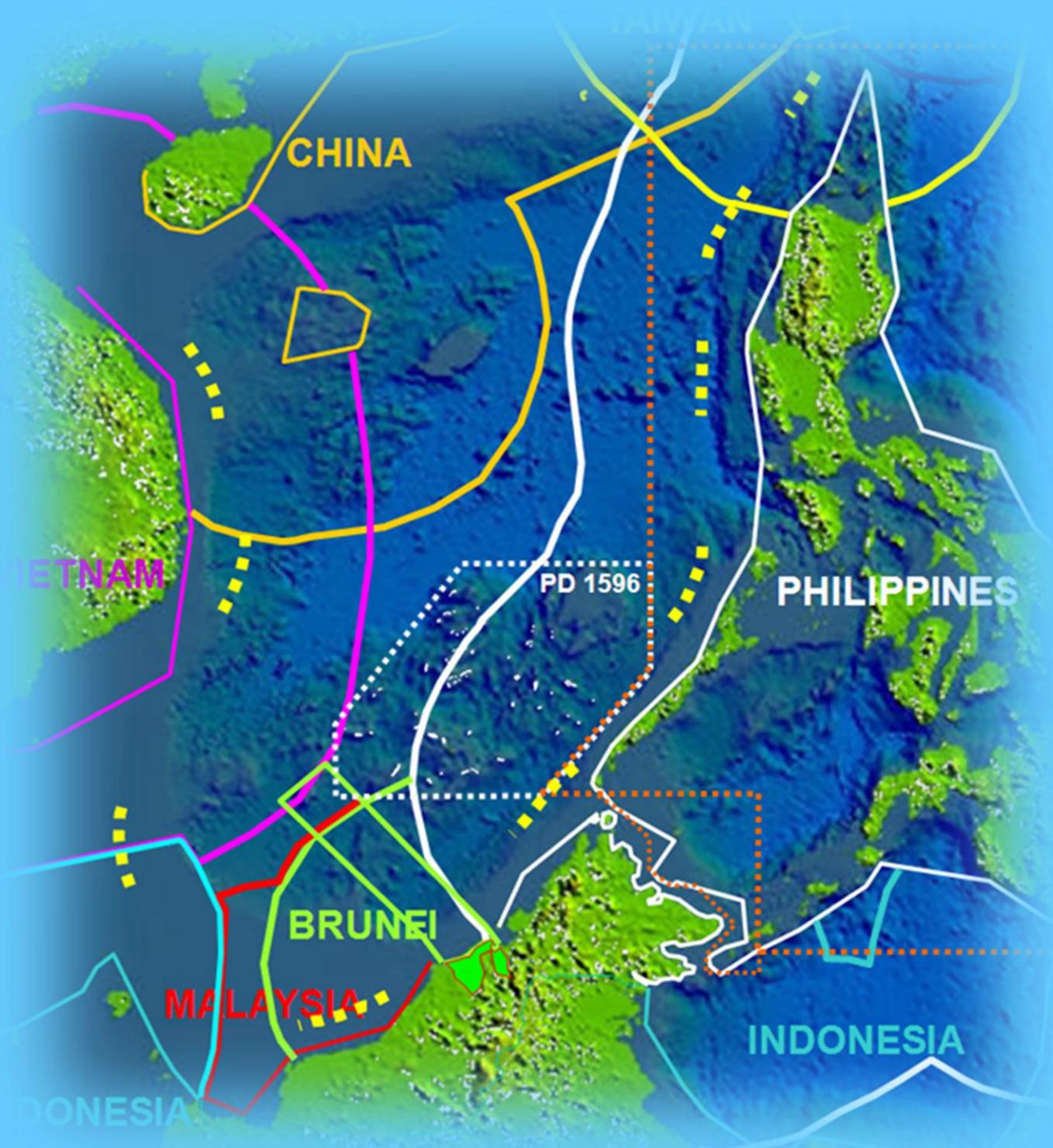


South China Sea Scenario



Vietnam

The International Strategic Crisis Negotiation Exercise

Exercise Description and Guidance

Introduction

The International Strategic Crisis Negotiation Exercise (ISCNE) is designed to engage and educate participants in the process of crisis negotiations at the international level over a two-day period. The intent of this exercise is to gain experience in negotiations at the strategic level, with participants coming away with a greater understanding of the complexity of the problem sets and the effort that goes into the pursuit of a resolution to a regional crisis that has broad international implications. The educational rigor is drawn from the participant's own endeavors as select members of a nation's negotiation team. Each country team engages with their counterparts within the framework of an Association of Southeast Asian Nations (ASEAN) convened peace conference in an effort to resolve an escalating conflict within a potentially volatile region. The teams are assigned mentors to assist them as they work through the process. This experiential learning experience will help expose students to the complexity of the diplomatic process, of negotiating with adversarial nations that have diverse and often irreconcilable positions and objectives, and working with partners that may have their own ulterior motives or objectives. An actual resolution of the crisis is not an expectation, nor is it a real factor – gaining an understanding of the process is the key learning objective.

For this exercise the crisis in question is the present day conflict between the countries of China, Vietnam and the Philippines over their conflicting claims within the South China Sea. Other countries with interests in this region and involved in the negotiations are the United States, India, Japan and Indonesia. The present date is the 9 July 2016, and the delegations are meeting in Jakarta Indonesia at the behest of the ASEAN Secretariat with the backing of the United Nations Secretary General. The ASEAN Secretariat's mandate as the host is to monitor developments, facilitate or mediate negotiations as appropriate, and report findings.

The documents provided are the South China Sea scenario, which contains information on the crisis and of the nations involved, maps and reference documents. Lastly, each team has their own set of Confidential Instructions. As the name implies these instructions are protected communications from each government to their negotiation teams regarding the impending round of talks, and must be handled as such.

This type of exercise works best when conducted within the confines of a strict schedule. This helps replicate the formality within which most high level international negotiations take place, and allows the parties involved time to negotiate issues, pause to evaluate and adjust the implementation of negotiation strategies, and schedule and respond to negotiation requests. The establishment and enforcement of such a strict structure may induce some level of frustration from the participants, but this is not unrealistic – the road to peace is never smooth and the journey never short.

Preparation for the Exercise

It is highly suggested that each delegation find time to meet and prepare prior to the start of the exercise, if possible. ***Prior to the start of the exercise, each delegation must appoint both a Head of Delegation (HOD) and a Team Communicator.***

As the title implies, the HOD is the leader of his or her delegation. They are responsible for providing direction to each of their delegates and are also responsible to their superiors, in the form of their Foreign Minister/Secretary of State, as role-played by a member of the Army War College team. The negotiation sessions the HOD elects to, or not to, attend is highly symbolic and of significant importance within diplomatic circles.

The Team Communicator has the additional duty of being their delegation's sole point of contact with the exercise control team, and as such is responsible for scheduling and processing ad hoc negotiation requests, sending/receiving press releases, team-to-team communication and diplomatic communiques, as detailed below.

- **Communication System:** This system is email-based. It allows communication with each team's national leaders (communiqués), limited coordination between teams, and the transmission and receipt of press releases. **Team communicators will meet with the War College Control Team prior to the start of the**

exercise (date & time TBD), and then respond to a test message to the Control Group well prior to the first Initial Negotiation Sessions. All communications must go through the Control Group.

- **Scheduling Ad Hoc Negotiation Sessions:** Ad Hoc negotiation sessions are scheduled via an electronic system run by your team's communicator (not by direct team-to-team communication). Ad Hoc sessions must adhere to the negotiation periods set out in the exercise schedule, which the system will do automatically. Requested sessions may be bilateral or multilateral and may be requested for 15 or 30 minute increments. (It is highly suggested that large multilateral sessions be scheduled for 30 minutes to ensure a full range of discussion.) Once a negotiation request is submitted, the system will execute coordination by notifying all invited parties. Once received, invited parties may accept, decline, or ignore the invitation. Only once all invitees have responded will the system notify all invited parties whether or not the session will held, and, if so, where. Ad Hoc Negotiation Sessions happen only if all parties agree. A team may request and schedule as many negotiation sessions as it can support within the allotted time.

The ASEAN Secretariat representative will be available to meet during the Ad Hoc Negotiation portions of the exercise. All requests to meet with the ASEAN representative will be initiated in the same manner as any ad hoc session. Also, he/she may request to meet with teams during the ad hoc negotiation session periods; if so, his requests may not be declined or ignored.

- **Diplomatic Communiqués:** These are messages, sent through UNCG Communiqués, to your nation's leadership either to provide reports or request guidance. The Control Group will provide a response as soon as possible, likely in the form of a visit from their foreign minister/SECSTATE during team meeting periods.
- **Team-to-Team Communication:** Allowed but strictly limited to coordination of texts for agreements or press releases, or to gain clarification of points or positions. **Negotiation via email is strictly prohibited.**
- **Exercise Schedule:** Adherence to the exercise schedule will be strictly enforced. Negotiation sessions between teams can only take place during the scheduled initial Bilateral and follow-on Ad Hoc Negotiation periods. Team Meeting periods are sacrosanct, as they are an important time for internal team communication, evaluation/reevaluation of positions and interests of the other teams, consultation with team mentors, scheduling negotiation sessions, and establishing talking points for the next round of negotiations.

Conduct of the Exercise

During the exercise participants should remain in role throughout. While negotiation proceedings and team meetings are confidential, all conversations in common or public areas are subject to intelligence collection.

On Thursday, 9 July, after the Breakfast Buffet and Registration, all participants will gather by team for followed by an **Opening Plenary Session** chaired by the ASEAN Secretariat representative. **Each Head of Delegation should be prepared to make an opening statement at this time, if called upon to do so.** Once the plenary session ends the delegations will move to their team rooms to confer with their mentors and prepare for the first round of negotiations. The first negotiation period consists of pre-scheduled bilateral negotiation sessions (See the Bilateral Negotiation Session Schedule). This is the only round of negotiations that are prescribed; thereafter all negotiation sessions will be Ad Hoc. The day ends with each team conducting an internal review of the day's proceedings led by their mentor.

Friday's session begins with a Breakfast Buffet in Thomson Hall, followed by a Team Meeting period and the resumption of negotiations sessions. At 3 p.m. teams will assemble for a formal **Closing Plenary Session, a final multilateral negotiation session presided over by ASEAN Secretariat representative.** The format of the this last negotiation session is at the discretion of the ASEAN representative; however, it is likely that each team will be accorded a few minutes to brief their current positions in the negotiation process, provide an assessment of the opportunity to reach a settlement of the crisis, and state what additional efforts would be required to bring about a peaceful settlement. **Formal instructions for the conduct of the closing plenary session will be provided to each team via email.** After the plenary session ends there will be a short break before reconvening a group After Action Review of the exercise led by Colonel Clausen, which will close out the exercise.

International Strategic Crisis Negotiation Exercise

July 9th & 10th, 2015

Henry M. Jackson School of International Studies, University of Washington

EXERCISE SCHEDULE

Wednesday, 8 July

Time TBD ISCNE Exercise Introduction & Orientation Thomson Hall, Room TBD

Thursday, 9 July

7:30-8:00 a.m.	<i>Breakfast Buffet and Registration</i>	<i>Thomson Hall, Room TBD</i>
8:00-8:30	<i>Opening Plenary Session</i>	<i>Room TBD</i>
8:30-9:30	<i>Teams Prepare for Negotiation Sessions</i>	<i>Team Rooms</i>
9:30-10:00	<i>Bilateral Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
10:00-10:45	<i>Team Meeting</i>	<i>Team Rooms</i>
10:45-11:15	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
11:15-12:30 p.m.	<i>Lunch</i>	
12:30-1:15	<i>Team Meetings</i>	<i>Team Rooms</i>
1:15-1:45	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
1:45-2:30	<i>Team Meetings</i>	<i>Team Rooms</i>
2:30-3:00	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
3:00-3:45	<i>Team Meetings</i>	<i>Team Rooms</i>
3:45-4:15	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
4:15-4:30	<i>Internal Team After Action Review w/ Mentors</i>	<i>Team Rooms</i>
4:30 p.m.	<i>End of Day One</i>	

Friday, 10 July

7:30-8:00 a.m.	<i>Breakfast Buffet</i>	<i>Thomson Hall, Room TBD</i>
8:00-8:45	<i>Team Meeting</i>	<i>Team Rooms</i>
8:45-9:15	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
9:15-10:00	<i>Team Meetings</i>	<i>Team Rooms</i>
10:00-10:30	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
10:30-11:15	<i>Team Meetings</i>	<i>Team Rooms</i>
11:15-11:45	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
11:45-1:00 p.m.	<i>Lunch</i>	
1:00-1:45	<i>Team Meetings</i>	<i>Team Rooms</i>
1:45-2:15	<i>Ad Hoc Negotiation Sessions</i>	<i>Negotiation Rooms & Team Rooms</i>
2:15-3:00	<i>Team Prep for Closing Plenary Session</i>	<i>Team Rooms</i>
3:00-3:45	<i>Closing Plenary Session</i>	<i>Room TBD</i>
3:45-4:30	<i>After Action Review</i>	<i>Room TBD</i>
4:30	<i>Exercise Concludes</i>	

International Strategic Crisis Negotiation Exercise

COMMUNICATION GUIDELINES

The communication system for this exercise is employed to:

- 1) Facilitate the request, coordination and scheduling of all Ad Hoc Negotiation Sessions
- 2) Facilitate communication (Diplomatic Communiqués) with each team's national leaders (Foreign Minister or Secretary of State)
- 3) Facilitate specifically limited types of communication between each team (Coordination of texts of potential agreements, joint diplomatic statements, or joint press releases)
- 4) Facilitate the vetting and release of press releases

Each team will be provided its own team Gmail and team specific web page. The Gmail and team specific web page share the same password for simplicity of log on management. Each team has a designated Communications Officer. Once in your team room, that person should login to <https://www.gmail.com> (to log into the team specific email) and <http://www.csl.army.mil/iscne/Login.aspx> (to log into the team specific communicator web page) in order to establish communications with the United Nations Control Group (UNCG) as soon as possible.

There are three email addresses for the USAWC control staff:

- ❖ uncg.usawc.iscne@gmail.com (All administrative questions)
- ❖ communiques.usawc.iscne@gmail.com (Official government communication)
- ❖ media.usawc.iscne@gmail.com (Press releases)

TEAM COMMUNICATOR RESPONSIBILITIES:

- Compose and submit all diplomatic communiqués, press releases, and inter-team messages (via the Gmail account).
- Compose and submit all Ad Hoc negotiation requests (via the team specific communicator web page).
- Monitor all communications and keep your team informed.
- Advise team when actionable items are received.
- Maintain situational awareness of all outstanding requests/requirements. Keeping a log is recommended.
- Act as team timekeeper. Each team meeting period is only 45 minutes long. The timekeeper's responsibility is to watch the clock amidst discussion and debate, and remind your team of when decisions need to be made.

MESSAGING:

- **Communiqués to a Country Team's National Leadership:** The purpose of these messages is to allow inquiries or requests for additional information, clarification, or a shift in policy from a negotiation team's national leaders. These messages will be answered as quickly as possible. Send to: "Foreign Minister" or "Secretary of State" at communiques.usawc.iscne@gmail.com
- **Press Releases:** Press releases must be sent to the media cell for evaluation and release. Teams are not allowed to distribute these on their own. Send to "Media" at media.usawc.iscne@gmail.com

- **Inter-Team Communication:** Teams are **restricted** in their communication with each other. The **only** allowed communication is for administrative or technical purposes, such as clarification of points from a previous negotiation session, exchange of texts of agreements, diplomatic statements or coordination of joint press releases. Teams **MUST** cc their Foreign Minister or Secretary of State at communiques.usawc.iscne@gmail.com for evaluation.
NEGOTIATION VIA EMAIL IS NOT PERMITTED.
- **Scheduling Ad Hoc Negotiation Sessions:** During the exercise each negotiation team shall use the team specific web page (<http://www.csl.army.mil/iscne/LogIn.aspx>) to request, accept, or decline all Ad Hoc negotiation sessions. Once all invitees have accepted, a room will be assigned through the system. It is recommended to keep positive situational awareness of this system for meeting request and room assignments as it refreshes every 3 seconds.

** Note: Initial "Requests to Negotiate" should be submitted through the team communicator page no less than 10 minutes prior to the start of the requested negotiation period. Requests to negotiate will be accepted up until 5 minutes prior the start time but risk not being processed in time by all participants.*

❖ **Requests for Ad Hoc Negotiation Sessions:**

- After logging into the team specific web page, go to the "**NEGOTIATIONS**" tab, select the team(s) to have a negotiation session with (**using the brevity code: CN, JP, etc.**), select the time (**15 or 30 minute blocks**), craft a purpose (optional/not required), and select the "**SUBMIT**" button.
- Once "**SUBMIT**" is selected, your "**INVITATIONS SENT – NOT YET CONFIRMED BY CONTROL**" area will populate with the meeting details.
- Ad Hoc negotiation sessions awaiting your response (invitations from other teams) will reside in the "**INVITATIONS RECEIVED – WAITING ON YOUR RESPONSE**" area of the communicator web page. You have the option to "**ACCEPT**" (which then you will wait for all teams to accept the request and/or the assignment of the negotiation space), "**DECLINE**" (which will immediately stop the request from proceeding any further), or "**IGNORE**" (this feature is for your situational awareness and will not do anything with the request, it is only a place marker for to assist in remembering that your team did not ACCEPT or DECLINE the request, you may go back and ACCEPT or DECLINE at another time, before the current team meeting session concludes.)
- Once a team meeting sessions (45 minutes) has ended, the request for negotiations tools will no longer be visible. The "**ALL MEETINGS REQUESTED/RECEIVED THIS SESSION**" is the only view. This view will assist the team in understanding where the negotiation meetings are taking place and which meetings were "**DECLINED**" or "**IGNORED**."

MESSAGE GUIDANCE:

- Once all negotiation teams have accepted an Ad Hoc Negotiation Session the UNCG will assign a negotiation space and all parties will receive information via the team specific web page in the "**ALL MEETINGS REQUESTED/RECEIVED THIS SESSION**."
- ❖ **ONLY** when a room is assigned is a negotiation authorized. If an Ad Hoc session is accepted the session **MUST** occur. Teams may choose to walk out of a scheduled session at any time but they must show up.
- ❖ If a negotiation request is declined, a **NEW** request may be submitted with the same parties for a different time period if desired.
- ❖ If a team does not respond to a request the negotiation session **WILL NOT OCCUR**. For multilateral requests the requestor will not know who did not respond. Teams may use this as a tactic for their particular purposes.

- If teams agree to a future negotiation session, during an Ad Hoc session, UNCG suggests that one team is designated as the “Request to Negotiate” initiator. Often both teams send requests and neither accepts the other’s request. Without acceptance and a room assigned this type of “pre-planned” session **WILL NOT OCCUR**. If both teams accept the other’s request then two Ad Hoc sessions will be scheduled.

BREVITY CODES: Please use the following brevity codes:

- CN = China
- JP = Japan
- VN = Vietnam
- PH = Philippines
- IN = India
- US = United States
- ID = Indonesia
- ASEAN-S = ASEAN Secretariat (AMB Shields)
- BILAT = Bilateral Negotiation
- MULTILAT = Multilateral Negotiation

International Strategic Crisis Negotiation Exercise

BILATERAL NEGOTIATION SESSION SCHEDULE

Bilateral Negotiation Sessions, 9:30-10:00 a.m. (All sessions begin promptly at 9:30 a.m.)

<u>TEAMS</u>	<u>HOST</u>	<u>MEETING LOCATION</u>
United States & Japan	Japan	Japan Team Room
Vietnam & The Philippines	Vietnam	Vietnam Team Room
Indonesia & China	Indonesia	Indonesian Team Room
Japan & India	India	India Team Room
India & The Philippines	The Philippines	Philippine Team Room
United States & Vietnam	United States	U.S. Team Room
China & United States	China	China Team Room
Vietnam & India	Vietnam	Negotiation Room 1
United States & The Philippines	United States	Negotiation Room 2
China & Japan	China	Negotiation Room 3
Indonesia & Vietnam	Indonesia	Negotiation Room 4
Indonesia & The Philippines	The Philippines	Negotiation Room 5

U.S. (4), Vietnam (4), The Philippines (4), Indonesia (3), China (3), Japan (3), India (3)

INTERNATIONAL STRATEGIC CRISIS NEGOTIATION EXERCISE

SOUTHEAST ASIA

This exercise introduces and reinforces negotiations techniques and strategic decision-making in a scenario-driven gaming environment.

The scenario utilized for this exercise depicts a developing crisis in the Southeast Asian region (specifically the ongoing crisis over the South China Sea) in the Summer of 2016. The scenario's purpose is to provide a near real world situation and to set the stage for country team negotiations which is the primary action of the exercise.

The scenario is completely hypothetical and has been designed solely as an aid to achieve student educational learning objectives.

**All materials in this exercise are notional for educational purposes only.
There is no attempt to be predictive or reach a real world solution.**

The South China Sea Scenario

OVERVIEW

The local, regional, and international importance of the South China Sea (SCS) cannot be overstated. Its waters are home to approximately 10% of annual global fisheries catch; beneath its seabed, depending on which estimates you subscribe to, lay between 28 and 105 billion barrels of oil, and 4 to 5 trillion cubic feet of natural gas; and half of worldwide shipping transit its waters. It is the strategic link between the East and West, between the Indian Ocean and the Pacific Ocean, between Africa, the Middle East and Europe to the West, and Japan, the Koreas and the western approaches to the Americas to the East.



The map on the left shows the South China Sea with the PRC claim as a red dashed line and the UNCLOS 200 nm Exclusive Economic Zone allowances for each nation shown as a blue dashed line. The map on the right shows the PRC claim as a red line, and the individual SCS nation claims as different colored lines. See legend at bottom.

China, Vietnam, the Philippines, Brunei, and Malaysia all claim parts of the sea. The end of the Second World War (WWII) brought full independence to these nations and, given China's overarching claims within the Sea, each has sought to establish and enforce their own claims. Each SCS nation has scrambled to establish its claims through the placement of buoys, cement plaques or the erection of structures on each outcropping. More recently, China has temporarily placed energy exploration rigs within other nation's Exclusive Economic Zones (EEZs), conducted land reclamation projects in order to establish permanent bases or outposts and to enhance their territorial claims, and challenged overflight rights. This ongoing friction and seeming brinkmanship has increasingly led to raised tensions and conflicts. The major conflict dealt with here is between China, the Philippines and Vietnam, all of whom have come to blows several times within the Sea.

Over the past 4 years, four incidents are illustrative of the ongoing tensions:

- In April 2012, after a prolonged stand-off between China and the Philippines over illegal Chinese fishing around the Scarborough Shoal (Reef), China seized de facto control over the Shoal even though it sits within the Philippine EEZ (200nm limit).
- In June 2012, Vietnam passed a maritime law that mandated jurisdiction over the Paracel and Spratly Islands and declared that all foreign ships that enter these areas must notify Vietnamese authorities. China issued a strong rebuke, expressing its “resolute and vehement opposition” and calling for an “immediate correction” from Vietnam. Shortly thereafter, the Chinese announced the establishment of Sansha as a prefecture-level city on the Paracel’s Woody Island to administer the Paracels, Spratly’s and Macclesfield Bank, to be directly overseen by the central government. They also announced their intent to establish a military garrison on Woody Island.
- In May of 2014, China deployed a deep-water drilling rig into Vietnam’s EEZ near the Paracels, which triggered a face-offs and collisions between dozens of vessels from both nations during which a Vietnamese fishing boat was sunk. China withdrew the rig in mid-July.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

- In May of 2015, after Secretary of State Kerry broached the subject of Chinese land reclamation efforts within the SCS with the Chinese Foreign Minister, Mr. Wang stated that the “determination of the Chinese side to safeguard our own sovereignty and territorial integrity is a firm as a rock.”

The 2012 Association of Southeast Asian Nations (ASEAN) Annual Ministerial Meeting, chaired by Cambodia and held in Phnom Penh, failed to produce a concluding joint statement for the first time in 45 years due to failure to agree on a unified stance on China’s encroachment into the region, in part because Cambodia, in their capacity as the ASEAN Chair, denied the request of Vietnam and the Philippines to reference the SCS dispute, and specifically the conflict over Scarborough Shoal. Cambodia’s action was seen by some as an appeasement to China, its close ally. This was particularly upsetting to Vietnam and the Philippines who have endured the brunt of what they view as continued Chinese aggression. While subsequent ASEAN Ministerial Meetings have produced statements on the SCS question, it was not until 2014 that Chinese actions were specifically cited. While all ASEAN member nations seek to increase ASEAN’s influence, the SCS claimant nations have become frustrated at the association’s inability to achieve unity on matters concerning the South China Sea. A contributing factor is the divergent national interests of each nation, and regional interests, such as the divide between maritime and continental nations, that are seen as impediments to the advancement of significant multilateral positions or actions.



The problem addressed in this exercise is focused on: How to resolve the conflicting claims of sovereignty within the SCS between the Philippines, the People’s Republic of China and the Republic of Vietnam.

SOUTHEAST ASIA

Southeast Asia (SEA) is a region sandwiched into a part of the globe that, until the advent of sea travel, was little known and of little consequence to the rest of the world, yet, it is the home of some of the earliest known human habitation. For example, within what is now the nation of Vietnam archeological excavations have confirmed human settlements dating as far back as a half million years, placing them among the first recorded peoples on earth. The earliest external influences came overland from China and by sea from India. Over time, as European development extended to the maritime culture and nations began explorations well away from their own regions, the SEA began to come under European colonization. It was the withdrawal of western colonization, especially during the period immediately following the end of WWII, which allowed the creation of the independent states that makeup the region today.



In geographic terms, SEA can be generally defined as a collection of continental and maritime countries that are both defined and bounded by larger nations; China to the north, Australia to the southeast and India to the west. Continental countries within Southeast Asia are Myanmar, Thailand, Laos, Cambodia and Vietnam; while Maritime countries include Malaysia, Indonesia, Singapore, Brunei, the Philippines, and Timor-Leste.¹ The many islands in this region help

¹ Papau New Guinea is considered outside of the SEA region, even though it shares the island of New Guinea with Indonesia.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

create and define the natural separation of the Pacific and Indian Oceans. They also create natural chock points for sea-based lines of communication, especially for maritime-based trade between nations to the West (in Africa, Europe, South Asia) and to the East (the Asian nations of China, Japan, North and South Korea, and western approaches to the American continent). Central to this region is the SCS, a primary sea line of communication through which transits the world's second busiest sea lane.

Lying within the SCS are groups of very small, basically uninhabitable islands known as the Spratly Islands,² Paracel Islands, Scarburgh Reef and Macclesfield Bank. The largest group is the Spratly Islands, and their importance lies not in the islands themselves, but rather in what is thought to lie beneath them – major oil and gas reserves.

Since they are uninhabited, the Spratlys have never been officially recognized as part of any nation, yet each of the nations that border the SCS (Vietnam, the Philippines, Brunei, Malaysia, and China³) claim all or part of the islands. These claims mattered little before the discover of vast natural resources, but now each of these conflicting claims has gathered a growing importance; to the huge, burgeoning, and energy starved nation of China seeking sources of cheap, easily controllable energy supplies, as well as to the smaller, mostly poorer nations looking for the prosperity that the energy industry can provide. Another point of disagreement among all parties is whether or not some or any of these “islands” actually fit the legal definition of an island as spelled out in the United Nations’ Convention on the Law of the Sea (UNCLOS).

While seemingly a regional issue resolvable within the ASEAN, the implications are paramount for nations with both global reach and focus, such as the United States, Russia, and members of the European Union. It is also important to nations with an extra-regional focus, such as India, Japan, South Korea, and Australia, primarily in regards to freedom of navigation.

The essence of the problem is then two-fold: How to find an equitable solution to the various claims regarding to the SCS overall and the Spratly Islands in particular, and how to protect freedom of navigation through the SCS for all nations, primarily regarding maritime trade and naval right of passage.

BRIEF HISTORY AND CURRENT STATE OF THE SCS NATIONS

The development of Southeast Asia spans the course of human history and has been primarily influenced by two interrelated factors. The region’s earliest, primary influences that endure even today, is the migration of peoples into the region, in large part south from China and east from India. In more recent history, compounding the migration aspect is the socio-political tension between cultures and states spawning from post-WWII or post-Cold War independence after centuries of European conquest and colonization. These influences have had a profoundly lasting effect on today’s SEA nations, especially those who compete with China over their perceived rights within the SCS.

Vietnam

The history of the Vietnamese people can be traced back to almost the beginnings of human development. In early times, due to geographic constraints the Vietnamese people lived virtually unthreatened in the heart of their region, the Red River Valley (the northern portion of present day Vietnam). However, as civilizations advanced, foreign invaders soon conquered the Vietnamese: the Hans, Wus, Wei, Songs and Tang (Chinese) in the North and Indianized peoples in the central and southern regions. It was not until 939AD that the Vietnamese became powerful enough to reclaim their nation, albeit temporarily. The onset of internal feuds eventually provided an opportunity for China’s Ming Dynasty to re-conquer and annex Vietnam (1407), only to be forced out in 1418.

With the expulsion of the Chinese, and despite continued internal revolts, over the next 350 years Vietnamese leaders were able to extend their borders south. They conquered the once powerful Champa kingdom (central

² The Spratlys actually consist of shoals, atolls, reefs and sandbars. Some are permanently submerged, some are submerged at high tide, and some permanently above water.

³ Sitting at the northern edge of the South China Sea region, Taiwan mimics China’s SCS claims, however, since all ASEAN member states, in deference to the PRC, see Taiwan not as an independent nation but as part of the PRC, their claims are not recognized .

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

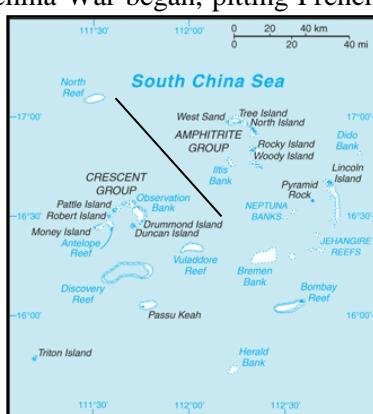
Vietnam) and then expelled the Khmer from the Mekong River Delta. By 1760, the Vietnamese had advanced beyond the Mekong to the waters that make up today's Gulf of Thailand, thus generally defining the present borders of Vietnam. Despite internal revolts that split the nation in half (1775), the nation eventually reunited under the Nguyen dynasty, which lasted until 1945.

European influence began in approximately 1516 with the arrival of Portuguese traders, followed by other European merchants and missionaries. Most of these missions eventually failed as the Vietnamese saw Christianity as undermining Confucianism. Catholicism, however, retained a foothold, and the Nguyen dynasty tolerated the Catholic faith for a brief period before beginning a brutal suppression. In response, the French, under Napoleon III dispatched a force in 1858 that eventually captured Gia Ding (Ho Chi Minh City) and most of the Mekong Delta. In 1873 they invaded northern Vietnam, and by 1886 had seized control of the entire country. Subsequent expansion into Laos and Cambodia led to the creation of what was known as French Indochina.

While the French "administered" Indochina, they left it to the Vietnamese emperors to rule their people, but under strict French oversight, which led to the exile of several Nguyen kings. By 1900, younger Vietnamese leaders undertook measures of modernization, designed in part to throw off French control – specifically in terms of education and politicalization. French suppression only served to increase radicalization. By 1930 Russian Communism was introduced and made significant inroads before being suppressed by the French.

During WWII, the Japanese seized Vietnam as they did most of Asia, but allowed the Vichy French to administer Indochina. It was during this time that Ho Chi Minh emerged as the leader of the Viet Minh. With the end of the war, a delay between the withdrawal of Japanese forces and the reestablishment of French control in Indochina created a power vacuum that allowed the Communist Vietnamese to seize power. In September 1945, under the leadership of Ho Chi Minh, Vietnam declared independence under the name of the Democratic Republic of Viet Nam (DRVN). Independence was shortlived; however, as Nationalist Chinese and British occupation forces seized control and lent their support to non-communist parties. Shortly after the return of French forces the First Indochina War began, pitting French and non-communist Vietnamese forces against the Communist Vietnamese supported by the Soviet Union. As the colonial era collapsed around them, the French tried to establish independent republics throughout Indochina, but their colonial death knell came with their defeat at Dien Bien Phu in 1954. Vietnam achieved independence under the provisions of the 1954 Geneva Conference, but as a divided nation. The renewed conflict, now between the Communist North and the U.S. supported democratic South, marked the beginning of the Second Indochina War, which lasted from 1954 through 1975, ending with the North victorious and the nation reunited under a communist regime. In 1974, with the Vietnamese enmeshed in the last years of civil war, China took control of the Crescent Group of the Paracel Islands after a brief battle with the South Vietnamese navy.⁴

After the war, the integration of South Vietnam proved to be disastrous, as the actions of the Communist government led to the death or exile of hundreds of thousands of people. In addition to its difficult transition, the new nation also had to deal with new threats along its border from the Khmer Rouge regime in Cambodia, which began to stage attacks into Vietnam. In retaliation, the Vietnamese army invaded Cambodia in 1978, deposed the Khmer Rouge regime, and occupied the country for the next ten years. The invasion provoked an eventual response from China, the Khmer proxy, who, in early 1979 staged a limited invasion into northern



⁴ China has controlled the Amphitrite Group portion of the Paracels since the end of WWII.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Vietnam. Vietnamese forces were able to defeat the Chinese, forcing them back into China. Vietnam's relations with the People's Republic of China have been tenuous ever since.

Additionally, the nation suffered through a severe economic collapse that lasted well into the 1980s. Frustrated by the poor state of the nation, reformers within the Communist party carried out a quiet revolution during the 1986 Sixth National Congress, replacing the "old guard" with new leaders. The new government, led by Nguyễn Văn Linh, embarked on a new direction, known as "Đổi Mới" (Renovation). A series of government reforms moved Vietnam away from Communist-style economic cooperatives to a "socialist-oriented market economy." While the government retained its Marxist-Leninist ideology and model of governance, changes in the economic sector were substantial. The government encouraged privatization of farms and small businesses and began the process of economic deregulation and the encouragement of foreign investment while still maintaining control over its strategic industries. Over time these reforms had the desired effect as the economy experienced rapid growth, raising the status quo of certain sectors of society. Unfortunately, economic growth bypassed many others, creating a new problem – social inequality.

In 1992, Vietnam adopted a new constitution which reconfirmed it as a communist nation, but it operated as a socialist state with a capitalist economy. In the last decade of the 20th century, as their economy began to recover, the collapse of the Soviet Union left them without their main ideological ally and hedge against China – the omnipresent "Dragon" who continued to loom over the "little Tiger" nations of SEA. Feeling isolated, Vietnamese leaders began to seek ways to both rebalance this threat and reestablish the nation as strong and independent. Leveraging their economic redevelopment in the 1980s, and the ideological about face of the 1990s, Vietnam reestablished relations with the United States and, under a new policy of "enmeshment,"⁵ became the first communist member state admitted into ASEAN. These new relationships soon proved fruitful in resolving the Kantan affair with China. This affair began in March 1997, when China began exploratory drilling in an area of the Tonkin Gulf claimed by Vietnam. In response Vietnam made its case against China within ASEAN and the U.S. PACOM Commander visited Hanoi. On 1 April China withdrew its vessels and agreed to resolution through consultation.

Vietnam in the 21st Century

Since the turn of the century, the Vietnamese government has been influenced by two ideological camps: the Anti-Imperialists, who seek communist solidarity and see the West as their enemy; and the Integrationists, who seek to balance China through expanded ties with the West. Favoring the Integrationist's position was the sustainment of significant economic growth (8% per annum); resolution of long standing disputes with the United States, which led to the grant of Permanent Normal Trade Status and WTO acceptance; election as one of the 15 non-permanent members of the UN Security Council for 2008-09; and enablement of the government to rebalance its overall relations within the region, and to some extent globally, allowing it to proactively pursue its national interests. With regards to China (as part of the Anti-Imperialist policy of solidarity between communist nations), they also pursued long-term stability through cordial, if quite deferential, bilateral relations. A hallmark of this approach was their settlement and demarcation of their mutual land border under terms quite favorable to China. Vietnamese leaders continued to try, and fail, to establish an ideological alliance with China.

In 2003 the new government of Nong Duc Manh shifted to a more pragmatic approach based on each nation's attitude toward Vietnam's goals, not its ideological affiliation. This shifted influence to the Integrationists with their policy of global balance and away from the policy of communist solidarity, which presaged an immediate improvement in U.S.-Vietnam relations. However, in 2006 government leaders shifted back to a tenuous balance between both polices and ideological camps.

While Vietnam's international foreign policies have continued to shift between approaches, its relations with China have continued to be deferential. However, China's active pursuit of increased relations with other SCS nations, either through ASEAN, as in the China-ASEAN Free Trade Area (CAFTA), or unilaterally, as in the

⁵ "Sino-Vietnamese relations will be meshed within the much larger regional network of interlocking economic and political interests. It is an arrangement whereby anybody wanting to violate Vietnam's sovereignty would be violating the interests of other countries as well." Nguyen Hong Thach, "Vietnam-China Ties: A New but Not Easy Era," *Business Times* (Singapore), December 31, 1992, quoted in Vuving, "Strategy and Evolution of Vietnam's China Policy," *Asian Survey*, Vol XLVI, No. 6, Nov-Dec 2006.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Sino-Philippine search for oil in the SCS, have left Vietnamese leaders fuming, but with little option than to join the agreements – to “bandwagon.” In Vietnam’s opinion the Sino-Philippine agreement violates the Declaration of Conduct, a non-binding agreement between the SCS states. Beijing’s pursuit of regional multilateralism, either within or outside of the ASEAN, only stokes Vietnamese fears of Chinese domination, especially given China’s burgeoning economic needs, growing military power, reach and influence. Despite, or because of, these fears deference remains Vietnam’s policy governing its relations with China.

However, Vietnamese deference has not translated to a resolution of its differences with China over their mutual maritime boundaries and claims in the SCS, issues that have proven much more difficult to resolve. While they reached an agreement on the definition of territorial seas and economic exclusive zones within the Tonkin Gulf, both nations continue to clash over issues involving the SCS and the Paracel Islands.

The maturation of Vietnam’s relations with China, the rest of the SEA nations, and other world powers began with its 1980s incursion into and occupation of Cambodia and resultant conflict with China. While the situation essentially proved to be a stalemate between Vietnam and China, it awakened the Vietnamese leadership to dangers associated with living with an ever growing dragon on their northern border, and that their nation stands in the path of Chinese expansion to the south. However, China is also Vietnam’s largest trading partner, with Chinese imports dominating Vietnamese markets. Chinese banks have granted significant loans and the government opened expansive trade deals that have provided a boost to Vietnam’s industrial and agricultural sectors; however, this also gives Beijing significant leverage, enabling Beijing to destroy the Vietnamese economy if they should choose. Yet, both China and Vietnam are fellow Marist-Leninist ideologues, and therefore have a unique relationship that allows their leaders to compartmentalize the different components of their relationships, in part through Vietnamese deference to China. Still, the Vietnamese populace and even some leaders are fundamentally anti-Chinese, never forgetting that for over half of its existence Vietnam was a vassal of China. Given the leverage that China holds over Vietnam, Vietnamese leaders have taken a cautious approach to Beijing given their recent aggressive actions in the SCS, and Chinese and Vietnamese leaders have both sought ways to calm the situation, in part by signing bilateral agreements (another acquiescence to China, as Hanoi would prefer to pull China into multilateral solutions and agreements through the ASEAN), and a recent agreement to set up a defense hotline between the two capitals.

According to Alexander Vuving,⁶ Vietnam’s current approach to foreign policy looks to four paradigms – realism (balancing), socialist internationalism (solidarity), interdependence (enmeshment), and asymmetry (deference). Balancing refers to both internal balancing in order to build government power and external balancing which refers to the building of international alliances. Deference is rooted specifically in its historic dealings with China, and as a Vietnamese government official once put it: “[W]e live adjacent to a big country; we cannot afford to maintain tension with them because they are next door to us.” While deference may well be seen as a policy of acquiescing to China as a superior adversary, as regards to Vietnam this policy has historically been paired with successful military resistance against Chinese forces, last demonstrated in 1979 when they ejected a Chinese invasion force. Solidarity applies first and foremost to fellow Marxist-Leninist states, which also supports balancing, in this case balancing Socialism against Imperialism. It also, to a great extent, applies to Vietnam as one of the SEA states, tied together as a regional block through ASEAN, balanced against China, the regional powers of Japan and India, as well as the United States. Enmeshment is discussed in at length in Enclosure 1 and requires little amplification here except to provide a Vietnam-specific spin to the concept. In that regard, Mr. Vuving notes:

Instead of seeking a great power to rely on, Hanoi must interlock the diverse interests of different actors into situations that are favorable for Vietnam. [Vietnamese] officials must even create new interests for the country’s opponents and then enmesh them in networks beneficial to it.

In part, this has led to a reopening of U.S.-Vietnam relations that places China on notice that Hanoi, along with most SEA states, and despite fundamental philosophical differences, support U.S. predominance in the region.

⁶ See Alexander Vuving, “Strategy and Evolution of Vietnam’s China Policy: A Changing Mixture of Pathways,” *Asian Survey* Vol. XLVI, No. 6 (Nov-Dec 2006): pp. 805-824.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Vietnam and the South China Sea

Vietnam and China's SCS claims overlap the most and they both claim more of the sea than any other country, which only adds to their natural rivalry. Given their disputes over the Paracels and Spratlys; competition over fishing rights that have led to numerous fishing boat seizures, most by the People's Liberation Army Navy (PLAN) of Vietnamese vessels; and aggressive at-sea encounters with Chinese naval vessels, Hanoi believes that Beijing would not hesitate to use force to settle sovereignty issues. The use of force has been prevalent over the past 30 years, as evidenced by the Chinese military's takeover of the southern Paracel Islands from the South Vietnamese government in 1974; the 1988 Johnson South Reef clash, which cost the lives of 74 Vietnamese; the 1992 Chinese seizure of 20 Vietnamese cargo vessels in response to Vietnam's landings on Da Luc Reef; incidents over conflicting oil claims in 1994, 1996 and 1997; and in 2005, when nine Vietnamese fishermen were killed and eight injured by the Chinese navy in the Gulf of Tonkin. Most recently, in May 2011, 120nm from the coast of central Vietnam a Chinese vessel crossed the stern of a Vietnamese survey vessel cutting its tow cable; and in June another Chinese ship became ensnared with the tow cables of another survey ship operating off the southern coast of Vietnam. Vietnam has also had disputes with the Philippines due to overlapping SCS claims, with the most notable occurring in 1998, when Vietnamese soldiers fired on a Philippines fishing ship near Pigeon Reef.

China has also made use of what might be considered coercive diplomacy to dissuade oil companies from signing contracts with the Vietnamese government. The most illustrative incident occurred around 2006 when Vietnam was looking to sign exploration contracts with several different oil companies – such as Chevron, BP, ConocoPhilips, and ExxonMobil – for blocks off the Vietnamese coast. The Chinese government made sure the companies were aware that these contracts would violate Chinese sovereignty. All but Exxon-Mobil withdrew their interest. For Chevron, once it abandoned its plans China awarded them a large natural gas concession in Sichuan province, at that time considered a significant opening to China.

Over a year ago, on 1 May, the Chinese towed a billion dollar oil rig into position just off of the Vietnamese coast guarded by a flotilla of some 80 vessels, some from the Chinese Coast Guard. The Vietnamese countered with their own armada of vessels to challenge the Chinese and force the removal of the rig. One of the Chinese vessels rammed and sank a Vietnamese fishing boat. This led to wide spread anti-Chinese demonstrations throughout Vietnam and the most significant crisis between the two nations in many years. The rig was withdrawn in late July after completing its operations.

Vietnam's Claim

Hanoi claims the entire Spratly Island area as an offshore district of Khanh Hoa province. They also claim the Paracel islands despite China's 1974 seizure and occupation of them. Taken together, their claim is bigger than any other claimant except China. Key foreign ministry statements and two authoritative White Papers from 1979 and 1982 outlined claims to all features of both island chains under four main historical arguments. A joint submission to the UN Commission on the Limits of the Continental Shelf (CLCS) with Malaysia in May 2009 defined 200-nautical mile EEZ limits derived from the mainland. Vietnam also maintains that its continental shelf extends past the 200nm limit and thus contends that the 350nm limit, under Article 76 of the UN Convention on the Law of the Sea (UNCLOS), should apply. Regarding the Spratly Islands themselves, Hanoi does not believe that any of them meet the threshold of an island under the UNCLOS definition (Article 121), and therefore do not have continental shelves or EEZs.

Vietnam provides several justifications for its sovereignty claims:

- First, Vietnam claims to have been the first country to discover and name the Spratly Islands, evidenced by their appearance in Vietnamese maps and books as early as the beginning of the 19th century.
- Second, it asserts its historical claims to the Paracels are supported by France's repeated statements in the early 1930s asserting sovereignty over the islands. The Vietnamese navy replaced French occupying forces following the Indochina war, and remained until China's illegal seizure of the Paracels in 1974.
- Third, Vietnam maintains that Japan's renunciation of all South China Sea islands in the San Francisco Treaty did not specifically return the territories to China.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

- Finally, control and administration of the Spratlys have continued unbroken through the Nguyen Dynasty, the French colonial government and the Republic of Vietnam. Currently Vietnam maintains garrisons on 22 geographic features within the SCS. These include the Spratly Island features of Spratly Island, West London Reef, Amboyna Cay, Pearson Reef, Namyit Island, Sand Cay, Barque Canada Reef, Southwest Cay, and Sin Crowe Island. Sin Crowe Island is home of their main military garrison, and the permanent military presence among these islands has grown to 1000 men.

The Philippines

Unlike continental Vietnam, the peoples of the maritime nation of the Philippines came to the islands some 67,000 years ago in primitive boats. The early history of settlement in the archipelago consisted of widely separate groups of peoples, “stratified into hunter-gatherer tribes, warrior societies, petty plutocracies and maritime-oriented harbor principalities which eventually grew into kingdoms, rajahnates, principalities, confederations and sultanates.”⁷ Seemingly each island became a kingdom unto itself. In those early centuries, Islam was the primary religion throughout the region. Western influence was introduced in 1521 when Magellan visited the islands, and the first Spanish settlers arrived in 1565. Spanish colonization expanded rapidly across the entire archipelago eventually consolidating the disparate island kingdoms into a single entity, thus founding the Philippine nation, named after King Philip II of Spain.

Spanish rule lasted for some 300 years, ending with their defeat in the Spanish-American War in 1898. During their rule, Spanish rulers introduced and established western rule of law, firmly established Catholicism as the national religion, built modern infrastructure, and established western education systems and the first universities in Asia. Following French rule, instead of being allowed to become an independent nation, the Treaty of Paris, which ended the Spanish-American War, transferred possession of the Philippines to the United States. The Filipinos, who had established their own government during the war, subsequently declared war on the United States in June of 1899. The Philippine-American War was a brief but bloody affair, causing the death of some one million Filipinos, mostly civilians. It ended with the defeat of Philippine forces and the capture of the Philippine president. The United States declared an end to the war in 1902; however significant clashes with rebel elements continued to occur until 1913.



The United States formed a military government in 1898, and then established a civilian government in 1901. The Philippines became a commonwealth in 1935, with the promise of full independence ten years later. With the outbreak of WWII, the Philippines came under Japanese occupation, but independence was finally realized following the end of the war under the Treaty of Manila, which established the Philippines as a democratic nation.⁸

The newly independent Philippines, known as the Third Republic, remained heavily dependent on the United States in terms of its economy and economic development. It faced a growing Communist-supported rebel insurgency in the north (the Hukbalahap guerrillas in Luzon) and a Communist-supported Islamic insurgency in the south (the Moro National Liberation Front [MNLF] on Mindanao). Over the years, succeeding administrations had differing priorities and levels of success, but the democratic process operated smoothly, with peaceful transfers of power. Despite some external successes, such as the Philippines becoming a founding member of ASEAN in 1967, internal corruption continued to grow within the houses of national power, which would soon prove problematic.

⁷ “History of the Philippines,” Wikipedia

⁸ The agreement included a military assistance pact that included a 99-year lease covering specific military bases within the country.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

The election of Ferdinand Marcos in 1965 would mark the beginning of an era of instability within the country. Marcos' achievements in his first term allowed him to win a second term in office, a first for a Philippine president. However, legislative corruption and cronyism blocked many of his programs and national priorities. As a result, during his second term, economic growth slowed, crime increased, and MNLF guerillas continued to fight for the establishment of an independent state – a Muslim Mindanao. For these reasons, in September 1972 Marcos declared martial law and suspended the constitution. He closed the legislature, curtailed press freedoms and attacked his political opponents, many of whom were forced into exile.

The constitution was replaced in 1973 with one that changed the form of government from presidential to parliamentary, with Marcos retaining power. At the behest of the Catholic Church, martial law was finally lifted in January 1981, but Marcos retained extraordinary powers. Despite the political upheaval, the economy continued to prosper, yet corruption continued to grow virtually unabated. Marcos won reelection in 1973, but when opposition leader, Benigno Aquino Jr., was assassinated upon his return from a long exile, popular sentiment began to turn against Marcos. A series of events, along with pressure from the United States, culminated in a snap election in 1986 that pitted Marcos against Corazon Aquino, the wife of Benigno. The election results, as compiled by the Commission of Elections, gave Marcos the victory, but other official observers and the United States decried the results, which were protested by Aquino. When the military withdrew its support of the government Marcos was forced to cede power and go into exile. Corazon Aquino was sworn in on 25 February 1986, which began the Fifth Republic.

Aquino and the presidents that followed her were plagued by weak administrations, military coup attempts and continued insurrections. In 1991, a U.S. effort to broker a 10-year extension of military basing rights was rejected by the Philippine Senate, which led to the departure of all U.S. military from the country the next year. The withdrawal also saw the end of U.S. military aid, however the mutual defense treaty remained in place as did the designation of the Philippines as a major non-NATO ally. With the withdrawal of U.S. forces and aid, the Philippine military suffered greatly, as its budget remained well below those of its SEA neighbors. While the Philippine Senate saw the end of U.S. military presence as a logical outcome of the end of the Cold War,⁹ they did not anticipate the power vacuum the U.S. absence would engender and that a strengthening Chinese military would soon fill it, especially within the SCS. This became shockingly obvious in January of 1995 when a Philippine air patrol discovered that the Chinese navy had occupied and erected structures on Mischief Reef, 130 miles from the Philippine coast, well within the Philippine Exclusive Economic Zone (EEZ). Philippine leaders protested, but were helpless to force a Chinese departure. The next year three PLAN warships engaged a Philippine naval patrol boat in a 90 minute gun battle. Given clear Chinese aggression the Ramos government oversaw passage of the Armed Forces of the Philippines (AFP) Modernization Program – as Philippine Senator Orlando Mercado noted: “We have an air force that can’t fly and a navy that can’t go out to sea.” In 1999, after the Chinese expanded their Mischief Island structures, the United States and the Philippines signed a Visiting Forces Agreement allowing U.S. forces temporary, pre-coordinated visits to Philippine ports and bases.

The Philippines in the 21st Century

Despite ongoing domestic insurgency, the Philippine nation has enjoyed stable government, continuation of reforms, and a burgeoning economy (2012 was one of the best years on record, with growth surpassing most other SEA nations).

Under the provisions of the 1995 AFP Modernization Program, the Philippine military, especially its navy, has continued to grow and modernize. Current naval structure consists of seven operational commands and a Fleet Marine Ready Force. Continued modernization was encapsulated in the Capability Upgrade Program (CUP), under the Philippine Navy Strategic Sail Plan 2020. Also in 2012, as part of the U.S. “Rebalancing to the Pacific” strategy, both governments concluded an agreement that allowed the return of U.S. naval forces to Subic Bay on a semi-permanent basis. During the 3rd Philippines-United States Bilateral Strategic Dialogue, in December 2012, an agreement was concluded to significantly increase the rotation of U.S. forces through

⁹ Prior to the U.S. departure, Russia had abandoned their naval base at Cam Ranh Bay, Vietnam; and Vietnam had withdrawn its forces from Cambodia, thus the U.S. withdrawal ended all foreign military presence in the SEA.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Philippine bases,¹⁰ and establish a five-year joint military exercise plan. This drew immediate condemnation from China, but the United States countered that the basing agreement was driven by humanitarian concerns given the number and severity of natural disasters that occur in the region.

Regarding recent relations with China, the administration of Gloria Macapagal Arroyo was known to favor increased economic ties with China over challenging Beijing's SCS claims. However, this slowly began to change after Benigno Aquino III took office in June of 2010. At first he maintained the appeasement strategy he inherited from the Arroyo administration, but he eventually became apparent that a continuance of this strategy only benefited Beijing while doing little to mollify China's aggressive behavior. The turning point seemed to be the March 2011 harassment incident near Reed Bank, located well within the Philippine EEZ. Since then the Philippine government has taken a more aggressive tack in its dealings with China.

The Philippines and the South China Sea

Since the end of WWII the Philippines, in one form or another, have explored, occupied and exploited the islands within the SCS, and have become increasingly aggressive in efforts to justify its claims. In 1971 they sanctioned drilling in the area off of Reed Bank. They began to occupy other islands: Nanshan, Flat, West York, Northeast Cay and Thitu in 1974; Lankiam Cay and Loaita Island in 1978; and Commodore Reef. Beginning in 1994 they established lighthouses on Nares Bank, Mary Louise Bank, Seahorse Banks and Jackson Atoll, for the most part to help establish a legal basis for territorial and claim baselines.

Since the mid-1990s there have been several significant incidents between China and the Philippines within the region. The first and most famous incident occurred in 1994, when the Chinese navy, knowing that the Philippine navy does not patrol during the monsoon season, erected structures on Mischief Reef, which China claimed were shelters for fishermen. The reef is situated only 130 miles west of the Philippine island of Palawan, well within Manila's internationally recognized 200nm EEZ. While the Philippine government protested, it did not destroy the structures in order to avoid escalation. In 1996, their navy's engaged in a 90-minute gun battle near Campones Island. Two years later the Chinese navy clashed with Philippine fisherman near Scarborough Reef over markers the Chinese had placed there. The Philippine government also claimed that China had planted buoys in Sabina Shoal, a reef just 70 miles off of Palawan. In 1998 China expanded its structures on Mischief Reef, emplacing antiaircraft guns and satellite communications, and constructing a helipad.

After over a decade of relative calm, the Aquino administration began to take umbrage against what they felt were a continued pattern of aggressive Chinese actions. Key was the March 2011 incident near Reed Bank, where two Chinese patrol boats harassed an unarmed Philippine Department of Energy survey vessel. Another serious incident occurred in April 2012, near Scarborough Reef, when the Philippine Navy attempted to seize 8 Chinese vessels fishing illegally, but was prevented from doing so by the intervention of two Chinese maritime surveillance ships. In response, the Aquino government has increased its patrolling and stationing of maritime and aviation forces along its west coast and on the Spratlys themselves,¹¹ bolstered its acquisition of patrol craft, and renamed the South China Sea as the West Philippine Sea. Beijing's response has been to increase patrols of its own and up its level of rhetoric. In early June, Beijing told the Philippine government to stop "harming China's sovereignty and maritime rights and interests, which leads to unilateral actions that can expand and complicate South China Sea dispute." This was in reaction to a Philippine protest against China's announced plans to construct an oil rig deep within the Philippine EEZ. China went on to declare that Manila must ask Beijing's permission before conducting oil exploration activities, even within the Philippine EEZ.

Given China's aggressive acts, in late January 2013, the Philippine government decided to formally challenge China's SCS claims before the UN tribunal that oversees UNCLOS, stating that China's claims are unlawful. However, Beijing's response has been to ignore the Philippine action, and since the tribunal requires negotiations between the claimant parties in order to settle the dispute, no action has taken place.

¹⁰ The bases are Subic Bay and Subic Bay International Airport.

¹¹ Currently Philippine military presence is second only to that of Vietnam, yet estimates vary widely as to how many military personnel are actually stationed among the islands posts, ranging from 1000 to as few as 50.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

In the spring of 2014 the Philippine government lodged a protest with China and later with ASEAN and the UNCLOS Tribunal that accused China of a land reclamation project on Johnson South Reef, which Manila believes could be the precursor toward construction of an airstrip on the disputed atoll. Such Chinese land reclamation projects were seen at several other SCS atolls. The 2015 CSIS report on China's dredging operations included operations at Mischief Reef, and included ongoing or finished reclamation projects on Fiery Cross, Subi and Johnson South Reefs. These operations have alarmed not just Manila, but all claimants to the SCS and the other nations involved in the region.

The Philippines Claim

The area, which Manila calls the Kalayaan Island Group, was first claimed in 1956 by a Filipino citizen, Tomas Cloma. In 1974, he transferred the deed to the Marcos government which declared them part of Philippine territory in a 1978 presidential decree. In 2009, the Philippine congress passed legislation to revise the baselines to comply with international law. The act claims the Kalayaan Islands Group (containing most of the Spratly Islands) and Scarborough Reef (also claimed by China), which are beyond the Philippines' archipelagic baselines (though most do fall within the UNCLOS mandated 200nm EEZ), are part of the Philippines under the "Regime of Islands" doctrine contained in UNCLOS.

Thus, the Philippine government claims virtually all of the Spratly Islands (some 50 features), under the name Kalayaan Island Group, plus Scarborough Reef to the north, all of which are within the West Philippine Sea (South China Sea). The majority of the Spratly Islands and Scarborough Reef do fall within the 200nm EEZ limit prescribed under UNCLOS. Manila's justifications of its claims are based on five arguments:

- The islands are adjacent to or contiguous with the main Philippine islands.
- The Spratlys and Scarborough are part of the Philippine's continental shelf
- The region is economically vital to the nation and strategically key to Philippine security.
- The area was *res nullius* (abandoned) after WWII. They justify this claim by noting that after WWII the Spratly Islands and Scarborough Reef were "de facto under the trusteeship of the allied powers" thus nullifying previous claims of ownership, and abandoned after the signing of the 1951 San Francisco Peace Treaty.
- Recent Philippine occupation of certain islets gives it title either through discovery or "prescriptive acquisition."¹²

Indonesia

Indonesia is the largest nation within the SEA and in ASEAN, and besides having EEZ and territorial claims in the southern portion of the SCS, the sea lanes that transit to the Indian Ocean all enter and exit between the islands of this archipelago.

Today's Indonesia has emerged from a troubled past as a thriving, democratic, Islamic nation made up some 238 million people – the world's fourth most populous nation. However, once it gained independence after WWII, the nation suffered for years at the hands of authoritarian rulers, through economic turmoil, natural disasters, and restive regions seeking separation. Sukarno, a charismatic figure, led the new nation from 1949 until 1969. Over that time he moved the nation from a parliamentary



¹² Prescriptive Acquisition: By law a continuous user as of right for the past 20 years or more will raise a presumption of user since time immemorial. It is not necessary to prove use stretching back past 20 years, providing those years are verified. But the presumption can be rebutted by showing that since time immemorial the right could not or was not executed.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

democracy to his own form of government – Guided Democracy – that accommodated a growing communist movement, embodied in the Communist Party of Indonesia (PKI). Over time PKI grew to become the largest Communist party outside of China and the Soviet Union, and with the tolerance of Sukarno its influence began to permeate the Indonesian nation. However, in 1965, a failed coup against Sukarno blamed in part on the communists, spurred a major anti-communist backlash that caused the death of an estimated half-million people, forced the PKI to become outlawed, and imprisoned 1 million communists; essentially destroying the communist movement, Sukarno's Guided Democracy, and eventually Sukarno himself.

A weakened Sukarno was forced to transfer power to the military. General Suharto formally took control in 1969, ushering in the era called the “New Order.” During this time Indonesia enjoyed substantial economic gains, and also absorbed Papua New Guinea and East Timor, yet all this happened under a fundamentally corrupt government that lasted almost thirty years. The fall of Suharto in 1998 is traced from events starting in 1996, when forces opposed to the New Order began to rally around Megawati Sukarnoputri, head of the Indonesian Democratic Party (PDI). When Suharto attempted to have Megawati removed as head of the party, student activists loyal to Megawati occupied the headquarters of PDI in Jakarta. The demonstration was broken up by the Indonesian military on 27 July 1996, an event remembered as Black Saturday.

These actions, along with increasing concerns over human rights violations in Indonesian-occupied East Timor, began to unsettle Suharto's normally friendly relations with Western nations. These further worsened for Suharto when the 1997 Asian financial crisis reached Indonesia, which helped expose the corruption of the New Order. Despite being approved by parliament for a 7th term in 1998, Suharto resigned in the face of nationwide protests and the loss of support from his own party and the military.

Suharto was replaced by his deputy Jusuf Habibie, who took measures to put the country back on the road to economic recovery and democracy. However, persistent economic malaise, internal struggles with separatist forces, terror attacks, an activist parliament, and continued popular protests forced several changes in the government as the nation ventured into the 21st century. In 2004, Susilo Bambang Yudhoyono won Indonesia's first direct presidential election and was re-elected in 2009. He was followed in 2014, by the election of Joko Widodo, the governor of Jakarta.

Today, Indonesia is a healthy democracy enjoying a vibrant economy and relative internal peace, although there are concerns about active remnants of militant Islamic organizations, like Jemaah Islamiyah. As the founding member of ASEAN, Indonesia primarily seeks to ensure the continued strength and relevance of the organization. It supports the crafting of a comprehensive solution to the SCS situation through the multilateral efforts of ASEAN. However, there are certain fissures within the organization that complicate and, at times, frustrate their efforts. The failure of ASEAN in both 2012 and 2013 to issue joint resolutions on the status of the SCS are blamed in part on the lack of emphasis given to the problem by Cambodia, a close ally of the PRC, and by Brunei, who has strong economic links with China.

Indonesia's Claim

Indonesia claims a modest portion of the SCS. Its claim extends only to its 200nm EEZ which does not include any land formations, as its northern extent does not encompass any land formations within the Spratly Islands area. The EEZ claim does however intersect with the Chinese nine-dashed line claim, and encompasses the West Natuna gas field. In contrast to their SCS neighbors, relations between Jakarta and Beijing are very cordial. Within what might have been a contested region, the two nations conduct natural gas extraction operations under mutually cooperative agreements.

People's Republic of China

China has a long and complex history. For the purposes of brevity this look at the history of China will begin with the 1368 emergence of the Ming Dynasty which ended Mongol rule. Always a huge but often an insular nation, during the early Ming Dynasty China was open to foreign trade and external contacts with Japan, maritime Southeast Asia, India, extending as far as the east coast of Africa. However, their economic base rested less on external commerce and more on internal revenues from their agricultural sector. Changes in agricultural

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

policies ended the feudal system and private slavery, with large land estates confiscated and rented out to the peasant class who became the predominant landholders.

The autocratic emperor ran a strong, complex government; however government inflexibility contributed significantly to its eventual decline and downfall. The regime built a huge army (1-1.9 million men) and navy. Their forces conquered and held Vietnam for 20 years. Several nations sent tributes to the emperor to help ensure that China stayed out of their affairs. During these years the Grand Canal was expanded, the Great Wall and the Imperial Palace in the Forbidden City were completed, and the potential of South China fully exploited.

The end of the Ming Dynasty came in 1644 with the rise of the Qing Dynasty, the last Chinese dynasty. The Qing Dynasty was formed by the Manchus – non-Han Chinese – from northeast China. Their conquest of the Ming's was bloody and costly, essentially a disaster that radically shrank China's economic sector. However, the Qing's adapted to the conventional Chinese way, accepting Confucian norms and traditional forms of government. Over the length of the dynasty, which lasted until 1911, China became the world's largest empire – home to approximately one third of the world's population – and the world's biggest economy. However, militarily it remained weak. They lost Hong Kong to Great Britain as part of their defeat in the First Opium War (1840). Internally, China endured numerous rebellions, beginning with the Taiping Rebellion (1851-1864), followed by the Punti-Haka Clan Wars, Nien Rebellion, Muslim Rebellion, and Panthay Rebellion. These claimed millions of lives, wreaked havoc on the economy (just as Europe and America were transforming their economies as part of the Industrial Age boon), and helped set the stage for the eventual downfall of the dynasty. The Qing rulers tried to strengthen their government, especially the military, through the institution of reforms, but internal disputes and corruption blunted their efforts. The Chinese navy's defeat in the Sino-Japanese War (1894-1895) initiated another attempt at reform, but that effort was blocked by a military coup. At the turn of the 20th century, the Boxer Rebellion threatened the empire. The Boxers were defeated; however, not by Chinese forces, but by the Eight Nation Alliance (a combination of forces from the United States, Great Britain, France, Japan, Russia, Italy, Germany and Austria), sent to rescue their besieged foreign missions. The Revolution of 1911, inspired by the ideas of Sun Yat-sen, finally ended the Qing Dynasty.

Sun emerged as the leader of the new government, but ceded control to the last Qing Prime Minister, Yuan Shikai, in order to ensure a peaceful transition. Much to Sun's regret, Yuan set about creating his own empire, naming himself emperor in 1915, but faced with an internal revolt he abdicated in 1916. The dissolution of the Yuan government, with no viable replacement or leader, laid China open to the "Warlord Era." For the next twelve years the nation was split among regional coalitions that took turns "ruling" the country. The terms imposed on China by the Treaty of Versailles at the end of WWI generated a political and philosophical response called the "May Fourth Movement." It matured into a degradation of western philosophy and the initialization of radical lines of thought, which eventually led to the left and right divide within China that has dominated that nation ever since.

During the 1920s Sun finally reemerged as a formidable Chinese leader. With the aid of the Soviet Union, and allied with the Communist Party of China (CPC), he undertook to reunify the nation. After Sun's death in 1926, Chiang Kai-shek seized control of the Kuomintang (Nationalist Party) and, by 1927, had brought most of China under his control through the Northern Expedition military campaign. Not the ally of the CPC that Sun had been, he then turned his forces on them and chased them from southeast China into the desolated northwest, in what was known as the Long March (1934), during which Mao Zedong emerged as the new communist leader.



NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

As the Chinese civil war continued, the Japanese took advantage of the situation and began conducting military incursions into Chinese territory, beginning in 1931. By 1937 it became clear to the CPC and the Kuomintang that the Japanese could only be defeated if they halted their civil conflict and combined their forces. Thus began the Second Sino-Japanese War, a subset of WWII, which concluded with the final Japanese surrender in 1945. Soon thereafter the Chinese civil war resumed, and by 1949 CPC forces had established control over most of the country, driving the Kuomintang across the strait to the island of Taiwan, where they established the Republic of China. On 1 October 1949 the communist People's Republic of China (PRC) came into existence, with Mao Zedong as its undisputed and essentially autocratic ruler.

Mao's efforts to transform his nation into a modern communist state were based on radical formulations that often caused more pain and suffering than advancement for the Chinese people and the nation. The Great Leap Forward, an economic and social plan, which reportedly cost some 45 million lives (most from starvation), was an attempt to rapidly transform the country from an agrarian economy into a modern communist society through the process of rapid industrialization and collectivization. The Cultural Revolution, launched in 1966, and based on internal power struggles and a fear of the Soviet Union,¹³ led to a major upheaval of Chinese society. Mao's goal was to reinforce communism by eliminating capitalism, and replace the traditional and cultural elements of Chinese society with Maoist orthodoxy. Key was the indoctrination of the nation's youth, in part through the creation of the Red Guard. There was also a massive purge of senior leaders who were seen as too capitalistic. Among the common Chinese people Mao became almost a deity. During the 1970s Mao began the process of warming relations with the West, most demonstratively through President Nixon's 1972 visit to China. The PRC was also admitted to the United Nations, replacing the Republic of China as one of the five permanent members of the UN Security Council.

Mao died in 1976, and the Cultural Revolution died during the power struggle that followed. The "Gang of Four" ultimately took the fall for the excesses of the Cultural Revolution, and Deng Xiaoping, who had been purged during the Cultural Revolution, outmaneuvered Mao's appointed successor and emerged as the de facto Chinese leader in 1978. Though never appointed to head the party or the state, his influence began the gradual process of change that would create the modern Chinese state, underpinned by the adoption of a new constitution in December of 1982. Economic reforms began to move the country toward western standards, beginning with socialism, but "Socialism with Chinese characters." While the change marked progress, for some, it would not come fast enough, especially the educated youth who staged months of protests in Tiananmen Square in 1989. However, that June their voices were silenced by army tanks.

Ongoing economic reforms coupled with disciplined governance and well-planned and executed leadership successions have allowed China to enjoy relative internal peace and a burgeoning economy, permitting the parallel development of a large military. China is once again a nation that wields significant international influence, and is a strong, imposing neighbor to the nations within the region, especially to those nations that stake claims within the SCS. Despite its size, Chinese territory holds little in terms energy reserves, thus making them heavily dependent on imports, which drives Beijing to acquire these resources from around the world.

The People's Republic of China in the 21st Century

At the turn of the millennium China's progress had allowed its leaders to evolve future foreign policy from one of traditional passivity – simply reacting to the world – to a proactive policy, an approach that would allow Beijing, over time, to shape the region and eventually the world in ways favorable to China. 2002 marked the once in a decade change in leadership. The installation of "fourth generation" leaders continued a government process initiated by Deng Xiaoping, one that ensures adherence to and the continuity of the nation's overarching Marxist-Leninist philosophy of governance combined with its Socialist economic policies. This continuity has allowed China to continue its rise as a superpower, both economically and militarily, but also ensured the

¹³ In 1960 the former allies split on their interpretations of Marxism, as demonstrated by their diverging philosophies – Maoism versus Marxism-Leninism – with Mao accusing Moscow of compromising fundamental communism in order to allow peaceful coexistence with the west, whereas Chairman Mao's philosophy was non-coexistence with capitalist western nations. Mao's anti-west philosophy would ease in the 1970s with the warming of U.S. relations, but that did not translate to relations with the USSR. The formal split ended in 1989 with the impending end of the Soviet Union.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

continuance of restrictions on personal and political freedoms. The symbolic high-water mark for Chinese prominence as a world-class power was the 2008 Olympic Games in Beijing.

As the economy continued its unprecedented growth, the People's Liberation Army (PLA) also continued its unparalleled expansion. Currently the PLA consists of 1.6 million active duty soldiers and 510,000 reservists. It is organized into 18 Army Groups stationed across the country, with most located along China's borders and across the strait from Taiwan. The PLA Air Force (PLAAF) consists of 400,000 personnel spread across bases within seven military regions, armed with bomber, fighter, reconnaissance, and transport aircraft. The PLA Navy (PLAN) consists of 255,000 personnel and is equipped with over 50 Submarines, 27 Destroyers, 51 Frigates, and over 250 fast attack craft. They have one aircraft carrier that came online in 2012, and is currently used for training purposes. The force is divided into the North, East and South fleets. The South Sea Fleet, based at Zhanjiang (Guangdong province), is responsible for the area stretching south of Hong Kong to the Vietnamese border, and has approximately 320 ships. Its importance is reflected in the fact that it has been building capability faster than the other two fleets, with the newest submarines transferred to the fleet's new base on Hainan Island. Given its location, this fleet is expected to have a primary role in power projection missions within maritime SEA. PLAN surface and subsurface vessels currently transit the SCS area on a regular basis. The PLAN also maintains one of the world's largest naval mine forces, able to conduct both defensive and offensive operations with modern rocket-propelled fast-rising and torpedo-armed mines.¹⁴

There should be no mistake in recognizing that the growth of China's military is an important aspect in what Chinese leaders see as the restoration of both their nation's proper place in the world, and of a proper global balance. If, when, and how they choose to employ their military will be indicative of just how China sees its role in the SEA and the world, and a demonstration of its true foreign policy aims. China continues with its general policy of patience and probing – taking a long-term approach toward national goals while simultaneously seeking to see if they can achieve some of those goals in the near-term. They have used a “velvet glove” approach to seek trust-building regionally and globally through a series of confidence-building measures and active engagement, some in the form of joint exercises, specifically with the British, French, Indian, Pakistani, Russian, Central Asian militaries and, in 2006, with the United States. In 2002 Beijing engaged NATO in strategic dialogue. Beijing also signed the ASEAN Treaty of Amity and Cooperation (TAC) in 2003, which led to peaceful regional relations for a time. However, regarding the SCS and other disputed areas, such as the Senkakus, the Chinese government has recently chosen to employ more aggressive and provocative acts.

Though Chinese foreign policy publicly espouses a philosophy of “Good Neighborliness,” it does not fully trust any of its neighbors, both those that share its borders and those more distant. It instead takes a relatively paranoid stance, examining the relations of all its neighbors, no matter how small or weak, for signs of intent for or against it. If China is to reclaim its rightful place as a world power, it needs to maintain its economic growth. This is, in part, dependent on securing necessary resources that remain external to China, which is presently being accomplished through aggressive commercial interactions with resource rich nations. However, Beijing's concerns about those opposed to, or afraid of, a strong, dominant Chinese nation who would seek to cutoff these imports by encircling China, continue to drive Chinese government development of the PLA.

China and the South China Sea

China claims first discovery of both the Paracel and Spratly Island groups during the later Han Dynasty (25-220AD) and followed by surveying missions, fishing and naval patrols throughout the region since the 15th century. Beijing formally restated its claims in 1883, and reached an agreement with the French government in 1887 to tacitly recognize Chinese sovereignty over the Paracel Islands. In 1909 a Chinese survey team raised a flag on Woody Island in the Paracels, and those islands were placed under local Chinese county control administered from Hainan Island. In the same year Japan recognized the Pratas Islands as Chinese territory.

However, the fall of the Qing Dynasty and ensuing internal struggles allowed other governments – primarily Japan, France operating from Indochina, and the United Kingdom – to exploit the Paracels, primarily for fishing and extraction of guano bird manure. It was not until the late 1920s under the unified government led by Chiang Kai-shek that China began to reestablish control over the Paracels. At that point a private survey of the territorial

¹⁴ Source: Jane's World Navies, accessed January 8, 2013.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

sea south and east of Hainan was conducted, but apparently did not extend to the Spratly Islands, as the published report stated that the Paracels were the southernmost point of Chinese territory. By the early 1930s China was in the midst of significant internal struggles, prosecuting a long civil war, which left the government unable to militarily defend their territorial sea claims, although they continued to try to do so diplomatically.

It was not until 1933, amidst surveys, landings, occupations and continued territorial claims by the French, British and Japanese governments (for Japan as early as 1917), that the Chinese government finally conducted a formal survey of the SCS. As documented and published in a *List of Place Names On Our Country's Southern Sea*, China laid claim to 132 features located throughout the SCS as Chinese territory. In 1935 a companion document, *Detailed Map of the Southern Sea Islands*, was published. It pinpointed all Chinese claimed territory, and extended China's claim all the way to James Shoal off the coast of Borneo, near the southern most point of the Spratlys. In 1948 the Nationalist government of China issued an official map of the SCS that used a U-shaped broken line encompassing virtually the entire Sea, which it claimed was derived of a 1914 eleven-dashed line map. That "cow's tongue" shaped, nine-dashed line continues to encompass China's claim.

In 1951, Chinese Premier Zhou Enlai issued a statement in which he declared Chinese sovereignty to the Paracel and Spratly Islands groups and maritime rights over their adjacent waters. Reaffirmed in 1958, China also began the process of codifying its claims thorough the passage of domestic legislation, which would harmonize China's legal procedures with those required by UNCLOS. Building on their 1958 positions, in 1992 China's National People's Congress (NPC) passed the *Law on the Territorial Sea and Contiguous Zone of the People's Republic of China*, within which article 2 identifies the Nansha (Spratly) Islands as Chinese territory. However, during the post-WWII years China was not in a position militarily to enforce their claims.

It was not until 1974, with their defeat of the South Vietnamese over Paracel Islands, that they declared themselves capable of defending their claims. It was not until 1987 that Chinese leaders felt that they were in a position to enforce their claims through actual occupation. That year they occupied nine vacant features, beginning with Fiery Cross Reef. This initiated a race with Vietnam to occupy the other reefs, which precipitated the clash at Johnson South Reef. China's military aggressiveness ended with the international political blowback they received due to their occupation of Mischief Reef. Their subsequent political retreat was manifested in agreement on a 1995 Code of Conduct with the Philippines. In 2002, China and the 10 members of ASEAN signed a *Declaration on the Conduct (DOC) of Parties in the South China Sea*, however the accompanying *Guidelines for Implementation* were not agreed upon until 2011, and the code is seen as more symbolic than substantive, the political statement "of intent" that China sought rather than a legally binding agreement. (See References for complete texts of both documents.) In 2005, China, the Philippines and Vietnam entered into a joint seismic survey agreement, but that lapsed in 2008 due to internal Philippine political discord over the pact.

China's internal legal agenda continued in parallel when, in 1998, the NPC enacted the *Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China* which claimed additional maritime rights beyond their 1992 law. In 2009, in response to Vietnam and Malaysia's submission to the UN Commission on the Limits of the Continental Shelf (CLCS) seeking to extend their continental shelves into the SCS past the 200nm limit, China submitted a *Note Verbale*, referring to the nine-dashed line and stating that: "China has indisputable sovereignty over the islands of the South China Sea, and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof." In 2011, China sent a second *Note Verbale* to the UN CLCS claiming that the Spratlys were fully entitled to be designated as located within Chinese territorial waters, with an EEZ and continental shelf of their own.

Chinese leaders see the SCS akin to the way the United States sees the Caribbean Sea, as a vital waterway that they must control in the name of national security. However, it is even more vital to China given the known and the potential resources that the SCS possesses. They seek to control the area and continue to defend and enforce its claims militarily, through continuous patrols and deployments; legally, through compliance with the provisions of UNCLOS regarding maintenance of claims; governmentally, through the designation and administration of the entire SCS region as part of Hainan province; and economically, through fishing and active energy exploration. While Beijing participates in multilateral forums, primarily ASEAN, they prefer to conduct

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

their diplomatic efforts on a bilateral basis where they can seem open to negotiated solutions, but, in reality, this approach tends to make it easier to defer reaching any resolution.

Within the Sea itself, China continues to press its claims through naval monitoring and outright intimidation, the periodic deployment of energy research and exploration vessels and equipment, and continued measures to alter existing natural geographic features to create man-made islands capable of becoming sustainable military outposts, such as their current, widely reported and documented land reclamation and building projects on Mischief, Fiery Cross, Gaven, Johnson, Hughes, Cuarteron Reefs, which include extensive construction of bases, ports and airfields.

China's Claim

China claims “indisputable sovereignty” over both the Spratly and Paracel islands and maritime rights over related waters in the SCS based on their nine-dashed line map, and justifies this claim on the basis of historical usage through survey expeditions, fishing activities and naval patrols dating at least as far back as the 15th century. As a contemporary basis for its claims, Beijing uses an August 1951 statement by Chinese Premier Zhou Enlai, in which he asserted sovereignty over the island groups. In 1958, China released a statement linking, for the first time, its territorial claims over the Spratlys and Paracels to maritime rights in the surrounding waters, and in their 2009 *note verbale* to the UN CLCS, further declared jurisdiction over waters surrounding islands in the SCS.

REGIONAL NATIONS

United States

History in the Region

Ever since the demise of the Soviet Union ended the Cold War, the United States has considered itself the world’s lone superpower. However, U.S. involvement in SEA had begun to lessen in the mid-1970s with their withdrawal from Vietnam, and reached its current low with the 1992 termination of basing agreements with the Philippines. While the United States maintained its forces stationed in the Pacific – in South Korea, Japan and Guam – their post Cold War focus tuned to the Middle East, initially with the First Gulf War, and then, following the terrorist attacks of 9/11, the Second Gulf War, the war in Afghanistan, and the ongoing war against terrorism. Once the United States withdrew from Iraq and with an end to the war in Afghanistan in sight, President Obama decided it was time to shift U.S. focus back to the Pacific, in part to deal with the ramifications of China’s continued rise as an Asian superpower. While successive U.S. administrations have held relatively consistent approaches to its relations with China, significant shifts in the global order, particularly with the downfall of the Soviet Union, have necessitated nuanced policy changes between the two countries.

From the creation of the post-WWII Chinese communist state until the election of President Nixon, U.S. policy was one of external containment and isolation combined with efforts to weaken the regime from within. After the defeat of the Chinese Nationalist forces by communist forces led by Mao Zedong, and especially with China’s involvement in the Korean War, the United States ensured its containment policy was strictly enforced. As far as the United States was concerned the PRC did not exist; that the true government of China was led by General Chiang Kai-shek on the island of Taiwan, which was also the only Chinese government recognized by the UN. The United States imposed a strict embargo on the PRC, sought additional Pacific alliances and added to its already established string of military bases to the east and south of China.

Over the last forty years or so, beginning when doctrinal differences between the Soviet and Chinese versions of communism became intractable, the United States has sought to strike an appropriate balance in its relations with China. At a time when power in Washington shifted from Democratic liberalism to Republican conservatism, the Sino-Soviet split provided the Nixon administration with an opportunity to reverse course on China, and perhaps through a new strategic alignment between Washington and Beijing, to counter what appeared to be an increasingly strong Soviet threat. The United States established relations with the PRC, and to the detriment of Taiwan allowed the PRC to replace it on the UN Security Council. However, in the end the desired grand alliance failed to materialize, and the two countries merely collaborated on certain lesser issues.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

The U.S.-PRC policy established by Nixon/Kissinger, and maintained by subsequent administrations, was strictly focused on cooperation between the two nations against the Soviet Union, which meant that China's internal affairs were strictly off limits. However, Tiananmen Square coupled with the Soviet collapse and subsequent end to the Cold War, helped usher in a new shift in U.S. policy toward the PRC. The policy became centered between continued engagement and a return to some aspects of containment – what some call “congagement” – but with the unstated goal of peaceful regime change in order to move China from an authoritarian communist state toward some type of liberal democracy.¹⁵

At the turn of the century it remained clear that China and the United States shared many of the same concerns, from unstable leadership in North Korea, to mutual economic well-being, terrorism, and nuclear proliferation. Additionally, China was becoming “entangled” in a series of regional and international agreements and organizations (such as its long-awaited entry into the World Trade Organization) that the U.S. hoped would increasingly move Beijing closer to western norms.

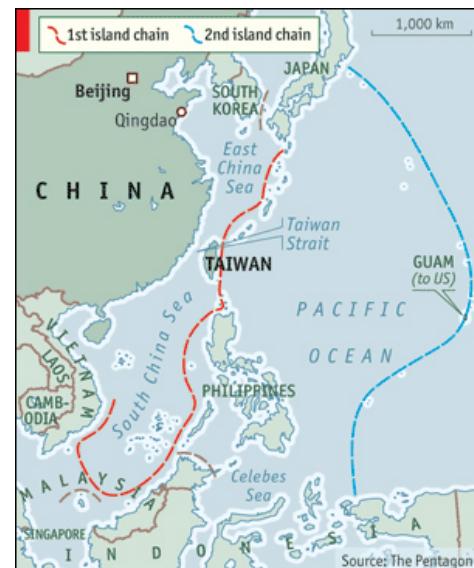
While the United States cannot deny China's ultimate rise, it hopes that Beijing will become a “responsible stakeholder.” However, at present, Beijing's vision of an ordered world, now often in line with that of the Russian Federation, often conflicts with U.S. interests and frustrates U.S. leaders. As part of Washington's efforts to help ensure the continued emergence of a responsible China, it has become increasingly involved with all nations in the greater Pacific region. As the Obama administration begins to execute its so-called “Rebalance to the Pacific,” these efforts will likely become increasingly assertive.

Current Relations

In general, the United States continues to take a neutral stance on SCS issues, preferring to see the achievement of a regional solution through the reduction of provocative measures by all sides, agreement and implementation of confidence building measures, and final settlement in concert with UNCLOS provisions via multilateral negotiations, ideally under the auspices of the ASEAN. Washington remains adamant that maintaining freedom of navigation and the right of innocent passage through the SCS is critical given the strategic importance of this international waterway and the shipping lanes that transit through it.

Along with its complex cooperative-competitive relationship with China, the United States continues to maintain and expand its bilateral relations with individual SEA and SCS nations, in part because it sees China as less a partner and more as a self-interested, hyper-nationalist power that is pursuing a gradual, unilateral strategy to nationalize the SCS and all the resources within it. Their concerns are tied to what increasingly appears to be a long-term strategy by Beijing to expand Chinese control deep into the western Pacific. Such a strategy would extend Chinese control first out to what China calls the *First Island Chain*, and eventually, as China's blue-water naval capacity improves and expands, out to the *Second Island Chain*, effectively challenging U.S. naval domination in the greater Pacific. Rather than acquiesce to a rising China, the United States' shift to the Pacific is a deliberate strategy to assert itself in the region in large part to protect the “global commons.” To this end, Washington is strengthening its relations with all the nations in the region, particularly those surrounding the SCS.

Regarding Vietnam, Washington is working with Vietnam to help it counter China's growing influence. Both governments are cooperating on critical maritime issues, including a code of conduct focusing on the SCS, and working to improve freedom of navigation in the oceans. Washington continues to gradually increase renewed military relations, and signed agreements between the two countries for naval maintenance facilities and collaboration in military medicine may open the door for further, and perhaps wider, agreements in the future.



¹⁵ Source: Aaron L. Friedberg, *A Contest for Supremacy: China, America, and the Struggle for Mastery in Asia*

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Regarding the Philippines, the United States formal alliance continues to underpin the relations between both countries. The 1951 mutual defense treaty was reaffirmed with the November 2011 Manila Declaration, which also included a long-term advisory role for the modernization of the Philippine armed forces. Beginning in 2012, a U.S. military contingent of 600, including Navy SEALs and Seabees have been stationed "indefinitely" in the Southern Philippines, in a declared non-combatant role to assist the Philippine armed forces in operations against the al Qaeda-linked Abu Sayyaf terrorist group primarily on the island of Basilan in western Mindanao and the Sulu islands.

The United States has important economic, commercial, and security interests in Indonesia. It remains a linchpin of regional security due to its strategic location astride a number of key international maritime straits, particularly the Malacca Strait. Relations between Indonesia and the United States are positive and have advanced since the election of President Yudhoyono in October 2004. The United States played a role in Indonesian independence in the late 1940s and appreciated Indonesia's role as an anti-communist bulwark during the Cold War. Cooperative relations are maintained today, although no formal security treaties bind the two countries. The United States and Indonesia share the common goal of maintaining peace, security, and stability in the region and engage in dialogues on threats to regional security. Cooperation between the United States and Indonesia on counter-terrorism has increased steadily since 2002, as terrorist attacks in Bali (October 2002 and October 2005), Jakarta (August 2003 and September 2004), and other regional locations demonstrated the presence of terrorist organizations, principally Jemaah Islamiyah, in Indonesia. The United States has welcomed Indonesia's contributions to regional security, especially its leading role in helping restore democracy in Cambodia and in mediating territorial disputes in the SCS. The United States is committed to consolidating Indonesia's democratic transition and supports the territorial integrity of the country.

India

History

Indian influence in Southeast Asia is not new. As history shows, many SEA nations were at times either conquered by Indian empires or populated by Indian peoples.¹⁶ However, the prominence of the nation of India in the region is relatively new stemming from changes in foreign policies and relations due, in part, to a rapidly expanding economy and burgeoning population, both of which require resources that can increasingly be gained only through importation.¹⁷

The history of the modern Indian nation began in 1950 when, along with Pakistan, it gained independence from the United Kingdom. Over time it fought five wars with Pakistan, mostly over the still contested northwest region of Jammu-Kashmir. In the East, the Indo-Pakistan War of 1971 led to a major victory against Pakistan, resulting in the separation of Eastern Pakistan – the Bengali half of Pakistan – from which was born the nation of Bangladesh. Over time, India has also suffered from significant internal sectarian struggles, most involving Muslims and Sikhs, political assassinations (Mohandas Gandhi by a Hindu in 1948, Indira Gandhi by Sikhs in 1984, and Rajiv Gandhi by a Tamil in 1991), terrorism, and political upheavals. Externally, besides their conflicts with Pakistan, India continues to have long-standing disagreements with China regarding border demarcation.

Economically, India struggled through its first 40 years under a unique economic system that combined Socialist and Capitalist elements. Poor execution led to widespread inefficiencies and endemic corruption, which significantly retarded growth. However, in 1991 Finance Minister Manmohan Singh, introduced financial and economic reforms that shifted India to free-market principles and liberalized foreign investment and trade. By the 2000s, with considerable foreign investment, rapid expansion of the middle class, a significant rise in education levels, and the availability of a large labor force, the nation's growth rates began to soar. With annual revenues increasing 22% per year from 2000-2005, India became one of the world's fastest growing economies; though weakened by the global financial crisis, growth has averaged 6.5% through 2015.

¹⁶ In particular was the 11th century reign of the Chola Empire, which covered modern day southern India and expanded east to encompass most of Southeast Asia.

¹⁷ In 2010, India imported 70% of its oil and 22% of its natural gas. Source: U.S. Energy Information Administration

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

India remains the world's largest democratic nation, with the world's second largest population (1.2 Billion). Given continued economic health combined with relative internal peace, most experts expect that India will rise to a level that will allow it to compete with the United States and China as a global superpower. Already a nuclear power, India has built a large military which continues to expand (FY2012 defense spending increased 17.63% over FY11). India is currently the world's biggest importer of military hardware, recently outpacing China in terms of acquisitions. Of primary national importance is India's ability to command the waters of the Indian Ocean extending west to Africa, south to Antarctica and especially east to Malaysia and Indonesia. Its development as a regional and world power has in part driven its growth as a "blue-water" naval power (it possesses the world's fifth largest navy), a necessary component to help it secure resources and trade, and help secure the routes they must travel to Indian ports. While the Navy remains focused on India's traditional enemy, Pakistan, there is widespread popular and political support for a power projection strategy that envisions a three carrier battle group force with nuclear-powered submarines, and strategic bomber/strike aircraft. As part of developing that strategy, the Indian Navy regularly interacts with other navies within and outside of the Indian Ocean, as evidenced by the joint India-Japan-China anti-piracy mission in the Gulf of Aden,¹⁸ and the annual Malabar joint naval exercise series with the United States.

Current Relations

A founding member of the Non-Aligned Movement, along with Myanmar, Cambodia and Indonesia, India had desired to foster closer ties with SEA nations and ASEAN, however, missteps by New Delhi during the Cold War negatively colored those relations; specifically, India's support for the Soviet Union's invasion of Afghanistan and its support of Vietnam's invasion and occupation of Cambodia. For New Delhi, their desire for improved relations with the SEA states and ASEAN as well as their support of the Russian and Vietnamese actions were connected to their wariness of China's growing influence. It was not until the end of the Cold War that ASEAN members finally warmed to India. Since that time India has made significant inroads in its relations with ASEAN and its member states. With Singapore as its strongest ASEAN ally, India was accepted as a Dialogue Partner (ASEAN+1), became a member of the ASEAN Regional Forum, and signed the ASEAN TAC. New Delhi's membership in three multi-lateral trade and investment organizations has also enhanced its ties with ASEAN.¹⁹ In recent years India has signed defense cooperation agreements with Malaysia, Singapore and Indonesia and has conducted naval deployments and exercises in the Strait of Malacca and the SCS, as part of their own "Look East" policy, all to the consternation of China. However, it is New Delhi's close relations with its eastern neighbor, Myanmar, that have brought it into direct competition with China, where both are driven by the same need – energy resources. In recent years India has significantly improved its relations with Myanmar, concluding new agreements on increased security ties and energy cooperation.

Close to home, India has sought to improve its relations with its neighbors. In 2011 India and Bangladesh reached a landmark border agreement, and a transit and commerce agreement that will allow expanded trade between both nations and Nepal and Bhutan.

Outside of the Indian Ocean region, India has been aggressively seeking to revive its 20 year-old "Look East" policy by attempting to increase ties with the SEA and western Pacific nations, specifically Vietnam, Indonesia, Thailand and South Korea. Given China's close relations to Pakistan, New Delhi sees Vietnam as the linchpin of its "Look East" policy, and possibly as the counterweight to Chinese influence in the Indian Ocean region. This new relationship was tested when, in late 2011, China warned India against engaging in agreements with Vietnam for oil and gas exploration within the SCS, which China viewed as an illegal act within Chinese-administered territory. Nonetheless, India's state-run explorer Oil and Natural Gas Corporation signed a three-year deal with PetroVietnam for developing long-term cooperation in the oil sector. Shortly thereafter Vietnamese President Truong Tan Sang conducted a four-day visit to India and signed several bilateral agreements covering energy, technology, education and homeland security. Vietnam leaders also expressed interest in India's help in strengthening Vietnam's armed forces. In more subtle, but no less symbolic ways, Indian Premier Manmohan Singh attended the 2011 East Asian summit in Bali, and has invited leaders of

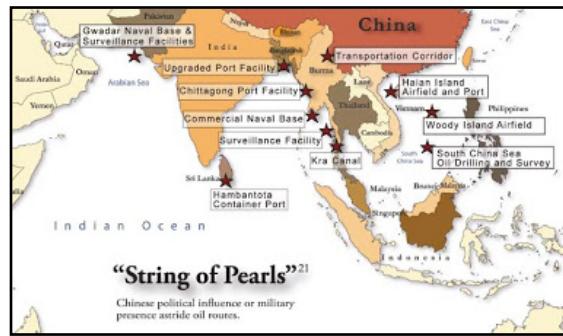
¹⁸ Source: IHS Jane's.

¹⁹ These are the Bay of Bengal Initiative for Multi-Sectoral Economic Cooperation (BIMSTEC), Mekong-Ganga Cooperation (MGC) group, and the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC).

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

several important East Asian nations as honored guests at each year's Republic Day parade. With the election of Narendra Modi in 2014, India's relations with the United States have taken a much more positive turn.

As India strengthens ties in the SCS, China remains engaged in the Indian Ocean; developing its "String of Pearls," a line of bases and ports, of alliances and agreements that stretch westward from southeastern China west to Pakistan. Despite India's concern over this development, and Beijing's supportive relationship with Pakistan, both governments have worked hard over the past three decades to put their tumultuous past behind them and strengthen political and economic relations. China is India's largest trading partner, although the trade deficit steeply favors China.



Japan

History

Before it became a single nation, the Japanese archipelago was home to a disparate number of militaristic clans that eventually came together during the Kofun (250-538) and Asuka (538-710) periods, from which the current imperial family emerged. During the Asuka period Japan remained an underdeveloped society heavily influenced by China, primarily through the spread of Buddhism and culture. It was during this period that Japan first began to reach out from their islands to the Asian continent, where, besides China, they also established ties with the Three Kingdoms of Korea. In the 8th century Japan entered its "Golden Age" finally emerging as a strong nation with a powerful aristocracy. However it was soon torn by revolutions which, by 1185, led to an era of powerful samurai military clans established under the Shoguns, lasting until the mid-19th century. Hostilities with Mongol China during this time twice resulted in unsuccessful attempts to invade Japan; however relations improved under the Ming Dynasty, which allowed the introduction of Zen Buddhism. In 1543 the first Europeans arrived in Japan from Portugal, followed by traders from England, Spain and the Netherlands, along with catholic missionaries. The missionaries were welcomed at first, but they soon became seen as a threat and by the 1620s they had been eliminated from Japan; they would not return for more than two centuries.

From 1633 until 1853, Japan expelled all foreigners and entered a period of self-imposed isolation known as the *Sakoku* (locked country) era.²⁰ In 1853 the United States Navy's Black Ships under Commodore Matthew Perry arrived and demands for the establishment of relations forced Japan to end its isolation. Japan quickly recognized and signed treaties with several western nations already active in the Asian region. However, the unequal terms of these treaties, most brokered under "gunboat diplomacy" and driven by western imperialism, especially those with the United States, negatively colored Japan's relations with the west.

The modern, unified *Empire of Japan* began to emerge in 1868 with a series of progressive reforms that established a strong central government with a robust economy developed under their own industrial revolution. Japan also created an imposing military centered on sea power, with the intent of becoming an imperial power, in part to achieve equality with the western powers. They used their military strength to fight wars with China (1894-95) and Russia (1904-05), occupy Taiwan and annex Korea and southern Manchuria. By 1910, Japan was the dominant power in East Asia, and after siding with the United Kingdom during WWI, emerged from that conflict as one of the "Big Five" powers. Yet, while Japan continued to strengthen and grow as a nation, its politicians failed to mature their government into a modern democracy – instead it grew increasingly militaristic. The ramifications of the Great Depression only served to secure the military's hold on the nation and in 1931 the Japanese initiated military incursions into northeastern China, which eventually spread into central China, leading to the Second Sino-Japanese War (1937-1945). U.S. support for China and its condemnation of Japanese actions led to Tokyo's decision to confront the United States, drawing it into WWII in December 1941.

Japan's surrender ended WWII, and despite being allowed to keep their Emperor, the empire was dissolved and the nation transformed into a non-threatening democratic state, with the United States guaranteeing Japanese

²⁰ Some external trade continued mostly limited to the Dutch and Chinese through 4 points of entry or "gateways."

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

security under the *Japan-United States Mutual Security Assistance Pact*. The Japanese retained their home islands, while the island groups of Ryukyu, Bonin, Volcano and Okinawa remained under U.S. administration, and the southern Sakhalin and Kurile Islands under the control of the Soviet Union, who seized them as the war ended. The Japanese post-war economy grew at an astonishing rate, quickly reestablishing prosperity and economic prominence, first regionally, then as one of the world's strongest economies. This lasted until 1989 when the economy fell into an extended recession and the "Lost Decade" of deflation and economic stagnation. During this time Japan began to reemerge as a military power, ostensibly for self-defense.

After the turn of the century, with both China and Japan strong enough to resume their historic roles as East Asian competitors and rivals, they began to squabble over island territories claimed by both. The most recent and dangerous quarrel involved the Senkaku/Diaoyu Islands,²¹ located at the southern end of Japanese territory, just to the northeast of Taiwan. The islands had been controlled by Japan since 1895, and came under control of the United States after WWII, then returned to Japan along with Okinawa in 1972. China claims that these islands were in their possession since before the First Sino-Chinese War and were seized by Imperial Japan, thus should have been returned to China after WWII. Japan claims that it had surveyed the islands in the late 19th century and declared them *terra nullius* (land belonging to no one). The United States recognizes that the islands are part of the Japanese nation and as such fall under the U.S.-Japan Security Treaty, but the United States holds no opinion on the competing claims. Tensions increased in September 2012, when the Japanese government purchased the islands from their private owner, initiating large-scale protests in Chinese cities, many of which turned violent. Over the next few months' tensions continued to escalate as each nation's militaries sent ships and planes into the area. The United States engaged both nations to help reduce tensions, and a late January 2013 meeting in Beijing between Japanese representatives and China's new Communist Party Secretary General, Xi Jinping did calm the situation with the promise to "push relations forward," but tangible solutions to the dispute have yet to be discussed.

Current Relations

While Japan, along with the United States and India, is not a claimant state within the SCS, nor does it support the territorial claims of any of the current claimants, Japan does have substantial strategic interests within the region. During its often troubled history in East Asia, the Japanese have had historic ties to the SCS. Japanese companies began mining the Spratly Islands in 1918, and in the 1920s occupied various islands for the purpose of excavating Guano for fertilizer. When Japan began attempt to conquer and occupy China in the years prior to the start of WWII, its forces seized and occupied Hainan Island and the Paracels, where they established a submarine base.

Today, economics, security and status are the drivers of Japan's interests in the SCS. Japanese tankers carry 70% of Japan's oil through the sea lanes that transit the SCS, therefore unfettered access and security of all Japanese shipping is essential. While alternate routes are available, they would add significant time and costs. Secondly, any instability in the East Asian region does not serve Japan's national interests. This is in part why China's new assertiveness regarding the Senkaku Islands is so concerning, as it may indicate that Beijing may soon turn its brazenness to the SCS, creating the destabilization that the leaders in that region that Tokyo fears.

Significant Events – July 2015 to July 2016

July 2015: As first reported by the *Center for Strategic and International Studies* in April of 2015, the land reclamation and building boom taking place on and around the islands, atolls, cays, reefs and rocks within the SCS, come to a close as most projects are now reportedly complete. An earlier report in *The Economist* notes Chinese claims that they are just trying to catch up to the "decades of building" within the SCS undertaken by other claimants. But, it is more likely that Beijing and the other claimant states are simply trying to reinforce their territorial claims under the tenants of UNCLOS by creating habitable features from uninhabitable ones.

July 14, 2015: The Philippines awards oil exploration contracts to the Gujarat State Petroleum Corporation Ltd, an India state-owned corporation, for exploration of SCS blocks within the Philippine EEZ.

²¹ Senkaku is the Japanese name; Diaoyu the Chinese name.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

August 23, 2015: At the conclusion of the 24th Malabar Naval Exercise, the U.S. Secretary of Defense announced that the 25th Malabar exercise would take place in the Andaman Sea in the March-April 2016 timeframe. This annual joint U.S.-Indian exercise, conducted over a ten-day period, will include participants from Japan's Maritime Self Defense Forces, who last participated in 2011, and for the first time it will include participants from the navies of Vietnam, Indonesia and the Philippines, making it the largest exercise of the series.

October, 2015: The Philippine challenge to China's SCS claims, brought before the UNCLOS Tribunal by the Aquino government, continues to languish without action, as China continues to refuse to acknowledge it.

Mid-December 2015: Within the SCS, claiming that a Vietnamese fishing trawler is operating illegally with the Chinese EEZ, the PLAN seizes the vessel, tows it to the Chinese port of Haikou, Hainan Island, where the crew is jailed and the Captain put on trial. Vietnam vehemently protests the Chinese actions stating that the vessel was operating well within Vietnam's 200nm EEZ, and takes the matter to ASEAN and the United Nations. ASEAN passes a resolution bemoaning the Chinese action calling for the release of the ship and crew. The UN Security Council is unable to pass a U.S. sponsored resolution on the subject due to the threatened vetoes by China and Russia.

January 1, 2016: The nation of Laos assumes the ASEAN Chair for 2016. While the Laotian government has warm ties with Beijing, in the accompanying press release the new chair expressed a sense of urgency regarding the need to calm rising tensions over the SCS, though specific approaches were not presented or alluded to.

January-March 2016: Beijing increases naval patrols within the SCS, especially in the areas under dispute between itself and Vietnam and the Philippines, and both nations respond in kind. By late July ships from both countries cross paths with PLAN warships, are queried by them and closely shadowed. This pattern continues deep into March despite Vietnamese and Philippine protests.

April 16, 2016: Vietnamese and Chinese patrol craft trade warning shots off of the Vietnamese coast just east of Julia Shoal. No injuries are reported, but Hanoi sends a formal protest to Beijing. Hanoi had been expected to raise the issue within ASEAN as part of normal recourse, but decided not to do so; instead the Foreign Ministry released a statement that in part read: “[T]here is little point in addressing this situation within an organization that is not empowered to take significant action.”

May 31, 2016: Joint Exercise Malabar 25 begins in the Andaman Sea.

June 2, 2016: Near Half Moon Shoal, during rough weather, two Chinese coast guard vessels attempting to chase off an Indian oil exploration vessel are confronted by two Philippine patrol craft – the BRP *Gen. Emilio Aguinaldo* and the BRP *Gen. Antonio Luna* – assigned to protect the Indian vessel. As the vessels maneuver for position one of the Chinese ships fires on the Indian vessel causing significant damage. Both Philippine patrol vessels return fire and are subsequently fired on and sunk by the Chinese vessels. The Chinese ships, having also sustained damage, withdraw from the area. The attack results in the death of five and the wounding of 4 on the Indian vessel and the loss of almost all onboard both Philippine patrol ships, with the death of 10 of the 12 officers and 85 of 104 seamen, with the remainder rescued.

June 3, 2016: The Philippine and Indian governments both issue strongly worded demarches to Beijing.

June 4, 2016: As the news spreads along with the accounts of the incident by the wounded, there are significant anti-Chinese protests in Manila and New Delhi. At first the Chinese government denies the incident took place; however, as the news reports begin to focus on the dead and the accounts of the wounded, Beijing places the blame on the Philippines for “its blatant conduct of illegal actions within Chinese territory” as the direct cause of the loss of life.

June 5-8, 2016: Anti-Chinese protests spread across India and the Philippines. In New Delhi, protesters attack the Chinese embassy and several local Chinese-owned businesses. In both the Philippines and India, legislators rail against Chinese aggression, sentiments that are echoed in the press and opinion polls. News commentators in India bemoan the weakness of government's response and buttress growing public anger and increasing demands for credible action, not simply continued talk.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

June 8, 2016: Due to the SCS incident and the immediate desire of the Philippine and Vietnamese governments to return their forces, the decision is made to terminate Malabar exercise and, as part of the return of amphibious forces, conduct a Freedom of Navigation (FON) exercise through the SCS. India decides to send its vessels to the Philippine naval base at Balabac Island, located at the southern end of Palawan and just off of the SCS, in order to escort the oil exploration vessel back to India once repaired. As part of the FON exercise, United States and Japanese ships will steam with the other ships into the SCS, and as the Vietnamese, and Philippine and Indian naval vessels peel off to return to their ports, the Japanese and U.S. ships will proceed through the Sea, exiting at the northern end through the Bashi Channel, just south of Taiwan. The Japanese ships will then steam on to their home ports and the U.S. ships will sail into the Philippine Sea and conduct a series of calls to eastern Philippine ports.

June 10-11, 2016: The Malabar exercise contingent enters the SCS, and the passage occurs without incident. Simultaneous to this, the governments of Vietnam and the Philippines appeal to the United Nations Security Council through the auspices of the United States, not to condemn China as most had expected, but to propose the creation of a formal talks in order to broker a resolution of the SCS claims.

June 13, 2016: Russia and China veto a UN Security Council resolution on the SCS which would have called for formal peace negotiations between all claimant parties. Following the vote the Chinese representative to the UN stated that Beijing was more than willing to work with the Association of Southeast Asian Nations to help resolve this situation.

June 16, 2016: UN Secretary-General Ban Ki-moon, meets with Chinese President Xi Jinping in Beijing as part of a previously scheduled tour of East Asia. Given the previous day's statement by the Chinese ambassador to the UN, the Secretary-General urges the Chinese leader to agree to immediately enter talks organized by ASEAN, with the active support of the UN Secretary-General, in order to seek a diplomatic resolution to the ongoing tensions with the SCS states. There is no immediate response from Beijing.

June 19, 2016: ASEAN announces an agreement to host immediate talks between the Peoples Republic of China, Indonesia, Vietnam and the Philippines, and has invited India, Japan and the United States to join the talks, which will be held in Jakarta Indonesia. While Beijing accepts the ASEAN invitation, a government spokesman expressed his disappointment at the inclusion of those nations external to the region, but that despite this seeming slight, Beijing was more than willing to participate in a good faith effort to seek peaceful resolution to a neighborhood problem.

July 4-8, 2016: As ASEAN sponsored talks draw near, continued protests become reinvigorated in both India and the Philippines. Both the Indian Parliament and People's Assembly pass non-binding resolutions demanding punitive action in the face of illegal Chinese aggression. The Philippine Congress passes a resolution calling for increased energy exploration efforts in the SCS under armed military escort.

The Present Day

July 9, 2016: Negotiation teams from the governments of China, Vietnam, The Philippines, Indonesia, India, Japan and the United States, along with the representative of the ASEAN Secretariat are gathered in Jakarta Indonesia to begin negotiations in an effort to move toward resolution of the issues surrounding the South China Sea. Each team has arrived with a set of confidential instructions containing the negotiating positions of their governments.

China Blasts ASEAN Head for South China Sea Remarks

Beijing scolds ASEAN's Vietnamese chief for allegedly biased and false comments.

By Prashanth Parameswaran
March 12, 2015



Image Credit: U.S. Navy Photo

China slammed the Vietnamese head of the Association of Southeast Asian Nations (ASEAN) Wednesday for a series of allegedly biased and false remarks on South China Sea disputes.

"Mr. Le Luong Minh has repeatedly made biased comments on the issue of the South China Sea, which were untrue and incompatible with his capacity as ASEAN secretary-general," Chinese Foreign Ministry spokesperson Hong Lei **said** at a press briefing, according to *Xinhua*.

"We advise Mr. Le Luong Minh do his part as ASEAN secretary-general, stick to ASEAN's neutrality on the South China Sea issue, and do more to promote the healthy development of China-ASEAN relations," Hong added.

Hong also suggested that Le's comments had damaged ASEAN's image as a regional organization because he was making comments on behalf of one country rather than reflecting the consensus of the grouping more broadly.

A *Reuters* **report**, carried by several other international media outlets, noted that China may be reacting to Le's comments on the South China Sea to *The Manila Times* last week.

In that **interview**, published March 4, the secretary general, who is also a veteran Vietnamese diplomat, said that the four ASEAN claimants – Brunei, Malaysia, the Philippines, and Vietnam – could not possibly accept China's nine-dotted line because it was not in accordance with international law, specifically the United Nations Convention on the Law of the Sea (UNCLOS).

"All ASEAN claimants protest [against] the dotted line [concept] because it's not [in accordance with the] commitment [to] UNCLOS and the dotted line covers 90 percent of the South China Sea. There is no way it can be accepted by any party to the UNCLOS," Le had said.

He also noted that what has been happening in the South China Sea is “impacting” ASEAN’s efforts to **forge a more cohesive community**, which is why the grouping considers efforts to reach a solution – including through a binding code of conduct – “conducive to maintaining peace and stability.”

Le also said that developments in the South China Sea – which would presumably include China’s **reclamation efforts** – were dangerous and risk complicating matters.

“The developments seem to be dangerous for the fact that [they affect] the status quo. The expansion and illegal [occupation] of islands affect the status quo and [they are] complicating the situation,” Le said.

But Le was also careful to stress that China is not considered a threat to regional peace because the South China Sea is only one issue within ASEAN-China ties.

“We have been talking about sovereignty issues but we have to be reminded and aware that this is not the only issue with China. We have a very substantive engagement with China,” he emphasized.

South China Sea



South China Sea Claims



South China Sea: UNCLOS EEZs versus Chinese Claim



South China Sea

TAIWAN

Philippine Sea

- International Treaty Limits
- Kalayaan Claim (Spratlys)
- Archipelagic Waters
- Territorial Sea
- Exclusive Economic Zone (EEZ)

Scarborough Shoal

Kalayaan Group of Islands

BRUNEI

Sabah
MALAYSIA

INDONESIA

Palmus Island (Indonesia)

INDONESIA

Celebes Sea

Luzon

Mindoro

Sulu Sea

Palawan

Iloilo

Bacolod

Cebu

Negros

Bohol

Leyte

Samar

Davao

Zamboanga

Cagayan de Oro

Mindanao

Baguio

Manila

The SEA and the SCS nations within the context of the larger world

Given the number of nations both residing and involved in this region, it is helpful to have a logical mechanism through which the roles of each nation and the interactions of all nations might be considered. Such a mechanism is laid out by author and analyst, Evelyn Goh, in *Great Powers and Hierarchical Order in Southeast Asia*.¹ Ms Goh's analysis posits a certain prevailing order that governs the relationships between the SEA/SCS nations and other regional and extra-regional nations that brings a sort of balance to these intermingled relationships. In short she sees a layered hierarchy, beginning at the top with the United States as the sole superpower, or "superpower overlay"; just below, China as a "regional great power"; followed by India and Japan as equal major regional powers; and finally ASEAN, South Korea and Australia as major regional players.

<u>SCS HIERARCHICAL STRUCTURE</u>	
Superpower:	United States
Great Power:	People's Republic of China
Great Regional Powers:	Japan and India
Major Regional Player:	Indonesia (represents ASEAN interests)
South China Sea Nations:	Vietnam and The Philippines

Table: SCS Hierarchical Structure used in the exercise

This exercise employs a slightly altered version of Ms Goh's structure (see Table) as a guide to help inform and shape participant's views and understandings regarding the overarching role and inter-relationships of each nation within this exercise. Within this structure the United States remains the lone superpower within a unipolar world, one that for the time-being is acceptable to China. It is also one preferred by ASEAN member states as they seek to balance their relations with China without offending Chinese leaders. They seek the predominant presence of the United States within their region not as a hegemon, for they know that Washington does not seek dominance in terms being a coercive force, but as a power seeking to maintain regional peace and stability. While the United States fulfills their lone superpower role as the top of this structure, the SEA and SCS states continue to work unilaterally and multilaterally to build relations, organizations, treaties and commitments with all regional players in an "enmeshment" strategy, creating an interlocked regional system which obligates all players to behave within a prescribed set of acceptable norms, which helps create a regional identity. Their goal is to institutionalize cooperation in order to avoid the emergence of conflicts, especially regarding overall relations with China. This is one of the key reasons that drove ASEAN expansion and development.

However, despite the growth of ASEAN as a strong regional alliance, it has not matured to the point that its members would rely on it to address the more challenging and difficult issues of regional security. Each state tends to handle those issues bilaterally. While the ASEAN members often find common ground, the fact that there are significant philosophical differences between these very diverse individual states and blocks of states (democratic, communist, Islamic and totalitarian), and their inability to develop and agree on a cohesive regional stance is self-limiting and at times problematic.

¹ For the complete article see: Goh, Evelyn, "Great Powers and Hierarchical Order in Southeast Asia: Analyzing Regional Security Strategies," *International Security*, 32, 3 (Winter 2007/08), pp 113-157.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

While the SEA states see the United States as the sole superpower in a unipolar world, they are concerned that, given the dramatic growth of China and India, along with the omnipresence of Japan, will eventually translate into a multipolar world that would be inherently unstable. Therefore, collectively as ASEAN, and bilaterally as individual states, all of the SEA nations seek to engage regional players in, what Ms. Goh terms, a strategy of “omni-enmeshment.” They see stability in their region as being tied to the stability of relations between all regional nations, whether between SEA states, or between the ASEAN states and Japan and India, or between China and India and Japan, and most importantly the stability of relations between the United States and China. The policy of omni-enmeshment, while primarily focused on China, is meant to promote multiple linkages between all states in order to create significant interdependences between them in order to “help the ‘elephants’ get to a point where their interests are so intertwined that it would be too costly to fight.” They also hope that enmeshment will bring the nations involved in the region, to include the bigger powers, into acceptance of certain regional norms that might mediate their behavior, making them more predictable – in other words, to tie them down in order to reduce uncertainty.

ASEAN member states also employ their own enmeshment strategies in order to secure multiple alignments. Within the security realm, primary examples include Vietnam’s efforts to maintain close ties with China while simultaneously pursuing gradually increased military ties with the United States and defense exchanges with India; and Indonesia’s defense ties to China, the United States and Australia. Another example involves Thailand and the island nation of Singapore, and their location at the southern entrance to the South China Sea amidst the narrow straits that allow passage from the Indian Ocean to the Pacific Ocean. Both nations have used their strategic location to build bilateral agreements with all of the major powers in order to tie them to the region and to obligations concerning the preservation of economic stability in terms of free trade, finance and security. The bottom line for the omni-enmeshment strategy is to establish “overlapping spheres of influence” in order to (1) create greater regional stability, and (2) involve the great powers in mutual deterrence.

Another primary principle of SEA nation behavior, especially as concerns China, is “balancing.” One normally thinks of strategic balancing as actions taken by two or more co-equal states to maintain a level playing field or to prevent one state from achieving a decisive advantage over another. In the case of the SEA and ASEAN, balancing involves two concepts: “indirect military balancing” and “regional ‘complex balancing.’”² This strategy relies upon the continued dominance of the United States within the region, especially in terms of military balancing, which in fact implies an imbalance favoring the United States over China. Indirect balancing involves enmeshment, the long established concept of deterrence, and “triangular politics,” sometimes known as triangular diplomacy.³

The most visible aspects of deterrence in indirect military balancing are the military basing and support agreements that exist between the United States and individual SEA nations that enable U.S. military presence and power projection in the region. The assumption is that the maintenance of a U.S. military presence in the region is sufficient to deter China. However, these agreements do not include permanent bases or, except for the Philippines, mutual defense pacts, as Beijing would likely see these as part of U.S.-led encirclement strategy designed to contain China. SEA states sometimes use triangular politics to exact additional U.S. military investment and support by seeking improved security ties with China which then prompts the United States to either counter or risk losing influence. This type of maneuvering speaks to the strategic pro-active nature of these smaller nations.

² Goh defines indirect military balancing as “policies undertaken by individual states unilaterally or bilaterally aimed at deterring a range of potential threats,” and regional complex balancing as “encompassing multiple balancing media and targets with the wider aim of forging a regional balance of influence that goes beyond the military realm.”

³ Triangular diplomacy involves Country A using their bilateral relations with Country B in order to influence Country C. The small nations of the SEA often use this strategy to play the United States against China. This is employed when one nation, rebuffed when seeking something from either the United States or China, looks to the other nation, which forces the first nation to either respond in kind or risk possible loss of some level of influence.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

The strategy behind regional complex balancing, which focuses on the political and economic spheres of influence, is to enmesh a widening number of nations within the SEA region and then manage their competition through the constraints of institutional norms. As Ms Goh describes, this concept involves “three related processes: diversification, institutionalization, and normalization.”

- Diversification speaks to increasing the number of nations involved in the SEA region, primarily through economics. This diversity helps ensure that SEA nation are not overly dependent on any single nation for their economic health, and is driven by their fears of being absorbed into a “Sino-centric regional economic system” – in other words of being devoured by China’s economic dragon. The main instrument used are Free Trade Agreements, established via multilateral (through the ASEAN) and bilateral agreements with a number of nations; primarily China, the United States, India, Japan, and the European Union.
- Institutionalization builds on what was begun with the founding of ASEAN. The concept seeks to involve all nations with interests in the region in organizational structures led by the SEA member states, and bind them through institutional frameworks and agreements, and constrain them through adherence to institutional norms as established by ASEAN. The primary ASEAN organization where this can be seen is the ASEAN Regional Forum (ARF). Established in 1994, and originally formed to help establish stable relations between the United States, China and Japan, it now consists of 27 member states.⁴ ARF, as is true with ASEAN, was, and remains, an attempt at collective action by the smaller SEA states to control and constrain the actions of the larger powers within their region, and in so doing perhaps help improve great power relations across the board. One of the primary organizational instruments used is the Treaty of Amity and Cooperation (TAC). As noted by the ARF Chairman during the organization’s first meeting, the TAC is “a code of conduct governing relations between states and a unique diplomatic instrument for regional confidence building, preventive diplomacy, and political and security cooperation.” ASEAN has continued to expand the institutionalization process through ASEAN + 3 and APEC. (See SEA References for additional details).
- Normalization recognizes the complex nature of international relations and competition, and seeks to develop a more comprehensive method of balancing behavior and expectations, especially of the great powers. This is in part to prevent unilateral actions within the region, as was seen in the U.S. invasion of Iraq, and seeks to normalize behavior – to shift from a “balance of power” to a “balance of influence” and ensure all nations understand that they have both their own and interdependent responsibilities in the maintenance of regional order. As Ms. Goh notes, “the nonmilitary aspects of relative influence is aimed at showing that great powers win hearts and minds through humanitarian and other goodwill actions, and that they have to compete with each other in these realms as well if they want to exercise power in the region.”

This hierarchical structure purports that the United States is a non-hegemonic superpower, and being external to the region, can be relied on as an “honest broker” within the region, and one that China accepts and can live with, for now. What concerns SEA nations and drives their efforts to build relationships that are both interdependent and flexible is the uncertainty that the United States will stay the course, as they depend on it to do, will seemingly being pulled in multiple directions at once. China, given their sheer size and geographic position, will be an omnipresent factor in region and SEA affairs, and the future direction of that nation will impact significantly on all of Southeast Asia. While India and Japan are economic factors and can compete with China, within the security realm Japan is completely dependent on the United

⁴ Current ARF participants include: Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, Timor Leste, United States, and Vietnam.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

States, and India's military projection capability is still under development. As depicted in Table 1, Indonesia, as the largest SEA nation and the founder of ASEAN, acts as the sole major regional player representing their own positions as well as those of ASEAN. Bottom line: While the SEA nations work to preserve and improve the current status quo through an array of overlapping bilateral and multilateral organizations, strategies and approaches, the region itself continues to move in transition.

REFERENCES

The Association of Southeast Asian Nations

Any discussion of the South China Sea and Southeast Asia states would be incomplete without an understanding of this regional association – both its importance and its limitations. With the end of WWII, the exit of the western powers (save for continued French and U.S. involvement in Vietnam), followed by the advancement of Communism influenced by both China and the Soviet Union, the leaders of the newly independent states that comprised maritime SEA, plus Thailand, began to think towards a collective means of unifying their states under an economic and political entity that would both seek to bring balance to their internal state relations as well as demonstrate a unified front toward the greater powers who still sought influence the region. These states began to understand the beneficial concepts of “regionalism” in the conduct of relations with greater powers; and how the power of “regional resilience,” a collective mindset, could help create a genuine balance against the domineering influence, whether political, economic or militaristic, of certain powerful nations, such their immediate neighbors – China and India – or even more powerful albeit distant nations like the United States and the Soviet Union, or a nation with which all have had a painful past – Japan. These ideas were codified first in the Association of Southeast Asia, and then finally in the creation of the Association of Southeast Asian Nations (ASEAN).

ASEAN was formed by Indonesia, Malaysia, the Philippines, Singapore and Thailand on 8 August 1967 under the Bangkok Declaration. Internally, some of the original members held contradictory motivations for the establishment of this regional political and economic group. Indonesia, as the largest of the five members, hoped that they could use the group to help it become the regional hegemon through their domination of regional cooperation. On the other hand, Malaysia and Singapore hoped that the inclusion of Indonesia in a regional group would help constrain and mollify Jakarta’s ambitions by enmeshing it into a mutually cooperative framework. However, the overriding imperative for the creation of this organization was each nation’s concern about how they could counter-influence the larger nations who wished to influence the region.

The key to understanding the organization is found in the fundamental principles of the ASEAN Member States, as codified in the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976:

1. *Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;*
2. *The right of every State to lead its national existence free from external interference, subversion or coercion;*
3. *Non-interference in the internal affairs of one another;*
4. *Settlement of differences or disputes by peaceful manner;*
5. *Renunciation of the threat or use of force; and*
6. *Effective cooperation among themselves.*

By 1999 the organization had expanded to 10 member nations, with the addition, in order of accession, of Brunei, Vietnam, Laos, Myanmar, and Cambodia, making it second only to the European Union as an international organization based on political and economic cooperation. While this expansion strengthened the organization in terms of presenting a wide-ranging trade group and solid political entity to the rest of the world, it has also diluted its ability to reach solutions of issues between member states, given its principle of decision-by-consensus, especially since the new members include communist or totalitarian states holding philosophies contradictory to the original democratic member states.

Over time, in order to strengthen its organizational structure, ASEAN sought to establish internal treaties and agreements to build cohesion between member states, most importantly the ratification of the 1995 Southeast

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Asian Nuclear-Weapon-Free Zone Treaty. Other agreements have focused more on environmental issues, such as the 2002 ASEAN Agreement on Transboundary Haze Pollution.

Over the next thirty years, in order to build its influence with regional and extra-regional powers, it set about building inclusive organizations and “dialogue partnerships” with nations that sought influence in the region. By 1996 there were 10 dialogue partners (Australia, Japan, New Zealand joined in 1977; Canada, EU and the United States in 1988; South Korea in 1991; and China, India and Russia in 1996). These were very formal interactions conducted in two phases as part of the ASEAN Post-Ministerial Conference – first a collective closed session discussing a wide-range of pertinent economic, security and political topics and issues; then bilateral discussions (ASEAN + 1) with each dialogue partner. ASEAN sought to create other regional groups with nations outside of the SEA, in part to improve existing ties, but also with the goal of bringing certain nations into agreements that might help moderate how they dealt with the SEA nations, hopefully to move them towards alignment with the precepts spelled out in the ASEAN charter. The first of these was established in 1997, with South Korea, China and Japan as ASEAN + 3 (APT). This was followed by the larger East Asia Summit (EAS), which included these countries, plus India, Australia, and New Zealand. There is also the ASEAN Regional Forum (ARF), established in 1994, now involving 27 nations, with the stated objectives of, “foster[ing] constructive dialogue and consultation on political and security issues of common interest and concern, and make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region.” The first years of the 21st century saw ASEAN complete a series of partnership agreements with China, Japan, Russia, South Korea, India, the United States, Australia, and the European Union.

Today ASEAN remains a loose confederation, primarily based on economic, environmental and some political cooperation, however one that refrains from interfering in the internal affairs of its members or seeks to degrade their individual national sovereignty. As an example, even though Myanmar was accepted as a member, the association never pressured the (now former) Junta to end totalitarian rule and move toward a representative form of government, as they considered it an irrelevant issue given the association’s principle of non-interference in the internal affairs of its members. But it was also their philosophy (which contradicts their rationale in the previous sentence) that “constructive engagement” would be sufficient to move Junta leaders in the right direction.

This type of multilateralism, known as “The ASEAN Way,” where a primary guiding principle – refrain from confrontation – is combined with a decision-by-consensus system that gives every member a veto among an expanded membership, often creates an organizational paradigm that greatly limits the organization’s ability to bring solutions to some of the most vexing regional problems. Also, two other generally accepted principles encompassed in the ASEAN Way concept are, 1) that internal bilateral problems between member states be solved for the overall good of the region and the ASEAN organization, and 2) that any bilateral problems between a member state and non-member states not adversely affect the internal harmony of the ASEAN. In other words, it is the responsibility of each member state to do everything possible, even if detrimental to that nation, to protect the ASEAN organization, under the mutual understanding that ASEAN is strongest when it addresses problems with a united front.

These “harmony-based” principles, while successfully reducing the possibility of intra-state conflict, often butt up against the aspirations of highly individualized nations driven by significantly different governing ideologies (democratic, communist and totalitarian), economic requirements, and strategic interests and goals, making it extremely difficult to find much significant common ground other than in the economic and environmental realms. This problem is acerbated by each member nation’s bilateral relations with the extraregional nations: China, the United States, India, Japan, and increasingly, the European Union (EU). Given this situation it is unlikely that the ASEAN integration will ever progress to include collective security, or the degree of union achieved by the EU. Such diversity also weakens the organization among its own members, as many problems/issues brought before the ASEAN remain unresolved since finding an acceptable consensus on an equitable solution remains a difficult process. Given these circumstances, and given that there are a multitude of

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

bilateral and multilateral disputes between the member states themselves and with China regarding the South China Sea, the ASEAN leadership has found it difficult to find acceptable and appropriate methods to deal with the SCS problem.

ASEAN agreements referenced in the scenario

DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties undertake 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 action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
 - b. ensuring just and humane treatment of all persons who are either in danger or in distress;
 - c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
 - d. exchanging, on a voluntary basis, relevant information.
6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:
- a. marine environmental protection;
 - b. marine scientific research;
 - c. safety of navigation and communication at sea;
 - d. search and rescue operation; and
 - e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.
- The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.
7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;
8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;
9. The Parties encourage other countries to respect the principles contained in this Declaration;
10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.



“ASEAN Community in a Global Community of Nations”

Guidelines for the Implementation of the DOC

Reaffirming that the DOC is a milestone document signed between the ASEAN Member States and China, embodying their collective commitment to promoting peace, stability and mutual trust and to ensuring the peaceful resolution of disputes in the South China Sea;

Recognizing also that the full and effective implementation of the DOC will contribute to the deepening of the ASEAN-China Strategic Partnership for Peace and Prosperity;

These Guidelines are to guide the implementation of possible joint cooperative activities, measures and projects as provided for in the DOC.

1. The implementation of the DOC should be carried out in a step-by-step approach in line with the provisions of the DOC.
2. The Parties to the DOC will continue to promote dialogue and consultations in accordance with the spirit of the DOC.
3. The implementation of activities or projects as provided for in the DOC should be clearly identified.
4. The participation in the activities or projects should be carried out on a voluntary basis.
5. Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures.
6. The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of a Code of Conduct.
7. In the implementation of the agreed projects under the DOC, the services of the Experts and Eminent Persons, if deemed necessary, will be sought to provide specific inputs on the projects concerned.
8. Progress of the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN-China Ministerial Meeting (PMC).

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) is an international agreement that defines rights for and responsibilities of coastal states and their use of the world's oceans and adjacent waters. Other associated terms for UNCLOS are; Law of the Sea Convention or Law of the Sea treaty. The current UN convention version, UNCLOS III, was signed in 1982 and enacted in 1994. UNCLOS established rules for the conducting of business (movement of goods, natural resource utilisation), navigation (sea surface, undersea as well as airborne over flight), and management of the environment and marine natural resources within defined maritime areas. To date, 164 nations and the European Union have joined the convention. The United States signed the Agreement on Implementation but has not joined the convention, due to a disagreement with part XI on the regime relating to minerals on the seabed outside any state's territorial waters or exclusive economic zones (EEZs). Subsequently the United States has had difficulty in settling disputes between signatory nations. The Convention on the Law of the Sea is still to be seen as the most comprehensive and significant multilateral agreement under the auspices of the United Nations in the history of international law. It replaces the four 1958 Geneva Conventions on law of the sea and regulates almost all fields of international maritime law.¹

Signatory coastal states have interpreted the definitions, of the various maritime zones and activities, in different ways. Main conflict areas have arisen with how coastal nations interpret the definitions of; territorial waters, archipelagic waters, contiguous zone, EEZs, and continental shelf. Where there tends to be economic benefits, historical precedents, and/or hegemonic desires, coastal states tend to define these maritime areas to their advantage. A nation's baseline shore determinations, and its definition of archipelagic waters, define that nation's larger maritime zones. When a coastal state interprets UNCLOS III differently from another coastal state the differing maritime areas can be and have been a source of dispute.

Areas of dispute, regarding UNCLOS III, are in that of innocent passage through territorial waters, under-sea resource management, and utilisation of deep-sea resources. For the right of innocent passage; the bulk of global commerce transits via the seas. In order to save time in transit, and ultimately, cost of transit, vessels traverse via great circle navigation, from point-to-point. Where these routes pass through choke points, an area where a nation or multiple nations' territorial water space overlap, there is potential for disruption and ultimately conflict. Major choke points such as the Straits of Malacca and Singapore, Bab Al-Mandab, the Suez Canal, the Turkish Straits and the Strait of Hormuz, are vital for international commerce and are strategically important to governments and trans-national corporations.² The right of innocent passage is essential for the free-flow of the world's commerce.

Under-sea resource management covers such areas as; oil and gas exploration and extraction, mineral exploration and extraction, marine-life protection and harvesting, and the laying of submarine cables. States manage how, and by whom, these resources are collected. When a difference of maritime zone definition exists, between two or more nations, conflicts have arisen in protecting each state's maritime territorial integrity and economic asset utilisation. How a state controls undersea resources, within

¹ International Foundation for the Law of the Sea, 2010. (<http://www.iflos.org/en/background/the-constitution.aspx>)

² Chatham House, January 2012, *Maritime Choke Points and the Global Energy System (Charting a Way Forward)*. (<http://www.chathamhouse.org/publications/papers/view/181615>)

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

disputed EEZs and archipelagic water, has brought acts such as harassment and shows of force between vessels at sea.

Maritime claims, for deep seabed areas (outside of EEZs), have increased and states competing for natural resources disagree on claimed areas. Modern techniques for discovering and technologies for extracting natural resources have improved the efficiency and lowered the cost of these operations. With global energy requirements increasing each year, there is a corresponding increase in exploration and extraction operations to meet these needs. As nations make claims to deep seabed areas, through governance defined in UNCLOS, non-signatory nations (namely the United States) have limited recourse in conflicted areas of common utilization.

Disputes between states raise their issues with the International Tribunal for the Law of the Sea (ITLOS) established under UNCLOS III. The Tribunal is a specialized world court established for the settlement of disputes and for rendering advisory opinions concerning the interpretation or application of the Convention or of an international agreement related to the purposes of the Convention. ITLOS has special powers in fields requiring urgent measures. Thus under certain conditions it may in special proceedings order the prompt release of detained vessels and their crews. Furthermore, it may prescribe provisional measures to preserve the respective rights of the parties to a dispute or to prevent serious harm to the marine environment. The Tribunal has formed the following standing chambers: the Seabed Disputes Chamber, the Chamber of Summary Procedure, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes. The Tribunal may also establish ad hoc chambers to deal with a particular dispute if the parties so request.³

For further reading on this subject see: Nong Hong, 2012, *UNCLOS and Ocean Dispute Settlement (Law and politics in the South China Sea)*

³ U.S. Navy Judge Advocate General's Corps, 2013. http://www.jag.navy.mil/organization/code_10_law_of_the_sea.htm

Sections of UNCLOS referenced in the Scenario

PART VI CONTINENTAL SHELF

Article 76 Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
 - (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
 - (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.
6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.
7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.
10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

PART VIII REGIME OF ISLANDS

Article 121 Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Philippines Government Documents

Excerpt from Philippine Note Verbale to UN Secretary General, 5 April 2011

“On the Islands and other Geological Features

“**FIRST**, the Kalayaan Island Group (KIG) constitutes an integral part of the Philippines. The Republic of the Philippines has sovereignty and jurisdiction over the geological features in the KIG.

“On the “Waters Adjacent” to the Islands and other Geological Features

“**SECOND**, the Philippines, under the Roman notion of *dominium maris* and the international law principle of “*la terre domine la mer*” which states that the land dominates the sea, necessarily exercises sovereignty and jurisdiction over the waters around or adjacent to each relevant geological feature in the KIG as provided for under the United Nations Convention on the Law of the Sea (UNCLOS).

“At any rate, the extent of the waters that are “adjacent” to the relevant geological features are definite and determinable under UNCLOS, specifically under Article 121 (Regime of Islands) of the said Convention.

“On the Other “Relevant Waters, Seabed and Subsoil” in the SCS

“**THIRD**, since the adjacent waters of the relevant geological features are definite and subject to legal and technical measurement, the claim as well by the People’s Republic of China on the “*relevant waters as well as the seabed and subsoil thereof*” (as reflected in the so-called 9-dash line map attached to Notes Verbales CML/17/2009 dated 7 May 2009 and CML/18/2009 dated 7 May 2009) outside of the aforementioned relevant geological features in the KIG and their “adjacent waters” would have no basis under international law, specifically UNCLOS. With respect to these areas, sovereignty and jurisdiction or sovereign rights, as the case may be, necessarily appertain or belong to the appropriate coastal or archipelagic state – the Philippines – to which these bodies of waters as well as seabed and subsoil are appurtenant, either in the nature of Territorial Sea, or 200nm Exclusive Economic Zone (EEZ), or Continental Shelf (CS) in accordance with UNCLOS.”

**PHILIPPINE PAPER ON ASEAN-CHINA
ZONE OF PEACE, FREEDOM, FRIENDSHIP AND COOPERATION (ZoPFF/C) IN THE WPS
(SCS)**

AS A VISION

ZoPFF/C seeks to transform the West Philippine Sea (South China Sea) from a region of conflict into a zone of peace, freedom, friendship and cooperation among the littoral states in the region. To achieve this, the disputed areas must be clarified from the non-disputed waters of the WPS (SCS).

AS A FRAMEWORK

The ZoPFF/C framework is encapsulated in the statement of President Benigno S. Aquino III:

***“WHAT IS OURS IS OURS, AND WITH WHAT IS DISPUTED, WE CAN WORK
TOWARDS JOINT COOPERATION.”***

Secretary Albert F. Del Rosario, on the other hand, said that

***“THERE IS A NEED TO SEGREGATE THE DISPUTED AREA FROM THE NON-
DISPUTED AREA. WHAT IS OURS IS OURS, AND WHAT IS DISPUTED CAN BE
SHARED.”***

OPERATIONALLY, THEREFORE:

Before “territorial disputes” could be shelved, it is imperative to segregate the disputed features from the non-disputed waters in the WPS (SCS). This may be done through the following steps:

TEN WAYS OF ZoPFF/C (10 Ways of “Z”)

- **One**, not the **whole** of the WPS (SCS) is disputed;
- **Two**, the **area of dispute** in the WPS (SCS) is **specific, determinable and measurable**;
- **Three**, the area of dispute can be determined and measured by clarifying the nature of, and distinction between “territorial disputes” and “maritime claims” in the WPS (SCS).
- **Four**, the nature of and distinction between “territorial disputes” and “maritime claims” in the WPS (SCS) can be **clarified** by: *first*, recognizing the **distinction** between **geological features** (i.e. islands, rocks, low-tide elevations) and **waters** (including continental shelf); and *second*, by **applying the rules** governing each of these elements in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).
- **Five**, the dispute in the WPS (SCS) is **principally** on the **relevant features** (i.e., islands, rocks, and low-tide elevations). If ever there is a dispute on the water, this is principally **caused** by the dispute on the features. Under the principle of “*la terre domine la mer*”, or “the land dominates the sea,” he who owns the land also owns the sea around it. Therefore, if the owner of the land is disputed, then the sea around it could also be assumed as disputed.
- **Six**, however, the **extent** of adjacent waters projected from the island is **limited, finite, determinable, definite, and measurable** under UNCLOS (i.e., **Article 121, Regime of Islands**)
- **Seven**, once the extent of adjacent waters is determined and measured in accordance with international law, specifically UNCLOS, then the extent of dispute both on the relevant features [**“territorial dispute”**] and maritime zones [**“maritime claims dispute”**] generated from the said features, can already be determined.
- **Eight**, once the extent or limit of the disputed area (relevant features + adjacent waters) is determined; the same can now be **segregated** from the rest of the non-disputed waters of the WPS (SCS).

- **Nine**, the disputed area (relevant features + adjacent waters) can be segregated from non-disputed waters (and continental shelf) of WPS (SCS) by **enclaving** the said disputed area. Enclaving will **literally operationalize** the “shelving of territorial disputes” and pave the way for **effective and meaningful cooperation** among the claimant countries in the WPS (SCS).
- **Ten**, therefore, **joint cooperation** in the **Enclave** (as Joint Cooperation Area) could be conducted among the claimant countries. **Outside** of the Enclave, the littoral states in the semi-enclosed sea can also engage in **appropriate cooperative activities** under **Part IX of UNCLOS**, while **exercising their sovereign rights** over these bodies of waters under **Articles 3,4, 55, 57, and 76 of UNCLOS**.

EXPLANATION

A. Areas under Dispute

Not the whole of the WPS (SCS) is disputed.¹

The disputes in the SCS are actually **limited** to the **features** (*i.e.* rocks, reefs, atolls, and low-tide elevations) in the Spratlys and the Paracels (and their limited adjacent waters).

There are 2 groups of islands in the South China Sea that are disputed: 1) Spratlys, and; 2) Paracels.

The features in the Spratlys are claimed wholly by China. The Philippines, Vietnam, Malaysia and Brunei claim part of it. Vietnam and China have also contesting claims over Paracels.

The waters (and continental shelves) **beyond** the disputed relevant features (and their adjacent waters) are **not** in dispute.²

B. Enclave: Disaggregating the Disputed Relevant Features from the Non-disputed Waters of the SCS

The disputed relevant features³ (and their adjacent waters) could be segregated from the rest of the waters of the SCS by **enclaving** the said features. The adjacent waters of the relevant features could be determined by **applying Article 121 of UNCLOS**.

Most of the features in the Spratlys are actually and obviously low tide elevations and rocks.

¹ China's so called 9-dash line claim over the whole of the South China Sea is bereft of any legal basis under international law, specifically UNCLOS. See Note Verbale of the Republic of the Philippines to the UN Secretary General, 5 April 2010:

On the Islands and other Geological Features

...At any rate, the extent of the waters that are “adjacent” to the relevant geological features are definite and determinable under UNCLOS, specifically under Article 121 (Regime of Islands) of the said Convention.

On the Other “Relevant Waters, Seabed and Subsoil” in the SCS

...since the adjacent waters of the relevant geological features are definite and subject to legal and technical measurement, the claim as well by the People’s Republic of China on the “*relevant waters as well as the seabed and subsoil thereof*” (as reflected in the so-called 9-dash line map attached to Notes Verbales CML/17/2009 dated 7 May 2009 and CML/18/2009 dated 7 May 2009) outside of the aforementioned relevant geological features in the KIG and their “adjacent waters” would have no basis under international law, specifically UNCLOS. With respect to these areas, sovereignty and jurisdiction or sovereign rights, as the case may be, necessarily appertain or belong to the appropriate coastal or archipelagic state – the Philippines – to which these bodies of waters as well as seabed and subsoil are appurtenant, either in the nature of Territorial Sea, or 200 M Exclusive Economic Zone (EEZ), or Continental Shelf (CS) in accordance with Articles 3, 4, 55, 57, and 76 of UNCLOS.

² **Reed Bank** is neither an island, nor a rock, nor a low-tide elevation under Article 121 of UNCLOS. It is completely submerged all the time and is therefore a continental shelf under Article 76 of UNCLOS. It is geographically **outside** the Spratlys area. *Neither* does it form part of the adjacent water *nor* continental shelf of any of the *islands or rocks* in the Spratlys under UNCLOS. Geologically speaking, Reed Bank forms part of the continental shelf of the main Philippine archipelago.

³ Relevant features are those capable of projecting maritime zone such as “Rocks” under Article 121 (3). Under Article 121 (2), low-tide elevations are not capable of projecting maritime zones. Under Article 60 (8), artificial islands are also not capable of generating maritime zones, except a safety zone of 500 meters.

Article 121
Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which **cannot sustain human habitation or economic life of their own** shall have no exclusive economic zone or continental shelf.

C. Cooperative Approach: Duality Of Regime

Once the territorially disputed relevant features are enclaved, appropriate cooperative activities under the dual regimes of 1) **Code of Conduct (COC)**, and; 2) **Part IX of UNCLOS** could be implemented in the enclave and the rest of the waters of the WPS, respectively.

1. **Enclave as Joint Cooperation Area (JCA)**.⁴ The enclave could be designated as Joint Cooperation Area (JCA).

The COC would be specifically applied in the JCA. COC could be designed to prevent **accidental military encounters** through specific **rules of engagement (ROE)** between and among the parties.

The JCA could be **demilitarized**, e.g. replacement of military personnel with police or coast guard personnel.

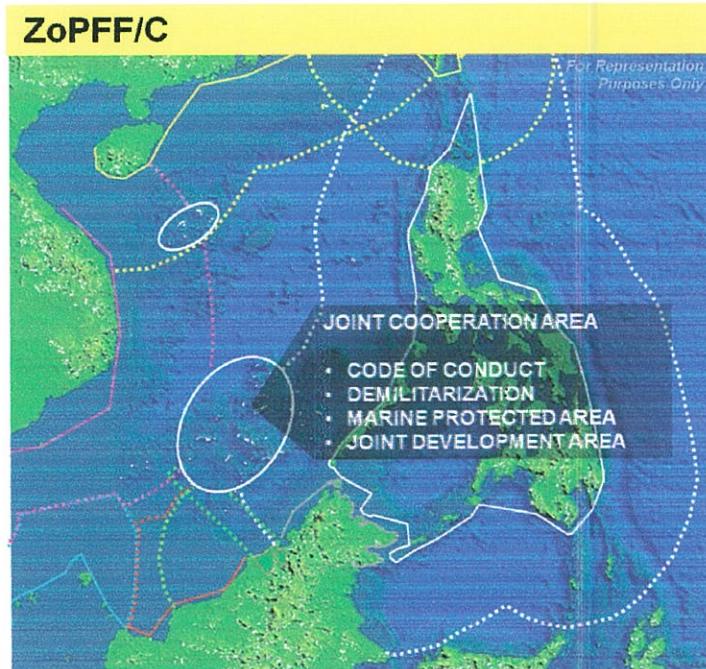
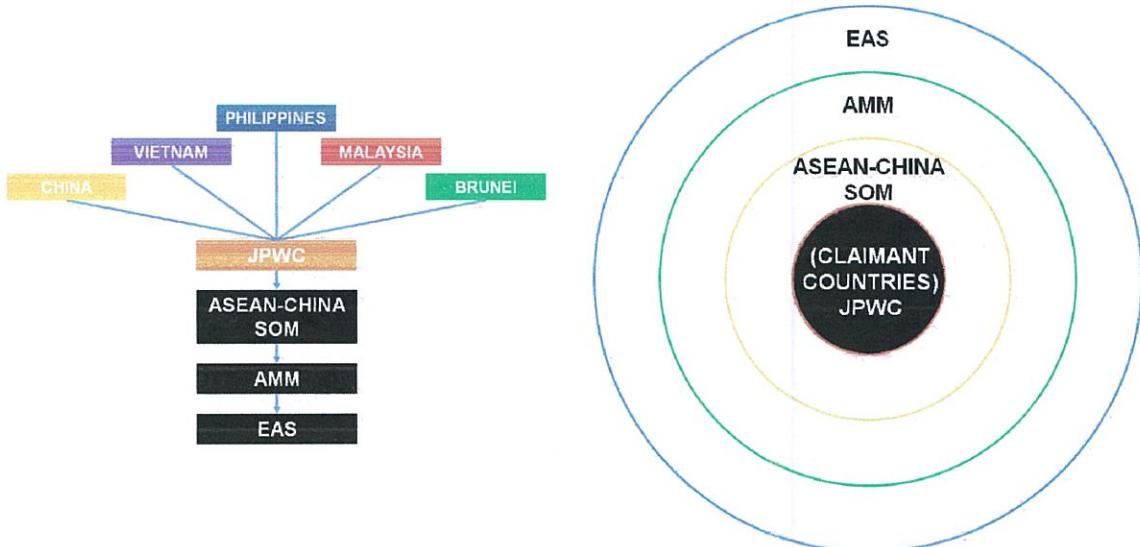


Figure 1

A **Joint Permanent Working Committee (JPWC)** among the claimant states could be established for **joint management** of the enclave including the drafting of and operational implementation of the COC.

The **JPWC** submits periodic reports to the ASEAN-China Senior Officials Meeting (**SOM**). SOM submits periodic reports to the ASEAN-China Ministerial Meeting (**AMM**). AMM could apprise the East Asia Summit (**EAS**)

⁴ See Figure 1.



Joint activities could be done in the JCA such as:

- (1) Joint Development
- (2) Marine scientific research
- (3) Protection of the marine environment
- (4) Safety of navigation and communication at sea,
- (5) Search and rescue operation,
- (6) Humane treatment of all persons in danger or distress at sea,
- (7) Fight against transnational crimes

Specifically, a **Joint Marine Peace Park** (JMPP) could be established in the JCA. It would be a **concrete** implementation of DOC and a beginning of a more vigorous cooperation in the WPS.

The ‘management mechanism’ under the JPWC and JMPP can also serve as ‘dispute settlement mechanism’ in the JCA.

2. UNCLOS Part IX. With respect to the maritime areas of the SCS **outside** the enclave, joint cooperative activities under Part IX of UNCLOS could be applied.

Article 123
Cooperation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

Joint activities that could be undertaken in this area include search and rescue (SAR), oil spill preparedness, marine scientific research (MSR) and other conservation projects. Structures for purposes of coordinating activities in the area could also be constituted among the concerned littoral states pursuant to Article 123 of UNCLOS.

**Confidential Instructions
REPUBLIC OF VIETNAM**

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

Confidential Instructions (Official Guidance from the Foreign Ministry)

Hanoi, Vietnam

Fundamental Principle:

- Peaceful coexistence with all nations within the region

Desired End States:

- Peaceful resolution of South China Sea (SCS) claims within international norms
- Transformation of relations with China based on mutual respect
- A strong Southeast Asia built around a strong ASEAN

Principal Negotiating Positions:

- Chinese aggression in the SCS must end. Beijing must accept resolution of SCS claims either through negotiation or through international arbitration.
- Confidence building measures must be put in place in order to ensure that hostile incidents will not reoccur.
- An ASEAN SCS Code of Conduct with agreed enforcement measures and checks must be approved and implemented.
- We support the Philippine government's Zone of Peace, Friendship, Freedom and Cooperation (ZoPFF/C) as a valid basis for reducing SCS tensions, and as a framework for both the long-term process of claim settlement and the short-term processes and procedures required for the immediate exploitation of SCS resources.
- We support the Philippine government's submission of their 2011 *Note Verbale* and 2012 submission of their challenge to China's claim to the UNCLOS Tribunal

Instructions to Negotiation Team:

Ensure periodic reports or requests for further guidance or clarification of your instructions are submitted via message to the office of the Prime Minister.

We dispute China's historical account regarding their claim to the Spratly and Paracel Islands. Both island chains are entirely within our territory. We have documented proof that our nation has actively ruled over both the Paracels and the Spratlys since the 17th Century. We contend that China never claimed sovereignty over the islands before the 1940s. Our nation had incorporated the Paracel Islands as part of Vietnam until the late 1970s before being forced out by the Chinese. The Spratly Islands are part of our continental shelf and as such our verifiable claims extend our EEZ to the UNCLOS limit of 350nm.

China would like to settle this dispute through a bilateral agreement with our government; however, most likely under terms extremely favorable to Beijing. Of substantial concern is the significant and extremely one-sided economic relationship we have with China. Our northern neighbor is our nation's largest trading power and main source of imports, which gives Chinese significant leverage over our economy. However, China's aggressive acts within the SCS over the last few years cannot go unchallenged. We have recognized that our nation's future cannot be

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

tied to an unpredictable, self-centered and selfish Chinese regime. We rely on a strong and united Southeast Asian region anchored in the multilateral Association of Southeast Asian Nations (ASEAN), and further buttressed by increased bilateral and multilateral relations with the regional powers of India, Japan, Australia, and South Korea, and through improved relations with the United States, whose continued presence is the best modifier against China's increasingly aggressive and irresponsible behavior.

In your talks with the Chinese delegation, clearly state immediate steps must be taken to reduce tensions through the termination of all military activity within the SCS for an indefinite period of time, and the immediate implementation of certain confidence building measures. Only in this way will the further loss of innocent lives be avoided. Strongly advocate that naval patrols and anti-piracy efforts by SCS nations be replaced with and conducted by non-SCS nations drawn from Asia-Pacific nations, such as Australia, India, and South Korea.

Reiterate that any settlement of these SCS claims must begin with the clarification of their claims within the nine-dashed line area in accordance with UNCLOS provisions regarding islands, exclusive economic zones (EEZ) and continental shelves. Once delineated, then any overlapping claims can be resolved through multilateral negotiations or alternatively through formal arbitration under the auspices of the UNCLOS Tribunal.

Insist that China cease its efforts to block the implementation of an SCS Code of Conduct armed with specific rules of behavior and code enforcement. Their improper influence on certain past ASEAN chairs, and now 2016 ASEAN Chair, Laos, in order to prevent any discussion of the SCS situation only serves to increase regional instability, weaken ASEAN, and forces the SEA and SCS nations to look toward increased bilateral relations with, and regional involvement of, China's competitors, certainly not an outcome that serves Beijing's long-term interests.

Ensure that the Chinese delegation understands that we will continue to support the Philippine government's actions to resolve their SCS claims through UNCLOS Tribunal arbitration. You may inform the Chinese delegation that we are prepared to take similar actions if these negotiations fail to demonstrate acceptable progress toward a reasoned resolution of our mutual claims. We note that the Philippine ZoPFF/C is an admiral concept for beginning the process of positive SCS-nation bilateral and multilateral actions that could build both confidence and trust between nations as we both sort out and resolve claims while simultaneously working together to harvest the SCS resources to the mutual benefit of all SCS nations.

In your talks with the Philippines, inform them of our support for their positions and of our positions regarding China as laid out above. Ensure them that our stance vis-a-vis China is united with theirs on most points. Remind them of our precarious position regarding China, both in terms of geography and economics. But also remind them that our nation and China are both kindred communist countries, which both allows for and requires a much more nuanced type of relationship with Beijing, one that Manila could never replicate. This allows us to work more closely with Chinese leaders while still vehemently protesting Chinese behavior. This being the case, it may be more prudent for our two delegations to join together in any negotiations we may have with the Chinese delegation. Indeed, our delegation should work with the Philippine delegation to promote the creation of agreed multilateral positions with all delegations, save the Chinese, so that we all speak with one voice as we engage the Chinese delegation in bilateral and multilateral meetings throughout the course of these and future negotiations.

In your talks with the Indonesian delegation, express our profound disappointment in the ASEAN process and member inability to unite in support of ourselves and the Philippines on a

NOTIONAL EXERCISE MATERIAL FOR EDUCATIONAL PURPOSES ONLY

matter of such importance to all of ASEAN. Inform them in no uncertain terms that we expect their full support of our positions in their talks with China, and that we are willing to partner with them on any meetings they have with the Chinese delegation, but with the inclusion of the Philippine delegation, and only if the meetings will advance this situation in a positive direction. There is no point in meeting with China just to hear the same old rhetoric. In other words the Indonesian government must act as a driver of positive change and must understand that it can be the key to positive outcomes if it uses its good offices with Chinese for the betterment of ASEAN and ASEAN member states.

In your talks with India and Japan, note that our position is similar to that of the Philippines. Also relate our delicate position with China as noted above, especially in terms of the one thing that can change – economics. Seek increased assurance of increased bilateral trade to counterbalance China. Regarding India, seek their assurance of continued military support in terms of training, weaponry imports, and joint exercises, and also in terms of cooperative energy exploration and extraction endeavors within the SCS. Seek the support of both nations for seeking to involve the Chinese delegation in multilateral vice bilateral negotiation sessions in order to display a united front even if our positions are not completely aligned. Hopefully, this will help pressure the Chinese to alter their positions.

It has come to our attention through third country classified sources that India may seek to mount a military attack on a Chinese naval vessel in retaliation for the attack on their oil exploration vessel, but only if these talks are found to be unproductive regarding Beijing's position on the SCS. In your talks with the Indian delegation, seek to discover if this is true and, if so, what details can be shared about any possible action. Advise them that any military action at this time will only negatively exacerbate the situation and will likely make it more difficult for the SCS nations to deal with Beijing in a constructive manner. If the possibility of such a military option comes to the attention of the Chinese delegation, deny any complicity on the part of the Vietnamese nation, and emphasize our overarching desire for continued peaceful and mutually respectful coexistence with China. Given their relations with India, it is reasonable to assume that the other delegations, except perhaps for Indonesia, are aware of the contemplated Indian military action. Seek to understand from your meetings with them any further details that they can divulge.

In your talks with the United States, welcome their continued presence in the region and the need for their continued influence in order to help control Chinese ambitions and behavior. Express to them that we are happy to continue the expansion of our diplomatic, military and economic relationship. To a great degree, our increased relations with the United States are focused on securing Washington's support for placing ASEAN at the center as the primary venue for confronting China on the SCS issues. They have responded positively in the past to this objective. Despite our issues with the ASEAN leadership, for the long-term this continues to be our objective – to have ASEAN take the lead in controlling Chinese behavior in the SEA in concert with the United States and other regional powers, primarily India, Japan, Australia and South Korea. In order to help ensure this come to pass, we need Washington's help to join with other ASEAN members and regional powers to sway Cambodia and Myanmar away from Chinese influence. While Myanmar has taken great strides in governance and improvement of external relations they still suffer under the thumb of China, as does Cambodia. The United States needs to take the lead in combined efforts to move Myanmar and Cambodia away from China's dominating influence, which would then allow ASEAN to find the consensus it needs to deal effectively with China.