



Konrad  
Adenauer  
Stiftung

# A QUEST FOR REGIONAL SOLUTIONS

CHALLENGES AND PROSPECTS  
FOR CONFLICTS IN THE  
SOUTH CHINA SEA

EDITED BY BENEDIKT SEEMANN  
AND MARIE ANTOINETTE DE JESUS

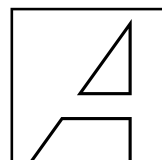




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# Foreword

What does China's rise mean to the Asia Pacific region and how to deal with it? That is the question most frequently addressed by scholars, analysts, and decision-makers right now. But what if China is not rising? What if it has risen already? What if unilateral approaches provide no solution? Assuming this is the case, it's worth looking, not only at China itself, but instead for regional solutions and answers.

This publication follows the conference titled "Maritime and Regional Security in the Asia Pacific: Challenges and Prospects for Cooperation" held in November 2015—right after the Asia-Pacific Economic Cooperation Summit in Manila—jointly organized by the Konrad-Adenauer-Stiftung Philippines Office and the AIM Rizalino S. Navarro Policy Center for Competitiveness. Needless to say, the eyes of an entire region (and beyond) are closely following the developments in the South China Sea. Both the conference and this publication have been created from the ambition to provide a comprehensive view on certain challenges and questions. The questions asked here, revolving around the key players and processes in the South China Sea, reflect more than just a geopolitical, China-centric view. The playing field is way too complicated to only look at one state in the broader context of regional conflicts. On the other side, this book is not solely written from a Philippine point of view, either. As a matter of fact, numerous experts and authors coming from different backgrounds and different parts of the world tried to paint a picture that comes from diverse points of view, attempting to create a bigger picture, which allows us to understand better the complexities underlying the current disputes and options for dispute resolution.

Konrad-Adenauer-Stiftung is grateful to Ron Mendoza, former Executive Director of the AIM Rizalino S. Navarro Policy Center for Competitiveness, who did not hesitate to cooperate in this endeavor, bringing high-quality expertise and serious commitment to the joint undertaking. Jamil Paolo Francisco who succeeded Ron Mendoza as Executive Director, deserves thanks as well for picking up the baton and continuing our partnership in exploring solutions and mechanisms for regional cooperation in South East Asia and the South China Sea.

As the conflicts and disputes surrounding the South China Sea keep on evolving, our endeavor will closely follow those changes and developments with both public conferences and further publications.

## **Benedikt Seemann**

Country Director

Konrad-Adenauer-Stiftung Philippines

# Statements of Dr. Wilfrido Villacorta

## Maritime and Regional Security in the Asia Pacific: Challenges and Prospects for Cooperation

20 November 2015

### **Is there a need for a clearer Framework for solving the West Philippine Sea Issue?**

In coming up with the best approach to our territorial issue with China, we must be certain about the goals, the rationale and the premises that should guide the conduct of engagement.

Our government has given priority to the legal course of action. We have won the first round—the ruling of the Arbitral Tribunal that it has jurisdiction of over the case. The second round involves deliberations on the merits of our submissions. But as our President has always reiterated, the South China Sea is not the sum total of our bilateral relations. We have not abandoned the diplomatic alternative. Diplomacy is, after all, the most effective instrument in relations among states.

*We must be mindful of the premises that should guide our diplomacy:*

1. The principal stakeholders in the conduct of our domestic and foreign policies are the Filipino people and their national interest.
2. The Philippine Constitution stipulates that “the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations (Article II, Section 2).”
3. Our Constitution further provides that “the State shall pursue an independent foreign policy (Article II, Section 7).
4. In the Foreign Policy Guidelines during the Aquino III administration, it was specified that “our major concern should be to build a safe and strong regional neighborhood. We should consider the Association of the South East Asian Nations (ASEAN) as the bedrock of Philippine Foreign policy for the 21st century.” It was also stated that “new centers of global power and influence have emerged. The Cold War is long gone and new alignments must take into consideration on these shifts.”

Another fiat is that “the Philippines will strengthen its bilateral relations with member states of the Association, will rely on the Association in resolving its



territorial disputes with other countries, and will strive for the realization of an ASEAN Economic Community, an ASEAN Social Community and an ASEAN Security Community... We must design defense and security relationships to manage new realities. Classic ideas of balance-of-power and containment have long been out of vogue. In their place we have emphasized new cooperation on fresh dangers, including transnational crime, piracy and terrorism, as well as on cooperation for humanitarian emergencies... Since the Philippines is less likely to affect these emerging political and security arrangements on its own, it makes sense to do so in concert with others. The mechanisms constructed in recent years by ASEAN, including the ASEAN Regional Forum (ARF), engage all the powers with interests in our region in non-confrontational, inclusive and transparent dialogues that serve to enhance peace and stability."

### **Should we negotiate with China after the second ruling of the Arbitral Tribunal?**

The Arbitral Tribunal will now deliberate on the merits of our submissions. After it has made its ruling on the second round, then we should be open to diplomatic negotiations. This is not surrender or appeasement, but preventive diplomacy. We are still asserting our claims but would maintain our commitment to the peaceful settlement of disputes, in keeping with the prescriptions of our Constitution, the ASEAN and the United Nations.

### **What are the recent diplomatic initiatives of China?**

In November 2014, President Xi convened a meeting of the Communist Party of China Central Committee, on how to advance China's diplomacy "under new conditions."

He underscored the need "to increase China's soft power, give a good Chinese narrative, and better communicate China's message to the world." He called for continuing the independent foreign policy of peace.

He highlighted the promotion of "democracy in international relations." By this, he meant that "all countries, regardless of their size, strength and level of development, are equal members of the international community and that the destiny of the world should be decided by people of all countries. We should uphold international justice and, in particular, speak up for developing countries."

President Xi emphasized the need to promote the "principles of amity, sincerity, mutual benefit and inclusiveness in conducting neighborhood diplomacy, promote friendship and partnership with our neighbors, foster an amicable, secure and prosperous neighborhood environment, and boost win-win cooperation and connectivity with our neighbors."

Since September 2015, China has pursued diplomatic overtures aimed at demonstrating these aspirations. On September 25, 2015, President Xi reciprocated the visit of President Obama to China. His mission was to develop a "Great Power relationship" with the US. During his US trip, he delivered his first address to the United Nations General Assembly. He stressed that "the future of the world must be shaped by all countries. All countries are equals."

Last October 2015, he witnessed the signing of deals worth US \$61.5 billion in the United Kingdom. The main agreement was the establishment of Britain's first nuclear plant in a generation, with China holding a one-third stake.

Prime Minister David Cameron announced that “China is investing more in Britain than other European countries. And the change we will see is obviously the investment into our infrastructure.” Britain, a conventional Atlantic force, will become the first major Western economy to join the Asian Infrastructure Investment Bank (AIIB), a multilateral institution initiated by China that will provide investment opportunities mainly in Asia.

On November 1, 2015, China’s Premier Li Keqiang, Japan’s Prime Minister Shinzo Abe and Republic of Korea’s President Park Geun-Hye signed the Joint Declaration for Peace and Cooperation in Northeast Asia. The meeting was finally realized after the Fifth Trilateral Summit three-and-a-half years ago in May 2012. They recognized their common interest in peace and stability in the Korean peninsula and agreed to hasten economic integration through acceleration of trilateral FTA negotiations and functional cooperation. They reached a consensus that the trilateral summit will now be held on a regular basis.

President Xi went to Viet Nam on November 5-6, 2015, the first visit by a top Chinese party leader in nine years. In his bilateral talks with National Assembly Chairman Nguyen Sinh, he emphasized the value of striving “for win-win, multi-win and all-win results.”

Afterwards, he proceeded to Singapore to meet with Ma Ying-jeou of Taiwan, to discuss “the happiness of the next generations.” The unprecedented gesture yielded a positive response from the US, according to Reuters. This was the first meeting between the two sides since 1949.

# Maritime Security in Southeast Asia and its Impact on Regional Integration

Sebastian Bersick

There is no agreed definition of maritime security in a universal or legal sense. The term refers to and links up several issue areas, i.e. (1) international, regional and national peace and security, (2) sovereignty, territorial integrity, and political independence, (3) Sea Lines of Communication (SLOC), (4) the principle of freedom of navigation, (5) security protection from crimes at sea, (6) resource security, access to resources at sea and to the seabed, (7) environmental protection, as well as, (8) security of all seafarers and fishermen (Feldt et al. 2013, 23). Since the South China Sea dispute entails all eight elements to varying degrees, it can be considered as one of the most important cases of maritime security in Asia (see also: Lin and Gertner 2015). Especially with regard to the SLOC and the principle of freedom of navigation, does the South China Sea play a pivotal role—regional and global trade depend on the open and safe passage through Southeast Asia’s waters.

Due to the economic strength of the People’s Republic of China (China) and its status as the only Asian permanent member of the United Nations Security Council, Beijing combines increasing economic and political power. China is, arguably, the most important country in East Asia. Yet, with China’s regional and global economic strength rising, the vulnerability of China’s neighbors increases as well. This leads to uncertainty about China’s strategic intentions and in turn reinforces old and new threat perceptions as well as security dilemmas within East Asia and beyond. As a consequence, processes of regional economic integration in East Asia do have a strong security dimension. Bilateral and multilateral policy making in the Asia Pacific is characterized by a pattern of two conflicting developments, i.e. converging economic policies and diverging security policies. This phenomenon, which I call ‘convergence’, is increasingly influenced by China’s role in the South China Sea. It impacts on regional economic cooperation and integration. Any attempt to understand or explain regional integration in East Asia therefore needs to take into account economic, political and security factors. The question of maritime security in the South China Sea thus offers a case in point to explore the interplay of economic, political and security factors in the developing international political economy of East Asia and the Asia-Pacific.

According to Ian Storey, three interrelated Chinese “key interests” do exist with regard to the South China Sea. “First, it wants to assert what it sees as its historic rights, including sovereignty over all the geographical features and possibly even the entire maritime space. Second, it wants to secure access, on the basis of those historic rights, to maritime resources, principally fish, oil, gas, and undersea minerals. Third, it wants to ensure that its sea lines of communication [...] are secure because these trade arteries are so vital to China’s economic prospects and great power aspirations.” (Storey 2012). Beijing’s interests in the South China Sea bring China into conflict with a number of states in Southeast Asia, including Brunei

Darussalam, Malaysia, the Philippines, Vietnam and Indonesia. Yet, peace and stability in the South China Sea are key to China's and the region's economic development. The region is a vital channel of trade for China because much of its trade to the European Union, the Association of Southeast Asian Nations (ASEAN), and Africa travels through the South China Sea, as well as China's supply of oil from the Middle East and East Africa. As such, China's main strategic goal in the region is to create a stable trading network. A main strategic threat to this aim is the disputed waters of the South China Sea (Bersick and Duggan 2013). At the same time, countries in the region are well aware that their national economies' development and prosperity depend on the well-functioning of the SLOC. China is the biggest trade partner for most Asian economies, including Japan, South Korea, Taiwan, Malaysia, Philippines, and Vietnam.

Maritime security in the South China Sea is vital to the functioning of the regions' economies. Because of the South China Sea dispute, which has developed a dangerous tit-for-tat pattern, the Asia-Pacific security environment has deteriorated since 2009. During the 2015 APEC business leaders' meeting in Manila, it was argued that the economic outfall of a military escalation in the South China Sea would be more serious than a sharp economic downturn in China or the breakdown of the Euro (Frankfurter Allgemeine Zeitung 2015, 16). The readiness of the littoral states of the South China Sea to engage in tit-for-tat behavior and risk military escalation runs counter to the logic of the liberal paradigm in International Relations. According to the latter's logic, increasing economic interdependence and the establishment of multilateral institutions offer a key to national, regional and global security, and prosperity, because the gains for any given state-actor from a future war would not outweigh the current and future gains from economic cooperation and integration. Since the escalation of the South China Sea dispute and the resulting increasing maritime insecurity in the region threaten gains from current as well as future economic cooperation and integration, the observable—puzzling—nexus between regional economics, politics, and security calls for an explanation.

### **Patterns of Regional Integration in East Asia**

Despite strong economic ties and a vibrant international political economy, there is no common agreement about a normative-institutional regional order among the countries in the region. Different preferences towards the participation in regional multilateral forums as well as economic integration processes do exist, which are informed not only by economic but also by security factors.

In the Asia-Pacific, the 1967 formed ASEAN has a pioneering role in regional and functional cooperation, that led to the formation of several multilateral forums and processes such as the ASEAN Regional Forum (ARF 1994), the ASEAN+3 process (APT 1997), or the East Asia Summit (EAS 2005). The ASEAN member states pursue a goal of community building and adopt a comprehensive agenda of intra-regional and inter-regional cooperation. In the course of the ASEAN Economic Community (AEC), a Single Market and Production Base is being implemented since the end of 2015.

#### *The Economic Dimension: Convergence*

In the economic realm, a new trend towards greater constraints of the national scope of action can be observed in Asia-Pacific. This leads to converging economic policies on the regional level.

With regard to the current normative-institutional set up of economic regionalism in East Asia and Asia-Pacific four major initiatives can be differentiated: (1) the ASEAN Economic Community (AEC), (2) the ASEAN-centered Regional Comprehensive Economic Partnership (RCEP), (3) the Asia-Pacific Economic Cooperation forum (APEC), and the China-driven Free Trade Area of the Asia-Pacific (FTAAP), as well as (4) the US-driven Trans-Pacific Partnership (TPP). All four initiatives are underlying different strategic concepts regarding regional economic integration. Essentially, there are two rivaling positions, one of the PR China and one of the USA, who are both pursuing a leadership role in East Asia and the Asia-Pacific. So far this rivalry results in the de facto mutual exclusion of China and the USA in the latest and still developing integration initiatives. China is not part of the TPP and the USA is not part of the RCEP. The rivalry for regional leadership triggers the question, whether a Sino-centric or a USA-centric model shall shape the future of economic integration in the Asia-Pacific. The propagated model by China is an APEC-wide free trade area (i.e., the Free Trade Area of the Asia Pacific, FTAAP). The USA under President Barack Obama promotes the formation of the TPP, while the ASEAN aims at establishing its economic community (AEC) and RCEP. RCEP plays an important role since it aims at free trade agreements (FTAs) between ASEAN and its already existing free trade partners (the six ASEAN+1 FTAs), i.e., Australia, China, India, Japan South Korea, and New Zealand. It is envisaged, that the negotiations, initiated at the end of 2012, will be concluded by the end of 2016. The agreement shall inter alia cover trade with goods and services, investments and intellectual property.

The 21 APEC economies have so far not been able to successfully implement their goals of liberalization in the area of trade, investments, and services. APEC follows the concept of open regionalism which is based on voluntary liberalization actions in the respective economic sectors that are not legally binding. According to the President of the PR China, Xi Jinping, a future FTAAP shall also be based on the concept of open regionalism: "While endeavoring to bring regional economic integration to a higher level and initiate the Free Trade Area of the Asia-Pacific (FTAAP), we should also remain committed to open regionalism and work for new and open economic institutions and regional cooperation architecture, so that the door of the Asia-Pacific will always be open to the entire world." (Xi 2014).

Because of the slow advances within APEC and in order to strengthen economic cooperation and integration, the USA promotes the TPP, which brings together the twelve countries of Australia, Brunei Darussalam, Chile, Japan, Canada, Malaysia, Mexico, New Zealand, Peru, Singapore, the USA, and Vietnam. TPP negotiations were finalized in October 2015 and the agreement now awaits a domestically highly contested ratification process in all twelve member countries. TPP aims at implementing far reaching and legally binding steps in the process of economic integration. The TPP thus compromises and calls into question the existing normative-institutional order of economic cooperation and integration in East Asia and the Asia-Pacific, since the treaty represents a change from the principle of legally non-binding to legally binding economic integration. It thus breaks with the tradition of open regionalism and introduces the juridification of multilateral regional economic integration in East Asia and the Asia-Pacific (Bersick 2013).

The recent trend towards rules-based economic integration contributes to economic convergence in the Asia-Pacific by putting greater constraints on the national scope of action. Overall, a process of regional economic convergence, i.e., multilateral cooperation and integration, in the form of economic agreements, can be observed in the Asia-Pacific, as shown

by the examples of the AEC, RCEP, FTAAP, and TPP. Yet, even this new trend of convergence in regional economic affairs is informed and shaped by the rivalry between China and the USA and the two different methods of regional integration both actors seek to apply, i.e., legally non-binding (China) and legally binding (USA) economic integration. The role of security factors should be taken into consideration when explaining this observation.

### *The Security Dimension: Divergence*

Regional cooperation and integration can significantly reduce the risk of armed conflicts and can even help to erode security dilemmas. The example of the European integration process proves that regional integration can allow for a structural transformation that ensures security and economic prosperity. So far, political integration in East Asia is low or even non-existent (Börzel and Risse 2016).

The debate about China's regional economic integration policy taking place in China shows to what extent the question of regional economic integration and security factors are influencing each other. Proponents in favor of China acceding to the TPP argue that it might promote a further opening of the domestic economy and reform processes, such as in the area of state-owned enterprises. When not participating, China would be excluded from regional standardization processes, for example, in the area of environmental protection and intellectual property rights (Xu 2013; Xing and Sun 2013). Opponents claim that accession to the TPP would diminish China's current influence on processes of regional economic integration such as trade liberalizations as well as its general influence on regional cooperation processes in East Asia. Moreover they claim that the TPP is a strategic part of the US 'pivot' to Asia, and thus promotes the US's strategic goal to "diminish the rise of China" (see Tang and Lin 2012). Because of Japan's participation in the TPP, Chinese observers furthermore criticize TPP for following the strategic objective of strengthening the US-Japanese alliance (Cai 2012).

Security factors do also impact on the ASEAN's integration process. The ASEAN's aim to establish an ASEAN Community consisting of an economic, a political-security, as well as a socio-cultural pillar, is the furthest advanced project of regional integration in Asia-Pacific so far (Dosch 2016). However, the ASEAN risks division in view of China's unilateral and bilateral approach to the South China Sea. A first example of the divisive effect of the South China Sea issue on the ASEAN and China's role within was that no joint communiqué of the ASEAN Ministerial Meeting in Cambodia in July 2012 could be agreed on; nor could participants of the ASEAN Defence Ministers Meeting (ADMM)-Plus agree on a joint communiqué in November 2015. There is a risk that the ASEAN becomes increasingly divided by this development as island building and 'land reclamation' in the South China Sea, "effectively transform the facts on the ground" (Beeson 2015, 11). What is more, the Philippines' appeal to international law and an arbitral tribunal under the United Nations Convention of the Law of the Sea (UNCLOS) has not resulted in a joint ASEAN position with regard to the Philippines vs. China case in the South China Sea dispute.

Because of the divergence in the security realm, multilateral institutions like the ARF have so far not successfully contributed to conflict resolution in the South China Sea. Instead, bilateral approaches are chosen and often preferred to multilateral forms of problem-solving. Consequently, regional solutions to regional problems, such as maritime security in the South China Sea, are undermined. The position of China to prefer a bilateral problem-solving approach over a multilateral process is a case in point (Sutter 2013; Dosch 2010).

## Security Trumps Economics: Convergence and Regional Integration in East Asia

When discussing maritime security and regional economic integration in East Asia, two conflicting developments need to be differentiated, i.e., converging economic policies and diverging security policies. Convergence is particularly relevant in the case of the South China Sea. Seen from a liberal perspective, littoral countries' governments should be well aware that safeguarding maritime security is in their country's national interest as their national economies depend on intra-regional and global production networks and the functioning of SLOC.

Yet, claimant as well as non-claimant states' behavior, like in the case of the USA, to varying degrees, risk a further escalation by playing tit-for-tat. In this game of *actio* and *re-actio*, China's behavior provides hard evidence that the risks to maritime security in East Asia are increasing. According to Johnston, the South China Sea "is perhaps the only example where China's diplomatic rhetoric and practice did shift fairly sharply in a more hard-line direction [...]" (Johnston 2013, 19). China's unwillingness to accept the July 2016 verdict by the arbitral tribunal in The Hague provides further evidence for Johnston's assessment. It not only puts China at odds with international law, but it also threatens to delegitimize China's role as an international law abiding and law promoting responsible stakeholder (see: Tønnesson 2015). This, in turn, adds to the strategic uncertainty in the region. Increasing maritime insecurity in the South China Sea impacts negatively on the domestic and regional economic environment and thereby on the prospects of regional economic integration in Asia-Pacific because it re-enforces existing and creates possible new security dilemmas and threat perceptions. Within such a regional environment, the prospects for the PR China joining the TPP, the USA joining RCEP or the start of negotiations on a future FTAAP appear rather dim. The limits to regional economic integration are to a large extent defined by security factors. It remains a characteristic of the region that state actors are not willing to effectively dis-entangle the economic and political dimension of regional integration from the security dimension by deepening economic integration. Instead, the normative-institutional set up of current economic integration initiatives is shaped by the rivalry between China and the USA for leadership in the Asia-Pacific.

The divergence of security policies resulting from threat perceptions and security dilemmas impact negatively on otherwise converging economic integration processes: the phenomenon of convergence, at least for now, makes security trump economics in East Asia and the broader region.

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# Economic Implications of Maritime and Territorial Disputes

Ronald Mendoza and Charles Siriban

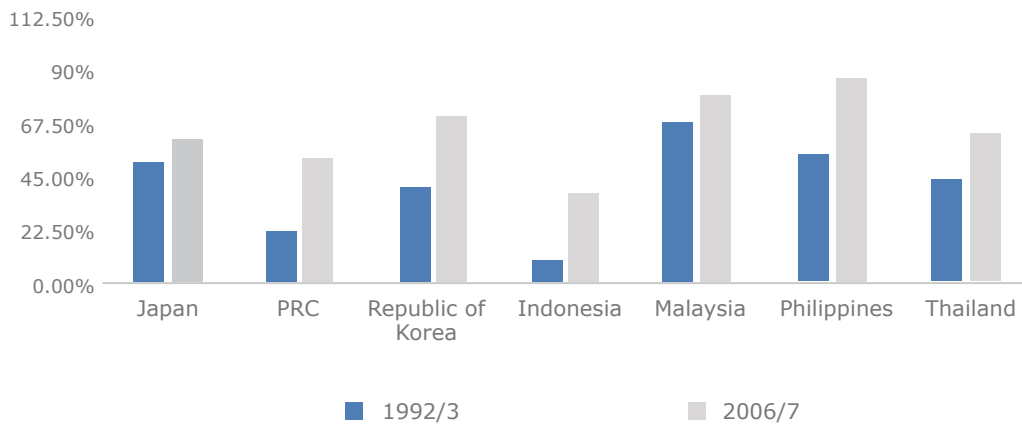
*Territorial and maritime disputes continue to figure prominently in international affairs. These are not simply limited to the political sphere, given their economic ramifications. Drawing on studies on the economics of conflict, this paper examines an array of economic costs associated with territorial and maritime disputes. These include adverse effects on certain economic and development outcomes arising from possible armed confrontation, with some of these possibly lingering in the aftermath of conflict. There are also costs associated with territorial disputes per se, emphasizing how these disputes also have implications on the livelihoods of resource users in the disputed areas. A clearer understanding of these economic links could help inform and motivate policymakers on mitigating the risks of conflict.*

## **Introduction**

There is an overall decline in the number of territorial disputes over the period 1948 to 2000. In particular, the decline plateaued in mid-1970s, reflecting the persistence of some territorial disputes and the emergence of new ones (Schultz 2015, 126-127). Relatedly, a significant number of such disputes lingered for years, while some continue to be an active point of contention. In an analysis of 129 territorial disputes over the period 1950 to 1990, Huth (1998, 31) finds that 46% of the territorial disputes lasted for 10 to 30 years, while around 36% existed for more than thirty years.

Currently, some of the territorial and maritime disputes are located in vital areas for the international economic arena. For instance, the Asia-Pacific region (in which some countries have overlapping claims in the West Philippine Sea/South China Sea and East China Sea) is characterized by the presence of international production networks and supply chains utilized in manufacturing electronics and automotive products, among others. Many Asian countries have seen an increased participation in such production chains in the recent years (see Figure 1.1), with some countries serving as production hubs of parts and components and others serving as assembly hubs of final products (Cheewatrakoolpong, Sabhasri, and Buditwattanawong 2013; APEC Policy Support Unit 2013). The West Philippine Sea/South China Sea also serves as a vital passageway of commercial ships, with around USD 5.3 trillion worth of trade passing through the said area every year (Glaser 2012).

Figure 1.1. Share of Network Products to Total Manufacturing Export



Source: Adapted from Athukorala (2010, 40)

Many territorial and maritime disputes continue to be a main source of tensions among the concerned countries, in some cases leading to military confrontations. By one estimate, around one-third of territorial disputes over the past two centuries have evolved into armed confrontations (Hensel 1999 as cited in Wiegand 2011, 2). In some instances, such armed confrontations have lasted only for a couple of days while some, such as the Iran-Iraq war, have lasted for years.

Drawing on the results of various studies on the economics of conflict, the succeeding sections examine the potential economic costs associated with territorial and maritime disputes. Aside from the casualties and destruction of properties, interstate armed confrontations that may erupt as a result of such disputes have potential implications on the output and standard of living of the concerned countries, as well as on their trade and investment activities and development outcomes. It is also possible for such effects to linger beyond the war years. Results of some studies also suggest potential economic costs associated with the existence of territorial dispute per se. Such costs arise primarily from reduced economic activity due to uncertainties imposed by the presence of such dispute.

### **Economic Implications of Military Conflicts among States**

Various studies find evidence linking interstate military conflicts and territorial dispute. Results of the analysis conducted by Kocs (1995, 170-172) using data on territorial disputes over the period 1945 to 1987 show greater frequency of war among countries with contested boundaries as opposed to those whose boundaries are clearly defined and legally valid. Relatedly, Hensel (1996, 59) finds that militarized interstate disputes are almost thrice as likely to escalate into full-blown wars among country pairs with territorial dispute relative to those that are not involved in any dispute of similar type.

As noted by Hensel (2000, 58-60), one explanation on the observed link between armed conflict and territorial dispute hinges on the array of values that a contested territory contains from the point of view of concerned countries. First among these are the tangible benefits, which include

among others, its resource- and commerce-related (for instance, if the territory has access to vital commercial routes) endowments. There also exist non-tangible benefits such as its perceived historical connection to the claimant countries. In this case, the said territory serves as a vital component of the claimant countries' identity and as such, territorial disputes evoke a sense of pride and nationalism among their citizens (Fearon 1995, 390) as cited in Hensel 2000, 59; Luard 1970, 7; and Vasquez 1993 as cited in Hensel 2000, 60, making compromise agreement more difficult to achieve, relative to the case where the dispute merely concerns resource-sharing issues (Fearon 1995 as cited in Hensel 2000, 59). There are also reputation issues, in which case a claimant country would opt not to give up its claim due to fear of providing other countries greater leverage (Hensel 2000, 60).

Military conflicts are associated with significant costs on human life and on society. As posited by Stewart (1993, as cited in Harris 1999, 15-16), the economic costs of war can be classified as follows:

- *Human costs*, which refer to the immediate costs borne by the society due to war. Included here are costs associated with reduced production of goods and services, reduced government expenditure on health and education due to diversion of fiscal resources for war time needs, and direct and indirect effects of war felt by households and individuals (such as casualties and injuries, foregone economic opportunities and foregone access to health and education services).
- *Development costs*, which refer to costs associated with the depletion of an economy's capital stock and foregone investment due to war. Capital includes physical infrastructure as well as human and social capital. Some examples of development costs include costs associated with the reduction in the proportion of educated workers in the labor force and the loss of trust and respect for law and private property due to war, among others.

Building on the categories proposed by Stewart (1993) and Harris (1999, 16-17) summarizes the economic costs of war as follows: (1) reduction in an economy's wealth due to depletion of its resource endowments and destruction of environment and its stock of physical and human capital, (2) reduction in an economy's output due to reduced stock of capital and reduced efficiency arising from changes in resource allocation made during the war, and (3) the opportunity costs associated with increased military expenditure during periods of war.

In this regard, the persistence of a number of territorial disputes nowadays continues to signify the possibility of interstate conflicts breaking out among the claimant countries. Such conflicts can affect the economy through various channels, as examined below.

#### *Casualties and Immediate Economic Costs*

One issue of interest concerns the valuation of economic costs associated with the loss of life during times of military conflict. While no metric can fully encapsulate the toll associated with the loss of life and injuries during war, such valuation can provide a benchmark estimate of the extent of human casualties caused by war. Glick and Taylor (2005, 26-38, 49, 51) provide an estimate of the human costs associated with World Wars I and II. The corresponding prevailing average real wages during the war periods are used, along with certain assumptions on the

share of labor force to total population and on the share of labor and human capital to total output, in providing a measure of human costs of the said wars among the belligerent countries.

As can be seen in Figures 2.1 and 2.2, there is a wide variation of estimated cost figures. In the case of World War I (in which some belligerent countries were engaged in territorial disputes and rivalries<sup>1</sup> beforehand), the losing parties (such as Germany and Austria-Hungary) have registered some of the highest cost-to-(pre-war) Gross Domestic Product (GDP) ratios, while the estimated total human costs in this case are equivalent to around 3.4% of (pre-war) world GDP. In contrast, estimated human costs associated with the Second World War amount to more than 6% of (pre-war) world GDP. For some countries, the estimated human costs of the Second World War amount to more than one-fifth of pre-war GDP, as in the case of USSR (whose cost-to-(pre-war) GDP ratio is 24.80%), Poland (whose cost-to-(pre-war) GDP ratio is 23.50%), and Yugoslavia (whose cost-to-(pre-war) GDP ratio is 22.60%).

In the aftermath of the Second World War, some territorial disputes have evolved into running skirmishes and military disputes (see Table 2.1). While other factors have also contributed to the decision of concerned countries to resort to military conflict, analysts have considered territorial dispute to be an influential factor. For instance, as posited by West (2006, 77), the Vietnamese government's assertion of its purported historical rights over Spratly Islands in the aftermath of the Vietnamese war, along with geopolitical considerations, has contributed to the emergence of Sino-Vietnamese war. Some territorial disputes are characterized by episodes of skirmishes among claimant countries in the past. Such was the case of the dispute between Peru and Ecuador with regards to the demarcation of their 883-mile long border. The territorial dispute commenced shortly after Ecuador declared independence from Great Colombia in 1830 and persisted for years until an agreement was signed in 1998 by the Presidents of both countries. Before 1998 however, there were at least 34 instances of military conflict arising from the said dispute, including a military confrontation in 1995 (Simmons 1999, 10-19).

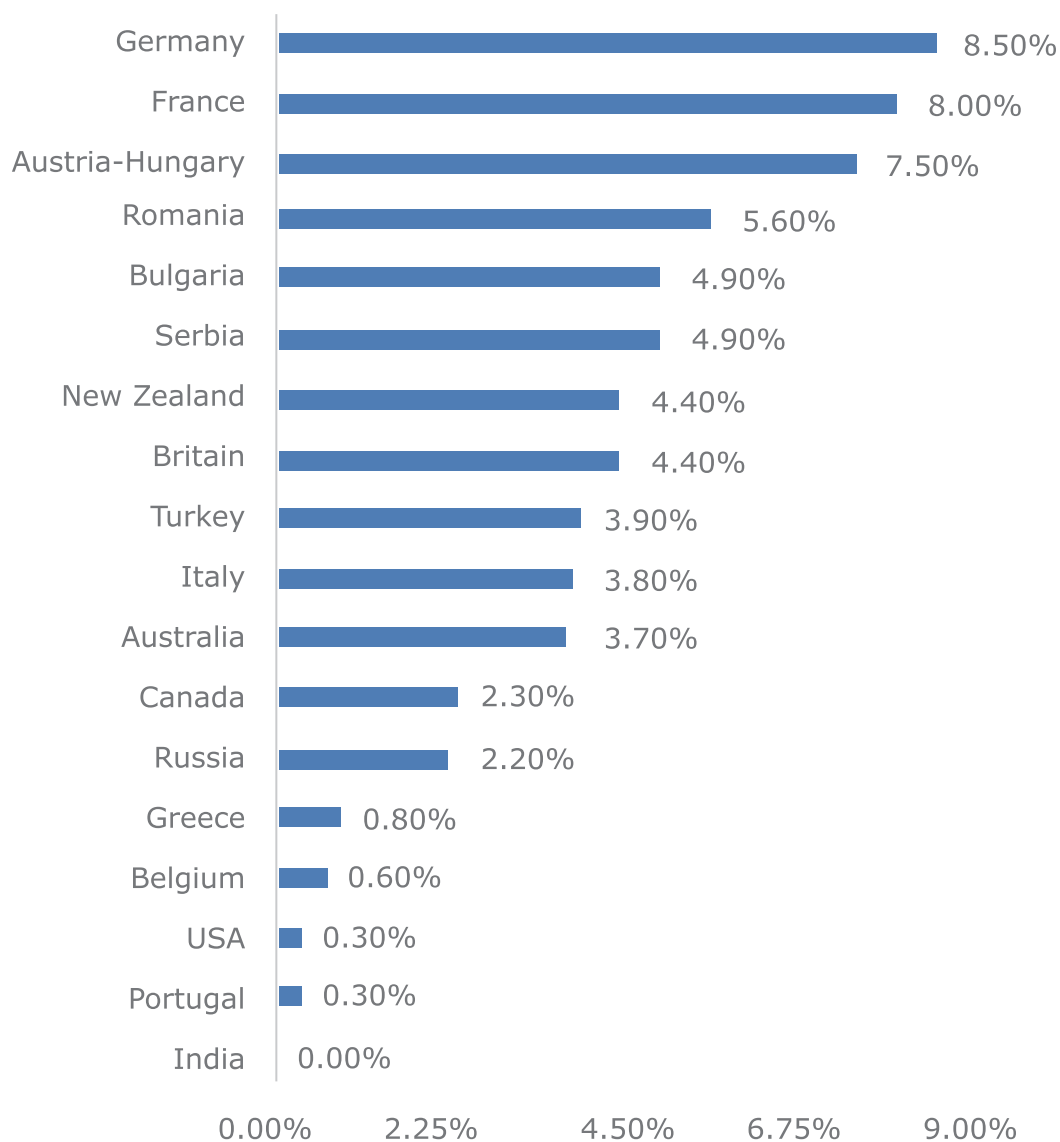
While there are differences with regards to the duration of military conflicts, all of them are associated with significant casualties and costs. By one estimate, the Iran-Iraq war cost Iran around USD 644 billion, with war damage and lost potential production (excluding oil) comprising a large part (at around USD 450 billion) of the estimated cost. Iraq, on the other hand, is estimated to have incurred economic cost amounting to USD 453 billion, which includes oil revenue losses amounting to USD 198 billion. Such estimated losses amount to around 60% of Iran's Gross National Product (GNP) and 112% of Iraq's GNP over 8 years of war (Mofid 1990 as cited in Harris 1999, 18-19).

Casualties due to military conflicts may also continue to pile up even after the war, as can be seen in the case of the First Gulf War. These include the death of Iraqi civilians who were displaced as a result of the conflict, which can be attributed to lack of purified water systems, lack of well-functioning health care delivery systems, and destruction of vital infrastructures (such as power generating plants), among others (Alnasrawi 1992, 345-346).

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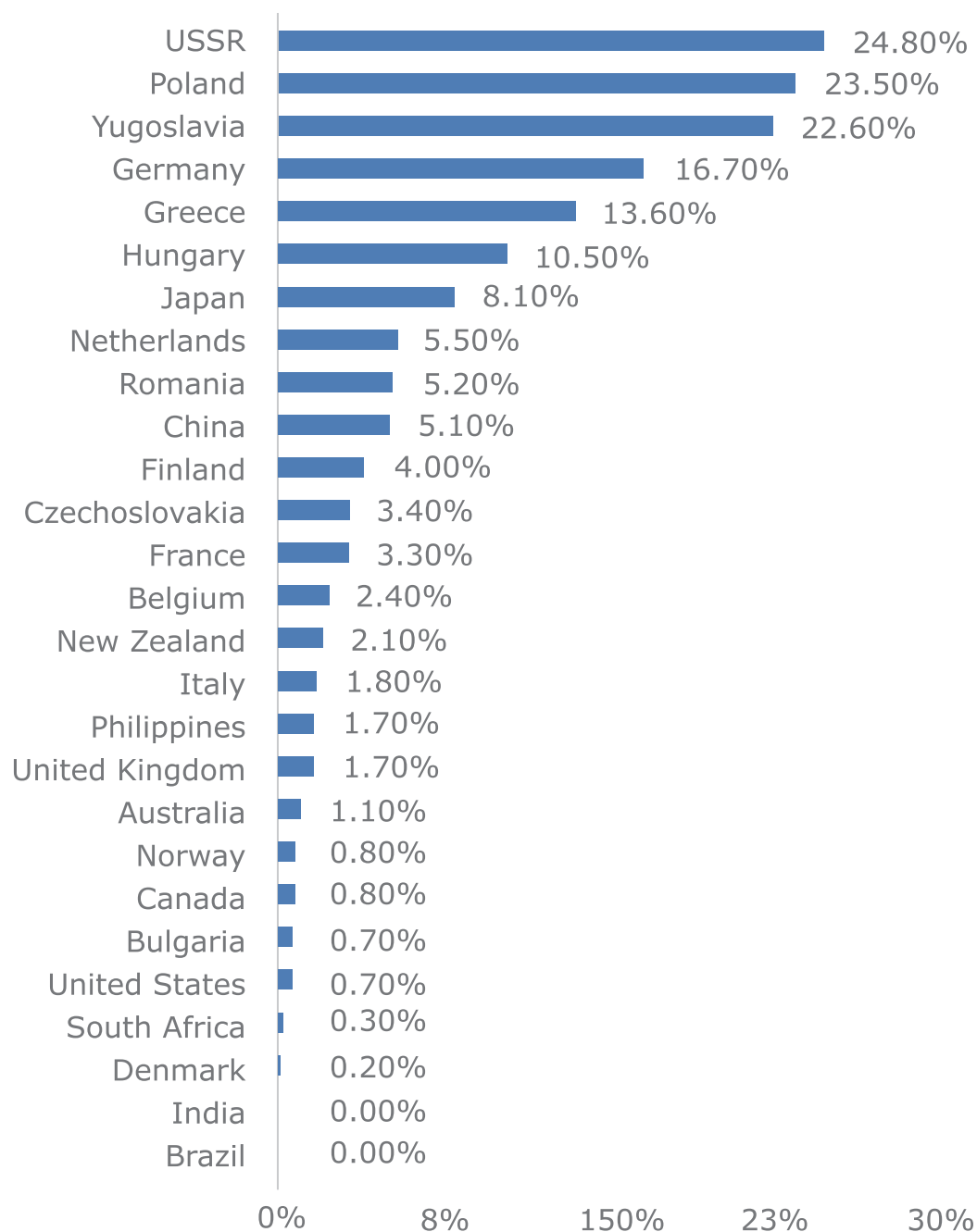
<sup>1</sup> These include among others territorial disputes between France and Germany, and between Austria-Hungary and Serbia, some of which have lingered for centuries (Cashman and Robinson 2007, Hensel 1996).

Figure 2.1 Estimated Human Costs- to-(1913) GDP Ratio among World War I Belligerent Countries



Source: Adapted from Glick and Taylor (2005, 49)

Figure 2.2 Estimated Human Costs-to- (1938) GDP Ratio among World War II Belligerent Countries



Source: Adapted from Glick and Taylor (2005, 51).

Table 2.1 Selected Post-World War II Skirmishes Associated with Territorial Disputes

Date of Encounter	Countries Included	Disputed Territory	Casualties and Associated Costs
April 2 to June 14, 1982	United Kingdom and Argentina	Falkland Islands	<ul style="list-style-type: none"> <li>• Military casualties: death of around 800 to 1,000 Argentine soldiers and 250 British soldiers</li> <li>• Estimated cost to the British government of around USD 1.19 billion</li> <li>• Estimated cost of around USD 5 billion to the Argentine government</li> </ul>
February 16 to March 17, 1979	People's Republic of China and Vietnam	Overlapping claims over certain islands in the Spratlys area	<ul style="list-style-type: none"> <li>• Death of around 25,000 to 28,000 Chinese soldiers and injury of around 37,000 soldiers</li> <li>• Death of around 20,000 Vietnamese soldiers and injury of around 35,000 to 45,000 soldiers</li> </ul>
1980 to 1988	Iran and Iraq	Shatt Al Arab waterway	<ul style="list-style-type: none"> <li>• Estimated death toll of around 1,000,000 in Iran and 250,000 to 500,000 in Iraq</li> <li>• Estimated economic cost amounting to USD 644 billion in Iran and USD 453 billion in Iraq</li> </ul>
August 2, 1990 to February 28, 1991	Iraq and Kuwait	Kuwait	<ul style="list-style-type: none"> <li>• Death of around 50,000 to 120,000 Iraqi soldiers</li> <li>• Death of around 5,000 to 15,000 Iraqi civilians during the war</li> <li>• Death of around 20,000 to 100,000 Iraqi civilians during the uprisings conducted in the aftermath of the war</li> <li>• Death of around 15,000 to 30,000 displaced Iraqi civilians</li> <li>• Death of around 4,000 to 16,000 Iraqi civilians due to starvation and disease</li> <li>• Estimated replacement cost of destroyed Iraqi assets: USD 200 billion</li> <li>• Estimated cost of war in Kuwait: USD 65 billion</li> <li>• Reduction in Kuwait's GDP and increase in government debt</li> </ul>
January 26, 1995 to February 28, 1995	Ecuador and Peru	Dispute over 883-mile long border (which includes Condor Mountain range)	<ul style="list-style-type: none"> <li>• Around 200 to 1,500 casualties</li> <li>• Estimated total cost of up to USD 1 billion</li> </ul>
May 1998 to June 2000	Ethiopia and Eritrea	Border areas (Badme, Tsorona-Zalambessa and Bure regions in Ethiopia)	<ul style="list-style-type: none"> <li>• Estimated total military fatalities of around 70,000 to 100,000</li> <li>• Internal displacement of around 360,000 people in Ethiopia as of May 2000</li> <li>• Internal displacement of around 1.1 million people in Eritrea during the war</li> </ul>

Source: Compiled by the authors from various sources.

## Impact on Economic Growth and Standard of Living

Armed interstate conflict can affect economic growth and the standard of living in different ways. As noted previously and noted elsewhere (see for instance Yamarik, Johnson and Compton, 2010), war is associated with casualties and destruction of properties and productive capacities of a country, in turn adversely affecting its economy in the short run. Military conflicts are also associated with build-up of military capabilities, which affects the economy through various channels. First among these are the demand effects which include multiplier effects associated with increased military spending and crowding out of other expenditures. The crowding out effect would depend on how the additional military spending is financed. If, for instance, the increase in spending is financed through additional government borrowing, this may lead to increase in real interest rates, which can then crowd out private investment. On the other hand, additional military spending can result to changes in output of other sectors via reallocation of resources, thereby inducing supply effects (Dunne, Smith and Willenbockel 2005, 450-451).

In addition, to the extent that increased security leads to increased economic activity, and increased military spending leads to increased security, greater military spending can have positive consequences to a country's economy. However, greater military spending in one country can possibly lead to an arms race with other countries, which can then adversely affect the security of such countries (Dunne, Smith and Willenbockel 2005, 451).

Table 2.2 contains information on selected studies on the relationship between interstate military conflict and output variables. Some studies find evidence showing that an interstate military conflict has a negative effect on output growth and standard of living. Yamarik, Johnson, and Compton (2010, 16) find that a standard deviation increase in the value of a country's conflict indicator<sup>2</sup> results to a reduction of about 14% of a standard deviation of its 2000 real GDP per capita.

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<sup>2</sup>The conflict indicator is formulated by first computing the weighted sum of all bilateral conflicts in which a particular country is involved during a particular year, with the average daily fatality figure of each conflict serving as its weight. The yearly indicators from 1960 to 2000 are then summed up to generate the conflict indicator used in their study.



Table 2.2 Selected Studies on the Impact of Military Conflict on GDP Growth and GDP per Capita

Authors	Countries Included	Disputed Territory	Casualties and Associated Costs
Yamarik, Johnson and Compton (2010)	158 countries over the period 1960 to 2000	Deep determinants regression approach	<ul style="list-style-type: none"> <li>• A standard deviation increase in fatality-weighted conflict indicator results to a decrease in 2000 real GDP per capita by around 14% of a standard deviation.</li> </ul>
Polachek and Sebastianova (2009)	81 countries over the period 1970 to 2000	Fixed effects regression	<ul style="list-style-type: none"> <li>• High-intensity interstate military conflict reduces annual growth by 0.18 to 2.77 percentage points.</li> <li>• High-intensity interstate military conflict results to lower annual economic growth across all countries using observations with 1-year and 2-year time intervals</li> <li>• High-intensity interstate military conflict results in lower annual economic growth using observations from low-income and African countries</li> </ul>
Koubi (2005)	114 countries over the periods 1960 to 1974 (for war/ conflict observations) and 1975 to 1989 (for observations on economic growth)	OLS regression (with conflict indicator that is not contemporaneous with economic growth)	<ul style="list-style-type: none"> <li>• Doubling the duration of war from its mean value increases per annum economic growth by 22%</li> </ul>
Miguel and Roland (2011)	Vietnamese provinces; 1992/ 1993 and 2002 observations on outcome indicators	Instrumental Variable- Two Stage Least squares (IV-2SLS) method	<ul style="list-style-type: none"> <li>• No robust adverse effects of US bombing on poverty rates, consumption levels, electricity infrastructure, literacy or population density through 2002</li> </ul>

Source: Synthesis of studies compiled by the authors.

Polachek and Sebastianova (2010, 16-24), on the other hand, find evidence indicating the presence of short run effects associated with interstate military conflict. In particular, their analysis shows that fatal militarized interstate disputes result to lower economic growth rate using panel observations of countries with 1-year and 2-year time intervals<sup>3</sup>. For instance, a one unit increase in the number of war dead per thousand population leads to 2.20% and 2.25% lower average economic growth rate using observations that use 2-year and 1-year time intervals, respectively. Similar results are also observed for regression runs using observations from low-income countries as well as African countries, suggesting a significant toll on developing countries associated with such conflicts.

However, other studies yield results showing an insignificant or even positive relationship between interstate war and output variables. For instance, results of the analysis by Koubi (2005, 78) show that greater war duration from 1960 to 1974 is associated with higher average annual economic growth over the period 1975 to 1989 using a total sample of 114 countries. As such, this potentially suggests the presence of a “phoenix factor” in certain cases, a term coined by Organski and Kugler (1977) upon observing that countries on the losing side have recovered rapidly within 15 to 20 years after the two world wars.

Various explanations have been put forward to explain the said observation. Consistent with the predictions of the neoclassical growth theory, it is possible for countries to experience convergence in the long run (Koubi 2005, 79). Also, it is possible that interstate military conflict has undermined, if not eliminated, the vested interests opposed to economic reforms in belligerent countries (Olson 1982). Aside from possible multiplier effects, increased military activity can potentially induce an increase in research and innovation activities, in turn affecting an economy’s long-run trajectory (Ruttan 2006).

Relatedly, Miguel and Roland (2011) make use of variations across provinces in bombing intensity and distance from the demarcated boundary of North and South Vietnam to determine the long run impact of US bombing activities during the Vietnam War. Results show that the bombing activities do not have a negative effect on poverty incidence, consumption level, as well as population density years after the war (Miguel and Roland 2011, 8-12). As posited by the authors, it is possible that the heavily-bombed areas received a significant amount of resources for reconstruction. Additional analysis<sup>4</sup> conducted by the authors provides evidence that cohere with such conjecture, suggesting the importance of having strong institutions in the aftermath of the military conflict.

### **Impact on Trade and Investment**

Military conflict can affect trade through different channels. On one hand, military encounters can disrupt commerce, thereby reducing the volume of trade among the concerned countries. There are also security externalities associated with trade not usually factored in by firms involved in exporting and importing business. These include export of strategic goods, which can strengthen the military capabilities of an adversary country as well as income gains that can be attained by an adversary country as a result of trade. To the extent that governments are

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<sup>3</sup> For two-year time intervals, one observation corresponds to 1971 to 1972, 1973 to 1974, and so forth. The average value of most indicators for years included in a unit of observation serves as the value of such indicators for that unit of observation.

<sup>4</sup> See Miguel and Roland (2011, 12-14).

aware of the presence of such externalities, policies can be initiated to push firms to internalize them, thereby reducing trade among warring countries (Kastner 2007, 667-668).

As show in Table 2.3, there are studies, which find that a military conflict has negative impact on bilateral trade (Pollins 1989; Anderton and Carter 2001; and Glick and Taylor 2005), while other studies find limited or insignificant impact (Morrow, Siverson and Tabares 1998 and Barbieri and Levy 1999).

Some authors attempt to explain the mixed results observed in the literature. For instance, Li and Sacko (2002, 13-19) posit that the impact of military conflict on trade depends on the predictability of the conflict on the part of the firms. War can be considered as a product of a stochastic process, in which case the governments do not have full expectation *ex ante* that a military conflict will occur. Traders do not have more complete information than their respective governments, and as such do not also fully expect the occurrence of such armed confrontation. The negative impact of a military conflict on bilateral trade will be greater if it is less expected that the conflict will exist, if all parties do not expect beforehand that it will be severe, and if the conflict endure longer than what is expected by the parties to the conflict. Empirical analysis conducted by the authors yield results that cohere with their conjecture, with the unexpectedness of the onset of a military conflict between states and of its severity and duration all having negative impact on bilateral trade (Li and Sacko 2002, 27-33)<sup>5</sup>. Relatedly, results of an empirical analysis conducted by Li (2006, 245-251) show that the emergence of an unanticipated military dispute among states is associated with a lower probability that a country will be chosen as location for potential investment.

Furthermore, as noted by Glick and Taylor (2005, 2-3), some of the empirical studies use samples that include relatively short time series and limited set of countries (such as only the contiguous or politically relevant ones), which suggest a higher likelihood of presence of selection bias. In this case, Glick and Taylor (2005) make use of a large dataset of countries over the period 1870 to 1997 and extend the analysis on two fronts: (1) inclusion of lagged terms to determine if a military conflict has effects on trade beyond its contemporaneous impact, and (2) examination of the possible presence of spill-over effects associated with a military conflict. Their results show significant negative impact of war on trade as well as the presence of lingering effects of war. On average, a military conflict causes value of trade to decrease by around 80% to 90%. War also has an adverse effect on trade between belligerent and neutral countries, with more remarkable figures observed when the analysis is limited to the major wars (see Table 2.3) (Glick and Taylor 2005, 15).

Other studies examine the impact of a military dispute on inflow of foreign direct investments. The emergence of such type of conflict can increase the risk associated with operating on countries that are party to the dispute, in turn increasing the uncertainty on the returns that firms can earn from their investments (Jensen 2006; Jensen and Young 2008; and Bussman 2010). The presence of risk may induce multinational firms to resort to measures that aim to ensure that their operations will remain smooth (such as increasing the security of their affiliate offices), which will then increase the cost associated with operating in those countries (Spich and Grosse 2005).

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<sup>5</sup> In this case, the authors simulate the firms' calculation of the possibility of a military conflict by modeling the onset of a conflict as a function of various variables, which include bilateral trade flows and trade interdependence, historical commonality, distance, presence of alliance, and the presence of a major world power in a country pair or dyad, among others.

Table 2.3 Selected Studies on the Impact of Military Conflict on Trade

Authors	Observations	Empirical method	Results
Pollins (1989)	25 countries over the period 1960 to 1975	OLS regression applied to cross section of countries for each year	<ul style="list-style-type: none"> <li>Lagged conflict indicator is (statistically) significantly related to trade variable on all regression runs</li> </ul>
Morrow, Siverson and Taberes (1998)	7 countries (considered major powers) over the period 1907 to 1913, 1920 to 1938, 1948 to 1990)	OLS regression (but use of panel corrected standard errors in place of usual standard errors)	<ul style="list-style-type: none"> <li>Militarized interstate dispute does not have a statistically significant effect on trade</li> </ul>
Barbieri and Levy (1999)	7 dyads (Argentina-UK, UK-China, UK-Egypt, Cyprus-Turkey, Greece-Turkey, Uganda-Tanzania, USA-China) over the period 1870 to 1992	Interrupted time series analysis	<ul style="list-style-type: none"> <li>Statistically significant and negative effect of war on trade on only one dyad (Argentina-UK)</li> <li>No adverse permanent effect associated with war on trade for all dyads included</li> </ul>
Anderton and Carter (2001)	14 major power dyads and 13 non-major power dyads	Interrupted time series analysis	<ul style="list-style-type: none"> <li>Greater number of dyads for which war has a negative and significant effect on trade</li> </ul>
Li and Sacko (2002)	One dataset consisting of 56 countries from 1870 to 1992  Post-war dataset consisting of 120 countries from 1950 to 1992	Fixed effects regression	<ul style="list-style-type: none"> <li>Onset of an unexpected militarized interstate dispute and the degree of unpredictability of such dispute reduce bilateral trade ex post</li> </ul>
Glick and Taylor (2005)	50 countries over the period 1870 to 1938 and 171 countries over the period 1938 to 1997	Country-pair fixed effects regression	<ul style="list-style-type: none"> <li>Decline in trade of about 80% to 90% (on average) as a result of military conflict</li> <li>Decline in trade between neutral and belligerent countries of about 5% to 12% (on average) as a result of military conflict and about 42% to 65% as a result of major wars</li> </ul>

Source: Synthesis of studies compiled by the authors.

It is also possible that host country governments modify their regulatory policies toward foreign investments as a result of a military conflict. Governments can utilize an array of tools, which include imposition of capital controls to discourage their multinational enterprises to invest on their adversaries. Also, such governments can induce affiliates of multinational firms from hostile countries to repatriate less amount of profit to their respective countries of origin and even expropriate the firms' assets as a result of the military conflict (Li and Vaschilko 2010, 767-768). Both of these are expected to reduce the amount of bilateral investments among countries that are party to a military dispute.

Using data on 1,117 dyads or country pairs from 1980 to 2000, Li and Vaschilko (2010, 773-776) find that military conflict affects bilateral foreign direct investments only for dyads in which one country is a high income country and the other a low income country. On the other hand, military conflicts are found to have insignificant effects on bilateral investments between high income countries.

The authors posit that a possible explanation behind the observed result concerns the existence of relatively few military disputes among high income countries in the sample. Many of these countries have democratic governments and disputes are usually settled through mediation. Another possible explanation put forward by the authors concern the difference with regards to the dominant type of bilateral investments for the two types of country pairs in the sample. In particular, bilateral investments for high income-low income country pairs tend to be more vertical, in which case, the investment made is a vital component of a production chain that serves a large market while bilateral investments for high income countries tend to be more horizontal. It is possible for a military dispute to have more significant impact on vertical-type investments given that various countries (in particular, all countries that are part of the production chain) are affected in this case as opposed to horizontal-type investments in which the disruption is limited only to countries that are part of the dispute (Li and Vaschilko 2010, 775).

#### *Other Effects of Interstate Military Conflict*

Some studies show that it is possible for the effects of interstate conflicts to linger in the post-war years. For instance, Che, Du, Lu, and Tao (2015) analyze the long-run impact of Japanese occupation of China in the years preceding the Second World War by using trade and investment data at the provincial-level. Results show that a one percentage point decrease in the ratio of civilian casualties would induce a 7.9% increase in the number of direct investment projects from Japan, a 23.3% increase in investment from Japan in 2001 and a 16.3% increase in accumulated investment (until 2001) from Japan. A possible explanation cited by the authors hinges on the war memories that may have been passed on to succeeding generations and related psychological conditions, which include lack of mutual trust on the part of some of their citizens (Che, Du, Lu, and Tao 2015, 186-195).

Some studies have also shown that military conflict can adversely affect development outcomes. For instance, Akresh, Lucchetti, and Thirumurthy (2012, 335-337) find that Eritrean children who were born during the Ethiopian-Eritrean conflict from 1998 to 2000 (see Table 2.1) and were living in a conflict region have 0.42 standard deviation lower height-for-age Z scores. This in turn makes their average height-for-age Z score 22% lower than that of children who were born in a non-conflict region during the war. This has implications on the future health, education and labor market outcomes of the affected children, with the affected children estimated to have 4.3% less wage in their adulthood<sup>6</sup>.

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<sup>6</sup> The estimate is based on the following figures: Alderman, Hoddinott, and Kinsey (2006) find that a one standard deviation decrease in height is associated with 0.678 fewer grades completed in Zimbabwe while Krishnan, Selassie, and Dercon (1998) estimate the returns to education in Ethiopia to be around 15 percent.

Relatedly, Ichino and Winter-Ebmer (2004, 59-68) find that individuals from Austria and Germany (countries whose civilian population were significantly affected in the Second World War) who were born in the 1930s have lower educational attainment than their counterparts in Switzerland and Sweden. Among the possible reasons cited by the authors include reduction in financial means and disruptions in schooling caused by intermittent bombings during the war. Furthermore, it is possible that many of those individuals had fathers who were actively serving in the military during the war, which then could have disruptive consequences on their education outcomes. The authors also find that the similar cohort of individuals in Austria and Germany have, on average, lower wages, 40 years after the war, as compared to the similar cohort in Switzerland and Sweden (Ichino and Winter-Ebmer 2004, 78-81).

### **Economic Implications of Border Disputes**

Territorial dispute, in itself, is associated with two types of uncertainty which can affect economic activities. On one hand, jurisdictional uncertainty exists in which case there is ambiguity on whose rules and legal protections will apply on a certain jurisdiction. This, in turn, induces a higher risk on the part of firms when conducting cross-border transactions. Such was the case in the Persian Gulf area in which shipping and fishing are occasionally disrupted due to the existence of disputes between Iran and United Arab Emirates over Abu Musa Islands (see Box 3.1 for further details). On the other hand, territorial disputes are also associated with policy uncertainty to the extent that countries that are parties to territorial disputes tweak their policies in response to the dispute. Such was the case of Nicaragua, which imposed a 35% tariff on all goods from Honduras and Colombia in response to their maritime delimitation agreement, which Nicaragua criticized as including an area it considers as part of its territory (Simmons 2005, 828-829).

Using data from 1950 to 1995 for 557 contiguous country pairs, Simmons (2005, 835) finds that the presence of a territorial dispute between country pairs is associated with a 28% decline in the value of their bilateral trade in the short run. Furthermore, Simmons (2005, 835) finds that a territorial dispute has a long-run effect on bilateral trade of contiguous countries. In particular, territorial dispute is associated with a reduction in the average value of annual bilateral trade from the sample mean of USD 3.17 million to around USD 2.3 million in the short run, and to around USD 1.17 million in the long run.

These suggest a significant amount of foregone trade when applied to some cases of countries with territorial disputes. For instance, Simmons estimates that the previous territorial dispute between Argentina and Chile (which lasted from 1950 to 1995) is associated with cumulative foregone trade amounting to almost USD 33 billion over the same period. The said figure is close to the estimated total military spending by Argentina over the period 1962 to 1994 (at USD 37 billion) and is higher than the counterpart figure for Chile (at USD 22 billion). While the estimated cumulative losses in bilateral trade are smaller for other countries, the estimated amounts can still be considered as significant. In the case of Ethiopia and Kenya, it is estimated that the territorial dispute (which lasted from 1963 to 1970) is associated with foregone bilateral trade amounting to USD 44 million. This is equivalent to more than one-tenth and about 23% of total overseas development assistance received by Kenya and Ethiopia, respectively, over the same period (Simmons 2005, 836-838).

Many areas that are subject to territorial dispute contain various resource endowments (such as diverse fisheries and other marine resources) and as such, the uncertainties associated with a territorial dispute also affect those who depend primarily on the said endowments for their

livelihood. Box 3.1 contains cases of territorial disputes and how these affect those who traditionally fish in the disputed areas. In most cases, fishermen tend to be caught in between countries that are party to the dispute. There are reports of harassment experienced by such fishermen, ranging from confiscation of some of their tools to use of force (such as ships and air forces) to drive them away from the disputed area.

#### Box 3.1. How Fishermen in Disputed Areas are Affected by Territorial Disputes: Selected Cases

- **India and Sri Lanka**

Given the unclear demarcation of maritime boundary in the Palk Strait, a series of arrests of fishermen from one country have been made by another country on charges of illegal poaching. About 626 Indian fishermen were arrested by Sri Lankan authorities in 2013 while around 200 Sri Lankan fishermen were arrested by Indian authorities over the same period (Colombage 2014).

Anecdotal evidence suggests that some fishermen in both parties experienced harassment from the Navy and fishermen of other parties. Sri Lankan authorities were reported to have confiscated equipments, cellphones and fish containers of some Indian fishermen. One report also notes that as of 2012, at least 100 Indian fishermen have been killed and 350 have been injured as a result of the dispute. Sri Lankan fishermen, on the other hand, have complained that Indian fishing fleets have committed overfishing activities in their waters and have utilized fishing tools (such as bottom trawlers and monofilament nylon nets) that are banned in Sri Lanka (Yardley 2012).

- **Colombia and Nicaragua**

After a case was brought to the International Court of Justice (ICJ) by Nicaragua in 2011, the court's decision in 2012 has paved the way for the transfer of a sea area of about 30,000 square miles from Colombia to Nicaragua. The said area has been considered as a rich fishing ground and potentially has a significant amount of oil. Reports indicate the presence of Colombian Navy warships in the area in the aftermath of the Court's decision and that warships, as well as helicopters and planes, were reportedly used to harass Nicaraguan fishermen. This in turn induced the Nicaraguan government to send Coast Guard ships in the area (The Economist 2012).

The Colombian government announced that it would continue its navy and aerial patrols in the area, with a Navy commander reportedly given instruction to "maintain the sovereignty of Colombia's maritime jurisdiction as it has been historically known" (Castro 2012). Results of a survey conducted in Colombia the aftermath of the ICJ decision show that around 85% of respondents believe that their government should not accept the ruling despite the possible implications of such move with regards to its relations with Nicaragua (The Economist 2012 and Paterson and Flynn 2013, 6).

- **United Arab Emirates and Iran**

Territorial disputes between the United Arab Emirates and Iran concern Abu Musa, and Greater and Lesser Tunbs Islands. Abu Musa is approximately 34 miles away from UAE and forty-three miles away from Iran. A previous agreement stipulated co-management by Iran

and UAE of Abu Musa Islands. However, Iran has taken steps to have a monopoly of control over the said island, constructing an airstrip and increasing its military presence in the said island (Seddiq 2001).

The Greater and Lesser Tunbs Islands, on the other hand, are located in an area that is considered as passageway for international ships. The dispute between the two countries has caused intermittent disruption of shipping and fishing activities in the disputed area. In 2013, for instance, the Iranian authorities arrested 12 UAE and 1 Indian fishermen for alleged trespassing. The fishermen were freed days later, after reportedly signing a document stating that they will never trespass the territorial waters of Abu Musa Island (Shaaban 2013).

- **Vietnam, Philippines, and China**

Vietnam, Philippines and China are among the countries with overlapping claims in the West Philippine Sea/South China Sea area. In the recent years, reports surfaced of Chinese fishing vessels expanding their operations into areas that serve as traditional fishing grounds for Vietnamese fishermen. Reports indicate various instances during which Chinese vessels would arrive as a group (sometimes accompanied by Chinese authorities), making it difficult for Vietnamese authorities to disperse such ships from traditional Vietnamese fishing grounds (see for instance Huy 2011 as cited in Tuan 2012-13, 100).

Some reports also suggest harassment among Vietnamese fishermen by Chinese soldiers, with one report suggesting that some Vietnamese fishermen were denied entry in Paracel Islands during a period of severe weather in late 2007. The Chinese soldiers eventually allowed such fishermen to enter the islands. However, the fishermen were reportedly detained and were asked to sign a document certifying that they have entered Chinese waters in the aftermath of the storm. Properties of some Vietnamese fishermen were also reportedly confiscated by Chinese authorities, such as fuel supplies owned by Vietnamese fishermen, leaving only sufficient amount of fuel for the fishermen to be able to return to Vietnam (Tuan 2012-13, 101-102).

Similarly, the standoff between the Philippines and China in Scarborough Shoal (which was a traditional fishing ground of fishermen in nearby Zambales province in the Philippines) in 2012 has narrowed the areas where people can safely conduct their fishing activities. Reports of harassment surfaced, with some Filipino fishermen reportedly driven out of the periphery of the shoal by Chinese authorities through water cannon. Reports also suggest that Filipino fishermen are denied entry to Scarborough Shoal even in the presence of a typhoon or any severe weather. As a result of the dispute, some fishermen were reported to have shifted to other livelihood activities (such as hog raising) (Associated Press 2013 and Cupin 2015).

*Source: Compiled from various sources.*



Such moves, as well as the reluctance of one party to accept entry of fishermen from other claimant countries in its occupied portion of the disputed areas, narrow the area where fishermen can pursue their fishing activities with minimal uncertainty, in turn affecting their earnings and livelihood. In many developing countries, a significant number of fishermen belong to low-income households<sup>7</sup> and that fishing activities serve as one of the main sources of their earnings. While it is possible for such fishermen to shift to other occupations in the long run, the dependence of many of them on fisheries suggests their vulnerability to the short run disruptive effects of a territorial dispute.

Furthermore, the fishing industry supports a range of other industries, including fish processing, production of tin cans and shipbuilding, among others. The contribution of such broader economic activities can be considered as significant, with one estimate showing that the value of output supported by such industries amount to around USD 240 billion per year, 3 times larger than the estimated landing value of marine fisheries (Dyck and Sumaila 2010, 235). A territorial dispute can affect not only the direct fisheries output of a country that is party to the dispute, but also the output of other sectors supported by the fishing industry. Also, some disputed areas serve not only as traditional fishing grounds, but are intertwined as well with other fishing grounds in the area. The South China Sea/West Philippine Sea, for instance, is estimated to house 100,000 square kilometers of coral reefs or around 34% of the world total (Burke et al. 2002, 8). As such, territorial disputes have implications not only on the management of the resources in the disputed areas but also of resources on other fishing grounds that are biologically related to them.

## **Conclusion**

There is a large variance in the economic costs associated with military conflicts among states. Many of these studies find evidence suggesting the presence of the effect of such armed disputes on trade and foreign investment, as well as on development outcomes, and that it is possible for such impacts to last well beyond the conflict years. While the literature is not unanimous with regards to the presence of possible adverse effect of armed conflict on some economic outcomes (e.g., Koubi 2005, Miguel and Roland 2011), this does not mean that war can be a socially desirable option. As noted by Miguel and Roland (2011, 3-4), one cannot discount the humanitarian costs and the short-run but disruptive effects of a military conflict on the economy.

Furthermore, some studies find evidence suggesting that territorial dispute in itself can hamper trade, and some documented cases suggest that territorial disputes have adversely affected the livelihood of small-scale fishermen and other segments of the population who significantly depend on the resource endowments of the disputed area. While the settlement of territorial and maritime disputes is typically fraught with a lot of difficulty, events in the past show that it is still possible for conflicting parties to cooperate with regards to management of common resources.

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<sup>7</sup> One estimate shows that around 20% of fishermen are small-scale fishermen who earn less than USD 1 a day, and that many of them can be found in Asia (FAO 2002). In the case of the Philippines, poverty incidence among fishermen is estimated to be around 39.2% in 2012 (PSA-NSCB 2012).

In a review of 14 cases of international cooperation (some of which were and are engaged in territorial and maritime disputes), Mendoza and Siriban (2014) find that many of such initiatives have utilized financing and burden-sharing mechanisms, including the use of side payments. In some cases, stakeholder countries have engaged in cooperation in their research initiatives, in turn enabling and sustaining cooperation with regards to management of shared resources. Many resources in the disputed areas (such as those found in marine ecosystems typically intertwined with other marine ecosystems) are characterized by a significant amount of externalities. As such, the management of resources in disputed areas (especially marine resources) can be viewed as regional public goods, in which case the externalities associated with the provision of such good can only be properly internalized through collective action (Mendoza and Siriban 2014, 31-33).

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# China's Foreign Policy and the Territorial and Maritimes Disputes Between the Philippines and China

Chito Sta. Romana

*"Know your enemy and know yourself and you can fight a hundred battles without defeat."*  
– Sun Tzu, *The Art of War*

The intensification of territorial and maritime disputes between the Philippines and China has become the focus of regional and international attention. These disputes have adversely affected the state of bilateral relations, which have deteriorated to a record low level since the establishment of diplomatic relations between the two countries in 1975. There is growing concern as to whether these disputes can be resolved peacefully or whether they will intensify further and lead to a diplomatic rupture or even a military conflict.

These disputes first became a diplomatic issue between the two countries in 1995 when China began to build structures on Mischief Reef, 130 miles off the Philippine island of Palawan. But the issue turned into a diplomatic crisis in 2012 during a 2-month maritime standoff at Scarborough Shoal, 120 miles off Luzon island. The standoff ended with China in effective control over the shoal while the Philippines considered and eventually decided to file an arbitration case to challenge China's maritime claims and seek a clarification of maritime entitlements under the United Nations Convention on the Law of the Sea or UNCLOS (Republic of the Philippines, Department of Foreign Affairs 2013).

There are several dimensions in the disputes between the Philippines and China: the first is the issue of territorial sovereignty and the competing claims between the two countries over Scarborough shoal and some maritime features in the Spratlys.

The second is the issue of maritime rights and jurisdiction: the respective maritime entitlements of these contested islets, rocks and shoals, if any, and the competition for economic resources, such as fisheries, oil and natural gas, in the disputed waters.

The third is the mode of resolving the territorial and maritime disputes: whether to resort to bilateral negotiations or to a multilateral approach, such as arbitration and other forms of international legal adjudication of disputes.

The fourth is the issue of geopolitics, which complicates the bilateral territorial and maritime issues since the Philippines is a treaty ally of the United States: which of the two powers—China or the US—will dominate and control the strategic sea lanes and air space in the South China Sea? Which one will be the dominant power in Southeast Asia or the Asia-Pacific region?

## China's Strategic Goals and Its Foreign Policy

The economic rise of China during the past three decades has resulted in the stunning transformation of its economy, which is now the biggest in Asia and the second biggest in the world based on current exchange rates. China's rapid economic growth had led to a significant increase in its power and influence, and laid the basis for its military modernization and the build-up of its military capabilities. With the growth of its political and military power, it is important to understand China's strategic goals and the trajectory of its foreign policy.

In principle, China's foreign policy is an extension of its domestic policies and is meant to support its domestic situation. Thus, its foreign policy is aimed at promoting its national interests and is driven by its domestic politics and priorities. In turn, its policy towards the disputes between the Philippines and China is a component of its overall foreign policy and is likewise influenced by its national interests and domestic priorities.

What drives China's policy towards the South China Sea? Will the country's political and economic challenges aggravate or alleviate the assertive trajectory of its South China Sea policy?

In the late 1970s, when Deng Xiaoping took over the helm of post-Mao China, he shifted the focus of domestic policy from "politics in command" to "economics in command." With the stress on domestic economic development, Deng also shifted the paradigm of China's foreign policy from "support for the world proletarian revolution" to the pursuit of a peaceful international environment to promote China's economic growth.

With the collapse of the Soviet Union and the end of the Cold War in the early 1990s, Deng issued the strategic foreign policy guideline of "hide & bide" (known in Chinese as taoguang yanghui, that is, "to hide one's capacities and bide one's time"). Under this policy, China sought to lie low and avoid a confrontational posture with the US, the remaining superpower, while concentrating on developing its economy. With China's rapid economic rise, this guideline later evolved after the death of Deng into the doctrine of China's "peaceful rise," now officially described as "peaceful development."

When Xi Jinping came to power in November 2012, he articulated his vision of the "Chinese dream" (Zhongguo meng) of "national rejuvenation" and set forth "two centenary goals": first, to double China's 2010 per capital income and gross national product in a decade and transform the country into a "moderately prosperous society" by 2021 as the Chinese Communist Party celebrates the centennial of its founding; and to further transform China into a "modern socialist society that is prosperous, strong, democratic, culturally advanced and harmonious," with its citizens enjoying a fairly advanced level of living standards by 2049, the 100th anniversary of the establishing of the People's Republic (Xi Jinping 2014, 38).

President Xi Jinping speaks of the "Chinese dream" as the overarching theme of his administration with the aim of achieving a Chinese renaissance and transforming the country into a major regional and world power and enabling China to regain its former preeminent position in Asia.

To achieve these goals, China will need a peaceful international environment and avoid the outbreak of a major war. Hence, the Chinese government states that it has a foreign policy of

peace and development that includes promoting “friendly relations and...mutually beneficial cooperation with neighboring countries” (Xi Jinping 2014, 326) and seeking “a community of common destiny” with them (Xinhua, 2014).

### **The Role of “Core Interests” in China’s Foreign Policy**

But there is another aspect to China’s foreign policy—its avowed determination to defend its “core interests” (or *hexin liyi* in Chinese). It is this aspect that drives China’s moves to assert its territorial and maritime claims in the South and East China Seas.

The term “core interests” is of recent vintage in China’s diplomatic vocabulary. Chinese officials and state media first began to use it in 2004 to refer to the issue of sovereignty, with particular reference to Beijing’s goal of reunifying Taiwan with the mainland. But its meaning evolved since then to include China’s sovereign control over its western regions of Tibet and Xinjiang. Then in 2009, Dai Bingguo, who was at that time the top Chinese foreign policy official, broadened the definition of the term by saying China had three core interests: maintaining its political system of Communist Party rule, defending its sovereignty claims and territorial integrity, and promoting its economic development (Swaine 2011).

In a White Paper on China’s Peaceful Development issued in 2011 by the Chinese government, 6 core interests were listed: (1) state sovereignty; (2) national security; (3) territorial integrity; (4) national reunification; (5) China’s political system established by the constitution and overall social stability; and (6) basic safeguards for ensuring sustainable economic and social development (State Council Information Office 2011).

Xi Jinping placed the defense of China’s “core interests” as a key plank of the country’s foreign policy. As Xi expressed it at a Politburo study session in January 2013, “No country should presume that we will engage in trading our core interests or that we will swallow the ‘bitter fruit’ of harming our sovereignty, security, or development interests” (Xi Jinping 2014, 273).

He reiterated this point in another Politburo study session in July 2013 when he explained the relationship between peaceful development and the defense of core interests: “China will adhere to the path of peaceful development but in no way will the country abandon its legitimate rights and interests, nor will it give up its core national interests” (Xinhua 2013).

So do Xi and the Chinese leadership view China’s territorial and maritime claims in the South China Sea as part of its “core interests”? In a major speech in Singapore in November 2015, Xi Jinping stated that “the islands in the South China Sea have been China’s territory since ancient times, and the Chinese government must take responsibility to safeguard its territorial sovereignty and legitimate maritime interests” (Wong 2015). Thus, it is evident that Xi considers China’s territorial claim over islands in the South China Sea as part of its “core interests” of sovereignty and territorial integrity.

But what does Xi mean by “legitimate maritime interests”? Is he referring to China’s claim of historic rights over the maritime area within its 9-dash line claim? Though this is not explicitly stated, the conduct of Chinese fishermen, China’s coast guard ships, and the People’s Liberation Army (PLA) Navy vessels in the maritime area within the 9-dash line is a telling indicator of what Xi means.



It is the doctrine of defending “core interests” in its foreign policy that constitutes the underpinning of China’s assertive behavior in its territorial and maritime claims in the East and South China Seas. As China seeks to realize its goal of “national rejuvenation” and overcoming its “century of humiliation,” it views the recovery of territories lost when it was still weak as a necessary goal of its “Chinese dream.” Thus, China’s South China Sea policy flows from Xi Jinping’s goal of transforming China into a great power and restoring its status as a major, if not dominant, player in Asia and the world.

The challenge for China is how to balance these two seemingly contradictory aspects of its foreign policy—peaceful development and defense of core interests—in order to achieve the “two centenary goals” of Xi Jinping’s “Chinese dream.”

### **The Role of China’s Domestic Politics**

For Xi Jinping, his ultimate aim is to maintain the rule of the Communist Party in China and to further consolidate his own personal control over the party, government, and military. To achieve these goals, Xi seeks to preserve the legitimacy of one-party rule by continuing the country’s economic development and improving the living standards of ordinary people.

As part of his overarching theme of the “Chinese dream,” Xi Jinping has made it clear that the goal is to transform China into a modern, prosperous country with a strong army and under the leadership of the Chinese Communist Party (Xi Jinping 2014, 241). With the collapse of the Soviet Union in mind, his aim is to avoid a similar collapse of communist party rule in China. He does not want to follow Gorbachev or his policy of glasnost, nor is he in favor of a liberal democracy for China. Instead, he seeks to strengthen the rule of the Communist Party and not to weaken it (MacFarquhar 2015).

It is within this context that Xi Jinping launched his anti-corruption campaign. Corruption has been a key concern of Chinese citizens, topping the list of complaints in public opinion surveys (Dobell 2015; Wike and Parker 2015). Thus, Xi’s anti-corruption campaign easily garnered popular support despite initial skepticism about the prospects of its success. Anti-corruption campaigns have been carried out in the past but their impact was somehow limited, thus giving rise to an expression that has captured the public sentiment—“they are simply swatting flies but not catching the tigers.”

But Xi’s high-profile campaign against corruption proved to be more extensive in scale than previous ones. It not only netted a big number of “flies” but also caught several big “tigers.” Wang Qishan, the head of the Central Discipline Inspection Commission, which is the party organization spearheading the campaign, reported that 282,000 party members were punished for “discipline violations” in 2015, including 80,000 who were meted severe punishment. The commission also conducted investigations or concluded cases against 90 officials of vice-ministerial rank and above last year, up from 68 in 2014 (Aredy and Jie 2016).

What is noteworthy is that the campaign resulted in the unprecedented investigation, detention or sentencing of several big “tigers”: a former member of the Politburo standing committee, Zhou Yongkang; two retired senior generals who were the former vice chairmen of the Central Military Commission, Xu Caihou and Guo Boxiong; and a former party leader who formerly headed the Central Committee’s General Office, Ling Jihua.

By targeting Zhou Yongkang, Xi sought to show that no one was exempt from the anti-corruption campaign by overturning the unwritten rule in the post-Mao era that retired leaders, particularly members of the Politburo Standing Committee, were practically immune from investigation or detention. Moreover, by going after the top two PLA generals in the Central Military Commission who served under his predecessor Hu Jintao and who were close confidants of former top leader Jiang Zemin, Xi made it clear that the campaign will not spare the military nor those with close links with former top leaders. The same is true for Ling Jihua, a former Central Committee member who was a key political lieutenant of former party leader Hu Jintao.

Thus, the anti-corruption campaign not only became an important instrument for Xi to win popular support for his regime and boost the legitimacy of Communist Party rule; it also became a powerful weapon to eliminate or neutralize his political enemies and rivals and consolidate his own grip on power.

In a sense, Xi has rewritten the rules of Chinese politics in the post-Mao era, as illustrated by the high-level officials snared by the anti-corruption campaign thus far. Moreover, while Deng Xiaoping promoted a system of “collective leadership” through a consensual decision-making process among the top leaders, Xi has moved away from “collective leadership” and towards a return to “strongman rule” by centralizing authority and controlling the key levers of power.

However, while Xi Jinping has become the most powerful leader since Deng Xiaoping, he also faces a number of serious domestic challenges, ranging from an economic slowdown, endemic corruption, a glaring income gap, environmental pollution, and mounting social protests, among others. These challenges, particularly the slowdown in economic growth, pose serious risks to Xi’s ability to achieve his strategic goals.

After three decades of rapid economic growth, the Chinese economy is slowing down from the double-digit growth rates in previous years to single-digits. In 2015, its growth rate was 6.9, its slowest in 25 years and the rate is expected to be even lower this year and the next few years (Magnier 2016; Raghuvanshi 2016).

The economic strategy laid down by Deng Xiaoping was based on exports and investment in manufacturing and infrastructure. But this model is no longer sustainable and the China boom seems to be over as the economy is now undergoing a difficult structural adjustment and seeking new sources of growth by shifting to a model based on consumption, services, and technology. Now that China is already the world’s largest exporter, it is difficult for its exports to grow faster than the world economy, which is experiencing sluggish growth.

China has one of the highest investment rates in the world, exceeding 40% of its gross domestic product in recent years. One result is that there is excess capacity in major sectors such as housing and heavy industry, as well as in local government infrastructure. In the housing sector, there is the phenomenon of rows of empty apartment buildings and the so-called “ghost cities”—newly-built cities that are empty of any residents. Steel and cement factories in the heavy industrial sector operate at about half of capacity. And the excessive construction of infrastructure projects is evident in the rapid run-up of local government debt that finances it.

China’s economic performance will play a critical role in Xi Jinping’s strategic calculus because

economic development and the improvement of people's living standards constitute a key pillar in winning public support for his leadership and continued Communist Party rule. The other two pillars that support the regime are nationalism and the PLA: Chinese nationalism arouses a sense of patriotism, mobilizes national unity, and rallies popular support for the party and government—as embodied in Xi's vision of the "China dream"—especially at a time when Marxism-Leninism and Maoist ideology have lost their ideological appeal; while the PLA serves as the bulwark of defense against internal and external threats.

It was China's growing economic strength over the past three decades that laid the basis for its military modernization. China's defense budget grew by double digits during the past two decades, which provided the wherewithal for the development of the PLA's weaponry and technology, including the ongoing modernization of the PLA Navy.

Another major element in Xi Jinping's "Chinese dream" is the goal to turn the country into a maritime power. The last time in Chinese history that it was a maritime power was six centuries ago during the Ming Dynasty, when the famous explorer Zheng He commanded an armada that sailed seven times through the South China Sea and the Indian Ocean and reached the eastern coast of Africa. But the Ming Dynasty later decided to end these maritime expeditions as it turned its attention inward due to mounting domestic problems.

China's economy will have to succeed in finding other sources of growth in order to provide the material resources needed to transform the nation into a modern maritime power.

In a sense, these three pillars are also the domestic drivers of China's foreign policy. The need to continue China's economic growth, promote nationalism to build up the people's morale and mobilize popular support, and gain control over and support from the PLA drive the foreign policy of promoting peaceful development and seeking a peaceful international environment. But at the same time the need for security of its food and energy supplies and the quest to defend what it views as its sovereign territory constitute the push factors for asserting China's territorial and maritime claims under the patriotic banner of "defending core interests."

Thus, China's assertive moves in the South China Sea not only serve the foreign policy goal of defending the country's "core interests" but also play a role in consolidating Xi's control over the party, government and military.

But how will the economic slowdown impact on the military budget and China's military posture, particularly in the South China Sea? If the economic slowdown persists and impacts on China's fiscal situation, China will face the "guns versus butter" dilemma in deciding how to allocate its resources. And it is a distinct possibility that China's defense budget could be adversely affected. This scenario will likely have a negative impact on China's military modernization, including its military posture in the South China Sea. But this will depend on China's priorities and military modernization could survive any budgetary cuts if the government decides to cut elsewhere instead of defense. It also cannot be ruled out that China's leadership will resort to a calculated act of military adventurism in the South China Sea in order to divert public attention and shore up nationalist support when faced with a severe domestic crisis (Blackwill and Campbell 2016).

Nevertheless, there are important policy limits to China's behavior in the South China Sea. First,

Xi speaks of the need to maintain a balance between “defending China’s maritime rights and interests” (weihu quanli in Chinese) on one hand while “preserving regional stability” (weihu wending in Chinese) on the other. As Xi said during a Politburo study session in July 2013, “China will safeguard its maritime rights and interests...and should plan as a whole the two overall situations of maintaining stability and safeguarding rights” (Xi Jinping 2013).

These two weihu’s – defending China’s maritime rights but maintaining stability—appear to make up the parameters of Xi’s high-risk strategic calculus of aggressively pushing forward to assert what he considers to be China’s maritime rights while stopping short of upsetting the stability in the region.

Second, thus Xi does not seek a full-scale military confrontation with the US since a major war would prevent China from attaining its development goals. Moreover, there is no guarantee of a military victory for China, given the current state of its military preparedness and technology compared to the US. But it still leaves room for the possibility of limited skirmishes if and when Xi perceives a serious challenge to China’s “core interests” by other countries’ assertive moves.

### **Soft Power and Island Building**

Recent diplomatic initiatives by China provide some indication of how China is seeking to achieve a balance between asserting its “core interests” and developing good-neighborly relations and promoting economic cooperation with surrounding countries.

China established the Asia Infrastructure Investment Bank and provided more than 30% of the bank’s equity of USD 100 billion. It also unveiled a plan for a “New Silk Road” with its two components—the “Silk Road Economic Belt” connecting Western China to Central Asia and Western Europe, and the “21st Century Maritime Silk Road” connecting the Southeastern Coast of China to the Middle East and Europe via the South China Sea, Malacca Strait, Indian Ocean, Red Sea, and the Mediterranean Sea.

China’s top leader Xi Jinping said the “New Silk Road” project will be backed by a \$USD 40 billion fund to finance infrastructure projects such as roads, ports, highways and railways in countries along the route. Chinese Premier Li Keqiang also announced in November 2014 an offer of a USD 20 billion China-ASEAN fund for infrastructure projects and industrial cooperation (Min 2014; Xinhua 2015; and Tiezzi 2014).

These recent initiatives appear to signify a tactical shift as China seeks to revive the use of “soft power” by leveraging its economic resources in support of its diplomacy towards its neighboring countries.

These moves are in a sense part of China’s response to the US “pivot” to Asia, which has resulted in the deployment of more US military assets in the region, strengthening of existing alliances and building up of new partnerships. The US “rebalancing” strategy, according to some US analysts, is itself a response to the growth of Chinese power, and it clearly signals the US resolve to maintain its dominance in Asia.

But the other side of this Chinese “charm offensive” is its efforts at island reclamation in the Spratlys, turning the reefs and shoals under its occupation into artificial islands. China’s massive

island building project is aimed at transforming its seven occupied reefs and shoal into artificial islands—a move that seeks to strengthen and consolidate China’s territorial and maritime claims and undermine the Philippines’ arbitration case.

The reclamation project is reported to be part of a USD 5 billion plan to build artificial islands from the reefs China occupied in the Spratlys in order to build military and fishery facilities in the South China Sea (Wong and Ansfield 2014; Bacani 2014). Satellite photos showed a completed 3,000-meter runway in Fiery Cross reef, which was recently tested when two passenger jetliners from Chinese airline companies landed there in January.

The photos also showed helipads, a radar dome, a surveillance tower, and communication facilities on the newly-expanded area of Fiery Cross reef (Glaser 2015). Other photos also indicated that China is building two other runways—one in Subi reef, which is just 15 nautical miles from the Philippine airstrip at Thitu Island [Pag-asa Island], and another one in Mischief Reef [Panganiban Reef], which is just 21 nautical miles from the Second Thomas shoal [Ayungin Shoal] where a contingent of Filipino marines is stationed aboard the World War II-era tank landing ship BRP Sierra Madre, grounded on the shoal (Poling 2015).

This dual-track approach by China—the use of “soft power” combined with massive “island building”— poses a serious challenge as well as a possible opportunity to the Philippines and other neighboring countries.

### **US-China Strategic Rivalry**

The strained relations between the Philippines and China have transpired in the context of intensifying strategic rivalry between the US and China. Though China has embarked on a military modernization program, the US is still the dominant military power in the region at present, with its forward deployed forces in bases in Japan, South Korea, Australia, and Guam, as well as its advanced capability for power projection. But the overwhelming dominance of the US since the end of the Cold War is now being challenged by the rapid growth of Chinese economic and military power (Nye 2010; Kaplan 2014).

As a result, the balance of power is undergoing a strategic shift in Asia and the existing US-led unipolar regional order is eroding. The region is witnessing a strategic competition escalating between the established power—the US—and the rising power—China.

The emerging focus of this geopolitical rivalry is in East Asia—in particular, the South China and East China Seas, or what China calls its “near waters.”

The flashpoints in Asia used to focus on Taiwan and North Korea but in recent years new flashpoints affecting the peace and security in the region have emerged—namely, the Senkaku/Diaoyu Islands in the East China Sea; and the Paracels, Spratlys, and Scarborough Shoal in the South China Sea. These new flashpoints are the manifestation of this growing rivalry between a dominant but declining power and a rapidly rising power.

The geopolitical competition is manifested in China’s maritime and aerial assertiveness on one hand, and in the US “pivot” or “rebalancing” strategy on the other. The renewed focus of the US on Asia reflects its resolve to maintain its dominant position in the region.

Will the strategic rivalry between the US and China lead to a military confrontation and an outright war?

Some analysts from the realist school in international relations theory think a war is inevitable as a dominant power will not simply accept the rise of a new power, nor will it willingly yield its supremacy (Mearsheimer 2014). According to these analysts, the risk of war increases when power shifts from a dominant power to a rising one. Prof. Graham Allison of Harvard University compares China and the US to what happened between Athens and Sparta, and warns that the two contemporary powers are in danger of falling into what he calls the “Thucydides’s trap” (Allison 2012, 2015). According to Allison, it was Thucydides, the Athenian historian of the Peloponnesian War, who wrote in the 5th century BC, “It was the rise of Athens and the fear that this inspired in Sparta that made war inevitable” (Thucydides 1910). Citing historical case studies that show the outcomes when a rising power emerged to challenge a ruling power, he found out that war occurred in 12 out of 16 cases since 1500 (Allison 2015).

But other analysts from the liberal school are of the view that increasing economic interdependence together with strategic dialogues and high-level diplomacy will be able to promote understanding and cooperation, lessen tensions and prevent the outbreak of war (Ikenberry 2008).

At present, US-China relations are indeed a mix of cooperation and competition. The cooperative aspect can be seen in the booming economic relations between the two countries: USD 662.5 billion in total bilateral trade in goods and services in 2015, significant US investments in the Chinese market, China’s holdings of USD 1.237 trillion in US treasury bonds (US Census Bureau 2016; US Treasury Department 2016). Moreover, the two sides also cooperate on issues such as climate change and environmental protection, as well as nuclear non-proliferation in North Korea and Iran.

The competitive aspect can be seen in a range of issues, such as the US complaints of human rights abuses in China, US criticism of Chinese violations of intellectual property rights, China’s complaints of US maritime and aerial surveillance in its claimed exclusive economic zone or EEZ.

The cooperative and competitive elements in US-China relations elements exist side by side, and though at present, cooperation still seems to be predominant in the bilateral relationship, the competitive elements are increasingly on the rise. How the situation will develop in the foreseeable future depends to a significant degree on the strategic calculations and decisions taken by the leaders of both countries.

The emerging strategic rivalry between the US and China is, in a sense, the clash of two big powers for strategic supremacy and their competing visions of the regional order. The US seeks to maintain its strategic supremacy over the existing regional order, or what some describe as a “Pax Americana,” which is the situation prevailing in Asia since the Second World War and particularly since the end of the Cold War. On the other hand, China seeks a regional order based on a Sino-centric vision of neighboring countries economically integrated with China and under its strong influence, if not under its leadership (Jacques 2012). That is to say, a “Pax Sinica.”

In the long term, the question of which country will emerge as the dominant power in the future

will depend on which one will have a more sustainable and stronger economy. China has a rising economic trajectory but it is currently facing serious challenges ranging from slower growth, growing debt burden, a looming real estate crisis, serious environmental pollution, among others. The US economy is still the world's biggest economy but it is overstretched in its international commitments and burdened by serious budget deficits and domestic political gridlock. However, it can still sustain its growth with its superior technology and its growing energy independence. It remains to be seen which one will eventually prevail.

While the decline of US dominance and the rise of China's power reflect the transition from a unipolar order to possibly a bipolar one, there is also the prospect of an emergence of a multipolar order in which there is no single dominant power or at least where there is a new equilibrium of power between China and the US, and where ASEAN can play a major role while other countries such as Japan, India, South Korea, Australia and the EU also can play their respective roles.

The possible emergence of a multipolar order in Asia indicates another alternative—so to speak, a “Pax Asiana” in which there is a “concert of powers” and where small and medium-sized countries can have more flexible space for maneuver and thus play a more significant role in a new regional equilibrium, together with a greater role for civil society and people's movements to influence governments and societies throughout the region (Drysdale 2012 and White, 2012).

### **Prospects for Philippines-China Relations**

Regarding the prospects for Philippine-China relations, the dual-track approach by China—“soft power” combined with “island reclamation”—will certainly represent both a challenge and opportunity to the Philippines in its relations with China. The construction of artificial islands in the Spratlys will continue to be a major issue affecting the bilateral relations, while the economic incentives offered by China in its “New Silk Road” strategy could attract political leaders and government officials who seek more economic cooperation in major infrastructure projects badly needed by the Philippines. On the other hand, depending on the degree that China increases its military and paramilitary presence in the artificial islands and the disputed waters, any inclination to consider offers of Chinese-financed projects could be adversely affected, if not severely undermined, and become politically unacceptable to Filipino leaders and the general public.

Moreover, there are other hurdles to overcome aside from the outstanding territorial and maritime disputes. A major obstacle is the huge gap in perception between the two sides, as manifested in media reports and public opinion surveys. News reports in the Philippines depict China as a “regional bully” that resorts to “coercion and threats,” while the Chinese state media portrays the Philippines as a “Trojan horse” in the US strategy to contain China, or as a “crybaby” seeking international sympathy. China's state media also depict the Philippines as a “troublemaker” and “provocateur” in ASEAN and as a “pawn” of the US pivot strategy in the region.

A case in point is a commentary in Xinhua, the official Chinese news agency, in which a Chinese analyst said, “The Philippines, under its current administration, has been a true troublemaker in the region” (Diola 2013). The analyst complained that the country has “assaulted and detained” Chinese fishermen and had an old warship “stranded on purpose” at

the Second Thomas Shoal. The analyst also described other ASEAN countries of being “tired of seeing Manila poison the meeting of one regional meeting after another with provocative accusations against China” (Diola 2013).

Another Chinese analyst interviewed by the Global Times about the new US-Philippine Enhanced Defense Cooperation Agreement (EDCA) warned that the US was sending “wrong signals” which “may encourage reckless provocations by Manila against Beijing.” He described the Philippines as “just a pawn of the US amid its rebalancing in Asia,” adding that “once the US shifts its strategic pivot away, it will be deserted” (Yang 2014).

In another instance, a retired Chinese general known for his hardline nationalist views, Major General Luo Yuan, also accused Washington of being “biased” towards Manila and said it “added fuel to the fire” by cooperating with the Philippines amid the maritime dispute. “The role of the Philippines in the South China Sea is actually, in my view, a troublemaker,” he said (Agence France-Presse 2013).

The growing distrust between China and the Philippines is also reflected in public opinion surveys in both countries. Surveys conducted in the Philippines by the Social Weather Stations showed China as the least trusted country by Filipinos, followed by Malaysia (Social Weather Stations 2015). These two countries have a common denominator—border disputes or incidents with the Philippines. In the case of China, the disputes involve Scarborough Shoal and the Spratlys, while in the case of Malaysia, the issues are the Philippines’ claim over Sabah and Malaysia’s support of Muslim rebels in Mindanao.

Parenthetically, the countries most trusted by Filipinos are the US, Australia, and Japan. The US and Japan are strategic partners of the Philippines while Australia also has close ties with the Philippines.

In a survey of public and elite opinion conducted in China, the Philippines is the second least trusted by the Chinese public, with Japan as the least trusted and the US, Vietnam, and India ranking after the Philippines. Meanwhile, the countries most trusted in China are Pakistan and Russia (Research Center for Contemporary China, Peking University 2012).

What impact will the US-Philippines EDCA have on Philippines-China relations? From the Chinese perspective, it arouses greater suspicion about the role of the Philippines in the US “rebalancing” strategy and the role of the US in the Philippines’ approach towards the territorial and maritime disputes with China.

From the Philippines’ perspective, the EDCA can play an important role in building up its military capacity and deterring Chinese military adventurism in the disputed features and waters (Quismundo 2016). But it is also somewhat of a “double-edged sword,” that is, while it can be a deterrent to possible Chinese attacks, it also is likely to increase the risk that the Philippines will be at the crosshairs of Chinese missile targets in case of a military conflict between the US and China. A major challenge for the Philippines is to persuade the Chinese that the EDCA is meant to strengthen the country’s defensive capability and not aimed at threatening or containing China.

Looking into the near future, the prospects for Philippines-China relations will depend on



whether the two sides can combine a high level of statesmanship and pragmatism to manage the disputes, lower tensions, and prevent any accident or miscalculation on one hand; and to restore normal ties and promote areas of bilateral cooperation in trade, tourism, infrastructure, investments and other fields on the other.

The territorial aspect of the disputes will not be resolved by the arbitration case and will continue to be a controversial issue for the foreseeable future, since the issue of territorial sovereignty is excluded from the purview of the UNCLOS and the arbitral tribunal can only deal with the interpretation and application of the UNCLOS to maritime issues. Unless China agrees to submit the territorial dispute with the Philippines for international adjudication or arbitration, then the only alternatives are to resort to direct negotiation or to set aside the issue and leave the dispute unresolved.

The maritime aspect of the disputes may be partially or even significantly clarified, if not fully resolved, by the arbitral tribunal's decision on the issue of maritime entitlements. But if there is an issue involving the overlapping of EEZs between the Philippines and China, then the arbitral tribunal will not be able to settle this issue of maritime boundary delimitation, since it is also excluded from the tribunal's jurisdiction. In such a case, unless China agrees to submit the case of maritime boundary delimitation for international adjudication or arbitration, there are limited alternatives for resolving the issue without resorting to direct negotiation.

As for the geopolitical aspect, the geopolitical rivalry between China and the US will likely continue for the foreseeable future unless the two powers can find a mutually acceptable way to effectively manage, if not resolve, their strategic differences without resorting to military confrontation.

In conclusion, the Philippines can perhaps learn from the wisdom of an old saying in Africa—"When two big elephants fight, it's the grass underneath that gets trampled upon."

And one can indeed raise the question: Is there a way the Philippines can avoid being part of the grass that gets trampled upon by the elephants?

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# Malaysia's Response to the China Challenge in the South China Sea: Strategy and Diplomacy

K.S. Balakrishnan

With a population of roughly 30 million, Malaysia is an important state actor in the international relations of the Association of Southeast Asian Nations (ASEAN) and the Asia Pacific. While its size is small, its role in diplomacy at times can be seen as punching above its weight. Some scholars and analysts have ranked Malaysia in the middle power category because of its foreign policy activism. From a military power perspective, Malaysia is an active contributor to the United Nations Peace Keeping Operations or UNPKO. The size of its military is relatively small. Its defense spending is also small compared to Singapore and a few other ASEAN states. Malaysia also had its share of security challenges ranging from communist insurgency and the Indonesian attack, which was known as Konfrontasi after the formation of Malaysia on September 16, 1963. After the communist Emergency era and the Indonesian Konfrontasi, the fear of the spillover effect of the Vietnam War and its domino effect became a regional security concern. Other concerns were the invasion of Cambodia in 1978 and its effect on mainland Southeast Asia, the superpower confrontation in the region between the US and Russia, the China threat because of the support for the Malayan Communist Party during the Cold War, the refugee crisis, drug smuggling and organized crime, the Sabah claim by the Philippines, spillover effects from the Southern Thai crisis and Southern Philippines crises, maritime boundary issues after the United Nations Convention on the Law of the Sea or UNCLOS in 1982, international and national terrorism, the recent encroachment in Lahad Datu by the Sulu fighters, and extremism and contemporary terrorism. Moreover, arms buildup in the region and superpower rivalry is always a concern.

Numerous other new security threats in the form of climate change, environmental security, human security, and natural disasters are gaining attention. Flood has lately become an important issue, although it has been there for decades because of the monsoon. Sabah was hit by an earthquake in June 2015 at a serious level, where damages were serious and lives were lost. Malaysia also experienced the 2004 tsunami, although the damages and loss of life was manageable. Besides these, Malaysia is a multiracial society where ethnic tensions, religious issues, and over-politicking can affect peace and security. Economic stability and national security are intertwined and cannot be seen separately. While all the above points point towards the fragile nature of the country, Malaysia has demonstrated a good track record of managing both the national and regional security by using the military, police, other agencies and most importantly, its diplomacy in bilateral and multilateral settings. It has been a champion in promoting peace and stability throughout the region by using all available means. While it can be critical of the West, its foreign policy champions pragmatism. At times it thrives on providing balance, in an otherwise tilted international system.

## **The China Challenge in the South China Sea: Grand Strategy and Chinese Belligerence in the Maritime Theater**

The case of the South China Sea is unique because it involves both China and Taiwan. Taiwan did not create a problem after occupying Taiping Island/Itu Aba. But China has been constantly

increasing its position since the annexation of the Paracels Islands from Vietnam in 1974. In 1988, it ousted the Vietnamese by the use of force in one of the reefs/atoll. In 1995, it occupied Mischief Reef and fortified it with a naval installation. Since then, many attempts were made by China to grab new islands/reefs/atolls. It has thrown markers in Malaysian occupied atolls within Malaysia's exclusive economic zone (EEZ). It has challenged both Vietnam and the Philippines during oil exploration activities. It has pushed an oil rig into the Vietnam's EEZ. It ousted the Philippines from the Scarborough Shoal where Manila is challenging the issue at the International Tribunal for the Law of the Sea (ITLOS) or the International Court of Justice (ICJ) by means of international law. China has refused to participate in any such deliberation. Malaysia and Vietnam too have made joint submissions on the extended seabed EEZ beyond the 200 nautical miles (nm) at the ITLOS or ICJ, which was protested by China.

China has raised its profile in the South China Sea by taking over Scarborough Shoal since 2012. It ousted the Philippines from the shoal and has been entering into Malaysian waters up to 90 nm near James Shoal (Beting Serupai) and also Luconia Shoals (Beting Patinggi Ali) recently. Reports on activities of encroaching on Malaysian waters have increased since 2013. In 2010, a vessel from China was reported to have thrown a steel marker for sovereignty on James Shoal, which was removed. The distance from James Shoal and China is 1,800 kilometers. Malaysia has demonstrated more calmness than, say, the Philippines or Vietnam.

China's military has grown by leaps and bounds and was noted for bringing in aircraft carriers and other naval ships and submarines into the disputed waters. It has also challenged US ships and spy planes from any surveillance works being carried out in the South China Sea. The massive land reclamation works in the South China Sea waterways on the couple of atolls/reefs have received global attention. Both the US and the ASEAN did not recognize such activities as positive, as this is a violation of UNCLOS, the Declaration of Conduct of Parties on the South China Sea signed in 2002. Intense and aggressive activities have increased since 2013. The dispute over Senkaku Island resulted in China declaring an Air Defense Identification Zone or ADIZ for that maritime zone, challenging both Japan and the US. China also raised the ante by moving actively with economic carrots by declaring the idea of a maritime silk route or belts for the region, exposing its huge strategy, which has clear connections between economic strategy and military strategy. One has to carefully study China's intents of purchasing land nearer to port zone and vital sea lanes bordering the South China Sea. This is almost similar to the that "string of pearls" strategy implemented to contain India in the Indian Ocean up to the Gulf.

Encroachments by fishermen, illegal fishing and China's Coast Guard vessels into the ASEAN waters have increased tremendously. Regular visits/patrolling and naval exercises in the South China Sea and the East China Sea have intensified. In the future, we could see more military installations in the atolls/area of land reclamations. The speed and size of land reclamation works are seriously a worrying trend. But nothing can be done by the US or ASEAN except only by issuing statements. Some kind of mini-bases for China's maritime force to watch the sea lanes are on the pipeline. China also learned something from the MH370 tragedy in March 2014 where navies had access to the South China Sea, which also exposed China's naval/maritime unpreparedness. The search and rescue mission offered a few lessons for China's maritime forces. So it is easy for China to say that all its land reclamations works in the South China Sea is for disaster relief and maritime safety of navigation. Indirectly, China is already on a mission to subdue US presence and render a blow to Washington's pivot strategy and to all its allies in the Asia Pacific region.

On its own, China has declared its maritime administration headquarters for the South China Sea near Hainan and also implemented the no fishing period, which it enforces, to show legal seriousness via effective administration, which is required for international arbitration. Whether such endeavor is recognized or not by others, China is fully aware of the fact on what is important to make all the claims of the other claimants in the South China Sea as legally disputable. Even Indonesia's Natunas zone is in China's radar. There are news about backdoor entries of buying assets/fishing facilities.

### **Malaysia's Foreign Policy and Approaches to Maritime Issues and Other Disputes**

Maritime security concerns in the South China Sea began much earlier during the Cold War after the establishment of the UNCLOS. Malaysia lost sufficient maritime territory or waters in the South China Sea because of Indonesia and the Philippines' successful claim for the status of the archipelagic regime, which gave access to enormous sea lanes, waters and maritime island/features to Indonesia and the Philippines. The archipelagic regime created maritime domain limitations, as Indonesia obtained the sovereignty for the Natunas. Similarly, the Philippines was able to stretch its maritime EEZ to further south to the Sulu Sea.

In 1979, Malaysia came up with its maritime map explaining/covering its 200 nm maritime zone, which involved waters, features, and islands that it regards as its sovereign territory. This has created some difficulties with neighbors. Through friendly consultations and bilateral technical committees, many issues were resolved and some are being negotiated in line with the UNCLOS rules. Since the 1982 UNCLOS, all maritime disputes are being solved or managed, based on the principles of international maritime law, the use of ICJ and ITLOS, and by bilateral joint exploration agreements with neighboring countries. Malaysia is one of the few countries that have a positive track record with neighbors in resolving territorial disputes in a cooperative and responsible manner. It has used all the bilateral, regional, and multilateral or international platforms and mechanisms in finding peaceful solutions.

All the ASEAN countries bordering Malaysia (Thailand, Philippines, Brunei, Indonesia, Singapore, and Vietnam) have used both bilateral and international mechanisms to resolve conflict and discuss options for the remaining maritime and land boundary disputes. We have issues with Indonesia where old agreements made in the 1960s and 1970s were no longer recognized by Jakarta. In this case, friendly consultations and discussion at the bilateral level are carried out to resolve issues and work out solutions. Exchange of visits between leaders with high-powered delegations from both the countries helps in improving ties and thinking about mechanisms to resolve both maritime and land boundary issues. For example, ASEAN members are all signatories to the Treaty of Amity and Cooperation, where only peaceful settlements of disputes are emphasized.

It is also important to understand that Malaysia's dispute with neighboring countries in the South China Sea, the Straits of Malacca, and in other land borders involve numerous issues. Some of the issues overlap like smuggling, illicit drugs, human trafficking, terrorism, maritime terrorism, extremism, diseases, haze, oil spills, illegal fishing, piracy, encroachment of foreign vessels, and numerous other border-related crimes. While territorial disputes are serious sovereignty issues in the maritime zones, they cannot be viewed in isolation. It is also important to take into account the relationship with neighboring states from the perspective of economic interdependence. Malaysia has been using many approaches and has adopted numerous measures:

1. **Unilateral Measures.** The use of diplomacy, military, Coast Guard (Malaysian Maritime Enforcement Agency), other maritime agencies, police, and other security preparedness are common in managing threats to maritime security. Diplomatic Notes were issued via the Embassies to Embassies and also to Foreign Ministries of the Disputing States. Malaysian leaders and foreign ministers have emphasized expediting the Code of Conduct (CoC) for the South China Sea. The Malaysian Defense Minister has raised suspicion on China's Maritime Silk Route Plan/the idea of One Belt linking China and other sub-regions, which was widely reported. In recent years, Malaysia has become more active in raising issues, albeit diplomatically and politely worded.
2. **Military exercises**, strengthening security in maritime borders via **additional assets and surveillance** have all been upgraded. The issuance of clear maritime or border maps in 1979 have also been helpful. This has helped to negotiate overlapping claims in a peaceful manner. The map is valid, as it has been used in previous cases at the ICJ and in maritime tribunals. Increasing of personnel in the border zone is obvious. The recent human trafficking issues reported widely in the media at the Malaysian-Thai border indicate that a lot more work needs to be done on border security. Similarly, terrorism in Sabah in the form of kidnapping and the Lahad Datu incident have alerted the government to work on the Eastern Maritime and Security Command or ESSCOM to beef up maritime security and patrolling. Overall, military vigilance and preparedness are vital and need continuous upgrading.
3. **Bilateral Measures.** Bilateral meetings with disputing states, leader's visits, and Joint Border Committee and Technical Committees meeting with neighbors, have all resulted in the peaceful management of security problems. These efforts are carried out with almost all the neighboring countries of Malaysia. Bilateral defense/security meetings do take place with countries like China in the recent years. For the first time, Malaysia and China had their maritime exercise in Lumut.
4. **ASEAN Platforms and Side Meetings.** ASEAN Treaties and Agreements are vital to stop the use of force as a solution. The states involved have become parties to the Treaty of Amity and Cooperation of the ASEAN. Declarations on the Conduct of Parties of South China Sea (2002) and the CoC initiative and the ASEAN Maritime Forum are important moves. In the past, Malaysia also participated in the Indonesia-initiated Informal Workshop on the South China Sea in Bandung. Currently, China is also sponsoring Track Two meeting on the South China Sea. Malaysia is also active in ensuring that the ASEAN Joint Communique addresses the issues of dispute and peaceful settlement as a means and a way forward. Other declarations and agreements are also vital.
5. **The United Nations, the ICJ, and the ITLOS** are important, as Malaysia has the experience in using these platforms for maritime disputes.
6. The use of **international law** and the UNCLOS and other international treaties and agreements are in line with the overall effort. The World Trade Organization and dispute settlement mechanisms have been used by countries in resolving economic disputes.

7. Other larger **Regional Security and Economics Architecture** and the side meetings in relation to the big meetings of the ASEAN Regional Forum, the East Asia Summit, the Asia Pacific Economic Cooperation, the Trans Pacific Partnership Agreement, the Russian-European Centre for Economic Policy, ASEAN Defense Ministers Meeting (ADMM), and the ADMM Plus can serve and continue to serve as platforms for confidence building in the region.
8. Malaysia has been helping neighboring states in the **Peace Monitoring Mission** and also serves as a mediator for rebel groups and their governments for organizing dialogue-related platforms. The Philippines and Thailand have benefitted from such initiatives and cooperation from Malaysian diplomatic initiatives in the region.
9. **Economic Initiatives.** Setting up of Growth Zones and Growth Triangles within the ASEAN region have been useful. It serves ASEAN connectivity and infrastructure development projects, which can enhance regional ties in the border zone that can help prevent escalations.
10. **Balance of Power.** While China is an important economic partner, Malaysia has its own way of working closely with the US, Australia, Japan, and others, in enhancing security cooperation in the maritime zone. It is important to have more friends in countering sizable challenges from China.

## Conclusion

From the above it is very clear that Malaysia prefers negotiations, dialogue, and the use of legal dimension and friendly consultations as a way of settling disputes in the maritime zones, especially in the South China Sea. Malaysia explores both the bilateral approach plus the multilateral platform in line with international law and the UNCLOS. Economic cooperation is also an important part of long-term thinking about strategy and security. The use of all available regional architecture and maritime regimes has been useful in maintaining peace thus far. Malaysia has also toughened its stance on the South China Sea when the ASEAN Summit was held in May and November 2015 in Kuala Lumpur. Statements were issued condemning the extensive land reclamation works of conflicting parties and that they were detrimental to peace and needed to be stopped. The US also condemned China's activities as unhealthy and unrecognized during the Shangri-La Dialogue in Singapore and also at the US-ASEAN Sunnyland Summit in February 2016. The Asia Pacific Roundtable, an informal open security forum in Kuala Lumpur in June 2015, also stressed the importance of peaceful approaches and the stoppage of the reclamation and encroachments by China.

The hope that China will sign the CoC on the South China Sea is still far remote. From China's perspective, it is not only the ASEAN, but also the US, that needs to be curbed in the South China Sea. More so when the US has been actively engaging in "freedom of navigation" movements of naval ships near China's reclamation work area in the Spratlys. The others claimants are hoping for the US to keep the pressure on China. The US has declared that it is a residence power in the Asia Pacific. It has also helped smaller countries in different friendly ways, while calling all parties to use international law to settle disputes. But China has not taken the US pressure seriously. China's military/coast guard presence is on the increase in the waters of the ASEAN claimants. It claims that it has the right to patrol or conduct naval exercises in



other claimants' EEZ. The issue is still far away to be handled peacefully. The ASEAN is also appears to be ineffective in stopping China's forward strategy in the South China Sea. Hopefully, so long as there is no flare up, things will be under control.

Options available are also limited other than the normal Confidence- and Security-Building Measures, Search and Rescue, and the Humanitarian Assistance and Disaster Relief types of cooperation that can be envisioned. The ADMM Plus can also help to mitigate better China's onslaught. It looks like pressuring China to face the international court and adopt the UNCLOS principles is the only way forward while enhancing maritime surveillance and defense against China's forces. But China prefers a bilateral approach, which makes it easier for it to pressure smaller states of the ASEAN. Engaging many other stakeholders and non-claimant states in the regional maritime architecture for the Asia Pacific can be also an option in the balancing act. The thinking must move beyond the South China Sea, while the focus remains on the cooperative, common, and comprehensive security ideas as guiding principles for dispute settlement. On the other hand, the disputes in the South China Sea are definitely unique, involving several countries and historical sensitivities between the claimant states.

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# The Decision from the Arbitral Tribunal and What to Expect Moving Forward

Marie Antoinette de Jesus

The arbitration between the Philippines and China as it relates to the South China Sea disputes was sought by the Philippines through the Permanent Court of Arbitration at the Hague, invoking the arbitration provision under the 1982 United Nations Convention on the Law of the Sea or the UNCLOS. The UNCLOS, specifically under Article 287, indicates ways to peacefully settle maritime disputes, offering different dispute settlement procedures that include compulsory arbitration. China and the Philippines are both parties to the UNCLOS. Having been ratified by 168 parties, the UNCLOS serves as an oceans constitution to settle challenges related to maritime law—China ratified it on June 7, 1996 and the Philippines on May 8, 1984. Within this context, the Philippines started its arbitration case versus China on January 22, 2013. Most of the details in this article refer to the South China Sea Arbitration Award of July 12, 2016.

## **A Backgrounder on the South China Sea Disputes between China and the Philippines: What Went on Before**

The South China Sea has a stretch of 1.4 million square miles starting with the Strait of Taiwan up to Eastern Sumatra and Borneo. The South China Sea is composed of 4 main island groups, particularly the Pratas, the Paracels, the Spratlys, and Scarborough Shoal. It has half of the world's merchant fleet tonnage passing through it, including half of all liquefied natural gas and a third of crude oil.

Several Asian countries are players in the South China Sea disputes. China claims 4 of the main island groups,—the Pratas, the Paracels, the Spratlys, and Scarborough Shoal. The Philippines lays claim to many parts of the Spratlys and Scarborough Shoal. Particularly, the Philippines claims 8 Spratly Islands, having control of 2 of the 3 largest islands, specifically West York and Thitu Islands. The Spratlys fall under the country's 200 nautical miles (nm) Exclusive Economic Zone (EEZ) range since the 1950s (a country's EEZ covers a maximum of 200 nm). Countries like Vietnam claim the Paracels and the Spratlys; while Brunei, Malaysia, and Taiwan claim parts of the Spratlys.

Territorial disputes over the South China Sea have been in existence for decades. This is unsurprising, given that a country protecting its sovereign territory is perhaps its most important role and responsibility (Beeson 2015, 305). There are other reasons, however, as to why some nations lay claim over the South China Sea territories: (1) the access to fishery and energy resources; (2) the continuing rise of China as a regional power player in Asia; (3) the importance of a country's image in national politics (Dolven, Manyin, and Kan 2014,

23-24); and (4) the access to trade routes and military positioning (O’Rourke 2015, 2). China, in particular, has its sights on all territories of the South China Sea as it establishes a buffer zone for them to ensure that military forces are kept away from mainland China during conflict. This creates a stronghold for the country, allowing them to become a regional hegemon (O’Rourke 2015, 3).

Although territorial disputes and its attached incidents have been going on for quite some time, there was a sharp increase in maritime tensions in the past years. This could be attributed to (1) the differing interpretations of history and the United Nations Convention on the Law of the Sea (UNCLOS) and (2) the lack of willingness of some countries to go through international dispute settlement procedures (Dolven, Manyin, and Kan 2014, 7).

As related to the differing interpretations of history and the UNCLOS, none is more evident than China’s 9-dash line. China claims around 80% of the South China Sea by using a U-shaped 9-dash line, with it overlapping with the claims of other countries. Throughout history, China has been unclear as to the meaning of this 9-dash line—whether it covers the whole sea and seabed within the line or if it makes claims that are more limited (2014, 10). China’s 9-dash line even goes through the EEZs of Brunei, Indonesia, Malaysia, the Philippines, and Vietnam (McDevitt 2014, 3). In addition, many of the features in the perimeter of the 9-dash line are as far away as 550 nm from Hainan Island, China and as close to the Philippines as 50 nm. However, even as China uses the 9-dash line as a legal claim to the South China Sea territories, the map where the 9-dash line appears is based on legally weak claims under the UNCLOS, although it does have a historical basis for China (Simon 2015, 586). Moreover, historical maps actually hold little value in international tribunals because they vary in accuracy and do not constitute a territorial title (McDevitt 2014, 42). Nevertheless, based on China’s perspective, the international community has accepted their 9-dash line because no one has gone against its declaration in 1953 (Sinaga 2015, 134-135).

### **Tensions between China and the Philippines**

China is not the only country staking its claim over territories in the South China Sea. However, the actions and claims made by China, particularly Beijing’s leaders and authorities, have become a rising concern (Dolven, Manyin, and Kan 2014, 1). For the purposes of this article, the tensions between China and the Philippines will be focused on, as indicated in Table 1. On an interesting note, it seems that China had a more intense stand against the Philippines’ claim over their South China Sea territories. This is even if before the intensification of the disputes, their relationship had been forthcoming and they do not have to go against a negative history, like China with Vietnam (Tolentino and Ham 2015, 9).

Actions by China show their objectives to consolidate territorial claims, extend their naval capacities, and cut away the claims made by other countries through coercive diplomacy (Sutter and Huang 2010, 71). China has been involved, not only with intimidation in the South China Sea, but they are also creating and building artificial islands able to support military structures (Cruz 2015, 44). These “islands,” according to McDevitt, can allow an occupying country to ensure that a territory is within the required 200 nm of an EEZ (2014, 4). However, the foundation rules of maritime zones are that land creates maritime zones and not the other way around.

Table 1. Actions Leading to Tensions between China and the Philippines Over the South China Sea

Date	Incident
January 1995	Chinese vessels start the construction of buildings in Mischief Reef, a large reef in the Spratlys.
February 8, 1995	A Chinese flag surrounded with 8 Chinese ships stays on the coral ring of Mischief Reef.
1997	China positions boundary markers around Scarborough Shoal. Subsequently, the Philippines destroys the barriers.
1995 and 1998	China takes control of Mischief Reef after several naval attacks against the Philippines.
2000	A Philippine navy patrol boat fires at 2 Chinese fishing boats near Scarborough Shoal.
Early 2009	Obvious naval presence and greater assertiveness from China in Philippine territorial waters in the Spratlys.
March-April 2009	China sends a fishery patrol vessel to the Spratlys, succeeded by 6 more patrol vessels in the next month. Vessels were positioned to minimize the illegal fishing taking place, as declared by China.
March 2, 2011	2 patrol boats from China harass a survey ship (conducting oil exploration) commissioned by the Philippines' Department of Energy at the Reed Bank. The Reed Bank is 150 kilometers east of the Spratlys Islands and 250 kilometers west of Palawan, Philippines and within the Philippines' Exclusive Economic Zone (EEZ). The Philippines then files a protest to the Chinese Embassy in the Philippines to seek an explanation, but an official from the Embassy says that China has sovereignty over the Spratlys and their nearby territory.
Early June 2011	China's People's Liberation Army Navy and marine surveillance ships are seen in the vicinity of the Kalayaan group of islands in the Spratlys. The Philippines' foreign and defense secretaries express concern over the Chinese staking claim over the Philippines' EEZ by constructing an oil rig in Iroquois Bank. The Chinese foreign ministry responds by stating that the Philippines should stop harming China's sovereignty and maritime rights and interests. China proceeds to demand that the Philippines seek their permission first before they conduct oil explorations.
April 8, 2012	8 boats from China are spotted around Scarborough Shoal.
April 9, 2012 - June 18, 2012	Scarborough Shoal is composed of 150 square kilometers of rocky islets and barren reefs, around 135 miles from the Philippines and 543 miles from China. Scarborough Shoal lies 128 nautical miles (nm) west of Luzon, Philippines under the Philippines' EEZ and 1,000 nm from China. On April 10, 2012, the Philippines' frigate, the BRP Gregorio del Pilar, attempts to arrest Chinese fishing boats hauling live sharks, clams, and corals. However, 2 Chinese maritime surveillance vessels come and stop this. To decrease tensions, the Philippines replaces its ship with a smaller coast guard vessel. Diverging from the Philippines' actions, China deploys the Yuzheng 310, its largest and most advanced patrol vessel with light cannons, machine guns, and electronic sensors. As part of its routine port calls, the USS North Carolina, a Virginia-class fast attack submarine, docks at Subic Bay on May 13, 2012. A month afterwards, the USS Louisville, also a nuclear-powered attack submarine, docks at Subic Bay. Tensions decrease when civilian vessels leave due to the typhoon season. After negotiations and verbal agreements to de-escalate the situation, including talks intermediated by the US, Philippine vessels leave Scarborough Shoal. In opposition to these actions, Chinese vessels come back and cordon off portions of the atoll. Currently, China has de facto control of the area.

Date	Incident
December 2013	China brings in Liaoning, an aircraft carrier, to the South China Sea.
January 2014	China conducts massive land reclamation at Johnson South Reef in the Spratlys.
March 2014	China blocks 2 civilian ships from the Philippine navy. The ships were to send to logistics to the Philippines Marine Unit in the Second Thomas Shoal in the Spratlys.
September 2014	China, on 5 reefs, builds new structures on Johnson South Reef found in the Spratlys.
November 2014	Based on satellite images, China builds an island in the Spratlys, particularly at Fiery Cross Reef, able to accommodate an airstrip.
February 2015	According to satellite imagery, China builds 5 sites and airstrips.
June 16, 2015	China states that it is almost complete in its land reclamation of the South China Sea.
March 1, 2016	Chinese ships are in Jackson Atoll or Quirino Atoll in the Spratlys. Beijing confirms this but states that its vessels immediately left.
March 5-7, 2016	The Chinese coast guard harasses and chases away Philippine fishing boats in Scarborough Shoal.
April 17, 2016	China sends a military plane to one of its manmade islands in Spratlys' Fiery Cross Reef. Beijing states they were picking up 3 injured construction workers.

The rising concern of the world over China's actions is due to the size and quickness of their efforts and how they have immediately and surprisingly changed the status quo of the South China Sea (O'Rourke 2015, 27). Robert Haddick, writing in a Joint Special Operation University report, described China's assertive behavior and actions as a "salami-slicing" strategy (2014, 33), wherein China undertakes small acts of aggression that will not alert its neighbors and the international community. However, through time, the small acts that only seem to garner small gains would eventually lead to major changes in the status of the disputes (Heng 2014, 11). A Chinese official once used "cabbage" as another term for their strategy of putting together their control over the disputed islands. They do this through "wrapping" the islands, as with the leaves of a cabbage, through layer upon layer of protection and occupation by the Chinese Coast Guard, fishing boats, etc. (Kazianis 2013).

### **Categories of the Philippines' Submissions**

The Philippines presented its disputes under 4 main categories to the Arbitral Tribunal, constituted under Annex VIII under the UNCLOS, composed of 5 judges. The Philippines requested the Tribunal to:

1. Resolve the disputes in terms of the source of the maritime rights and entitlements in the South China Sea. The rights and entitlements claimed by China must be based on the UNCLOS and not any historic rights. The Philippines is asking the Tribunal to claim that China's historic 9-dash line has no legal effect on its maritime rights and entitlements.
2. Resolve the disputes involving maritime zone entitlements in Scarborough Shoal and particular maritime features in the Spratlys. The UNCLOS sets that low tide

elevations and submerged banks cannot create maritime entitlements nor can rocks sustain economic life or human habitation by themselves. Thus, they cannot create entitlements to an exclusive economic zone or EEZ of 200 nautical miles (nm) or a continental shelf.

3. Resolve the disputes regarding the legality of the actions of China in the South China Sea. The Philippines requested that the Tribunal declare that China violated the UNCLOS when it: (a) interfered with the Philippines' exercise of rights under the UNCLOS, which includes navigation, oil exploration, fishing, and construction of artificial islands and installations; (b) failed to preserve and protect the marine environment when it tolerated and actively supported Chinese fishermen that harvested endangered species and used dangerous fishing methods that hurt the South China Sea's ecosystem; and (c) created serious harm to the marine ecosystem when they constructed artificial islands and performed extensive land reclamation on the Spratlys.
4. Determine that China lengthened and exacerbated the disputes during arbitration when China restricted access to a Philippine marine detachment located on the Second Thomas Shoal. China did this through its construction and land reclamation in the Spratlys.

### **China's Non-Participation**

In response to the Philippines' arbitration case, China countered by neither accepting nor participating in the proceedings. Nevertheless, China has made known its position on the arbitration through the media and diplomatic Notes Verbales both to the Philippines and to the PCA (the Registry of the Arbitration). Case in point, on December 7, 2014, the Ministry of Foreign Affairs of China published a position paper on the jurisdiction of the arbitration. In this paper, China highlighted that: (1) the Tribunal has no jurisdiction over the disputes because the matter is about territorial sovereignty; (2) both countries should negotiate through bilateral instruments and the Declaration on the Conduct of Parties; and (3) the Philippines' submissions to the Tribunal is an important part of maritime delimitation. Moreover, the Chinese Ambassador to the Netherlands communicated with individual members of the Tribunal by providing them with statements of the officials of the Ministry of Foreign Affairs of China.

However, China made it clear that these statements are by no means a participation in the proceedings. At any rate, the communications and position paper of China was treated by the Tribunal as an objective to jurisdiction. Moreover, even with China's non-participation, the arbitration can continue. Although China has no participation in the proceedings, the Tribunal determined the position of China based on their official statements and remained transparent with China by sending communications and materials from the arbitration. Due to measures provided for in the UNCLOS, neither the Philippines nor China were prejudiced against participating and not participating, respectively.

### **Jurisdiction of the Arbitral Tribunal**

On October 29, 2015, the Tribunal unanimously concluded that it can decide on its jurisdiction and the admissibility of the South China Sea arbitration. The Tribunal had a unanimous conclusion regarding their jurisdiction, noting that: (1) the Arbitral Tribunal is properly

constituted; (2) China’s non-participation still gives the Arbitral Tribunal jurisdiction; (3) the Philippines’ initiation of the arbitration is not abusive of the process; (4) there is no third party that is indispensable in the process; (5) existing and relevant declarations, statements, treaties, and conventions remain consistent with the Convention; (6) the Philippines and China have already exchanged views prior to the arbitration; and (7) the Tribunal has jurisdiction for some of the Philippines’ submissions, with certain conditions.

On November 24-26 and November 30 of 2015, the Tribunal heard the merits of the Philippines’ case. Although this was not open to the public, present at the hearing were the Tribunal; the Philippines’ agent, representatives, counsel and advocates, counsels, technical experts, assistants, and expert witnesses; delegations from observer states from Australia, Indonesia, Japan, Malaysia, Singapore, Thailand, and Vietnam; an expert assisting the Tribunal; the PCA; and the court reporter.

### Arbitral Tribunal Decisions

By July 12, 2016, the Tribunal released its decision on the South China Sea arbitration between the Philippines and China. The decisions are reflected in Table 2 below.

Table 2. The Philippines’ Submissions and the Arbitral Tribunal’s Decisions

Submission	Decision
<p><b>Submission No. 1</b> China’s maritime entitlements to the South China Sea should not go beyond what is in the UNCLOS.</p>	<p>The UNCLOS has defined the range of maritime entitlements for the South China Sea, “which may not extend beyond the limits imposed therein.”</p>
<p><b>Submission No. 2</b> China’s jurisdiction over sovereign rights and historic rights as connected to the South China Sea and encompassed by the nine-dash line goes against the UNCLOS.</p>	<p>The UNCLOS supersedes any historic or sovereign rights or jurisdiction “in excess of the limits imposed therein.”</p>
<p><b>Submission No. 3</b> Scarborough Shoal creates no entitlement to a continental shelf or an exclusive economic zone (EEZ).</p>	<p>Scarborough Shoal has naturally formed areas of land that are above the water during high tide. The high tide features from Scarborough Shoal are rocks that cannot sustain economic life or human habitation by themselves, so it does not have a continental shelf or an EEZ.</p>
<p><b>Submission No. 4</b> Subi Reef, the Second Thomas Shoal, and Mischief Reef are low tide elevations that cannot create entitlements to a continental shelf, an EEZ, or a territorial sea.</p>	<p>Mischief Reef, Second Thomas Shoal, and Subi Reef, in their natural condition, are exposed at low tide and submerged at high tide and are low tide elevations. Hence, it cannot create entitlements to a continental shelf, an EEZ, or a territorial sea.</p>
<p><b>Submission No. 5</b> Mischief Reef and the Second Thomas Shoal are parts of the continental shelf and EEZ of the Philippines.</p>	<p>Mischief Reef and Second Thomas Shoal are within 200 nautical miles (nm) of the Philippines (Palawan) and are situated in an area not overlapped by entitlements created by any claimed maritime feature of China. Hence, Mischief Reef and Second Thomas Shoal are part of the continental shelf and EEZ of the Philippines.</p>

Submission	Decision
<p><b>Submission No. 6</b> Gaven Reef and McKennan Reef are low tide elevations and cannot create entitlements to a continental shelf, an EEZ, or a territorial sea. However, their low water line could be utilized to peg the baseline wherein the breadth of the territorial sea, Sin Cowe and Namyit, are measured.</p>	<p>Gaven Reef (North) and McKennan Reef include sand cays or rocks that are above water at high tide and as such, are high tide features. Gaven Reef (South) in its natural condition is exposed at low tide and submerged at high tide and is a low tide elevation. Hughes Reef is within 12 nm of high tide features of McKennan Reef and Sin Cowe Island. Gaven Reef (South) is within the 12 nm of high tide features in Gaven Reef (North) and Namyit Island.</p>
<p><b>Submission No. 7</b> Cuarteron Reef, Fiery Cross Reef, and Johnson Reef create no entitlement to a continental shelf or an EEZ.</p>	<p>The high tide features of Cuarteron Reef, Fiery Cross Reef, and Johnson Reef cannot sustain economic life or human habitation by themselves and should have no continental shelf or EEZ.</p>
<p><b>Submission No. 8</b> China interfered illegally with the Philippines' sovereign rights in terms of the resources in its continental shelf and EEZ.</p>	<p>Because of China's operation of marine surveillance vessels, as connected to the incidents in March 1-2, 2011 with the M/V Vertias Voyager, it has breached Article 77 of the UNCLOS. China also breached Article 56 of the UNCLOS, connected to the Philippines' sovereign rights on living resources on its EEZ, because China permitted and allowed Chinese fishing and flagged vessels within the Philippines' EEZ.</p>
<p><b>Submission No. 9</b> China failed to prevent its vessels and citizens in exploiting the living resources in the EEZ of the Philippines.</p>	<p>China, by operating marine surveillance vehicles and allowing Chinese flagged vessels to fish in Mischief Reef and Second Thomas Shoal in May 2013, disregarded the sovereign rights of the Philippines, as connected to its fishing in its EEZ. China did not follow its obligations under the UNCLOS's Article 58.</p>
<p><b>Submission No. 10</b> China illegally prevented Filipino fishermen from performing their livelihoods as they interfered with their fishing activities in Scarborough Shoal.</p>	<p>China illegally thwarted Filipino fishermen from fishing at Scarborough Shoal by operating its vessels in the said shoal from May 2012 onwards.</p>
<p><b>Submission No. 11</b> China violated the UNCLOS in protecting and preserving the marine environments of Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Hughes Reef, Johnson Reef, Scarborough Shoal, Second Thomas Shoal, and Subi Reef.</p>	<p>The Arbitral Tribunal concluded that China breached Articles 192 and 194(5) of the UNCLOS by protecting, tolerating, and failing to prevent the fishing of Chinese vessels that harmed the endangered species of Scarborough Shoal, Second Thomas Shoal, and Spratlys through their harvesting activities. Moreover, because China built islands in Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Hughes Reef, Johnson Reef, Mischief Reef, and Subi Reef, it breached several articles of the UNCLOS.</p>



Submission	Decision
<p><b>Submission No. 12</b></p> <p>(a) By occupying and constructing on Mischief Reef, China went against the UNCLOS's provisions on installations, structures, and artificial islands</p> <p>(b) China's occupation and construction at Mischief Reef violated the duties of China to preserve and protect the marine environment, as indicated in the UNCLOS.</p> <p>(c) By occupying and constructing on Mischief Reef, China violated the UNCLOS by attempting to appropriate.</p>	<p>(a) China, by constructing artificial islands and installations at Mischief Reef without the permission of the Philippines, violated Articles 60 and 80 of the UNCLOS. Since Mischief Reef is a low tide elevation, it cannot be appropriated.</p> <p>(b) The Arbitral Tribunal concluded that China breached Articles 192 and 194(5) of the UNCLOS by protecting, tolerating, and failing to prevent the fishing of Chinese vessels that harmed the endangered species of the Spratlys through their harvesting activities. Moreover, because China built islands in Mischief Reef, it breached several articles of the UNCLOS.</p> <p>(c) Since Mischief Reef is a low tide elevation, it cannot be appropriated.</p>
<p><b>Submission No. 13</b></p> <p>China violated the UNCLOS through its law enforcement vessels they operated in a dangerous manner that caused serious collision risks with Philippine vessels and harm to Philippine personnel in Scarborough Shoal.</p>	<p>China caused serious collision risks with Philippine vessels and harm to Philippine personnel. China violated Article 94 of the UNCLOS.</p>
<p><b>Submission No. 14</b></p> <p>China illegally worsened and lengthened the disputes by interfering with the navigation rights of the Philippines at and adjacent to Second Thomas Shoal; inhibiting the rotation and resupply of personnel from the Philippines in Second Thomas Shoal; imperils the well-being and health of the personnel from the Philippines in the Second Thomas Shoal; and dredges, builds artificial islands, and constructs at Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Hughes Reef, Johnson Reef, Mischief Reef, and Subi Reef.</p>	<p>China worsened and extended the disputes through its construction of artificial islands, by: (1) building a large artificial island in the EEZ of the Philippines; (2) inflicting irreparable and permanent harm on the coral reef of Mischief Reef; (3) starting large scale island building and construction in Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Hughes Reef, Johnson Reef, and Subi Reef; and (4) permanently destroying evidence of the natural condition of Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Hughes Reef, Johnson Reef, Mischief Reef, and Subi Reef.</p>
<p><b>Submission No. 15</b></p> <p>China should respect the Philippines' rights and freedoms under the UNCLOS. China should also preserve and protect the marine environment of the South China Sea.</p>	<p>Both China and the Philippines must comply with the UNCLOS as well as its provisions.</p>

The Tribunal was not asked to make rulings on which country has sovereignty over a particular land territory in the disputed islands, especially over Scarborough Shoal or the Spratlys, because the UNCLOS cannot address the sovereignty of either country over land territory. Moreover, the UNCLOS does not provide for the delimitation of maritime boundaries. In 2006, China declared that it is excluding maritime boundary delimitations, as permitted by the UNCLOS. Thus, the Tribunal only addressed the rights and obligations of both countries, as independent from maritime boundaries.

## **Moving Forward**

The Philippines obviously accepted the decision from the Tribunal. Nevertheless, the country is pragmatic in the sense that it does not foresee that the status quo would drastically change. Yet even with this stated, the award from the Tribunal can be used and leveraged by the Philippines when in a negotiation table with China concerning the South China Sea territories.

Expectedly, China completely and unequivocally rejected the Tribunal's process and ruling and highlighted it as unlawful. To quote the position paper from China's Ministry of Foreign Affairs (2016): "...the award is null and void and has no binding force. China neither accepts nor recognizes it...China's territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China opposes and will never accept any claim or action based on those awards."

Patently, the award has not shifted China's behaviors and actions (Yan 2016, 2), especially since China views the arbitration process and ruling as influenced largely by the US and other states in order to weaken their strength in Asia and around the world. China deems the ruling from the Tribunal to be serious threats to their interests and damages the current order of the international arena. Moreover, China strictly stands by its belief in its historic rights to the islands and waters, hence ignoring the award (Jones 2016, 75). Given these, it would be highly improbable for China to accept, even accommodate the ruling by the Tribunal in the short term.

Nevertheless, in the highly unlikely happenstance that China accepts parts of the decision from the Tribunal, it is most probably not going to happen overnight, but can take place sometime in the future. This may be a minute possibility, since being unaccepting of parts of the award can have a deleterious effect on China's reputation as an aspiring major international player or power in the world, such as the US, Germany, or Japan, that acknowledges a world order, recognizes the importance of peace among states, and wholly agrees to become good citizens in a global community (Swaine 2016, 9).

But what both parties are dealing with at present is how to move forward in the short-term. Since China believes that no third party, including the Tribunal, can make a decisive judgment on its territorial and maritime disputes, it becomes apparent that China could and would only negotiate bilaterally with the Philippines (and perhaps other claimant countries). Since China believes that the international legal entities have no role in maritime disputes involving sovereignty, the country's stance is opposite from traditional Western notions (Swaine 2016, 9). Although it is not advisable for the Philippines to engage in bilateral talks with China since a one-on-one meeting between the two would always give China the upper hand (as it has more resources military- and economically-wise), bilateral talks seem inevitable, as this stream seems to be the only way to get China to dialogue and discourse with the Philippines about the South China Sea.

It would seem now is an opportune time for China and the Philippines to engage in bilateral talks concerning the maritime and territorial disputes. The current Philippine President, Rodrigo Duterte, has made pronouncements that the Philippines would rely less on the US and would look more towards China (it is unclear, however, whether his current pro-Chinese and/or anti-American verbal pronouncements would lucidly translate into actual policy). The situation that China and the Philippines currently find themselves in is a complete about-face from the administration of then Philippine President Benigno Aquino III, which could be described as antagonistic, especially in the light that Aquino's administration initiated the previously discussed arbitration proceedings. Currently, through Duterte's pronouncements and recent anti-US rhetoric, the relationship between China and the Philippines seems to have calmed down somewhat, with Duterte even being welcomed and honored with a full state visit to China in October 2016. Prior to his visit, the relations between China and the Philippines have been seen to be gradually thawing, as China lifted its ban on Philippine banana exports, as well as its advisory to Chinese citizens to avoid traveling to the Philippines. Moving forward, frank yet diplomatic discussions on the South China Sea territorial disputes between the Philippines and China should be inevitable and perhaps, more pleasant.

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# The Philippines' and the US's Enhanced Defense Cooperation Agreement: Background and Considerations

Marie Antoinette de Jesus

The Enhanced Defense Cooperation Agreement (EDCA) had its origins in the August 16, 2011 meeting of the US-Philippine Mutual Defense Board (MDB)/Security Engagement Board (SEB). In order to implement the Strategic Guidance, the Philippines suggested that the US expand its strategic presence in the Philippines so it can balance China; with officials from the Philippines willing to host the US surveillance aircraft and ships in the Armed Forces of the Philippines. By January 2012, during the Philippine-US Bilateral Security Dialogue in the US, Philippine officials again made the case for increased US military presence in their country. The Philippines' proposal was eventually accepted by the administration of US President Barack Obama. They decided to implement the rotational presence of the US in the Philippines, which includes deployment and operation of US ships from Philippine ports, troop rotations, and joint military exercises (De Castro 2014, 434).

After 2 years of discussing the possibility of US rotational troop presence, the Philippines decided to negotiate with the U.S for the length of 8 rounds. Afterwards, the EDCA was signed on April 28, 2014 by the former US Ambassador to the Philippines Philip Goldberg and the Philippines' then Defense Secretary Voltaire Gazmin, 2 days prior to Obama's arrival in the Philippines. This was Obama's centerpiece in showcasing the US's strategic influence in Asia.

According to Washington, its rebalance to Asia is to guarantee stability in the region and to protect its allies, most particularly Japan and the Philippines. More topically, the US wanted to strategically balance or maybe confront head-on, China's assertiveness (De Castro 2014, 427). In addition, not many were surprised that the Philippines was supportive of the US's rebalance to Asia, as concretized in a sense by the EDCA. The South China Sea dispute is mostly responsible for the quick backing of the Philippines' former administration under then President Benigno Aquino III, of the US's rebalancing, not to mention the tense standoff that occurred between the Philippines and China in 2012 at Scarborough Shoal.

## **The Relationship between China, the Philippines, and the US within the Context of the South China Sea Disputes Prior to the EDCA**

It would be illuminating to discuss the relationships of China, the Philippines, and the US, as they are all the concerned actors impacted directly or indirectly by the EDCA. Moreover, by highlighting the relationship among the three prior to the EDCA, within the context of the South China Sea disputes, it would indicate whether the status quo has shifted after the signing of the EDCA.

## *China with the Philippines and the US*

What has been the relationship between China and the US in terms of the US's rebalance to Asia? Many Chinese officials and experts have criticized the US's involvement with Asia, since they cannot comprehend why the US must involve themselves in Asia's affairs and why the US is targeting China specifically (Green and Cooper 2014, 34). China perceives the rebalance of the US to Asia as directed towards them, to contain and control their rise. China underscores that their actions in the South China Sea are simply a reaction to the rebalancing strategy of the US (Tolentino and Ham 2015, 3). Scholars have noted that with this "restraint" that the US is putting on them, they can become even more aggressive (10).

The relationship of China with the Philippines concerning the South China Sea maritime disputes is an interesting case study. China is the bigger power in its relationship with the Philippines—yet, even with this lopsided relationship, the Philippines maintained a strong and defiant stance against China, especially during the administration of Aquino. This caused the leaders of Beijing frustration and irritation to no end (4). Although China could have simply ignored the Philippines' stances and actions, as China holds more power in their relationship, China insists on being strong and defiant as well. For example, China has always insisted on bilateral talks with the Philippines and other claimant countries in order to manage tensions. However, other claimant countries, including the Philippines, were well aware of their vulnerability when dealing with China because of their Asian neighbor's larger military, economy, land size, international influence, and population (2). In a sense, the smaller countries need China more than China needs them, giving China a greater leverage to act on the South China Sea disputes in their favor (McDevitt 2014, 67).

In the more recent past, there has been a strained relationship between China and the Philippines, in terms of the South China Sea issues. Chinese Defense Minister Chang Wanquan even mentioned in a press conference with former US Defense Secretary Chuck Hagel, that the Philippines is "disguising itself as a victim," when the Philippines began its international arbitration (Stewart 2014). The antagonism of Beijing towards the Philippines was brought to the international limelight when super typhoon Haiyan devastated the Philippines in November 2013, leaving 6,340 dead and 1,061 missing. As the rest of the world donated to the Philippines' rescue, relief, and rehabilitation efforts, the international media became aware that China's pledge to the Philippines was much smaller (USD 100,000), even compared to corporations like IKEA and Coca-Cola. The response from China was perceived by the international community as a way for China to hurt or exact revenge on the Philippines for its position on the territorial disputes (Cook 2015, 123). China, after the international backlash, later raised its support to USD 1.6 million. Nevertheless, some international pundits have noted that if China considers itself to be a major player in the world and wants to be recognized as such, the country must start acting like one, especially in the light of such humanitarian disasters.

China's approach when dealing with fellow South China Sea claimants may be stemming from the feeling of uncertainty of the country in the international political arena. Although the country is perhaps the biggest trading partner of more than a hundred countries globally, Yan Xuetong, Dean of the Institute of Modern International Relations at Tsinghua University noted that, "We are the world's second largest economy, but we have fewer friends than the United States does. Washington may have about 40 allies, but we have (virtually) zero." (Furuya 2014). That being said, China's antagonism towards other claimant countries, particularly the Philippines, could

be stemming from the increasing power shift to their side, the rising strength of their navy, the need to expand their economic interests, energy needs, and the country's increased nationalism (Tolentino and Ham 2015, 5). It is unsurprising that as China's military and economic might increases, its government officials are putting first its policy strategies that would get them respect in their country (Mastro 2015, 160).

According to Tolentino and Ham, given the "absolute power disparity" between China and other claimant countries, China could be more patient and cautious when dealing with the South China Sea tensions, as smaller countries would expectedly be concerned for their security and survival, given the rapid rise of the state capacity of China. China does not seem to fully grasp that the cause for concern of the Philippines, as well as other claimant countries, is warranted and important to them (2015, 13). Moreover, as China aims to pursue aggressive economic reforms through free markets, it seems to contradict itself by expanding its territorial claims with countries they would like to maintain and keep trade relations (Johnson et al. 2014, 3). Hence, as China grows, it has to realize that it has to be clearer with its intentions in order to avoid further frictions in the South China Sea disputes.

### *The Philippines with China and the US*

During the tenure of Aquino, the Philippines, in its disputes with China for the South China Sea territories, worked with the US in many matters. China's actions propelled the Philippines into a deeper alliance with the US during this time (Taylor 2014). In 2011, Aquino redirected the country's armed forces to focus from domestic security to territorial defense; he obtained military equipment from the US; he encouraged closer security relations between the US and the Philippines; and he asked for a guarantee from the US of the statements encapsulated in the 1951 US-Philippine Mutual Defense Treaty (MDT) (De Castro 2014, 428). This was also echoed by members of Aquino's Cabinet (432).

Moreover, after the tension-filled 2-month long incident in Scarborough Shoal, the Philippines clearly saw how it could easily be outmaneuvered by China (Galang 2014, 5) and that it needed US support in its disputes over the South China Sea. Former Department of Foreign Affairs Secretary Albert del Rosario said it best during the May 2012 Philippines-US Bilateral Strategic Dialogue: "It is terribly painful to hear the international media accurately describing the poor state of the Philippine armed forces. But more painful is the fact that it is true and we only have ourselves to blame for it. For the Philippines to be minimally reliant upon a US regional partner...it, therefore, behooves us to resort to all possible means to build at the very least a most minimal credible defense posture." (Agence France Press 2012). This action by the Philippines, in highlighting the importance of its alliance with the US in countering China, has the US almost mandated to face China, a rising threat. Nevertheless, this could inevitably create further tensions with China (Tolentino and Ham 2015, 3).

The position of the Philippines against China's territorial claims is not something unique to this country. Based on a Pew poll, 70% of respondents from the Philippines, India, Japan, South Korea, and Vietnam are concerned with potential conflict with China (Global Attitudes Project 2014). The feel of fear and anger of the Philippines towards China was not solely for the former leaders of Manila.

Even beyond seeking US support, the Philippines, probably due to its resource constraints in the navy and air force and its unbalanced levels of power with China, took the legal route in

approaching the disputes. The country accomplished this when it sought international arbitration, by filing a case at the Permanent Court of Arbitration (PCA) from The Hague, under the dispute resolution mechanism of the United Nations Convention on the Law of the Sea or UNCLOS. The UNCLOS is built upon 4 laws of the sea conventions in 1958—the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, the Convention on the Territorial Sea and Contiguous Zone, and the Convention on the Continental Shelf. The Philippines’ Notification and Statement of Claims submitted to the PCA on January 2013 asked for the adjudication by the International Tribunal of the Law of the Seas. By invoking the UNCLOS Article 287, the Arbitral Tribunal provision, the Philippines asked for arbitration on the proper interpretation of the obligations of countries under this treaty. That is, whether the Philippines’ or China’s continental-shelf, exclusive economic zone (EEZ), and contiguous zone claims follow the guidelines of the UNCLOS. Note that this did not include arbitration over maritime boundary delimitation nor sovereignty claims. The Philippines made 4 claims that: (1) the 9-dash line of China is invalid; (2) the claim of China to Scarborough Reef is not based on significant land features; (3) the structures of China on submerged features are illegal; and (4) the harassment of China of Philippine nationals at sea is illegal. Although the Philippines’ case was endorsed by the international community and lauded by the US, the Philippines was the only claimant state in the South China Sea disputes that have done so (not Brunei nor Malaysia, not even Vietnam, which is usually in the forefront of the disputes with China (Heng 2014, 14)---although Vietnam has submitted a position paper to the Arbitral Tribunal. Because it sought arbitration in the maritime disputes, the Philippines demonstrated that the region needs a more “rules-based regional security architecture” and those who think otherwise show that perhaps they are not for peace (Misalucha 2014, 8).

To counter the case of the Philippines, China maintained that the Arbitral Tribunal has no legal standing on the case and refused to participate in the arbitration. The refusal by China indicated to the international or the Asian community that China did not abide by international norms to which it agreed to when the UNCLOS was ratified (Simon 2015, 587). Yet, even with these objections, the Arbitral Tribunal took on the case, with the Philippines submitting its argument on March 30, 2014. China has not honored the Arbitral Tribunal case, its process and decision, which eventually went in favor of the Philippines.

### *The US with China and the Philippines*

In order to rebalance its international priorities, the US decided to also rebalance to Asia. In 2013, the US identified 6 strategic partners for its rebalance to Asia—this included the Philippines, wherein the US has formal defense commitments. The rebalance, according to the speech of former National Security Advisor Tom Donilon to the Asia Society, is based on 5 pillars: (1) close coordination of the US with its treaty allies—Australia, Japan, the Philippines, South Korea, and Thailand; (2) increased capacity building and cooperation with India, Indonesia, Myanmar, and Vietnam; (3) shaped constructive relations with China; (4) more engagement with the ASEAN and the East Asian Summit; and (5) finalization of negotiations on initiatives on investment and trade (Harold 2015, 86).

The US realized the importance of its security relations with the Philippines in 2012 when China violated its agreement with the Philippines to withdraw their ships in Scarborough Shoal—an agreement brokered by the US. Given this and the US’s rebalance to Asia, the US has transitioned or rebalanced its help to the Philippines from suppressing radical Islamic insurgents and terrorism, to the South China Sea disputes.



Obviously, the US has and makes no claim on any features of the South China Sea. Moreover, the US has always declared that it does not take a particular stance on specific sovereignty issues. However, it is supportive of freedom of navigation and is against intimidation, coercion, force, or threats by country claimants. With this, the US has not taken a clear side on the disputes, even though they do oppose the actions of China in the South China Sea. The US's lack of clarity may be because the South China Sea disputes is a divisive issue and is critical to maintaining the relationship between the US and China. For example, in April 2014, although Obama clearly stated that the US, as the Philippines' ally, would defend the Philippines in an armed attack as enshrined in the MDT, he offered no indication that this included the disputed territories. In addition, when former US Chief of Naval Operations Admiral Jonathan Greenert was asked if the US would respond to the occupation of China of features within the Philippines' EEZ, he stated that while they are required to help the Philippines because of the MDT, he is unsure to what extent they can help. Moreover, the US State Department has not referenced any potential response they would have if there were armed hostilities over the South China Sea disputes. This is in diametric opposition to the clear commitment of the US to help Japan with its Senkaku/Diaoyu Islands dispute with China.

Even with the US's less than clear stance in defending the Philippines within the context of the South China Sea disputes, the US supported the strengthening of Philippine military capacity. This is apparent in their transfer to the Philippines of two 3,350-ton Hamilton-class high-endurance cutters; a USD 40 million 3-year package under the Global Security Contingency Fund; and a USD 32.5 million regional assistance package (Dolven, Manyin, and Kan 2014, 4). In 2012, the Philippines launched a US-supported 5-year modernization program costing USD 900 million, where the country can acquire combat jets, patrol boats, anti-ship missiles, and naval helicopters. This was augmented by increased US presence in the Philippines with more warship visits, as well as military personnel and nuclear submarines (Simon 2015, 583).

As previously indicated, although the US has not taken a particular stance on the South China Sea issue, it supports freedom of navigation and goes against coercion and intimidation. Case in point, in almost every regional security dialogue, the US has voiced its concerns over the tensions over the South China Sea (Dolven, Manyin, and Kan 2014, 3). The US prefers that claimant countries follow international law and tap into arbitration mechanisms and those enshrined in the 1982 UNCLOS and the 1967 ASEAN Treaty of Amity and Cooperation in South-east Asia (Simon 2015, 581-582). In addition, the US has highlighted the importance of working through multilateral streams (Dolven, Manyin, and Kan 2014, 4).

In the more recent months and years, the US has become more vocal and has been taking a more proactive stand against the aggressiveness of China with respect to the South China Sea disputes. Daniel Russel, the US Assistant Secretary of State for East Asian and Pacific Affairs, in February 2014, stated his opposition to China's demarcation line that claims South China Sea disputed territories (Tow 2015, 18). In May 2014, Hagel said that with China's unilateral actions over the South China Sea, the US will not "look the other way when fundamental principles of international order are being challenged." (Associated Press 2014). In addition, in the middle of December 2014, the US State Department sent out a document that stated that China is ignoring the UNCLOS with its claims and is disregarding their provisions (Simon 2015, 595).

As the US becomes more certain in its rhetoric against China's stance on the South China Sea disputes, it still recognizes its dilemma of minimizing the coerciveness and/or aggressiveness of

Chinese actions but simultaneously trying to maintain a productive relationship with them. In a way, the US is still “beholden” to Beijing to close out the nuclear programs of North Korea, not to mention their relationship’s impact on their trade, investment, and economic growth (McDevitt 2014, vi). On the same vein, the US is trying to support its allies like the Philippines, but at the same time would like to dissuade the Philippines from escalating tensions further (Dolven, Manyin, and Kan 2014, 2).

## The EDCA

The EDCA reiterates the treaties that the Philippines already have with the US. It “enhances” and updates the 1951 MDT and the 1998 Visiting Forces Agreement (VFA). As described in the MDT, disputes are settled through peaceful means and should be consistent with the rulings from the United Nations; the US and the Philippines are committed to support each other in an attack of a third party; military action would only occur upon consultation between the US and the Philippines; there will be no US permanent military presence or bases in the Philippines; to name a few. The language of the MDT, however, is ambiguous. The EDCA also mentions the VFA, wherein the US can conduct drills in the Philippines. It also recalls other agreements such as the Agreement for the Establishment of an MDB in 1958; the Agreement to Establish an SEB in 2006; the Mutual Logistics Support Agreement in 2007; and other international obligations of the US and the Philippines.

Briefly, the EDCA allows US forces to have a strategic rotational presence in the Philippines, giving them access to military ports, bases, and airfields in the Philippines. This is the first time this has occurred in more than 20 years since the US left its Philippine base in Subic Bay in 1991. The EDCA gives the US the green light to help Philippine forces resist armed attacks. However, it does not explicitly include that the US forces help the Philippines defend its territorial claims in the South China Sea. For a more in-depth look of the EDCA, Table 1 has a description of the EDCA articles, as derived directly from the agreement.

Table 1. EDCA Articles

Article	Description
1 - Purpose and Scope	<ul style="list-style-type: none"> <li>• The purpose of the EDCA is to deepen the defense cooperation between the Philippines and the US, which includes enhancing the “interoperability” of the countries’ forces, as well as helping the Armed Forces of the Philippines in its capability gaps, modernization, maritime security, and disaster relief and authorizing access to Agreed Locations on a rotational basis.</li> <li>• Activities under the EDCA are security cooperation exercises, joint and combined training activities, humanitarian assistance and disaster relief activities, and other activities.</li> </ul>
2 - Definitions	<ul style="list-style-type: none"> <li>• This includes definitions of the United States personnel, United States forces, United States contractors, Agreed Locations, and Designated Authorities.</li> </ul>

Article	Description
3 - Agreed Locations	<ul style="list-style-type: none"> <li>• Activities in the Agreed Locations are training; transit and support; refueling; vessel bunkering; temporary maintenance; temporary accommodation; communications; prepositioning; and deployments.</li> <li>• The Philippines will assist in the transit or access of the US of public land and facilities.</li> <li>• Agreed Locations have no rent. Operational expenses are covered by the US</li> <li>• The US has operational control of the Agreed Locations and they can alter and improve them, with consultation with the Philippines, if there are issues.</li> <li>• The Philippines has access to the Agreed Locations.</li> <li>• The US is responsible for the costs of constructing, developing, operating, and maintaining Agreed Locations.</li> </ul>
4 - Equipment, Supplies, and Materiel	<ul style="list-style-type: none"> <li>• The US can preposition and store defense equipment, supplies, and materiel.</li> <li>• There is value in prepositioning for humanitarian assistance and defense capabilities.</li> <li>• The US prepositioned materiel is for the sole use and property of the US forces.</li> <li>• The US forces and contractors have unhampered access to Agreed Locations when prepositioning and storing defense equipment, supplies, and materiel.</li> <li>• The US contractors work under US laws and regulations.</li> <li>• There should be no nuclear weapons in prepositioned materiel.</li> </ul>
5 - Ownership	<ul style="list-style-type: none"> <li>• The Philippines has ownership of the Agreed Locations.</li> <li>• The US will return to the Philippines the Agreed Locations as well as non-relocatable structures and assemblies no longer needed by the US</li> <li>• The US forces and contractors keep the title of all equipment, materiel, supplies, relocatable structures, as well as other movable property imported or acquired in the Philippines by or on behalf of the US forces.</li> <li>• Buildings, non-relocatable structures, and assemblies on land in the Agreed Locations are the property of the Philippines. Those constructed by the US permanently in the Philippines are the Philippines', but will be used by US forces until they are no longer needed.</li> <li>• The Philippines and the US can consult in transferring or purchasing excess equipment based on US laws.</li> </ul>
6 - Security	<ul style="list-style-type: none"> <li>• The US and the Philippines will take measures to protect and secure US forces, contractors, and information.</li> <li>• The Philippines has the main responsibility of keeping Agreed Locations secure.</li> <li>• US forces have rights and authorities in the Agreed Locations to protect US forces and contractors. This should be coordinated with the Philippines.</li> <li>• The countries will protect and secure US property from conversion or seizure by parties other than the US that our done without their written consent.</li> </ul>

Article	Description
7 - Utilities and Communications	<ul style="list-style-type: none"> <li>• The US can use utilities with the same rates given to the Philippine Government, excluding taxes and similar fees.</li> <li>• The US can use its own radio spectrum, free of charge.</li> </ul>
8 - Contracting Procedures	<ul style="list-style-type: none"> <li>• The US can contract for materiel, supplies, equipment, and services in the Philippines based on US laws and regulations.</li> <li>• The US will try to use Philippine goods and services as much as possible.</li> </ul>
9 - Environment, Human Health, and Safety	<ul style="list-style-type: none"> <li>• The countries will ensure that there are no environmental, human health, and safety problems and if any occur, will be dealt with quickly.</li> <li>• The US respects Philippine environmental, health, and safety laws and regulations and the Philippines will implement these for the safety of US forces and contractors.</li> <li>• The US will not release hazardous materials or waste intentionally. If there is a spill, timely action must be taken.</li> </ul>
10 - Implementation	<ul style="list-style-type: none"> <li>• Obligations in the EDCA are subject to fund availability.</li> <li>• The countries can enter into implementing arrangements, which can include more details of US presence in Agreed Locations and functional relations between US and Philippine forces.</li> <li>• Countries would consult regularly on implementation.</li> </ul>
11 - Resolution of Disputes	<ul style="list-style-type: none"> <li>• Disputes should be resolved upon consultation between both countries. Disputes will not be referred to international or national courts, tribunals, or third parties.</li> </ul>
12 - Entry into Force, Amendment, Duration, and Termination	<ul style="list-style-type: none"> <li>• The agreement will come into force on the last note exchanged between the countries.</li> <li>• The EDCA and any annex may be amended upon written agreement of both countries.</li> <li>• Annex/es appended to the EDCA are part of the agreement.</li> <li>• The initial term of the EDCA is 10 years and will be automatically in force unless terminated by either country, with one year's written notice.</li> </ul>

There are some interesting notes to make with regards to the EDCA: (1) it is not a throwback to the time when the US had free access to Philippine bases; (2) it is the sole US defense accord that has a consent provision, wherein all supplies brought in by the US must first be approved by the Philippines' MDB and the SEB; and (3) it is the Obama administration's concrete output to its rebalance to Asia.

### **Implementation Status of the EDCA**

In May 2014, petitioners asked the Philippine Supreme Court to halt the implementation of the EDCA, with some claiming that it violates the Constitution and others finding that it goes against Philippine national interests and sovereignty because it sets up de facto American bases. Moreover, petitioners have stated that it is a treaty and not an executive agreement, escaping

Constitutional prohibition and ratification by the Senate. At the end, the Supreme Court ruled that the EDCA is constitutional and can be implemented in the Philippines. In addition, the Court ruled that the EDCA is an executive agreement and does not need approval from the Senate. An argument was made during the Supreme Court hearings that the EDCA can serve as a credible defense in the face of concerns over the South China Sea disputes.

After hurdling the Supreme Court case, there have been further details made available as related to the EDCA's implementation. Based on the US-Philippines Strategic Dialogue joint statement in March 2016, the military presence of the US in the Philippines will be in the: (1) Antonio Bautista Air Base (near the Spratly Islands), (2) Basa Air Base (north of Manila), (3) Fort Magsaysay (Palayan), (4) Lumbia Air Base (Mindanao), and (5) Mactan-Benito Ebuen Air Base (Cebu).

However, since the start of the tenure of the new administration of the current Philippine President, Rodrigo Duterte, he has emphasized that the Philippines will chart a more independent foreign policy, underscoring decreased dependency of the Philippines on the US. For example, Duterte has called to remove the US special forces from Mindanao and even to cease the joint naval patrols with US warships. This calls into question then, whether the EDCA will be fully implemented, if at all, under this new administration. Nevertheless, the Duterte Administration has noted that they will not reject all of the military commitments made with the US.

### **Initial Reactions of Concerned Actors to the EDCA**

Immediately after Obama's announcement of the EDCA, he clearly stated that the US's goal of the agreement was not to contain China, but to ensure that the norms and rules of international law were followed, particularly that of the maritime disputes.

One of the most important roles of a state is to protect territorial sovereignty. Hence, it actually seems counterintuitive for a country to invite foreign military bases to their territory (as with the Philippines with the EDCA), thinking that this would improve their security (Beeson 2015, 305). Yet this is exactly what the Philippines did with the approval and implementation of the EDCA. So why did the Philippines perceive that the US's presence would protect their territorial sovereignty rather than diminish it? This may be because of China's rapidly increasing aggressive behavior towards its fellow claimants and the vulnerability felt by the Philippines, a much smaller and weaker country, both militarily and economically, as compared to China.

Majority of Filipinos are supportive of the EDCA and are less likely to create domestic political problems because of it. They are probably cognizant of the fact that their country has an anemic naval and air force and that, as based on the current status quo, it already relies heavily on the US for joint trainings, emergency relief, and humanitarian missions. The Philippine government, moreover, sees the EDCA as an effective deterrent to China's growing aggression in the South China Sea disputes, given the rotational (albeit temporary) presence of US forces in the country. In addition, the EDCA's humanitarian component emphasizes the importance of the US in disaster relief in the Philippines, as evident in their invaluable presence and help during Typhoon Haiyan in November 2013. The acceptance of most Filipinos of the EDCA is not unexpected, especially in the light of a Pew Research poll showing 85% of Filipino citizens view the US with positivity, the highest in the world (Maresca 2014). However, there are a couple of nay-sayers

among the leftist groups of Philippine politics that underscore that the EDCA is an attack on the country's sovereignty.

For China, once the EDCA was signed, Beijing's main reaction was that the US has no justifiable nor rightful role in the disputes and that the disputes must only be resolved among fellow claimants. They again reiterated that their rights and interests were based on international law and history (Heng 2014, 13). According to a president of a think tank from China, Wu Shichun, their country was unhappy over the EDCA and perceived it as a way for the US to intervene in the South China Sea disputes and to conduct "intelligence activities." In an opinion piece for China Daily, the author stated that the US has shown with the EDCA that it is taking on China as an opponent to contain its influence (GMA News Online 2014). Moreover, in the editorial section of People's Daily, the writer emphasized that the EDCA will embolden an already reckless Manila and will increase tensions within the region. The writer also stated that the Philippines is a troublemaker in the South China Sea, has harassed Chinese fishing boats, and encroached on the territory of China (Shang 2014).

### **Impact of the EDCA on the South China Sea Disputes**

In the scenario of the US helping the Philippines in the event of Chinese aggression, it is possible, that the US, as a dominant alliance partner of the Philippines, could find themselves included in conflicts not of their own choosing. What will they do if an armed conflict arises between China and the Philippines from incidents such as an attack on a Philippine coastguard boat or a shooting down of a Philippine aircraft, for example? This is a reasonable question, since, no matter how much equipment, materials, and technical assistance is given by the US to the Philippines, the Philippines may still be unable to confront this military giant in the seas and beyond.

US officials from the Obama administration have underscored that the MDT, as included in EDCA, is only applicable to attacks in the territories in the Philippines and not those in the South China Sea. The MDT is also not definitive about the responsibilities of the US during an attack on a territory claimed by the Philippines in the South China Sea (unlike the treaty between the US and Japan, the US-Japan Security Treaty of 1960). Nevertheless, what the MDT does include, is that an illegal attack against the Philippines is also an illegal attack on the US. Hence, if the US follows the treaty strictly, it may be possible that the US could defend the Philippines, the same way that it defends its own borders. But this is highly unlikely because such an act would violate Article 51 of the UN Charter, wherein the US cannot invoke self-defense when it is a violation of the right of a different state. If this were left to the UN Security Council to decide, this will not only take time, but China holds veto powers in the council. Solely within the context of the EDCA, it would be futile for the Philippines to gain the US's help when there are provocative actions from China.

Nevertheless, things will shift into a different perspective when the EDCA is placed within the context of the US's rebalance to Asia. If severe events occur in the South China Sea, the US may be "required" to help the Philippines, its Asian ally, because the country is the focus of its rebalance to Asia. If the US chooses not to come to the Philippines' aid in the event of severe action/s made by China, this calls into question the US's supposed rebalance. In this instance, it is not far from the realistic realm that the US would aid the Philippines. For these far-off possibilities, the US is in a tricky situation. While the US hopes for diplomacy supported by

military deployments and multilateral negotiations, the EDCA also compels the US to risk a confrontation with China. The other option—inaction—would allow the US to lose its credibility in its rebalance to Asia and its other defense commitments. Moreover, the ASEAN neighbors of China believe that the US's actions to support its rebalance to Asia may not be followed through. This is because the US is seen as shifting towards isolation, as the result of the experience in the wars in Iraq and Afghanistan. The US's decision-making in Ukraine and Syria echo this as well. However, if the US Democratic candidate former Secretary of State Hillary Clinton won the US Presidency, it may be that the commitment of the US to the rebalance and to the Philippines would deepen and strengthen, as opposed to the US Republican candidate, Donald Trump, who seems to underscore isolation.

So what does the EDCA serve if not for a way for the Philippines to be defended by the US? Perhaps the EDCA should be perceived, not for the US and the Philippines to go to war with China, but to serve as a deterrent. At any rate, armed conflict is unlikely, especially since the US has to deal with other concerns such as constraints to their budget, political division (as who knows if the next President of the United States would keep in mind this Asia rebalance), and the like. Moreover, the Philippines, under the administration of Duterte, has been making headway with the country's relationship with China, making the relationship less antagonistic. On the flip side, Duterte, from his pronouncements, has been making the relationship between the Philippines and the US more trying, to put it mildly. Nevertheless, it is not so clear-cut whether the Philippines would shift from being pro-American to pro-Chinese simply from talking points from Duterte (according to a study by the Social Weather Stations in October 2016, 76% of Filipinos have much trust in the US, while 55% of Filipinos have little trust in China). These being noted, completely severing ties from the US can be problematic and must be discussed elsewhere. Not discounting the fact that the US is a long-term ally, a major trading partner, and an invaluable support during rescue, relief, and rehabilitation efforts in the Philippines, having the US as its advocate is actually one of the "aces" of the Philippines against China on the territorial disputes, since, economically and militarily, the Philippines cannot possibly compete with China. On the other hand, during the administration of Aquino, when the Philippines needed the US to publicly declare and substantiate that it is willing to protect and defend the Philippines if the disputes with China took a drastic turn, the US refused to make a clear statement on the issue. So, perhaps, having a less US-centric position in terms of dealing with the maritime and territorial disputes could be somewhat acceptable for some Filipinos, at least within this perspective.

Based on strategy alone, the EDCA can undercut China's Southeast Asia Anti-Access or Area-Denial Strategy. However, territorial disputes have been in place for such a long time and would thus need the involvement of many parties and could be challenging to solve for the short term. The important matter that the Philippines should take from the EDCA is that it must work hard on the modernization of its defense capabilities, to at least have some sort of minimum credible defense. Moreover, the Philippines can also take advantage of multi-layered interventions in terms of diplomacy with China. Relying always on the US cannot always be the solution.

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What does China's rise mean to the Asia Pacific region and how to deal with it? That is the question most frequently addressed by scholars, analysts, and decision-makers right now. But what if China is not rising? What if it has risen already? What if unilateral approaches provide no solution? Assuming this is the case, it's worth looking, not only at China itself, but instead for regional solutions and answers.

This publication by the Konrad-Adenauer-Stiftung Philippines aims to provide a comprehensive view on certain challenges and questions. The questions asked here, revolving around the key players and processes in the South China Sea, reflect more than just a geopolitical, China-centric view. The playing field is way too complicated to only look at one state in the broader context of regional conflicts. On the other side, this book is not solely written from a Philippine point of view, either. As a matter of fact, numerous experts and authors coming from different backgrounds and different parts of the world tried to paint a picture that comes from diverse points of view, attempting to create a bigger picture, which allows us to understand better the complexities underlying the current disputes and options for dispute resolution.

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