



The School for Ethics and Global Leadership

The South China Sea Conflict

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Introduction

This policy document was written by 24 high school juniors who attend The School for Ethics and Global Leadership (SEGL). SEGL is a semester long residential program in Washington, D.C. that provides intellectually motivated students with the best opportunity to shape themselves into ethical leaders who will create positive change in our world. The Summer 2017 semester created this policy document to provide practical and ethical solutions to the South China Sea Conflict. We chose to explore this international controversy because it presents a significant challenge to the current understanding of maritime and territorial sovereignty and presents thought-provoking ethical questions. If not properly addressed, the conflict in the South China Sea has the potential to escalate dramatically on a global scale due to the vested interests of countries across the world. This document reflects the opinions of the students at SEGL, but not necessarily the opinions of its faculty. We hope that this document provides a clear and in depth analysis of the South China Sea Dispute, as well as ethical parameters for resolving issues of sovereignty.

Executive Summary

The South China Sea is a body of water that is vital to the human population and global economy, for trillions of dollars worth of goods travel through it each year. Additionally, large reserves of oil and natural gas lie within its borders.¹ However, tensions have recently escalated within the Sea as China has increasingly tried to assert its dominance over the region.² China has justified its actions based on the Nine-Dash Line, which it created in 195 to give itself sovereignty over the majority of the region.³ In fact, the tensions grew so strong that the Philippines brought the conflict to the Court of Arbitration for the United Nations (UN). The court struck down on China's overreach of power, yet the nation immediately rejected the hearing itself as well as this ruling.⁴

The trade within the region has attracted notice from the U.S. With China declaring the majority of the South China Sea as their own, the surrounding countries have seen the potential of a loss of money through trade and a severe decline in fish.⁵ The U.S. should ratify the United Nations Convention of the Law of the Sea (UNCLOS) as a way of protecting America and their allies' trade involvement in the South China Sea. If the U.S. were to join UNCLOS, it would be able to enforce the international laws without using military force. With all of the willing actors in the region, the U.S. should then create a Naval Task Force (NTF) to help focus on the goal of peace. If the U.S. accomplishes this feat, the South China Sea dispute will diminish in intensity.

Additionally, the militarization of China's man-made islands is a source of great tension in the region. China has claimed that their purpose is to offer protection for the "shelter [of] ships, navigation aid, [and] search and rescue."⁶ However, the United States and countries within the Association of Southeast Asian Nations (ASEAN) speculate that the militarization of the islands suggest that China has martial motivations.⁷ Although military clashes are not likely to occur between China, ASEAN, and the United States, significant conflicts have arisen.⁸ There is currently a Code of Conduct being drafted that has the capability to mitigate the crisis within the South China Sea. Other potential ways in which China can relieve political tension is by receding sovereignty and military from their man-made islands. In addition, China should begin discussions with the other outside parties in order to listen and understand their opinions, points of views, and economic needs. However, it is imperative that the international community understand that there will have to be concessions offered to China as an incentive to ease tensions in the region.

As a group made up of Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, Laos, Myanmar and Cambodia, ASEAN represents the people and rights of states that are being directly

¹ Max Fisher, "The South China Sea: Explaining the Dispute," *The New York Times*, July 14, 2016.

² "A Timeline of What Happened in the South China Sea Dispute," *Associated Press*, July 12, 2016.

³ Zhou Fangyin, "Between assertiveness and self-restraint: understanding China's South China Sea policy," *Oxford, UK: John Wiley & Sons Ltd*, 2016.

⁴ "A Timeline of What Happened in the South China Sea Dispute," *Associated Press*, July 12, 2016.

⁵ Julian Advincula, "China's Leadership Transition and the Future of US-China Relations: Insights from the Spratly Islands Case," *Journal Of Chinese Political Science* 20, no. 1 (2015): 51-65

⁶ "Building-up of China's Capabilities in the South China Sea Serves the Security, Stability and Freedom of Navigation," *Embassy of the People's Republic of China*, April 17, 2015.

⁷ Council on Foreign Relations, "China's Maritime Disputes," *Council on Foreign Relations*, 2017.

⁸ Richard Javad Heydarian, "ASEAN Unity and the Threat of Chinese Expansion: Are China's Expanding Territorial Claims in the South China Sea Going to Bring Southeast Asian Countries Together?," *Aljazeera*, May 26, 2014.

encroached upon by China's territorial advancements.⁹ It hasn't been able to present a fully unified front, for although almost all feel a sense of indignation, many of its states have complicated relationships with China.¹⁰ As a result, many complaints of wrongful expansion are met with a reminder of ASEAN's place as China's dependent.¹¹ In addition, China's boldness is growing in intensity. In March of 2017, it released a statement claiming that if the Philippines continued to drill for oil in the Spratly islands, there would be war.¹² There have been some recent attempts to better this relationship, but many have floundered without full support, and those that are ongoing do not look promising.¹³ As such, ASEAN has to work to make diplomatic proposals that are more appealing to China and that are backed by the UN.

One such possible diplomatic solution is the UNCLOS, a convention that defines the rights and responsibilities of nations in the South China Sea. It covers guidelines for business, the environment, and management of the natural resources in the area.¹⁴ However, this document, although signed by almost all nations surrounding the South China Sea, has been widely disregarded. Moving forward, the UN should start a formal resolution using the United Nations Security Council (UNSC) as well as a newly created International Commission of Inquiry (COI). A Maritime Task Force (MTF) should also be deployed into the South China Sea to establish presence as well as monitor the feuding countries. Finally, a policy-based conversation to resolve the issue of environmental destruction should be initiated.

In terms of ethical dilemmas, China in particular has overstepped its boundaries in the South China Sea by violating not only the rights of ASEAN nations, but also the well-being of the environment surrounding it. In doing so, it has utilized an extremely Realist approach within the region, creating "a naked struggle for power which makes any kind of international society impossible."¹⁵ Although it is understandable that China holds great value over its self-interests, it must not do so in such a radical way. The nation should implement a strategy known as "enlightened realism," which takes into account not only the needs of China, but also the wants and rights of their surroundings.¹⁶ A nation with such an ethical code will succeed in preserving peace, stability, and cooperation within this controversial region.

⁹ "Overview," *ASEAN*.

¹⁰ Kevin Rudd, "A Maritime Balkans of the 21st Century," *Foreign Policy*, January 30, 2013.

¹¹ Mohammad Zaki, Ahmad and Mohd Sani, Mahd Azizuddin "China's Assertive Posture in Reinforcing Its Territorial and Sovereignty Claims in the South China Sea: An Insight into Malaysia's Stance."

¹² Jane Perlez, "Philippines and China Ease Tensions in Rift at Sea," *The New York Times*, 2012.

¹³ "Foreign Minister Wang Yi Meets the Press," *Ministry of Foreign Affairs of the People's Republic of China*, March 8, 2017.

¹⁴ Schoenbaum, Thomas J. "The South China Sea Arbitration Decision and a Plan for Peaceful Resolution of Disputes," *Journal of Maritime Law & Commerce* 47, no. 4, October 2016.

¹⁵ W. Julian Korab-Karpowicz, "Political Realism in International Relations," *Stanford University*, May 24, 2017.

¹⁶ Devin T. Stewart, Interview by author. July 18 2017.

History and Current Status

The conflict in the South China Sea is complex and constantly developing. The most adept way to address the situation is through a non-violent diplomatic solution to the territorial disputes in the regional conflict of the South China Sea using and expanding existing legislation.

The sea in Southeast Asia is referred to by many different names from each of its surrounding countries. However, the 'South China Sea' is the most commonly used English term, and therefore will be used in this document. The debate on the proper nomenclature of the region does not pale in comparison to the conflict in the region.

The South China Sea is one of the most disputed territories in the world. The area has many different chains of islands and land formations that multiple countries claim.¹⁷ These chains of islands are claimed both as a whole and in smaller divisions. China closely monitors trade in the area, putting pressure on all the neighboring nations. The Association of Southeast Asian Nations (ASEAN) has come together to protest China's claims to the area.¹⁸ In addition, China has recently begun constructing man-made islands. These islands increase China's presence in the area, which is seen as an act of intimidation and a threat towards war. China is constructing permanent military bases on the islands that are capable of launching strikes on ASEAN nations.¹⁹ The man-made islands' main goals are to enforce the Nine-Dash Line, which is a boundary the Chinese government created, and control the Spratly Islands.

The South China Sea is one of the most important bodies of water in the world. It is estimated that 5.3 trillion dollar's worth of different goods go through the South China Sea per year, and 1.2 trillion dollars of this sum is just from the United States.²⁰ The South China Sea also contains vast oil and gas reserves that are estimated to contain 11 billion barrels of oil and 190 trillion cubic feet of natural gas.²¹ To put these figures in comparison, possession of these reserves would theoretically make the South China Sea the 17th richest country by oil reserves and the richest country by natural gas reserves. The South China Sea is also paramount for the fishing industry and it is estimated that 10 percent of all global fishing occurs in the South China Sea.

This conflict has already impacted the economies that rely on the South China Sea. Before the escalation of this conflict, the South China Sea was fished in and treated like common grounds.²² However, since the conflict, it is not possible for fishermen to fish the rich areas of the South China Sea such as the shoal.²³ Because of this, fishers like Macario Forones of the Philippines have to turn to selling other people's fish and makes around one-tenth of what they used to and barely have enough money to buy the rice they need.²⁴

¹⁷ Camila Domonoske, "U.S. Sails Near Disputed Island In South China Sea," *NPR*, January 30, 2016.

¹⁸ Declaration on the Conduct of Parties in the South China Sea, *ASEAN*, October 17, 2012.

¹⁹ "A Timeline of What Happened in the South China Sea Dispute," *Associated Press*, July 12, 2016.

²⁰ Max Fisher, "The South China Sea: Explaining the Dispute," *The New York Times*, July 14, 2016.

²¹ "COUNTRY COMPARISON :: CRUDE OIL - PROVED RESERVES," *Central Intelligence Agency*.

²² Will Englund, "For some Filipino fishermen, the South China Sea dispute is personal," *The Washington Post*, June 7, 2015.

²³ *Ibid.*

²⁴ *Ibid.*

One reason that the United States is involved in this conflict is that it is strongly allied with the Philippines, and has a treaty with the state that requires the United States to protect it.²⁵ The United States has the largest economy in the world and has a strong interest in keeping shipping lanes like the South China Sea open so it can continue to trade with ease.²⁶ Another reason why the United States is interested in this conflict is that because the American navy is the strongest in the world, it often burdens itself with an obligation to police shipping lanes across the world and to act as the mediator in regional conflicts like this one.²⁷

A contested point in the South China Sea dispute is China's Nine-Dash Line. In 1947, the government of the Republic of China created a map that displayed eleven hypothetical dashes delineating China's sovereignty over the South China Sea.²⁸ It originated in atlases that were distributed by the Chinese government to show their sovereignty over island groups in the sea and certain areas of water. During the Communist Revolution in China, the Chinese Communist Party revised the map and removed two of the dashes to bypass the Gulf of Tonkin as a courtesy to their partner communist country, Vietnam. In 1949, the removal of these two dashes created a new Nine-Dash Line.²⁹ It is an ambiguous delimitation of the area that China issues sovereignty over; however, other countries dispute its legitimacy. There are no real coordinates that show the exact location of the line, so it is difficult to implement regulations on what areas China can control. The ambiguity of the matter allows China to easily push the line further back and give China more land and water access if they desire.

Historically, other countries in the area generally respected China's sovereignty within the Nine-Dash Line, except for certain minor disputes. Since China did not implement direct trade regulations over the area that they supposedly controlled, the line was not seen as an issue for other countries.³⁰ In 1958, Chinese legislation ruled that China has sovereignty over the Dongsha, Nansha, Xisha and Zhongsha Islands.³¹ These islands are located within the Nine-Dash Line under China's control and are important for building military bases and recovering natural resources. In the late 1960s, tensions began to rise over the possibility of oil and natural gas reserves in the sea.³² On account of this, there many were exchanges of islands between the Philippines, China and Vietnam. In 1971, the Philippines took possession of the Kalayaan Group of Islands to the West of the Spratly Islands.³³ Later, China took back the Xisha Islands from Vietnam after winning a minor war against them in 1974. At that time Vietnam also had more than ten islands and islets from the Nansha Islands.³⁴ These small disputes over territories are a demonstration of the larger constant battle for land that marks the history of the South China Sea.³⁵

²⁵ Fisher, "The South China Sea: Explaining the Dispute."

²⁶ Ibid.

²⁷ Ibid.

²⁸ Zhiguo Gao and Bing Bing Jia, "The nine-dash line in the South China Sea: history, status and implications," *The American Journal of International Law*, Digital file, (2014): 103.

²⁹ Ang Cheng Guan, "The South China Sea Dispute Revisited," Vol. 54, *Australian Journal of International Affairs*, Digital file.

³⁰ Peter Dutton, "A Maritime or Continental Order For Southeast Asia and the South China Sea," *Chatham House*, London, U.K., February 16, 2016.

³¹ Gao and Jia, "The nine-dash line in the South China Sea: history, status and implications," 105.

³² Ibid, 105.

³³ Ibid, 103.

³⁴ Ibid, 105.

³⁵ Zhou Fangyin, "Between assertiveness and self-restraint: understanding China's South China Sea policy," *Oxford, UK: John Wiley & Sons Ltd*, Digital file, 2016.

After six decades of existence, the purpose of the Nine-Dash Line in relation to the rest of the world it is still unclear. From a Chinese perspective, it is seen as a line that delimits the sovereignty that China has over certain island groups and bodies of water in the South China Sea. The international community did not acknowledge the issue of the Nine-Dash Line because it did not create any controversy in the area until recent years. China submitted a map of the Nine-Dash Line to the United Nations in 2009 with the hope of receiving international protection for the territory that they wished to claim within the line.³⁶ This aroused objection from Vietnam, Indonesia and the Philippines, who argued that China's claim did not respect the United Nations Convention on the Law of the Sea (UNCLOS) that China signed onto in 1996.³⁷

China also defends the Nine-Dash Line by relying on a historical claim. For China, the line serves as a claim to "historical rights" which allows China the rights of fishing, navigation and other maritime activities in the region. Today, there is much debate over whether or not the Nine-Dash Line is legal in terms of the UNCLOS treaty. The Philippines have been contesting that the line exceeds maritime entitlements and argue that they have control over disputed territories such as islands, low-tide coral and submerged banks. The Nine-Dash Line allows China sovereignty over all the islands that it encompasses, preserves China's historic rights in fishing, navigation and such other marine activities, and serves as potential maritime delimitation lines. China wishes to keep the Nine-Dash Line to maintain control of the sea and certain islands; however, other countries dispute that China's historical claim is not sufficient to claim such a vast territory of water and land.

In 1995, China took control of Mischief Reef and built structures throughout it. ASEAN protested this action. Tensions rose between Chinese and the Philippines as a result of naval intimidation and action on both sides. The conflict's tension continued through 2009 when China asserted that the Nine Dash Line gave them absolute authority over the region.³⁸ ASEAN protested and disputed this claim, and Vietnam and Malaysia specifically fought for resource rights in the region. Naval tensions rose to new heights, causing the Philippines to bring the conflict to the Permanent Court of Arbitration. China was angered by this action and later ignored the Philippines' protest of an alleged attack on a Filipino fisherman in the Scarborough Shoal. China continues to claim that the UN has no stake in this dispute, and as such it did not participate in the hearing. In the court, the Philippines argued that China had no right to the islands that it was claiming in the South China Sea.³⁹ Furthermore, the tribunal also struck down China's creation of its man made islands. This ruling was rejected by China. The rejection has spiked tensions between the nations. The conflict has warranted more attention because there now is a global fear that the tensions in the region will escalate to military action, or even war.

The South China Sea consists of many disputed areas. This includes a range of different island chains; some more heavily contested than others.⁴⁰ Differences can be noted between the Spratly Islands and Pratas Islands. While the Spratlys are contested between six plus countries, the Pratas are only claimed by 3 nations. A map of the most notable territorial claims can be seen below.⁴¹

³⁶ Dingli, Shen, "China's Maritime Disputes," *Council on Foreign Relations*, January 2017.

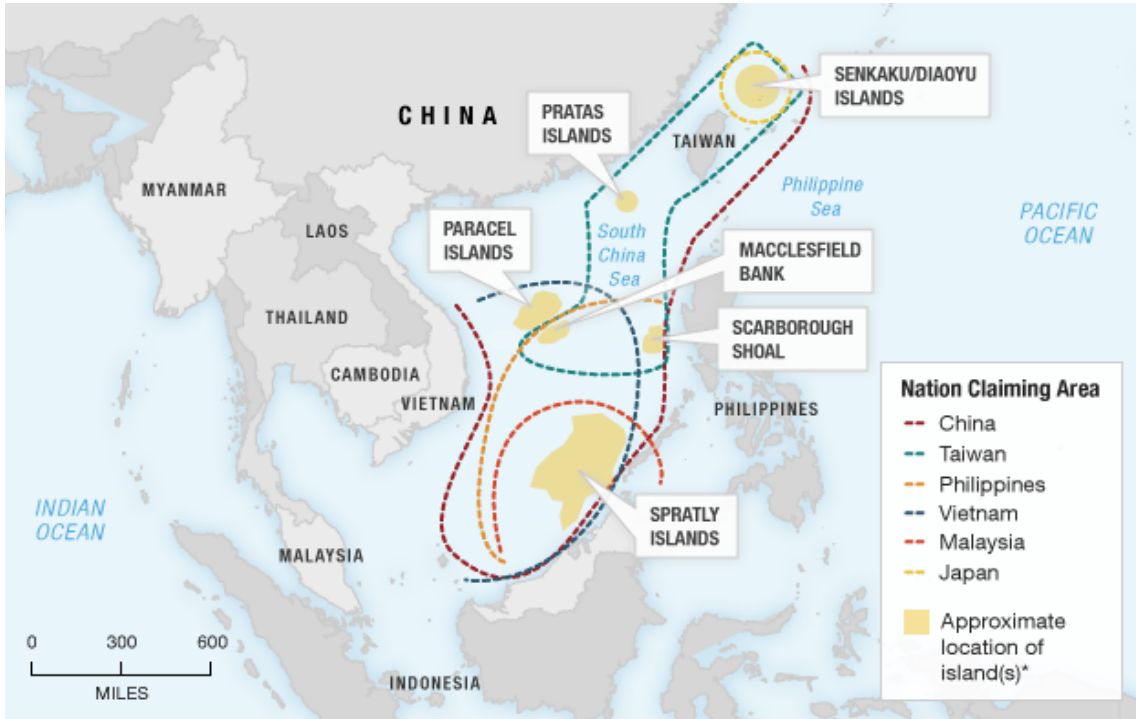
³⁷ Gao and Jia, "The nine-dash line in the South China Sea: history, status and implications," 104.

³⁸ "A Timeline of What Happened in the South China Sea Dispute," *Associated Press*.

³⁹ *Ibid*.

⁴⁰ Domonoske, "U.S. Sails Near Disputed Island In South China Sea."

⁴¹ *Ibid*.



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⁴² Ibid.

UN Approach to Conflict in the South China Sea

The territorial dispute of the South China Sea includes issues with sovereignty regarding ocean territory and surrounding island chains, such as the Paracels and Spratly Islands. These territorial waters - the South China Sea and surrounding islands - are home not only to many fishing businesses that supply numerous countries worldwide, but also an abundance of natural resources, such as oil, natural gas reserves, rare earth metals and fish. However, due to the lack of agreed-upon sovereignty that exists in regard to the waters and its surrounding islands, many Asian-Pacific countries are making different territorial claims. In this specific territorial dispute, the countries arguing over sovereignty are Brunei, China, Malaysia, Philippines, and Vietnam. China has claimed the majority of the territory, citing their historical right to do so as determined by their Nine-Dash Line. The Philippines has continuously argued that the Spratly Islands is a part of their “geographical proximity.”. Similarly, Malaysia and Brunei’s claims are based on the closeness of the islands to their Exclusive Economic Zones (EEZs). Vietnam’s claims on the other hand, are contradictory to those of the previously discussed; according to documents created in the 17th century, Vietnam has held claims to the surrounding islands in question since then. The United States has personal interests in the South China Sea due to the imperative role it plays in their shipping routes.⁴³

In 2013, the Philippines brought a case to an Arbitral Tribunal of the United Nations Convention on the Law of the Sea (UNCLOS) to contest China’s claims to the South China Sea, including China’s assertion of the Nine-Dash Line region. China refused to appear in the case, stating that China’s policy was to negotiate rather than be forced through arbitration.⁴⁴ China maintained the stance of the Tribunal’s illegitimacy and in 2014 created a white paper to elaborate its stance; however, under UNCLOS rules, non-appearance of a party in court does not hamper a tribunal’s jurisdiction. In July of 2016, the UNCLOS presented the Award on Jurisdiction and Admissibility, notably that China had no historical claim to the Nine Dash Line, which marks its territory. The Award also states a non-interventionist position that, “The Tribunal is not persuaded that it is necessary or appropriate for it to make any further declaration.” Following the Award, China declared it “null and void”, continuing its enforcement of the Nine-Dash Line and the creation of military bases in the South China Sea. However, despite China’s continuation of U.N.-deemed illegitimate activities in the region, President Duterte of the Philippines has realigned the nation with China in hopes of improved military and economic relationships. Currently, Duterte has been balancing the fine line between maintaining good relations with China and staking his nation’s sovereignty in various South China Sea territories. Duterte has been developing and occupying nine islands in the region while conversely vowing to China that he will not bring up the South China Sea conflict in the Association of Southeast Asian Nations. The increasing complexity and confusion

⁴³ Rodolfo C. Severino, "Preventing Conflict in the South China Sea," *Entering Uncharted Waters*, 2nd ed. (Singapore: ISEAS Publishing, 2014.)

⁴⁴"Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines," *Ministry of Foreign Affairs*, July 12, 2016.

regarding these nations' claims and positions within the territorial conflict have created an environment simultaneously averse but in need of honest and productive negotiations.

The UNCLOS cannot consider claims of territorial sovereignty by member states. The UN has long set a precedent of establishing duplicative bureaucratic institutions. Such a method is necessary in lieu of reforming existing frameworks, as that would require a vote by the General Assembly and Security Council. Furthermore, China has rejected any form of tribunal jurisdiction to mitigate the conflict in the South China Sea. Thus, the most successful actions that multilateral institutions have taken thus far to assist in the de-escalation of the South China Sea conflict have been to facilitate negotiations. Such a forum capable of discussing and negotiating issues of territorial sovereignty is an international commission of inquiry (COI). COIs were first introduced as a potential means for resolving international disputes in the first Hague Convention of 1899 and then endorsed and expanded in the second Hague Convention of 1907. More recently, the Independent International Commission of Inquiry on the Syrian Arab Republic has looked into human rights abuses in the Syrian Civil War.⁴⁵

The UNIFIL (United Nations Interim Force in Lebanon) Maritime Task Force (MTF) deployed around Lebanon in October of 2006 to assist with monitoring territorial waters to secure Lebanese borders and prevent unauthorized entry. The MTF was also responsible for training Lebanese Navy personnel so that in the future, the same can be carried out without the task force's assistance. This was the first naval-based task force used to enforce peacekeeping. The MTF successfully convinced the Israeli government to lift their naval blockades surrounding Lebanon. MTF utilization and success in peacekeeping efforts has since increased.⁴⁶

The South China Sea is home to a diverse global marine biosystem that has fallen victim to illegal and unreported actions.⁴⁷ Due to the South China Sea's major role in international routes, both for foreign and commercial affairs, there is a major problem with the increase of polluted waters and the exploitation of resources. Along with this, there is a major issue with an increase of illegal fish capturing through the use of toxic materials such as cyanide and dynamites. Due to the lack of legality and reports on the amount species of fish being captured, there is a rapid decrease in the existence of coral reefs and marine life. This process has gone to the extent in which populations species could potentially become at risk for possible extinction.⁴⁸

⁴⁵ Ryan Mitchell, "An International Commission of Inquiry for the South China Sea?: Defining the Law of Sovereignty to Determine the Chance for Peace," *Vanderbilt Journal of Transnational Law*.

⁴⁶ United Nations, "UNIFIL Maritime Task Force," *United Nations Interim Force in Lebanon*, 2017.

⁴⁷ Abhijit Singh, "Why the South China Sea is on the Verge of an Environmental Disaster," *The National Interest*, 2016.

⁴⁸ "United Nations Convention on the Law of the Sea," *General Provisions*, 1982.

Recommendations:

- Following China's dispute with UNCLOS's Award and its expressed desire for negotiations, a member state of the United Nations Security Council (UNSC), permanent or elected, should seek a formal UN Security Council Discussion and resolution. The discussion and resolution will be sought on the premise that the issue of South China Sea is a dispute causing international friction, placing it in UNSC jurisdiction. In the event of a veto in UNSC, discussion and resolution will be moved to the United Nations General Assembly floor for debate among relevant member states. Subsequent discourse and negotiation will move member nations to speak openly regarding territorial grievances and move closer to a multilateral solution.
- An International Commission of Inquiry (COI) should be created, comprised of involved states in the South China Sea dispute (Brunei, China, Indonesia, Malaysia, and Vietnam), as a forum to discuss and negotiate territorial claims in the South China Sea. This COI will operate under the auspices of the UN Economic and Social Council in conjunction with maritime negotiations being conducted in UNCLOS.
 - Steps proposed for the creation of the COI:
 1. Put forth a resolution in the General Assembly and the Security Council authorizing the creation of such a COI.
 2. Allow any other member state of the UN to access the COI's proceedings in an observatory capacity.
 3. Create a working dialogue with UNCLOS to coordinate both the territorial and maritime interests of involved member states.
 - The three overall goals of the COI are as follows:
 1. Dissuade unilateral behavior of individual states.
 2. Promote mutual recognition and cooperative arrangements among regional actors.
 3. Reach a point in negotiations such that all member states agree to procedural legal rules fixed and announced beforehand.
- To follow in the footsteps of Lebanon from 2006, the UN will create a peacekeeping-motivated Maritime Task Force (MTF) to deploy in the South China Sea. The main priority of this MTF will be to monitor the territorial waters and watch over the countries that are involved in the dispute. It is also important to establish an active United Nations presence in the sea.
- In an effort to maintain the diversity of the current existing marine biosystem, a branch of the UN should conduct a series of discussion and policy based conferences, with the end goal being the creation of effective provisions restricting the access to marine life and the exploitation of resources.

U.S. Approach to Conflict in the South China Sea

Today, the South China Sea is a center of conflict due to its strategic geographic location and wealth of natural resources. This conflict, arising from the opposing claims of different nations over parts of the area, requires careful management to avoid upsetting the international order. The U.S. has taken a role in trying to prevent conflict between China and its neighbor states, something which China sees as a pretext for spying.⁴⁹ China claims the majority of the South China Sea with a geographic device dubbed the “Nine-Dash Line” of questionable legality.⁵⁰ Although China has never published the exact coordinates of the “Nine-Dash Line,” it has begun construction of strategically placed “islands” meant to give this claim legitimacy and, more importantly, to give it the foothold with which it may use to impose hegemony over the Sea.⁵¹ With China claiming territorial control over the majority of the South China Sea, it is America’s duty to work with other countries to maintain peace and trade in accordance to international law.

China has used some of the world's largest dredgers to build the coral reefs up above the water to create these islands, making use of thousands of tons of sand and concrete to make nearly two thousand acres of land.⁵² These islands could give China two runways capable of serving a wide range of military aircrafts, which would allow Beijing to exert increasing influence over the South China Sea and to fulfill their likely goal of gaining airspace control over the area.⁵³ It is important to the United States that China not gain this form of control, given the threat it would pose to our allies and the greater international order.

Around forty years ago, the United States helped forge UNCLOS (United Nations Convention on the Law of the Sea) to prevent conflicts from occurring on the seas.⁵⁴ UNCLOS defines the rights and responsibilities of nations with respect to their use of the world’s oceans, establishes guidelines for business, the environment, the high seas, and allocates control of marine natural resources.⁵⁵ China, a party to UNCLOS, has continued to violate the treaty by disallowing benign military activities by other nations within their claimed EEZs (Exclusive Economic Zones). Despite pressure from Democrat and Republican administrations alike, the treaty has yet to be ratified by the United States Senate.⁵⁶ As a nonmember of UNCLOS, it is increasingly hard for the United States to use the treaty as justification for government actions in active support of the international law that is contained within it. Along with the U.S. Navy and the U.S. Coast Guard, both the House of Representatives’ Armed Services and Foreign Affairs Committees have stated support for the ratification.⁵⁷ They argue that, in addition to bolstering our alliance with the Philippines, ratifying UNCLOS is a necessary prerequisite to protecting national interests and promoting equitable use of

⁴⁹ Julian Advincula, “China’s Leadership Transition and the Future of US-China Relations: Insights from the Spratly Islands Case,” *Journal Of Chinese Political Science* 20, no. 1 (2015): 51-65.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Lyle Goldstein, "Rocks, Reefs, and U.S.-China Relations," *Brown Journal Of World Affairs* 22, no. 1 (2015): 271-284.

⁵³ Andrew S. Erickson, "America’s Security Role in the South China Sea," *Naval War College Review* 69, no. 1 (2016): 7-20.

⁵⁴ “The United Nations Convention for the Law of the Sea,” *UN Division for Ocean Affairs and the Law of the Sea*.

⁵⁵ *Ibid.*

⁵⁶ Klarize Medenilla, “US House Dems Push Senate to Ratify UNCLOS,” *Asian Journal*, (2016).

⁵⁷ *Ibid.*

the world's oceans.⁵⁸ Furthermore, there is no evidence that ratification will hurt the U.S. in any way; indeed, the agreement was modified in 1994 to incentivize the U.S. to ratify it, granting the U.S. effective control over the International Seabed Authority once it ratifies the treaty.⁵⁹ Ratifying UNCLOS would support the rules-based international system that Washington has been trying to foster for so long and would ensure two things: (1) that military force should not be employed as a means to resolve maritime conflict and (2) that such approaches are not acceptable.⁶⁰

Recently, the U.S. has sent military vessels through the South China Sea as a demonstration of freedom of movement in light of China's recent intimidation activities, something we would continue to do under the proposed plan of action. The US should take every step possible to ensure that we do not enter into armed conflict with China or any of the surrounding countries. That being said, there are other steps the U.S. can take to enforce rights currently threatened in the South China Sea, such as creating a naval task force (NTF) with partners in the region and sharing the cost equitably. The NTF should prevent any interdiction of a ship by naval forces of any state within the South China Sea unless such interdiction is deemed acceptable under Article 27 of UNCLOS. In keeping with this, signatories agree to the following terms: (1) setting aside their territorial disputes with one another for the time being to focus on containing China; (2) not to charge duties against ships transiting claimed areas as defined in Article 26 of UNCLOS; and (3) suspend their right to expel warships of other nations under the terms set forth under Article 30 of UNCLOS.⁶¹ Although the U.S. is not in the same region as the South China Sea, what occurs in that area affects the U.S. greatly. From the abundance of natural resources, multi-trillion dollars of trade, and the potential strategic military position, the U.S. desperately needs to be aware of events in this critical area.

Recommendations:

- The United States should ratify UNCLOS.
- With all willing actors in the region, the United States should create an NTF in the region.
- Any US military actions in the South China Sea going forward should be to maintain access for commerce vessels under UNCLOS and the agreement we have reached with the NTF agreement signatories.
- The United States cannot and should not take a position with regards to sovereignty disputes over any piece of land within the South China Sea. We must make it clear that any nation claiming control over any island does so alone. Our focus needs to be on maintaining the norms of access under UNCLOS which exist regardless of whose EEZ covers a specific piece of ocean. Doing so will inhibit China from achieving extra-legal hegemony and the disruption to international order that would likely result.

⁵⁸ *Ibid.*

⁵⁹ Stewart M. Patrick, "(Almost) Everyone Agrees: The U.S. Should Ratify the Law of the Sea Treaty," *The Atlantic*, June 2012.

⁶⁰ "The United Nations Convention for the Law of the Sea."

⁶¹ *Ibid.*

China's Approach to Conflict in the South China Sea

It is imperative that The People's Republic of China reduces tensions with ASEAN and the United States as it is in their best interest both economically, socially, and politically. In order for productive and effective negotiation, both China and surrounding countries must make concessions and work towards their shared goal of ensuring and maintaining peace. This section provides insight into China's role in the South China Sea conflict and offers a number of recommendations as to how China should approach the issues presented by this conflict.

A major facet within the South China Sea dispute that is causing tensions between China and ASEAN countries is the Chinese militarization on some of the Paracel and Spratly Islands. Satellite images have shown "possible construction of helipads, airstrips, piers, and radar and surveillance structures," suggesting that China might have martial interests.⁶² Due to the fact that the islands within the South China Sea are not officially owned by any ASEAN country, China has claimed them and posted Chinese forces throughout them. According to the State Council of the People's Republic of China, China has claims to Xisha Qundao, Nansha Qundao, and Huangyan Dao, also known as the Paracel Islands, the Spratly Islands, and the Scarborough Reef respectively.⁶³ China has not only claimed much of the territory in the South China Sea, but is also creating artificial islands on top of the Subi Reef, Fiery Cross Reef, and various atolls of the Spratly Islands.⁶⁴ According to the Embassy of the People's Republic of China in the United States of America, specifically Ambassador Cui, the purpose of this construction is to create facilities in which China and ASEAN countries can visit to offer "shelter for ships, navigation aid, search and rescue, marine meteorological observation, fishery service and many others."⁶⁵ The Chinese embassy stated that military presence on the islands is solely for the defense and protection of itself as well as other nations who may benefit from its service.

China's claims are often viewed skeptically by the Council on Foreign Relations (CFR) and Antonio Carpio, a Filipino Supreme Court Justice. The CFR has stated that "infrastructure, such as runways, support buildings, loading piers, and possible satellite communication antennas, has prompted [China's] neighbors and the United States to question whether they are strictly for civilian purposes, as claimed by the government."⁶⁶ In addition, Carpio has increased skepticism surrounding the use of these islands because he suggests that China only needs to create one more "air and naval base in Scarborough Shoal, in addition to its bases in Woody Island and the Spratlys, to have naval and anti-aircraft missile coverage of the entire South China Sea."⁶⁷ Although China states that creating the islands will be in everyone's best interest, neighboring countries believe that China has a selfish and

⁶² "China's Maritime Disputes," *Council on Foreign Relations*, January, 2017.

⁶³ "Limits in the Seas: China: Maritime Claims in the South China Sea," *Office of Ocean and Polar Affairs Bureau of Oceans and International Environmental and Scientific Affairs U.S. Department of State* no. 143, (2014): 4; "China Adheres to the Position of Settling through Negotiation the Relevant Disputes between China and the Philippines in the South China Sea," *English.gov.cn*, last modified July 13, 2016,

http://english.gov.cn/state_council/ministries/2016/07/13/content_281475392503075.htm.

⁶⁴ "China's Maritime Disputes," *Council on Foreign Relations*; Clint Carroll, "Protecting the South China Sea: Chinese Island-Building and the Environment," *Council on Foreign Affairs*, June 9, 2017.

⁶⁵ "Building-up of China's Capabilities in the South China Sea Serves the Security, Stability and Freedom of Navigation," *Embassy of the People's Republic of China*, April 17, 2015.

⁶⁶ "China's Maritime Disputes," *Council on Foreign Relations*.

⁶⁷ Johanna Son, "The Philippines' Headache over China," *Bangkok Post*, July 18, 2017.

threatening interest in mind. Placing military weaponry and personnel in close proximity to neighboring countries therefore makes them feel threatened, thereby making the social, political, and economic rise of tensions between China and the rest of the world inevitable.

China's expansion of territory is assumed to lead to an increase in their political power. Although China believes that it has control over many of the reefs within the area of the Spratly Islands and has the right and therefore has the right to assert its dominance, it is imperative that China stop its aggression so as to not further strain international relations. Additionally, the ways in which civilians in non-government jobs will be affected by the increasing tension in the South China Sea is often overlooked. In 2014, China had to evacuate 3,000 of its citizens from Vietnam due to safety concerns because of a standoff between Chinese and Vietnamese vessels in the South China Sea.⁶⁸ In the Philippines, the increased presence of Chinese coast guards drives fishermen away as they bring in maritime research vessels.⁶⁹ In 2012, China was involved in a battle for natural gas deposits with the Philippines. Filipino oil survey ships were continuously harassed by Chinese vessels in an attempt for China to secure the natural gas in the South China Sea.⁷⁰ The escalating conflict in the South China Sea has far reaching repercussions and must be addressed.

Currently, a Code of Conduct is being drafted by ASEAN and China while many ASEAN diplomats are sceptical about whether or not China will keep its word. A Code of Conduct is one of the best ways in which China can begin to improve its relations with the United States and ASEAN. A Code of Conduct will offer "mutual commitment to peacefully resolve international disputes."⁷¹ Although it is uncertain if China will keep its word with the Code of Conduct, it is possibly the best option to help mitigate the crisis in the South China Sea because it will "deepen practical maritime cooperation, to promote consultation on the code and jointly maintain the peace and stability of the South China Sea."⁷²

Recommendations:

- The People's Republic of China should not expand their territory past their EEZ; the further creation of man-made islands will also be prohibited.
- The People's Republic of China should not veto the United Nations Resolutions in the Security Council that deems negotiations necessary. In addition, The People's Republic of

⁶⁸ Richard Javad Heydarian, "ASEAN Unity and the Threat of Chinese Expansion: Are China's Expanding Territorial Claims in the South China Sea Going to Bring Southeast Asian Countries Together?," *Aljazeera*, May 26, 2014.

⁶⁹ Son, "The Philippines," *Bangkok Post*.

⁷⁰ "Armed Clash in the South China Sea," *Council on Foreign Relations*.

⁷¹ Albert, "The U.S.-Philippines," *Council on Foreign Relations*.

⁷² Ankit Panda, "China, ASEAN Come to Agreement on a Framework South China Sea Code of Conduct," *The Diplomat*, May 19, 2017.

China should not veto the Committee of Inquiry (COI) or the UN Maritime Task Force (UN MTF). (Please refer to the UN section for more details).

- China should be given a large say in the Code of Conduct that is currently being drafted.

ASEAN in the South China Sea Dispute

Introduction

ASEAN, the Association of Southeast Asian Nations, is one of the largest parties involved in the South China Sea. A political group consisting of Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Laos, Myanmar, and Cambodia, ASEAN represents many countries bordering the South China Sea.⁷³ Not all ASEAN nations claim sections of the South China Sea, but the organization as a whole is involved in the conflict (oftentimes in opposition to the claims made by the Chinese government). In fact, competing national interests prevent ASEAN from forming a united front against China's aggressive behavior. Yet, ASEAN passed a Declaration on the Conduct of Parties in the South China Sea (DoC) in 2002. The DoC, signed by both ASEAN nations and China, states that parties should “resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force [...] in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”⁷⁴ The DoC was an important first step towards negotiations in the South China Sea, though a far cry from a legally binding Code of Conduct (CoC).⁷⁵ While there is a CoC that is being negotiated by both Beijing and ASEAN, as Chinese Foreign Minister Wang Yi told reporters, there is little optimism about its success, especially given that past negotiations have dissolved.⁷⁶ An editor at *The Diplomat* writes, “Given that we have been through multiple bouts of renewed optimism on the CoC that ultimately proved to be short-lived, we should be cautious about declaring breakthroughs on this score before they actually occur.”⁷⁷

Regardless of the state of the current CoC draft, a united ASEAN is paramount to the success of future negotiations.

Vietnam

Vietnam stands as China's fiercest competition in the South China Sea. A combination of unique economic and political ties, and each country's military prowess complicates Vietnam's role in the South China Sea conflict. In reference to Vietnam and China's economic and diplomatic relationship, a Vietnamese foreign ministry official stated, “the two countries are old friends and old enemies.”⁷⁸ The periodic shifts between close alliance and bitter conflict include China's willingness to offer assistance to Vietnam. To the contrary, China has repeatedly invaded Vietnam in the past, fueling nationalist antagonism of the Chinese.⁷⁹ In response, Vietnam has balanced its opposition to Chinese aggression with its need to maintain strong economic ties with its neighbor.⁸⁰ Although Vietnam continues to rapidly develop its economic ties the international community (including the

⁷³ “Overview” *ASEAN*.

⁷⁴ “Declaration on the Conduct of Parties in the South China Sea,” ASEAN, October 17, 2012.

⁷⁵ International Crisis Group, “Stirring up the South China Sea (II): Regional Responses,” *Asia Report* 229 (2012): 30-31.

⁷⁶ “Foreign Minister Wang Yi Meets the Press,” *Ministry of Foreign Affairs of the People's Republic of China*, March 8, 2017.

⁷⁷ Prashnath Parameswaran, “Beware the Illusion of China-ASEAN South China Sea Breakthroughs,” *The Diplomat*, 2016.

⁷⁸ Kevin Rudd, “A Maritime Balkans of the 21st Century,” *Foreign Policy*, January 30, 2013.

⁷⁹ Pao-Ming Chang, *Vietnam and China: New Opportunities and New Challenges* (Yusuf Ishak Institute, ISEAS, 1997), 136 – 137.

⁸⁰ Carlyle Thayer, *The Tyranny of Geography: Vietnamese Strategies to Constrain China in the South China Sea* (Contemporary Southeast Asia: ISEAS, 2011), 350.

U.S.), China's economic influence remains overwhelming.⁸¹ China has been a key partner in boosting Vietnam's economy and has not hesitated to wield this economic leverage in the territorial disputes.⁸² China has already made several threats to hinder the Vietnamese economy, including cautioning foreign oil companies against joint development projects in disputed waters, warning them of "unspecified consequences in their business dealings with China" if they pursue those projects.⁸³ As a Vietnamese economist stated, "the Chinese could wreck the Vietnamese economy if they wanted."⁸⁴

China has challenged Vietnamese claims in the South China Sea region since the late 20th century.⁸⁵ After territorial disputes in the Paracel Islands, in 1974 and 1988, many Vietnamese today believe that China would not falter in using military force to settle disputes of sovereignty.⁸⁶ Today the conflict surrounds the Spratly Islands and the sovereign waters of Vietnam (including the Gulf of Tonkin).⁸⁷ There have been several recent confrontations between China and Vietnam, including incidents within Vietnamese waters.⁸⁸ Fueling Vietnamese fears regarding use of force, two recent incidents in the South China Sea support Vietnamese perceptions of Chinese hostility.⁸⁹ First, in 2011, a China Marine Surveillance ship cut the cable of an oil and gas survey vessel operated by Vietnam's state-owned energy firm, Petro Vietnam, in Vietnamese waters. Soon after, the next month, a Chinese fishing boat cut the cable of a Vietnamese seismic survey vessel.⁹⁰ As China excels its direct involvement in violations of Vietnamese sovereignty, the diplomatic dispute has heightened between the two countries and fueled nationalist demonstration in Vietnam.⁹¹ Furthermore, Vietnam has invested heavily in its own defense, purchasing military equipment (including several submarines) from Russia and has grown the United States' defense ties in the region.⁹²

Politically, Vietnam and China remain among the few communist nations in the world, allowing for a strong channel of communication between the countries ruling parties. The existing relationship between Vietnamese and Chinese Communist parties gives Vietnam a useful tool to repair and maintain the countries diplomatic relationship (despite frequent confrontations between the nations).⁹³

Vietnam's political, military, and economic ties to the region is important to untangle and understand the conflict. Today, track-2 diplomatic efforts by the countries populations and track-1 diplomatic relations could be heavily utilized in the future to resolve the regions disputes. Currently these relationships are being utilized to manage the conflict rather than resolve it, making substantial

⁸¹ *Stirring up the South China Sea (II): Regional Responses* (Brussels, Belgium: International Crisis Group, 2012), 2-6.

⁸² Thayer, *The Tyranny of Geography*, 354.

⁸³ *Stirring up the South China Sea*, 2-6

⁸⁴ Ibid.

⁸⁵ Ishaan Tharoor, "China and Vietnam: Clashing Over an Island Archipelago," *TIME Magazine*, January 14, 2010.

⁸⁶ Ibid.

⁸⁷ John D. Ciociari and Jessica Chen Weiss, *The Sino-Vietnamese Standoff in the South China Sea* (Washington DC, USA: Georgetown Journal of International Affairs, 2012)

⁸⁸ Ibid.

⁸⁹ Thayer, *The Tyranny of Geography*, 358.

⁹⁰ Ibid.

⁹¹ *Stirring up the South China Sea*, 2-6.

⁹² Thayer, *The Tyranny of Geography*, 358.

⁹³ Nguyen Hong Thao, *Vietnam and the Code of Conduct for the South China Sea* (Hanoi, Vietnam :Ocean Development & International Law, 2001), 111.

progress on a Code of Conduct, solidifying ties with ASEAN member states, and pushing for the use of international law to solve territorial disputes will begin meaningful progress on resolving the regional conflict.⁹⁴

Republic of the Philippines

In recent years, international relationships with the Philippines have been rocky. Despite having long-standing military ties to the United States, recently elected Filipino president Rodrigo Duterte has decided to move away from America and closer to China. But even after these changes, on March 17, 2017, China threatened the Philippines with war if it continued to mine for oil in the South China Sea.⁹⁵ If diplomatic relationships with China could be bettered, then these threats and any violence in the future might be avoided. To avoid such eventualities in the futures, diplomatic relations with China should be bettered, but the different states of ASEAN have to somehow take some power back for themselves in their discussions with China, and not let it get to this point.

These threats are not unsurprising considering how increasingly aggressive China has become in the controversy between the two countries. In April 8, 2012, the Philippines' Navy confronted eight Chinese fishing vessels near the Scarborough Shoal, an underwater landmass that had historically been considered Philippine territory.⁹⁶ Despite the Philippine's withdrawal from this "standoff," the conflicts are only heating up. In 2015, China successfully created seven new artificial "islets" in one of the most contested areas of the sea: the Spratly islands.⁹⁷ These territorial claims are made especially sobering by their difference in size. Scarborough Shoal is 2,659 km off of China's coast, and the Spratly islands are 3,125 km. If in three years China became bold enough to move its claims 466 km along the coast of the Philippines, who is to say what it will do next? As such, there needs to be some type of regulation that defines in clear terms what the domains of each respective country in the South China Sea are, and how they can be enforced: UNCLOS.

Since 2013, the Philippines has been working in this direction. First they made an appeal to the United Nations, requesting the ability to invoke Annex VII of the UN. This gives the Philippines the right to jointly, with China, set up a board of arbiters to review and come up with a solution to the complaints.⁹⁸ After this had been granted, on July 25th of 2015, it was announced that the arbiters had ruled in favor of the Philippines.⁹⁹ But despite this, as is evidenced by China's threat of war, relationships between the two countries are still strained, making diplomatic steps between them all the more essential.

Malaysia

⁹⁴ David Scott, *Conflict Irresolution in the South China Sea* (University of California Press, 2012), 1019.

⁹⁵ Jane Perlez, "Philippines and China Ease Tensions in Rift at Sea," *The New York Times*, 2012.

⁹⁶ *Ibid.*

⁹⁷ Derek Watkins, "What China Has Been Building in the South China Sea," *The New York Times*, 2015.

⁹⁸ "United Nations Convention on the Law of the Sea", Montego Bay Dec. 10, 1982, entered into force November 10, 1994, 1833 UNTS 397, arts. 2 & 3, available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

⁹⁹ Jerome Cohen, "The Wisdom of The Hague's South China Sea Decision," *The Wall Street Journal*, 2016.

In contrast to an assertive approach from ASEAN nations such as Vietnam and the Philippines, Malaysia has traditionally adopted a more conciliatory, non-militaristic, and pragmatic approach to the South China Sea dispute. Reasons for this reaction include Malaysia's military capability, the cost involved in defending maritime claims, national defense funds, and strong economic and business ties to Beijing. In fact, Malaysia was China's largest trade partner (106 billion dollars in 2014) between 2008 and 2014, and any unsettling actions surrounding the dispute put this trade relationship in jeopardy.¹⁰⁰ The coast of Malaysian states of Sabah and Sarawak are rich in natural gas/oil resources, which serve as an important source of income for the Malaysian government.¹⁰¹ Some production sites lie within China's nine-dash line claims.¹⁰² However, in 2006, China and Malaysia signed a 25-year liquefied gas deal, and it remains unlikely that in the foreseeable future, China would disrupt Malaysian oil sites.¹⁰³

Malaysia claims several maritime features, most situated in the southern portion of the Spratly archipelago. Current claims lie within the China's nine-dash line, however the maritime claims also lie in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). Islands are entitled to Economic Exclusive Zone (EEZ), territorial sea, and continental shelf. The rocks are entitled only to a 12-mile territorial sea.¹⁰⁴ Malaysia's current claims include Swallow Reef, Erica Reef, Investigator Shoal, Mariveles Reef, Dallas Reef, and Ardasier Reef. They also claim Commodore Reef, though it is occupied by the Philippines. Amboya Reef and Barque Canada Reef are claimed outside of Malaysia's EEZ, and are occupied by Vietnam.¹⁰⁵

While alienating Beijing would have detrimental short-term economic effects, Malaysia's diplomatic approach has not subdued China's increasingly assertive behavior. Many Malaysian officials have expressed interest in developing a Code of Conduct: a legally binding code that ensures accountability and collaboration.¹⁰⁶ Therefore, it is in Malaysia's best interests to push towards multilateral peace negotiations- something that can only be done by a united ASEAN.

The Nation of Brunei

There have been several Malaysian-Brunei negotiations, as Malaysia's 200-mile EEZ and continental shelf deny Brunei equal maritime access because of the close proximity of the nations. Brunei's maritime claims include a 12-mile territorial sea, EEZ, and continental shelf, and the nation has not publicly opposed the nine-dash line or Malaysia's claims. Brunei makes only one known claim, the Louisa Reef, which lies approximately 120 miles off of its coast.¹⁰⁷ The status of Louisa Reef, which

• ¹⁰⁰ Mohammad Zaki Ahmad, and Mohd Azizuddin Mahd Sani, "China's Assertive Posture in Reinforcing Its Territorial and Sovereignty Claims in the South China Sea: An Insight into Malaysia's Stance." *Japanese Journal of Political Science* 18, 1(2017), doi 10.1017/S1468109916000323.

¹⁰¹ Nguyen Hong Thao, *Vietnam and the Code of Conduct for the South China Sea* (Hanoi, Vietnam: Ocean Development & International Law, 2001), 111.

¹⁰² J. Ashley Roach, "Malaysia and Brunei: An Analysis of their Claims in the South China Sea." *U.S. Policy Options in the South China Sea*. CAN, 2014.

¹⁰³ "Malaysia to supply LNG to Chinese for 25 years- Business-International Herald Tribune," *New York Times*, October 30, 2016.

¹⁰⁴ United Nations Convention on the Law of the Sea, Montego Bay Dec. 10, 1982, entered into force November 10, 1994, 1833 UNTS 397

¹⁰⁵ Roach, "Malaysia and Brunei," 13.

¹⁰⁶ Roach, "Malaysia and Brunei," 18.

¹⁰⁷ Gary Stands, "Brunei, Silent Claimant in the South China Sea," *Foreign Policy Association*, April 28, 2016.

has been claimed by Brunei and Malaysia, is currently unclear, though a private agreement, in which many speculate that Malaysia has rescinded claim of Louisa Reef, was reached in 2009.¹⁰⁸

Indonesia

Indonesia is the dominant voice in ASEAN among the nations that do not claim any section of the South China Sea. The most populous, most influential, and richest member of ASEAN, Indonesia has found itself as the de facto leader of ASEAN since its creation.¹⁰⁹ Therefore, Indonesia remains an important player in the discussion surrounding the South China Sea, even though it does not have any claims in the area.

Recently, Indonesia has shown its political clout towards the South China Sea by assembling ASEAN in a moment of potential crisis. In 2012, at an ASEAN summit, the Philippines tried to push for a ASEAN statement about a stand-off with China over the Scarborough Shoal. Cambodia, the chair and a close ally to Beijing, rejected the statement. To stop what would have been an unprecedented lack of unity in ASEAN, Indonesia's Foreign Minister demonstrated their leadership by creating a new statement that was accepted by all of ASEAN.¹¹⁰ Indonesia may be expanding its military to help protect the South China Sea and its own EEZ from China's aggression.¹¹¹ Indonesia's leadership has been characterized by a push for regional autonomy, yet many ASEAN members continue to look to the United States for their security, primarily the Philippines, Thailand, and Singapore.¹¹² In addition, states like Cambodia remain closely allied and economically tied to Beijing.¹¹³ Against Indonesia's wishes, external influence still dictates much of the Southeast Asian political discussion.

As has been shown, ASEAN has struggled to form a united front against China, given the agendas of individual ASEAN countries. While the CoC drafting looks promising, there is a high possibility that the talks will fall through. Should this happen, ASEAN should pursue unilateral options. These options include a CoC proposal from ASEAN to Beijing and a call for support from the United States. Beyond this, ASEAN needs help from others to help slow China's aggression and monitor their activities in the South China Sea. Among these other parties, the United States and the United Nations could help ASEAN enforce international maritime law.

Recommendations

- ASEAN should continue to work with Beijing over the current CoC draft and emphasize the importance of negotiations instead of increased military actions. ASEAN, however, must not allow China to dominate CoC discussion; rather, these talks should encompass the best interests of all parties.

¹⁰⁸ Roach, "Malaysia and Brunei," 39.

¹⁰⁹ Ralf Emmers. "Indonesia's role in ASEAN: A case of incomplete and sectorial leadership," *The Pacific Review* 27, no.4 (2014): 544, 551.

¹¹⁰ Ibid., 552-553.

¹¹¹ Ralph Jennings, "Indonesia Moving Toward Tougher Stance on Contested South China Sea," *Forbes*, June 15, 2016.

¹¹² Emmers, "Indonesia's role in ASEAN," 548.

¹¹³ Ibid., 553.

- If the current CoC talks dissolve, ASEAN should look internally to propose an alternate draft. This draft will then be presented to Beijing to further negotiations towards a concrete solution. Creating an ASEAN draft will allow for increased discussions in the event of the breakdown of talks with China.
- ASEAN should demand enforcement of UNCLOS by various unbiased parties in order to uphold existing international maritime law. In addition, ASEAN should encourage the surveillance and monitoring of vessels in the South China Sea to enforce the UNCLOS agreements.

Ethical Considerations

There are a multitude of ways in which the nations of the world can interact with one another. Theorists, in fact, continue to argue over the beliefs and assumptions implemented in world affairs to this day. Many nations have attempted different approaches, ranging from realism, to liberalism, to alternative methods such as “smart power” or “Machiavellianism.” In reality, however, one must concur that there are flaws in every system. In order for the world to come as close as it can to ethical peace and harmony, there needs to be understanding and empathy between nations. In addition, a balanced (rather than an extreme) approach to world politics, no matter which method is being used, is necessary in order to maintain a stable society.¹¹⁴

In the South China Sea, many nations have been at fault while attempting to balance power in the region. This paper has chosen to concentrate on China, a nation that has shown significant ethical violations. China has predominantly kept its own interests at heart, leaning towards an extremely Realist mindset. In doing so it has claimed almost the entirety of the Sea, created islands in the marked territory of other nations, utilized intimidation techniques, and disregarded the environmental decay it is causing in the region. Yet, although China’s desire to preserve and expand its own power is understandable, it is unethical for it to put self-interests over the ethical values of the world. Through a more open-minded use of realism, which ethicist Devin Stuart refers to as “enlightened realism,” China can not only acknowledge its own needs and longings, but it can also respect its surrounding countries, known as The Association of Southeast Asian Nations (ASEAN), and the environment they all share.¹¹⁵

Realism is the notion that foreign affairs policies are dictated by the self-interests of countries, and therefore the more powerful countries will ultimately triumph. Acting on *pure* realism, a country will do whatever is best for its own people, regardless of humanitarian issues and the needs of other countries.¹¹⁶ In the past few decades, China has discouraged smaller nations from participating in joint-cooperation, in which multiple nations negotiate as a productive group. Thus far, China has become problematic by engaging only in bilateral negotiation; in doing this, it negotiates solely with a singular country rather than with ASEAN as a whole.¹¹⁷ This strategy ensures that it has overwhelming economic and military strength in comparison, guaranteeing the negotiations are unbalanced and unfair.

These actions are simply unethical, for China is taking too extreme of a realist approach to the issues that the Sea presents. Although it is natural for the nation to want to promote its own self-interest, it must not completely disregard the rights of other nations. The greatest problem with pure realism is that it tends to “benefit the state at the expense of other states, no matter how morally problematic the policy is.”¹¹⁸ China is justified in taking specific pieces and resources of the region for its own benefit that the Convention on the Law of the Sea (UNCLOS) has allotted it to have. However, by making reasonable concessions to the ASEAN nations and negotiating with them fairly, it can properly ensure that both peace and power are achieved.

¹¹⁴ Marc Turetzky, “Understanding IR Theories I: Realism V. Liberalism,” *Galivan College*.

¹¹⁵ Devin T. Stewart, Interview by author. July 18 2017.

¹¹⁶ Joel H. Rosenthal, "Ethics and International Affairs: A Primer," *Carnegie Council for Ethics in International Affairs*.

¹¹⁷ John Harvey Divino Gamas, “The Tragedy of the Southeast Asian Commons,” *European Journal of East Asian Studies* 13, no. 1(2014).

¹¹⁸ W. Julian Korab-Karpowicz, “Political Realism in International Relations,” *Stanford University*, May 24, 2017.

In addition, as philosopher Edward Hallett Carr states, “[Radical realism] can offer nothing but a naked struggle for power which makes any kind of international society impossible.”¹¹⁹ A nation with an utterly power-hungry state of mind is unethical. Within the South China Sea, an example of this abuse of power lies in a land reclamation effort that is underway by several different nations. This often includes building islands using a method called suction dredging in order to obtain more land, and it is a process being conducted by a variety of countries.¹²⁰ However, China is dredging and building islands at an especially fast and aggressive speed. It has reclaimed thousands of more acres of land than all of the other nations involved.¹²¹ Both the method of building islands and the destructing of the reefs themselves create permanent damage to the environment, including the marine life.¹²² China has dismissed its moral obligation to preserve the environment and the ecosystem for all the nations of the world, as well as for future generations. No nation should take advantage of its power and destroy an ecosystem of over 3,000 indigenous and migratory fish species.¹²³

However, Carr, while claiming that realism can be a negative force in the world, also realizes that one must take into account the reality of power. A nation’s natural inclination to be selfish is expected. The problem lies not within realism, but within the extreme realism that China is utilizing, for it does not encompass the complexity of human beings and the countries in which they reside. Carr longs to see a world in which, although the reality of power and selfishness is taken into account, there is also a sense of peace, prosperity, and justice.¹²⁴ In order to create this balanced policy of idealism and realism, larger powers, who realistically have more control and dominance over the world, must make concessions for the greater good. A world of pure realism, “in which all values are made relative to interests,” turns life into an “unbearable...power game.”¹²⁵ Therefore, the logical conclusion is the policy of appeasement.

Enlightened realism is the happy medium between idealism and realism in their purest forms. According to Devin Stewart, an ethicist from Carnegie Council for Ethics in International Affairs, “promoting national power and protecting superior status does not imply a free for all, nor should it prompt hostility or belligerence.”¹²⁶ So, although China is certainly—by international law—allowed to have control over parts of the Sea for its own wants, it cannot degrade the environment around them with the islands it builds, nor can it create islands in the designated territory of other nations. In our opinion, this overreach of power will cause chaos. Additionally, a country that maintains ethical integrity and uses its power responsibly will ultimately hold much more national prestige in the eyes of the global community than a country that abuses its authority.

Joel Rosenthal, an international ethics scholar, in his book *Righteous Realists*, is in agreement with the concept of enlightened realism. He came to the conclusion that the greatest challenge that concerns

¹¹⁹ Ibid.

¹²⁰ Derek Watkins, “What China Has Been Building in the South China Sea,” *New York Times*, February 29, 2016.

¹²¹ “Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China,” *Office of the Secretary of Defense*, April 26, 2016.

¹²² Camilo Mora, Iain R. Cadwell, Charles Birkeland, and John McManus, “Dredging in the Spratly Islands: Gaining Land but Losing Reefs,” *PLOS Biology*, March 2016.

¹²³ Adam Greer, “The South China Sea is really a Fishery Dispute,” *The Diplomat*, July 2016.

¹²⁴ Korab-Karpowicz, “Political Realism.”

¹²⁵ Ibid.

¹²⁶ Devin T. Stewart, Interview.

leaders is “one of balancing the tension between ‘ethics’ and ‘politics.’”¹²⁷ China has yet to find that balance. In fact, China is further abusing its power by using the islands it has built to militarize the South China Sea. In an attempt to dominate the disputed waters and dismiss the claims of the other nations involved, China has built several military outposts on these islands. The islands are now able to support a sustained Chinese air and naval presence despite being thousands of miles away from its coast.¹²⁸ This intimidation is based on China’s view that its ownership of the South China Sea is more important than the needs and rights of other surrounding nations. China is escalating military tension between all of the nations involved, which may lead to future war solely because of its own longings for the area. China should not ignore its responsibility to avoid military escalation that could lead to ultimate destruction of the area. They must preserve global stability. Rosenthal defines his version of enlightened realism as “a concept sensitive to both ultimate ends [intentions] and responsibility [consequences].”¹²⁹ China should act in a way that benefits itself without overriding the needs of others. Additionally, Graham Allison, a Harvard professor and associate of Devin Stewart and Joel Rosenthal, emphasizes the importance of recognizing that the national interests countries share such as peace, prosperity, and safety are much greater than those that divide them. Allison claims, “overall, leaders should understand that survival depends on caution, communication, constraints, compromise, and cooperation.”¹³⁰ In order to instill permanent peace in the South China Sea, ASEAN and China need to negotiate together. China must fulfill its moral and civil obligations and be held accountable for its global impact.

Recommendations

1. China should engage in multilateral negotiations rather than bilateral negotiations.
2. China should refrain from building islands and hold a level of respect for the environment.
3. China should respect the nations surrounding them.
4. China needs to learn to utilize enlightened realism rather than extreme realism.

¹²⁷ Rosenthal, Joel, *Righteous Realists: Political Realism, Responsible Power, and American Culture in the Nuclear Age*, (Baton Rouge, LA: Louisiana State Press, 1991).

¹²⁸ Rick Gladstone and David E. Sanger, “Piling Sand in a Disputed Sea, China Literally Gains Ground,” *New York Times*, April 8, 2015.

¹²⁹ Rosenthal, *Righteous Realists: Political Realism*.

¹³⁰ *Ibid.*

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