



Four Phases of South China Sea Disputes 1990–2020

This chapter overviews the development of the South China Sea (SCS) situation, focusing on the interstate interactions between regional great powers, particularly China and the United States, the claimant states, and ASEAN member states from 1990 to 2020. To clearly illustrate the strategic context in the SCS where each ASEAN and ASEAN-led institution formed and altered its own institutional strategy, the chapter examines the developments over four phases: 1990–2002, 2003–2012, 2013–2016, and 2017–2020.

3.1 FIRST PHASE: FRAMING THE DISPUTES (1990–2002)

3.1.1 1990–1996: *The Emerging SCS Issue in the Post-Cold War Era*

The change in the global strategic environment which was facilitated by the US-Soviet détente in the late 1980s was not necessarily positive for all regions in the world. In East Asia, the end of the US-Soviet confrontation and the eventual collapse of the Soviet Union created strategic uncertainty over US security commitment. The SCS situation was also precarious, with naval skirmishes between China and Vietnam over Johnson South Reef in the Spratly Islands in March 1988. Consequently, the regional states expressed concern over the prospect of stability in the SCS, suggesting that it could be a potential flashpoint in the post-Cold War era (e.g., Prakash, 1990).

Indeed, in June 1990, Malaysia began to enhance its naval presence in the northern Borneo state of Sabah by creating a naval base, which would increase Malaysia's power projection capability in the SCS (Prashanth, 1990). Chinese Foreign Minister Qian Qichen expressed China's willingness to become a dialogue partner of ASEAN, but insisted on its sovereignty over the SCS islands (*Xinhua*, 1991). Also, in 1991, China's military spokesperson stated that the SCS oil and natural gas reserves had become a strategic focal point as the Gulf War had increased awareness of the necessity of risk diversification in oil reserves (Gangadharan, 1991a).

Amid the gradual rise in tension, Indonesia organized the informal workshop, "Managing Conflicts in the South China Sea," in January 1990. Indonesia saw the situation as increasingly unstable and was compelled to diffuse the tension before the rivalry between claimant states, including China and Taiwan, escalated into open conflict. Although China refused to attend the first workshop, Indonesia emphasized its informality and successfully included China in the second session held in June 1991 (Gangadharan, 1991a). Since Indonesia had no explicit territorial disputes in the SCS, it played a mediator role by inviting to the workshop all six claimant parties—Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam—with four observers—Indonesia, Laos, Singapore, and Thailand (Gangadharan, 1991b). The workshop resulted in a positive atmosphere as China proposed a joint exploration for the Spratlys' oil and gas reserves (Gangadharan, 1991b). Thus, Vietnam and Malaysia agreed in April 1992 to joint development in the overlapping territories—areas claimed by both states—by splitting benefits evenly (*Platt's Oilgram News*, 1992).

However, 1992 also saw the emergence of strategic distrust over the SCS issue. In February 1992, China enacted a new maritime law: the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (The National People's Congress of the People's Republic of China, 1992). This law explicitly stipulated that the Spratly Islands were part of China's territory, and thus China's domestic maritime laws applied to these areas. Although the other claimant states were concerned about the new law, their initial reactions were largely quiet, without strong diplomatic protests.¹

¹ Philippine General Lisandro Abadia expressed concerns not specifically about China but about the five parties' reinforcement of their claims, and emphasized the necessity for

The strong response from some ASEAN and non-ASEAN member states, particularly Vietnam, came after negotiations for China's proposed joint development collapsed. This is because China had unilaterally given the right to exploration to a US oil company, Crestone Energy Corporation, in May 1992 (*The Age*, 1992b). China insisted that it had the sovereign right to conclude the deal and indicated its resolve to use force to defend the company, if necessary (*The Age*, 1992b). Given these trends, China's behavior was seen to protect its own maritime interests by consolidating its position in the SCS through domestic law and by including a US company to hedge against US government involvement, which some have described as the emergence of "China's new assertiveness" (Yeong, 1992). Faced with China's coercive diplomacy, other claimant states also began to employ *fait accompli* strategies by sending troops and building structures in the SCS. This renewed tension led ASEAN to adopt the "ASEAN Declaration on the South China Sea" in July 1992 (ASEAN Secretariat, 1992).

Although it represented ASEAN's united position on the SCS issue, the declaration did not completely alleviate the tension. China continually asserted its stance, advocating for bilateral talks on the SCS disputes, instead of multilateral negotiations. Malaysia and the Philippines expressed concern about the future development of the situation which could potentially trigger an arms race in Southeast Asia (*ST*, 1993a, 1993b).

Indeed, China announced in July 1993 that it had developed an airstrip in the Parcel Islands, and Malaysian Defense Minister Najib Razak responded by demanding the non-militarization of the seas (Chai & Pereira, 1993). The United States also responded indirectly: At the ASEAN-US Post Ministerial Conference (PMC), US Secretary of State Warren Christopher stated that the United States would not accept the use or threat of force in the SCS as this would likely affect the stability of the sealines of communication (SLOCs), which the United States considered "most seriously" (Kassim et al., 1993). To alleviate the situation, Indonesia proposed to officialize the SCS workshop, placing it on Track-1, but the idea was immediately rejected by China because of Taiwan's participation and the potential inclusion of non-claimant states (Jacob, 1993a, 1993b).

the Philippines to develop its own defense capabilities to fend off other states' intrusions in the seas (see *The Age*, 1992a; *UPI*, 1992).

Nevertheless, after the 1992 ASEAN declaration, the SCS situation somewhat stabilized. From 1992 to 1994, there were no major maritime skirmishes or confrontations that altered the status quo (Isberto, 1993).

Tensions re-emerged in June 1994 when the Philippines unilaterally allowed a US-Philippines consortium to explore hydrocarbons in the SCS, which China fiercely opposed (*Platt's Oilgram News*, 2014). In the following month, Chinese naval fleets blocked a Vietnamese oil rig in the SCS, which China considered an encroachment on its sovereignty (Murdoch, 1994). In addition, China rejected the internationalization of the SCS issue by taking it off the agenda of the newly established security institution, the ASEAN Regional Forum (ARF). However, Brunei, Malaysia, the Philippines, and Vietnam considered the discussion of the issue at the ARF to be inevitable (Kassim, 1994). Eventually, the ARF discussed the SCS matter, and China assured ASEAN of its commitment to peace and stability, non-use of force in the SCS, and peaceful negotiations, but it also added that the time was not ripe for negotiations (*Xinhua*, 1994).

The situation further deteriorated in 1995 when the Philippines confirmed China's newly constructed structures and troop presence on Mischief Reef on February 8 (*AFP*, 1995). Philippine President Fidel Ramos accused China of this *fait accompli*, but Chinese Foreign Ministry spokesperson Chen Jian denied any naval intrusion, troop presence or attempts to build a naval base in the Spratlys (*UPI*, 1995). Ramos then ordered the enhancement of military presence in the Spratlys, stating that the Philippines needed to "prepare for the worst" (Teves, 1995). Faced with this incident, Malaysia's Foreign Minister Abdullah Ahmad Badawi also accused China of creating regional tension (*APW*, 1995a). China subsequently insisted that the structures on Mischief Reef were shelters for fishermen and that there was no military structure or naval presence (Chandra, 1995).

Although the Philippines was a US ally, the United States did not send a clear signal to deter China. In the context of US disengagement from Subic Bay and Clark Air Base—a political decision by the Philippines—US Admiral Ronald Zlatoper argued that the US policy on China should be based on engagement rather than isolation or confrontation (Soh, 1995). State Department Assistant Secretary Winston Lord also stated on March 10 that the SCS issue was not "of immediate danger to the United States certainly, given their general level of defense abilities... [the United States does not] see any immediate reason for attention or concern by any

means” (*Federal News Service*, 1995). Thus, the United States avoided being entrapped by the SCS disputes.

In this context, ASEAN garnered political support from member states to form a unified stance on the SCS issue. Before the ASEAN ministerial meetings in April, the six member states held a closed session on March 17, and issued a joint statement, “Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea,” on March 18, which expressed “serious concern” over the development of the SCS situation, explicitly referring to the Mischief Reef incident, and the importance of peaceful resolution (ASEAN Secretariat, 1995; Whiting, 1995). Vietnam, a non-ASEAN member state at the time, supported ASEAN’s stance, expressing that “[s]tability should be maintained on the basis of the status quo” (APW, 1995b). With regional diplomatic support, Philippine navy destroyed China’s structures and markers on March 25 and continued to detain Chinese fishermen and boats on the charge of violating its maritime boundaries (Reid, 1995; ST, 1995).

Likewise, the United States responded by issuing a slightly stronger statement. While reaffirming the importance of freedom of navigation and international law, including the United Nations Convention on the Law of the Sea (UNCLOS), and advocating against the threat or use of force, the United States expressed “serious concern,” aiming to “reassure US allies in Southeast Asia” (Lobe, 1995). Such diplomatic pushbacks from ASEAN and the United States, however, might not be fully effective. In May, a Philippine naval vessel and two Chinese fishing boats engaged in a 70-minute standoff. President Ramos reacted by sending a special envoy to China to seek a peaceful resolution, while China stated that it would “always be a positive factor for world peace and development” (Cumming-Bruce, 1995).

After the ARF in July 1995, China’s diplomatic stance on the SCS shifted subtly. Although China still rejected multilateral negotiations, Foreign Minister Qian Qichen agreed to three points: holding multilateral talks with the seven ASEAN member states; respect for international law, including UNCLOS; and freezing sovereignty issues and promoting joint development (Kassim, 1995). In addition, the Philippines and China reached an agreement on a bilateral code of conduct (COC) on August 10, 1995, issuing the “Joint Statement between the People’s Republic of China and the Republic of the Philippines Concerning Consultations on

the South China Sea and on Other Areas of Cooperation.” As such, the SCS situation began to stabilize.

This positive trend somewhat continued between the Philippines and China in 1996. Both sides reaffirmed the importance of dialogue in resolving the territorial disputes. In fact, President Fidel Ramos and Premier Li Peng at the Asia-Europe Meeting in April that year agreed to keep their naval vessels away from the Spratlys, and in November, President Ramos and President Jiang Zemin agreed to “shelve the disputes and conduct peaceful consultation so as to achieve common programming and development” in the SCS (*AFP*, 1996a, 1996b). Furthermore, China ratified UNCLOS on May 15, which would become an important legal tool for resolving the SCS disputes peacefully. Yet, despite dialogues between the Philippines and China, the situation in the Spratlys, particularly Mischief Reef, remained unchanged as China insisted on its sovereignty there, while the Philippines renovated an airstrip on Thitu Island (*API*, 1996).

On the other hand, the China-Vietnam maritime tension remained. From February 1996, China attempted to conduct drilling operations in the Spratly Islands, and its escorting naval ships fired warning shots at a Vietnamese ship (Sugiyama, 1996). In turn, Vietnam licensed a US oil company, Conoco, Inc., to explore oil and gas in the Spratlys in April 1996, which drew China’s criticism (Hayton, 2014, pp. 61–89; Phuong, 1997; *UPI*, 1996; Wilhelm, 1996). Furthermore, China unilaterally delineated straight baselines around the Paracel Islands on May 15, the same day that China ratified UNCLOS. China banned foreign warships from entry without its permission, resulting in strong criticism from ASEAN claimant states, particularly Vietnam and the Philippines, which questioned China’s behavior at the ARF (*DPA*, 1996; *JEN*, 1996; Valencia, 2000). In response, China’s Foreign Ministry spokesperson Shen Guofang insisted that the baselines were “in accordance with international law and Chinese domestic law” (Ngoo, 1996).

During this period, because ASEAN member states attempted to tackle the SCS issue formally and informally, and UNCLOS was ratified by four ASEAN claimant member states and China by 1996, there was some optimism that international law would be able to regulate state behavior in the SCS. Nevertheless, tensions remained without any guiding principles agreed upon by the claimant states.

3.1.2 1997–2002: *Asian Financial Crisis and Road to DOC*

The tension between Vietnam and China gradually re-emerged in 1997. In March, Vietnam protested China's oil exploration with the *Kantan-3* semi-submersible drilling platform “within [Vietnam's] continental shelf” and the violation of “Vietnamese sovereignty” (API, 1997a; Phuong, 1997). This made Vietnam determined to refuse any joint exploration with China in the near future (API, 1997b). Eventually, China and Vietnam engaged in bilateral negotiations to defuse the tension, and China backed down by withdrawing its oil rig, stating that it had completed the planned exploratory work (API, 1997c; Richardson, 1997; SCMP, 1997). This incident illustrates that the lingering tension in the SCS was not easily mitigated despite the 1995 ASEAN statement and UNCLOS.

Further, the bilateral tension between the Philippines and China rose again from May 1997. The Philippines accused China of sending four vessels, including a hydrographic survey ship and a *Yantai*-class vessel, and building new structures in the Spratlys (Baker, 1997; Ghosh, 1997; Son, 1997). Philippine Secretary of Foreign Affairs Domingo Siazon, Jr. criticized China's behavior as a violation of the 1995 bilateral COC, while Defense Minister Renato de Villa openly expressed concern about China's military presence in the sea (Baker, 1997; *The Australian*, 1997b). After some Chinese officials had initially dismissed the accusations as “fabrication,” China stated that it had a legal right to maintain its vessels “within the waters of its own jurisdiction” (Son, 1997). China's Foreign Affairs spokesperson Shen Guofang countered by accusing the Philippines of violating China's sovereignty when it dispatched naval vessels and surveillance planes near Scarborough Shoal in April 1997 (Kwang, 1997; *The Age*, 1997). In response, the Philippines arrested 40 Chinese fishermen for fishing near the Spratlys (*The Australian*, 1997c). Facing these tensions, ASEAN attempted to discuss the SCS issue with China by holding a meeting in mid-April 1997, but China refused to discuss a potential resolution (*The Australian*, 1997a).

At the same time, ASEAN was not a monolith. On the one hand, Singapore's Senior Minister Lee Kuan Yew had warned China in May 1995 that “if China were to attack Vietnam after its admission to Asean, we would close ranks with Vietnam against China.” Two years later in May 1997, the city-state's Ambassador Tommy Koh said that “ASEAN [was] not afraid to stand up to China” (ST, 1997). On the

other hand, Malaysian Prime Minister Mahathir Mohamad maintained a softer approach, stating in April 1997 that “China [was] committed to economic expansion and [would] not foolishly go into a war of aggression and conquest because such an idea is outdated” (*API*, 1997d). As such, ASEAN member states did not share a common diplomatic posture toward China’s maritime behavior.

Following the outbreak of the Asian Financial Crisis (AFC) in July 1997, the SCS tensions remained, but the crisis inevitably relegated the SCS issue to a lower priority in ASEAN. As such, pessimism among ASEAN claimant states emerged—the crisis was seen as an opportunity for China to conduct *fait accompli*. For example, despite Premier Li Peng’s reassurance on the importance of dialogue and international law in resolving the disputes, Philippine Foreign Affairs Secretary Siazon stated at the ARF that the principles of peace and restraint were not enough (Torode, 1997).

However, contrary to the pessimistic expectations, the AFC created political momentum for ASEAN member states and China to enhance cooperation between them, as shown by the ASEAN-China informal summit held in December 1997 (see ASEAN-China dialogues section in Chapter 4). The summit produced a joint statement that reiterated principles such as self-restraint and non-use of force, resulting in the softening of their diplomatic attitudes toward each other on the SCS disputes. On December 15, China and the Philippines organized a bilateral summit where Chinese President Jiang Zemin and Philippine President Fidel Ramos restated their promise of peaceful resolution on the SCS issue through consultations, while China emphasized promoting economic cooperation and shelving the disputes (*Xinhua*, 1997). Singapore’s Senior Minister Lee Kuan Yew also mentioned that China was unlikely to exploit the AFC to advance its interests in the SCS, and that China would likely maintain the status quo (*ST*, 1998).

Nevertheless, this positive prospect was short-lived, lasting less than a year. In April 1998, the Philippines discovered a Malaysian structure on Investigator Shoal and protested against Malaysian navy vessels’ intrusion near the shoal, which the Philippines said was within its exclusive economic zone (EEZ) (*API*, 1998a). In response, Malaysia dismantled the structure, and both the Philippines and Malaysia eventually agreed to continue the dialogue for peaceful resolution. The incident was a reminder of divergent interests among ASEAN claimant states (*API*, 1998b).

In October 1998, the Philippines again found a newly built Chinese structure as well as navy ships escorting cargo ships at Mischief Reef and accused China of violating the 1995 bilateral COC (Ghosh, 1998). China in turn stated that the structure was a shelter that was being renovated for fishermen and rejected the Philippines' accusation as "groundless" (*Xinhua*, 1998). The Philippines' Department of National Defense then issued a rebuttal by releasing photos and video clips showing that China's new permanent structure had military value. Defense Secretary Orlando Mercado revealed "concrete bunkers, concrete piers and headquarters" constructed by China on Mischief Reef and on other reefs (Baguioro, 1998a). To deter China's further encroachment, Philippine President Joseph Estrada emphasized the importance of enhancing its alliance with the United States and to engage in multilateral diplomacy, particularly ASEAN (API, 1998c; Baguioro, 1998b). Singapore Prime Minister Goh Chok Tong also urged China not to exploit the economic crisis, while Vietnamese Foreign Minister Nguyen Manh Cam urged claimant states to exercise self-restraint (API, 1998d, 1998e).

At this point, the Philippines was facing difficulty ensuring US commitment. In February 1999, the United States clarified its position on the SCS, showing unwillingness to become involved in the disputes. According to James Foley from the US State Department, the United States did not consider that China's construction activities, while provocative, had "thus far hindered freedom of navigation" and harmed "fundamental interest" for the United States (*Federal News Service*, 1999). The United States also indicated that it would not take sides on the sovereignty issue in the SCS. In response, in January 1999, President Estrada proposed a meeting with the parties concerned and the United States to mitigate the tension over the Spratlys, but China and Malaysia contended that external powers should not be involved (Gomez, 1999; Teves, 1999).

Additionally, Estrada proposed bringing the disputes to the International Tribunal on the Law of the Sea (ITOLS), which would forcibly launch a compulsory arbitration case for the disputant states (*The Nikkei Weekly*, 1999). Still, considering the potential intensification of tensions among the claimant states, Estrada became hesitant about a legal solution and decided to pursue peaceful resolution through bilateral dialogue and the creation of a multilateral COC via ASEAN (*The Nikkei Weekly*, 1999).

Despite these diplomatic efforts, the Philippines encountered additional challenges from China and Malaysia in June 1999. The Philippines

again discovered Malaysia's construction activities on Investigator Shoal. Malaysian Prime Minister Mahathir employed a diplomatic logic similar to that of China, emphasizing its right to build structures, but the Philippines flatly rejected this (*JEN*, 1999a, 1999b). Foreign Affairs Secretary Siazon suspected that there was a tacit understanding between China and Malaysia on Malaysia's action, given that China and Malaysia had just issued a joint statement in May highlighting the importance of bilateral consultation and that China did not immediately and openly protest Malaysia's construction on Investigator Shoal (*ST*, 1999). Although China eventually protested against Malaysia a few weeks later in July, Malaysia's encroachment continued as it built another structure on Erica Reef in the Spratlys in August, which drew further criticism from the Philippines (*AFP*, 1999; *API*, 1999).

Given the persistently rising tensions in the SCS among claimant states, ASEAN-led forums, particularly the ARF in July 1999, announced ASEAN's efforts to create a COC in the SCS. This was not surprising as this had been agreed among ASEAN member states in October 1998 when ASEAN assigned the Philippines and Vietnam to draft a COC. The move was also necessary because China was not involved in crafting the 1992 ASEAN Declaration (Lugo, 2000). In drafting the COC, the main foci were: legality; geographical scope; specification; a moratorium on the construction of structures; and permission for conducting maritime research, shipping, and communications among the claimant states (Khumrunroj, 2000). However, the drafting process was not smooth. In addition to the Philippines-Vietnam proposal, another draft COC was proposed by China, but the latter's focus and contents, such as the geographical scope, differed from ASEAN's draft (see AMM, ARF, and ASEAN-China dialogues sections in Chapter 4). Also, China was not entirely willing to create a COC as it regarded the 1997 joint statement of the ASEAN-China Summit as the highest guidelines for the SCS. Therefore, China refrained from pursuing a legally binding agreement (ASEAN Secretariat, 1997). The issue was further complicated when the Philippines submitted its own COC proposal at the ASEAN meeting, and Malaysia abruptly argued that the ASEAN forum was not the right place to discuss the COC (*The PRS Group/Political Risk Services*, 2000). Such diplomatic divisions among claimant states hampered the COC formulation.

Eventually, the draft COC had five contentious points. The first was the geographical scope. China argued for a COC that focused only on

the Spratlys, while Vietnam was eager to include the Paracels (*AFP*, 2000a). Yang Yanyi, China's Foreign Ministry Counselor on Asian Affairs, stated that China had sovereignty over the Paracels, and that there was no room for negotiation (Hin, 2000). Malaysia also wanted to limit the area to the Spratlys because a COC with a broader scope would potentially include Sabah and Borneo, which Malaysia considered to have no territorial disputes and including them might trigger an intensification of disputes with neighboring states (Deogracias, 2000). The second was China's proposal to ban military exercises and patrols. This was revealed in February 2000, when the Philippines and the United States resumed their joint military exercise, Balikatan, last conducted in 1995. China was concerned because future military exercises in the SCS was highly likely, which would give the United States justification to be near the contested areas (Gomez, 2000; Stone, 2000). Also, the Philippines conducted frequent patrols, and tension between the Philippines and China often increased when the former detained Chinese fishing boats during patrols (Gomez, 2000; Stone, 2000). The third was the COC's legality. From the outset, China had stated that a COC was "not a legal document but a political one," while other states, such as Vietnam, wanted a legally binding one (Hin, 2000). The fourth was civilian access to the Spratlys. China proposed a ban on "coercive measures" to seize, detain, and arrest "fishing boats or other civilian vessels engaged in normal operations in the disputed areas, [or] against nationals of other countries thereon" (*Jiji Press*, 2000). The fifth was the wording. Particularly, China was concerned about the use of the term "occupation" because it connotes illegality in Mandarin. Also, by including such a term, China feared the retroactive effect on existing Chinese structures (Cerojano, 2000). These five issues impeded agreement among ASEAN member states and China.

In addition, the COC negotiation process did not place a moratorium on developments in the SCS, and it was unable to prevent claimant states' fait accompli. In September 1999, Vietnam and Taiwan reinforced their structures on Cornwallis South Reef and Alison Reef, and Itu Aba Reef, respectively (*JEN*, 1999c). In October, the Philippines protested Vietnam's reinforcement of the structures, while a Vietnamese military plane fired at the Philippines' OV-10 Bronco ground attack plane because the plane was "flying too low," which the Philippines formally protested against (*JEN*, 1999d, 1999e). Among claimant states, the tension between the Philippines and China increased rapidly. In May 1999, a Chinese fishing vessel collided into a Philippine patrol ship, the BRP

Rizal (PS74), and subsequently sank near Second Thomas Shoal, and in July 1999, Philippine patrol vessel, the BRP *Emilio Jacinto* (PS-35), rammed into a Chinese fishing boat near Thitu Island (BBC, 1999; *The PRS Group/Political Risk Services*, 2000). In January 2000, Philippine Defense Secretary Orlando Mercado made a formal diplomatic protest against China for its intrusion near Scarborough Shoal by Chinese fishing vessels, and in February, the Philippine navy detained two Chinese fishing boats and their crews who were fishing illegally because they did not respond to the navy's warning (Dwyer, 2000; Williamson, 2000). Immediately, Chinese Foreign Ministry spokesperson Zhu Bangzao responded by stating that the Philippines had "no sovereignty and no sovereign right over [Scarborough Shoal] ... and [had] no right to administer [its adjacent waters]" and sent two diplomatic notes criticizing the Philippines' actions (Dwyer, 2000). In April 2000, China found that the Philippines had also erected simple structures on Scarborough Shoal (JEN, 2000b). In March 2001, the Philippine navy boarded 10 Chinese fishing vessels near Scarborough Shoal, confiscated their catches, and drove them out of the area, which led to both the Philippines and China issuing diplomatic protests (AFP, 2001a).

Other claimant states were also active during this period. In August 2000, Malaysia decided to acquire submarines as part of its defense plan to create a new naval base at Teluk Sepanggar Bay in Sabah. However, as the submarines could be used as deterrents to defend Malaysia's maritime claims, the move triggered concern from China (*The Nation*, 2000). Additionally, Chinese and Vietnamese fishermen were present near Philippine-claimed islands, such as Nanshan Island, while two Chinese fishing vessels anchored at Thitu Island in August 2002 (Agnote, 2002).

Since there was no effective deterrence mechanism in the SCS, the situation worsened, and thus ASEAN and China attempted to accelerate the COC's conclusion. In March 2000, the ASEAN Senior Officials' Meeting (SOM) on the COC was held in Thailand. States agreed that a COC should be adopted, which would not be legally binding but would help build trust. According to Sihasak Phuangketkeow, Deputy Director-General of the Thai Foreign Ministry's East Asia Department, the COC consisted of measures for trust- and confidence-building, marine issues, environmental protection, and modes of consultation; however, its primary objective was not a strict regulation of behavior but to "create a friendly atmosphere" between ASEAN and China (Sivasomboon, 2000). Chinese Foreign Ministry Counselor Yang Yanyi highlighted the latter

point, stating China's concerns about military exercises held near the disputed areas and the existence of US bilateral alliances, which would not be constructive for the SCS issue (*JEN*, 2000a).

Accordingly, some progress was made. China agreed in principle with the clause of “no new occupation structures” in the SCS, although it was particularly concerned about the terminology (*BusinessWorld*, 2000). In May 2000, Philippine President Estrada made a state visit to China and met with President Jiang Zemin, and both sides agreed to the early conclusion of the COC (Lugo, 2000). By July, the major sticking points were the geographical scope and the phrasing of the clause on creating new structures in the disputed areas, but ASEAN and China consolidated it into the following sentence:

... the parties concerned undertake to exercise self-restraint in the conduct of activities that affect peace and stability (geographical area) [sic], including refraining from action of inhabiting or erecting structures in presently uninhabited islands, reefs, shoals, cays and other features and to handle their differences in a constructive manner. (Cerojano, 2000)

The draft indicated that China's proposals to allow civilian access to the disputed areas and ban military exercises were dropped, but instead included: “notify, on a voluntary basis, other parties concerned of impending joint military exercise” (Cerojano, 2000). In July, Chinese Foreign Ministry spokesperson Zhu Bangzao stated that China was ready to agree to the COC that ASEAN and China drafted (*AFP*, 2000b). Malaysian Foreign Minister Syed Hamid Albar and Vietnamese Foreign Minister Nguyen Dy Nien also indicated that the COC would likely be signed by the end of 2000 (*AFP*, 2000c; *API*, 2000).

However, a point of disagreement arose in the second ASEAN-China SOM held on August 24–25, 2000, in China. Philippine Foreign Affairs Undersecretary Lauro Baja clarified that China had demanded to drop the following clause in the draft: “halt to any new occupation of reefs, shoals, and islets in the disputed area” (*AFP*, 2000d). Instead, China requested a weaker clause: “refrain from any action that would complicate the situation.” Consensus was not reached, and discussions continued. The third ASEAN-China SOM was held on October 11 in Vietnam. At the meeting, China pointed out that some ASEAN members still had differing views on the COC's scope, referring to Vietnam's request to

include the Paracels (*Xinhua*, 2000b). Because of these disagreements, the COC's conclusion was delayed.

In July 2001, the Philippines altered the wording in the draft COC and proposed a new one that omitted the controversial clause on geographical references (*JEN*, 2001a). However, given that the draft had been significantly diluted at this point, it became less likely that the COC would be able to constrain claimant states' behavior. Consequently, rather than relying on the COC, some states attempted to increase their defense capabilities. For example, Philippine President Gloria Arroyo reiterated the importance of Philippines–US alliance as a “strategic asset to the Philippines” and the enhancement of the alliance to defend its claims in the SCS (*AFP*, 2001b).

Despite the Philippines' newly crafted draft, claimant states still debated over the geographical scope, whether it should cover the SCS entirely or only the Spratlys. As China said that it no longer contested the scope, the other ASEAN claimant states—namely, Vietnam and Malaysia—were the ones that were unable to reach consensus (*JEN*, 2001b). Another round of ASEAN SOM in August 2001 failed to reach consensus, and subsequently the issue was referred to the ministerial level, which further delayed the COC negotiation process (Aquino, 2001).

It was only a year later that the SOM finally agreed to a draft that the Philippines provided—which did not specify the geographical scope—but they decided to term the document a “declaration,” that is, a political document (Abbugao, 2002a; *JEN*, 2002; *Malaysia General News*, 2002). This was because Malaysia had long demanded to limit the geographical scope to the disputed areas, and if the geographical scope was not specified, it was not in Malaysia's interests to make it legally binding or to call it a COC (Pereira, 2002). Further, at the last minute, Malaysia also proposed including a clause on the peaceful use of the disputed areas for the parties involved as China had demanded previously (*Malaysia General News*, 2002). Consequently, ASEAN titled the proposal “Declaration on the Conduct of Parties” (Abbugao, 2002b). Following a study of the proposal by China and ASEAN member states, ASEAN and China finally adopted the “Declaration of the Conduct of Parties in the South China Sea” (DOC) on November 4, 2002.

The DOC was a significant achievement for ASEAN and China as it indicated appropriate behavior in the SCS. This became not only a stepping stone to a COC, but also a test case for the effectiveness of non-binding agreements in stabilizing the SCS situation. However, there

were many challenges. As the road to adopting the DOC illustrates, there were clear divergent interests not only between ASEAN member states and China, but also among ASEAN member states themselves, which complicated the negotiation process. Also, there were marked differences between policy discussions and the SCS situation on the ground. While some saw the positive aspects of policy dialogue, there were still skirmishes between fishermen and between coastguards and fishermen from claimant states.² These issues could thus easily negate the diplomatic intentions of the DOC.

3.1.3 *Major Strategic Events in the SCS, 1990–2002*

The impact of the end of the Cold War created new strategic dynamics in East Asia, and one of the regional focal points was the SCS issue, which had not been high on ASEAN's agenda in the past. The 1988 China-Vietnam skirmish over Johnson South Reef was the initial indication of the possibility of China's future encroachment in the SCS, and this became more evident from the early to mid-1990s.

Indeed, China began to justify its territorial claims by adopting a domestic territorial law in 1992 and by incrementally increasing its physical presence in the SCS, backgrounded by the strategic readjustment of US policy in East Asia. China's 1992 maritime law that officially included the SCS as its territory and its construction of structures on Mischief Reef in 1995 were two particularly important events that compelled regional states and ASEAN to respond quickly.

In addition, the 1997 AFC resulted in new strategic dynamics in East Asia as the United States was unwilling to bail out the regional crisis while China was seen as an economically benign regional power, which influenced the regional states' perception of great powers. Nevertheless, this did not necessarily translate into the SCS domain, which continued to be contentious among ASEAN claimant states and between China and them, and the United States still distanced itself from the territorial disputes.

As China's military and economic capabilities grew rapidly, the US–China rivalry gradually intensified. The initial indication of the latter was the EP-3E incident in April 2001: US reconnaissance plane EP-3E was

² According to Philippine Foreign Affairs Undersecretary Lauro Baja, there had been no new occupation since 1999 when the Philippines proposed its draft COC. However, skirmishes still continued (JEN, 2001a).

Table 3.1 Major strategic events, 1988–2002

<i>Year(s)</i>	<i>Month</i>	<i>Major strategic event</i>
1988	March	China-Vietnam skirmish over Johnson South Reef
1992	February	Enactment of the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone
1995	February	China-Philippines Mischief Reef incident
1997	July	Asian Financial Crisis
1998–2000	–	Growing tensions among ASEAN claimant states and between China and ASEAN claimant states
2001	April	US-China EP-3E incident
	September	September 11 terrorist attacks in the United States

forced to land on Hainan Island by China after it collided with a People's Liberation Army Navy fighter jet, which projected the image of a new great-power rivalry between China and the United States. This strategic trend was, however, suspended in September 2001, when the United States was attacked by Al-Qaeda. The United States shifted its strategic focus to the Middle East and engaged in two wars in Afghanistan and Iraq.

In sum, up until 2002, when ASEAN and China concluded the DOC, seven major international and regional events (Table 3.1) shaped the regional balance of power in the SCS as well as ASEAN member states' perception of the strategic environment.

3.2 SECOND PHASE: EMERGENCE OF TURBULENCE (2003–2012)

3.2.1 2003–2008: *Turbulence After Tranquility*

The 2002 DOC was not a legally binding document, but it created a political moratorium on *fait accompli* for ASEAN member states and China. In order to consolidate stability in the SCS, joint exploration projects between the claimant states became a focal point. On August 31, 2003, Wu Bangguo, Chairman of China's Parliament, proposed to the Philippines to conduct joint oil exploration and development in the Spratlys (Parameswaran, 2003). Indonesia also utilized this momentum to push ASEAN to activate the "High Council" which would serve as a conflict resolution mechanism for disputes including the SCS issue, while

Vietnam continued to pursue the creation of a COC (ASEAN Secretariat, 1976, 2001; *BBC*, 2003; *JEN*, 2003a). Since China was the first country among the external states of the ASEAN Plus Three (APT) countries to sign the Treaty of Amity and Cooperation in October 2003, there was indeed an opportunity to activate the High Council (ASEAN Secretariat, 2003).

However, the SCS situation on the ground remained a factor that hindered the progress of political cooperation. Particularly from late 2003, claimant states returned to being assertive, creating diplomatic tensions and making it more difficult for ASEAN to consolidate cooperation. In November 2003, the Philippines expressed concern about Chinese research and military vessels in the SCS although it did not file a formal protest as China did not construct any new structures (*AFX-Asia*, 2003; *JEN*, 2003b). More critically, in October 2003, Vietnam's Foreign Affairs spokesperson Le Dung informed the public that Vietnam had been considering tourist trips to the SCS, which raised concerns from other claimant states (*DPA*, 2003b). Vietnam then unilaterally conducted the military-run tour to the Spratlys in April 2004, which invited strong criticism from China, the Philippines, and Taiwan (*API*, 2004a; *JEN*, 2004). The criticism against Vietnam stemmed from its violation of the 2002 DOC, but Vietnam rejected it by highlighting its “indisputable sovereignty” over the Spratlys and Paracels (*DPA*, 2003a). In May, China accused Vietnam of violating China's territorial sovereignty when Vietnam decided to renovate its airstrip in the Spratlys, while China also planned to explore and develop natural gas hydrates there (*AFP*, 2004a; Wiest, 2003). In response, in July, the Philippines expressed concerns about China's potential exploration project, stating that “Unilateral actions violative of the [DOC] or any form of bullying are abhorred,” and threatening with the possibility of legal action against China (*DPA*, 2004). These incidents quickly revealed the fundamental weakness of the DOC, which proved unable to effectively restrain claimant states' behavior.

However, the tide again changed from September 2004, when the possibility of a joint exploration in the SCS began to be actively discussed. Most notably, Philippine President Gloria Arroyo, in her second term, took a new approach to facilitate cooperation with China. On September 1, Arroyo visited Chinese President Hu Jintao and reached an agreement for joint exploration of the potential oil deposits in the SCS. The agreement was a three-year project in which Chinese and Philippine

state firms—China National Offshore Oil Corporation (CNOOC) and the Philippine National Oil Company (PNOC)—would conduct a seismic survey in the SCS, the areas albeit not specified, and they would be “open to the participation of a third party” such as PetroVietnam (*AFP*, 2004b, 2004c). This did not mean that they were compromising their respective territorial claims, but that both had agreed to set them aside. In fact, this was consistent with China’s policy declared by then Vice-President Hu in July 2000—“shelving disputes and going for joint development” (*Xinhua*, 2000a). China thus began seeking cooperation with ASEAN claimant states for potential joint explorations (*Xinhua*, 2004b).

Vietnam, on the other hand, expressed dissatisfaction at such a bilateral agreement. On September 9, 2004, Vietnam stated that it had not been consulted with regard to the agreement, and that this was a deviation from the DOC. Further, although Vietnam asked for more information about the bilateral agreement, it was still not fully informed even a week after the agreement had been concluded (*AFP*, 2004d). The Philippines responded by stating that the agreement did not violate the DOC and assured that the project would not conduct drilling for oil or gas (*AFP*, 2004e; Hurle, 2004). Vietnam ignored these signals; instead, it called for an international bidding for oil and gas exploration in nine blocks near the Spratlys in October. Immediately, China accused Vietnam of violating the DOC and China’s indisputable sovereignty over the area, while Vietnam insisted on its sovereignty (*API*, 2004b; *Xinhua*, 2004a). China also sent its oil rig, the *Kantan-3* drilling platform, to the SCS, following which Vietnam told China to avoid dispatching it to areas under its sovereignty. In February 2005, when China completed its first survey on coral reefs in the Paracels, Vietnam reiterated its “undisputable [sic] sovereignty” over the Spratlys and the Paracels (*Vietnamese Radio*, 2005; *Xinhua*, 2005a).

Six months after the China-Philippines agreement, a major breakthrough came on March 14, 2005, when the Philippines, China, and Vietnam signed a three-year trilateral agreement on a joint marine seismic undertaking in agreed areas in the SCS (JMSU) through the collaboration of CNOOC, PNOC, and PetroVietnam (Embassy of the People’s Republic of China in the Republic of the Philippines, 2005; *JEN*, 2005). This joint exploration aimed to collect data and information about potential oil and gas reserves in the SCS (*Xinhua*, 2005c). Prior to this agreement, the Philippines and Vietnam had made a bilateral deal on March 7 to conduct joint scientific research from Manila’s coast to Nha Trang in Vietnam, which cut across the SCS, although China expressed

concerns (*AFP*, 2005; *AFX-Asia*, 2005). Having a cooperative link with both China and Vietnam, the Philippines played a coordinator role for the JMSU. As the agreement covered an area of approximately 143,000 square kilometers, it subsumed the Vietnam–Philippines bilateral agreement (*Xinhua*, 2005b). Also, the deal strictly set aside the claimant states’ respective position on the SCS as the 2004 Philippines–China agreement did, and it envisioned the possibility of a future joint development among the three.

For the moment, the JMSU shaped the claimant states’ diplomatic posture toward the SCS—setting aside territorial disputes and concentrating on cooperation for joint exploration and development. Gaining political momentum, China reiterated this principle, aiming to consolidate it as a general principle of the regional cooperative mechanism—the ASEAN–China Joint Working Group to implement the provisions of the DOC—which was endorsed at the AMM in July 2005 (*Xinhua*, 2005d, 2005e). This positive trend gained traction, and as the JMSU saw steady progress in the implementation of its first phase, new cooperative actions, such as the Vietnam–China joint exploration of the Gulf of Tonkin in October 2005, were also agreed upon (*China Energy Newswire*, 2005).

Seizing this opportunity, the Philippines pushed for the conclusion of a “more legally binding document” to consolidate maritime stability (*APW*, 2005), but little attention was paid to it. Nevertheless, status quo in the SCS was maintained in 2006. ASEAN member states and China continually sought the enhancement of cooperation between them, while praising claimant states’ self-restraint in the SCS. For example, in the 2006 Shangri-La Dialogue, Singapore Prime Minister Lee Hsien Loong highlighted China’s cooperative behavior, stating that “China has handled [the SCS] disputes in a restrained manner. It has adopted a joint declaration with ASEAN to reduce the risk of a clash and reached bilateral understandings with several of the other claimant states individually” (*ST*, 2006).

Also, President Arroyo mentioned that the Philippines was satisfied with the development of the 2005 JMSU and would seek the enhancement of bilateral security ties with China, which she thought were in a “golden period” (*PS*, 2006; *Xinhua*, 2006a). Other claimant states also began seeking cooperation with each other. For example, Malaysia made a US\$25 billion deal to supply liquefied natural gas to Shanghai, while Vietnam made a deal with China for a joint oil and gas exploration and

development in the Gulf of Tonkin during President Hu Jintao's visit to Vietnam (Lee, 2006; Richardson, 2006).

China also considered its diplomatic maneuver to focus on joint exploration to be quite successful (*Xinhua*, 2006b). China's Secretary-General of the Foreign Affairs Leading Group, Dai Bingguo, praised the JMSU as well as its smooth implementation by setting up a mechanism for consultation on the SCS issue (*BBC*, 2006). These outcomes led ASEAN and China to revive diplomatic momentum for the eventual conclusion of a regional COC, which was stipulated in the joint statement of the Commemorative Summit Marking the 15th Anniversary of ASEAN–China Dialogue Relations in 2006 (Shenzhen International Cultural Industry Fair, 2006).

However, the positive atmosphere gradually dissipated in 2007 as skirmishes on the ground resurfaced. In April 2007, China criticized Vietnam for concluding a joint gas exploration agreement with British Petroleum (BP) in the Moc Tinh and Hai Thach fields near the Spratlys (*AFP*, 2007). Vietnam counterargued that the project was not new but had been implemented since 2000 and that the areas were “completely under the sovereignty of Vietnam” (Kazmin & McGregor, 2007). The Vietnam–China bilateral summit on May 17 downplayed the territorial disputes, but BP decided to suspend plans with Vietnam given the rising tension (Chua, 2007; *The Independent*, 2007). Moreover, on July 9, Chinese naval vessels fired and sank a Vietnamese fishing boat, resulting in the death of one fisherman and several injured, which led Vietnamese Vice Foreign Minister Vu Dung to hold crisis talks with his Chinese counterparts headed by Vice Foreign Minister Wu Dawei and Foreign Minister Yang Jiechi (Mitton, 2007a, 2007b). On August 18, Vietnam strongly protested against China's tourism plan for the Paracels, which aimed to create a Hawaii-style resort (Mitton, 2007c). When Chinese Premier Wen Jiabao visited Vietnam in November, he reiterated the importance of handling the SCS issue with the principle of “putting aside disputes and seeking common development” (Hu et al., 2007). Nevertheless, after China passed the legislation to establish the city of Sansha for administering the Spratly and Paracel islands, Vietnam's accumulated frustrations resulted in explicit anti-China protests in Hanoi and Ho Chi Minh City in December, which were said to be government-led (Mitton, 2008).

The Philippines also faced a new difficulty implementing the JMSU. According to *The Philippine Star*, the JMSU required clarity on whether the seismic study would include Philippine-claimed territorial waters, and

a Senate investigation ensued in March (PS, 2008a). This was a significant development because if the territorial waters were to be included in the joint exploration project, it would likely violate the Philippine constitution, which does not allow the state to compromise its territorial sovereignty in any way (PS, 2008b). To clarify the Philippines' baselines, House Bill 3216 (HB 3216), which identified the Kalayaan islands in the Spratlys and Scarborough Shoal as Philippine territories, was resurrected after the second reading in 2007 (*GMA News Online*, 2008; Storey, 2011a, p. 265). This had both international and domestic implications. Internationally, China raised concerns over the future of bilateral relations with the Philippines although it did not explicitly protest it. Domestically, the JMSU was suspended because of the ongoing domestic debates (*Xinhua*, 2009).

For its part, Malaysia sent senior officials, including Deputy Prime Minister and Defense Minister Najib Razak, to Swallow Reef in the SCS in August 2008, which was criticized by China (*Xinhua*, 2008). As the situation deteriorated, claimant states returned to *fait accompli* conduct although they also attempted to maintain stable relations with each other regarding their territorial claims.

3.2.2 2009–2011: *Revitalized Rivalry*

Some of the *fait accompli* moves by claimant states were made in anticipation of the May 2009 deadline for submitting their baseline claims of the extended continental shelf to the UN Commission on the Limits of the Continental Shelf (CLCS). The CLCS is a scientific organization that does not have the authority to manage legal and political issues over territorial disputes. However, the claims needed to be made as states would lose their right to claim their territories if they did not do so, and this institutional and legal procedure eventually revived tensions among the claimant states (Batesman & Schofield, 2009). To meet the deadline, claimant states expedited domestic legislation to justify their claims.

The initial move was made by the Philippines when its Senate passed the third reading of HB 3216 on February 2, 2009 (*GMA News Online*, 2009). Considering the potential diplomatic backlash from other claimant states, particularly China, the Senate version of HB 3216 did not specify the names of atolls or shoals; instead, it vaguely described “a regime of islands under the Republic of the Philippines” while being open to potential international arbitration on the Spratlys (Robles, 2009). Despite this

cautious approach, as the wording change did not substantially alter the Philippines' sovereignty claims, this drew strong protests from China and Vietnam, arguing that the inclusion of the Spratlys and Scarborough Shoal into the Philippines' baselines would significantly harm their bilateral relations (*HIS Global Insight*, 2009; Robles, 2009; VOA, 2009b). On March 10, President Arroyo signed the Republic Act 9522, amending Republic Act 3046 and Republic Act 5446, to define the country's baselines. This legislation considered the Spratlys and Scarborough Shoal under the "Regime of Islands" under Article 121 of UNCLOS, which recognized the territorial sea, but its contiguous zone, the EEZ, and continental shelf depended on whether the "islands" were defined as "rocks" that could not sustain "human habitation or economic life of their own" (Republic of the Philippines, Congress of the Philippines, 2009; UN, 1982).

On March 15, 2009, China dispatched *Yuzheng 311*, its largest fisheries patrol vessel that had been converted from a naval rescue vessel, to the Paracels (*API*, 2009a). The Philippines reacted immediately to this. National Security Adviser Norberto Gonzales regarded it as part of China's response to the Philippine baseline law and argued that the Philippines would need to diplomatically exercise "self-restraint" as stipulated in the DOC, although press secretary Cerge Remonde downplayed the tension by framing China's action as a form of diplomatic "posturing" (Esguerra, 2009). Subsequently, China announced that it would enhance its law enforcement capabilities against illegal fishing and other states' "unfounded" territorial claims through means such as converting its retired naval vessels into patrol ships (*BMO*, 2009; *International Oil Daily*, 2009). On April 13, China also sent its largest patrol ship, *Haixun 31*, along with two other major ships, to the SCS (Chan, 2009). In other words, China aimed to further enhance its presence in the SCS.

In the meantime, the United States began raising concerns about China's behavior. On March 8, 2009, US naval ship *Impeccable* was harassed by five Chinese ships by coming within 25 feet to the *Impeccable*. The United States speculated that China had become "militarily aggressive" with its increasing economic and military capabilities, while China accused the United States of violating international law by surveying waters under China's jurisdiction without its permission (Shanker & Mazzetti, 2009). These differing perspectives derived from differing interpretations of UNCLOS, which vaguely defined activities in the EEZ with "due regard." The United States interpreted that EEZs did not require coastal states' permission as it is considered international waters in terms

of passage, which ensured the freedom of navigation and overflight. As such, the United States regarded the *Impeccable*'s activities as routine operations in the SCS that fully complied with international law (Cha, 2009), but China argued that such activities required its permission. To China, US naval activities to monitor Chinese submarines, such as by using the *Impeccable*'s sonar equipment, should not be considered “innocent” (VOA, 2009a). Although US Secretary of State Hillary Clinton and Chinese Foreign Minister Yang Jiechi later agreed to continue discussions and mitigate tensions, both states did not back down and the situation began to intensify (Lee, 2009).

As the CLCS deadline grew closer, the diplomatic row among claimant states escalated. The trigger was the Vietnam–Malaysia joint submission on their territorial seas in the southern part of the SCS on May 6, 2009 (CLCS, 2011). The Philippines, though invited by Vietnam, did not participate in the joint submission because of its overlapping territorial claims with Malaysia (Steinglass, 2009). China rejected the joint claim by sending a note verbale to the UN Secretary-General stating that “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters” with a nine-dash line (9DL) map attached (The Permanent Mission of the People’s Republic of China to the United Nations, 2009). However, China’s 9DL was never clear on what it entailed, and thus Vietnam and Malaysia responded by insisting that their submission was legally consistent with UNCLOS. Yet, Vietnam and Malaysia were unable to unite in responding to China’s 9DL ambiguities. While Vietnam sought to conclude a legally binding COC, Malaysia’s Prime Minister Najib Razak indicated interest in holding a talk for peaceful negotiations over the territorial disputes (*New Straits Times*, 2009; Torode, 2009). There was thus no decisive agreement reached by claimant states.

As the SCS tensions rose, several ideas to mitigate them were proposed. After the ARF in July 2009 touched on a potential “regional code of conduct in the South China Sea,” Singapore’s Deputy Prime Minister Teo Chee Hean revealed in August that ASEAN and China had been working on a new COC based on the DOC (Gunasingham, 2009; Ministry of Foreign Affairs, Japan, 2009). In September, Chinese Ambassador to the Philippines Liu Jianchao stated that, given the little prospect of resolving the disputes in the near future, joint projects among claimant states should be discussed as the three-year JMSU had concluded (API, 2009b). However, China again refused to discuss the SCS issue during

the ASEAN–China Summit in November, reiterating its original diplomatic position that the disputes were a bilateral issue between China and the individual claimant states, not a multilateral one between China and ASEAN (VOA, 2009c).

In this context, 2010 became the critical year in redirecting the SCS disputes. This was mainly because the United States, the foremost regional power, had begun to explicitly express the intention of increasing diplomatic commitment to maintaining stability in the SCS. This resulted from the US–China strategic rivalry that had emerged after US power and commitment to East Asia were perceived to be in decline due to the 2007–2008 Global Financial Crisis. The regional balance of power in Asia therefore was possibly changing in favor of China, and regional states were concerned about the uncertain consequences of such a power shift (Koga, 2011). Thus, to reassure its Asian allies and partners in North and Southeast Asia, the United States expressed renewed diplomatic, economic, and military commitment to East Asian stability as illustrated by State Secretary Clinton’s speech at the East–West Center in January 2010 (Clinton, 2010).

US concerns about China stemmed from the latter’s geostrategic ambitions in Asia. A Chinese official had reportedly stated that the SCS was part of China’s “core interest,” equivalent to the importance of Hong Kong, Taiwan, and Tibet (Wong, 2010). Jeffrey Bader, US National Security Council’s Asia Director, and James Steinberg, Deputy Secretary of State, were told in the bilateral meeting in March 2010 that China would not tolerate external interference in the SCS (Jacobs et al., 2010; Landler, 2010; Swaine, 2011). According to Clinton, China’s Secretary-General of the Foreign Affairs Leading Group Dai Bingguo stated at the US–China Strategic and Economic Dialogue in May that China “viewed the South China Sea as a core interest” (US Department of State, 2010). However, it is unclear whether these statements were official or private, or even true or misunderstood, and China maintained the ambiguity. They were neither confirmed by the Chinese government nor affirmed by Chinese senior officials. In response, US Defense Secretary Robert Gates stated in his speech at the 2010 Shangri-La Dialogue that there was a “growing concern” in the SCS regarding the freedom of navigation and economic development, implying China’s increasing assertiveness (AFP, 2010a).

Faced with increasing tensions, some ASEAN member states attempted to maintain the status quo multilaterally. In particular, Vietnam, one of the most vocal claimant states and which became the ASEAN chair in

2010, was eager to place the SCS issue on ASEAN's agenda despite China's demands to not discuss it in a multilateral setting. Vietnamese Deputy Foreign Minister Pham Quang Vinh assured member states that the ASEAN Summit would discuss "everything and anything related to regional security" (Torode, 2010).

These strategic tensions culminated in a diplomatic confrontation at the 2010 ARF. Twelve of the 27 participants, including Australia, Brunei, Indonesia, Japan, Malaysia, the Philippines, the United States, and Vietnam, discussed the territorial disputes (Storey, 2010; Torode & Chan, 2010; VOA, 2010a). US State Secretary Clinton argued that the SCS was "pivotal" to regional security and that the United States had "a national interest in freedom of navigation, open access to Asia's maritime commons and respect for international law in the South China Sea," and stated that the United States was willing to facilitate multilateral negotiations (Storey, 2010; *The International Herald Tribune*, 2010). Chinese Foreign Minister Yang Jiechi interrupted Clinton's speech to reiterate China's position—that is, not to internationalize the SCS issue—and rebuked Clinton, stating that the ARF was not an appropriate forum; the SCS situation was relatively stable; the disputes were between China and some ASEAN claimant states, not ASEAN itself; there was consensus on a peaceful settlement of disputes; the DOC aimed to create a favorable atmosphere to reach a resolution; freedom of navigation was not hindered; coercion was not conducted; and the internationalization would make it more difficult to resolve the issue (AFP, 2010b; *States News Service*, 2010). The US–China great power tension over the SCS drew significant attention from the international community, and thus the disputes were internationalized.

The great power tension also divided ASEAN members' positions. On the one hand, Vietnam was willing to include the United States in the issue and continued strengthening its bilateral ties with the United States, albeit cautiously. In August 2010, Vietnam held a joint naval training with the United States in the SCS. While symbolic, the non-combatant operations, such as search and rescue, also facilitated interoperability between the two navies and signaled the potential of US–Vietnam security cooperation (VOA, 2010b). On the other hand, some ASEAN claimant states were more reluctant to explicitly support US involvement. Despite the existing US–Philippines alliance, Philippine Secretary of Foreign Affairs Alberto Romulo stated in August that Southeast Asian states did not

always support US assistance for conflict resolution because the SCS issue was between “ASEAN and China” (*AFP*, 2010c).

Accordingly, when the ASEAN–US Summit was held in September 2010, the joint statement, which had initially considered including the SCS issue, excluded it. Rather, the statement remained general, stressing the importance of maritime security, freedom of navigation, and international law including UNCLOS (*Manila Times*, 2010; *ST*, 2010). On the other hand, the ASEAN–China Summit in October discussed the continuation of dialogues and arrived at the decision to commence negotiations for a regional COC (del Callar, 2010). At this point, the United States stated that it did not have a “direct role” in the SCS territorial disputes but encouraged the ASEAN–China dialogue process (Kaufman, 2010). Hence, China and ASEAN agreed to hold an SOM in December to discuss the COC (*JEN*, 2010b). Yet, the United States still raised the SCS issue at the inaugural ASEAN Defence Ministers’ Meeting Plus (ADMM-Plus) with Australia, Japan, Malaysia, Singapore, South Korea, and Vietnam (*JEN*, 2010a; *The Nikkei Weekly*, 2010).

In 2011, Indonesia became the ASEAN chair and was eager to make substantial progress on the SCS issue. Indonesian Foreign Minister Marty Natalegawa expressed concern over the SCS stalemate, which might invite sporadic external intervention by regional powers such as Japan and the United States (Madanir, 2011). As such, Indonesia attempted to include the SCS issue as a regular agenda item of ASEAN-led institutions such as the East Asia Summit (EAS); to expedite the process of creating guidelines to implement the DOC, which had been in discussion for almost nine years; and to start formulating the COC (*The Jakarta Post*, 2011; Torsricharoen, 2011). As a result, by May, ASEAN agreed to an early conclusion of the guidelines and a plan to complete COC negotiations in 2012 on the occasion of the DOC’s 10th anniversary (*VNA*, 2011a).

However, skirmishes on the ground continued between China and ASEAN claimant states. Particularly, China’s harassment toward the Philippines and Vietnam became more pronounced. In March 2011, Chinese patrol boats harassed Philippine oil exploration vessels near Reed Bank, and in May, Chinese patrol boats cut the cables of a Vietnamese oil and gas survey ship near the Paracels (e.g., Lee & Dao, 2011; *PS*, 2011). Consequently, the Philippines and Vietnam advocated using the platform of ASEAN to reach a common stance on the SCS issue to push back China’s assertiveness. On April 6, Philippine Secretary of Foreign Affairs Albert del Rosario stated that the Philippines would “rely on

ASEAN in resolving its territorial disputes with other countries,” which implied the early conclusion of a *legally binding* COC (del Callar, 2011a, 2011b). Additionally, while Philippine President Benigno Aquino advocated for the immediate conclusion of DOC guidelines, he also explicitly raised a fundamental question about the ambiguity of China’s 9DL (Agnote, 2011). According to Aquino, it was not essentially productive for the eventual resolution of the territorial disputes without clarifying China’s territorial claims, a position that was also supported by Singapore’s Foreign Ministry (ST, 2011). As such, the Philippines expressed the intention to bring the SCS matter before the International Tribunal for the Law of the Sea (ITLOS) (Lee-Brago, 2011).

Vietnam also sought functional and technical cooperation to manage the disputes. On March 31, 2011, Vietnamese Deputy Defense Minister Do Ba Ty raised the SCS issue at the 8th ASEAN Chiefs of Defence Forces’ Informal Meeting and proposed the establishment of hotlines, joint patrol of ASEAN navies, and regional mechanisms to tackle non-traditional security issues such as search and rescue, humanitarian assistance, and disaster relief (VNA, 2011b). These were not intended to resolve the disputes, but the focus was on managing the situation by creating mechanisms for claimant states to avoid misperception and misunderstanding.

These efforts first resulted in the “Guidelines for the Implementation of the DOC” in July 2011. It stipulated eight principles for cooperative activities between China and ASEAN: (1) implementation of the DOC with a step-by-step approach; (2) promotion of dialogue and consultation; (3) clear identification regarding the implementation of activities and projects; (4) voluntary-based participation in the activities or projects; (5) promotion of confidence-building measures as initial activities; (6) consensus-based decision-making for the COC; (7) the use of experts and eminent persons, if necessary; and (8) annual reporting of the progress of activities or projects (ASEAN Secretariat, 2011). China’s Assistant Foreign Minister Liu Zhenmin called it an “important milestone,” and Indonesia’s Foreign Minister Natalegawa described it as a “breakthrough” (Nazeer, 2011; Torode, 2011). The United States also praised the agreement (Lee, 2011). Nevertheless, the Philippines was still dissatisfied because the guidelines did not address the ambiguity of China’s 9DL.

As such, the Philippines began pursuing its own policy. It aimed to forge ASEAN’s common position, clarify China’s 9DL, and create rules-based solutions, which culminated in the Philippines’ new proposal

to ASEAN—the concept of “Zone of Peace, Freedom, Friendship and Cooperation” (ZoPFFC) (Esplanada, 2011). Philippine Foreign Affairs Secretary del Rosario then proposed a meeting of legal experts in September 2011 to discuss ZoPFFC. At the meeting, however, the Philippines could not gain the support of ASEAN member states, partly because Cambodia and Laos were absent and some members were cautious about the proposal (del Callar, 2011c). On the other hand, Vietnam began engaging China bilaterally. On August 29, China’s Defense Minister Liang Guanglie and Vietnam’s Deputy Defense Minister Nguyen Chi Vinh met and agreed to resolve the SCS disputes through consultation and negotiation (*Xinhua*, 2011a). On October 11, China and Vietnam reached an agreement on basic principles for the settlement of sea-related issues—the so-called “six-point agreement,” which was similar to DOC guidelines but included the creation of a hotline mechanism between the two states (Ministry of Foreign Affairs, Vietnam, 2013; *Xinhua*, 2011b).

At the same time, the Philippines and Vietnam enhanced their relations with external powers in order to hedge against the risk of ASEAN’s failure to effectively ensure compliance with SCS principles and norms. In April 2011, for example, Vietnam procured six Kilo-class submarines from Russia, in addition to its announcement in late 2010 that it would open Cam Ranh Bay, a strategic port, which could invite US naval vessels as well (Storey, 2011b). Vietnam also held a joint naval exercise in the SCS with the United States in July 2011 (*The Nation*, 2011). Meanwhile, the Philippines gained a US Coast Guard Hamilton-class cutter and attempted to clarify the applicability of its Mutual Defense Treaty with the United States pertaining to the SCS situation, although this was not clearly indicated by the United States as part of “strategic ambiguity” (Bordadora & Balana, 2011). Both the Philippines and Vietnam expressed gratitude to the continued presence of the United States in the region and its contributions to maintaining stability in the SCS (e.g., Bland, 2011).

It is noted, however, that Indonesia was concerned about increasing US military presence in the region when the United States and Australia agreed to a rotational deployment of US marines in Darwin, Australia (Khalik, 2011). The different approaches of Vietnam and the Philippines toward China after the establishment of DOC guidelines in 2011 illustrate the varying diplomatic postures among ASEAN member states and the schisms between member states that would be vulnerable to external powers’ wedge strategy.

3.2.3 *The 2012 Scarborough Shoal Incident*

The maritime tension came to a head in April–July 2012 with the Philippines–China naval standoff near Scarborough Shoal and when the AMM was unable to issue a communiqué for the first time in its history. Hints of this development had emerged in early 2012. Cambodia had then become the ASEAN chair and held SOMs on the SCS issue. Some ASEAN member states, such as Indonesia, the Philippines, and Vietnam, were eager to push forth their proposals for the early conclusion of a COC, yet Cambodia showed reluctance to tackle the SCS disputes as it had become increasingly dependent on China for its economy and wanted to maintain neutrality (*JEN*, 2012a). In March, Chinese President Hu Jintao visited Cambodia just before the ASEAN meetings in April and exerted implicit diplomatic pressure by emphasizing its strong opposition to the internationalization of the SCS issue and interference from non-claimant states (*Xinhua*, 2012a).

In the meantime, the Philippines and Vietnam continually accused China of fait accompli in the SCS. The Philippines expressed concern over the presence of three Chinese vessels, including a navy ship, near Sabina Shoal (*BusinessWorld*, 2012a). In March, Vietnam also criticized China's assault on Vietnamese fishermen in the Paracel Islands (*Samay Live*, 2012). In turn, China raised concerns about the diplomatic moves of ASEAN claimant states becoming closer to the United States. For example, as the Philippines attempted to enhance its security ties with the United States through joint military exercise, China questioned the "real intentions" of such exercises (*Indo-Asian News Service*, 2012). In December 2011, Vice President Xi Jinping had warned Vietnam not to include the United States in the SCS territorial disputes (*JEN*, 2012b).

It is in this context that Cambodia started to express a strong stance on ASEAN statements, reaffirming ASEAN's consensus-based decision-making process. In formulating ASEAN's joint statement, the Philippines and Vietnam began to demand stronger wording in a paragraph regarding the SCS, given their rising tensions with China (*JEN*, 2012c). Although Cambodian Prime Minister Hun Sen flatly rejected the claim that Cambodia was politically under China's influence, Cambodia faced an increasingly difficult position directing ASEAN's discussions as tensions grew (*JEN*, 2012d). This became more evident when the Philippines proposed its long-held alternative idea to form ASEAN's own COC

before negotiating with China. This proposal was repeated by Philippine President Aquino at the ASEAN Summit and supported by Vietnam in April (PS, 2012a; VOA, 2012a). However, because such a maneuver would provoke China, ASEAN leaders did not reach any agreement on it.

Just days after the ASEAN Summit on April 3–4, 2012, the Philippines–China confrontation over Scarborough Shoal occurred. On April 8, Philippine navy surveillance plane found eight Chinese fishing vessels in a lagoon of the shoal, and the Philippines sent its largest warship, BRP *Gregorio del Pilar* (PS-15), which had been converted from a Hamilton-class cutter from the US Coast Guard. On April 9, Philippine crew from the warship boarded and inspected the Chinese vessels, but two Chinese surveillance ships, *Zhongguo Haijian* 75 and 84, intervened, resulting in a naval standoff (Gomez, 2012). On April 12, the Philippines withdrew the PS-15 and replaced it with a coastguard ship, while a third Chinese patrol vessel arrived; the following day, the Chinese fishing vessels and one of the Chinese coastguard ships departed from the site (Cerojano, 2012a; *The Nation*, 2012a). The tension was initially mitigated through bilateral negotiation, but as soon as the negotiation stalemated, the Chinese coastguard ship returned to the site (Esmaquel, 2012).

The tension again escalated from April 20 when, in response to the Philippines' refusal to withdraw its coastguard ship, China dispatched its most advanced patrol ship, *Yuzheng* 310 (FLEC 310), to Scarborough Shoal (Cerojano, 2012b). On April 23, the Philippines sent another coastguard ship to the shoal (Avendano & Yap, 2012). The standoff continued with two Philippine vessels, MCS 3008 and SAR V002, and two Chinese vessels, CMS 71 and FLEC 310. The Philippines' foremost military ally, the United States, held the very first 2+2 meeting with Philippine counterparts on April 30, and opposed any use of force in Scarborough Shoal. However, the United States did not clarify whether the US–Philippines defense treaty would cover the ongoing incident; instead, it only stated that the United States would “honor [its] obligations under the mutual defense treaty” (NYT, 2012).

The diplomatic row between the Philippines and China continued. Foreign Affairs Secretary del Rosario suggested taking the territorial disputes to ITLOS on April 17, yet China rejected that immediately (*Shenzhen Daily*, 2012). The Philippines then asked ASEAN to discuss the Scarborough Shoal issue and respond with a common position in the

next AMM (*Daily Inquiry*, 2012). President Aquino argued that the best course of action for the Philippines was to draw international attention to the matter and inform the world of its predicament in the face of China's assertiveness (Poblete, 2012). Before it did so, the Philippines had exhausted all diplomatic means, both bilaterally and multilaterally, including efforts to create ASEAN's COC (PS, 2012b). In the meantime, China threatened the Philippines that it was ready to escalate the maritime standoff and warned its citizens not to travel to the Philippines because of the risk (*News Point*, 2012; Ng et al., 2012).

Indeed, China escalated the situation by sending more coastguard ships to Scarborough Shoal from mid-May. After two months of standoff, China accused the Philippines of sending more ships although this was not specified or confirmed, and China sent more vessels to the shoal (VOA, 2012b). On May 23, the Philippine Department of Foreign Affairs stated that China had enhanced its presence by sending approximately 100 vessels, including fishing boats and coastguard ships, while the Chinese Foreign Ministry said that the government ships had been sent to provide services and administration to the fishing boats (TNS, 2012). On May 24, the Philippines facilitated ASEAN senior officials in drafting the "ASEAN Foreign Ministers' Statement on the Situation in Scarborough Shoal," and the next day, del Rosario requested the ASEAN chair, Cambodia, to circulate it to all ASEAN foreign ministers (Basilio, 2012; Natalegawa, 2018, p. 127). Although the statement did not gain consensus, several member states endorsed it, stating that such an initiative was important for regional stability.

The situation finally calmed down in June in favor of China. Following bilateral consultations, the Philippine Department of Foreign Affairs confirmed on June 6 that two Chinese ships and one ship deployed by the Philippine Bureau of Fisheries and Aquatic Resources had withdrawn from the lagoon of Scarborough Shoal (JEN, 2012c). The tension eased, but this did not yet indicate that both would eventually withdraw from the area because there were still 30 Chinese fishing boats as well as government ships from both sides at the shoal. On June 15, Aquino ordered two Philippine ships to withdraw because of the "weather condition," which the Philippines considered to be a face-saving agreement for both states, brokered by the United States, and Chinese fishing boats were also pulled back from the shoal (Green et al., 2017; Perlez, 2012a).

However, Chinese coastguard ships remained, and the Philippines explicitly accused China of not following through on the agreement (Green et al., 2017). It is still unclear what exactly were the terms of the US-brokered deal, but China maintained its presence in Scarborough Shoal and thus its *fait accompli* to control the shoal succeeded.

China quickly attempted to consolidate its control, at least in terms of its domestic legal apparatus. On June 28, China's Defense Ministry announced that Sansha, a newly established prefecture-level city, would administer the Paracel, Spratly, and Macclesfield Bank islands, and that China planned to set up a local military command unit to monitor the disputed islands (Chow & Ng, 2012). Even before Sansha was created on July 24, China had approved the establishment of the command on Woody Island in the Paracels (BBC, 2012). During this period, China also sent patrol ships under the State Oceanic Administration to the Paracels to show its continuous presence there (PDI, 2012a).

In response, the Philippines again urged ASEAN to form a diplomatic unified front against China by leveraging the AMM. This was because, despite the Scarborough Shoal incident, ASEAN had largely remained silent to avoid being entrapped in the China–Philippines dispute. In the eyes of the Philippines, however, ASEAN should have provided concrete statements on China's behavior as it had violated the DOC. Thus, the Philippines compelled the AMM to issue a statement of “grave concern” on the incident (Agnote, 2012). Instead of responding directly to this request, Cambodian Prime Minister Hun Sen emphasized ASEAN's efforts to formulate a COC, but China rejected this (Ganjanakhundee, 2012a). Chinese Foreign Ministry spokesperson Liu Weimin stated that China would do so “when conditions mature,” while emphasizing that the COC must not be a tool for resolving the disputes (Ganjanakhundee, 2012a; *The Nation*, 2012b). Furthermore, China expressed dissatisfaction with ASEAN's use of the AMM to discuss the SCS issue, stating that the meeting was “an important platform for enhancing mutual trust and cooperation between concerned countries, but not a proper venue for discussing the South China Sea issue” as it was neither a bilateral meeting nor did it include China (*Xinhua*, 2012c).

Because of these diplomatic disagreements, the AMM, held on July 9, 2012, failed to issue a joint communiqué for the first time in its history. Hun Sen had warned in April that the discord over certain statements regarding the SCS might lead Cambodia to decide on the non-issuance of a communiqué, and this became a reality. Specifically, the Philippines

and Vietnam were the two most vocal advocates for including in the communiqué a sentence specifying China's intrusions in the SCS, but Cambodia did not accept the demand (*Kyodo*, 2012a). According to del Rosario, ASEAN-led forums had been discussing the Scarborough Shoal situation for a long time, and the incident should have been reflected in an ASEAN statement. Although the Philippines' position was supported by some member states and the ASEAN secretariat, Cambodia consistently rejected it (Santos, 2012). In turn, Cambodian Foreign Minister Hor Namhong insisted on the necessity of a joint statement "without mentioning the South China Sea dispute," reiterating that the AMM should not be a "court" to give verdict on the situation. However, del Rosario pushed back by stating that Cambodia had a "political reason" to reject the statement, alluding to China's influence over Cambodia's decision (Ganjanakhundee, 2012b; Santos, 2012). It was speculated that Cambodia and China had coordinated their political stance on the SCS disputes at the AMM due to their strong bilateral ties—Chinese Foreign Minister Yang Jiechi met with Hun Sen on July 10 and appreciated Cambodia "for its staunch support for China on issues related to China's core interests" (Perlez, 2012b; *Xinhua*, 2012b).

At the same time, Cambodia's resistance was not the only factor that divided ASEAN. Brunei and Myanmar also supported Cambodia's position, stating that the disputes should be settled on a bilateral basis, whereas Thailand, which would become the coordinator of ASEAN–China relations from the end of July, was wary about the inclusion of strong wording in the joint communiqué (Chongkittavorn, 2012). According to Philippine Foreign Affairs Undersecretary Erlinda Basilio, the Philippine position was eventually "strongly supported" by Indonesia, Malaysia, Singapore, Thailand, and Vietnam as well as ASEAN Secretary-General Surin Pitsuwan (Basilio, 2012). Brunei and Myanmar had reservations on the specific statement regarding China's intrusions in the draft communiqué (Chongkittavorn, 2012). All this indicated that ASEAN was unable to forge consensus.

Faced with ASEAN disunity, Indonesia's Foreign Minister Marty Natalegawa proposed a different version of the ASEAN foreign ministers' statement. Natalegawa conducted shuttle diplomacy from July 18, starting from the Philippines to other member states including Vietnam, Cambodia, and Singapore (Natalegawa, 2018, p. 132; *PDI*, 2012b). This resulted in "ASEAN's Six-Point Principles on the South China Sea," issued by ASEAN foreign ministers on July 20. Although it neither stated

ASEAN's common position toward the Scarborough Shoal incident nor fully alleviated intra-ASEAN discontent, the statement restored ASEAN's image by reaffirming its collective principles on the SCS matter (Chou et al., 2016; Hussain & Nazeer, 2012). Natalegawa expressed the urgency of establishing a binding COC so as to maintain stability in the SCS, as indicated by one of the six points in the statement (*PDI*, 2012b).

That said, the Philippines was still dissatisfied and heightened its assertive posture on the SCS issue. For example, on August 23, del Rosario said that the Philippines was ready to send vessels back to Scarborough Shoal, where Chinese vessels remained (*PDI*, 2012c). On September 5, President Aquino officially renamed the SCS the "West Philippine Sea," which triggered criticism from China (*Xinhua*, 2012d). In November, while the Philippines was eager to discuss a COC and aimed to persuade China to commence negotiations at ASEAN meetings, Aquino suggested that ASEAN prioritize the discussion on maritime security at the ASEAN Summit (*BusinessWorld*, 2012b, 2012c).

Given these incidents and the heightened diplomatic tensions, the SCS issue had become the foremost agenda in ASEAN-led institutions by November 2012. Nevertheless, internal and external divisions among ASEAN member states and ASEAN dialogue partners persisted. Cambodia's Foreign Affairs Secretary of State Kao Kim Hourn stated that ASEAN had decided "not [to] internationalize the South China Sea," but the comment was opposed by Aquino at the end of the ASEAN Summit because, according to Aquino, the statement did not represent ASEAN consensus, with Vietnam in agreement with him (Au Yong, 2012; *PDI*, 2012d; Torode, 2012). Notwithstanding such opposition, Cambodia still included its own sentence—"There's consensus on no internationalizing" of the SCS disputes—in the chairman's statement of the ASEAN Summit, which was again criticized as untrue and removed by the Philippines and Vietnam with the support of Singapore and Indonesia (*Kyodo*, 2012c). On the other hand, while China continually opposed the internationalization of the issue, the United States and Japan started discussing the SCS issue with ASEAN (*Kyodo*, 2012b). Therefore, the internal disunity and external competition diminished the prospect of resolving the disputes, and ASEAN's plan to create a COC in 2012 ultimately failed.

3.2.4 *Major Strategic Events in the SCS, 2003–2012*

After ASEAN concluded the DOC in 2002, a positive trend in the SCS gradually appeared. Regionally, US strategic focus shifted to the Middle East, yet its military presence in East Asia remained, and there was still a large capability gap between the United States and China. Thus, the regional strategic balance remained relatively stable. The situation also improved with the conclusion of the China–Philippines agreement for joint exploration in April 2004. By including Vietnam subsequently, this bilateral cooperation evolved into the JMSU in 2005.

However, the temporary stability grew increasingly shaky due to a series of events starting from 2008. The Global Financial Crisis created a global perception of the United States and its unipolarity in decline, which affected regional states' assessment of the future configuration of the regional balance of power. Subsequently, two major disruptive events occurred in 2009. In March, the USNS *Impeccable* was harassed by China's naval ship in the SCS, and in May, the submission of claimant states' respective baseline claims to the CLCS was due. The former increased US concern over China's assertiveness, and despite its economic setback, it compelled the United States to monitor China's behavior in East Asia more carefully. The latter was a formal legal procedure that required states to clarify their claims, but the process increased tensions among claimant states.

The US senior official's statements in 2010 about China's assertion of the SCS as a "core interest" was contextualized in the chain reaction of these events, resulting in Clinton's firm statement on US interests in the SCS at the 2010 ARF. This created a diplomatic row with Chinese counterpart Yang Jiechi, and the US–China rivalry over the SCS ensued during the Obama administration. Concurrently, maritime skirmishes occurred more frequently than in 2005–2008, which culminated in the 2012 Scarborough Shoal incident between the Philippines and China.

Given all this, the period from 2003 to 2012 saw the fluctuation of tensions over the SCS. Changes in the SCS situation and in the international perceptions of the global balance of power were the basic causes, and these are summarized in Table 3.2.

Table 3.2 Major strategic events, 2003–2012

<i>Year</i>	<i>Month(s)</i>	<i>Major strategic event</i>
2004	April	China–Philippines agreement on joint exploration
2005	March	China–Philippines–Vietnam agreement on a joint marine seismic undertaking in agreed areas in the SCS (JMSU)
2008	September	Start of the Global Financial Crisis
2009	March	USNS <i>Impeccable</i> incident (US–China)
	May	Deadline for submitting baseline claims of the extended continental shelf to CLCS
2010	March	China’s “core interest” statement with regard to the SCS (according to US officials)
	July	US–China diplomatic row over the SCS at the ARF
2012	April–July	Scarborough Shoal incident (China–Philippines)

3.3 THIRD PHASE: NURTURING A “NEW NORMAL” (2013–2016)

3.3.1 2013–2015: *Legal and Military Confrontation*

By the end of 2012, the Philippines faced strategic difficulty maintaining the status quo in the SCS—its bilateral dialogues with China and ASEAN’s multilateral negotiations for the COC had not produced any favorable outcomes. This created a political dilemma for the Philippines. On the one hand, without diplomatic accommodation, China’s firm stance and consistent assertions to resolve the territorial disputes bilaterally would risk intensifying tensions and conflicts between China and the Philippines. On the other hand, even with diplomatic accommodation, the status quo was unsustainable as China’s *fait accompli* would likely continue. Therefore, as an alternative, the Philippines government brought the SCS disputes to the Arbitral Tribunal under UNCLOS on January 22, 2013. According to Foreign Affairs Secretary del Rosario, the Philippine government had “exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime disputes with China” (Torode & Chan, 2013). For the arbitral process, the Philippines’ focus was on China’s 9DL claims that did not clearly specify China’s territorial claims and maritime rights in the SCS (*Xinhua*, 2013a). The exercise of this legal option was unsurprising: The Philippines had repeatedly mentioned a potential legal procedure since 2011, particularly when it proposed the ZoPPFC and advocated a rules-based approach.

Expectedly, China immediately rejected the international judicial process. China had consistently advocated for bilateral negotiations, and Chinese Foreign Ministry spokesperson Hong Lei warned the Philippines not to complicate the issue (*Xinhua*, 2013b, 2013c). In February, China argued that both China and the Philippines should abide by the DOC—that is, to resolve the issue through negotiations between directly concerned states (He, 2013; *Xinhua*, 2013d). On February 19, China’s Ambassador to the Philippines Ma Keqing formally rejected Manila’s Notification and Statement of Claim to initiate arbitral proceedings. Simply put, China’s initial argument emphasized that its sovereignty had existed long before UNCLOS was created and that the law should not be entirely applicable for its territorial claims. However, since the arbitral process could be undertaken without China’s consent according to Annex VII of UNCLOS, the Philippines started the arbitration process and requested the ITLOS president to form the panel (*Manila Times*, 2013).

Thailand, the 2013 coordinator of ASEAN–China relations, was cautious about the Philippines’ legal action. Contrary to del Rosario’s expectation that ASEAN would support the Philippines’ move, some ASEAN members such as Thailand and Singapore emphasized the importance of dialogue between concerned parties, although they recognized the “legitimate right” of the Philippines to pursue legal action (Lin, 2013; Ubac, 2013). Accordingly, ASEAN took a wait-and-see stance vis-à-vis the legal procedure and monitored the progress carefully.

To be sure, the Philippines had not lost its motivation to conclude the COC. Essentially, the Philippine strategy was the “three-track approach”—political, diplomatic, and legal means (Basilio, 2012). While the Philippines elevated its efforts and shifted its focus to the legal means, it continually engaged ASEAN as a political track and kept its channels of communication with China open for consultation as a diplomatic track. Philippine Foreign Affairs Assistant Secretary Raul S. Hernandez mentioned that the Philippines had pressed for the early conclusion of a “legally binding COC” near the ASEAN Summit in April 2013 despite China’s conditional statement that it would discuss the COC when the time was ripe (Tubadeza, 2013).

Meanwhile, ASEAN and other member states attempted to mitigate the SCS tensions through engagement with China. For example, ASEAN, having failed to establish a COC in 2012, facilitated the dialogue process

for a COC with China by setting up SOMs (Nazeer, 2013). Also, Indonesia's Admiral Marsetio proposed a joint naval exercise between China and ASEAN to nurture mutual trust (Hussain, 2013). Thailand proposed in April to organize a special AMM for the DOC's 10th anniversary before the ASEAN–China Summit in October (*Kyodo*, 2013a).

ASEAN leaders also tasked their ministers to work with China on the COC (*Kyodo*, 2013a). As ASEAN Secretary-General Le Luong Minh described, ASEAN envisioned a two-step approach—maintaining peace and stability first and then resolving territorial disputes—in which ASEAN would achieve the former through the creation of a COC and conduct specific negotiations to resolve the territorial disputes between concerned parties (*Kyodo*, 2013a).

In July 2013, ASEAN and China decided to begin formal talks on the COC from September in Beijing—a move that was meant to alleviate tensions (Teo, 2013). Admittedly, the talks had been already planned, as Secretary-General Le had indicated on April 29 that ASEAN foreign ministers would have a meeting with China in Beijing in August or September to discuss the SCS issue (*Xinhua*, 2013c). However, the re-escalated tension between the Philippines and China over the Second Thomas Shoal in May, where each accused the other of increasing presence, delayed the process (Teo, 2013).

In the face of ASEAN's weakening unity, China attempted to drive a wedge among ASEAN claimant states. On June 19, President Xi Jinping met with Vietnamese President Truong Tan Sang, stating that “China and Vietnam should... [seek] a political solution to the South China Sea issue” (*Xinhua*, 2013f). Clearly, China was attempting to focus on bilateral negotiations so as to prevent Vietnam from seeking international arbitration like the Philippines. However, these moves from China were also limited in effect because of China's continual encroachment on the SCS, harassing Vietnamese fishing boats, which triggered domestic discontent as illustrated by anti-China demonstrations after Chinese patrol vessels fired at Vietnamese fishermen in May (*NYT*, 2013). In short, there was an increasing gap between China's diplomatic rhetoric and its behavior on the ground.

In this context, Philippine Foreign Affairs spokesperson Hernandez reiterated the Philippines' reasons for arbitration on July 15 by presenting eight points on how the Philippines had exhausted all diplomatic and political means to settle the dispute with China. These were: (1) Philippines–China bilateral consultations on the years SCS issue had begun

in 1995 but no progress was made for 17 years; (2) the Scarborough Shoal incident occurred in April 2012, following which the Philippines held over 50 consultations with China; (3) the Philippines and China held informal talks in early 2012, yet the Scarborough Shoal incident still occurred; (4) the Philippines had long indicated a three-track approach, which included international arbitration; (5) the Philippines consulted with China regarding the arbitration and officially communicated it through a note verbale on April 26, 2012, which China rejected; (6) the Philippines verbally invited China for ITOLS adjudication; (7) Secretary del Rosario visited Beijing three times for consultation; and (8) China's persistent refusal made it difficult for the Philippines to continue bilateral dialogue and led it to international arbitration (Diola, 2013). China responded to the statement on July 16, expressing regret and dissatisfaction that the Philippines had shut down bilateral consultation (*Xinhua*, 2013g).

In the meantime, there was a slight progress on the COC negotiations between ASEAN and China. In August 2013, the AMM decided to persuade China to discuss the COC (BMO, 2013). In response, China's stance on the COC shifted in a positive way, though its rhetoric remained the same. Despite continual tensions on the ground, China insisted that the SCS situation was "stable" while opposing international arbitration (*Kyodo*, 2013b). However, on the occasion of the 10th China–ASEAN Expo held in Singapore in September, Chinese Premier Li Keqiang stated that China would engage in COC talks "systematically and soundly" in order to reaffirm China's commitment to stability in the SCS (Li, 2013).

On September 15–16, 2013, the 9th ASEAN–China Joint Working Group on the Implementation of the DOC and the 6th ASEAN–China SOM on the Implementation of the DOC were held in Suzhou, China. According to Thai Foreign Ministry Permanent Secretary Sihasak Phuanketkeow, it was the first time that ASEAN and China officially discussed the COC, and it indicated China's strong commitment to establishing a COC (*Bangkok Post*, 2013). Because it was the inaugural meeting, contents of the COC were not discussed in detail, but the SOM agreed that it should have "a confidence-building process, prevent conflicts, and keep disputes from affecting security in the South China Sea," and that it should be built on existing frameworks, particularly the DOC (*Bangkok Post*, 2013). While the draft chairman's statement of the ASEAN–China Summit scheduled in October reportedly did not mention the COC, the actual statement clearly indicated that ASEAN and

China would work toward the creation of a COC (*Kyodo*, 2013c; *Xinhua*, 2013h).

China also attempted to divert ASEAN's attention away from the disputes by focusing on the betterment of the overall ASEAN–China relationship. In October, President Xi and Premier Li Keqiang visited five Southeast Asian nations to participate in ASEAN-led forums, where China proposed the “2+7 cooperation framework” (Embassy of the People's Republic of China in the Republic of Indonesia, 2013). The framework consisted of a two-point political consensus and seven proposals for cooperation, the former of which were to (1) deepen strategic trust and good neighborliness, and (2) strengthen cooperation through economic development. The seven cooperation areas included the conclusion of a treaty of good neighborliness; upgrading the ASEAN–China Free Trade Area; establishing an Asian infrastructure bank; hosting an informal ASEAN–China defense meeting in China; and building a “maritime silk road” (Parameswaran, 2013). ASEAN, however, was cautious about the proposals as they did not provide details.

The uneasiness on the ground continued into 2014. In January, the Philippine Department of National Defense stated that, in view of Chinese fishing vessels' continual encroachment on Philippine territory, it would enforce maritime rules to secure the resources in its EEZ (*PS*, 2014a). Vietnam also continued to see anti-China demonstrations because of China's increasing presence in the Spratlys and Paracels (*The Nation*, 2014). Despite these, China's activities in the SCS persisted, conducting naval exercises, including the use of amphibious landing crafts (*NZH*, 2014a). On March 29, the Philippines successfully sent supply ships, despite China's blockade, to the navy ships that had “marooned” near the Second Thomas Shoal for almost 15 years (*NZH*, 2014b). China soon accused the Philippines of illegal occupation of the territory at the Second Thomas Shoal (Perlez, 2014).

On the diplomatic front, the 10th ASEAN–China Joint Working Group convened in Singapore in March 2014 to discuss the COC. The Philippines and Vietnam attempted to discuss specific items, such as the geographical scope, to clarify the points of dispute. Indonesia also proposed that there should be no military exercises held in the disputed areas (*ST*, 2014). Yet, since China frequently conducted naval drills in the SCS, it implicitly disagreed with such specifications by emphasizing the importance of consensus decision-making and negotiations for dispute resolution (*ST*, 2014).

On the legal front, there was progress to break the SCS stalemate. The Philippines made a submission to the tribunal on March 30, 2014, including 4000 pages and 40 maps, and expected the ruling to be made in 2015 (Perlez, 2014). On April 1, the Chinese chargé d'affaires in the Philippines, Sun Xiangyang, laid out three main reasons for China's rejection: (1) its commitment to resolving the disputes through bilateral negotiations; (2) its right not to accept the arbitration because UNCLOS covered only disputes over islands, not the maritime sphere; and (3) its belief that the arbitral process did not meet "people's expectations for friendship" between the two countries (Ministry of Foreign Affairs, People's Republic of China, 2014a). In other words, China demanded a political process rather than a legal one.

The Philippines hedged the risk of an unsuccessful legal procedure by strengthening security ties with the United States. On April 28, the United States and the Philippines reached a bilateral military agreement—the Enhanced Defense Cooperation Agreement—that would provide US troops access to selected bases in the Philippines and to allocate its military assets, including ships and fighter jets (Gomez, 2014). US President Barack Obama argued that the goal was "to make sure international rules and norms are respected," including "in the area of international disputes" (NZH, 2014c). The Chinese Foreign Ministry in turn stated that China would watch US behavior carefully (Kor, 2014).

In May 2014, Vietnam and the Philippines again clashed with China. For Vietnam, the incident started when PetroVietnam protested against CNOOC because the latter's *Hai Yang Shi You 981* semi-submersible rig (HD 981) began hydrocarbon drilling in Vietnam-claimed waters (Dao & Song, 2014). After Vietnam attempted to prevent it, China dispatched 80 ships; in response, Vietnam sent 35 ships (NYT, 2014). This resulted in Chinese ships deploying water cannons and ramming two Vietnamese coastguard ships near the Paracels on May 4 (Mullany & Barboza, 2014). On the other hand, Philippine coastguards detained a Chinese fishing boat and fishermen who were reportedly poaching sea turtles at Half Moon Shoal in the Spratlys, and China immediately demanded their release (Mullany & Barboza, 2014). Given these incidents, ASEAN responded by issuing the "ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea" on May 10, expressing "serious concerns" about the SCS situation (ASEAN Secretariat, 2014a). President Aquino also stated that he would raise the SCS issue at the

ASEAN Summit because bilateral negotiations with China were insufficient to maintain the status quo and stability in the seas (*NZH*, 2014d). China pressured Myanmar, the 2013 ASEAN chair, not to mention the SCS issue. However, Myanmar resisted, and without naming China, the ASEAN Summit's declaration, "Nay Pyi Taw Declaration on Realisation of the ASEAN Community by 2015," included a paragraph calling for "self-restraint," "non-use of force," and the early conclusion of a COC in the SCS (ASEAN Secretariat, 2014b; Ghosh, 2014a). Singapore Prime Minister Lee Hsien Loong also mentioned that the skirmishes in May made it necessary for ASEAN to have a COC immediately (Chan, 2014).

Despite this, the situation remained largely the same. Vietnam had massive anti-China demonstrations, which saw physical attacks on Chinese-owned factories (e.g., *AP*, 2014). The Philippines had been worried about China's potential land reclamation on the atolls and shoals in the SCS, including Johnson South Reef, and this fear became a reality (Bradsher, 2014). On May 15, the Philippines showed photo evidence of China reclaiming land and building an airstrip on Johnson South Reef, and Aquino accused China of violating the DOC (Delavin, 2014). Initially, China responded by not confirming the allegations, but stated that the reef belonged to China. Since then, China's land reclamation activities had accelerated, and the Philippines revealed on June 7 that China also reclaimed land near Eldad Reef, in addition to Gaven, Cuarteron, and Johnson South reefs (Dancel, 2014). Around this time, Fiery Cross Reef, which China's People's Liberation Army considered as its "main command headquarters" in 2011, also saw the start of land reclamation for building a 3000-meter airstrip (Dancel, 2014; Rapp-Hooper, 2015).

While China–Vietnam and China–Philippines tensions rose, ASEAN was unable to maintain its unity. For example, Malaysia quietly nurtured ties with China as 2014 was the 40th anniversary of Malaysia–China diplomatic relations. On this occasion, Chinese Premier Li Keqiang and Malaysian Prime Minister Najib Razak issued a joint communiqué on May 31, 2014, that highlighted their common stance toward the SCS despite the deteriorating situation in the SCS by emphasizing self-restraint, peaceful resolution, consultation and negotiation, and respect for international law, particularly UNCLOS (*The Star*, 2014; *Xinhua*, 2014a).

Having difficulty deterring China's land reclamation, President Aquino proposed on June 24 to meet with the four ASEAN claimant states—Brunei, Malaysia, the Philippines, and Vietnam—to nurture a common diplomatic position (*Kyodo*, 2014). However, given that the five-member meeting would bypass the ASEAN meeting, it was difficult reaching consensus among the claimant states, let alone all ASEAN member states. Subsequently, on August 4, Philippine Foreign Affairs Secretary Albert del Rosario repropose the Triple Action Plan (TAP) to ASEAN. The plan comprised (1) “immediate,” (2) “intermediate,” and (3) “final approaches” to the SCS disputes: a moratorium on specific activities; DOC implementation and COC creation; and creating a settlement mechanism in accordance with international law (*PS*, 2014b). Brunei, Indonesia, and Vietnam were reportedly supportive of the initiative, and the AMM noted the proposal (Ghosh, 2014b). Nevertheless, China soon rejected the TAP because, according to Foreign Minister Wang Yi, the Philippines had already engaged in international arbitration and would need to revoke it if the Philippines wanted to pursue the TAP (*BMO*, 2014). The Philippines did not relinquish the existing legal process and instead presented the same initiative at the United Nations General Assembly on September 29, informing the international community of China's assertive actions that destabilized the SCS (Alvic et al., 2014).

At the same time, as the December 15 deadline for China to submit its territorial claims to the SCS Arbitral Tribunal approached, China further attempted to invalidate the arbitral process by issuing a position paper on December 7. In this paper, China stated that (1) the arbitration established under Article 287 and Annex VII of UNCLOS did not have the authority to determine territorial sovereignty; (2) China and the Philippines expressed commitment to resolve the disputes through negotiation based on the DOC; (3) China's 2006 declaration under Article 298 made it clear that China would not accept any “compulsory dispute settlement procedures” including maritime delimitation; and (4) the Arbitral Tribunal did not have jurisdiction over the arbitration (Ministry of Foreign Affairs, People's Republic of China, 2014b). Therefore, China ignored the deadline and again showed no intention or willingness to participate in the arbitration (Ng, 2014).

The Philippines–China tension was on the rise. As China's land reclamation continued in 2015, the Philippines advocated for ASEAN's collective condemnation against China. This was because despite the ASEAN–China dialogues, the COC discussion was delayed and China's

assertive actions were never deterred. On January 29, for instance, the Philippines filed a diplomatic protest against China when two Philippine fishing vessels were rammed and towed by a Chinese coastguard vessel near Scarborough Shoal (Monzon, 2015a). Secretary del Rosario warned that ASEAN's inaction would seriously undermine its credibility because China's maritime activities were a critical issue for regional stability (Teoh, 2015a).

China largely ignored these warnings, while continually reclaiming land on Hughes, Johnson South, and Gaven reefs, which amounted to 63,000 square meters from May 2014 to February 2015 (Fullerton, 2015). At the same time, China praised the progress of the COC discussion with ASEAN after the ASEAN Foreign Ministers' Retreat on January 27–28. On January 30, the Chinese Foreign Ministry stated that China and ASEAN had reached consensus on an “early harvest” of the COC (*Xinhua*, 2015a).

In this context, the AMM issued a joint statement that explicitly warned that land reclamation in the SCS would erode trust and confidence (*Manila Bulletin*, 2015a). Vietnam and the Philippines expressed serious concern, but President Aquino again advocated for ASEAN's common position on the SCS issue, citing China's threat that was derived from its land reclamation activities (Monzon, 2015b). China quickly pushed back by expressing “serious concerns” that some individual members had hijacked ASEAN and undermined ASEAN-China relations because the SCS issue was not between China and ASEAN as a whole, but a bilateral issue between China and each ASEAN claimant state (*Xinhua*, 2015b).

The United States also stepped up. Observing China's ongoing land reclamation in the SCS, the United States asked China to explain the situation and assured ASEAN claimant states that the United States had military capabilities to guard against China's assertive behavior (*Xinhua*, 2015c). Nevertheless, the United States did not clearly indicate the conditions under which it would use military force or how it would be used. As such, these statements remained as a symbolic show of force. In May 2015, the United States publicly indicated the possibility of conducting freedom of navigation operations (FONOPs) in the SCS, where China was reclaiming land in reefs such as Fiery Cross Reef (Cooper & Perlez, 2015a, p. 3). China's militarization of those reefs also proceeded, and Fiery Cross Reef, for instance, was equipped with an early warning system along with other military assets. In response, the United States sent strong

warnings to China by flying the P-8A Poseidon surveillance aircraft over the SCS (McCurry, 2015). US Secretary of Defense Ashton Carter also condemned China's reclamation activities, stating that the land reclamation amounted to over 2000 acres, and that this was becoming a source of regional instability (Au Yong, 2015; US Department of Defense, 2015). China rejected the criticism by repeating the narrative that it was improving the islands' amenities and living conditions for its personnel (PDI, 2015).

With these developments, the August round of ASEAN-led forums focused on the SCS. According to Malaysia's Foreign Minister Anifah Aman, the 2015 ASEAN chair, the SCS was extensively discussed among member states, although Chinese Foreign Minister Wang Yi reiterated that the AMM was not an appropriate venue to discuss the territorial disputes (BMO, 2015). Without naming China, the ARF drafted and issued the chairman's statement which raised concerns over land reclamation and construction projects, warning that unilateral actions would destabilize the region as a whole (ASEAN Secretariat, 2015; Kyodo, 2015a). At the EAS Foreign Ministers' Meeting, Japan, the Philippines, and the United States, raised concerns over the SCS situation, while China rejected the assertions by stating that the situation was generally stable and that the possibility of major conflict was non-existent (Xinhua, 2015c). To alleviate the situation, ASEAN and China senior foreign affairs officials began discussing the establishment of a diplomatic "hotline" between them in times of emergency in the SCS (Manila Bulletin, 2015b). Additionally, the United States proposed "three halts"—land reclamation, construction, and aggressive actions that would raise tensions—which were criticized by China but fully supported by the Philippines (Teoh, 2015b; Xinhua, 2015d). Nevertheless, ASEAN foreign ministers were not united to discuss these proposals in a joint statement on the SCS disputes (Kwok, 2015).

As tensions rose, China suddenly attempted to eschew the COC negotiations by asking ASEAN to refrain from discussing the COC at the ASEAN–China Foreign Ministers' Meeting. Although Malaysian Foreign Minister Anifah Aman said that the COC process needed to be expedited, Chinese Foreign Minister Wang Yi argued that there had been already dialogue mechanisms for COC discussions, such as the SOM and the Joint Working Group (The Nation, 2015). In this way, China took the SCS issue off the table in the ASEAN–China Foreign Ministers' Meeting, and instead focused on general ASEAN–China relations (Xinhua, 2015f).

Based on the 2013 ASEAN–China “2+7 cooperation framework,” Wang stipulated 10 proposals, including signing a treaty of good neighborliness and friendly cooperation between China and ASEAN countries, and the creation of a “win-win situation” by properly handling the SCS issue (*Xinhua*, 2015f). Wang also declared that China had stopped land reclamation in the SCS, but this was a false statement. Its installation of military assets and the construction of other facilities continued (*PS*, 2015). Given the lack of clarity on the details of these proposals, they could be seen as China’s delaying tactics toward policy dialogues while conducting *fait accompli* on the ground. ASEAN remained skeptical about China’s intentions in the SCS.

Against this backdrop, diplomatic progress was made at the China–US Summit in September 2015. President Obama directly expressed to President Xi US concerns over China’s behavior in the SCS, namely “land reclamation, construction, and the militarization of disputed areas.” In response, Xi confirmed that “China does not intend to pursue militarization” (The White House, 2015). Although the term “militarization” was not clear and might be interpreted differently by the United States and China, it can be inferred from the context of the dialogue that China would refrain from installing military assets and dual-use facilities in the disputed areas. In the meantime, the United States conducted its “first” FONOP in the SCS—on October 27, USS *Lassen* passed within 12 nautical miles of Subi Reef and other features claimed by the Philippines and Vietnam (Cooper & Perlez, 2015b; Perlez & Hernandez, 2015). While this was legal from the US perspective, the Chinese Defense Ministry responded critically by stating that the FONOP infringed its “sovereignty,” representing a “coercive action that [sought] to militarize the South China Sea region” (Blanchard & Shalal, 2015). Rear Admiral Yang Yi reaffirmed China’s firm stance and warned that if this US behavior continued, the SCS would “be caught in a vicious cycle” (*China Military Online*, 2015). China then began using US FONOPs to justify its militarization in the SCS.

The fall round of ASEAN-led forums in 2015 was more active in addressing the SCS issue. On November 20, the AMM expressed serious concerns about the escalating SCS situation (*The Star*, 2015). On November 22, the EAS also saw contentious discussions on the disputes, where most member states, particularly US President Obama and Japanese Prime Minister Abe Shinzo, proactively raised the issue and openly criticized China’s assertive behavior by calling for the ceasing of

unilateral actions, including land reclamation and militarization (*Kyodo*, 2015b). Yet, there was no diplomatic progress.

3.3.2 2016: SCS Arbitral Award

The year 2016 marked a critical juncture in the development of the SCS disputes. At this point, the regional great powers had become more active in nurturing alignment with regional states. For example, to deter, or at least slow down, China's assertive behavior, external regional powers, particularly the United States and Japan, attempted to strengthen their comprehensive ties with ASEAN and the claimant states, namely, the Philippines and Vietnam.³ Also, while the United States conducted another FONOP by USS *Curtis Wilbur* within 12 nautical miles of Triton Island in the Paracels, it invited ASEAN member states to the Sunnylands estate in California for the ASEAN–US Summit, and discussed the SCS situation (*The Herald*, 2016, p. 14). Although the joint statement did not mention the SCS, it addressed the principles of maritime security, such as non-militarization and the importance of international maritime laws including UNCLOS (ASEAN Secretariat, 2016a). In doing so, the United States signaled to ASEAN that it would continually monitor the SCS situation.

On the other hand, China's fait accompli and diplomatic engagement continued. In January, China tested its airstrip on Fiery Cross Reef by landing airplanes including two commercial jets (*The Nation*, 2016a). China also strengthened ties with Cambodia by agreeing at the Third Inter-Governmental Coordination Committee on February 4 that both supported each other in terms of their respective "core and major interests" (*Xinhua*, 2016a). On February 17, China deployed surface-to-air missiles on Woody Island in the Paracels in response to US FONOPs, yet Chinese Foreign Minister Wang Yi said they were "self-defence facilities" (*Financial Times*, 2016; Withnall, 2016).

Under these circumstances, Singapore, as the 2015–2018 country coordinator for ASEAN–China relations, attempted to strengthen the rules and norms in maintaining the SCS stability. In February, Foreign Minister Vivian Balakrishnan declared that it was important to support a rules-based approach, and that ASEAN and Singapore "[could not afford

³ For external powers' reactions, such as that of Australia and the United Kingdom, see McCurry (2016).

to] have a world in which might is right” (Ghosh, 2016). Singapore thus aimed for the early conclusion of a COC, while proposing an expanded Code for Unplanned Encounters at Sea (CUES) to include coastguard ships (Kor, 2016a). CUES is a set of informal, non-binding guidelines for navies created by 21 members of the Western Pacific Naval Symposium in 2014 in order to avoid miscommunication, misunderstanding, and accidents at sea, providing basic rules for maritime navigation. Singapore proposed to expand the scope of CUES, so that both navy and law enforcement forces could regulate their behavior and stabilize behavioral expectations in the maritime domain.

For its part, China strengthened diplomatic engagement with several ASEAN member states to minimize the effects of a potentially negative outcome of the Arbitral Tribunal. In April, Foreign Minister Wang stated after visiting Brunei, Cambodia, and Laos that China had reached a “four-point consensus” with them on the SCS (Embassy of the People’s Republic of China in The Republic of Singapore, 2016). These were: (1) territorial disputes were “not an issue between China and ASEAN as a whole,” (2) sovereign states had a right “to choose on their own ways to solve disputes in line with [the principles that] the international law should be respected and an imposition of unilateral will on others is opposed,” (3) disputes should be resolved through “dialogues and consultations by parties directly concerned” under Article 4 of the DOC, and (4) external states “should play a constructive role rather than the other way around” (Embassy of the People’s Republic of China in the Republic of Singapore, 2016). However, the “consensus” was not confirmed by those three states. Cambodian government spokesperson Phay Siphon did not recognize that any new agreement had been reached, and said, “There’s been no agreement or discussions, just a visit by a Chinese foreign minister,” while Brunei and Laos were silent on the matter (Davies, 2016). As a result, the move was seen as China’s attempt to highlight schisms between ASEAN member states vis-à-vis the Arbitral Tribunal.

It was in this context that the Special ASEAN–China Foreign Ministers’ Meeting in Kunming was held on June 13. The meeting aimed to discuss the implementation of the DOC as well as the upcoming ruling from the SCS Arbitral Tribunal (Parameswaran, 2016a). Singapore, the co-chair of the meeting, expressed concerns over the SCS situation on behalf of ASEAN and urged China to cooperate for regional stability in accordance with international law (*ITAR-TASS*, 2016). The meeting

became contentious; as a result, the joint press conference with Chinese Foreign Minister Wang and Singapore Foreign Minister Balakrishnan was canceled, and Wang held the press conference alone.

During the meeting, ASEAN member states insisted on broaching the SCS disputes and attempted to issue ASEAN's own press statement on the matter, which had been agreed among ASEAN member states in advance (Parameswaran, 2016a). In the draft statement released by Malaysia, ASEAN expressed "serious concerns" over developments in the SCS; emphasized the importance of ensuring freedom of navigation and overflight in accordance with the principles of international law, particularly UNCLOS as well as of exercising self-restraint and avoiding actions that would complicate the situation; showed its commitment to peaceful resolution, "including full respect for legal and diplomatic processes"; and highlighted the importance of "non-militarization and self-restraint in the conduct of all activities, including land reclamation" (VNA, 2016). However, because of a last-minute disagreement among ASEAN member states, the draft was retracted by Malaysia due to "urgent amendments" (Kyodo, 2016a).

The disagreement was caused by China's last-minute proposal for its "10-point consensus" (Thayer, 2016). The proposal discussed a broader perspective on ASEAN–China relations, but eight points touched on the SCS, which included (1) maintenance of peace and stability and enhanc[ing] cooperation in the SCS; (2) necessity of "properly handl[ing] the South China Sea issue, and... not let[ting] it affect the big picture of the China–ASEAN friendship and cooperation"; (3) full and effective implementation of the DOC and the advancement of consultation on a binding the COC; (4) abidance of key documents, such as the UN Charter and UNCLOS; (5) resolution of disputes through peaceful means between directly concerned parties; (6) exercise of self-restraint and refrainment of any action that would complicate the issue as well as the implementation of appropriate preventive measures; (7) upholding freedom of navigation and overflight; and (8) a request for external powers to play a "constructive role for peace and stability" (Parameswaran, 2016b).

However, since ASEAN was more concerned about the recent developments in the SCS, such as land reclamation and militarization, ASEAN was unable to agree with a statement that did not address those issues. Nevertheless, some ASEAN member states, particularly Cambodia and Laos, expressed the necessity to reconsider the original press release

prepared in advance by ASEAN (Parameswaran, 2016b). This ASEAN schism eventually killed its original statement, and thus China had successfully driven a wedge between ASEAN member states. At this point, ASEAN unity had become more fragile. Soon after the ASEAN–China meeting, China appreciated Cambodian Prime Minister Hun Sen for his “fair and objective” stance when the latter announced on June 28 that his Cambodian People’s Party would not support the SCS arbitral ruling (*Xinhua*, 2016b).

Amid ASEAN disunity, the SCS Arbitral Tribunal issued its award on July 12, with the outcome an overwhelming victory for the Philippines. Fourteen of the 15 claims that the Philippines made were judged in its favor (PCA, 2016a). The most notable ones included: (1) China’s 9DL was invalid because it did not have any legal basis and China’s “historic rights to resources” in the SCS were “extinguished” as they were incompatible with the EEZ under UNCLOS; (2) Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef do not generate an EEZ or continental shelf; (3) Mischief Reef, Second Thomas Shoal, and Subi Reef are low-tide elevations that do not generate an EEZ; (4) Mischief Reef and Second Thomas Shoal are within the Philippines’ EEZ or continental shelf; (5) China unlawfully interfered with the Philippines’ sovereign rights in its EEZ and continental shelf; and (6) China violated UNCLOS by deploying its law enforcement forces “in a dangerous manner” (PCA, 2016b, p. 5). The award was “final and binding” and could not be appealed without the consent of parties involved (PCA, 2016a, p. 460). China rejected ruling, stating that it was “null and void” (Ministry of Foreign Affairs, People’s Republic of China, 2016a), but legally speaking, the award clearly illustrated the illegal nature of China’s behavior in the SCS.

Nevertheless, ASEAN was unable to form a united front despite its long-held, explicitly stated respect for international law, including UNCLOS. Except for the Philippines and Vietnam, member states avoided making official statements in support of the award and only reiterated the importance of peaceful resolution and international law including UNCLOS (*Inquirer.net*, 2016; Ministry of Foreign Affairs, Vietnam, 2016; Storey, 2016). In the meantime, China intensified its diplomatic offensive to invalidate the award. On July 13, for instance, China issued a white paper, “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the

South China Sea,” which reiterated its firm position that the maritime delimitation “should be settled equitably through negotiation with countries directly concerned in accordance with international law, including UNCLOS” (Ministry of Foreign Affairs, People’s Republic of China, 2016b). On the same day, China suggested declaring an air defense identification zone in the SCS to counter the award (Connor, 2016).

Despite the favorable outcome of the arbitral award, the Philippines’ newly elected President Rodrigo Duterte took a softer approach to China, showing willingness to discuss the SCS disputes with China, which China welcomed (*Xinhua*, 2016c). Consequently, at the AMM on July 24, ASEAN was unable to reach consensus on making a specific reference to the arbitral award in its joint communiqué, although the statement touched on the importance of non-militarization and emphasized self-restraint in activities including land reclamation (ASEAN Secretariat, 2016b). On July 25, ASEAN and China issued the “Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the Declaration on the Conduct of Parties in the South China Sea,” reiterating the basic principles in the SCS that had been agreed on (ASEAN Secretariat, 2016c).

Nonetheless, the arbitral award shaped China’s posture toward ASEAN and individual member states. Most notably, China began focusing on the early conclusion of a COC. On July 26, Foreign Minister Wang proposed that ASEAN and China expedite the COC negotiations to lower “the temperature surrounding the arbitration case” and complete the “framework” of COC “by the middle of next year” (*ST*, 2016). Making a clear deadline was progress, although it was not clear what the “framework” would entail. On August 15–16, ASEAN and Chinese senior officials discussed the COC framework and agreed to resolve the disputes through negotiation, based on a regional framework, while launching an emergency hotline and adopting CUES in the SCS (Kor, 2016b; *Xinhua*, 2016d). As a result, by the end of the ASEAN–China Summit in September that commemorated the 25th anniversary of ASEAN–China dialogue relations, both sides agreed to adopt CUES and the “Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs” for maritime emergencies in the implementation of the DOC and confirmed consultations on the COC outline would complete by mid-2017 (ASEAN Secretariat, 2016d). As such, China attempted to make progress in ASEAN–China discussions and prevent external powers from intervening.

In this process, however, China continued its wedge strategy by taking a “stick and carrot” diplomatic approach—punishing those that supported the award and rewarding those that accommodated China. For “punishment,” China targeted Singapore, which had seemingly supported the award. On August 1, Singapore’s Prime Minister Lee Hsien Loong made a statement in Washington that the award should ideally “set the order for the world because... it is much better to have an arbitration and adjudication based on acknowledged principles than to fight it out and see whose guns are more powerful” (Prime Minister’s Office, Singapore, 2016). In response, on August 7, the Chinese government asked Singapore to “respect” China’s basic position because it considered the arbitration “illegal, invalid and ha[d] no binding forces” (Chong, 2016a). China’s English-language newspaper, *Global Times*, began to castigate Singapore’s position, stating that it did not play the role of country coordinator for ASEAN-China relations (Ge, 2016).

In September, *Global Times* again accused Singapore of attempting to incorporate the SCS arbitral award into the final document of the 17th Summit of Non-Aligned Movement (NAM) (Leng, 2016). Singapore’s Ambassador to China Stanley Loh pushed back by stating that the contents of the article were “false and unfounded” (Kor, 2016c; *Today*, 2016). Although a description of the award was not incorporated in the final NAM document, the harassment continued. In November, China seized Singapore’s Terrex vehicles, and it took three months before the Hong Kong government finally released them in January 2017 (Chong, 2016b). The incident was said to be linked to Singapore’s joint military exercises with Taiwan, not the SCS issue; however, Singapore had been conducting joint military exercises with Taiwan since 1975, and the timing of the incident would be questionable if it was because of the Taiwan issue. Another diplomatic disapproval was to exclude Singapore from the 2017 Belt and Road Forum for International Cooperation despite strong China–Singapore economic relations (Jaipragas, 2017).

On the other hand, China rewarded the Philippines’ efforts to develop a cordial relationship with China. After the 2016 arbitral award, Philippine President Duterte avoided openly mentioning the ruling at international forums, including the ASEAN Summit and the EAS; instead, the Philippines started to forge stronger ties with China (*The Australian*, 2016). On October 16, Duterte made a state visit to China, setting aside the arbitral award but raising the issue of fishing rights near Scarborough

Shoal for Philippine fishermen (Liu & Huang, 2016; *The Dominion Post*, 2016). Chinese Vice Foreign Minister Liu Zhenmin responded by stating that China would “provide assistance with aquaculture and the commercial processing of fish,” while agreeing to provide financial assistance for infrastructure development, to lift economic sanctions on fruits, and to encourage tourists to visit the Philippines. The deals to be signed would amount to US\$13.5 billion (*BBC*, 2016; Perlez, 2016). Eventually, the Philippines regained access for its fishermen to the waters near Scarborough Shoal without China’s interference, although its lagoon was still closed (*Kyodo*, 2016b; *The Nation*, 2016b).

The improvement of China–Philippines relations was further accentuated by the decline of US–Philippines relations. US–Philippines relations had deteriorated because of President Obama’s candid comments on the Philippines’ human rights violations in its drug war, which made Duterte distance himself from the United States (Yoshimura et al., 2016). The bilateral relationship worsened when Duterte announced the cancellation of the US–Philippines joint military exercise and raised the possibility of abrogating the Enhanced Defense Cooperation Agreement (Rauhala, 2016; Tarrazona, 2016). Secretary of Foreign Affairs Perfecto Yasay Jr. stated that the United States attempted to keep the Philippines dependent on it for SCS security by not providing enough military capabilities to defend its “territorial boundaries and the exclusive use of [Philippine] maritime entitlement in the South China Sea” (Gonzales, 2016).

At the EAS held in September, external actors—namely, Australia, Japan, and the United States—commented on the SCS situation. US President Obama directly mentioned the arbitral award, considering it a useful reference to “clarify maritime rights in the region,” while Australian Prime Minister Malcolm Turnbull referred to the award as “a fact... and... a reality” (Coorey, 2016). Chinese Premier Li Keqiang responded that external powers should not “overstat[e] differences or even [sow] the discord” between China and ASEAN members (*Xinhua*, 2016e). China’s Vice Foreign Minister Liu Zhenmin also implicitly accused the United States and Japan of sowing discord at the EAS by stating, “Only two nations mentioned the international arbitration ruling and insisted the ruling should be binding and implemented” (Zhou, 2016). Amid the major powers’ confrontation, ASEAN did not reach consensus and the EAS chairman’s statement did not mention the arbitral award.

3.3.3 *Major Strategic Events in the SCS, 2013–2016*

The 2012 Scarborough Shoal incident left the SCS in a highly volatile state. It was apparent that the DOC was no longer a viable option for maintaining the status quo on the ground and that the positive assessment of the DOC, albeit rhetorical, was increasingly untenable. Thus, the Philippines filed its case with the Arbitral Tribunal in January 2013. To counter the Philippines' diplomatic and legal maneuver, China attempted to drive a wedge between ASEAN member states by creating a positive impression of its policy toward ASEAN. A case in point is President Xi and Premier Li's visit to Southeast Asia in October 2013 to propose the "2+7 cooperative framework" with ASEAN.

Nevertheless, China's diplomatic position toward ASEAN did not necessarily translate to its SCS policy, and China kept enhancing its physical presence in the SCS during this period. Particularly, several skirmishes with Vietnam near the Paracels triggered massive protests against China in May 2014, although it did not change China's position. In December 2014, when the deadline to submit its rebuttal to the Arbitral Tribunal arrived, China instead issued its position paper, stating that China rejected the legitimacy of the tribunal. The tension between China and the United States also continued to rise, and in May 2015, the United States conducted its first publicly reported FONOP over the SCS.

In 2016, when the Arbitral Tribunal was about to issue the award, China made a series of moves as part of its wedge strategy against ASEAN member states. In April, China unilaterally announced that it had concluded a "four-point consensus" with Brunei, Cambodia, and Laos, which created diplomatic confusion within ASEAN and beyond. Additionally, during the Special ASEAN–China Foreign Ministers' Meeting held in June, China proposed last-minute amendments to the joint statement, which negated ASEAN's joint statement on the SCS.

The Arbitral Tribunal issued the award on the SCS case in July, ruling overwhelmingly in favor of the Philippines. China rejected the award, and because of China's diplomatic pressure and ASEAN disunity, ASEAN remained silent about the ruling thereafter. However, legally, the Arbitral Tribunal's decision was "final and binding," which created a new strategic dynamic in the SCS. Despite its firm rejection, China began considering further negotiated settlements with ASEAN claimant states. Particularly, Xi met Duterte in October, promising that China would not militarize Scarborough Shoal.

Table 3.3 Major strategic events, 2013–2016

<i>Year(s)</i>	<i>Month</i>	<i>Major strategic event</i>
2013	January	The Philippines submits its case to the SCS Arbitral Tribunal under UNCLOS
	October	China proposes the “2+7 cooperation framework” to ASEAN
2014	May	Massive anti-China protests in Vietnam
	December	China issues position paper on the SCS in response to the arbitral proceedings
2015	September	Xi Jinping promises no militarization in the SCS (China-US)
2016	October	US conducts first publicized FONOP
	April	China issues statement on “four-point consensus” (China, Brunei, Cambodia, and Laos)
	July	SCS Arbitral Tribunal issues award in favor of the Philippines
	October	Xi Jinping promises no militarization on Scarborough Shoal (China–Philippines)

Given its legality, the SCS arbitral award drew more international attention, but this did not create any immediate or expected change in the regional balance of power. Nonetheless, the nature of diplomatic exchange among claimant states altered, because even if China rejected the award, the Philippines could always invoke the ruling to justify its accusations against China’s behavior in the SCS. Given the international legitimacy that the Philippines attained from the award, it was able to take a firm stance. If both China and the Philippines insisted on their legitimacy, diplomatic negotiation would likely fail, which would then escalate the tension into conflict, and both sides wanted to avoid this. In this sense, the diplomatic dynamics pertaining to the SCS had gradually changed.

The major events that shaped the strategic environment in the SCS during this period are shown in Table 3.3.

3.4 FOURTH PHASE: SEARCH FOR A NEW EQUILIBRIUM (2017–2020)

3.4.1 2017–2019: *Road to COC*

In 2017, the Philippines assumed ASEAN chairmanship. This would have been a great opportunity for the Philippines to table the arbitral

award on the agenda of ASEAN-led institutions, but it did not do so. According to the Philippines, doing so would be “counter-productive” in resolving the disputes and maintaining the SCS stability, and the issue should be discussed with China bilaterally (*API*, 2017; *CNA*, 2017a). Indeed, bilateral dialogue seemed to work for the Philippines. On March 13, President Duterte affirmed that China had not intruded into Philippine territory since his visit to Beijing in October 2016, during which President Xi had promised not to militarize Scarborough Shoal (*PDI*, 2017c; *Reuters*, 2017). Further, the Philippines explored the possibility of a joint exploration, and on March 1, 2017, Philippine energy companies, Philex Mining Corporation and PXP Energy Corporation, began discussing a potential project with CNOOC in the SCS.

Rather than being confrontational, the Philippines adopted a multidimensional approach to the SCS disputes. Diplomatically, the Philippines aimed to complete the COC framework, which would include the “key elements and principles,” by mid-2017 (*CNA*, 2017b; *PDI*, 2017a; *PNA*, 2017a). Also, the Philippines attempted to stay calm, firm, and independent in dealing with the territorial issues. For instance, after Beijing reportedly installed anti-aircraft and anti-missile weapons in the SCS in December 2016, Secretary of Foreign Affairs Perfecto Yasay Jr. quietly sent a note verbale to China to protest against it (*PS*, 2017a). But when the US–China diplomatic row intensified after Rex Tillerson during his confirmation hearing for secretary of state made a controversial statement to prevent China from taking territories in international waters in the SCS in January 2017, the Philippines attempted to avoid getting involved by stating that both the United States and China “should not use the countries in ASEAN as a proxy for their rivalry” (Dancel, 2017a). Economically, the Philippines attempted to draw as much financial assistance as possible from China. On January 23, 2017, China and the Philippines signed an agreement for joint projects worth US\$3.7 billion, although the specific contents and locations were not revealed (Zhang & Jing, 2017). The Philippines also attempted to secure loans to build a railway line between Manila and Legazpi in Albay and for other infrastructure development projects such as the construction of bridges (*ST*, 2017a).

However, negotiations for the COC framework soon faced a stumbling block. This was partly because China opposed a “legally binding” COC, whereas ASEAN was eager to have an agreement that was stronger than the DOC (Calupitan, 2017). Indeed, ASEAN foreign ministers had

already expressed preference for a legally binding COC that covered a broad geographical area in the SCS so that it could be more “meaningful and effective” (*PDI*, 2017b). At the AMM on February 21, 2017, ASEAN claimant states further advocated to make the SCS issue “an ASEAN issue,” to have a unified front vis-à-vis China (Calungsod & Kea, 2017). According to Secretary Yasay, ASEAN member states had unanimously expressed grave concerns over the continued militarization in the SCS, which intensified the US–China tension. This rivalry was illustrated by the deployment of a US strike group including the USS *Carl Vinson* in the SCS as routine operations as well as China’s continued installation of military assets in its SCS facilities, including surface-to-air missiles in Subi, Mischief, and Fiery Cross reefs (*PDI*, 2017b).

China’s response to ASEAN’s concerns was evasive. China stated that its facilities in the SCS were “necessary and appropriate national defense installations in its own territory... [It was] exercising [China’s] sovereign right recognized by international law” (Perry, 2017). Moreover, China rejected Yasay’s statement regarding ASEAN’s grave concerns, attributing it to Yasay’s personal opinion, and suggested that he “follow [President] Duterte’s lead” (*PS*, 2017b). China even increased diplomatic pressure by suddenly canceling China’s Commerce Minister Gao Hucheng’s trip to the Philippines in February, which led Duterte to justify Yasay’s remarks by stating that China had misunderstood the statement about ASEAN and that dialogue with China was still open (*CNA*, 2017c). Nevertheless, China insisted that the general SCS situation tended toward “improve[ment] at the moment” and that its stability depended on US behavior (Shi, 2017). Further, Chinese Premier Li Keqiang argued that China’s facilities were “primarily for civilian purposes” while some defense equipment was “for maintaining the freedom of navigation” (*China Daily*, 2017).

President Duterte also engaged in a diplomatic tug-of-war over the SCS territories. On April 6, 2017, Duterte stated that he had ordered armed forces to occupy all Philippines-claimed islands in the SCS, such as Thitu Island, in order to maintain Philippine jurisdiction there, and he revealed a potential visit to Thitu Island for the Philippine Independence Day (Griffiths & Luu, 2017; Villamor, 2017a). China responded with concern and asked the Philippines to properly handle the maritime disputes, while Vietnam also reacted by stating that such a move by the Philippines would be illegal (*DPA*, 2017a; *PNA*, 2017b). After a

discussion with China, Duterte canceled his visit to Thitu Island and backtracked on the occupation of the claimed islands. Duterte stated that he valued the Philippines' friendship with China, but to avoid being seen as too accommodating toward China, Philippine Defense Secretary Delfin Lorenzana downplayed the statement by stating that those reefs were already occupied by the Philippines (*PS*, 2017c; Villamor, 2017b). The Philippines started transporting troops and supplies to Thitu for the reinforcement of an airstrip and the construction of a dock (Bodeen, 2017b). Secretary Lorenzana also visited the reef with C-130 transport aircraft (Villamor, 2017c).

Nonetheless, there was some progress on the COC framework. On March 8, 2017, the first draft was completed, and Philippine Foreign Affairs Acting Secretary Enrique Manalo stated that ASEAN had made "good progress" on the COC framework, considering that ASEAN and China had "started from zero in January" (Bodeen, 2017a; *CNA*, 2017d; *PDI*, 2017d; *Xinhua*, 2017a). When the deadline of July 2017 approached, the member states' assessment of the framework varied. Some argued that the prolonged discussion was part of China's delaying tactic until it had control of the SCS, while others pointed out that the framework was "essentially the same" as the DOC and that the contentious point was whether it would be legally binding (*CNA*, 2017e). Despite these dissonances, Singapore Foreign Minister Vivian Balakrishnan stated that ASEAN's priority was to draw up the COC framework since there was no viable alternative (*ST*, 2017b). Indeed, Duterte said on April 27 that there was no point in discussing China's sweeping claims and construction activities in the disputed areas and bringing up the arbitral award because ASEAN "can't do anything about it" (*DPA*, 2017b). He also stated that the United States was the only power that was able to stop China but it allowed China's behavior in the SCS, and without US backing, raising the award would be "suicide" for the Philippines (*DPA*, 2017b). At this point, almost all ASEAN members, including Vietnam and Malaysia, were focused on completing the COC framework to set rules and norms to regulate claimant states' behavior rather than on discussing the arbitral award (*PDI*, 2017e).

During the 14th ASEAN-China SOM on the Implementation of the DOC held on May 18, 2017, both sides reached an agreement on the draft COC framework (*CNA*, 2017f). The contents were confidential and would be submitted to the foreign ministers of ASEAN and China so as to prevent "outside interference," according to China's Vice

Foreign Minister Liu Zhenmin (*AFR Online*, 2017). The practical cooperation between ASEAN and China was illustrated by their pursuit of the Inter-Ministry of Foreign Affairs hotline and CUES (*TNS*, 2017). Subsequently, both initiatives were endorsed by ASEAN and Chinese foreign ministers on August 6.

The China–Philippines consultation also saw some progress. The first Bilateral Consultation Mechanism (BCM) between the Philippines and China, headed by Vice Foreign Minister Liu and Philippine Ambassador to China Jose Santiago Sta. Romana, was held on May 18, 2017 (Mo, 2017). The meeting ended with an agreement to meet at least twice annually, focusing on the management of disputes through frank discussion (Monzon, 2017). In addition, they agreed to “handl[e] incidents and disputes in the South China Sea in an appropriate manner” and further discuss the establishment of technical working groups (*JEN*, 2017a). In their joint press release, both sides agreed to use the BCM a platform for confidence-building measures and maritime cooperation, and they would follow principles stipulated in the joint statement of the China–Philippines Summit held in October 2016, which were:

importance of maintaining and promoting peace and stability, freedom of navigation in and over-flights above the South China Sea, addressing jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned in accordance with universally recognized principles of international law [including UNCLOS]. (*Xinhua*, 2017b)

That said, China kept conducting the wedge strategy against ASEAN. Multilaterally, Chinese Foreign Minister Wang Yi asked ASEAN member states on July 25, 2017 to “say no” to external forces’ intervention in the SCS because the maritime situation was becoming more stable between ASEAN and China, and between claimant states and China, given the progress on the COC framework (*Alliance News*, 2017). Bilaterally, China coerced Vietnam to halt drilling activities near the Paracels, while engaging the Philippines to consider a joint exploration project. On July 15, China had threatened to attack Vietnamese bases over gas drilling in the disputed waters of the SCS. Vietnam responded by ordering Spanish company Repsol, which was conducting the drilling, to leave the area known as Block 136-03, about 400 kilometers off Vietnam’s southeastern coast (*Energy Monitor Worldwide*, 2017a, 2017b). Chinese

Foreign Ministry spokesperson Lu Kang said on July 25, “China urges the relevant parties to cease the relevant unilateral infringing activities... with practical action, safeguards the hard-earned positive situation in the South China Sea” (*Energy Monitor Worldwide*, 2017c). Eventually, the Vietnamese government ordered Repsol to abandon the drilling because of Chinese threats to militarily attack Vietnamese bases in the Spratlys (*Premium Official News*, 2017).

On the other hand, on July 25, 2017, Wang stated that he supported the idea of joint energy ventures with the Philippines in the disputed areas, while warning that unilateral action could cause problems and damage on both sides because it could trigger the same action from the other party (Lo, 2017). The warning was directed toward Philippine Energy Department’s announcement on July 12 that the Philippines would resume the drilling project at Reed Bank, which had been suspended since 2014, by the end of 2017, and that there would be another bidding for a new block in December (Lo, 2017). Duterte responded on July 24 that he planned to conduct joint oil and gas exploration with China in the SCS and that bilateral talks on this would continue (Cigarral, 2017).

Under these circumstances, the AMM, which was held in August 2017, drafted a joint communiqué that asked senior officials “to begin earnest discussions on a substantive and effective code of conduct on the basis of the framework as soon as possible” (Gomez, 2017). However, there were two major issues in the COC negotiations. One was whether the COC would touch on the arbitral award; the other was whether the COC would be legally binding. The Philippines reiterated its desire to make the COC legally binding, while China was uncertain about that (CNA, 2017g). Nevertheless, ASEAN and China decided to start formal negotiations, following which Chinese Foreign Minister Wang proposed a three-step vision: (1) initiating substantive consultations by the end of 2017; (2) discussion of the approach and principles of the COC would be conducted at the Joint Working Group Meeting on the Implementation of the DOC in end August; and (3) should there be SCS stability and no major external interference, negotiations for the COC text would be announced in November (*PDI*, 2017f; *Xinhua*, 2017c).

In November, it was announced that ASEAN and China would commence COC negotiations in March 2018 in Vietnam (*Kyodo*, 2017). This positive trend diffused to other areas. Militarily, as part of confidence-building measures, China and ASEAN conducted their first combined naval drill on October 31, which comprised approximately

1000 participants aboard 20 ships and three helicopters from Brunei, Cambodia, China, Laos, Myanmar, the Philippines, and Thailand (*The Japan Times*, 2017).

At the EAS Foreign Ministers' Meeting in August, however, diplomatic tensions surfaced. Wang reiterated the improved situation in the SCS, which, according to China, was "the current mainstream view of the countries in the region," and he stated that some external powers still interfered and did not want to recognize the situation (*Xinhua*, 2017d). Wang also responded to an accusation of land reclamation by highlighting China's two-year inaction and suggesting that some other claimant states had been reclaiming land instead. The latter referred to Vietnam, which had reportedly begun land reclamation on several islets (*AMTI*, 2017a).

Several ASEAN member states did not share China's assessment. In particular, Vietnam was concerned with China's coercion in July to stop its exploration projects in the areas that both Vietnam and China claimed. Vietnam thus criticized China's reclamation and militarization in the SCS and attempted to include both issues in the AMM joint communiqué, but such a strong posture resulted in China's cancellation of the bilateral foreign ministers' meeting (*CNA*, 2017b; Dancel, 2017b; *PS*, 2017d). On the other hand, the Philippines attempted to omit these issues from the joint communiqué because it feared China's retaliation in terms of restrictions on trade, investment, and tourism. Yet, these issues were eventually included in the AMM communiqué (Yap & Cayabyab, 2017).

As expected, such official statements did not alter China's behavior in the SCS, and tensions between China and the other states remained. Diplomatically, the ASEAN Summit in November 2017 failed to discuss the SCS issue in depth. At the summit, Duterte asserted that the claimant states should eschew discussing the SCS disputes at an ASEAN forum, as this would only heighten the tension with China (*PDI*, 2017g). As a result, the November 11 draft of the chairman's statement for the ASEAN Summit excluded the section on the SCS dispute. In the meantime, China continued militarizing the SCS throughout 2017, constructing hangars, underground storage, missile shelters, radar arrays, and other dual-use facilities on Fiery Cross, Subi, and Mischief reefs as well as North, Tree, and Triton islands (*AMTI*, 2017b; *Asian News International*, 2017).

External major powers actively internationalized the SCS issue given China's ongoing fait accompli. For example, the United States publicized and continually conducted FONOPs, including the fourth FONOP on October 10, when it sent the USS *Chafee* near the Paracel Islands (*CNA*,

2017i). Also, the United States and Vietnam urged all claimant states “to implement their international legal obligation in good faith in managing or resolving [the] disputes” and called for “an early conclusion to an effective, legally binding” COC (PS, 2017e). This was echoed by ASEAN Secretary-General Le Luong Minh, who advocated a strong COC that could regulate state behavior (JEN, 2017b).

Moreover, in April 2017, the G7 Foreign Ministers Meeting issued a joint communiqué that explicitly referred to the 2016 arbitral award as a “useful basis for further efforts to peacefully resolve disputes in the South China Sea” (G7, 2017a). The G7 Summit in May issued a communiqué that adopted a similar line, emphasizing a resolution of the disputes “through diplomatic and legal means, including arbitration” (G7, 2017b). Militarily, Japan and the United Kingdom attempted to show their presence in the SCS. The Japan Maritime Self-Defense Force dispatched its largest helicopter destroyer, JS *Izumo*, and a destroyer, JS *Sazanami*, for the ASEAN-Japan Ship Rider Cooperation Program held on June 19–23; while the United Kingdom announced in July plans to send two new colossal aircraft carriers, HMS *Queen Elizabeth* and HMS *Prince of Wales*, to the SCS to conduct FONOPs in 2018 (Japan MSDF, 2017; *The Guardian*, 2017). In August, ministers of the Australia–Japan–United States Trilateral Strategic Dialogue issued a joint statement reaffirming the 2016 arbitral award as “final and legally binding” on both the Philippines and China and urged them to abide by it while facilitating the early conclusion of the COC, which should also be “legally binding, meaningful, effective, and consistent with international law” (US Department of State, 2017).

Amid the accelerated internationalization of the SCS issue, 2018 was the 15th anniversary of the ASEAN–China Strategic Partnership for Peace and Prosperity, and ASEAN attempted to facilitate the early conclusion of the COC. In February 2018, ASEAN began preparing for COC discussions by creating a “joint zero draft” based on the COC framework, which incorporated all the ideas submitted by ASEAN members states and China (JEN, 2018a). At the ASEAN Summit in April, it became obvious that the COC would not be concluded in 2018, but ASEAN and China planned to have four joint working-group meetings (JEN, 2018b).

In 2018, China focused on relations with the Philippines; in fact, institutionalized dialogues on the SCS between the Philippines and China provided a steady interaction. On February 13, the Second China–Philippines BCM was held in Manila. Both states agreed to form a panel to

study the possibility of joint oil and gas exploration in the SCS without infringing on each other's sovereignty. Further, at the Boao Forum for Asia in April, according to Philippine Secretary of Foreign Affairs Alan Peter Cayetano, China gave a firm guarantee that it would not build new facilities on Scarborough Shoal and that the red line for both states was building "in uninhabited areas including Scarborough" (Jaipragas, 2018). Both Duterte and Xi also agreed for the first time on a joint exploration in the disputed areas (*Energy Monitor Worldwide*, 2018a).

At the same time, Duterte reaffirmed that the Philippines would not give up its rights in the SCS (*PDI*, 2018a). In May 2018, he said that the Philippines would fight a war against China if China unilaterally extracted natural resources from the SCS, and he identified the red lines: (1) building structures on Scarborough Shoal; (2) removal of the BRP *Sierra Madre*, which had been anchored near Second Thomas Shoal for a long time; (3) harassment of Filipino soldiers carrying out resupplying and repair works; and (4) natural-resource extraction (Westcott, 2018). China also stipulated its red line, which was to maintain uninhabited features as uninhabited (Viray, 2018b). In addition, when the Philippines and China held the third BCM on October 18, both reiterated the importance of freedom of navigation and overflight (*PS*, 2018a).

On November 21, 2018, the Philippines held a bilateral summit with China, which saw the conclusion of the Memorandum of Understanding (MOU) on Cooperation on Oil and Gas Development and agreed to further discuss maritime cooperation such as "maritime oil and gas exploration, sustainable use of mineral, energy, and other marine resources" (*Xinhua*, 2018b). The MOU focused on the creation of working groups comprising governments and enterprises of both China and the Philippines, which would recommend locations for exploration and the distribution of profits (*Energy Monitor Worldwide*, 2018b). Both parties decided to work out the details by November 2019 (*Energy Monitor Worldwide*, 2018b).

Despite the bilateral dialogues and agreements, however, the SCS situation on the ground still frustrated the Philippines. On June 8, 2018, the Philippines expressed concern over China's continued seizure of Filipino fishermen's catches near Scarborough Shoal (Gomez, 2018), even though both states had negotiated for a joint fishing agreement after the bilateral summit in April (Aguinaldo, 2018; *ASEAN Tribune*, 2018). On November 13, Defense Secretary Delfin Lorenzana criticized China for stating that countries needed its permission to use the sea.

At the same time, the Philippines also accused the international community and the United States of doing not enough to maintain stability in the SCS. During the ASEAN Summit in November, Duterte accused the United States of provoking China with its FONOPs and said that it should leave China and ASEAN to resolve the disputes by themselves (*Asia Times*, 2018a). Moreover, in the same month, presidential spokesperson Salvador Panelo stated that if there had been enough international support, the Philippines would have urged China to abide by the 2016 arbitral award (*Manila Bulletin*, 2018). Consequently, on December 20, 2018, Defense Secretary Lorenzana expressed the desire to review the US–Philippines Mutual Defense Treaty in order to clarify whether the SCS was covered by it. This was because the treaty had long maintained a “strategic ambiguity” by stating that it covered “Metropolitan Philippines,” which referred to the whole country including the islands that the Philippines administered (*PDI*, 2018b).

For its part, Vietnam’s relations with China grew tense. On May 8, 2018, Vietnam asked China to withdraw its military equipment from Woody Island. But despite Vietnam’s warning, Chinese H-6K bombers landed on Woody Island for the first time in mid-May, which triggered another round of criticism against China from regional states as well as the United States (*API*, 2018; Panda, 2018). Vietnam and the Philippines expressed concerns about the bombers, and the latter considered taking “appropriate diplomatic action” (*CNA*, 2018b). In response, China reiterated its sovereignty and accused the United States of raising tensions by expanding its military presence (*Afternoon Voice*, 2018). Although China had removed its HQ-9 surface-to-air missile systems from Woody Island in early June, they were reportedly reinstated on the island (Tahir, 2018).

On June 25–27, 2018, the 24th ASEAN–China Joint Working Group on the Implementation of the DOC and the 15th ASEAN–China SOM on the Implementation of the DOC were held. Member states agreed to create a “single draft negotiating text” (SDNT) for a COC (*JEN*, 2018c). The SDNT was the draft document based on the COC framework which attempted to address five issues: geographical scope, dispute settlement, duty to cooperate, role of third parties, and legal status of the COC (Thayer, 2018). The document was evolutionary as all parties added their desired statement for discussion and it was planned to have at least three readings (Thayer, 2018). Given this progress of ASEAN–China cooperation, China’s foremost concern was external interference, and Chinese Foreign Ministry spokesperson Lu Kang stated, “Some external forces

have been trying whatever they can to muddy the waters in the South China Sea, including through hyping up the non-existent proposition that navigation freedom and security is somewhat affected” (PS, 2018b; *Xinhua*, 2018a).

The proposal for an SDNT was formally notified to the AMM on August 1, 2018, and the AMM welcomed the practical measures. However, since there was no clear deadline for its completion, it was still uncertain whether a COC could be completed in the near future. Therefore, while China applauded this progress as a “breakthrough,” some ASEAN member states, particularly Vietnam, were still wary about the development of the situation, especially China’s militarization, and thus included these concerns in the AMM communiqué (Liang & Gomez, 2018). Also, the United States tried to ensure that international principles stipulated by UNCLOS would be incorporated into the SDNT (TNS, 2018). Indeed, this US desire had previously been expressed by W. Patrick Murphy, Department of State Deputy Assistant Secretary for Southeast Asia—that the COC negotiation process should be transparent and have a “binding, meaningful result in accordance with international law” (Viray, 2018a).

In this context, China initiated setting a deadline for the COC’s completion. On November 13, 2018, Chinese Premier Li stated that the COC should be concluded in three years, in 2021 (Wong, 2018c). The 2018 ASEAN chair, Singapore Prime Minister Lee, echoed this in the same month, that ASEAN aimed to complete the first reading in 2019 and the COC in three years (ST, 2018). In doing so, China attempted to exclude external actors, particularly the United States, from influencing the SDNT. For example, China wanted to include a ban on oil exploration by external actors in the SCS, which was aimed at preventing the United States from concluding joint exploration projects with ASEAN member states (*Energy Monitor Worldwide*, 2018c).

External states watched the development of the SDNT closely, commenting on the progress, and militarily showed their presence in the SCS. In September, for instance, the United Kingdom for the first time sent HMS *Albion* to China-claimed territorial waters in the Paracels (Kelly, 2018). The frequency of US FONOPs also grew as the United States promised to conduct these operations wherever international law permitted (Lo, 2018). On January 17, 2018, the United States dispatched USS *Hopper* within 12 nautical miles of Scarborough

Shoal, which China considered militarization and used it to justify the installation of military facilities in the SCS (Lo, 2018; UPI, 2018).

As such, the SCS situation fell into an action-reaction vicious cycle. While the United States showed its diplomatic and military commitment, there was no effective way to roll back China's presence. Rather, US action facilitated a chain reaction from regional states. For example, on March 23, 2018, the United States, under the Trump administration, conducted its fourth FONOP in the SCS by sending USS *Mustin* within 12 nautical miles of Mischief Reef (CNA, 2018a). China responded by stating that the US FONOP was a "serious military provocation" that might cause "misjudgments and accidents at air or sea" (Ma, 2018).

On March 25, 2018, China sent its most advanced bombers and fighter jets, include the Su-35 and H-6K long-range strategic bombers, for "joint combat patrols" over the SCS (Bodeen, 2018a). China launched a weeklong series of live-fire drills from April 5, including aircraft carrier *Liaoning* and its combat group, while the United States also conducted military exercises with USS *Theodore Roosevelt* and its strike group (Chan, 2018). In April, China installed anti-ship cruise missile and surface-to-air missile systems on Fiery Cross, Subi, and Mischief reefs, which Chinese Foreign Ministry spokesperson Hua Chunying said were not directed at any state but were meant to "uphold [China's] sovereignty and territorial integrity" (*The Telegraph*, 2018).

Such an action-reaction cycle intensified US-China tension, increasing the probability of accident and miscalculation. Things came to a head-on September 30, 2018, when USS *Decatur* conducted another FONOP, traveling within 12 nautical miles of Gaven and Johnson reefs (*PressTV*, 2018). In response, Chinese destroyer *Lanzhou* approached within 41 meters, risking collision between the two, which forced USS *Decatur* to steer away from its path (Perlez & Myers, 2018; Wong, 2018b). China's Defense Ministry criticized the US action which "seriously threaten[ed] China's sovereignty and security" (CNA, 2018c). As CUES had not been followed, the US navy described the Chinese action as an "unsafe and unprofessional maneuver" (Pennington, 2018). The military tension also resulted in the cancellation of the US-China Diplomatic and Security Dialogue, which was meant to be held in mid-October.⁴ In the meantime, on October 30, China established weather observation stations

⁴ There were contradictory reports on who cancelled the meeting (Perlez, 2018; Wong, 2018a).

on Fiery Cross, Subi, and Mischief reefs, which could be used by civilians but also for military navigation purposes (Liu, 2018). This raised concerns not only in the United States, but also among ASEAN member states. While Vietnam protested against the installations, the Philippines indicated that it would raise the issue during the ASEAN Summit (*Asia Times*, 2018b; *Manila Times*, 2018).

To mitigate the increased tensions, the US–China Diplomatic and Security Dialogue was eventually held on November 9, with both sides emphasizing the importance of ensuring freedom of navigation and overflight, avoiding confrontation, and facilitating cooperation (CNA, 2018d). However, the United States reiterated concerns about China’s ongoing militarization in the SCS, urging China to remove its missile systems in the Spratlys, while China insisted on its “indisputable sovereignty” over the SCS, demanding a stop to US FONOPs (Bodeen, 2018b; US Department of State, 2018a, 2018b). Without a compromise reached, on November 26, the United States conducted another FONOP, sending USS *Chancellorsville* near the Paracel Islands, which China criticized, demanding the United States to cease “provocative actions” (Browne, 2018; *FARS News Agency*, 2018).

In 2019, competition between the claimant states played out in the drafting of the SDNT. Vietnam aimed to prevent China’s *fait accompli* by (1) banning the creation of new air defense identification zones, (2) clarifying maritime entitlements in accordance with international law, (3) blocking China’s proposal to ban military exercises in the SCS with external powers unless all signatories agree, and (4) blocking China’s proposal to exclude foreign oil firms by limiting joint development deals to China and Asia (*Manila Bulletin*, 2019a). Vietnam also continued opposing land reclamation and militarization, while requesting for an expanded geographical scope that included the Paracels and proposing the establishment of a dispute settlement mechanism (*ASEAN Tribune*, 2019a). The Philippines went a step further. On February 16, Philippine National Security Adviser Hermogenes Esperon Jr. proposed “internationalizing” the features of each claimant states in the SCS that could benefit all while “demilitarizing” the features (Le, 2019; Mangosing, 2019a). In doing so, the Philippines attempted to neutralize the unbalanced presence and assets of claimant states, particularly China’s because of its massive land reclamation. China had reclaimed 3200 acres in the Spratlys compared with Vietnam’s 120 acres and the Philippines’ eight acres (Mangosing, 2019a).

To make progress on the SDNT, diplomatic interactions between ASEAN and China increased. On February 27–28, 2019, China and ASEAN held the 27th Joint Working Group on the Implementation of the DOC in Myanmar (*Xinhua*, 2019). According to the Chinese ambassador to ASEAN, Huang Xilian, both ASEAN and China aimed to complete the first reading of the SDNT by the end of 2019 to meet the deadline of 2021 for the COC completion (*TNS*, 2019a). China also expressed determination to accelerate the completion of the COC, with State Councilor and Foreign Minister Wang Yi assuring China's commitment while highlighting its desire to "shield the negotiations from interference" (*PNA*, 2019a). The United States, nevertheless, continually commented on the SDNT negotiation process, requesting that the COC "[uphold] the rights of third parties and [be] fully consistent with international law, including as reflected in the 1982 UN Convention on the Law of the Sea" (US Mission to ASEAN, 2019).

But the slow process frustrated member states. Their main concern was that the delay would deteriorate the situation, which would make it more difficult to continue the SDNT negotiations. For example, President Duterte complained that the pace of negotiation was slow, and Philippine spokesperson Salvador Panelo stated, "The longer the delay for an early conclusion of the COC the higher the probability of maritime incidents happening and the greater the chance for miscalculations that may spiral out of control" (*FGDP*, 2019a). Vietnam echoed this frustration and told ASEAN that they should pay more attention to the events on the ground because of the incidents that Vietnam had faced from March. These events included the sinking of a Vietnamese fishing boat near Discovery Reef by a Chinese vessel in March; China's death threat to a Vietnamese boat near the Paracels on June 2; and the Reed Bank incident between the Philippines and China on June 22 (*VNExpress*, 2019b).

Consequently, the Philippines proposed at the ADMM to create guidelines on maritime conflict management "based on confidence building, preventive diplomacy, and peaceful tension management" (Dangprasith, 2019). There were also other proposals, including expanding the diplomatic hotline to other regional actors in times of crisis, so as to prevent tensions on the ground from impeding the COC negotiations. Hence, the ADMM emphasized the importance of confidence building measures, while commending the success of the 2018 ASEAN–China Maritime Exercise and welcoming the ASEAN–US Maritime Exercise to be held in September 2019.

ASEAN and China completed the first reading of the SDNT earlier than expected, on July 31. The main progress was that member states had seemingly reached a consensus that the COC would be legally binding. After the first reading, Foreign Minister Wang clarified China's position that the COC should be legally binding and facilitate regional stability that could benefit external powers (*Tendersinfo*, 2019). On August 28, 2019, Malaysia and Vietnam also issued a joint statement stipulating that the COC should be "effective, substantive, and consistent with international law, including the 1982 UNCLOS" (Ministry of Foreign Affairs, Malaysia, 2019). This first reading of the SDNT was less contentious because its main objective was to clarify the framework and important points (*China Daily*, 2019). With this diplomatic momentum, the first COC draft was completed on September 27. According to Philippine Secretary of Foreign Affairs Teodoro Locsin Jr., China no longer insisted on the exclusion of external states' military presence and instead proposed the establishment of a notification mechanism on military activities (*TNS*, 2019c).

Nonetheless, this achievement did not translate to positive developments on the ground. Admittedly, much of the diplomatic statement from China and ASEAN highlighted the ongoing "stability" in the SCS. At the 18th ASEAN–China SOM on the Implementation of the DOC on October 15, 2019, for instance, all parties agreed that the SCS situation was generally stable (*TNS*, 2019d). Yet, the gap between rhetoric and reality remained. This rhetorical gap was particularly felt in Vietnam due to the increasing number of incidents near the Paracels in 2019. As early as March, a Chinese fishing boat rammed into and capsized a Vietnamese fishing boat near Discovery Reef (*Postmedia Breaking News*, 2019a). On March 29, Vietnam denounced China's military exercises in the Parcel Islands and its plan to turn the Paracels into various Chinese cities following China's March 16 announcement of plans to transform Woody, Drummond, and Tree islands into cities and strategic logistics bases (*VNExpress*, 2019a).

A more prolonged China-Vietnamese confrontation occurred near Vanguard Bank in July 2019. On July 12, two Chinese and four Vietnamese coastguard vessels engaged in a confrontation and a weeklong standoff ensued. The incident was triggered by China's survey ship, *Haiyang Dizhi 8*, which had entered the area to conduct a seismic survey from July 3 to 11 (Liu, 2019a). While the United States supported Vietnam and accused China of interfering with Vietnam's longstanding

oil and gas exploration and production activities, China protested that China and the ASEAN states were “effectively implementing the DOC” and that the United States and other states were making irresponsible remarks, stirring trouble in the seas (*EFE Newswire*, 2019a). Vietnam countered by extending the schedule of its oil rig *Hakuryu-5*’s operations at Vanguard Bank from July 30 to September 15 (Ng, 2019; US Department of State, 2019a).

Although *Haiyang Dizhi 8* operated in the area for over one month and left briefly on August 7, China soon redeployed the ship near Vanguard Bank on August 14 (Liu, 2019b; Lye & Ha, 2019). This time, China dispatched 20 vessels, including eight coastguard vessels, 10 fishing boats, and two service ships, near ONGC Videsh’s oil exploration block near the Paracels (*Indian Government News*, 2019). Vietnam confirmed the return of the Chinese survey ship with escort vessels and demanded their withdrawal because they had violated Vietnamese sovereignty (*FGDP*, 2019c). On August 22, the US State Department again issued a statement of deep concern over China’s interference in Vietnam’s EEZ (*US Fed News*, 2019). This time, Australia also joined in: During the G7 meeting held on August 24–26, without naming China, Australia and Vietnam expressed “serious concerns” about “disruptive activities in relation to longstanding oil and gas projects” in the SCS (*Australian Government News*, 2019).

Meanwhile, China continued to enhance its presence in the Paracels. On September 5, 2019, China moved a 7500-metric-ton-capacity crane of the CNOOC to Vietnam’s EEZ, signaling its intention to install an oil rig in the area (*Newstex Blogs*, 2019). On September 13, *Haiyang Dizhi 8* anchored in Vietnam’s EEZ, which the Vietnamese government condemned as a violation of its sovereignty (*Energy Monitor Worldwide*, 2019). Vietnam also criticized China for pressuring ExxonMobil to relinquish its joint exploration project, Blue Whale, with PetroVietnam in its EEZ (*TNS*, 2019b). On October 24, *Haiyang Dizhi 8* finally departed Vietnam’s EEZ. Faced with China’s assertiveness, however, Vietnamese Deputy Foreign Minister Le Hoai Trung asserted on November 6 that Vietnam was considering every means to counter China over the SCS disputes, including litigation (*CNA*, 2019b; Hoang, 2019).

To be sure, China was not the only one conducting fait accompli. Vietnam also gradually upgraded its facilities in the Spratlys although they were of a much smaller scale compared with China’s activities. The upgrades reportedly took place on Spratly Island, where Vietnam’s

largest outpost and administrative center was located. These included an extension of its runway and the construction of a protected harbor on approximately 40 acres of reclaimed land (*AMTI*, 2019). Similar modest improvements were conducted on Pearson Reef, where Vietnam had reclaimed six more acres of land (*AMTI*, 2019). Altogether, Vietnam erected buildings on 10 major islets from 2017 (Anderson, 2019).

On the Philippines' part, it also gradually began to take strong action against China, being concerned about China's increasing presence in the Spratlys. In April 2019, President Duterte issued a strong message to China to "lay off" Thitu Island and that it was prepared for a "suicide mission" if China "touch[es]" it (Korporaal, 2019). On April 2–3, the Philippines and China held their Fourth BCM Meeting, led by Chinese Vice Foreign Minister Kong Xuanyou and Philippine Foreign Affairs Assistant Secretary Meynardo Montealegre. Both sides reaffirmed the importance of continual dialogue and confidence-building measures, freedom of navigation and overflight, and principles of international law including UNCLOS (*TrenderInfo*, 2019). However, the Philippine government also protested against China, which reportedly had 275 Chinese vessels in the disputed Sandy Cay near Thitu Island from January to March (Gomez, 2019; Korporaal, 2019).

Tensions rose on June 9, 2019 when a Chinese fishing vessel rammed into and sank a Philippine fishing boat, *F/B Gem-Ver I*, which had been anchored in Reed Bank. The Chinese vessel left the scene after the collision, leaving behind the 22-person crew onboard the sinking *F/B Gem-Ver I*, who were eventually rescued by a Vietnamese boat (*PS*, 2019b). On June 11, Philippine Defense Secretary Delfin Lorenzana rebuked China over the incident. China then proposed a joint investigation of the incident, which President Duterte accepted (*Postmedia Breaking News*, 2019b). On August 26, the Chinese shipowner whose fishing vessel was involved in the incident apologized and described it as an "accidental collision" (Pazzibugan & Ramos, 2019; *States News Service*, 2019). The Philippines eventually accepted the apology, but the incident had nonetheless further created mistrust between the two states.

On November 2, Duterte emphasized the necessity of self-restraint in the SCS, the early conclusion of the COC at the ASEAN Summit, and the importance of UNCLOS in resolving the disputes through the 2016 SCS Arbitral Tribunal's award (*Manila Bulletin*, 2019c; *NewsLine Philippines*, 2019). Regardless of whether such a statement on the award had come from domestic pressures, given the prolonged process without significant

improvement in the SCS situation, it indicated a certain postural change in Philippine diplomacy toward the SCS issue. This is mainly because, despite the “general stability in the South China Sea” rhetoric, ASEAN member states were still concerned about developments of the situation, including land reclamation and militarization (*JEN*, 2019). In short, there were perception gaps between ASEAN and Chinese leaders over the SCS situation (*PNA*, 2019b; *Shanghai Daily*, 2019).

The United States also more actively engaged in the SCS, militarily and diplomatically. By gradually increasing its frequency of FONOPs from 2017, the United States signaled that excessive claims would not be legitimized and that it would maintain its presence and commitment to defending international law.⁵ In addition, the United States clarified its role in the US–Philippines Mutual Defense Treaty—that is, to protect Philippine vessels in the SCS. On March 1, 2019, US Secretary of State Mike Pompeo officially discarded the treaty’s “strategic ambiguity” by stating that “any armed attack on Philippine forces, aircraft or public vessels in the South China Sea will trigger mutual defense obligations under Article 4 of our mutual defense treaty” (Cabato & Mahtani, 2019). This was a significant statement as it clearly indicated US commitment to defending the Philippines in the SCS for the first time.

Pompeo also began emphasizing the importance of the potential natural resources in the SCS. On March 13, 2019, he criticized China for blocking ASEAN member states through “coercive means” from exploring energy reserves in the SCS, which were said to be worth over US\$2.5 trillion (*Millennium Post Newspaper*, 2019). While China reiterated that external powers should refrain from interfering with regional issues and destabilizing the situation, the United States offered gas and oil extraction projects to ASEAN member states (Lu, 2019; *Manila Bulletin*, 2019b). According to Pompeo, some ASEAN member states were hesitant to pursue energy development projects in the SCS because

⁵ On January 7, US conducted a FONOP by sending USS *McCampbell* within 12 nautical miles of Lincoln, Tree, and Woody islands in the Paracels. On February 11, the United States sent USS *Preble* and USS *Spruance* within 12 nautical miles of Mischief Reef. On May 6, USS *Chung-Hoon* and USS *Preble* conducted a FONOP within 12 nautical miles of Gaven and Johnson reefs in the Spratlys. On May 19, USS *Preble* conducted a FONOP within 12 nautical miles of Scarborough Shoal. On November 20–21, USS *Gabrielle Giffords* and USS *Wayne E. Meyer* entered the Paracel Islands. “US Navy’s South China Sea passing criticized,” *Asia News Network*, May 20, 2019.

of China's coercion, and the United States would help them overcome such difficulties (*Manila Bulletin*, 2019b).

At the same time, the United States strengthened its maritime cooperation with ASEAN and its member states. On May 9, 2019, to promote maritime cooperation, Philippine, Indian, Japanese, and US navies sailed together to Singapore for the second phase of the ADMM-Plus Maritime Security Field Training Exercise (Mangosing, 2019b). In September, the United States conducted the first ASEAN–US Maritime Exercise in Thailand to match the inaugural ASEAN–China Maritime Exercise in 2018. In May, the United States Coast Guard conducted joint exercises with the Philippines in the SCS, and in October, joined the Philippines and Japan's maritime training (Mangosing, 2019c). Also, as part of its capacity-building efforts, the United States sent 34 ScanEagle unmanned aerial vehicles (UAVs), worth US\$47.9 million, to Malaysia, the Philippines, Indonesia, and Vietnam, which would be used for “surveillance of local waterways,” including the SCS (*ASEAN Tribune*, 2019b). The UAVs would be delivered by March 2022, providing 12 for Malaysia, eight for the Philippines and Indonesia, and six for Vietnam.

Diplomatically, the United States and its allies continued advocating for the importance of international law in the SCS disputes outside of ASEAN frameworks. On June 1, 2019, the Australia–Japan–US Defense Ministers' Meeting issued a joint statement requesting (1) the SCS COC to be “consistent with existing international law,” including UNCLOS, (2) the COC to not “prejudice the interests of third parties or the rights of all states under international law,” (3) the parties concerned to conduct self-restraint in order not to complicate and escalate the tension (US Department of Defense, 2019). In August, the three states' Trilateral Strategic Dialogue “expressed serious concerns about negative developments” in the SCS and opposed any unilateral action, including militarization and land reclamation (US Department of State, 2019b).

These stronger actions further fueled reactions from China and ASEAN member states. Chinese Foreign Ministry spokesperson Hua Chunying had already stated in February that it was “the United States that drove its advanced warships into the South China Sea from afar” and that it was “self-evident” who was militarizing the SCS (Mo, 2019). On July 29, Chinese ambassador to ASEAN Huang Xilian stated that the “biggest threat” in the SCS came from “outside,” pointing to the “frequent intrusion... under the name of ‘freedom of navigation’,” without naming the United States (Huang, 2019). Foreign Minister Wang Yi

followed suit, stating that those external powers took advantage of claimant states' differences to "sow mistrust" (*EFE Newswire*, 2019b). Among ASEAN member states, Cambodia pointed out that external powers should not interfere with the SCS issue. On July 29, Cambodian government spokesperson Phay Siphon repeated China's line, that outsiders should not destabilize the SCS "under the pretext of freedom of navigation," which would affect ASEAN-China joint efforts (*People's Daily*, 2019). This point was reiterated at the ASEAN-China Foreign Ministers' Meeting.

Contrary to these accusations, US Secretary Pompeo at the ASEAN-US Foreign Ministers' Meeting reiterated the negative impact of China's coercive action in the SCS. Pompeo said that ASEAN members needed to "stand firm against China's coercion" which hindered oil and gas exploration by regional states (*FGDP*, 2019b). Vietnamese Foreign Minister Pham Binh Minh also accused China of "seriously threaten[ing] the legitimate rights and benefits of coastal countries, erod[ing] trust, and intensify[ing] tension," by raising the incident of China's confrontation with Vietnam near Vanguard Bank (*EFE Newswire*, 2019c).

Meanwhile, Malaysia grew cautious of China's behavior, particularly after Mahathir Mohamad became prime minister in May 2018. On March 7, 2019, Mahathir adopted a line similar to the Philippines' and Vietnam's, urging China to clarify what it meant by "ownership" of the SCS, referring to its 9DL (*PS*, 2019a). In April, China proposed a bilateral meeting with Malaysia to discuss their territorial disputes, yet Malaysian Foreign Minister Saifuddin Abdullah stated that the Malaysian government would not discuss the issue bilaterally but would do so within ASEAN frameworks (*CNA*, 2019a). This is partly because, according to Mahathir, ASEAN needed to maintain its centrality, and given the SDNT process, ASEAN should be the avenue for managing the disputes (*CNA*, 2019a). This is also because, as Saifuddin inferred, the bilateral mechanism could be used as China's "divide and conquer" strategy toward ASEAN (*SCMP*, 2019). Nonetheless, on September 12, Saifuddin announced that Malaysia and China had agreed to establish a BCM to discuss the SCS issue, particularly on promoting maritime cooperation (*FGDP*, 2019d). However, he assured that the BCM was not the place to discuss territorial and maritime claims, insisting that ASEAN was the only proper venue to do so (Sukumaran, 2019).

The SCS situation took a turn on December 12, 2019 when Malaysia revitalized the legal discussion by submitting information on the SCS to the CLCS, providing “a partial submission for the remaining portion of the continental shelf of Malaysia beyond 200 nautical miles in the northern part of the South China Sea” (CLCS, 2020e). This move was a surprise, but some speculated that because the 2016 SCS Arbitral Tribunal’s award had legally invalidated China’s 9DL and the ASEAN–China COC was gaining political traction for its completion, it was the right timing for Malaysia to gain bargaining power in shaping the COC (e.g., Nguyen, 2019).⁶

China opposed Malaysia’s claim, stating that Malaysia had infringed China’s sovereignty in the SCS islands, which were not only within its “internal waters, territorial sea and contiguous zone,” but also in its “exclusive economic zone and continental shelf” (Beckman, 2020; Cordoba, 2019; UN, 2019). Since China’s statement contradicted the arbitral award as well as the claims of three ASEAN states—Malaysia, the Philippines, and Vietnam—this again cast a long shadow over ASEAN–China cooperation in the SCS, triggering further legal and political contention by regional states. These included Australia, France, Germany, Indonesia, Japan, New Zealand, the United Kingdom, and the United States; from January to August 2020, all of them were either explicitly or implicitly supportive of the arbitral award.

Despite progress on the SDNT, strategic uncertainty remained in the SCS. While ASEAN and China attempted to emphasize the general stability of the SCS, each ASEAN member state had a different threat perception. Some, particularly Vietnam, were more concerned about China’s *fait accompli* behavior on the ground. These concerns were exacerbated by the increasing great-power competition. In the context of the US–China trade war, the United States was eager to increase its presence in the SCS through FONOPs. Yet, considering US President Donald Trump’s neglect of ASEAN multilateralism, shown by his

⁶ To be sure, Malaysia acknowledged that there would possibly be overlapping claims, but considering that Malaysia’s joint submission with Vietnam was based on the baselines of their coasts and the Philippines’ claims were based on archipelagic baselines, none of the three claimed that reefs and rocks in the Spratlys generated an EEZ. This means that Malaysia’s consideration of overlapping claims was with the Philippines and Vietnam, not with China (UN, 2017).

absence at ASEAN-led forums, including the EAS, two years in a row, US commitment to the SCS was made primarily to compete with China for regional primacy, not stability. For ASEAN, therefore, these factors became another point of concern in terms of regional stability.

3.4.2 2020: COVID-19 Disruption and Re-emergence of Legal Debates

In 2020, Vietnam became the ASEAN chair, and it was expected that Vietnam would focus more on the SCS issue at ASEAN-led forums. In fact, given China's increasingly assertive behavior near the Paracels in 2019, Vietnamese Deputy Foreign Minister Nguyen Quoc Dung confidently mentioned that China would restrain its behavior while Vietnam held the ASEAN chairpersonship, indicating that Vietnam would watch China's actions in the SCS closely (*Kyodo*, 2019). As Vietnam was the most outspoken claimant state at the point, it was willing to raise the SCS issue at ASEAN-led forums without hesitation. Accordingly, Vietnam prioritized expediting the COC negotiation process as indicated by Foreign Affairs spokesperson Le Thi Thu's remark in February that the SCS would be high on the agenda of the 2020 ASEAN Summit (Connors, 2020; Valente, 2020).

At the same time, the tension between Indonesia and China rose rapidly from late December 2019. According to the Indonesian Maritime Security Agency, there were at least 63 Chinese fishing and coastguard vessels trespassing Indonesia's EEZ near the Riau Islands in the period of December 19–24 (Fadli & Septiari, 2019). Immediately after Indonesia's Ministry of Foreign Affairs received the information, Indonesia filed a diplomatic protest by summoning the Chinese ambassador (Fadli, 2019). In response, China invited Indonesia for a dialogue to “manage [the] disputes,” which Indonesia rejected as it insisted that there were no overlapping claims or disputes in Indonesia's EEZ (*The Jakarta Post*, 2020a). Indonesia's Foreign Ministry added, “China's claims to the exclusive economic zone on the grounds that its fishermen have long been active there... have no legal basis and have never been recognized by the 1982 UNCLOS” (*The Japan Times*, 2020). Indonesian President Joko Widodo then reasserted Indonesia's sovereignty by ordering warships and

fighter jets to the Natuna Islands and visiting the area on January 8, following which Chinese ships eventually left the area (Patterson, 2020). Accordingly, Indonesia's Foreign Minister Retno Marsudi said, "Positive progress achieved on the [COC] negotiating table must also be reflected on the ground," recognizing the gap between diplomatic discussion and action in the SCS (Connors, 2020). At the ASEAN Foreign Ministers' Retreat held on January 17, 2020, member states agreed to ensure that international laws, particularly UNCLOS, would be upheld in the SCS (*Indonesia Government News*, 2020). Additionally, Vietnam's Foreign Minister Pham Binh Minh stated that all ministers expressed concerns about land reclamation and the recent serious incidents in the SCS (*The Jakarta Post*, 2020b). These issues were also reflected in the press statement (ASEAN Secretariat, 2020).

Against this backdrop, the emergence of the COVID-19 pandemic greatly disrupted the agendas and schedules of ASEAN, including the SCS negotiation process (Koga, 2020). After the World Health Organization (WHO) announced on January 30 that COVID-19 was a public health emergency of international concern, the agenda of ASEAN-led forums began to focus on pandemic management, and after the WHO declared COVID-19 a pandemic, some of the forums were postponed and moved online, with the agenda dominated by the pandemic. For example, the ASEAN–China COC negotiation had been scheduled in Brunei in February, the Philippines in May, Indonesia in August, and China in October; however, all were postponed (Septiari, 2020). On June 10, the Chinese ambassador to the Philippines Huang Xilian stated that the SCS dialogue was "proceeding smoothly and effectively," although ASEAN and China were unable to hold any discussion (Tadalan, 2020). Jose Tavares, Indonesia's Director-General for ASEAN Cooperation, indicated that there would be a potential delay in completing the COC negotiations as they "[could not] be held virtually"—collective bargaining and trust-building required face-to-face interaction (*Kyodo*, 2020; Septiari, 2020). Therefore, the process was again delayed, and it was increasingly unclear whether the COC could be completed by the end of 2021.

Moreover, despite the pandemic, which required international cooperation to manage, the SCS situation remained volatile and maritime skirmishes continued. On April 2, a Vietnamese fishing boat was rammed

into and sunk by a Chinese coastguard vessel near the Paracels, and Vietnam officially protested against China (Vu, 2020). The Philippine Foreign Affairs Department also supported Vietnam, expressing “deep concern” about the incident and referred to its own experience in June 2019, when a Philippine fishing boat had suffered the same fate (FGDP, 2020a). The United States followed suit, accusing China of exploiting the COVID-19 situation to advance China’s “unlawful claims” in the SCS (Huang, 2020).

Nevertheless, China maintained its assertive presence in the SCS. On April 18, China announced two new administrative districts in Sansha City that covered the Spratlys and Paracels—Xisha District People’s Government and Nansha District People’s Government—whose headquarters were located on Woody Island and Fiery Cross Reef respectively (Haver, 2020). Subsequently, on April 19, the Chinese ministries of natural resources and civil affairs issued the names of 25 islands and reefs and 55 seafloor geographical entities in the SCS (Zhao, 2020). These actions aimed to strengthen China’s legal claims by effectively administering the areas. Furthermore, on April 16, China’s *Haiyang Dizhi 8* entered waters near Malaysia, approaching the Petronas-operated *West Capella* (ST, 2020). *Haiyang Dizhi 8* was escorted by China’s coastguard ships and remained in the area until May 15 to conduct a survey, and given the risk of tension, *West Capella* suspended operations on May 12 (ASEAN Tribune, 2020a). Furthermore, on June 13, Vietnam and Spanish company Repsol decided to cancel their operations because the situation had not stabilized (Hayton, 2020). In July, China again sent survey ship *Haiyang Dizhi 4*, accompanied by China Coast Guard ship CCG 5402, to Vanguard Bank, continually challenging Vietnamese claims. In addition to these moves, the China Maritime Safety Administration announced that China would be conducting a large-scale naval exercise near the Paracels on July 1–5 (ASEAN Tribune, 2020b). Vietnam protested against this as it would “seriously violate Vietnam’s sovereignty,” and even Philippine Defense Secretary Delfin Lorenzana expressed that it was “highly provocative” as it would potentially spill over to Philippine territory, thus triggering “alarm bells” for all claimant states (DPA, 2020a; FGDP, 2020b).

ASEAN and the United States contested China's moves by bringing up the 2016 arbitral award more explicitly. The Philippines and Vietnam reaffirmed the award, asserting that none of the high-tide features at the Spratly Islands generated an EEZ and continental shelf (CLCS, 2020a, 2020b). On May 26, Indonesia explicitly stated that China's 9DL had been rejected by the Arbitral Tribunal. It also claimed on June 12 that Indonesia's official position was consistent with the award and thus there was no need to negotiate maritime delimitation with China (CLCS, 2020c, 2020d). Meanwhile, Malaysia displayed a stronger posture to reject China's 9DL claims, stating that "the Government of Malaysia rejects China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the SCS encompassed by the relevant part of the 'nine-dash line'" (CLCS, 2020g).

Furthermore, there emerged a number of East Asian and European states, such as France, Germany, Indonesia, and the United Kingdom, that explicitly indicated their legal support for the arbitral award (CLCS, 2021). The United States castigated China's "unlawful assertions" in the SCS, accusing China of being a "bully," and formally protested against it by sending a letter to the UN Secretary-General (Ananthalakshmi & Latiff, 2020; Ching, 2020; Lau, 2020; Long, 2020; UNGA, 2020). On July 13, on the occasion of the fourth anniversary of the 2016 SCS Arbitral Tribunal Award, US Secretary of State Mike Pompeo issued a press statement titled "US Position on Maritime Claims in the South China Sea." Although the general stance of the United States was unchanged, the statement explicitly rejected China's 9DL to claim resources in the SCS as "unlawful" (US Department of States, 2020). On July 26, Australia also stated that it "rejects China's claim to 'historic rights' or 'maritime rights and interests' as established in the 'long course of historical practice'" in the SCS on the basis of the arbitral award (CLCS, 2020f).

In this sense, through legal procedures, Malaysia and Indonesia, in addition to the Philippines and Vietnam, as well as other external powers such as the United States and Australia, explicitly and implicitly showed their support for the arbitral award. China again "firmly opposed" the US statement, accusing the United States of "interfering" in the SCS issue (*Xinhua*, 2014b). At the same time, China summoned ASEAN

ambassadors to discuss the SCS situation and showed willingness to accelerate the COC negotiations, which had stalled after the outbreak of the pandemic (Wong, 2020).

That said, Southeast Asian states had not reached consensus on their diplomatic posture. Although Vietnam was largely supportive of the strong US statements against China (DPA, 2020b), some states were more cautious about the intensified US–China rivalry over the SCS. Malaysian Foreign Minister Hishammuddin Hussein emphasized the importance of peaceful resolution and international law but was inclined to conduct quiet diplomacy, stating Malaysia should not be “dragged and trapped” by the great-power competition (JEN, 2020; Yusof, 2020). Indonesia was also hesitant to escalate regional tensions and rejected the US request in July and August to allow the US P-8 Poseidon surveillance plane to land for refueling (Allard, 2020). Even Philippine presidential spokesperson Harry Roque downplayed the maritime issue, stating that it did not “sum up [the Philippines’] relations with China” (Siow, 2020).

More notably, ASEAN member states did not support US economic sanctions on China’s SCS-related companies and individuals in August 2020. Frustrated with the lack of progress, the United States had imposed economic and diplomatic sanctions on 24 Chinese companies and individuals that played a role in the militarization of the artificial islands in the SCS (Heavy et al., 2020). On September 9, Pompeo asserted that as Southeast Asian states faced maritime bullying by China, they should not “just speak up but act” by reconsidering their business relations with China’s state-owned enterprises (Nguyen, 2020). Nevertheless, ASEAN member states were not responsive to this call by the United States. While most remained silent, Foreign Minister Retno Marsudi reiterated Indonesia’s desire not to “get trapped by this [US-China] rivalry,” while Malaysian Foreign Minister Hishammuddin shared the same concern (CNA, 2020; *Malaysia General News*, 2020). The Philippines was more explicit in its stance, stating that it would not follow US sanctions and maintained business ties with those Chinese enterprises (*Radio Free Asia*, 2020). Subsequently, President Duterte stated that the SCS should not be “another locus of... power play” (*Manila Bulletin*, 2020).

Indeed, ASEAN members still preferred diplomatic means for maintaining the SCS stability. Facing US diplomatic pressures, China began to facilitate the COC negotiations to prevent the United States and

others from discussing the SCS situation. Chinese Foreign Minister Wang Yi made a five-day visit to Southeast Asian states, including Cambodia, Malaysia, Laos, Thailand, and Singapore on October 11–15 and encouraged ASEAN to work together to prevent “external disruption” in the SCS (Chu & Lee, 2020). Also, in November, Chinese Premier Li Keqiang stated that ASEAN and China should “speed up negotiations to demonstrate to the international community that we have the wisdom and capability to take good control of the South China Sea,” and expressed the desire to host a physical meeting in China although the timeline was not stated (Zhou, 2020). On the other hand, ASEAN members were willing to take advantage of this situation to pursue the early conclusion of the COC, while some states, including Vietnam, the Philippines, and Indonesia, held their individual legal position in rejecting China’s 9DL claims (*ASEAN Tribune*, 2020c).

3.4.3 *Major Strategic Events in the SCS, 2017–2020*

The 2016 SCS Arbitral Tribunal’s award opened up a new strategic option for ASEAN claimant states in terms of how to approach China. Admittedly, the Philippines and other member states were increasingly hesitant to immediately take coercive means to implement the arbitral award because they simply lacked the military capabilities to do so, and even if they relied on regional great powers, particularly the United States, the latter’s commitment would not be clear. In fact, the United States, under the Trump administration, began to explicitly engage in strategic competition with China as one of the “revisionist states,” yet its commitment to the SCS issue was not ensured as Trump was consistently absent from ASEAN-led forums. Furthermore, the 2016 arbitration was essentially a bilateral case between the Philippines and China, and thus some ASEAN member states, such as Cambodia, were unwilling to discuss it in a multi-lateral setting. As a result, ASEAN decided not to discuss the award, and this rested on the individual member state’s legal posture.

That said, China and ASEAN were willing to accelerate the early conclusion of the COC after the arbitral award. This is partly because China wanted ASEAN to divert its attention from the award, and ASEAN member states also wanted to conclude the COC without coercive means. Therefore, from 2017 to 2019, there were several positive developments in the COC negotiations, albeit slowly, including the COC framework that was endorsed in August 2017; the SDNT that was adopted in August

2018; and the first reading of the SDNT in July 2019. It is true that despite these positive trends, there were contentious debates over issues such as whether the COC ought to be legally binding, whether it should address the 2016 award as part of international law, and whether it could create regional norms, particularly a ban on military exercises with external actors without the consent of concerned parties. Moreover, while progress stagnated, the SCS situation on the ground remained tense. Nonetheless, ASEAN and China aimed to complete the second reading of the SDNT and create the COC by the end of 2021.

In this context, the pandemic in 2020 caused a great disruption for the COC negotiations. Inevitably, the political and diplomatic priorities of China and Southeast Asian states revolved around COVID-19 countermeasures. Given the hiatus of face-to-face diplomatic meetings, the COC negotiations significantly slowed down. In the meantime, the legal debate over the SCS revived after Malaysia's partial submission of information regarding its territorial claims in December 2019, which triggered responses from Australia, France, Germany, Indonesia, the Philippines, the United States, and Vietnam (as well as Japan and New Zealand in 2021), which rejected China's 9DL claims, referring to the arbitral award. Furthermore, despite the pandemic, the SCS situation continued to be contentious, as military exercises were held in the SCS by China and the United States in July 2020 and skirmishes occurred between fishing boats and coastguard ships among the claimant states. Eventually, the legal debates and continually tense situation in the SCS triggered the strong US reaction against China, resulting in economic sanctions on SCS-related Chinese enterprises and individuals in August 2020.

ASEAN member states did not follow the US request to enact similar sanctions, but this prompted China to immediately condemn US interference in the SCS and to request the immediate resumption of the COC negotiations and its early conclusion. Nevertheless, as the COVID-19 situation prolonged because of the emergence of new variants, particularly the delta variant, the timeline of the COC negotiations accordingly shifted.

Table 3.4 shows the major events that shaped the strategic environment in the SCS from 2017 to 2020.

Table 3.4 Major strategic events, 2017–2020

<i>Year</i>	<i>Month</i>	<i>Major strategic event</i>
2017	December	Trump administration issues US National Security Strategy
2019	July	US Secretary of State Mike Pompeo clarifies US-Philippines Mutual Defense Treaty to cover the SCS
	December	Malaysia submits its territorial claims to the CLCS
2020	January	WHO declares COVID-19 as a public health emergency of international concern
	March	WHO declares COVID-19 as a pandemic The Philippines submits a note on its territorial claims to the UN Secretary-General Vietnam submits a note on its territorial claims to the UN Secretary-General
	May	Indonesia submits a note on its position in the SCS to the UN Secretary-General
	June	The United States submits a note on its position in the SCS to the UN Secretary-General
	July	China and the United States conduct military exercises in the SCS Australia submits a note on its position in the SCS to the UN Secretary-General
	August	United States enacts economic sanctions on SCS-related Chinese enterprises and individuals
	September	United Kingdom submits a note on its position in the SCS to the UN Secretary-General France submits a note on its position in the SCS to the UN Secretary-General Germany submits a note on its position in the SCS to the UN Secretary-General

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