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# Managing Great Power Politics

ASEAN, Institutional Strategy,  
and the South China Sea

Kei Koga

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Kei Koga

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# PREFACE

## ROLE OF REGIONAL SECURITY INSTITUTIONS UNDER POWER SHIFTS

The ongoing power shift in the global geopolitical landscape has created strategic uncertainty in the future configuration of the balance of power. In the post-Cold War era, the United States as the sole superpower largely shaped an international order based on its “liberal” principles—democratic system of governance, rule of law, and fundamental rights, notably human rights—but it increasingly faced a number of strategic challenges in the twenty-first century. Most notably, China’s increasing economic and military presence in East Asia and beyond has become the most significant geopolitical phenomenon in the world. While the preponderance of the United States is expected to remain in the near future, its individual capabilities to define an international order would likely decline in relative terms.

In this power shift, realists argue that the most important variable is strategic rivalry and alignment between great powers. From the 2010s, China, the European Union, India, Japan, Russia, and the United States can be considered existing and potential great powers; thus, examining their shifting relations would offer us important implications for the global strategic outlook. Nevertheless, what is missing in the examination of these relationships is the role of non-great powers and their institutions—regional security institutions (RSIs).

Existing in many places around the world, RSIs explore ways to shape the regional order by nurturing the region's own principles, norms, and rules. They can assume such a role simply because great powers cannot always reach every corner of the world to install their aspirational global order. Under a power shift, great powers' tendency to do the latter becomes less acute because they prioritize the protection of their own national interests over regional order-building. As a result, great powers are unable to provide sufficient public goods for security in less prioritized regions. It is in this context that RSIs play a significant role in constructing and reconstructing regional order with its own political resources.

Indeed, RSIs—such as the Association of Southeast Asian Nations (ASEAN), African Union, Economic Community of West African States, Gulf Cooperation Council, and the South Asian Association for Regional Cooperation—have attempted to nurture their respective region's interstate relationship and increase their capacities to address regional political and security issues. Some institutions, like the Asian and Pacific Council and the 1967 East African Community, failed to sustain themselves, but the survivors have contributed to stabilizing regional security when they face security crises ranging from political tensions among member states to internal conflicts in regional states to non-traditional security.

Too often, their success has been dismissed quickly. This is largely because RSIs do not have material capabilities to enforce rules and norms, and the achievements are attributed to other factors such as a change in great powers' behavior. However, military and economic punishment is not the only means to measure institutional effectiveness. While great-power-led institutions with substantial material capabilities often fail to enforce their rules and norms, RSIs navigate or direct members or non-members to comply with or to not violate the rules. This is why many regional states invest their time and resources in nurturing their own institutions despite a lack of material capabilities.

Under a power shift, RSIs move toward safeguarding their own interests because as great powers compete with each other over international rules, norms, and standards, this can potentially marginalize the role of non-great powers in the rule-making process. To this end, RSIs act as a bloc of international constituencies who have a casting vote to legitimize the rules and norms that serve their member states' interests. Accordingly, while RSIs do not have the authority to determine regional rules and

norms, they have sufficient diplomatic influence to shape great powers' behavior and preferences.

In this context, this book focuses on ASEAN as an RSI in Asia and explores institutional strategies that ASEAN and ASEAN-led institutions have employed to manage great-power politics in the South China Sea (SCS). Constructing a theoretical model of institutional strategy, the analysis aims to contribute both academically and practically. Academically, the analysis fills a critical gap between international institutions and strategic behavior in international relations (IR) literature. Traditionally, most IR literature focuses on great-power politics because great powers have material capabilities, and often soft power, to shape international politics. However, RSIs can no longer be ignored in international politics, as secondary powers collectively act through the institutions to influence regional security affairs, setting their security agendas, and legitimizing their rules and norms. In this sense, an analysis of the strategic utility of RSIs contributes to the advancement of the theoretical model of institutional strategy and provides an in-depth understanding of regional security dynamics.

Practically, the theoretical model provides policymakers with an analytical tool to clarify how RSIs, particularly ASEAN, are able to shape the regional strategic environment and construct a regional order. While many question whether ASEAN's strategic posture tilts toward one particular great power—the United States or China—the question does not consider the diplomatic power of ASEAN to prevent its member states from making such a choice. This book contributes to a better, more nuanced understanding of RSIs' strategic role and behavior, which helps policymakers assess the degree to which ASEAN is capable of managing great-power politics.

Singapore

Kei Koga



## ACKNOWLEDGMENTS

This book is the outcome of my research project on ASEAN's institutional strategy for the South China Sea disputes. To date, there are many studies on both ASEAN and the South China Sea, but there is scarce literature on the role of regional institutions led by non-great powers in managing traditional-security issues including territorial disputes. Starting from this question, I published the article, "ASEAN's Evolving Institutional Strategy: Managing Great Power Politics in South China Sea Disputes," in *The Chinese Journal of International Politics* in 2018, with very helpful comments and suggestions that I received from the Association for Asian Studies in 2016 and the International Studies Association annual convention in 2017. But since the article only focused on the role of the East Asia Summit (EAS), the ASEAN Defence Ministers' Meeting (ADMM), and the ADMM-Plus, I expanded my research by broadening the time span to 1990–2020, contextualizing the strategic dynamics of the South China Sea from the end of the Cold War, and including other important ASEAN-led institutions, namely, the ASEAN Foreign Ministers' Meeting, the ASEAN Summit, ASEAN–China dialogues, and the ASEAN Regional Forum in addition to the EAS and the ADMM/ADMM-Plus.

As a result, extensive research was necessary, and I am indebted to many for their valuable comments and suggestions, particularly Tan See Seng and Collin Koh, and to Han Wen Chou, Mathew Yeo Jie Sheng, Melvin Ho, Ng Jiaming Jeremy, Patwardhan Nandini Rajesh, Tan Kai Wen Aaron, Teo Ang Guan, and Wang Shuqi for their dedicated research

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Finally, I would like to thank my wife, Nozomi, and my son, Shota, for being patient and for their encouragement. This book could not have been completed without their generous support.

# PRAISE FOR *MANAGING GREAT POWER POLITICS*

“Kei Koga is one of Asia’s most thoughtful observers of regional security architecture. At a time when commentators question ASEAN’s effectiveness and the viability of multilateralism more generally, he demonstrates its ability to shape great power behaviour in one of this region’s most intractable flashpoints - the South China Sea. Theoretically rigorous and empirically rich, this book is required reading for Asian security scholars and practitioners alike.”

—Prof. Brendan Taylor, *Professor of Strategic Studies, Australian National University, Australia*

“An empirically rich and distinctive study of small-state agency at the group level. Focusing on the “quasi-division of labor” among the ASEAN-led mechanisms, the book unpacks the ASEAN states’ institutional strategy of maintaining stability in the South China Sea. A timely contribution to understanding weaker-state hedging and the debate on the roles and limits of regional multilateralism amidst the growing big power rivalry in the Indo-Pacific era.”

—Prof. Cheng-Chwee Kuik, *Associate Professor, National University of Malaysia (UKM), Malaysia*

“The South China Sea literature is increasingly dominated by the role of the great powers with too little attention given to other actors. This book fills this gap by bridging security studies and the role of regional institutions. It offers conceptual innovation and convincingly studies the strategic utility of the ASEAN-led institutions in managing great power politics and curbing their ambitions in the disputed waters.”

—Prof. Ralf Emmers, *Dean of S. Rajaratnam School of International Studies, Nanyang Technological University, Singapore*

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## Introduction: ASEAN's Strategic Utility Redefined

Does ASEAN play a role in managing security issues in Southeast Asia and beyond? ASEAN is considered one of the most successful regional security institutions (RSIs), particularly after the end of the Cold War. The end of the Cold War created a power vacuum in East Asia, and there was political momentum in the region to establish multilateral economic and security organizations to fill that vacuum. Indeed, non-ASEAN member states, such as Australia and Japan, have successfully created a multilateral economic institution, the Asia–Pacific Economic Cooperation. However, it was ultimately ASEAN that shaped the regional multilateral architecture in the post-Cold War Asia–Pacific. Building on ASEAN's Post Ministerial Conferences (PMCs) to interact with external actors, it started to establish a number of affiliated institutions, including the ASEAN Regional Forum (ARF) in 1994, ASEAN Plus Three (APT) in 1997, East Asia Summit (EAS) in 2005, and the ASEAN Defence Ministers' Meeting Plus (ADMM-Plus) in 2010. This was possible because the 1992 ASEAN Summit decided to expand its institutional agenda by including political and security issues in ASEAN forums (ASEAN Secretariat, 1992). In short, ASEAN, as the core of regional multilateralism, encompassing small, medium, and great powers in the region, became *the* RSI in East Asia.

Nevertheless, the strategic environment created by ASEAN through the construction of regional multilateral architecture in East Asia has been gradually changing because of the emerging strategic competition

between China and the United States. China's vast economic market attracted regional states and created significant trade and financial dependence on the country. Its Belt and Road Initiative provided an alternative development assistance to developing states that were unable to meet the high international standards set by global institutions such as the Organisation for Economic Co-operation and Development. China's increasing military presence in East Asia also placed strategic pressure on regional states, such as Brunei, Indonesia, Japan, Malaysia, the Philippines, and Vietnam, particularly over the East and South China Seas. Institutionally, China proactively established non-ASEAN institutional frameworks, including the Asian Infrastructure Investment Bank and the Shanghai Cooperation Organisation. As such, China's military, economic, and political rise has altered the US unipolar system in the region.

The United States, on the other hand, has long considered ASEAN's multilateral institutions in Asia-Pacific to be "supplementary" to the US-led bilateral security arrangement, the hub-and-spokes system (Goh, 2004). However, facing new security challenges in the 2000s, particularly the rise of international terrorism after September 11, 2001, and China's strategic challenges in the 2010s, the United States and its allies began to transform its hub-and-spokes system into a more networked system, so that the "spokes" can cooperate more deeply. Examples include the US-Australia-Japan Trilateral Strategic Dialogue, the US-India-Japan framework, and the US-Australia-Japan-India quadrilateral framework, the so-called "Quad." These trilateral and minilateral frameworks began to comprehensively enhance cooperation among major powers in the region. In fact, the United States has pushed for the "Free and Open Indo-Pacific" concept since 2017, expanding its geostrategic focus from the traditional "Asia-Pacific" to the area ranging from the "west coast of India" to the "western shores of the United States" (The White House, 2017, pp. 45-46).

As new strategic groupings such as the Quad emerge, new, non-ASEAN institutional frameworks would be further created in the region based on these trilateral and minilateral frameworks. While the United States, China, and other major powers have repeatedly highlighted the importance of "ASEAN centrality"—the principle that ASEAN plays a central role in regionalism—the newly emerged frameworks, if fully developed, would potentially marginalize ASEAN's institutional *raison d'être* (Koga, 2022). In other words, the current great-power rivalry between the United States and China would diminish the diplomatic viability of

ASEAN as the RSI in Asia, and ASEAN would risk losing its central position.

Considering the increasing importance of these geopolitical and traditional-security trends, is ASEAN destined to be institutionally marginalized? Or can ASEAN continue to play a significant role in shaping the regional security landscape? Responding to these questions, scholars and practitioners have long debated over the effectiveness and utility of ASEAN, particularly in the political-security field, and their opinions are divided.

Those who view ASEAN's utility positively focus on intra-regional relations, regional norms, and non-traditional security issues. First, they attribute to ASEAN the long-lasting, peaceful relationship among member states. Since ASEAN's establishment in 1967, there has been no major conflict among member states despite the political and military tensions among them (Kivimaki, 2012; Mahbubani & Sng, 2017; Natalegawa, 2018). While ASEAN has yet to resolve the fundamental interstate problems, it has facilitated stability through conflict management (Acharya, 2014; Collins, 2007; Koga, 2014; Scott, 2012). Second, they argue that the diffusion of ASEAN's institutional norm, the "ASEAN Way," transcends Southeast Asia to East Asia and beyond through ASEAN-led institutions. The ASEAN Way includes norms and practices of informality, the non-interference principle, consultation, non-use of force, and consensus decision-making process. This set of norms has been nurtured and practiced by ASEAN member states and diffused to regional states, including the great powers, through regional institutions (Acharya, 1997; Ba, 2006, 2009; Katsumata, 2004, 2006; Nabers, 2003; Roberts, 2012; Severino, 2006; Shambaugh, 2005; Suzuki, 2021; Tan, 2013; Terada, 2003). Third, ASEAN facilitates economic cooperation and provides forums for regional states to conduct multilateral dialogues, build confidence, coordinate policy, and create norms and rules (Ba, 2006; Kawasaki, 2006; Shoji, 2012; Simon, 1998; Tang, 2012; Yoshimatsu, 2006). In this context, non-traditional security issues, such as natural disasters, piracy, and international terrorism, which are transnational in nature and require international cooperation, become an important cooperative agenda in ASEAN meetings. These are the essential utility of ASEAN in shaping the regional order in Southeast Asia and beyond.

On the other hand, those who view ASEAN's utility negatively tend to focus on ASEAN's political disunity and its lack of capabilities.

They argue that the member states' pursuit of their own national interests, mutual distrust, limited material capabilities, the inflexible "ASEAN Way" as an institutional norm, and the shallow cooperative framework create the illusion of, or at best conditional, cooperation among member states and with external states (Haacke, 2003; Hsueh, 2016; Jetschke & Ruland, 2009; Leifer, 1999; Narine, 2008; Nischalke, 2000, 2002; Odgaard, 2003; Ruland, 2000; Sharpe, 2003; Yuzawa, 2006). Even for non-traditional security issues, ASEAN was unable to reach a deeper agreement among member states, such as information- and intelligence-sharing against disease, international terrorism, and environmental matters including Indonesia's haze issue (Collins, 2013; Funston, 1998; Jones & Smith, 2007; Nurhidayah et al., 2015; Simon, 2008). Most fundamentally, critics argue that ASEAN has never been capable of addressing traditional-security issues, such as great-power politics and territorial disputes (Beeson, 2019; Buszynski, 2003, 2012; Buzan, 2003; Emmers, 2003, 2014; Emmers & Tan, 2011; Goh, 2011; Heller, 2005; Kausikan, 2017; Koga, 2010; Lim, 1998; Narine, 1997; Yates, 2017). They argue that great powers, such as China, Japan, and the United States, accepted ASEAN's central role in regional multilateralism not because they considered ASEAN the best actor to facilitate interstate cooperation, but because ASEAN was convenient for preventing any one great power from dominating regional institutions (Caballero-Anthony, 2014; Sukma, 2010). In other words, it was the great-power strategic rivalry that pushed ASEAN to the center, not its effectiveness.

Debates between these two camps on the strategic utility of ASEAN have become a tradition of ASEAN studies. Questions range from whether ASEAN needs to relax the ASEAN Way, such as the principles of non-interference and consensus decision-making; to whether ASEAN has become a security community; to whether ASEAN can maintain unity among its member states (e.g., Ba, 2020; Beeson, 2020; Stubbs, 2020). To be sure, scholars and practitioners are generally cautious in evaluating ASEAN's utility in Southeast Asia and beyond and thus do not categorically reject or affirm its strategic utility. Their analyses provide a more nuanced and balanced understanding of ASEAN, taking into account the historical development of its objectives, functions, and *raison d'être*. These multiple perspectives generate alternative theoretical analyses and different assessments of ASEAN, which enable us to examine the association multidimensionally.

However, there is one common understanding between both camps: ASEAN's inability to effectively manage great-power politics. They recognize that ASEAN's strategic utility in great-power politics is extremely limited, and that even if ASEAN is able to shape the behavior of great powers, the effect is rather marginal and it is for non-strategic issues. In this sense, a general, long-held consensus is that ASEAN's strategic utility rests not on material—military or economic—capabilities, but at best the normative power of the ASEAN Way, the ideational factor that constructivists emphasize, in shaping great powers' behavior. Some realists who analyze the strategic utility of institutions concur with this limitation, highlighting the normative element by devising strategic concepts such as “soft balancing” and “institutional balancing” (He, 2008; Paper, 2005; Paul, 2005). Among them, He (2008) specifically analyzes the strategic utility of international institutions and provides three types of institutional strategy—inclusive institutional balancing, exclusive institutional balancing, and inter-institutional balancing—whereby a group of states attempts to prevent existing or emerging great powers from attaining more power to dominate a region or the world. As such, the strategic role of international institutions is generally based on normative and diplomatic elements, and these analyses, particularly He's conceptual frameworks, help us gain a deeper understanding of the utility of ASEAN and ASEAN-led institutions.

Still, there remain unanswered questions regarding both the theoretical framework and the ASEAN-specific case. The theoretical issue is two-fold. First, the concept of institutional balancing does not take into account the entirety of institutional strategy. While “balancing” is an imperative component of state strategy, the existing literature's sole focus on balancing excludes other important strategies—notably, bandwagoning and hedging—employed by international institutions. Conceptual clarification of these strategies is thus necessary to comprehend the strategic utility of international institutions. Second, the logic of institutional balancing largely neglects the degree of flexibility in strategy shifts, considering the dynamics of intra-institutional politics on decision-making. This is partly because strategies are either given or considered easy to formulate in the face of a rise of strategic threat. However, it is always difficult for any international institution to come to an agreement quickly because of the diverging interests among member states, particularly if they employ a consensus decision-making process.

Also, in the existing literature on ASEAN, there is a gap between theoretical explanations and empirical evidence. On the one hand, constructivists assert the importance of ASEAN's role in norm creation and diffusion in Southeast Asia and beyond, but if they are correct, it is puzzling why ASEAN has yet to concentrate its diplomatic and financial resources on one pivotal institution to consolidate and diffuse its institutional norms. Many examine the role of one particular ASEAN-led institution, such as the ARF, yet there is little literature that conducts a comparative analysis of the role of each ASEAN-led institution, such as the EAS and the ADMM-Plus. On the other hand, realists emphasize ASEAN's ineffectiveness in managing and resolving traditional-security issues, but they do not explain why ASEAN member states and major powers have been discussing both traditional and non-traditional security issues since 1992 and continue to do so. In fact, the number of ASEAN-led institutions that discuss security issues increased significantly—from the ASEAN Foreign Ministers' Meeting (AMM) to the ASEAN Summit to the ARF, APT, EAS and the ADMM-Plus. These two sets of facts—the proliferation of ASEAN-led institutions and the spread of security agendas among them—need to be clearly explained because both relate to the strategic utility of ASEAN.

The other important factor that is often neglected in the literature is ASEAN's institutional change and its strategy shifts. Simply put, ASEAN as an RSI has changed significantly since its inception. ASEAN today is not the same as ASEAN in 1967 (Koga, 2017). Its institutional format and strategy evolved over time. During the Cold War, its geopolitical scope was confined to Southeast Asia, and its strategic influence in the region was very much limited because of the strong presence of great powers, namely the United States, China, and the Soviet Union. However, in the post-Cold War era, ASEAN's functionality and geopolitical scope expanded to East Asia by including the Indochina states as members and by creating political and security linkages with external powers through institution-building. ASEAN member states now have more strategic tools than before to shape the broader Asian regional order. Admittedly, this is not to say that ASEAN has transformed into a completely different institution. There still is institutional continuity, and the origin of ASEAN's fundamental institutional principles and *raison d'être* is imperative for understanding the potential and limitations of its institutional and strategy changes. However, it is also important

to acknowledge ASEAN's institutional changes and strategy shifts that reconstruct itself and create new affiliated institutions.

This book aims to fill these theoretical and empirical gaps on the evolution of ASEAN's institutional strategy for managing great powers with regard to a regional traditional-security issue—the SCS disputes. Here, institutional strategy refers to the collective policy that RSI member states pursue under the belief that such a policy can enhance their security. RSIs employ four types of institutional strategy—institutional balancing, institutional bandwagoning, institutional hedging, and institutional co-option—in order to mitigate the negative effects from the regional strategic environment. The strategy likely shifts when member states expect either a radical or moderate change in the regional balance of power.

With this concept of institutional strategy, the book's core argument is that, since the 1990s, ASEAN and ASEAN-led institutions have individually devised and/or shifted their own institutional strategy to manage the great-power politics pertaining to the SCS disputes, and that each institutional strategy aims to constrain great powers' behavior and avoid being entrapped by their strategic competition so as to ensure member states' interests. Strategy creation or shifts generally occur when member states perceive a change in the strategic environment relating to the SCS. But when ASEAN faces difficulty changing its strategy, it establishes a new institution to expand its strategic tools, which assumes a different functionality, geopolitical scope, and *raison d'être*. In doing so, ASEAN nurtures a quasi-division of labor among its institutions to manage the great-power politics in the SCS, creating a “strategic institutional web.”

The rest of this book consists of four chapters. Chapter 2 conceptualizes the types of institutional strategy and constructs a theoretical model based on agent-centered historical institutionalism to understand the timing of its strategy shifts. This theoretical model analyzes how RSI member states perceive and assess their immediate security environment and create or change the institutional strategy. Since member states' perception is generally affected by the regional distribution of power, the chapter emphasizes the importance of analyzing the regional strategic environment as well as agent's decisions. The methodology of the analyses is briefly discussed through case studies on the role of ASEAN and ASEAN-led institutions regarding the SCS issue. The chapter also provides an overview and assessment of the general trend of the strategic



environment in East Asia from 1990 to 2020 over four phases: 1990–2002, 2003–2012, 2013–2016, and 2017–2020. These four phases will be used as a principal indicator to understand the change and continuity of institutional strategies employed by ASEAN and ASEAN-led institutions.

Chapter 3 chronologically explores the strategic trend of the SCS situation from 1990 to 2020 over four phases as discussed in Chapter 2. The main purpose of this chapter is to understand the timing of changes in the subregional power configuration in the SCS in a more nuanced way. Of course, environmental changes are not the sole determinant of institutional strategy shifts among RSIs. However, without understanding the subregional trends in the context of China's increasing military and economic capabilities, it becomes difficult to clarify the responses or non-responses of ASEAN and ASEAN-led institutions to the changing environment. The chapter serves as a useful reference for institutional strategy shifts, which are discussed in detail in Chapter 4.

Chapter 4 examines the institutional strategy of each ASEAN and ASEAN-led institution: (1) AMM, (2) ASEAN Summit, (3) ASEAN–China dialogues, (4) ARF, (5) EAS, and (6) ADMM and ADMM-Plus. All these frameworks, either formally or informally, discuss salient traditional-security issues in East Asia, including the SCS disputes (see Tables 1.1, 1.2 and 1.3). Moreover, these institutions experience different institutional growths, and the specific timing and function of their institutional development highlight the divergences in the evolution of institutional strategy. The APT and the ASEAN-PMC are excluded in the analysis because the APT has not been actively discussing the SCS issue while the ASEAN-PMC only began to touch on the issue since the mid-2010s.

Chapter 5 discusses the validity of the conceptual and theoretical frameworks of institutional strategy, providing a quick overview of all the cases. It also compares the six cases and analyzes how the institutional division of labor among ASEAN member states was operationalized. The conclusion then discusses the future of the role of ASEAN and ASEAN-led institutions vis-à-vis the SCS situation as well as the strategic implications of an emerging geographical concept—the Indo-Pacific.

**Table 1.1** Discussions on the SCS issue in ASEAN and ASEAN-led institutions, 1990–1999

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
AMM			X	X	X	X	X	X	X	X
ASEAN Summit			X	X	X	X	X	X	X	X
ARE			X			X	X	X	X	X
APT Foreign Ministers' Meeting						X	X	X	X	X
APT Summit										
ASEAN-China Summit								X		
ASEAN-China PMC										
ASEAN-PMC (ASEAN+1) [other than China]			X	X	X			X		
EAS										
ADMM										
ADMM-Plus										

\*"X" indicates existence of discussion on the SCS issue

\*\*Both consensual and non-consensual documents were referred to, such as chairman's statements, joint press statements, and joint declarations (chairman's statements are non-consensual)

\*\*\*Blacked-out boxes indicate non-existence of the institution or meeting

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**Table 1.2** Discussions on the SCS issue in ASEAN and ASEAN-led institutions, 2000–2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
AMM	X	X	X	X	X	X	X	X	X	X
ASEAN Summit		X	X	X	X	X	X	X	X	X
ARF	X	X	X	X	X	X	X	X	X	X
APT Foreign Ministers' Meeting										
APT Summit			X							
ASEAN-China Summit		X	X	X	X	X		X		
ASEAN-China PMC		X			X					
ASEAN-PMC (ASEAN+3) [other than China]	X									
EAS										
ADMM										
ADMM-Plus										

\*"X" indicates existence of discussion on the SCS issue

\*\*Both consensual and non-consensual documents were referred to, such as chairman's statements, joint press statements, and joint declarations (chairman's statements are non-consensual)

\*\*\*Backed-out boxes indicate non-existence of the institution or meeting

Compiled by the Author

**Table 1.3** Discussions on the SCS issue in ASEAN and ASEAN-led institutions, 2010–2021

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
ADMM	X	X		X	X	X	X	X	X	X	X	X
ASEAN Summit	X	X	X	X	X	X	X	X	X	X	X	X
APF	X	X	X	X	X	X	X	X	X	X	X	X
APT Foreign Ministers' Meeting					X							
APT Summit												
ASEAN-China Summit	X	X	X	X	X	X	X	X	X	X	X	X
ASEAN-China PMC	X	X	X	X	X	X	X	X	X	X	X	X
ASEAN-PMC (ASEAN+1) [other than China]	X	X	X	X	X	X	X	X	X	X	X	X
EAS					X	X	X	X	X	X	X	X
ADMM		X	X	X	X	X	X	X	X	X	X	X
ADMM-Plus	X			X		X		X	X	X	X	X

\*“X” indicates existence of discussion on the SCS issue

\*\*Both consensual and non-consensual documents were referred to, such as chairman’s statements, joint press statements, and joint declarations (chairman’s statements are non-consensual)

\*\*\*Blacked-out boxes indicate non-existence of the institution or meeting

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## The Concept of Institutional Strategy and Change

Mainstream international relations (IR) theories—neorealism, institutionalism, and social constructivism—have different analytical foci on international security institutions. Neorealists argue that international institutions reflect a hierarchical order in the international politics of the day and that states strategically establish institutions to manage the balance of power (Mearsheimer, 1994/1995; Waltz, 1979). Essentially, these institutions are ephemeral because in an anarchic world where states are the primary actors and there is no world government that can enforce international rules and norms, institutions can only exist through their shared security interests, which are altered by a shift in the balance of power (Mearsheimer, 1994/1995). Furthermore, among many international institutions, great-power-led institutions matter most because they have the material capabilities to shape international politics (Mearsheimer, 1994/1995).

Institutionalists focus on intra-member political dynamics and international cooperation generated by institutions. While sharing the same assumptions with neorealists, institutionalists argue that international institutions help egoistic states cooperate and collaborate with each other even under an anarchic system. This is because international institutions are instrumentally useful for protecting or pursuing member states' interests as they provide functional benefits such as reduced transaction costs, creation of regulatory norms and rules, and provision of monitoring and

punishment, albeit imperfectly. These institutional functions increase the probability of cooperation among member states (Keohane & Martin, 1995).

Social constructivists discuss both the creation and outcomes of constitutive norms that shape member states' identities and worldviews. Through a "structuration" process, by which agents and the structure simultaneously interact, agents play a role in shaping the social structure. They do this by disseminating ideas and creating new norms, and institutions become the essential tool for agents to internalize the norms through repetitive practice (Giddens, 1984; Johnston, 2002). In doing so, agents take the norms for granted and believe that they need to follow the norms as it is "appropriate" to do so. Beyond intra-institutional interactions, institutions also help diffuse norms to external actors and make these norms part of their identity (Acharya, 2009).

While these theoretical insights have significantly advanced our understanding of international institutions, existing IR literature rarely discusses the evolving strategic utility of security institutions, let alone institutional strategy. This is because literature on institutional strategy and change is scarce, and these topics have been undertheorized (Cottrell, 2016; Holsti, 1998; Keohane, 2011; Koga, 2017; Wan, 2018). One of the few studies that attempted to explain institutional strategic utility was conducted by Wallander and Keohane (1999). They sought a nuanced understanding of evolving institutional *raison d'être* by conceptualizing two types of institutional objectives—counter-threat and counter-risk—and explaining the shift between the two (Wallander & Keohane, 1999, p. 23). However, as the institutionalist tradition demonstrates, this analytical framework is confined to explaining intra-member dynamics of the security institution and its institutional sustainability, instead of focusing on institutional strategy toward the external environment. Further, their use of NATO's experience as the sole empirical case is not necessarily applicable to other regional security institutions (RSIs) led by non-great powers (Koga, 2017, pp. 9–10; Wallander & Keohane, 1999, pp. 25, 33–34).

In this context, Ikenberry (2001) expanded the scope of the study on institutional functionality, focusing on the strategic utility of international institutions, such as the United Nations, the International Monetary Fund, and the World Bank. Employing the concept of historical institutionalism, he argues that institutions can "lock in" the existing international order led by a hegemon or great powers. This is because

great powers can impose favorable rules and norms through institutions, but these rules and norms also constrain their behavior, giving smaller states an opportunity to diplomatically influence great powers' behavior. Generating mutually beneficial interests for both great and small powers, institutions contribute to sustaining hegemonic stability or the domination of great powers. Treating the United States as the current global hegemon, Ikenberry argues that US behavior has been constrained by norms and rules created through these international institutions, yet at the same time these norms and rules have been built on US liberal values and have been diffused to the world through institutions such as the United Nations. In doing so, the United States has been able to embed its value system in the international community and sustain its global leadership. Whereas insightful, this argument also neglects the agency of RSIs. It centers solely on great powers' use of international institutions and does not analyze how RSIs led by non-great powers have been utilized strategically.

There is another academic attempt to deepen our understanding of international institutions by employing historical institutionalism. Fioretos (2017), for instance, employs the major concepts of historical institutionalism, such as path dependence and critical juncture, to analyze persistence and change in international politics and the proliferation of international institutions in the post-World War II era. Nevertheless, the research defines international institutions too broadly to analyze the strategic role of RSIs. Admittedly, this broad definition of international institutions may be necessary to understand the general characteristics of institutional continuity and change. However, the definition becomes too general, losing analytical edge in generating a theoretical model of international institutions, let alone institutional strategy. In this sense, existing IR studies still face a severe lack of conceptual and theoretical frameworks on institutional strategy.

On the other hand, branching off from the neorealist school of thought, some IR scholars have begun to explore the strategic role of international institutions based on the balance-of-power theory. Most notably, "institutional balancing" has gained currency in the literature on international institutions. Building on the "soft balancing" theory, which suggests that states can engage in a tacit balancing act to limit target states' strategic options without engaging military means, He (2008) argues that an institution can be used as a tool for soft balancing

under the condition that states have high economic interdependence. Institutional balancing can be either inclusive or exclusive. The former refers to “binding the target states in the institution” through regulatory norms and rules, and the latter means to “consolidate [member states’] political and economic unity to resist pressures from outsiders” (He, 2008, p. 493). States engage in institutional balancing when they have a high degree of economic interdependence with target states, because conventional military balancing is “not a sensible strategy” and is of a “less friendly nature” (He, 2008, p. 494). The third type of institutional balancing—inter-institutional balancing—aims to “counter-balance the pressure from the institution that excludes the state” by “support[ing] another or initiating a similar institution” (He & Feng, 2019, pp. 159–160).

However, this analytical framework faces five theoretical and empirical weaknesses. First, it is unclear whether economic interdependence is truly a necessary condition for institutional balancing. Even without economic interdependence, it is entirely possible for secondary powers to subtly conduct institutional balancing against a great power, which is less provocative than military balancing because secondary powers constantly fear the potential diplomatic, military, and economic retaliation.

Second, the primary intention of inclusive institutional balancing is not always about “balancing.” Regional institutions have multiple strategic motivations to be inclusive. For example, norms and rules created through the ASEAN Regional Forum (ARF) aim to not only constrain member states’ behavior but also enable them to cooperate with each other. If the ARF’s objective was to constrain the behavior of great powers such as the United States and China with pre-existing ASEAN norms and rules, its consultative role in norm- and rule-making would not have to be inclusive, and ASEAN could have fewer discussions on how to nurture cooperative norms with ARF member states. While there were strategic motivations among several member states that were eager to include the United States and China for constraining their behavior, the establishment of the ARF was not driven purely by the member states’ strategic motivation for institutional balancing. This example illustrates the difficulty in clarifying whether an RSI aims to balance against, hedge against, or bandwagon with great powers.

Third, it is also difficult to clarify the sustainability of institutional balancing. For example, according to He (2019, p. 215), the Trans-Pacific

Partnership (TPP) is defined as an exclusive institutional balancing against China under the Obama administration. While this is true, it does not capture the evolving strategic role of the TPP. The TPP grouping was originally formulated in 2005 by small powers in Asia–Pacific, such as Brunei and Singapore, and the United States joined in 2008. The original members had needed the United States to boost the political and economic relevance of the TPP; thus, TPP as a group was bandwagoning with the United States rather than balancing against China. The original members might not have expected the evolution of the TPP into a strategic tool to counterbalance China’s economic influence, let alone the Trump administration’s withdrawal from the institution in 2017. Therefore, it becomes unclear to what extent such an institutional strategy can persist over time.

Fourth, there is little discussion on the internal political dynamics in formulating institutional balancing. Compared with state strategy, institutional balancing is generally more difficult to conduct because decisions need to be made in agreement among sovereign states, and there is no legal hierarchy in their decision-making process unlike in the domestic arena. This is particularly true for RSIs led by secondary powers where there is no dominant player with sufficient material and political power to impose normative preferences on other member states. In this sense, institutional balancing assumes member states’ consensus on such an institutional strategy. However, this is not always the case in reality. The failure to adopt a joint communiqué in 2012 for the first time in the history of the ASEAN Foreign Ministers’ Meeting (AMM) shows, for instance, that member states’ strategic interests are not always congruent, and institutional balancing is not automatically operationalized by exogenous conditions. Rather, the 2012 AMM failure implies that differing interests among member states make it difficult, if not impossible, to quickly alter its institutional posture and strategy. The existing literature on institutional balancing fails to grasp these political dynamics.

Fifth, institutional balancing also assumes that there is a coherent and coordinated institutional strategy even in multiple institutional frameworks. For example, ASEAN has established different ASEAN-led institutions, such as the ARF, the APT, and the East Asia Summit (EAS), since the 1990s, and their strategic foci are not the same. While the APT focuses on economic and financial cooperation, the ARF is centered on

security, and the EAS has broader strategic foci. Without carefully examining the responses of these institutions to particular events and crises, we face the danger of oversimplification which creates a misunderstanding of the nature of each ASEAN-led institution.

With these limitations in the existing literature on the role of international security institutions and institutional balancing, the concept and logic of institutional strategy require significant refinement. More specifically, a broader conceptualization and theorization of institutional strategy is necessary by incorporating the entire spectrum of strategy, from balancing to hedging to bandwagoning. To this end, this book constructs an analytical model based on two underlying assumptions regarding the basic functions of security institutions. First, the primary objective of a security institution is to ensure the security of its member states (Jervis, 1982, p. 357). Given the anarchic international environment, security is considered a scarce commodity, and thus member states of a security institution value the institution's security utility. Second, because both the concept of "security" and the degree to which it is satisfactorily ensured depend on the actors' subjective judgment, an institution's sustainability is also subject to the member states' belief in its institutional credibility (Baldwin, 1997; Koga, 2017). Accordingly, if this belief weakens or collapses, member states will consider either initiating an institutional change or discarding the institution altogether (Koga & Nordin, 2020).

Also, in the light of the plasticity of institutional strategy, it is important to analyze RSIs' institutional history and design which create a common belief in institutional utility among the member states. Ahistorical theories are likely to miss the evolutionary process of institutional *raison d'être* and strategic functionalities. In this sense, a theory that incorporates strategic calculations and history becomes necessary.

## 2.1 THEORETICAL APPROACH: AGENT-CENTERED HISTORICAL INSTITUTIONALISM

In constructing an analytical model to capture the evolving nature of institutional strategy, historical institutionalism offers useful concepts: path dependence, critical junctures, and lock-in effects. "Path dependence" refers to the period during which a limited degree of freedom constrains

“the range of current possibilities and/or options in institutional innovation” (Nielsen et al., 1995, p. 6). This explains how “the strategies induced by a given institutional setting” may “ossify over time into a world view” (Hall & Taylor, 1996, p. 940). Unlike the ahistorical nature of major IR theories, this concept emphasizes the relevance of history which generates the patterns of institutional reproduction (Capoccia & Kelemen, 2007; Streeck & Thelen, 2005, pp. 6–9).

“Critical junctures” refer to “relatively short periods of time during which there is a substantially heightened probability that agents’ choices will affect the outcome of interest” (Capoccia & Kelemen, 2007, p. 348; Collier & Collier, 1991; Thelen & Steinmo, 1992, p. 27). Such a situation can be triggered by an exogenous shock that causes an institutional crisis or dysfunction, resulting in new institutional arrangements (Krasner, 1984). In contrast to path dependence, this concept embodies change. It is “critical” because the change affects the long-term consequences of institutional arrangements. Critical junctures generally span a relatively short period of time because institutions are typically stable for longer periods of time (Hall & Taylor, 1996; Pierson, 1996; Thelen, 1999, 2004; Thelen & Steinmo, 1992). After a critical juncture, the lock-in period emerges, consolidating the status quo and representing the initial period of stasis—path dependence—within the institution (Fioretos, 2011, p. 377). With these three concepts, historical institutionalism aims to strike an “effective and satisfying balance” between understanding the general logic of institutional change and the specific characteristics of each institution (Capoccia, 2016, p. 1096; Pierson, 2004, 178).

The most popular criticism against historical institutionalism, however, is that it overemphasizes institutional continuity instead of change. Given its assumption that institutions are generally considered “sticky,” they are likely to remain the same unless a crisis or an exogenous shock takes place (Bell, 2011, p. 886; Hay & Wincott, 1998, pp. 951–957; Olsen, 2009, p. 3). This deterministic logic invites a well-known critique of historical institutionalism: “[institutions] explain everything until they explain nothing” (Thelen & Steinmo, 1992, p. 15). Critics have also argued that historical institutionalism ignores the notion that an agent’s idea, and not the institutional setting, produces and reformulates preference sets leading to institutional change (Hay, 2008, 64). To avoid



this criticism, the concept of endogenous institutional change—coalition-building, norm defection, and norm reinterpretation—is introduced (e.g. Mahoney & Thelen, 2010). Still, even with these new foci, the questions of how institutions produce constraints and how empowering effects on actors break such institutional constraints tend to be unanswered. Rather, such concepts render institutions “plastic” and unstable as endogenous changes driven by agents are overemphasized in the analysis of how and when structural factors affect agents’ choices (Capocchia, 2016, p. 1096).

In this context, Bell proposes an agent-centered historical institutionalism (Bell, 2011, pp. 888–889). This theoretical approach focuses on “active agency within institutional setting[s] and sees the agents in question as being shaped (though not wholly determined) by their institutional environments” and argues that institutions shape agents’ behavior, thought, and function as both constraints and empowerment (Bell, 2011, p. 889). At the same time, while institutions are “ontologically prior to agency,” the theory emphasizes that agency is “a prime mover in institutional change processes” (Bell, 2011, p. 891; 2012, p. 716). Accordingly, it does not give complete precedence to agents over institutions or the environment. Agents do not act on a *tabula rasa* when there is an environmental change; rather, they act strategically under the influence of previous and existing institutional rules and norms. In this way, the approach clarifies the roles of both institutions and agents in institutional change (Bell, 2011, p. 892; Thelen & Steinmo, 1992, p. 17). The role of the agent is limited by institutional constraints, but because institutions only provide ambiguous principles, rules, and norms that are subject to reinterpretation, the agent can continue to utilize this space to empower itself (Mahoney & Thelen, 2010, p. 10; Schmidt, 2012, p. 709). Therefore, agent-centered historical institutionalism goes beyond the conventional institutional “change v. stasis” dichotomy and refuses to give particular primacy to agents or structure (Bell, 2012, p. 717; Streeck & Thelen, 2005, p. 8).

As such, agent-centered historical institutionalism avoids overemphasizing exogenous factors. Exogenous factors, or external shocks, certainly create change in the existing equilibrium, enabling agents to come up with new ideas and affording them the opportunity to implement the ideas in the existing institution, thus promoting change. Yet, the initial phase of a new institutional setting, including norms and strategy, is never optimal and agents continually finetune the ideas as the source of

new institutional norms and strategies. Once this period of fine-tuning ends, the ideas “fade into the background and relatively [sic] obscurity until something provokes a reevaluation of the policy” (Goertz, 2003, p. 51). It becomes costly for agents to break the new institutional setting, and the ideas then become the standard operating procedure. Agent-centered historical institutionalism thus focuses on the process of institutional change by explaining the dynamic transition between equilibrium and disequilibrium. Although the concept of exogenous shocks must be clarified, this comprehensive approach enhances its explanatory power regarding institutional change beyond what is offered by the structure- or agent-focused approaches alone.

Using the historical institutionalist approach, the next section discusses the concept and typology of institutional strategy as well as strategy shift.

## 2.2 CONCEPTUAL AND THEORETICAL FRAMEWORK OF INSTITUTIONAL STRATEGY

Institutional strategy is embedded in institutional design. In the traditional-security field, states construct a security institution such as a military alliance and/or diplomatic coalition to formulate a political strategy that shapes the balance of power in their favor. Institutional strategy thus refers to a set of collective security policies that member states of a security institution pursue under the belief that such policies can enhance their short- or long-term security. There are four main types of institutional strategy: institutional balancing, bandwagoning, hedging, and co-option (e.g., He, 2008; Khong, 2004; Koga, 2018; Pape, 2005; Posen, 2013).

Institutional balancing refers to the collective action by members of a security institution which aims to neutralize or at least minimize the current and expected power differences against rival states, including a hegemon and/or rising power. This concept is similar to the realists’ idea of “external balancing” whereby a security institution mobilizes its political, economic, and military resources to balance against a target state(s) (Liff, 2016; Mearsheimer, 2001, pp. 156–157; Waltz, 1979, pp. 126, 168). However, because of their limited military capabilities, medium- or small-power-led RSIs such as ASEAN generally use political means to conduct balancing. This strategy can send a political signal not only to the target state(s), but also to the international community, that the target

state is behaving “illegitimately” or “unjustly.” In doing so, member states aim to attract international diplomatic or possibly military support, including that of external great powers. Such a signal may increase the possibility of the international community raising concerns, internationalizing the issue, and imposing material punishment on the target states, which can function as a threat. ASEAN’s unified criticism of Vietnam’s invasion of Cambodia in 1979 through a joint statement is a case in point.

Institutional bandwagoning refers to the collective alignment with a great power(s), including the source of a threat, to gain benefits and/or to ensure security at the expense of opportunities to cooperate with other great powers. Institutionally, member states attempt to adopt a common stance toward a target state(s), or at least not to object to such a stance, thus enhancing military, economic, and political cooperation. Member states also incorporate a target state(s) into the institution, providing an opportunity to lead the institution so that the members can mitigate the threat from the target and benefit from the target’s greater military, economic, and political resources. An example of this is the TPP, which originated from a 2005 economic agreement entered into by four small powers in Asia–Pacific—Brunei, Chile, New Zealand, and Singapore. In 2008, the TPP included the United States, thus increasing the framework’s security, economic, and political influence in Asia–Pacific and beyond.<sup>1</sup>

Institutional hedging attempts to maintain strategic ambiguity to reduce or avoid risks associated with the negative consequences of failed institutional balancing or bandwagoning. On the one hand, failed institutional balancing can lead balancing institutions to experience severe punishment by the target state(s), because such actions provoke them. On the other hand, failed bandwagoning can lead bandwagoning institutions to confront the targeted actors’ domination and face a potential loss of autonomy and security. Both strategies also risk facing a lack of commitment from the ally or bandwagoned state. In order to mitigate such risks, institutions make the most of its “institutional power,” which aims to “exercise [control] indirectly over others through diffuse relations of interaction,” with the mobilization of material, symbolic, or normative resources (Barnett & Duvall, 2005, pp. 43, 50). To operationalize this

<sup>1</sup> Under the Trump administration, however, the United States withdrew from the TPP in 2017.

power, a security institution incorporates a target state(s) into the institution as a member state, attempting to constrain that state's behavior by creating or consolidating its own institutional norms and rules. An example of this is ASEAN's inclusion of great powers into an ASEAN-led institution to constrain them through the "ASEAN Way," which consists of norms such as non-interference and consensus decision-making. Since inclusion would risk members being dominated by the target powers, member states create additional normative mechanisms such as "ASEAN centrality" in ASEAN-led institutions, which gives ASEAN the privileges of agenda-setting and chairpersonship (Koga, 2021, pp. 94–95).

Institutional co-option nurtures cooperative norms and rules by incorporating a target state(s) in the hope of changing its preference. As with institutional hedging, this strategy is conducted by incorporating a target state(s) as a member(s) and providing opportunities for members to interact with each other more frequently. Of course, it is entirely possible that this strategy is motivated toward creating security norms and principles that are advantageous to core member states. However, unlike institutional hedging, it does not aim to immediately constrain the behavior of the target state by imposing regulative norms. Rather, it expands channels of communication, facilitates cooperation in non-contested areas, and increases the possibility of nurturing mutually acceptable cooperative norms and rules. An example of institutional co-option is a "cooperative security" arrangement that emphasizes the importance of confidence-building measures through diplomatic interactions and policy discussions toward potential cooperation. At the same time, such an arrangement also gives target states leeway to shape institutional norms and rules, which is an incentive for them to join.

According to agent-based historical institutionalism, institutional strategy is not static. The strategy can shift in times of environmental change, yet such a shift needs to be carefully examined by taking into consideration both intra-institutional politics among member states as well as the external strategic environment. Indeed, the timing of the change generally depends on both external and internal factors, and agent-centered historical institutionalism offers a clue to understanding how these two factors interact with each other.

In the conventional realist logic, the distribution of power shapes state behavior and a shift in the strategic landscape determines institutional change. However, RSIs require intra-institutional political processes to

decide the type of institutional strategy that they need to respond to environmental change. Therefore, a change in the distribution of power serves as a trigger, not a determinant, in shifting institutional strategy, and it is ultimately member states' implicit and explicit agreement that changes the strategy. To be sure, institutional strategy is relatively inflexible. This is due to the collective action problem among sovereign states: Changing institutional strategy is more difficult than changing state strategy as it is difficult for member states to achieve consensus quickly. In fact, a change in institutional strategy may alter the institutional design and format, which makes member states highly cautious of such a move. For example, a cooperative security institution based on institutional co-option will find it difficult to transform itself into a collective self-defense system based on institutional balancing unless there is a radical shift in the strategic environment.

In this context, some changes in institutional strategy are relatively easier than others, and there are two types of institutional strategy shift—radical and moderate—as illustrated in Fig. 2.1. The diagram shows more moderate changes than radical ones. There is only one type of radical change: a shift from institutional balancing to bandwagoning, and vice versa. In a shift from institutional balancing to bandwagoning, an RSI abruptly includes a target state that the institution was balancing against and gives it an opportunity to lead the institution. In a shift from institutional bandwagoning to balancing, an RSI excludes a target state from the institution that it was bandwagoning with. These radical shifts in institutional strategy are usually inconceivable; they require a radical change in the strategic environment, such as war or the collapse of a great power. On the other hand, an RSI can take various moderate changes. A moderate shift occurs when the institution faces either an abrupt or a gradual change in the strategic environment. Under a gradually changing environment, institutions are likely to avoid a radical strategy shift because it would invite political and military confrontation; instead, they gradually modify their institutional strategy from bandwagoning or balancing to hedging or co-option, or lean toward bandwagoning or balancing from hedging or co-option. At the same time, RSIs may conduct institutional hedging and co-option simultaneously as these strategies do not require substantial change to the institutional design and format.

Again, a strategic environmental change is not a determinant of strategy shift because the latter ultimately occurs from within, by agents.

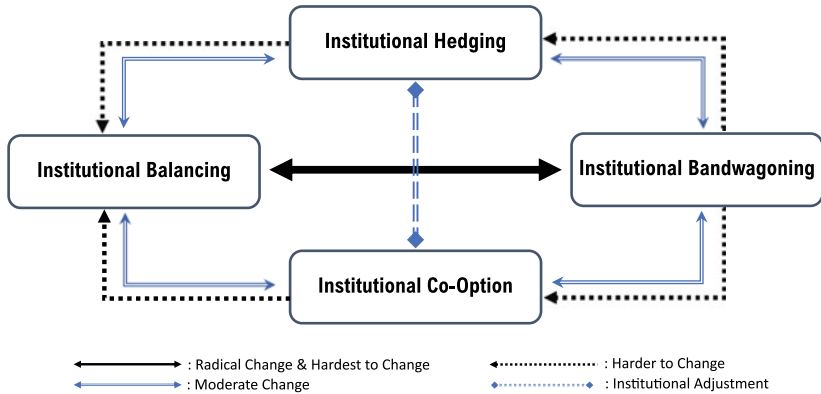


Fig. 2.1 Radical and moderate change in institutional strategy

As agent-centered historical institutionalism suggests, an environmental change provides only a window of opportunity for a change in institutional strategy. In addition, given the importance of agents, member states need to recognize such a change in the regional balance of power in order to shift institutional strategy. Therefore, an environmental change should be either actual or perceptual, and this could be the emergence of a power vacuum or a change in a major power's foreign policy. Once member states recognize that the existing institutional strategy may need changes to adequately respond to the changing environment, they will discuss a potential strategy shift. Specifically, with the existing utility of institutional strategy as a reference point, members reassess the institution's utility vis-à-vis the changing strategic environment and decide whether they will enact an institutional strategy shift.

### 2.3 METHODOLOGY

Using such a theoretical framework, this book focuses on ASEAN's management of great powers vis-à-vis the SCS disputes from 1990 to 2020. The SCS issue is one of the most important cases to be examined for East Asian security and ASEAN institutional strategies for four reasons. First, Brunei, Indonesia, Malaysia, the Philippines, China, and Taiwan have contested maritime borders, islands, and islets, and there have been naval and para-military clashes and standoffs between claimant

states in the contemporary period, particularly in 1974, 1988, 1995, and 2012. These have been a source of instability in East Asia.

Second, the SCS stability is vital for East Asia's economic prosperity. The sea lines of communication (SLOCs) through the SCS are geo-economically important. According to the US Energy Information Administration, approximately 11 billion barrels of oil and 190 trillion cubic feet of liquefied natural gas passed through the SCS in 2012 (USEIA, 2013). It was also estimated that USD 3.37 trillion worth of shipping (China Power Team, 2017) and 4.7 trillion cubic feet of liquefied natural gas passed through the sea in 2016 (USEIA, 2017), while 15 million barrels of oil did so per day in 2017 (USEIA, 2018). The SCS is at a strategically important location that connects the Pacific and the Indian oceans through several choke points.

Third, the SCS disputes are a rare and prominent security issue that ASEAN has attempted to manage since the 1992 ASEAN Declaration on the SCS. The issue presents not only traditional, but also non-traditional, security aspects including piracy, transnational crimes, maritime environment, and maritime safety. Although ASEAN has a track record of avoiding in-depth discussion of territorial disputes such as North Borneo, Pedra Branca, and the Preah Vihear Temple, the SCS issue has consistently been on its agenda since the end of the Cold War. Therefore, the issue serves as a test case for the future strategic behavior of ASEAN.

Fourth, regional great powers, particularly China and the United States, have been involved in the SCS disputes. While China is one of the claimant states, other regional major powers, including Australia, Japan, and the United States, are committed to stability in the seas primarily because of the importance of SLOCs as well as their strategic allies and partners such as the Philippines. ASEAN has attempted to manage not only the disputes among claimant states, but also tensions involving external great powers, aiming to prevent an escalation into full-blown conflict. In this sense, the SCS issue is the most useful case for analyzing ASEAN's ability to manage great-power politics.

For the time frame, this book examines ASEAN's institutional strategies in the post-Cold War era from 1990 to 2020. The end of the Cold War led to significant changes in the regional balance of power because of the demise of the Soviet Union and weakening US military presence in the region (Baker, 1991; Betts, 1993; Friedberg, 1993; Katzenstein, 2005; Koga, 2011; Stuart & Tow, 1995; Tow, 1991). The 1997 Asian

Financial Crisis also caused a temporary decline in Asian economies as well as Asia's skepticism regarding US political commitment to ensuring regional economic stability, while 9/11 generated US unilateral action in the Middle East, resulting in the lack of diplomatic attention in Asia (Acharya, 1999; Alagappa, 2003; Bowles, 2002; Christensen, 1999; Posen & Ross, 1996; Zheng, 2005). The 2008 Global Financial Crisis sparked public, academic, and policy debates over the relative decline of the United States and the rise of other powers, particularly China (Brooks et al., 2013; Layne, 2008; Mearsheimer & Walt, 2016; Nye, 2010; Posen, 2013; Wu, 2010; Zakaria, 2008). The 2016 SCS Arbitral Tribunal's award, which ruled overwhelmingly in favor of the Philippines, provided the Philippines and ASEAN with a legal means to resolve the territorial disputes. Although China rejected the ruling entirely, the denial heavily affected the regional states' perception of China's strategic posture as it challenged the existing international legal order, and this would have a long-term implication for the political balance of power in Southeast Asia and beyond (Davenport, 2016; Koga, 2016; Zhang, 2017).

The frequency of these changes in the regional strategic environment is partly related to the development of material capabilities in a larger strategic landscape. The United States still possesses the largest military force in the world, yet China has gradually narrowed the gap (Fig. 2.2). There was a drastic increase in US military expenditure between 2001 and 2009, but this was mainly caused by US military involvement in the Middle East, particularly in Afghanistan and Iraq, after the 9/11 terrorist attacks in 2001. From 2010, after the 2008 Global Financial Crisis, the United States steadily cut down its defense spending; by 2016, it had returned to the level of expenditure in 2000, although military expenditure began to gradually increase again from 2017. Whereas the gap between the United States and China has been consistently shrinking, the gap between China and Southeast Asian states has been exponentially widening since 1999. More remarkably, China made this possible without drastically increasing its share of GDP for military expenditure—there was, in fact, a decrease in its share of GDP for military expenditure from 2.5 percent in 1990 to 1.9 percent in 2019.<sup>2</sup> The dramatic increase in military expenditure is therefore attributed to China's strong economic

<sup>2</sup> SIPRI Military Expenditure Database, 1949–2019.



growth in the post-Cold War period. According to the World Development Indicator, China's economic growth has remained well above six percent since 1991. Its growth rate hovered at approximately 10 percent from the 1990s to 2000s and at seven percent in the 2010s (The World Bank, 2020). The economic gap between the United States and China has been steadily shrinking since 1992, while Southeast Asian states could not match China's economic might (Fig. 2.3).

Admittedly, military expenditure and GDP growth alone do not adequately account for a shift in the distribution of capabilities. Other factors such as the geographical allocation of military assets, quality of military, existence of alliances, and the degree of security commitment significantly influence the configuration of the balance of power. Nonetheless, given these trends of changing material resources and China's geographical location in East Asia, China's military and economic commitment to the region has remained stable, and its strategic influence in the region and beyond has increased. If we take a realist standpoint, ASEAN member states need to militarily align with the United States or other regional great powers to counterbalance the rise of China. Yet, this is not the case. The Philippines and Thailand are still the only two Southeast Asian states that have a formal defense treaty with the United

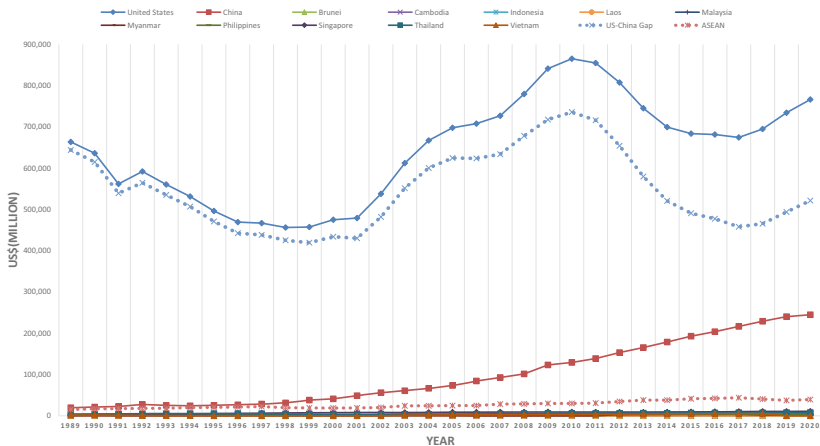
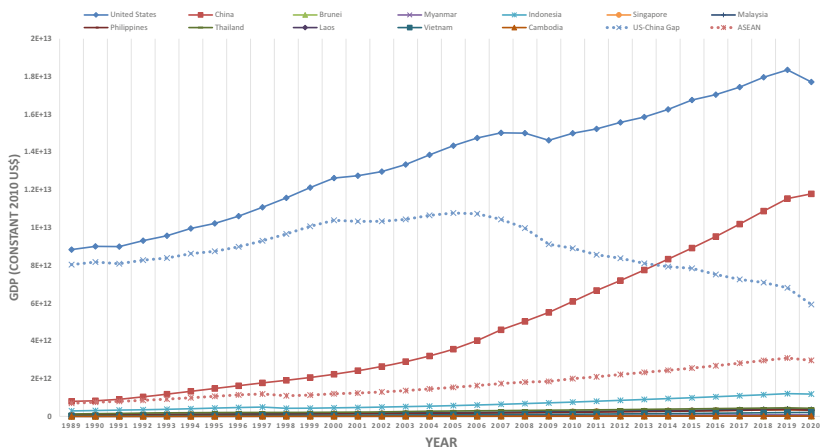


Fig. 2.2 Growth of military expenditure in East Asia, 1989–2020 (Source SIPRI, 2021)



**Fig. 2.3** GDP growth in East Asia, 1989–2020 (*Source* World Development Indicator, 2020)

States, and they constantly face the alliance dilemma: entrapment or abandonment. Other ASEAN member states need to find alternative ways to manage this power shift in East Asia. This constant change in material capabilities in East Asia illustrates the gradual change in the regional distribution of power.

Based on the theoretical model of agent-centered historical institutionalism, it is important to understand how ASEAN member states have perceived this general trend, and this requires a closer examination of the subregional trend for the SCS situation. To this end, this book examines the 30 years in the post-Cold War era by dividing it into four phases—1990–2002, 2003–2012, 2013–2016, and 2017–2020—in accordance with major changes in the regional strategic environment and with events such as ASEAN’s critical declaration on the SCS and other major maritime incidents. More specifically, the first phase, from 1990 to 2002, was when ASEAN and China concluded the Declaration on the Conduct of Parties in the South China Sea (DOC) after experiencing several tensions among the claimant states. The second, from 2003 to 2012, was when the Scarborough Shoal naval standoff between the Philippines and China led to ASEAN disunity despite institutional efforts to maintain the SCS stability in the 2000s. The incident resulted in the AMM’s failure to issue its joint

communiqué for the first time in its history. The third, from 2013 to 2016, was when the Philippines took legal action against China at the SCS Arbitral Tribunal, which eventually issued the award largely in favor of the Philippines. The fourth, from 2017 to 2020, was when the SCS code of conduct discussion became active and was seriously considered by China and ASEAN.

This book mainly uses official documents including ASEAN's joint communiqués and declarations, while examining media reports such as newspapers and magazines to understand the nuances in those documents. Given ASEAN's strict consensus decision-making mechanism, the documents reflect ASEAN's institutional stance and strategy. This is because ASEAN-led institutions will not issue any formal institutional document if there is a clear disagreement by any member state, although ASEAN can utilize peer pressure to create a unified political stance (Tan, 2013).

In addition, the book focuses not only on ASEAN's security institutions such as the ARF and the ASEAN Defence Ministers' Meeting Plus (ADMM-Plus), but also on political ones including the AMM and ASEAN-China dialogues. This is because ASEAN as a whole had already become a security-oriented institution in the post-Cold War era. Most notably, from 1992, the association formally included political and security agendas and proliferated ASEAN-led institutions. Since its establishment in 1994, the ARF has played a significant role in updating the SCS situation yearly in one way or another, drawing much scholarly attention. Other ASEAN institutions also discussed or were beginning to discuss the SCS issue. The AMM issued a joint communiqué mentioning the SCS disputes every year except for 2012. The ASEAN Summit has also consistently addressed the SCS situation since 2010 and issued joint statements, while many affiliated institutions, such as the ASEAN Post Ministerial Conference (ASEAN-PMC), EAS, ADMM, and ADMM-Plus, did the same (see Chapter 1). As such, it was not only ASEAN's security institutions, but also other ASEAN-led institutions, that attempted to address the issue. Confining strategic issues to only ASEAN security institutions therefore significantly limits a broader understanding of the strategic utility of ASEAN.

Also, with the proliferation of ASEAN-led institutions, member states have been able to opt for "forum shopping," whereby they intensively engage particular institutions to ensure their own interests (Chou et al.,

2016, pp. 54–55; Murphy & Kellow, 2013).<sup>3</sup> As a result, each ASEAN and ASEAN-led institution gradually assumed different roles in managing the SCS disputes. For example, the APT does not touch on the SCS issue, while the AMM is generally more assertive in that regard. Additionally, while many ASEAN-led institutions review the situation, the joint statements and press releases on the SCS disputes have been issued predominantly by the AMM and ASEAN–China dialogues, including the Summit, PMC, and Senior Officials’ Meetings (SOM) (Table 2.1). This indicates the implicit institutional division of labor among ASEAN and ASEAN-led institutions.

Accordingly, this book analyzes six major institutions in ASEAN relating to the SCS issue: AMM, ASEAN Summit, ASEAN–China dialogues, ARF, EAS, and ADMM/ADMM-Plus. The first four institutions are examined from 1990 to 2020, while the EAS and the ADMM/ADMM-Plus are analyzed from Phase 2 because they were established after 2002 (Table 2.2). The APT and the ASEAN-PMC are excluded. The APT has not touched on the SCS issue since its inception except for the 2002 summit and the 2014 Foreign Ministers’ Meeting; even then, there were only brief statements issued.<sup>4</sup> The APT has focused more on socioeconomic cooperation and long avoided traditional-security issues. Admittedly, there is still a possibility that the APT would table the SCS issue as a regular agenda in the future, but given that there has yet to be a serious discussion, the APT is considered irrelevant for examining the SCS disputes. On the other hand, the ASEAN-PMC has actively discussed the SCS issue since the 2010s. However, the most important meetings are the ASEAN–China dialogues, which have existed since the mid-1990s. Therefore, the book focuses on ASEAN–China dialogues rather than the other ASEAN+1 institutions.

The next chapter provides an overview of the historical development of the SCS situation through each of the four phases.

<sup>3</sup> Forum shopping refers to “the multiple, reiterative use of various arenas, including returning an issue to the original arena, and thus building (or blocking) support for policy action” (Murphy & Kellow, 2013, p. 139).

<sup>4</sup> In 2002, the APT Summit touched on the DOC but did not issue any political statement. In 2014, the APT Foreign Ministers’ Meeting discussed the importance of peaceful resolution of the SCS disputes for the first time (ASEAN Secretariat, 2002, 2014).

**Table 2.1** ASEAN documents on the SCS, 1992–2020

<i>Year</i>	<i>Date</i>	<i>Location</i>	<i>Document</i>	<i>Issued by</i>
1992	Jul 22	Manila, Philippines	ASEAN Declaration on the South China Sea	AMM
1995	Mar 18	Singapore	Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea	AMM
2002	Nov 4	Phnom Penh, Cambodia	Declaration on the Conduct of Parties in the South China Sea	ASEAN–China PMC
2004	Dec 7	Kuala Lumpur, Malaysia	Press Release of the ASEAN–China Senior Officials Meeting on the Implementation of the Declaration on the Conduct of Parties in the South China Sea	ASEAN–China SOM
2011	Jul 20	Bali, Indonesia	Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea	ASEAN–China SOM
2012	Jul 20	Phnom Penh, Cambodia	Statement of the ASEAN Foreign Ministers on ASEAN’s Six-Point Principles on the South China Sea	AMM
2012	Nov 19	Phnom Penh, Cambodia	Joint Statement of the 15th ASEAN–China Summit on the 10th Anniversary of the Declaration of the Conduct of Parties in the South China Sea—Enhancing Peace, Friendship and Cooperation	ASEAN–China Summit
2014	May 10	Nay Pyi Taw, Myanmar	ASEAN Foreign Ministers’ Statement on the Current Developments in the South China Sea	AMM
2016	Jul 25	Vientiane, Laos	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	ASEAN–China PMC
2016	Sep 7	Vientiane, Laos	Joint Statement on the Application of the Code for Unplanned Encounters at Sea in the South China Sea	ASEAN–China Summit
2017	Aug 6	Manila, Philippines	The Framework for a Code of Conduct on the South China Sea	ASEAN–China PMC
2018	Aug 8	Singapore	Single Draft Negotiating Text of the Code of Conduct in the South China Sea	ASEAN–China PMC

**Table 2.2** Establishment of ASEAN and ASEAN-led institutions and the four phases

<i>Name</i>	<i>Establishment (Year)</i>	<i>Phase 1 (1990–2002)</i>	<i>Phase 2 (2003–2012)</i>	<i>Phase 3 (2013–2016)</i>	<i>Phase 4 (2017–2020)</i>
AMM	1967	X	X	X	X
ASEAN Summit	1976	X	X	X	X
ASEAN-PMC (ASEAN+1)	1977	X	X	X	X
ARF	1994	X	X	X	X
ASEAN–China dialogues	1996	X	X	X	X
	1997	X	X	X	X
APT	1997	X	X	X	X
	2000	X	X	X	X
EAS	2005	–	X	X	X
	2011	–	X	X	X
ADMM	2006	–	X	X	X
	2010	–	X	X	X

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# 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.<sup>1</sup>

<sup>1</sup> 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.<sup>2</sup> 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

<sup>2</sup> 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; Hurlle, 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, 2012e). 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 Parcel, 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*, 2013e). 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, Quarteron, 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 repropoed 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.<sup>3</sup> 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

<sup>3</sup> 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)
	October	US conducts first publicized FONOP
2016	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 (Cigaral, 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*, 2017h; 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.<sup>4</sup> In the meantime, on October 30, China established weather observation stations

<sup>4</sup> 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.<sup>5</sup> 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

<sup>5</sup> 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).<sup>6</sup>

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

<sup>6</sup> 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
2020	December	Malaysia submits its territorial claims to the CLCS
	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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## Institutional Strategies of ASEAN/ASEAN-Led Institutions

Over the four phases of the strategic development of the South China Sea (SCS) disputes from 1990 to 2020, this chapter analyzes the creation and changes of institutional strategies of the following ASEAN/ASEAN-led institutions: (1) ASEAN Foreign Ministers' Meeting, (2) ASEAN Regional Forum, (3) ASEAN Summit, (4) ASEAN–China dialogues, (5) East Asia Summit, and (6) ASEAN Defence Ministers' Meeting/ASEAN Defence Ministers' Meeting Plus.

### 4.1 ASEAN FOREIGN MINISTERS' MEETING (AMM)

Established in 1967, the AMM is today still the original core institution of ASEAN. The founding members of ASEAN were Indonesia, Malaysia, the Philippines, Singapore, and Thailand, and the AMM was the only ASEAN institution where the foreign ministers of these five states met annually and developed ASEAN's institutional and functional framework over time.

The AMM's original objective was stipulated in the ASEAN Declaration (also known as the Bangkok Declaration) of 1967: to ensure that Southeast Asian states had “a primary responsibility for strengthening the economic and social stability of the region,” including “their stability and security from external interference in any form or manifestation” (ASEAN Secretariat, 1967). Although the means to ensure internal and external security was not clearly specified in the declaration, the AMM aimed to

achieve it through dialogues and nurturing confidence among the various states' ministers. In short, the AMM functioned as a foreign ministers' club, where the five ministers informally and frankly discussed issues in Southeast Asia and beyond.

The AMM underwent a structural change in 1999, when it implemented "retreats" before the actual meeting. According to Thuzar and Hoang (2018), the retreat served as a forum where foreign ministers could informally discuss issues that affected the association and Southeast Asia. After Singapore Foreign Minister S. Jayakumar first organized such an informal meeting to discuss ASEAN's institutional credibility and the future development of member states in 1999, the retreat was institutionalized in 2001, to be held at the beginning of the year (ASEAN Secretariat, 2001a). During the retreat, the AMM would set the most important issue of the year, often providing a press statement at the end of the meeting.

However, these developments did not mean that the ASEAN member states were able to unite politically and economically. There was disagreement on many issues, but the AMM's political process created opportunities for member states to come together, discuss issues, and find a way to facilitate cooperation and avoid conflict. ASEAN's institutional norms, or the "ASEAN Way," such as the principles of non-interference, informal consultation, and consensus decision-making, were useful for these purposes (Acharya, 2014; Koga, 2010).

Further, the internal dynamics of ASEAN began to change, particularly from the end of the Cold War. There were two concurrent trends. One was the expansion of ASEAN membership which renewed ASEAN diplomacy toward external actors. Vietnam joined ASEAN on July 28, 1995, Laos and Myanmar on July 23, 1997, and Cambodia on April 30, 1999. Including these Southeast Asian states laid the foundation for achieving ASEAN's initial goal, which was to nurture a Southeast Asian community and regional autonomy, but at the same time, the increase in member states made decision-making more difficult given its consensus-based process. Second, the AMM incorporated security agendas, institutionalized the ASEAN Summit, and established the ASEAN Regional Forum (ARF) on the basis of the ASEAN Post Ministerial Conference (PMC).

With these institutional developments, the AMM began to discuss the SCS disputes from 1992. This chapter examines the AMM's role and institutional strategies in managing the SCS disputes during four periods: 1990–2002, 2003–2012, 2013–2016, and 2017–2020.

#### 4.1.1 1990–2002: *Formulating Institutional Balancing*

The AMM was the only core institution that was able to respond to SCS incidents from 1990 to 1994, when the ARF was established. Yet, the AMM was diplomatically cautious not to be entrapped by individual territorial disputes. For example, when Vietnam and China had naval skirmishes near Johnson South Reef in the Spratlys in March 1988, it did not issue any statement on the matter. However, the incident created security concerns over the future of regional stability in Southeast Asia. Indonesia therefore initiated the “Workshop Process on Managing Potential Conflict in the South China Sea” in 1990 outside the ASEAN framework, inviting all claimant parties including Taiwan, as a Track-2 forum where government officials participated in a private capacity (Song, 2010). At this point, the AMM did not attempt to formulate an institutional strategy on the SCS issue.

However, this posture changed in February 1992, when China enacted the “Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone.” Given China’s military behavior in the SCS in 1988, its creation of a legal framework to justify its maritime boundaries, and its eagerness to conduct energy exploration in the SCS, the AMM responded by adopting the “ASEAN Declaration on the South China Sea.” The declaration emphasized the importance of peaceful resolution, self-restraint, potential areas of cooperation in the SCS, principles stipulated in ASEAN’s 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC), and efforts to create “a code of international conduct” in the SCS (ASEAN Secretariat, 1992b).

As no serious incident between ASEAN claimant states and China had occurred then, the declaration aimed to be a preventive measure for ASEAN by inviting “all parties concerned to subscribe to this Declaration of principles” (ASEAN Secretariat, 1992b). Accordingly, the AMM leaned toward institutional balancing based on the 1992 declaration as it did not solicit the input of non-ASEAN claimant states while publicizing its principles internationally. The 1992 communiqué also indicated that the AMM had urged all concerned parties to adopt the principles stipulated in the TAC (ASEAN Secretariat, 1992c). To get claimant states to abide by the principles of the declaration, ASEAN encouraged them to join Indonesia’s Track-2 workshop (ASEAN Secretariat, 1993a, 1994).

The AMM’s inclination toward institutional balancing notwithstanding, the situation did not significantly improve in 1993 and 1994.

China did not adopt the 1992 declaration, while tensions among the claimant states began to rise. In fact, the Philippines discovered China's newly erected facilities on Mischief Reef in February 1995 that was China's first attempt to assert itself in the SCS against an ASEAN claimant state. This alarmed ASEAN members because they feared that China's encroachment might continue further south, which would affect stability in Southeast Asia. Consequently, ASEAN swiftly responded by issuing a firmer statement regarding the SCS issue—"Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea." This statement employed stronger language, such as "serious concern" over "the recent development in the Mischief Reef" (ASEAN Secretariat, 1995a). Although the statement did not name China, it was obvious that the AMM was worried about China's gradual encroachment as it specified Mischief Reef. The AMM also reiterated the importance of complying with the principles stipulated in the 1992 declaration. This move by the AMM is a clear example of institutional balancing as it attempted to inform the international community about the recent SCS developments. ASEAN explicitly requested China to follow the principles that ASEAN had adopted in 1992, stating that the AMM "encouraged all parties concerned to reaffirm their commitment to the principles contained in the 1992 ASEAN Declaration on the South China Sea" (ASEAN Secretariat, 1995b).

ASEAN's signaling saw some success. Vietnam, which had been ready to assume ASEAN membership, supported the statement, and the United States expressed serious concern about developments in the SCS (see Chapter 3). Diplomatically, China proposed a multilateral discussion with ASEAN claimant states, while the Philippines and China agreed to conclude a bilateral code of conduct (COC). However, these positive movements neither stopped claimant states from engaging in skirmishes on the ground nor drew sufficient attention from the United States for maritime stability in the SCS.

From 1996 to 2002, the AMM not only relied on institutional balancing but also proposed conducting institutional co-option. Facing difficulty in maintaining the status quo with institutional balancing, the AMM proposed a "regional code of conduct" in the SCS, which would facilitate confidence-building and mutual understanding among the claimant states (ASEAN Secretariat, 1996a). After China ratified UNCLOS in May 1996, this proposal was seen as a starting point to

resolve the disputes peacefully and legally. That said, the COC negotiations needed to include not only ASEAN member states, but also regional claimant parties, including Taiwan; the AMM thus attempted to find a suitable avenue for conducting the institutional co-option. Yet, the AMM also faced difficulty dealing with Taiwan as it was not recognized as a sovereign state by ASEAN member states and China. As a result, the proposal did not gain diplomatic traction for two years.

In 1999, the AMM revived the idea for a COC and kickstarted dialogue on it. After ASEAN and China held a summit in December 1997 amid the Asian Financial Crisis, and with the ASEAN Summit's endorsement of the proposal in 1998, diplomatic traction for a COC emerged. The drafts were prepared by Vietnam and the Philippines, excluding Taiwan (ASEAN Secretariat, 1998, 1999; see Chapter 3), but the AMM thus became a facilitator for more substantial discussions at the ASEAN–China level rather than being the core avenue for crafting the COC. Nonetheless, it still reiterated the importance of principles endorsed by the 1992 ASEAN Declaration, including self-restraint, respect for international law, particularly UNCLOS, and peaceful settlement through bilateral and multilateral dialogues (ASEAN Secretariat, 1996a, 1997a, 1998, 1999, 2000, 2001a, 2002a). In this sense, the AMM maintained institutional balancing as a strategic option in case the ASEAN–China COC negotiations collapsed. Eventually, despite disagreements over the COC, the 2002 ASEAN–China Foreign Ministers' Meeting issued the DOC and promised to continue the COC discussions. At this point, the AMM was no longer the core institution for discussing the COC, although it monitored the progress of SCS dialogues and did not discount conducting institutional balancing.

#### *4.1.2 2003–2012: Limitations of the AMM's Institutional Balancing*

The DOC provided a good reference point for monitoring and evaluating the progress of the SCS dispute resolution by ASEAN and China. From 2003 to 2011, the AMM regarded the DOC as “an important step toward a Code of Conduct” in the SCS and “a milestone document between ASEAN and China.” It signaled a strong commitment to peaceful resolution, self-restraint, confidence-building, and international law such as UNCLOS (ASEAN Secretariat, 2003a, 2004b, 2005a, 2006, 2007a, 2008c, 2009a, 2010a, 2011b). As ASEAN–China forums had become the core institutional avenue for the COC negotiations, the

AMM's role was to monitor developments in the SCS and to ensure that basic principles were abided by parties concerned through its joint communiqué. It helped endorse new initiatives by other ASEAN-led institutions, such as the ASEAN–China Joint Working Group and the Senior Officials' Meeting (SOM) on the Implementation of DOC in 2005 that facilitated the creation of the Guidelines for the Implementation of the DOC (ASEAN Secretariat, 2004b, 2005a, 2008c).

From 2003 to 2008, the SCS situation was relatively stable while the COC negotiation process was slow. Despite several skirmishes on the ground, the claimant states did not take a drastic approach to alter the status quo. This was partly because China, the Philippines, and Vietnam had nurtured a cooperative atmosphere by agreeing to a joint SCS exploration project—the joint marine seismic undertaking—in 2005 (see Chapter 3). As the AMM's primary strategy was institutional balancing, which became active in times of contention, the relatively positive trend in the SCS resulted in institutional inertia, and thus joint communiqués issued during this period were rather similar.

The SCS situation, however, began to deteriorate from 2008 due to a series of events. These included the submission of claimant states' baseline claims report to the UN Commission on the Limits of the Continental Shelf; the Philippines' domestic legal procedures to safeguard its territories in the SCS; China's dispatch of coastguard ships; and the 2009 *Impeccable* incident (see Chapter 3). The AMM's reaction was slow and did not explicitly express concern about the situation until 2011. This was because, while tensions had risen among particular states, such as between China and Vietnam as well as China and the Philippines, the situation was not decisive enough for the AMM to reach a consensus to bring up the worsening developments in the SCS.

Even though the AMM finally responded by expressing “serious concern” about the situation in 2011 (ASEAN Secretariat, 2011b), it was unable to form a unified front to put diplomatic pressure on claimant states to comply with the DOC or to push forth the establishment of a COC, which was planned to be implemented in 2012. In addition, in the context of rising US–China rivalry over the SCS, Indonesia, the 2011 ASEAN chair, raised concerns about the potential intensification of external interference. Consequently, the AMM extensively discussed the SCS situation in the 2011 AMM communiqué compared with previous statements and endorsed two proposals to defuse the maritime tension:

Indonesia's proposal to optimize a Track-2 mechanism and the Philippine's proposal to create a "Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC)" (ASEAN Secretariat, 2011b; see Chapter 3). Since the United States was already involved in the SCS issue, the AMM's institutional balancing to internationalize the issue was no longer as effective, but it kept drawing international attention.

In 2012, when the Philippines and China engaged in a confrontation over Scarborough Shoal, the AMM had the opportunity to effectively reactivate institutional balancing against China. However, disunity among ASEAN members prevented them from reaching consensus on a joint communiqué, the main point of contention stemming from 2012 ASEAN Chair Cambodia's strong opposition to the Philippines' demand to mention the Scarborough Shoal incident in the statement. The dissent resulted in the AMM's failure to issue a joint communiqué for the first time in ASEAN's history. This also illustrates the increasing difficulty of the AMM in conducting effective institutional balancing, even though the AMM was meant to be the secure diplomatic avenue where external actors could not directly intervene in the issue or pressure member states. Institutional strategy could only be employed with the consensus of ASEAN members, but the membership expansion in the 1990s—to include Cambodia, Laos, Myanmar, and Vietnam—made this more difficult due to the collective action problem that came with divergent national interests. Therefore, the AMM's 2012 failure to issue a communiqué reflected negatively on ASEAN as it was perceived to be unable to handle the disputes effectively (Chou et al., 2016).

In order to counter this negative perception, Indonesian Foreign Minister Marty Natalegawa communicated with the other ASEAN foreign ministers and led the AMM to issue the "Statement of the ASEAN Foreign Ministers on ASEAN's Six-Point Principles on the South China Sea" (ASEAN Secretariat, 2012b). The statement reiterated the six principles and objectives: (1) full implementation of the DOC, (2) adherence to the Guidelines for the Implementation of the DOC, (3) early conclusion of the COC, (4) full respect for international law including UNCLOS, (5) self-restraint and non-use of force, and (6) peaceful resolution of the disputes. Although the statement did not produce anything new, it provided institutional reassurance that the non-issuance of the 2012 communiqué did not mean the neglect of principles regarding the SCS upon which ASEAN member states had long agreed. Nevertheless, the 2012 incident sheds light on the diplomatic limitations of the AMM in conducting institutional balancing.



#### 4.1.3 2013–2016: *The AMM's New Modus Operandi*

Having receded from its role as the core institution for dealing with the SCS disputes and for formulating the COC and faced with difficulty conducting institutional balancing, the AMM was confronted with a loss of *raison d'être* in terms of the SCS dispute management. In this context, the AMM's lesson from the 2012 incident was that its institutional balancing should not explicitly target a particular state by using the name-and-shame tactic, as this was difficult to attain consensus from the member states. Rather, as part of institutional balancing, the AMM's focus was to monitor the situation, reiterate the principles, and internationalize the issue more actively if ASEAN needed greater support from the international community.

Leveraging its limited diplomatic resources, the AMM expressed concern over the SCS matter and described its subtle political posture in greater detail to draw international attention (ASEAN Secretariat, 2013a). In fact, there were two notable changes after the 2012 incident. First, information dissemination via the AMM communiqué had become consistently more detailed since 2014. Although updates were rather ad-hoc in the past, the AMM's descriptions on SCS developments had become more structured, comprising recent events, past joint documents, agreed principles, political postures, and new initiatives. Specifically, information regarding the SOM on the Implementation of the DOC and the ASEAN–China Joint Working Group as well as new proposals by member states were discussed extensively. For example, AMM communiqués touched on the Philippines' Triple Action Plan, the establishment of a hotline between ASEAN member states and China, and the adoption of the Code for Unplanned Encounters at Sea (CUES) in the SCS (ASEAN Secretariat, 2014b, 2015b, 2016d).<sup>1</sup>

Second, the AMM found means to express concern about the SCS situation. Prior to 2015, it was difficult to reach consensus on how to describe the SCS situation among the member states in the joint communiqué. For example, while the AMM successfully issued the "ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea," in

<sup>1</sup> The Triple Action 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 (see Chapter 3).

2014, its description was quite vague, expressing only “serious concerns” over “ongoing developments” without specifying any details (ASEAN Secretariat, 2014b). From 2015, however, the AMM started specifying subjects, such as “some Ministers,” who expressed “serious concerns” about the escalation of activities including land reclamation (ASEAN Secretariat, 2015b, 2016d). In doing so, the AMM could disseminate information that might not have necessarily reached consensus but was important for regional security, so as to internationalize the issue, which was an important part of institutional balancing.

Nonetheless, limitations persisted. The AMM still could not discuss highly sensitive issues, particularly when it faced direct or indirect external pressure. For example, although ASEAN discussed the importance of intensifying consultations and the COC negotiation process at the beginning of 2016, it did not mention the expected outcome of the SCS Arbitral Tribunal (ASEAN Secretariat, 2016c). Additionally, ASEAN attempted to issue a media statement after the Special ASEAN–China Foreign Ministers’ Meeting in June 2016 which unequivocally expressed the AMM’s “serious concerns” over the SCS situation, emphasizing “peaceful resolution... including full respect for legal and diplomatic processes” and “non-militarization” (ASEAN Secretariat, 2016c). But the media statement was retracted due to pressure from China and internal disunity (see Chapter 3). Moreover, when the Arbitral Tribunal issued the award in July 2016 ruling overwhelmingly in favor of the Philippines, the AMM could not even mention the ruling in its communiqué issued in the same month (ASEAN Secretariat, 2016d). Although the award indeed applied to the bilateral dispute between China and the Philippines, with the AMM’s consistent emphasis on the importance of international law and UNCLOS, which was the basis of the arbitration, the international community had expected that ASEAN would still touch on the ruling in some way despite China’s implicit and explicit diplomatic pressure.

#### 4.1.4 2017–2020: *The AMM in a Fallback Position*

From 2017, the AMM continued to monitor the SCS situation and encourage the early conclusion of the COC since ASEAN viewed China’s renewed commitment in 2016 to discuss the COC positively. Although the process remained slow, the AMM embraced the positive trend as there was perceived progress, such as the adoption of the COC’s Single Draft Negotiating Text (SDNT) in 2018 and the conclusion of the first reading

of the SDNT in 2019. During this period, the AMM functioned as a key internal forum where ASEAN foreign ministers could exchange views without external participants.

In addition, the AMM began to issue a press statement annually from 2016 (ASEAN Secretariat, 2016a, 2018b, 2019a, 2020a; Ministry of Foreign Affairs, Singapore, 2017). Descriptions of the SCS issue remained similar to those in AMM communiqués, but this practice enabled the AMM to monitor the SCS situation more frequently and closely. The AMM thus became ASEAN's fallback in terms of conducting institutional balancing. Its "check and balance" mechanism through monitoring and signaling still existed. The AMM also began using the term, "non-militarization," in its communiqué from 2017 (ASEAN Secretariat, 2017c, 2018c, 2019d, 2020e), which became a criterion for assessing the SCS situation on the ground. Additionally, the AMM became a diplomatic tool for disseminating the contents of ASEAN's internal discussions and for expressing institutional concerns to the international community.

#### 4.1.5 *Conclusion*

The AMM's institutional strategy—institutional balancing—has been consistent since the mid-1990s when ASEAN began discussing the SCS disputes and its management despite the developments that shaped the expected and actual balance of power in the region. The consistency in strategy is mainly due to it being the core ASEAN institution that maintains the exclusivity of Southeast Asian states, preventing external actors from direct intervention. Its institutional importance was more valued in the 1990s when there were only a few multilateral institutions that attempted to manage the SCS disputes.

However, the AMM faced two significant setbacks after the 1990s. First, ASEAN's membership expansion made it difficult for the AMM to reach consensus on the SCS issue. Except for Vietnam, three new members, Cambodia, Laos, and Myanmar, do not have territorial claims in the SCS, and therefore they tend to avoid any diplomatic complications with China. Second, China did not easily accept guidelines set by the AMM. In the COC negotiations, China was dissatisfied with the ASEAN process and perceived that ASEAN was ganging up against it because the initial consultations had been conducted only among ASEAN member states (see Chapter 3). As such, the main negotiation platform shifted

from the AMM to China–ASEAN dialogues. This shift gradually occurred after ASEAN and China discussed the SCS issue in 1998.

The AMM’s diplomatic role in the SCS issue had changed while its institutional strategy remained the same. As the consultation and negotiation process became more systematized between ASEAN and China, the AMM no longer played a leading role. However, the AMM remained as a fallback for ASEAN to express its institutional position to counter any diplomatic and military threat toward its member states.

## 4.2 ASEAN REGIONAL FORUM (ARF)

The ARF was established in 1994 following the decision of the AMM and the ASEAN-PMC in July 1993. Given the rising strategic uncertainty in the Asia–Pacific region caused by the end of the Cold War and the regional flashpoints, including the Korean Peninsula, the Taiwan Strait, and the SCS, regional states sought to create a forum where they could have security-related dialogues to nurture mutual trust and confidence so as to prevent miscalculations, misperceptions, and tensions from rising. Particularly, the regional great powers—China, Japan, and the United States—were important participants as they could be potential adversaries in the post-Cold War regional order in East Asia.

Given ASEAN’s experience in operationalizing multilateralism in Southeast Asia and its fear of diplomatic marginalization by the great powers, ASEAN took the lead, positioning itself as a neutral player, in establishing the ARF. The basic objectives of the ARF were two-fold: (1) “to foster constructive dialogue and consultation on political and security issues of common interest and concern”; and (2) “to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia–Pacific region” (ARF Unit, 2021). The ARF issued a concept paper in 1995 that envisioned its institutional evolution in three stages: confidence-building measures (CBMs), preventive diplomacy mechanisms, and conflict resolution mechanisms (later changed to “elaboration of approaches to conflicts” in 1995 upon China’s request soon after the concept paper was issued) (ARF Unit, 1995a, 1995b). By 2021, the ARF had 26 member states and one organization, the European Union (EU), including all ASEAN member states and China.

Although its institutional development has been slow and it has yet to progress to the second stage as of 2021, the ARF has consistently

discussed regional security issues, including the SCS disputes (Emmers & Tan, 2009). In fact, the ARF's real functionality evolved into a tool for ASEAN's institutional strategy—institutional hedging—deviating from its planned traditional-security mechanism, such as preventive diplomacy and conflict resolution. ASEAN member states have used the ARF to place the SCS issue on the regional agenda for discussion with external great powers, particularly the EU, Japan, and the United States.

This chapter examines the ARF's institutional strategy vis-à-vis the SCS issue during four periods: 1994–2002, 2003–2012, 2013–2016, and 2017–2020.

#### 4.2.1 1994–2002: CBMs as Potential Institutional Hedging

At its inception, the ARF did not have any particular institutional strategy toward the SCS matter because there was neither firm consensus nor sufficient strategic consultations among the ASEAN member states. At the inaugural ARF, Philippine Foreign Secretary Roberto Romulo expressed the Philippines' desire for peaceful settlement and for China's endorsement of the 1992 ASEAN Declaration (Earl, 1994). Vietnam's Foreign Minister Nguyen Manh Cam also indicated that the ARF would inevitably discuss the SCS issue and communicate each claimant state's position, while multilateral discussions should be conducted and facilitate the joint development of resources, along the lines of the 1992 declaration (Kassim, 1994). Indonesia was also eager to discuss the territorial disputes including safety of navigation, while Singapore was hesitant to do so as it might provoke China (Kassim, 1994; Martelino-Reyes, 1994).

On the other hand, Chinese Foreign Minister Qian Qichen attempted to reassure ASEAN members that China did not have any hegemonic intentions by indicating that there were no Chinese military forces on foreign soil, and insisting on its preference to facilitate joint exploration and to resolve the territorial disputes bilaterally (*Deutsche Presse-Agentur*, 1994; *Xinhua*, 1994a). The United States remained low-key—Deputy Secretary of State Strobe Talbott stated that it would not take a position on the territorial disputes and that it endorsed peaceful settlement (*Xinhua*, 1994b). Consequently, the 1994 ARF chairman's statement did not mention the SCS at all, and instead indicated “maritime security issues” as a potential agenda (ARF Unit, 1994).

From 1995 to 1998, the ARF's role in the SCS issue—institutional hedging—gradually became clear as it attempted to strike a balance

between claimant states' differences. This was possible because each member state made compromises. For example, China agreed in 1995 to hold bilateral and multilateral talks with ASEAN member states, potentially through the ARF, to use international law as a dispute management tool, including UNCLOS, and to facilitate joint exploration and development. Also, as US Secretary of State Warren Christopher clarified that freedom of navigation in the SCS was a national interest, China assured the United States and other regional states that freedom of navigation in the SCS would be ensured (Cruz, 1995; Rahil, 1995). ASEAN emphasized the importance of discussing the disputes but was careful not to provoke China by discussing sensitive issues in a closed-door setting (Rahil, 1995). Accordingly, the ARF's role in the SCS disputes began to emerge over time.

In this context, the ARF became a tool for ASEAN's institutional hedging. This is because the forum could potentially lead China to accept ASEAN's institutional norms through the TAC and the 1992 declaration, while building confidence among member states as the dialogue could facilitate cooperative activities in the sea diplomatically, economically, and militarily. In doing so, the SCS issue could also be internationalized because the forum publicized discussions on the SCS situation with external actors such as Japan and the United States.

In fact, when China declared its maritime territorial borders near the Parcel Islands in 1996, ASEAN members, particularly Vietnam, protested against it at the ARF by pointing out its legal inconsistency with UNCLOS, which drew US attention and gained its support at the forum (Baker, 1996; Richardson, 1996). Chinese Foreign Ministry spokesperson Shen Guofang insisted that there was "no tension" in the SCS and stated that the ARF should not be a forum for negotiations (JEN, 1996; Morella, 1996). As a result, the 1996 ARF chairman's statement only emphasized the importance of international law (ARF Unit, 1996), and this Chinese stance continued. However, at the 1997 ARF, US Secretary of State Madeleine Albright advocated the importance and consistency of international law in managing territorial disputes (Albright, 1997). Philippine Foreign Secretary Domingo Siazon, Jr. also asserted that self-restraint was not enough to maintain the status quo in the SCS (Baker, 1996). This raised the possibility of having guidelines or a COC, but ASEAN aimed to draw China into a code based on ASEAN norms.

China explicitly resisted ASEAN's institutional hedging. After witnessing the slow institutional progress of the ARF caused by the 1997

Asian Financial Crisis, China's Foreign Ministry spokesperson Zhang Qiyue stated in 1999 that multilateral talks at the ARF would likely complicate the disputes and that China would not participate in the ARF's discussion on the COC that was proposed and drafted by ASEAN member states (Rahil, 1999). In fact, as Zhang indicated, China considered the ASEAN–China PMC rather than the ARF as the core platform for discussing the SCS disputes mainly because it feared the further internationalization of the issue (Rahil, 1999). Although ASEAN member states still discussed pursuing a COC at the ARF in 1999, ASEAN had shifted the main discussion platform from the ARF to the ASEAN–China SOM (Abbugao, 1999; see ASEAN–China dialogues section in this chapter). From 1997, the ARF chairman's statement merely updated the SCS situation, only briefly touching on the status of discussions between ASEAN and China (ARF Unit, 1997, 1998, 1999, 2000, 2001, 2002).

That said, the ARF could still function as ASEAN's tool for institutional hedging because its institutional setting had not been altered, and ASEAN could discuss the principles of international maritime law to which ASEAN members adhered.

#### 4.2.2 2003–2012: *Attempted Enhancement of Institutional Hedging*

After the 2002 DOC was adopted, the ARF became relatively quiet on the SCS issue. This was because, from 2001, the ARF mainly focused on international counterterrorism efforts, and there was relative maritime stability in the SCS in the 2000s (see Chapter 3). As the chairman's statements from 2003 to 2009 indicate, the ARF consistently reiterated four important factors: (1) importance of the DOC, (2) progress of ASEAN–China cooperation, such as the establishment of the ASEAN–China SOM on the Implementation of the DOC and the ASEAN–China Joint Working Group on the Implementation of the DOC, (3) eventual adoption of a COC, and (4) continued self-restraint and respect for international law including UNCLOS (ARF Unit, 2004, 2005, 2006, 2007, 2008, 2009; ASEAN Secretariat, 2003b). There were no negative accounts of the SCS situation in these chairman's statements; instead, the ARF Inter-Sessional

Support Group Meeting on Confidence-Building Measures and Preventive Diplomacy often indicated the “positive trends” of the SCS issue (ASEAN Secretariat, 2007b, 2008b).<sup>2</sup>

Nevertheless, as the SCS situation gradually worsened after 2009, the ARF functioned as institutional hedging against China (see Chapter 3). This development was triggered by US Secretary of State Hillary Clinton at the 2010 ARF. She discussed the SCS issue extensively at the forum, asserting 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” (US Department of State, 2010a; see Chapter 3). Given the increasing tensions in the SCS, the US statement was backed by 12 members, including Brunei, Indonesia, Malaysia, the Philippines, and the EU, which implied their concern regarding China’s behavior (Landler, 2010; US Department of State, 2010). While the statement did not depart significantly from her predecessor Madeleine Albright’s position, Clinton added that the United States explicitly opposed the threat or use of force and was “prepared to facilitate initiatives and confidence-building measures” consistent with the 2002 DOC (US Department of State, 2010). Since China viewed this statement as third-party interference in the maritime disputes, Foreign Minister Yang Jiechi warned the United States not to “internationalize” the disputes as it would likely complicate the issue (*AFP*, 2010a).

Admittedly, the SCS issue had been discussed at the ARF since the 1990s, and it was always possible for ASEAN to use the ARF as institutional hedging vis-à-vis China by emphasizing international and ASEAN maritime norms and by drawing the attention of regional powers. However, the worsening of the SCS situation compelled ASEAN claimant states to use the ARF more actively to restrain China’s behavior and triggered the extensive discussion on the SCS led by the United States.

To be sure, the ARF’s institutional hedging did not result in any institutional change. It did not add any new mechanism to manage the territorial disputes or advance its institutional function from confidence-building to preventive diplomacy. On the contrary, even after the contentious discussion at the 2010 ARF, the chairman’s statement did not indicate any negative trend in the SCS (ARF Unit, 2010; MOFA, 2011a). This

<sup>2</sup> The ARF Inter-Sessional Support Group Meeting on Confidence-Building Measures and Preventive Diplomacy is generally held twice a year with the aim of supporting ARF activities. Its activities include information-sharing, such as member states’ defense policy.



institutional trend continued even in 2012 despite the Scarborough Shoal incident in which China defied the 2011 Guidelines for the Implementation of the DOC (ARF Unit, 2012; see Chapter 3). China persistently refused to discuss the SCS disputes at the ARF because, according to Foreign Minister Yang, freedom of navigation and the territorial disputes were two separate issues—the former had been ensured and the latter needed to be dealt with by the parties concerned (*BBC Monitoring Asia Pacific*, 2011). He also added in 2012 that China had “ample historical and legal evidence” for its sovereignty in the Spratly Islands and adjacent waters, insisting that peaceful negotiations between the claimant states should be the priority as UNCLOS did not have the authority to determine state territories (*States News Service*, 2011). The ARF thus formally took a low-key approach to the SCS issue.

In this sense, the ARF became the diplomatic avenue for ASEAN to informally conduct institutional hedging. The 2010 US statement opened a window of opportunity for member states to discuss the SCS issue more extensively at the ARF despite China’s opposition, yet the SCS was not a regular official agenda. As the situation grew visibly tense with bilateral military tensions heightening rapidly, the United States continued to informally kick off the SCS discussion at the ARF. This was followed by US allies and partners in the region, including Australia and Japan, as they explicitly emphasized the Scarborough Shoal incident in 2012 (*Australian Government News*, 2011; JEN, 2012a; MOFA, 2010, 2011b; *States News Service*, 2012b).

#### 4.2.3 2013–2016: *Fragmenting Institutional Hedging*

After the Scarborough Shoal incident, the external great powers’ willingness to continue the SCS discussion was an encouraging sign for ASEAN member states, such as the Philippines and Vietnam, because it provided an opportunity for them to more explicitly check China’s assertive behavior. The United States continued to assert the importance of freedom of navigation and overflight, peaceful settlement of disputes, and respect for international law including UNCLOS. At the 2013 ARF, US Secretary of State John Kerry pointed out the importance of arbitration, alluding to the Philippines’ initiation of arbitral proceedings against China regarding their territorial claims (*SDDP*, 2013). Since ASEAN had declared support for international maritime law, these moves also functioned as institutional hedging.

On the other hand, the external powers' SCS discussions were continually rebutted by China, which further internationalized the issue. In 2013, for instance, Chinese Foreign Minister Wang Yi discussed China's position extensively in response to the Philippines' accusation of China's occupation of Scarborough Shoal and Second Thomas Shoal. Wang's argument was based on the assumption that the Spratly Islands were under China's sovereignty and that it was "fully [justifiable] for China to [respond to external states'] provocative activities" (*Xinhua*, 2013). Extending this logic, China stated that given that international law had no authority to determine territorial borders, bilateral negotiations between the parties concerned should be the only legitimate means to resolve the disputes (*Xinhua*, 2013). This rebuttal was useful for understanding China's position in the SCS disputes; however, since this interpretation was not shared by both the claimant and non-claimant states, the latter of which had stakes in freedom of navigation and overflight in the SCS, this point continued to be a source of debate at the ARF, and this was equivalent to consolidating the internationalization of the issue.

The United States was also encouraged to raise the SCS issue at the ARF because of the diplomatic signals that it received from ASEAN. Following the release of the AMM statement on SCS developments in 2014, the United States proposed a "voluntary freeze" to maintain the status quo in the SCS, and this encouraged claimant states' self-restraint in the context of escalated interstate tensions (*States News Service*, 2014). The intention of the proposal was partly similar to the early harvest measures of the COC—it was not practical for China and ASEAN to wait out such a long diplomatic process to its conclusion (*States News Service*, 2014). The Philippines also agreed to maintain the status quo and proposed the Triple Action Plan comprising voluntary freeze, implementation of the DOC, and arbitration (*ST*, 2014). Further, at the 2014 ARF, Japan raised three principles on the rule of law at sea: (1) "states shall make and clarify their claims based on international law," (2) "states shall refrain from unilateral actions which could increase tensions," and (3) "states shall seek to settle disputes by peaceful means" (MOFA, 2014c). These proposals resonated with each other and created a soft coalition vis-à-vis China's position, making the most of the external powers' support of the principles of international law and ASEAN norms.

Nevertheless, China rejected these proposals. Wang reiterated China's diplomatic position, arguing that the heightened tensions in the SCS had been exaggerated by some states and that such proposals would

disrupt the COC negotiations (*Daily The Pak Banker*, 2014). Also, there was no clear consensus at the ARF with regard to these proposals (Ismail, 2014b). According to ASEAN Secretary-General Le Luong Minh, ASEAN member states did not discuss the US proposal as they had their own ideas for preventing provocative behavior such as land reclamation (Gallucci, 2014). Given China's clear refusal to make the ARF a diplomatic forum for discussing the SCS issue and ASEAN member states' divergent reactions to the external actors' proposals, institutional hedging could not be effectively conducted as it did not serve the strategic interests of all ASEAN member states. Instead, diplomatic rows between the United States and China at the ARF continued. The United States accused China of disrupting the status quo by land reclamation and militarization while China insisted that the situation was stable and criticized the United States for interfering in the territorial disputes (Ministry of Foreign Affairs, People's Republic of China, 2015; *The Japan Times*, 2015).

In 2015, for the very first time, the contentious debates over the SCS were incorporated in the ARF chairman's statement: "[The ARF] took note of the serious concerns expressed by some Ministers over the recent and on-going developments in the area, including land reclamation which have resulted in the erosion of trust and confidence amongst parties, and may undermine peace, security and stability in the South China Sea" (ARF Unit, 2015). The ARF was able to do this by indicating that there were "some" ministers who expressed serious concerns as the AMM did (see AMM section in this chapter).

In 2016, when the SCS Arbitral Tribunal issued the award, the ARF became the platform for member states to discuss it. External powers, including the United States, Japan, and Australia, supported the award and discussed its legal importance within and beyond the ARF as the award was final and binding in accordance with UNCLOS (*Nikkei Asian Review*, 2016a). However, because of the potential intensification of interstate tensions between China and the claimant states, the United States took a cautious approach not to castigate China (*States News Service*, 2016). ASEAN member states also did not hold a monolithic view on the arbitral award, illustrated by Cambodia's opposition to mentioning it (*Nikkei Asian Review*, 2016a). As a result, the chairman's statement, though indicating some ministers' concerns as it did in 2015, did not discuss the award (ARF Unit, 2016).

Given this, while the ARF had become a tool for ASEAN's institutional hedging, ASEAN itself lacked a unified stance vis-à-vis the SCS disputes while external actors proposed new norms and rules. Consequently, ASEAN could not effectively leverage the ARF to constrain China by its rules. While the ARF could further internationalize the issue by information-sharing, it became increasingly difficult to pursue effective institutional hedging because of the internal disunity among ASEAN member states.

#### 4.2.4 2017–2020: *Weakening Institutional Hedging*

The ARF faced two diplomatic distractions between 2017 and 2020 that made it difficult to consolidate institutional hedging: China's firm refusal of the award and the emergence of US–North Korea tension. First, China rejected the SCS arbitral award soon after it was issued—on July 13, 2016, Chinese Vice Foreign Minister Liu Zhenmin stated that the award was “just a piece of waste paper” (Ministry of Foreign Affairs, People's Republic of China, 2016). This strong stance from China created a diplomatic division between those that preferred a cautious approach to dealing with the award at the ARF and those that did not. As a result, it became increasingly difficult for ASEAN to form a unified posture at the ARF. Second, between 2017 and 2019, there was growing military tension between the United States and North Korea as well as a sudden diplomatic rapprochement through the 2018 North Korea–United States Singapore Summit and the 2019 equivalent in Hanoi. Comparing the agenda priority of North Korea with that of the SCS, a US State Department official indicated that North Korea was a more immediate and direct national security concern (*SDDP*, 2019a). As the United States shifted its strategic focus away from the SCS, it became more difficult for ASEAN to expect consistent commitment on the issue from the United States.

Consequently, ASEAN member states did not push for the arbitral award to be discussed at the ARF, and instead used the forum to communicate SCS developments. Since the ASEAN–China cooperation in 2016 had generated diplomatic traction for the COC negotiations, along with the adoption of CUES and the establishment of a bilateral hotline between China and ASEAN foreign ministries in 2017, the general trend of the SCS situation was regarded as positive. The ARF chairman's statements from 2017 to 2019 also stated that ASEAN and China welcomed

improved maritime cooperation (ARF Unit, 2017, 2018, 2019). By mid-2019, the first reading of the COC was completed, after which ASEAN and China moved on to the second reading. However, debates remained over whether the COC should be legally binding as China still objected to that, while the SCS situation was not entirely stable (CNA, 2017). Several ASEAN members, such as the Philippines and Vietnam, were still concerned about the ongoing land reclamation in the Paracels, as China continued its assertive behavior, including harassment against Vietnam's oil and gas operations as well as the deployment of ballistic missile tests in the sea in 2019 (AFP, 2017; *Japan Economic Newswire*, 2019; SCMP, 2017; TendersInfo, 2018; Yong, 2019). Therefore, the situation was similar to the 2000s, when there was progress in terms of cooperation but the situation on the ground was not completely stable and US commitment was not clear.

In 2020, the situation changed drastically with the emergence of the COVID-19 pandemic and the intensification of US–China great-power rivalry. The ARF was not convened in-person but through teleconference, which made it difficult for member states to conduct informal diplomacy. In addition, as US–North Korea relations had not seen any progress, the United States shifted its strategic focus to China and intensified its diplomatic confrontation toward China over the SCS disputes. Although US Secretary of State Mike Pompeo and Chinese Foreign Minister Wang Yi did not attend the 2020 ARF, an intense diplomatic row occurred just before the forum: The United States castigated China over its claims to offshore resources in the SCS and the harassment of regional states by conducting military exercises, intruding into Vietnam's exclusive economic zone, and colliding with Philippine vessels, describing the actions as “completely unlawful.” Meanwhile, China accused the United States of interfering in the SCS disputes, disrupting the COC process, and militarizing the sea by sending aircraft carriers (*CE Noticias Financieras English*, 2020; *ST*, 2020).

In this context, ASEAN member states softly advocated its regional autonomy at the ARF by avoiding being entrapped in the great-power rivalry. For example, Malaysian Foreign Minister Hishammuddin Hussein insisted that Southeast Asia needed to “remain the master of its own destiny with the sole aim and purpose of ensuring peace and stability in [the] region,” while Indonesian Foreign Minister Retno Marsudi stated the importance of the ARF as the platform to “forge cooperation

among [member] states in addressing the ever increasingly complex challenges in the region” (*Indonesia Tribune*, 2020; *Malaysia General News*, 2020). Philippine Foreign Affairs Secretary Teodoro Locsin Jr. expressed ASEAN’s imperative to proceed with the second reading of the COC despite the pandemic in order to promote stability in the SCS, to which ARF member states agreed (ARF Unit, 2020; *PDI*, 2020). Even some ASEAN member states that had been seriously concerned about China’s behavior in the SCS remained cautious discussing the 2016 arbitral award at the ARF, as the SCS situation had a mixture of negative and positive trends. The negative trends included fishery and coastguard intrusions in disputed areas and the slow progress of the COC negotiations due to the pandemic. The ARF did not function effectively in terms of institutional hedging; instead, it returned to being the forum for CBMs among member states, similar to the ARF’s role during the 1990s.

#### 4.2.5 Conclusion

The ARF was a tool for institutional hedging for ASEAN. Before an ASEANs–China framework for creating the COC emerged in the late 1990, the ARF had attempted to use the principles of the 1992 ASEAN Declaration on the SCS to constrain China’s behavior. After the 2002 DOC was adopted, the ARF became an avenue for advocating international rules, particularly UNCLOS, to maintain the SCS stability. Using regional and international rules, the ARF became a useful tool for ASEAN to pursue institutional hedging.

However, the ARF’s institutional hedging was not always effective for two reasons. First, ASEAN was not necessarily in consensus about the rules it needed. For example, the 2016 arbitral award was not rejected, but it was also not openly endorsed by all ASEAN members. This disunity made it difficult to determine norms and rules. Second, the intensification of the US–China great-power rivalry over the SCS risked the loss of ASEAN’s strategic autonomy and shrank the room for the pursuit of its own strategy. Although the great powers’ diplomatic support for ASEAN rules and norms would help strengthen ASEAN’s institutional hedging, when their rivalry intensified, ASEAN would likely lose its autonomy, as illustrated by the US–China rivalry in 2020, and be unable to conduct institutional hedging effectively.

In this sense, the basic strategic utility of the ARF fell into monitoring and information dissemination to external actors, while its core institutional strategy, institutional hedging, could only be conducted under specific diplomatic conditions—namely, ASEAN unity and controlled great-power rivalry. Because its institutional strategy is neither always effective nor activated, the ARF’s role became a supporting one in the SCS disputes.

### 4.3 ASEAN SUMMIT

The ASEAN Summit was first convened in 1976, one year before the 10th anniversary of ASEAN, and the meeting saw the conclusion of the Declaration of ASEAN Concord (commonly known as the Bali Concord I) and the Treaty of Amity and Cooperation in Southeast Asia (TAC), ASEAN’s very first treaty. While the Bali Concord I was a political document that spelled out the guidelines of ASEAN cooperation and envisioned its institutional development, the TAC was a COC for member states, including the principles of non-interference, non-threat or use of force, and state sovereignty (Koga, 2014). Although the ASEAN Summit was an important organ, it was essentially an ad-hoc forum that was held only three times during the Cold War era—in 1976, 1977, and 1987. During this period, the SCS issue was not on the agenda of the ASEAN Summit.

In the 1990s, the end of the Cold War brought about new diplomatic momentum, and the ASEAN Summit’s structure evolved significantly in two ways. First, the 1992 ASEAN Summit formally included political and security issues in its agenda (ASEAN Secretariat, 1992a). While not all sensitive security issues, such as strictly bilateral territorial disputes without significant regional strategic implications, were on the agenda, this change allowed ASEAN to raise and discuss security issues in ASEAN-related forums. Second, the frequency of the summit increased exponentially. From 1995 to 2007, the summit was held annually except for 2006 and 2008. The 2006 ASEAN chair/host, the Philippines, was dealing with a strong typhoon season that year, and the 2008 ASEAN chair/host, Thailand, was undergoing a domestic political crisis. After the ASEAN Charter came into force in 2008, the ASEAN Summit was formally institutionalized to be held twice annually.

According to the Charter, the ASEAN Summit is “the supreme policy-making body of ASEAN” and would be convened as “special or ad hoc meetings” whenever necessary (ASEAN Secretariat, 2008a). Its functions

entail “deliberat[ing], provid[ing] policy guidance and tak[ing] decisions on key issues pertaining to the realisation of the objectives of ASEAN, important matters of interests to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies” (ASEAN Secretariat, 2008a). Technically, as stipulated in Article 20 of the ASEAN Charter, the ASEAN Summit is empowered to make a decision when consensus cannot be reached or if there is a serious breach of the Charter. However, given that the ASEAN Summit comprises the heads of member states, it is difficult to do so because the members who oppose reaching consensus or who violate the Charter are involved in the summit itself.<sup>3</sup> In this sense, as with other international organizations, the ASEAN Summit’s power is still limited.

While the ASEAN Summit is the pinnacle of ASEAN’s decision-making apparatus, it still faces diplomatic limitations when discussing the SCS issue. This is because the matter involves a third party, China. The summit can only make a decision after consulting with China, and therefore its role is likely confined to approving or disapproving the points of discussion at ASEAN–China dialogues. Still, the ASEAN Summit has enough political power to make suggestions and shape international perceptions with its statements. As such, ASEAN leaders need to carefully consider the recommendations that ASEAN–China dialogues provide and craft its statement and declaration in a way such that they do not downplay the SCS issue excessively or provoke China unnecessarily.

In this context, this chapter examines the ASEAN Summit’s role and institutional strategy in managing the SCS disputes during four periods: 1992–2002, 2003–2012, 2013–2016, and 2017–2020.

#### 4.3.1 1992–2002: *Limited Institutional Balancing*

The ASEAN Summit’s role in managing the SCS disputes from 1992 to 2001 was extremely limited. This is because the summit did not pay much attention to the issue, given the plethora of intra-Southeast Asian matters, ranging from ASEAN membership expansion to the building of

<sup>3</sup> There was an exception in 2021, when ASEAN neither legitimized the Myanmar coup in February 2021 nor invited the leader of the Myanmar junta partly because of the fact that the international community, including the United Nations, did not recognize the junta as a legitimate government.



new institutions including the ARF. Furthermore, the 1997 Asian Financial Crisis had a great impact on the summit's capacity to manage regional issues. In this sense, the ASEAN Summit's role was essentially to monitor and authorize the AMM's policy on the SCS issue, although nine summit meetings were held between 1992 and 2002 and the most of summit documents touched on the SCS issue.

The 1996 chairman's statement emphasized the early resolution of the territorial disputes by highlighting the TAC, 1992 ASEAN Declaration on the SCS, and international law, including UNCLOS, while the 1999 statement endorsed the creation of a regional COC that the AMM had drafted (see AMM section in this chapter; ASEAN Secretariat, 1996b). Therefore, the ASEAN Summit during the 1990s engaged in limited institutional balancing—it consolidated the same strategic posture of the AMM by endorsing the latter's decisions vis-à-vis China. Nevertheless, as there were still disagreements among ASEAN member states and between ASEAN and China with regard to the negotiation process and contents of the draft COC, this strategic posture dissipated in 2001 (see AMM section in this chapter). The 2001 statement merely emphasized the importance of dialogue and consultation to resolve the issue while the 2002 statement only indicated that the summit “witnessed” the signing of the DOC.

#### 4.3.2 2003–2012: *Failed Enhancement of Institutional Balancing*

The ASEAN Summit's institutional strategy was never concretely consolidated during the 1990, but after the DOC was created, the summit tried to conduct institutional balancing by emphasizing the importance of the TAC. Since China showed interest in signing the TAC to improve overall relations with ASEAN and to facilitate East Asia-oriented cooperative frameworks such as the East Asia Summit (EAS), it was a good opportunity for ASEAN to include China in ASEAN-led principles, rules, and norms (e.g., Ba, 2009; Goh, 2007/2008). China eventually signed the TAC in 2003, and ASEAN thus gained a tool to constrain China's behavior in the disputed SCS territories by assuring member states that China would be bound by the treaty. In 2004, the ASEAN Summit regarded the TAC as a “code of conduct governing relations between countries in the region for the promotion of peace and stability in the region” in conjunction with the DOC (ASEAN Secretariat, 2004d). Also, as ASEAN leaders envisioned the eventual conclusion of a COC in the

SCS, the ASEAN Summit reassured that the COC would be consistent with the TAC and the DOC (ASEAN Secretariat, 2003f). In doing so, the ASEAN Summit conducted institutional balancing.

Nevertheless, the COC was not touched on at the ASEAN Summit from 2003 to 2010. This was because ASEAN and China had already set up and activated the ASEAN–China Joint Working Group on the Implementation of the DOC (see ASEAN–China dialogues section in this chapter). Given that the DOC only stipulated principles in the SCS, the working group began to consider tangible means to implement the declaration. Furthermore, ASEAN’s institutional focus had shifted more toward intra-ASEAN cooperation as illustrated by the 2003 Declaration of ASEAN Concord II, or the Bali Concord II, which proposed the establishment of three ASEAN communities—security community (later revised as political-security community), economic community, and socio-cultural community—as well as by the adoption of the ASEAN Charter in 2007 (ASEAN Secretariat, 2003f, 2007d). Considering that the SCS situation had become relatively stable after the DOC was created, there was no immediate concern for the ASEAN Summit to take action (see Chapter 3).

After the SCS situation grew tense in the second half of 2010, the ASEAN Summit more acutely realized the limitations of the TAC, which did not necessarily constrain claimant states’ behavior, particularly that of China. Since then, the TAC had been emphasized as a general principle of interstate relations in Southeast Asia and was no longer placed in the same paragraph in the chairman’s statement which discussed the SCS issue. Rather, from the 17th ASEAN Summit in October 2010, ASEAN highlighted the principles of international law including UNCLOS, instead of the TAC, and the summit reintroduced the creation of a COC as the endpoint of the DOC implementation (ASEAN Secretariat, 2010c).

From 2011, the ASEAN Summit began to have the SCS issue as a regular agenda item, with the category, “South China Sea,” in the chairman’s statement, except for the 2013–2015 summits when the ASEAN chairs were Brunei, Myanmar, and Malaysia (ASEAN Secretariat, 2011a). However, despite the deteriorating situation, the ASEAN Summit emphasized the importance of “*continuing* positive engagement of ASEAN–China [emphasis added]” for the effective implementation of the DOC and the creation of a COC (ASEAN Secretariat, 2011a). This diplomatic posture did not change with the 2012 Scarborough Shoal incident, when tensions rose not only with China but also among ASEAN

member states, particularly between the Philippines and Cambodia (see AMM section in this chapter). The only major move that the ASEAN Summit made was to call for “self-restraint” and the avoidance of activities that would “complicate and escalate disputes” (ASEAN Secretariat, 2012e). During this period, the ASEAN Summit maintained institutional balancing, yet given the changed strategic environment in the SCS, the summit was unable to enhance its strategy, although it could still internationalize the SCS issue using its chairman’s statements.

### 4.3.3 2013–2016: *Dilemma Over Institutional Balancing*

The ASEAN Summit remained relatively dormant from 2013 to 2016 because the main decision-making apparatus for the COC was the ASEAN–China forums. There was only so much that the ASEAN Summit could do in terms of resolving the disputes without a draft COC. This was reflected in the ASEAN Summit’s chairman’s statements from 2013 to 2016, which only emphasized “collective commitment” to peaceful resolution through the principles of international law including UNCLOS, “full and effective implementation” of the DOC, and the early conclusion of a COC.<sup>4</sup> In order to accelerate the COC negotiation process, the ASEAN Summit endorsed the commencement of ASEAN–China formal consultations on the COC in 2013 (ASEAN Secretariat, 2013d).

In the meantime, during this period, diplomatic tensions between the Philippines and China rose rapidly; in 2013, the Philippines commenced arbitral proceedings against China on the SCS territorial claims. The ASEAN Summit also reacted by issuing several strong statements calling for the non-use or threat of force and self-restraint while advocating an “early harvest” of the COC. The latter meant that ASEAN and China would be able to start implementing part of the COC that had been agreed upon before formalizing the code (ASEAN Secretariat, 2013d). From 2014 to 2015, when naval tensions between Vietnam and China heightened, the ASEAN Summit expressed “serious concerns” or “concerns” about the SCS developments for the first time and requested all parties involved to avoid activities that would complicate the situation (ASEAN Secretariat, 2014a, 2014c, 2015a, 2015d, 2016g).

<sup>4</sup> See the ASEAN Summit’s chairman’s statements from 2013 to 2016.

However, these acts of institutional balancing by the ASEAN Summit were essentially limited as there were always qualifiers on these statements. Most notably, even after the arbitral award had been issued, the ASEAN Summit, as the supreme decision-making apparatus of ASEAN, decided not to discuss or mention the award at all despite its repeated emphasis over the years on the principles of international law that formed the very basis of the SCS Arbitral Tribunal.

#### 4.3.4 2017–2020: *Supporting Role Through Institutional Balancing*

From 2017 to 2020, the ASEAN Summit's role essentially remained the same. This is mainly because, in response to the 2016 arbitral award, China began to adopt a more cooperative posture toward ASEAN although it rejected the ruling in its white paper issued on July 13, 2016 (see Chapter 3). In 2017, for example, ASEAN and China operationalized the “Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs of China and ASEAN Member States” in case of maritime emergencies as well as CUES (ASEAN Secretariat, 2017a). Moreover, ASEAN and China had decided to complete the framework for the COC by mid-2017, which was implemented on time and progressed to substantial negotiations (ASEAN Secretariat, 2017a, 2017e).

These positive trends temporarily alleviated political tensions among ASEAN leaders, particularly those who were still concerned with SCS developments including land reclamation, such as Vietnam and the Philippines, and those who were not, like Cambodia and Laos. This was because these developments did not force them to seriously consider the activation of institutional balancing at the summit level for the time being. Also, to show that not all ASEAN members shared the same concerns, the summit chairman's statements began to state, “We *took note of* concerns expressed by *some* Leaders [emphases added],” instead of using the word “*share* [emphasis added]” (ASEAN Secretariat, 2017a, 2018a). However, this could still function as institutional balancing, albeit minimally, by disseminating developments of the SCS situation to the international community.

The COC negotiations made progress from 2017 to 2019 with the creation of the framework and the SDNT, and subsequently the completion of the first reading of the SDNT. With these positive trends, the SCS matter became subsumed into the more general regional and global

issues in the chairman's statements from 2018, signaling that the SCS disputes did not wholly define ASEAN–China relations.<sup>5</sup> The ASEAN Summit monitored the situation and, from 2017 to 2019, repeatedly welcomed “improving cooperation [or relations] between China and ASEAN” (ASEAN Secretariat, 2017a, 2017e, 2018a, 2018e, 2019b, 2019f, 2020c). Furthermore, although the pandemic outbreak in 2020 placed a new challenge on the situation—it was difficult to hold face-to-face discussions and the second reading of the SDNT was postponed—the ASEAN Summit remained optimistic, highlighting the importance of ASEAN–China cooperation while noting concerns raised by some leaders regarding the SCS situation (ASEAN Secretariat, 2020c).

#### 4.3.5 *Conclusion*

The ASEAN Summit's institutional strategy has been consistently based on institutional balancing. Because it is the core of ASEAN's institutional structure, it is difficult to alter the institutional design, and therefore its institutional strategy remained stable. That said, its diplomatic role in the SCS disputes is generally limited to whether ASEAN leaders endorsed the proposals that other ASEAN-led institutions submitted or highlighted. Given the same institutional structure, the summit has been closely aligned with the AMM. Moreover, the summit's standalone statements and decisions on the SCS disputes would have a significant impact on ASEAN–China overall relations, whether such statements and decisions are positive or negative, and thus the summit is cautious and generally plays a supportive role for other ASEAN-led institutions.

Admittedly, all this does not mean that the ASEAN Summit would not play a significant role in shaping the SCS strategic environment. It is ultimately the highest authority for making institutional decisions, and its institutional balancing can be activated once ASEAN leaders share common threat perceptions on the SCS situation. However, the 2016 SCS arbitral award created fundamental divisions in ASEAN leaders' perspectives, and consequently the ASEAN Summit has retained a relatively marginal role in managing the SCS disputes unless new developments, such as the conclusion of a COC, emerge.

<sup>5</sup> The section, “South China Sea,” was subsumed under the section, “Regional and International Issues and Developments” in the joint communiqués from the ASEAN Summits in April and November 2018 (Singapore), June and November 2019 (Thailand), and June 2020 (Vietnam). However, the section reappeared in the communiqué from the November 2020 (Vietnam) summit.

#### 4.4 ASEAN–CHINA DIALOGUES

ASEAN–China dialogue relations were established in 1991 soon after the end of the Cold War. Prior to 1991, ASEAN did not have any diplomatic framework with China even through the ASEAN-PMC, which aimed to build “closer, constructive and complementary relationship[s]” and devised the system of “dialogue partners” (ASEAN Secretariat, 1977; Nishimura, 2017).<sup>6</sup> ASEAN began interactions after two member states—Indonesia and Singapore—normalized diplomatic relations with China in 1990. From then on, ASEAN attempted to build trust through dialogues—focusing on functional cooperation such as trade as well as science and technology (Ong, 2007). In 1993, the dialogue relations elevated into a “consultative relationship” based on “equality, mutual benefit and common development without prejudice to bilateral relations between China and the member states of ASEAN” (ASEAN Secretariat, 1993b). Through these CBMs, China became a full dialogue partner along with India and Russia in July 1996 and began participating in the ASEAN-PMC, which was usually organized back-to-back with the AMM (ASEAN Secretariat, 1996a).

Since 1997, the ASEAN–China dialogue agenda has broadened to include security issues such as the SCS disputes. In 1997, an ASEAN–China informal summit was held to ensure the continual improvement of not only ASEAN–China relations but also bilateral relations between individual ASEAN member states and China. ASEAN and China held an informal summit annually until 1999, and this was formalized in 2000. In October 2003, China became the first external state to adopt the TAC, which strengthened bilateral relationships, resulting in the conclusion of the ASEAN–China Strategic Partnership for Peace and Prosperity (ASEAN Secretariat, 2003d, 2003e). While China had been skeptical about multilateral diplomacy, including ASEAN, in the early 1990s, its participation in the ARF facilitated active engagement with other ASEAN-led institutions such as the ASEAN Plus Three (APT), the EAS, and the ASEAN Defence Ministers’ Meeting Plus (ADMM-Plus), which further deepened their relationship.

To be sure, the ASEAN-PMC framework was not structured in a formal way even during the 1990s and 2000s. Meetings with ASEAN

<sup>6</sup> Informal dialogues were held before 1977, starting with the European Community, Japan, and Australia in 1972, 1973, and 1974, respectively.

dialogue partners were not regularly organized or recorded, and despite the existence of the system, the framework remained largely informal. Furthermore, because of the proliferation of regional institutions in Asia–Pacific, such as the ARF and the Asia–Pacific Economic Cooperation, the ASEAN-PMC struggled to find its *raison d’être* as new institutions started covering the agenda that the PMC had discussed, including transnational and political issues in Asia (e.g., US Department of State, 2001). However, the ASEAN-PMC provided ASEAN with a quasi-exclusive bilateral forum with its dialogue partners, and it became formalized and structured after the ASEAN Charter was enacted in 2008. Currently, bilateral dialogues are held at various levels, ranging from SOMs to ministerial meetings to the summit. In this context, ASEAN–China dialogues have become particularly useful for discussing SCS developments directly relating to China and ASEAN claimant states.

This chapter examines the role and institutional strategy of ASEAN–China dialogues—including the summit, ministerial meetings, and SOMs—during four periods: 1991–2002, 2003–2012, 2013–2016, and 2017–2020.

#### 4.4.1 1991–2002: *From CBMs to Institutional Hedging to Institutional Co-option*

ASEAN’s institutional strategy through ASEAN–China dialogues was not clearly set during the 1990s. This was mainly because at the beginning of the 1990s, ASEAN did not have a formal communication channel with China. Given the rising strategic uncertainty in Asia–Pacific at the end of the Cold War, where the rise of China and the disengagement of the United States would have a significant security impact on Southeast Asia, ASEAN started to create forums to engage with China rather than balancing against it. As an initial CBM, Malaysia, the 1991 ASEAN chair, invited China’s Foreign Minister Qian Qichen to the 24th AMM as a guest (ASEAN Secretariat, 2020b). Through informal bilateral dialogues, ASEAN–China relations steadily elevated to “consultative relationship” in 1993 and then to “dialogue partner” in 1996. Nevertheless, both were not yet ready to discuss security issues in depth, including the SCS matter, despite the intensification of territorial disputes, and ASEAN–China dialogues were mainly used as CBMs, focusing on non-contentious issues.

It was in this context that the inaugural ASEAN–China Summit was held in 1997, which touched on the SCS issue for the first time in an ASEAN–China meeting. The summit chairman’s statement stipulated that “[t]he parties concerned agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law, including the 1982 UN Convention on the Law of the Sea” (ASEAN Secretariat, 1997b). Given that China had repeatedly resisted the internationalization of the disputes, this statement indicated an opportunity for ASEAN to discuss the issue with China multilaterally (AFP, 1998).

From 1998 to 2001, ASEAN and China held a formal and informal annual summit, where the SCS issue was on the agenda consistently. Particularly, by 1999, ASEAN and China had agreed to a peaceful resolution through negotiation and consultation and were discussing a potential COC (see Chapter 3; AFP, 1998; MOFA, 1999). In this context, ASEAN attempted to conduct institutional hedging by framing the discussions with its own declarations and documents, including the 1992 Declaration on the SCS and the 1995 Joint Statement. ASEAN even attempted to preemptively create its own COC to enhance the effectiveness of institutional hedging. In this way, ASEAN could have made the most of its own COC to frame the COC discussions with China. Nevertheless, among ASEAN member states there were disagreements on issues such as the COC’s geographical scope (see Chapter 3). Accordingly, ASEAN–China dialogues faced difficulty proceeding with the COC negotiations even though both sides agreed with certain principles in general, such as peaceful resolution through dialogue and consultation and no new occupation or construction of structures (ASEAN Secretariat, 2001b; Bernama, 1999). Furthermore, the COC discussion occurred at several ASEAN-led forums, including ASEAN–China dialogues, the AMM, and the ARF, which created confusion about which venue would play the main role.

As such, ASEAN missed an opportunity to effectively conduct institutional hedging through ASEAN–China dialogues. If ASEAN had been able to create its own COC in the SCS swiftly, that could have been the negotiation basis for discussing the COC with China. However, because of ASEAN’s internal dissonance and China’s rapid involvement in the discussion, the COC discussion was not framed as one between ASEAN and China, but between individual ASEAN member states and China.



Thus, ASEAN–China dialogues instead began to conduct institutional co-option through the creation of a COC.

The 2002 DOC became a milestone SCS document, created by ASEAN and China to navigate state behavior. Although the document fell short of formulating a legally binding COC because of divergent interests among the claimant states, it was the first step to nurturing regional norms for maintaining stability in the SCS. Therefore, it was largely regarded as a CBM document; by engaging China on nurturing norms based on the DOC, ASEAN had conducted institutional co-option.

#### *4.4.2 2003–2012: Weakening Effectiveness of Institutional Co-option and Hedging*

The 2002 DOC opened a new window of opportunity for ASEAN to pursue institutional hedging based on the TAC. This was possible because China had shown willingness to sign the TAC in 2002 and acceded to it in 2003, rather than insisting only on its “five principles of peaceful co-existence” (e.g., ASEAN Secretariat, 1997b). Indeed, China began to engage ASEAN and ASEAN-led institutions more actively after the 1997 Asian Financial Crisis as it attempted to nurture East Asian regionalism for East Asian states through the APT, which did not include external major powers, particularly the United States (Koga, 2021). As a result, China’s diplomatic posture toward ASEAN became increasingly positive, resulting in the adoption of the 2002 Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues and the conclusion of the 2003 ASEAN–China Strategic Partnership for Peace and Prosperity (ASEAN Secretariat, 2002b, 2003d).

China attempted to differentiate itself from other major powers by publicly subscribing to the ASEAN rules and norms that those powers were hesitant to accept. For example, it was not only the TAC, but also the Treaty of Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ), that China expressed its intention to sign as the first Nuclear Weapon State in 2002 (ASEAN Secretariat, 2002c). Because of the potential geographical implications for China’s nuclear strategy in the SCS and the unwillingness of other nuclear-weapon states to sign the treaty, China did not immediately accede to the SEANWFZ but showed its amicable posture while continuing discussions with ASEAN. The display of political will on China’s part bodes well for ASEAN–China relations (NTI, 2020). Ultimately, China’s ratification of the TAC in 2003 was a clear

positive sign to ASEAN because China had essentially agreed that it would refrain from the use or threat of force in the SCS and pursue a peaceful resolution of the disputes in accordance with the TAC principles.

Given this trend, ASEAN expected relative stability in the SCS and focused on the incremental, but effective, implementation of the DOC which would lead to the eventual conclusion of the COC (ASEAN Secretariat, 2003f, 2004a). At this point, there was no clear demarcation between the DOC and the COC, but the assumption was that the COC would be a legally binding document, not just a political one without legally enforceable mechanisms. To this end, ASEAN and China formed several working-level dialogues to implement the DOC. The most notable ones were the SOM on the Implementation of the DOC (SOM-DOC)—an initiative by ASEAN’s and China’s foreign ministers—and the ASEAN–China Joint Working Group on the Implementation of the DOC (ACJWG) to monitor the implementation process, both of which were formed in 2004 (ASEAN Secretariat, 2004c). Convened in December 2004, the SOM-DOC in turn recommended the establishment of the ACJWG (ASEAN Secretariat, 2004f). Comprising registered experts and eminent persons, the ACJWG aimed to establish “concrete cooperative activities” based on the DOC to facilitate mutual understanding and trust, specifically in the fields of maritime environmental protection, marine scientific research, safety in navigation and communications at sea, search-and-rescue operations, and combating transnational crime (ASEAN Secretariat, 2004f, 2004g). In other words, the ACJWG functioned as a CBM and a norm-setting mechanism on functional cooperation in the SCS. Since these norms could be based on the TAC, ASEAN continued to conduct institutional co-option while leaving the option open for institutional hedging by emphasizing the importance of the TAC.

Despite the establishment of these mechanisms, however, the implementation process was delayed significantly between late 2005 and early 2010. For example, it was decided that the ACJWG would occur at least twice a year, and its first meeting was held in August 2005 (ASEAN Secretariat, 2004e, 2005b). However, there were only three meetings between August 2005 and March 2010, while the SOM-DOC was also relatively inactive (ASEAN Secretariat, 2010a). Furthermore, ASEAN–China Summits and PMCs during this period remained silent on the progress of the DOC implementation, even at ASEAN–China anniversary events such as the 2006 summit commemorating the 15th anniversary

of ASEAN–China dialogue relations (ASEAN Secretariat, 2007c, 2008d, 2009b, 2009c; Embassy of the People’s Republic of China in Jamaica, 2006).

There are two reasons for this silence. First, the SCS situation between 2005 and 2007 was clearly more stable than before, which did not draw much international and regional attention, while other pressing issues, such as counterterrorism and the ASEAN Charter, became more salient matters for ASEAN. In addition, given that both ASEAN and China had agreed to take an incremental approach to implementing the DOC, the delay was not necessarily negative. Several ASEAN member states, namely the Philippines and Vietnam, were negotiating a potential joint exploration project in the SCS, which was generally regarded as a positive sign for SCS stability (see Chapter 3). Second, the deterioration of the SCS situation from 2007 was gradual, and ASEAN did not consider the situation to be immediately alarming. The trilateral project involving China, the Philippines, and Vietnam—the joint marine seismic undertaking—was not proceeding smoothly, but this did not translate into major skirmishes. Rather, tensions rose in 2009 when Malaysia and Vietnam jointly submitted their claims to the UN Commission on the Limits of the Continental Shelf and when the USNS *Impeccable* incident occurred (see Chapter 3). Given these regional circumstances, ASEAN could not effectively conduct institutional co-optation during this period, while the TAC itself was also not effective enough to constrain claimant states’ behavior.

As US–China diplomatic and naval tensions climbed from 2009, ASEAN doubled down on its institutional co-optation efforts by revitalizing ASEAN–China dialogues on the SCS in 2010. In April 2010, the ACJWG was convened, while the foreign ministers of ASEAN and China also attempted to resume the SOM-DOC (ASEAN Secretariat, 2010b). Moreover, in the context of intensifying US–China great-power rivalry over the SCS, the ASEAN–China Summit in October 2010 highlighted the need for greater consultation between the two, resulting in the SOM-DOC’s creation of the “Guidelines for the Implementation of the DOC” in 2011, which was soon endorsed by both parties’ foreign ministers (ASEAN Secretariat, 2010d, 2011c, 2011d).

The 2011 guidelines were basically a summary of past ASEAN–China agreements. The guidelines included the promotion of joint cooperative activities, a step-by-step approach to implementing the DOC, active consultation through dialogues, and the creation of a COC based on consensus. There were few unique features in the guidelines—one

new recommendation was that the progress of the agreed activities and projects would be reported to the ASEAN–China PMC annually. However, despite the 20th anniversary of ASEAN–China dialogue relations in 2011, there was no real progress on both the DOC implementation and the COC discussion (ASEAN Secretariat, 2011e).

This negative trend became more apparent in 2012, when China–Philippines relations deteriorated due to the Scarborough Shoal incident, and ASEAN disunity was revealed by the non-issuance of that year’s AMM joint communiqué (see Chapter 3). As a result, ASEAN–China dialogue was paralyzed. The year 2012 marked the DOC’s 10th anniversary, yet there was no substantial discussion on the COC but merely a reiteration of the importance of the effective and full implementation of the DOC at the PMC and SOM levels (ASEAN Secretariat, 2012a, 2012c). The anniversary workshop was organized in November 2012, but the co-hosts were China and Cambodia, both of which avoided discussing specific incidents relating to the SCS, and the workshop only generally emphasized the enhancement of the ASEAN–China strategic partnership, deflecting attention away from the SCS disputes (ASEAN Secretariat, 2012d). Likewise, the ASEAN–China Summit on November 19, 2012 issued a joint statement on the 10th anniversary of the DOC but did not add substantially to the progress of the COC negotiations (ASEAN Secretariat, 2012f).

Therefore, there was a growing gap between diplomatic agreement and the SCS situation on the ground after 2009. At this point, the ASEAN–China dialogue faced considerable difficulty managing the SCS disputes because its institutional co-option and potential institutional hedging efforts had become ineffective.

#### 4.4.3 2013–2016: *Revitalizing Institutional Co-option*

The year 2013 was the 10th anniversary of the ASEAN–China Strategic Partnership for Peace and Prosperity, another occasion that provided an opportunity to promote their cooperation in the SCS. Given the 2012 SCS debacle that had affected ASEAN unity, ASEAN made significant efforts to accelerate its consultation with China on the COC creation, including leveraging the SOM-DOC and ACJWG platforms, which had been dormant for a long time. Foreign ministers of ASEAN and China agreed to start official consultation on the COC and considered the establishment of supportive mechanisms including an Eminent Persons

and Experts Group (ASEAN Secretariat, 2013b). These illustrate ASEAN member states' increasing concerns over its institutional viability on the SCS issue. Consequently, the COC consultation started in September 2013, while tangible cooperation mechanisms were sought to manage maritime tensions and accidents, such as setting up hotlines of communication (ASEAN Secretariat, 2013c). At this point, the most important objective was the early conclusion of the COC to regulate claimant states' behavior more concretely and maintain the status quo until peaceful negotiations for the territorial disputes were completed.

Such a political ambition was hard to achieve in the short term, and thus ASEAN began to take a two-pronged process which China also accepted: COC negotiations and early harvest measures. Discussed at the SOM-DOC and the ACJWG, early harvest measures included the creation of a bilateral hotline between the foreign ministries of ASEAN member states and China as well as a tabletop exercise on search and rescue (ASEAN Secretariat, 2014d). In this way, while negotiating a COC, ASEAN and China were able to promote CBMs and maintain a line of communication with regard to the SCS situation. By 2016, the SOM-DOC announced that ASEAN and China had adopted a hotline for maritime emergencies and were discussing the potential adoption of CUES in the SCS, and that the COC discussion had progressed based on two papers, "List of Elements of the Possible Outline of a COC" and "List of Crucial and Complex Issues" (ASEAN Secretariat, 2016b). To be sure, as with other political documents between China and ASEAN, these agreements did not prevent local skirmishes on the ground, as illustrated by the China–Philippines tension over Second Thomas Shoal in 2013 and the China–Vietnam skirmishes over hydrocarbon drilling in 2014. Yet, this institutional co-option promoted China and ASEAN onto the next phase to discuss the COC framework in 2015 (ASEAN Secretariat, 2015c).

In July 2016, the SCS Arbitral Tribunal's award was issued, ruling overwhelmingly in favor of the Philippines. Based on international law, the award was "final and binding," but as with other ASEAN-led institutions, ASEAN–China dialogues could not discuss it because of China's strong opposition (ASEAN Secretariat, 2016f). ASEAN-led institutions were based on consensus decision-making, and it was almost impossible for China to agree to any statement that would weaken its maritime claims

in the SCS. Furthermore, as shown by the 2012 Scarborough Shoal incident, there were also differing perspectives on the award among ASEAN member states.

Instead, foreign ministers of ASEAN and China issued a joint statement on the DOC in July 2016 that reiterated the 2011 Guidelines for the Implementation of the DOC (ASEAN Secretariat, 2016e). Also, rather than paying attention to those differences, ASEAN–China dialogues generally focused on the progress of functional cooperation, particularly the activation of the inter-foreign ministry hotline and the formal application of CUES. Meanwhile, the ASEAN–China Summit clarified two important timelines—for the implementation of early harvest measures and the completion of consultation on the COC outline by the first half of 2017 (ASEAN Secretariat, 2016h, 2016i). By focusing on institutional co-option, ASEAN and China made some diplomatic progress by sacrificing an opportunity for ASEAN to conduct institutional hedging using the 2016 arbitral award. Pursuing institutional hedging with the arbitral award would highly likely be counter-productive without concrete political and material support from the international community, particularly the United States and other regional great powers in East Asia. As a result, ASEAN did not take the risk.

#### 4.4.4 2017–2020: *Consolidating Institutional Co-option*

ASEAN’s institutional co-option through meetings to achieve the early conclusion of a COC and early harvest measures continued from 2017 to 2020. In May 2017, both the SOM-DOC and the ACJWG overviewed the progress of the inter-foreign ministries hotline and the application of CUES; exchanged their views on functional maritime cooperation, including marine environmental protection and safety of navigation in the SCS; and completed discussions on the draft COC framework (ASEAN Secretariat, 2017b). Subsequently, the ASEAN–China PMC endorsed the outcomes of the SOM-DOC and tasked senior officials to begin substantive consultation on the COC (ASEAN Secretariat, 2017d). At the ASEAN–China Summit, leaders reemphasized the positive steps made by both sides and endorsed the activities of the SOM-DOC and the ACJWG, resulting in the issuance of the declaration on the marine environmental protection (ASEAN Secretariat, 2017f).

Substantial discussions on the COC led to the creation of the SDNT at the SOM-DOC in 2018 (ASEAN Secretariat, 2018d). The SDNT was

a draft document of proposed ideas and positions of China and ASEAN member states which would form the basis of the COC (Thayer, 2018). The SDNT was endorsed by both the ASEAN–China PMC and Summit in 2018, with the aim of completing the first reading by 2019 (ASEAN Secretariat, 2018f). In fact, the first reading was completed in mid-2019, where each state’s position was streamlined in the document, and the ASEAN–China PMC decided to commence the second reading, aiming to complete the COC in 2021 (ASEAN Secretariat, 2019c, 2019e).

Due to the outbreak of the COVID-19 pandemic in 2020, face-to-face ASEAN–China dialogues were not able to be convened, which hampered progress on the COC negotiations. The ASEAN–China PMC and Summit were held in the second half of 2020, and the PMC reiterated that the COC would be “consistent with international law, including the 1982 UNCLOS, within a mutually-agreed timeline” (ASEAN Secretariat, 2020b, 2020d, 2020f). Nonetheless, negotiations were significantly delayed.

#### 4.4.5 *Conclusion*

ASEAN–China dialogues at various levels—senior officials, foreign ministers, and summit—have become the most important ASEAN-led institutions in managing the SCS disputes. Their role was not to deter a potential aggressor or to punish a norm violator; rather, the role had evolved from being a CBM to norm creation through institutional co-option.

During the 1990s, the end of the Cold War altered the strategic landscape in the SCS. As China had not been fully incorporated into the global and regional systems, ASEAN member states, particularly Indonesia and Singapore, were concerned about strategic uncertainty caused by China’s rise. In this setting, ASEAN–China dialogues functioned as CBMs, which turned out to be effective after the 1997 Asian Financial Crisis. While ASEAN used its own declarations and statements as a basis for the COC creation, which could work as institutional hedging, this strategy changed over time as China resisted such a negotiation process. At the same time, ASEAN also realized that its members had disagreements and that bilateral discussions with China were necessary for effective negotiation. The COC negotiation process from the late 1990s was not necessarily smooth, but it resulted in the creation of a political document in 2002—the DOC.

During the mid-2000s, the stable strategic balance in the SCS nurtured a diplomatic atmosphere in which ASEAN–China dialogues created new institutional mechanisms—the SOM-DOC and the ACJWG—to fully and effectively implement the DOC. However, the stability also indicated that there was no new immediate threat, and thus the implementation of the DOC and the creation of a COC were not prioritized. Paradoxically, ASEAN–China dialogues had not created diplomatic urgency for the resolution of the territorial disputes until the surge of skirmishes in the SCS in around 2008. This eventually led to the deteriorating SCS situation in 2012, when the Philippines and China confronted diplomatically and militarily over the Scarborough Shoal incident.

The 2012 Scarborough Shoal incident triggered new diplomatic momentum to push forward the COC creation. As it was clear that it would take a long time, ASEAN and China agreed in 2013 to facilitate a two-pronged process—COC negotiations and early harvest measures—which would take place over the next few years. Consequently, ASEAN–China dialogues established the inter-foreign ministry hotline and the adoption of CUES in the SCS. At this point, ASEAN’s institutional strategy through ASEAN–China dialogues was still institutional co-option because ASEAN could not dominate rule- or norm-making at the dialogues. This was clearly illustrated by the aftermath of the 2016 arbitral award, where ASEAN had no choice but to engage with China despite the award because ASEAN could not unite on the SCS issue. As ASEAN double-downed on institutional co-option, COC negotiations from 2017 to 2020 made progress—the first reading of the SDNT was completed in 2019, kickstarting the second reading, and the COC was planned to conclude by 2021. Nevertheless, the envisioned timeline was disrupted due to the COVID-19 pandemic outbreak.

Given these historical developments, institutional co-option was essentially the only option for ASEAN in ASEAN–China dialogues. ASEAN was structurally limited because even if it was united in its position against China in the SCS disputes, China would be able to reject the accusations and stop negotiations because of ASEAN’s consensus decision-making process. Also, the dialogues were the most direct institutional framework between ASEAN and China that ASEAN could utilize vis-à-vis a particular great power. Losing this framework would not only create strategic antagonism between ASEAN and China, but also exacerbate ASEAN disunity given the member states’ divergent diplomatic postures toward China.



Therefore, despite the deteriorating SCS situation on the ground, ASEAN did not stop engaging China through ASEAN–China frameworks.

At the same time, every time there was an expected change in the strategic balance in the SCS, the ASEAN–China dialogue framework gained diplomatic momentum to facilitate functional cooperation and COC negotiations. Moreover, considering that China has not canceled ASEAN–China dialogues despite the increasing tensions with several claimant states, particularly the Philippines and Vietnam, the dialogues serve as a consistent line of communication and a negotiating table which have gained strategic utility for ASEAN member states.

#### 4.5 EAST ASIA SUMMIT (EAS)

Established in 2005, the EAS currently has 18 member states: the 10 ASEAN member states, Australia, China, India, Japan, New Zealand, Russia, South Korea, and the United States. Its institutional lineage dates back to Malaysian Prime Minister Mahathir Mohamad’s proposal in 1990 to create the “East Asian Economic Group,” comprising ASEAN members, China, Japan, and South Korea, and excluding the United States, which strongly opposed it. Eventually, this group formed the institutional basis of the APT in 1997 (ASEAN Secretariat, 2008a). When the APT Summit was officially convened for the first time in 1999, South Korean President Kim Dae Jung initiated the academically oriented “East Asia Vision Group” (EAVG) to envision potential areas of cooperation among APT members. After the EAVG report was issued in 2000 recommending the nurturing of an “East Asian community,” the APT formed another study group, “East Asia Study Group” (EASG), largely comprising government officials, to implement the EAVG’s recommendations. In both the 2001 EAVG and 2002 EASG reports, one of the most important recommendations was to elevate the APT to an “East Asian Summit” as a long-term measure for facilitating the APT’s regional community-building efforts (East Asia Study Group, 2002; East Asia Vision Group, 2001).

The proposed summit was to be a regional forum that ensured equal participation among member states unlike the existing regional forums in East Asia that were predominantly led by ASEAN. To this end, long-term CBMs were necessary to negate strategic rivalry among member states, particularly China and Japan. However, China and Malaysia attempted to accelerate the process of establishing such a summit in East Asia. While

both sought greater regional autonomy from the United States and the West, there were also growing concerns about China's rising diplomatic clout among several APT members such as Indonesia and Japan (Koga, 2021). To avoid a potentially negative impact, those APT members attempted to dilute China's excessive influence by retaining ASEAN centrality and expanding the membership to other regional democratic states—Australia, India, and New Zealand (Koga, 2021). Consequently, the EAS included these three democratic states while remaining an ASEAN-centered regional framework.

In short, the EAS was the result of political compromises among APT member states, and the original purpose of upgrading the APT was lost in the process. Both frameworks could coexist: While the EAS would play a “significant role in community building” in East Asia, the APT would “continue to be the main vehicle in achieving [East Asian cooperation and community-building efforts]” (ASEAN Secretariat, 2005b, 2005c, 2005d). Nevertheless, since the institutional division of labor was not clearly articulated, the EAS's role remained vague initially and began to focus on non-controversial cooperative agendas among the member states.

The vague institutional role of the EAS also meant that it was flexible enough to modify its agenda and modality over time. Indeed, its membership expanded again in 2011, including Russia and the United States, covering two of the most influential regional powers in Asia-Pacific (Koga, 2018, pp. 61–69). This section examines the institutional strategy of the EAS during three periods: 2005–2012, 2013–2016, and 2017–2020.

#### 4.5.1 2005–2012: *Toward Institutional Hedging*

The EAS initially focused only on non-controversial, cooperative agendas and avoided discussing contentious issues in East Asia, including the SCS disputes. While the summit indicated that it discussed “issues of strategic importance to the East Asian region,” the agendas were confined to non-traditional security issues such as poverty eradication, energy, education, finance, the avian influenza, and natural-disaster mitigation, with the exception of North Korea's nuclear development (EAS Unit, 2007). Among these, the EAS identified five priority areas for cooperation in facilitating regional community-building efforts: energy and environment, finance, education, natural-disaster management, and pandemic (Ministry

of Foreign Affairs, Republic of Indonesia, 2012). In July 2009, an EAS foreign ministers' informal consultation was held which discussed regional political and security issues, such as the denuclearization of the Korean Peninsula and Myanmar's democratization process but did not touch on the SCS disputes (EAS Unit, 2009). China persistently avoided discussing the SCS issue at the EAS, and thus the EAS from 2005 to 2009 remained a non-controversial cooperative framework in East Asia (e.g., *States News Service*, 2009).

However, this institutional trend changed in 2010 when some ASEAN member states, particularly the Philippines and Vietnam, began raising concerns about China's behavior in the SCS. In the context of the ARF debates between China and the United States over the SCS disputes, EAS foreign ministers also emphasized the importance of maritime security while welcoming the establishment of the ASEAN Maritime Forum (EAS Unit, 2010a). Moreover, the expansion of EAS membership to include Russia and the United States was discussed and agreed to among EAS members, with US involvement in the EAS becoming more visible in 2010. Most notably, US Secretary of State Hillary Clinton, who was present at the 2010 EAS as a guest of the chair, Vietnam, began to proactively raise the issue of maritime security (US Department of State, 2010). While some ASEAN member states, such as Indonesia, were cautious about raising the SCS issue in a contentious way, most of the regional states, including Australia and Japan, also expressed concerns about the SCS situation in 2010 (*AFP*, 2010b; *JEN*, 2010b). Eventually, Clinton reiterated the US position on the SCS issue and mentioned the positive sign of progress in the ASEAN–China discussions for creating a legally binding COC in the SCS (*AFP*, 2010c). Although this did not necessarily reflect the 2010 EAS chairman's statement, it opened a small window of opportunity for the EAS to discuss the SCS issue (EAS Unit, 2010b).

Because of its inclusion of the United States, the EAS became another avenue for discussing the SCS issue from 2011. The EAS informal foreign ministers' meeting was formalized as the EAS Foreign Ministers' Meeting (EAS-FMM), whose inaugural meeting saw the participation of Clinton. She raised the SCS issue in the context of maritime security despite China's soft opposition, explicitly highlighting the importance of transparency to make territorial claims "publicly and specifically known" for an eventual resolution (Lee, 2011; US Department of State, 2011a). This proactive US stance encouraged EAS member states to discuss the SCS

issue more openly at the summit held in November 2011. China reiterated that the SCS solution ought to be sought bilaterally and among the parties directly concerned, and it supported Cambodia's diplomatic posture, which was compatible with China's (Hille & Deutsch, 2011; *Xinhua*, 2011). However, the United States persistently discussed the SCS issue at the EAS because of US national interests—that is, to ensure freedom of navigation and overflight in accordance with international law (The White House, 2011). Emphasizing that the territorial disputes were not an EAS matter, the United States considered it necessary to discuss the shared maritime principles at the leaders' summit (*Fair Disclosure Wire*, 2011; The White House, 2011).

Given the rising concerns among some ASEAN member states and US willingness to discuss maritime security at the EAS, including the SCS issue, 16 of the 18 member states touched on maritime security at the EAS retreat, most of which also discussed the SCS disputes (*The American Presidency Project*, 2011). The chairman's statement did not specifically mention the SCS, but indicated important principles, such as freedom of navigation, as well as leveraging existing frameworks, including the ASEAN Maritime Forum, to address maritime challenges (EAS Unit, 2011a).

Also, partly as the United States wanted to transform the EAS into a premier “political and security” forum to tackle regional security challenges in Asia–Pacific, the EAS gained diplomatic momentum to issue the “Declaration of the EAS on the Principles for Mutually Beneficial Relations” in 2011 (Clinton, 2011; The White House, 2011). This declaration stipulates that “the international law of the sea contains crucial norms that contribute to the maintenance of peace and stability in the region” and that the EAS principles include “respect for international law,” “renunciation of the threat of force or use of force,” and “settlement of differences and disputes by peaceful means,” which were fundamentally compatible with ASEAN's TAC (EAS Unit, 2011b). As such, the EAS used the existing ASEAN institutional norms to constrain member states' behavior and thus began to conduct institutional hedging.

This tendency became more visible in 2012 because of the Scarborough Shoal incident. Despite the 2011 EAS declaration, tensions between claimant states, particularly China and the Philippines, rose quickly. State Secretary Clinton then used the EAS-FMM to reiterate US position on maritime security but expressed concern about the SCS situation without naming Scarborough Shoal (*Federal News Service*, 2012). Furthermore,

Clinton advocated that resolving complex territorial issues only through bilateral negotiations was “a recipe for confusion and even confrontation” (*Federal News Service*, 2012). This was because the issue was not only territorial but also concerned the “conduct in disputed areas and... acceptable methods of resolving disputes,” which needed to be discussed multilaterally (*States News Service*, 2012a). Consequently, the 2012 EAS-FMM chairman’s statement reaffirmed the importance of peaceful resolution and the implementation of the DOC, mentioning the SCS issue for the first time in the EAS’s history (EAS Unit, 2012a).

The EAS also discussed the SCS situation in November 2012. The summit chairman’s statement reiterated the general principles of behavior on the SCS issue in the context of maritime security (EAS Unit, 2012b). Of course, there was pushback from China and Cambodia. China stated that it would reject any attempt to exaggerate maritime tensions, while Cambodia attempted to block the tabling of the SCS issue by stating that ASEAN had reached consensus not to “internationalize” the SCS disputes (*AFP*, 2012a, 2012b; *Xinhua*, 2012). However, this was soon denied by Philippine President Benigno Aquino. The Philippines did not agree with the statement and stated that it would act in accordance with its national interests, if necessary (*AFP*, 2012c). Also, given the maritime tensions, China, Japan, and other member states inevitably raised the issue (*JEN*, 2012b; *States News Service*, 2012c).

As the United States repeatedly highlighted, the SCS issue was discussed as a reminder of the principles of state behavior in the maritime domain, not to resolve the territorial disputes. The existing international law was the instrument that the EAS member states could refer to, and with US assistance, some ASEAN member states attempted to constrain China’s assertive behavior despite the resistance of other members such as Cambodia. Therefore, this period shows the development of the institutional strategy adopted by the EAS—institutional hedging.

#### 4.5.2 2013–2016: *Fall of Institutional Hedging*

The formal inclusion of the United States in 2011 made it possible for ASEAN to utilize the EAS as a tool for institutional hedging. In fact, the United States was more open to continually discussing the SCS issue at the EAS-FMM and the EAS despite China’s opposition, emphasizing the importance of international law, including UNCLOS, for maritime stability. By 2013, the SCS had become an important agenda at the

EAS, although maritime security had yet to be included as a priority area for cooperation (EAS Unit, 2012b). In July 2013, US Secretary of State John Kerry envisioned that the EAS would play a “key role in settling and enforcing norms and rules” for regional stability, including maritime security, and thus the United States showed its intention to support the EAS as the “region’s primary institution for political and strategic issues” that “should play a lead role in shaping the future of the Asia–Pacific” (US Department of State, 2013). With this declared US commitment, the strategic value of the EAS for institutional hedging increased. Some ASEAN member states, particularly the Philippines, welcomed US commitment, while others strengthened their positions to advocate the primacy of UNCLOS and peaceful settlement (*Malaysia General News*, 2013; *Targeted News Service*, 2013).

Nevertheless, diplomatic momentum to consolidate the EAS was thwarted because of the absence of US President Barack Obama at the summit held in October 2013. ASEAN member states were not diplomatically offended because they understood that Obama needed to be in the United States to manage the partial “shutdown” of the US government. Although the United States sent State Secretary Kerry, who, together with Japan, continued to advocate the need for a legally binding COC, Obama’s absence led to doubts on whether the United States would be able to maintain its commitment to the EAS and the SCS issue (Hurst, 2013). On the other hand, Chinese Premier Li Keqiang reiterated China’s position while stating that the SCS situation was stable, freedom of navigation was never affected, and the issue should not be “internationalized” (*Kyodo*, 2013; *ST*, 2013). As such, the EAS had yet to produce a joint statement regarding the SCS.

Amid the still-heightened SCS tensions in 2014, the EAS-FMM became one of the focal points for member states to propose ideas for maritime stability. At the meeting, Kerry proposed to freeze any “provocative” action in the SCS to maintain the status quo, which China rejected, as it considered this to be external interference (*Deutsche Welle Asia*, 2014). The United States also emphasized the need to clarify each claimant states’ claims and suggested the use of an Arbitral Tribunal (US Department of State, 2014). In this connection, Japanese Foreign Minister Kishida Fumio shared a similar diplomatic position, proposing peaceful settlement through the “three principles” of rule of law at sea: “(i) making and clarifying claims based on international law, (ii) not using force or coercion in trying to drive their claims, and (iii) seeking to settle

disputes by peaceful means,” which Japan’s Prime Minister Abe Shinzo discussed at the Shangri-La Dialogue in May 2014 (MOFA, 2014a, 2014b). For its part, China proposed accelerating the COC discussions, which ASEAN welcomed (Ismail, 2014a).

That said, these proposals were not clearly reached official agreements, and thus discussions were carried over to the summit in November 2014. At the EAS, most member states raised the SCS issue, with Japan and the United States urging China and ASEAN to expedite the conclusion of a legally binding COC, to which China also agreed (*Kyodo*, 2014; Zhao & Zhao, 2014). At the same time, China proposed a “dual-track approach,” whereby specific disputes would be directly handled by the parties concerned while SCS stability would be maintained by China and ASEAN (*Xinhua*, 2014). This proposal aimed to prevent external powers, such as Japan and the United States, from influencing the COC, which the United States sought to do. As a result, there remained differences among member states’ perspectives on the stabilization of the SCS situation, and none of the proposals reached consensus at the EAS. The chairman’s statement thus only reconfirmed existing agreements such as the guidelines for implementing the DOC (EAS Unit, 2014).

In 2015, US State Secretary Kerry accused China at the EAS-FMM of hindering freedom of navigation and overflight in the SCS because of China’s warning against US military aircrafts, its land reclamation, and its construction of “facilities for military purposes.” Thus, Kerry again proposed a freeze on any provocative action (*CNA*, 2015; *SDDP*, 2015; *US Fed News*, 2015). However, this diplomatic maneuver was not particularly effective as the SCS issue was not stipulated in the chairman’s statement, which only reiterated the fundamental principles of maritime stability, such as respect for international law and peaceful settlement (EAS Unit, 2015a). China later responded that US FONOPs conducted by B-52 bombers and the USS *Lassen* were “a political provocation” and “illegal” incursions that tested “China’s response” (*International Business Times News*, 2015; *JEN*, 2015b).

Concerns about the SCS situation were also raised at the EAS in November 2015 by some members including Indonesia, Japan, Malaysia, the Philippines, Singapore, the United States, and Vietnam (Kenny, 2015). According to Japan’s *Yomiuri Shimbun*, only Cambodia, Laos, and Russia did not touch on the SCS issue (Oki & Ikeda, 2015). Indeed, these continual efforts were an opportunity to advance EAS measures for responding to the SCS tensions. First, the 2015 EAS concluded the

“Statement on Enhancing Regional Maritime Cooperation.” Although this statement did not explicitly discuss the disputes, it included not only all the principles that had been emphasized in ASEAN documents, such as self-restraint, peaceful resolution, respect for sovereignty, adherence to international law, including UNCLOS, but also the potential incorporation of existing international rules such as CUES and the International Convention for the Safety of Life at Sea (EAS Unit, 2015b). In this way, the EAS expanded the use of relevant formal and informal international rules to regulate state behavior, including that of China.

Second, the chairman’s statement included Chinese President Xi Jinping’s statement that China had no intention to “pursue militarization in the South China Sea” (EAS Unit, 2015a). Although the statement was made during Xi’s visit to the United States in September 2015, it was incorporated into the chairman’s statement as it was China’s behavioral promise regarding the SCS. These achievements reflected most of the member states’ concerns about the SCS situation (MOFA, 2015). The Philippines attempted to include its arbitral case against China, but it was not able to do so (*Legal Monitor Worldwide*, 2015). Meanwhile, China made a five-point proposal to maintain SCS stability, which included non-interference from external actors on the issue, but it was not accepted by all EAS members (*China Daily*, 2015). With these two points, institutional hedging through the EAS was clearly conducted.

The diplomatic tug-of-war between China and the United States in shaping maritime norms and rules in the EAS drastically changed in 2016 when the SCS Arbitral Tribunal’s award was issued, ruling overwhelmingly in favor of the Philippines. Australia, Japan, the United States, and Vietnam openly supported the award (Department of Foreign Affairs and Trade, Australia, 2016; MOFA, 2016; *ST*, 2016; US Department of State, 2016). Philippine Foreign Minister Perfecto Yasay Jr. also confidently sought a unified position in ASEAN vis-à-vis the arbitral award by requesting the issuance of a statement (Torres, 2016). It could be argued that Yasay’s confidence stemmed partly from ASEAN’s longstanding respect for international law, particularly UNCLOS, and because the arbitral ruling was issued under UNCLOS, Yasay thought that ASEAN would support it. However, the initial reactions of other EAS member states were somewhat restrained. In fact, according to *Agence France-Presse*, Cambodia opposed a joint statement on the award, which prevented consensus, and thus the EAS-FMM chairman’s statement did not discuss it (EAS Unit, 2016a; Tan, 2016). China’s Foreign Minister



Wang Yi insisted that the award was not binding as it was influenced by “foreign forces”; instead, he urged to focus on ASEAN–China bilateral talks (*EFE Newswire*, 2016). Therefore, the 2016 EAS-FMM illustrated the diplomatic divisions among ASEAN member states’ perspectives on the arbitral award. Indeed, the degree of the member states’ support for the award was not entirely clear.

While the Philippines did not discard the award, it attempted to maintain a low-key response on it and to find a non-confrontational way to manage the SCS disputes with China, including holding bilateral dialogues (*Zee News*, 2016). Also, US Deputy National Security Advisor Ben Rhodes indicated that the United States would not focus on the award at the EAS (*Voice of America*, 2016), yet President Obama mentioned it at the EAS along with Japan’s Prime Minister Abe. In response, Premier Li reiterated China’s stance of rejecting the award and emphasized the ongoing COC discussions and the application of CUES (*Jiji Press*, 2016; Joshi & Gomez, 2016; *Xinhua*, 2016). As Japan and the United States were reportedly the only two states that mentioned the arbitral award at the EAS, China later described the move as “self-isolation” (*China Daily*, 2016). Most ASEAN member states, such as Brunei and Malaysia, took a more general stance on the SCS issue, which highlighted the positive development of ASEAN–China cooperation (*Brunei News Gazette*, 2016; *Malaysia General News*, 2016). Consequently, the ruling was excluded even from the chairman’s statement (EAS Unit, 2016b).

During this period, ASEAN had a great opportunity to activate institutional hedging through the EAS given the United States and its allies’ strong support for discussing the SCS disputes. Furthermore, the arbitral award could be utilized to strengthen ASEAN’s position regarding maritime norms and rules in the SCS and to constrain China’s assertive behavior. However, ASEAN member states were divided—some members took a more cautious approach, which made it difficult for the United States to openly push forth the compliance of the award against China at the EAS (*Nikkei Asian Review*, 2016b). As a result, institutional hedging through the EAS had become ineffective due to ASEAN disunity.

#### 4.5.3 2017–2020: Debilitating Institutional Hedging

The intensification of US–China rivalry within the EAS, and ASEAN’s general avoidance of being entrapped in great-power politics, led the EAS to deviate from institutional hedging. Furthermore, the change in US

administration from Obama to Donald Trump made a large impact on the institutional legitimacy of the EAS. In contrast to Obama's willingness to participate in the EAS and show US commitment to East Asia, Trump clearly displayed unwillingness to make an official visit to East Asia and did not attend the summit from 2017 to 2020. In 2017, although he had decided to attend the EAS, Trump left the venue before the meeting started because of the delay. Furthermore, the Trump administration's diplomatic marginalization of the EAS was apparent as the United States sent lower-ranking officials to the summit—Vice President Mike Pence in 2018 and National Security Advisor Robert O'Brien in 2019 and 2020. As a result, the strategic utility of the EAS was significantly reduced during this period.

That said, US stance on the SCS issue had not changed, and the United States continually advocated freedom of navigation and overflight, peaceful resolution of disputes, non-use of force, and respect for international law including UNCLOS (US Department of State, 2017). In 2018, for example, State Secretary Mike Pompeo at the EAS-FMM was unprecedentedly assertive and openly condemned China's behavior, raising concerns about China's military deployment in the SCS which reneged on President Xi's promise not to militarize the SCS (Ghosh, 2018). At the EAS, Vice President Pence explicitly said, "China's militarization and territorial expansion in the South China Sea is illegal and dangerous" (US Mission to ASEAN, 2018). In 2019, just before the EAS, National Security Advisor O'Brien provided a "non-paper" to ASEAN to "protest China's expansive and unlawful maritime claims" in the SCS. At the EAS, he openly criticized China for preventing ASEAN claimant states from exploring natural resources in the SCS (*AFP*, 2019; *Jiji Press Ticker Service*, 2019; *The Bangkok Post*, 2019). The United States had become more critical of China's behavior and claims in the SCS. With this strong US posture, US allies, particularly Japan, also expressed "serious concern" over China's large-scale creation of outposts in the SCS and called for respect for the 2016 arbitral award (MOFA, 2017, 2018a, 2018b, 2019a, 2019b, 2020a, 2020b; Roy, 2020).

In response, China insisted that ASEAN and China had made steady progress in the mitigation of SCS tensions since 2016. In 2017, China expressed satisfaction that the COC framework had been adopted (Zhou & Zhou, 2017; ASEAN Tribune, 2017). Although the United States argued that the framework was only an outline of the COC and continued to call for its rapid conclusion, China's Foreign Minister

Wang Yi argued that the SCS situation was stable as the COC negotiations were underway and thus the United States should not intervene and should respect the progress that China and ASEAN had made (US Department of State, 2017; *Xinhua*, 2017). This line of argument was echoed by Premier Li at the EAS, who attributed the maritime stability to China's vital national interest in securing the sea lines of communication (SLOCs) in the SCS (*Thai News Service*, 2017, 2020). Its rationale was questionable as China's assertive behavior had largely remained the same—conducting militarization. However, Wang stated in 2018 that the main driver of militarization in the SCS was the United States because it provided strategic weapons to regional states and that China only attempted to defend itself against such threats (Ministry of Foreign Affairs, People's Republic of China, 2018). In addition, by publicly declaring its aim to complete the COC negotiations within three years, China attempted to prevent external actors from diplomatically intervening in the SCS issue at the EAS, emphasizing non-interference by “outsiders.”<sup>7</sup>

In this intensified strategic rivalry, ASEAN became defensive at the EAS as it aimed to maintain ASEAN centrality. Some ASEAN member states began to gradually shift this diplomatic emphasis at the EAS—from advocating international law to mitigating the strategic rivalry. For example, although the Philippines had gained the legal advantages to reject China's excessive claims in the SCS with the 2016 arbitral ruling, it sought alternative means to mitigate tensions with China in the SCS. Philippine President Rodrigo Duterte mentioned just before the EAS in 2017 that the SCS was “better left untouched” as it could lead to a “violent confrontation,” highlighting the ongoing relative stability in the SCS after 2016 (*Manila Bulletin*, 2017; *PDI*, 2017). Duterte also highlighted the importance of “negotiations and fair compromises” for the conclusion of the COC (*Manila Bulletin*, 2019). In 2018, Malaysian Prime Minister Mahathir Mohamad also focused on the ongoing developments rather than the 2016 ruling, warning China and the United States not to dispatch warships to the SCS, which had caused military and diplomatic tensions (*The New Zealand Herald*, 2018). When the

<sup>7</sup> China then tried to push this argument by including a clause in the SDNT that would limit military exercises with external actors in the SCS (*China Daily*, 2018; *People's Daily Online*, 2018; *SDDP*, 2019b; *Thai News Service*, 2019).

United States place stronger diplomatic pressure on China at the EAS-FMM in 2020, stating that China's claims were "unlawful" and asking ASEAN member states to follow the United States to impose economic sanctions on Chinese companies that built infrastructure in the SCS, Indonesian Foreign Minister Retno Marsudi stated that ASEAN should avoid "get[ting] caught up in the rivalry between major powers" (see Chapter 3; *Federal Government Documents and Publications*, 2020; *States News Service*, 2020).

Even after the emergence of the COVID-19 pandemic in 2020, US-China strategic rivalry continued to intensify. As such strategic competition drew more attention from the international community, ASEAN grew increasingly concerned about the potential diplomatic marginalization and the entrapment of great-power politics. Therefore, ASEAN attempted to mitigate the rivalry by focusing more on the potential areas of cooperation in the SCS. This was largely reflected in the EAS chairman's statements from 2017 to 2020, which were not drastically different from previous statements. They welcomed the positive developments of the progress in the COC negotiations and of agreements such as CUES and the hotline between foreign ministries, while stipulating some member states' concerns about the SCS situation (EAS Unit, 2017, 2018, 2019, 2020). In this sense, ASEAN's use of the EAS as a tool for institutional hedging was put on the back-burner during this period.

#### 4.5.4 Conclusion

The EAS was the one of the most dynamic institutions among the ASEAN-led mechanisms in managing the SCS disputes. At its inception in 2005, the EAS was seen as the product of compromise among member states, which did not expect the institution to play a role in managing strategic issues including the SCS disputes. It focused solely on non-traditional security issues that could facilitate regional cooperation. However, this trend changed when the United States became a member of the EAS in 2011, a few years after the SCS situation had deteriorated.

The Obama administration was willing to table and discuss potentially controversial issues at the EAS because it envisioned the summit to "become the premier forum for dealing with regional political and security issues, from maritime security to nonproliferation to disaster response" (US Department of State, 2011b). As a result, this created diplomatic momentum for the United States to discuss the SCS disputes,

which was followed by many other member states. Those member states particularly emphasized the importance of existing international rules and norms, including UNCLOS, and attempted to constrain the behaviors of China and other claimant states. This institutional posture was reflected by the 2011 Declaration on the Principles for Mutually Beneficial Relations. The EAS was thus shifting toward institutional hedging.

However, the EAS deviated from its strategy of institutional hedging after 2016. This was paradoxical, considering China's weakening legal stance and the United States and ASEAN's advocacy for international law. Moreover, the EAS's institutional development as a premier strategic forum continued steadily, albeit slowly (Cook, 2020, p. 132). In 2015, for example, the EAS adopted the Statement on Enhancing Regional Maritime Cooperation and the Kuala Lumpur Declaration on the 10th Anniversary of the EAS. In 2020, it issued the Ha Noi Declaration on the 15th Anniversary of the EAS, which aimed to enhance regional cooperation. However, these did not translate into an enhancement of EAS's institutional hedging. This was because China's strong rejection of the 2016 arbitral award indicated that diplomatic confrontation would exacerbate the SCS situation, particularly when US commitment to ASEAN and the SCS issue was uncertain. Moreover, ASEAN member states were also wary about taking a firm position on the award, which weakened the functionality of institutional hedging. As a result, the EAS lost the diplomatic momentum to function as a tool for institutional hedging between 2017 and 2020.

#### 4.6 ASEAN DEFENCE MINISTERS' MEETING (ADMM) AND ASEAN DEFENCE MINISTERS' MEETING PLUS (ADMM-PLUS)

The ADMM was formed in 2006 to support the establishment of the ASEAN Security Community (ASC; later renamed ASEAN Political-Security Community) (ASEAN Secretariat, 2003c, 2004e; Sukma, 2003). Through a series of concept papers, the ADMM evolved into one of the most highly institutionalized organizations in ASEAN along with the ADMM-Plus in 2010. The origin of the ADMM can be traced to 2004 when the ASEAN Special SOM was held to realize the ASC as stipulated by the 2003 Declaration of ASEAN Concord II, or Bali Concord II (ADMM Unit, 2006a).

There were two main means for pursuing this broad objective: by facilitating intra-ASEAN defense cooperation, and by strengthening ASEAN defense links with external actors (ADMM Unit, 2006a). The former aimed to strengthen functional cooperation in defense-related fields by recognizing the ADMM as the apex of ASEAN defense-related frameworks, while the latter attempted to enhance peace and stability in Asia-Pacific as well as to facilitate capacity-building for ASEAN member states with external assistance. ASEAN also emphasized ASEAN centrality by stating that “ASEAN shall be in *the driver’s seat* in the ADMM’s interactions with ASEAN’s friends and Dialogue Partners [emphasis added]” (ADMM Unit, 2006a). As a result, the concept paper for the ADMM’s establishment set out four main objectives:

- a. To promote regional peace and stability through dialogue and cooperation in defence and security;
- b. To give guidance to existing senior defence and military officials dialogue and cooperation in the field of defence and security within ASEAN and *between ASEAN and dialogue partners*;
- c. To promote mutual trust and confidence through greater understanding of defence and security challenges as well as enhancement of transparency and openness; and
- d. To contribute to the establishment of an ASEAN Security Community (ASC) as stipulated in the Bali Concord II and to promote the implementation of the Vientiane Action Programme (VAP) on ASC [emphasis added] (ADMM Unit, 2006a).

The ADMM is structured to link to the ASEAN Summit by holding an annual meeting “prior to or back to back with” the summit, while the ASEAN Defence Senior Officials’ Meeting (ADSOM) plays the main coordination role (ADMM Unit, 2007c). Through this mechanism, the ADMM focuses on intra-ASEAN functional cooperation, including humanitarian assistance and disaster relief, cooperation with civil society organizations on non-traditional security issues, and peacekeeping operations.

In the meantime, the ADMM sought to establish the ADMM-Plus to strengthen its defense ties with external actors. From 2007, the ADMM issued several concept papers, clarifying that the purpose of the ADMM-Plus was “to bring expertise, perspectives and resources

from extra-regional countries to bear on shared security challenges” and to build the capacities of ASEAN member states to realize the ASC while nurturing confidence for peace and stability in the region (ADMM Unit, 2007a). ASEAN reassured that the ADMM was the core institution in charge of ASEAN’s defense cooperation, and ASEAN centrality was almost always stressed in its official statements (e.g., ADMM Unit, 2007a). Established in 2010, the ADMM-Plus comprises the 10 ASEAN member states, Australia, China, India, Japan, New Zealand, Russia, South Korea, and the United States. Membership was essentially open, with three requirements: (1) full-fledged dialogue partnership status with ASEAN; (2) significant interactions with ASEAN defense establishments; and (3) ability to work with the ADMM for capacity-building. Membership also required the ADMM’s consensual approval first, followed by that of ADMM-Plus countries (ADMM Unit, 2009a, 2010c). To support ASEAN’s defense capacity and ensure regional peace and stability, the ADMM-Plus established Experts’ Working Groups (EWGs) in 2011 to facilitate practical cooperation among member states, such as joint military training and exercises in the fields of maritime security, humanitarian assistance and disaster relief, military medicine, and peacekeeping (ADMM Unit, 2011a). The ADMM-Plus was initially held once in three years from 2010 to 2013, but as the demand for defense diplomacy increased, its frequency increased to once in two years in 2013 and to annually in 2017 (ADMM Unit, 2010a, 2012a, 2017b).

In short, the ADMM’s initial objective was to create defense-related norms and rules among ASEAN member states to enhance regional peace and stability, while the objective of the ADMM-Plus was to facilitate practical cooperation as a CBM as well as the capacity-building of ASEAN for regional peace and stability (Koga, 2018, pp. 61–69). Against this backdrop, this chapter examines the institutional strategies of the ADMM and the ADMM-Plus during three periods: 2006–2012, 2013–2016, and 2017–2020.

#### 4.6.1 2006–2012: *Toward Institutional Balancing*

The ADMM was a tool for intra-ASEAN institutional co-option, focusing on defense-oriented functional cooperation, and thus the ADMM did not discuss controversial issues during its formative years. In fact, ADMM joint statements from 2006 to 2010 did not touch on the SCS issue or even maritime security while reiterating the importance of maintaining

ASEAN principles and norms (ADMM Unit, 2006b, 2007d, 2009b, 2010b). Admittedly, since the ADMM's institutional design was evolutionary, its action plans, principles, and rules were created after its establishment and subject to change (ADMM Unit, 2007b, 2007c, 2010a, 2010c). In addition, the establishment of the ADMM-Plus was discussed as early as 2006. However, the ADMM took a cautious approach in order to concretely ensure ASEAN centrality and the means to receive defense assistance from external actors (ADMM Unit, 2007a, 2009a). The ADMM waited until its member states reached consensus on the establishment of the ADMM-Plus "at a pace comfortable to all" (ADMM Unit, 2009a). Therefore, from 2006 to 2010, the ADMM's institutional strategy was confined to institutional co-option among member states and there was no engagement with external actors.

This institutional trend changed after the US–China diplomatic row at the ARF in July 2010, and the ADMM started incorporating political issues into its agenda. Further, under Vietnam's chairpersonship, which was concerned about the gradual intensification of the SCS disputes, the ADMM-Plus was formally established in October 2010 (Goldman, 2010). Vietnamese Deputy Defense Minister Nguyen Chi Vinh assured that the ADMM-Plus would discuss general security issues, without specifying the SCS (*Xinhua*, 2010). While some member states, including Australia, Japan, Malaysia, Singapore, South Korea, the United States, and Vietnam, raised the SCS issue at the inaugural ADMM-Plus, which led to China accusing Vietnam of internationalizing the matter, its joint statement did not mention maritime issues (*JEN*, 2010a; *The Nikkei Weekly*, 2010). Chinese Foreign Ministry spokesperson Ma Zhaoxu strongly opposed bringing the SCS issue to "any international and multilateral arena," with Defense Minister Liang Guanglie echoing Ma's stance (*States News Service*, 2010; Storey, 2010). Given China's strong opposition, the joint declaration remained silent on the SCS issue, while its chairman's statement touched on it (ADMM Unit, 2010d, 2010e). Also, the ADMM aimed to make the ADMM-Plus a framework where the US defense secretary and Chinese defense minister could meet face-to-face and participate in practical cooperation rather than discuss regional disputes, at least for the time being (ADMM Unit, 2010e; *JEN*, 2010a; Ministry of Defence, Singapore, 2010).

On the other hand, the United States did not agree entirely with such an institutional development plan. Defense Secretary Robert Gates expressed US desire to create multilateral rules and norms for managing



the SCS issue (US Department of Defense, 2011). In 2012, succeeding Defense Secretary Leon Panetta requested greater frequency of the ADMM-Plus in the context of the changing strategic environment in East Asia, particularly after the 2012 Scarborough Shoal incident (US Department of Defense, 2012). For its part, China reemphasized that the role of the ADMM-Plus should remain as the promotion of practical cooperation between ASEAN and its dialogue partners (Oorjitham, 2012). Thus, at this initial stage, the ADMM-Plus functioned as institutional co-option although disagreements impeded the creation of a common set of defense norms and rules in the SCS.

This contrasted with the ADMM, which began discussing the SCS issue from 2011. The 2011 joint statement incorporated a general statement on the SCS which other ASEAN-led institutions had stipulated, such as the importance of the full implementation of the DOC, freedom of navigation and overflight in the SCS, respect for international law including UNCLOS, and the conclusion of the COC in the SCS (ADMM Unit, 2011c). Even in 2012, when Cambodia was the ASEAN chair, the ADMM joint statement reiterated the same principles for the SCS (ADMM Unit, 2012b). Although the three-year work program of the ADMM, from 2008 to 2010, discussed the DOC implementation and COC creation, which were also repeated in the subsequent three-year program from 2011 to 2013, the inclusion of the SCS issue in the ADMM joint statements was significant in shaping the characteristics of the framework (ADMM Unit, 2007b, 2011b). Clearly, the ADMM disseminated the SCS issue to the international and regional audience and thus functioned as institutional balancing vis-à-vis China.

#### 4.6.2 2013–2016: ADMM's Institutional Balancing and ADMM-Plus' Institutional Co-option

The ADMM's institutional balancing had become more visible since the 2012 Scarborough Shoal incident, followed by the AMM diplomatic fiasco (see Chapter 3 and AMM section in this chapter). Given that one of the original purposes of the ADMM was to consolidate regional peace and stability, the intensification of the SCS disputes became a major security concern. In 2013, the ADMM reiterated the important principles that ASEAN had long highlighted for maintaining maritime stability in the SCS (ADMM Unit, 2013a). This created diplomatic momentum to consistently incorporate the SCS issue in ADMM declarations.

Further, beyond merely highlighting agreed principles, the ADMM began to conduct more explicit institutional balancing from 2014 by calling for appropriate state behavior in the SCS. For example, it requested all parties “to exercise self-restraint and non-use of force, as well as refrain from taking actions that would further escalate tension” in 2014 and to “[u]ndertake practical measures such as protocol of interaction and direct communication channels to reduce vulnerability to miscalculations and to avoid misunderstanding and undesirable incidents at sea” in 2015 (ADMM Unit, 2014c, 2015b). These resulted in the establishment of a Direct Communications Link (DCL) between ASEAN member states in 2014 (ADMM Unit, 2014b). In 2016, the ADMM went a step further to not only advocate compliance with international protocols such as CUES, but also to create new regional protocols to avoid misunderstanding and miscommunication (ADMM Unit, 2016).

In fact, the creation of maritime rules and norms had been discussed as early as 2013. That year, Brunei proposed to establish bilateral hotlines, emphasizing the importance of channels of communication to deescalate tensions and reduce miscalculations in the SCS (Parameswaran, 2015; *Singapore Government News*, 2013). Vietnam also proposed a “no first use of force” agreement for further confidence-building first among ASEAN member states before moving to the wider region (Chow, 2013). As such, ASEAN’s rule-making efforts were conducted among ASEAN defense ministers, not with external actors. This was reflected by Malaysian Defense Minister Hishammuddin Hussein’s statement that ASEAN needed to be united and to become a stabilizing force in the region including the SCS (*Malaysia General News*, 2014).

In the meantime, the ADMM explored possible institutional strategies for the ADMM-Plus. Although the ADMM had set up the principles and rules of the ADMM-Plus prior to the latter’s establishment and increased its frequency from once every three years to two years and then annually, its strategic function was not concretely determined. Nonetheless, the most likely institutional strategy was institutional co-option. This was because its mechanism officially focused on defense-related functional cooperation for non-traditional security issues by establishing EWGs in 2011 for humanitarian assistance and disaster relief, maritime security, military medicine, counterterrorism, and peacekeeping operations (ADMM Unit, 2011a). The EWG mechanism ensured the facilitation of

functional cooperation among ADMM-Plus member states through military exercises and training, providing opportunities to nurture formal or informal norms and rules in the maritime domain.

However, the United States was eager to discuss the SCS issue at the ADMM-Plus, which impelled some of the member states to state their basic strategic posture. Given that the ADMM-Plus had an EWG on maritime security, US Defense Secretary Chuck Hagel expressed concerns about the heightening tensions in the SCS and indicated willingness to focus on maritime security issues at the 2013 ADMM-Plus (*Federal News Service*, 2013). This contrasted starkly with Chinese Foreign Minister Wang Yi's statement that the SCS was stable and that there were no concerns about freedom of navigation (*Voice of America*, 2013). The 2013 ADMM-Plus chairman's statement mentioned the importance of maintaining peace and stability in the SCS in accordance with basic principles and international law including UNCLOS (ADMM Unit, 2013c). Nevertheless, because of the disagreement over the assessment of the SCS situation, there was no specific statement focusing on the SCS in the joint statement although it described maritime cooperation on non-traditional security challenges (ADMM Unit, 2013b). The pattern of interaction among ADMM-Plus members thus nurtured its institutional characteristics: Discussions on the SCS situation would never become a substantial part of the institutional agenda because its focus was on practical cooperation.

This trend shifted in 2015. As the international media expected a discussion on the SCS issue at the 2015 ADMM-Plus, China reiterated that the defense meeting was not an appropriate avenue for discussing contentious issues including the SCS disputes and opposed the internationalization of the disputes (Tiezzi, 2015). As a result, China rejected any statement in the ADMM-Plus joint declaration which touched on the matter. According to one report, China rejected the proposed statement, "the commitment of ASEAN member states and China to the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea and looking forward to the early conclusion of the Code of Conduct in the South China Sea," although a similar line was included in the joint declarations of other meetings such as the ARF (*JEN*, 2015a). The United States insisted that the declaration should include the statement, with Defense Secretary Ashton Carter asserting that the status quo was not maintained because of the "intensive and

aggressive reclamation of features” in the SCS (US Department of Defense, 2015; *Yonhap News Agency*, 2015). Disagreements persisted, and the ADMM-Plus was unable to issue a joint declaration that year, which broke the emerging ADMM-Plus routine. Malaysian Foreign Minister Hishammuddin downplayed the importance of the ADMM-Plus joint declaration, which was partly true because there was no institutional custom of issuing a joint statement at each meeting (Lee & Hariz, 2015; Tan, 2015; Tang, 2015). In fact, the chairman’s statement adopted an almost identical line about the SCS issue (ADMM Unit, 2015c). Nevertheless, this indicated the great-power rivalry affecting the outcome of the defense forum.

Therefore, during this period, the ADMM began conducting institutional balancing, signaling the importance of the SCS disputes to the regional and international audience by providing updates on the situation. At the same time, the ADMM showed efforts to create partial rules and norms for maritime stability, such as the DCL and CUES, to illustrate ASEAN’s unity. Furthermore, it was proposed to extend these norms and rules beyond ASEAN member states, which would potentially become a source of institutional hedging for the ADMM-Plus (e.g., *Singapore Government News*, 2016). On the other hand, the ADMM-Plus still faced disagreement among dialogue partners, particularly the United States and China, and therefore it would be difficult for the ADMM to fully conduct institutional co-option.

#### 4.6.3 2017–2020: *Institutional Hedging Through ADMM and ADMM-Plus*

The ADMM continually conducted and consolidated its institutional balancing strategy after the SCS Arbitral Tribunal’s award was issued in 2016. The joint declarations from 2017 to 2020 became increasingly identical to those in other ASEAN-led institutions such as the AMM—informing the progress of the COC negotiations, request for self-restraint, and desire for peaceful resolution and the early conclusion of the COC (ADMM Unit, 2017e, 2018b, 2019c, 2020a).

While reiterating the importance of maritime principles and stability in the SCS, the ADMM also made further efforts to facilitate rule-making in the maritime domain. Most notably, in 2017, the ADMM adopted the concept paper for developing guidelines on air encounters between military aircraft. Proposed by Singapore, the guidelines aimed to complement

existing international rules and norms including those of the International Civil Aviation Organization as well as CUES (ADMM Unit, 2017a). In the same year, the ADMM also issued a concept paper on guidelines for maritime interaction, proposed by the Philippines, the objectives of which included “establish[ing] comprehensive and feasible maritime conflict management measures” (ADMM Unit, 2017c).

These rule-making efforts developed into more concrete measures in 2018 and 2019. The Guidelines for Air Military Encounters (GAME) were instituted in 2018, which set non-binding rules of engagement in the air, complementing UNCLOS and CUES (ADMM Unit, 2018a). The Guidelines for Maritime Interaction were created in the following year, which codified existing maritime-oriented rules and norms such as UNCLOS, CUES, GAME, and the International Regulations for Preventing Collisions at Sea (ADMM Unit, 2019a).

All these developments contributed to the ADMM’s focus on ASEAN unity, which was crucial for maintaining ASEAN centrality. Given the divergences in the SCS situation assessment and in perspectives on rules and norms among ADMM-Plus members, the ADMM focused on its internal cohesion by nurturing informal norms relating to the SCS. Detaching these norms from the COC discussions enabled it to discuss and formulate maritime guidelines, which could contribute to shaping the COC. In this sense, the ADMM actively engaged in institutional balancing while creating a source for institutional hedging.

On the other hand, the ADMM-Plus shifted its strategic posture on the SCS issue. The chairman’s statements from 2017 to 2020 discussed the challenging situation in the SCS, respect for international law, full implementation of the DOC, and the early conclusion of the COC (ADMM Unit, 2017f, 2018c, 2019d, 2020b). The ADMM-Plus also resumed issuing joint statements from 2018, although this was not necessarily a regular practice. Particularly, the 2018 joint statement discussed regional maritime security, extensively using terms and phrases relating to the SCS which had been included in the statements of various ASEAN-led institutions, such as “self-restraint” and “respect for principles of international law, including UNCLOS” (ADMM Unit, 2018d). Moreover, ADMM-Plus states agreed in principle to explore ways to incorporate ADMM-initiated norms, such as ASEAN Direct Communications Infrastructure (ADI; formerly DCL) and GAME, into ADMM-Plus guidelines (ADMM Unit, 2018d). More practically, ADMM-Plus members issued a concept paper on the ADI to extend it to the ADMM-Plus, and this was

eventually adopted in 2021 (ADMM Unit, 2019b, 2021a, 2021b). In this sense, the ADMM utilized the ADMM-Plus framework to conduct institutional hedging by introducing the rules and norms it created.

The ADMM-Plus could undertake institutional restructuring because of the fluidity of its format and norms. As the US–China rivalry intensified, the ADMM-Plus was likely to become another forum for great-power competition unless the ADMM maintained a united front. Most illustratively, from 2011, there was a proliferation of ADMM+1 meetings with regional powers, particularly China, Japan, and the United States, and in 2014, the ADMM issued additional protocol on the ADMM-Plus to designate such engagements as “informal” (ADMM Unit, 2014a). However, as this trend continued despite the new protocol, the ADMM established new rules and principles for informal ADMM+1 meetings. For example, ADMM+1 could not take place in a year when the ADMM-Plus was held; a maximum of two such meetings could be held annually; and the decision to hold these meetings would be decided based on consensus among ADMM members.<sup>8</sup> After the ADMM-Plus became an annual event in 2017, the principles for ADMM+1 also changed, and the ADMM became the only authority to convene such a meeting when deemed necessary (ADMM Unit, 2017d). This trend indicates that major powers competed to strengthen their defense ties with ASEAN, conducting a wedge strategy; in response, the ADMM sought to prevent the ADMM-Plus from being entrapped in the great-power rivalry by creating basic principles for ADMM+1. The guidelines ensured that the ADMM controlled the ADMM-Plus so as to maintain ASEAN centrality.

This is well illustrated by several ASEAN member states continuing to explicitly express concerns about the impact of the intensifying US–China rivalry in the SCS through ASEAN-led institutions. In 2018, for example, Defense Minister Mohamad Sabu stated that Malaysia insisted on maintaining the SCS as a “free zone” from great-power military competition (*Malaysia General News*, 2018). Also, Vietnam’s Defense Minister Ngo Xuan Lich mentioned in 2019 that ASEAN needed to consolidate its unity against great-power rivalry in the SCS (*Philippine News Agency*,

<sup>8</sup> Before this decision, the United States seemingly misinterpreted the ADMM+1 activities. For example, US Defense Department Press Secretary George Little mentioned that ASEAN members invited external states bilaterally and hoped for further institutional evolution (ADMM Unit, 2015a; US Department of State, 2013).

2019). As Defense Secretary Mark Esper's statement at the 2019 ADMM-Plus indicates, the United States demanded ASEAN member states to take an explicit stance on their sovereign rights in the SCS (Reyes, 2019). However, as doing so would entrap ASEAN in great-power politics, they were hesitant to do so collectively. Instead, the ADMM-Plus gradually incorporated ADMM defense-related norms and rules, with the aim of regulating member states' behavior in the SCS.

#### 4.6.4 *Conclusion*

The ADMM has arguably been the most dynamic ASEAN-led institution. But as with most security institutions, its institutional strategy was not clear at its inception. Also, it did not touch on the SCS issue until 2011. Since the 2012 Scarborough Shoal incident, however, the ADMM had begun to conduct institutional balancing more explicitly by constantly monitoring and discussing developments in the SCS and emphasizing the general principles of maritime law. At the same time, particularly after the issuance of the arbitral award, the ADMM started to incorporate international maritime norms, such as CUES, to show ASEAN unity in regulating its member states' behavior in the SCS. This trend continued, and the ADMM also became an avenue for creating new regional norms, which could contribute to shaping the COC.

Likewise, the institutional utility of the ADMM-Plus was not initially clear at the outset. Because of US–China rivalry over the SCS disputes, the ADMM-Plus had difficulty directly stating the SCS issue in its joint declaration, as illustrated by the 2015 meeting. On the other hand, given its emphasis on functional cooperation through EWGs, the ADMM-Plus attempted to nurture maritime norms without directly focusing on the SCS. As the great-power competition intensified, particularly after 2012, the ADMM-Plus made several institutional changes to provide the forum for regional great powers more frequently while maintaining ASEAN centrality. This was aimed at institutional co-option, so that the great powers could find a common ground to mitigate tensions in the SCS. Nevertheless, from 2017, the ADMM began extending its maritime rules and norms to the ADMM-Plus, some of which were adopted, such as the ADI. Therefore, the ADMM-Plus had evolved into a tool for institutional hedging, while continually conducting institutional co-option.

The ADMM and the ADMM-Plus have thus evolved over time, taking on different institutional strategies. After 2016, however, there was a clear

strategic link between them as the ADMM-Plus adopted principles that the ADMM had created. While their institutional strategies might change in the future, the ADMM and the ADMM-Plus are thus far the best-coordinated institutions among ASEAN-led institutions.

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## Conclusion: Future Implications of ASEAN's Institutional Strategies

In the post-Cold War era, ASEAN aims to protect member states' security interests and maintain regional autonomy from external intervention through the proliferation of ASEAN-led institutions. With the principle of ASEAN centrality—by which ASEAN holds chairpersonship and agenda-setting privileges—ASEAN included all regional great powers, particularly China and the United States, into its institutions. The variance in the membership of these institutions has given ASEAN a comparative advantage because it allows ASEAN to forum shop to determine which institutions can discuss particular security and economic issues and to shape the dynamics of great-power relations with ASEAN member states (see Chapter 2).

The South China Sea (SCS) disputes have become one of the most important security and strategic issues for ASEAN member states since the 1990s. This is because the power vacuum created by the end of the Cold War opened up a strategic space for China to extend its reach and control in the maritime sphere, which some ASEAN member states also claimed. Therefore, to fill that space, ASEAN member states sought to establish institutions capable of dealing with security issues and of preventing strategic instability in the region. The ASEAN Foreign Ministers' Meeting (AMM) then began to proliferate the institutions, ranging from the ASEAN Regional Fourm (ARF), the ASEAN Summit, ASEAN–China dialogues, the East Asia Summit (EAS), and the ASEAN

Defence Ministers' Meeting/ASEAN Defence Ministers' Meeting Plus (ADMM/ADMM-Plus).

At the same time, this proliferation of ASEAN-led institutions began to nurture a quasi-institutional division of labor in dealing with the SCS issue. Indeed, through these institutions, ASEAN could conduct either institutional balancing, institutional hedging, and/or institutional co-option to manage its relations with not only China but also the United States and other regional powers by maintaining various channels of communication. That said, as the theoretical model predicts, institutional bandwagoning is too risky because granting institutional privileges to great powers would weaken ASEAN's capabilities to defend its interests, which may lead to ASEAN claimant states losing their control over territorial sovereignty.

From the beginning, ASEAN's approach to the SCS disputes has not been to "resolve" the disputes multilaterally but to maintain stability. Specifically, ASEAN aims to create a peaceful environment in the SCS where claimant states can conduct negotiations instead of resorting to physical conflict. This is why ASEAN has been making efforts to establish regional rules and norms bilaterally and multilaterally since the 1990s, and both ASEAN and China engaged in negotiations for a code of conduct (COC). However, despite this fundamental, agreed objective among the claimant states, the situation on the ground has not been always conducive to peaceful negotiations, and thus ASEAN conducts different strategies through its institutions, depending on their institutional characteristics.

These institutional strategies may evolve over time, and among ASEAN-led institutions, there are some variances in strategy shifts. While the strategies of the AMM, the ARF, the ASEAN Summit, and ASEAN–China dialogues have been relatively consistent, there were shifts in those of the EAS and the ADMM/ADMM-Plus (Table 5.1). There are four general findings based on the analysis of the empirical cases.

First, expected and actual changes in the regional strategic environment propelled ASEAN member states to consider a shift in ASEAN-led institutions' institutional strategies. The SCS situation on the ground has been consistently volatile since the early 1990s, but there was an ebb and flow—when the threat perception among ASEAN claimant states heightened because of the emerging maritime tension with China, they proposed a strategy shift. In 1995, for example, ASEAN member states found that China had erected facilities on Mischief Reef, which drove



**Table 5.1** Evolution of institutional strategies in ASEAN and ASEAN-led institutions

<i>Institution</i>	<i>Phase 1 (1990–2002)</i>	<i>Phase 2 (2003–2012)</i>	<i>Phase 3 (2013–2016)</i>	<i>Phase 4 (2017–2020)</i>
AMIM	Institutional balancing	Institutional balancing	Institutional balancing	Institutional balancing
ARF	Institutional hedging	Institutional hedging	Institutional hedging	Institutional hedging
ASEAN Summit	Institutional balancing	Institutional balancing	Institutional balancing	Institutional balancing
ASEAN–China dialogues	Institutional hedging to Institutional co-option	Institutional co-option/Institutional hedging	Institutional co-option	Institutional co-option
EAS	X	Institutional hedging (2010–2012)	Institutional hedging	Institutional hedging
ADMM	X	Institutional balancing	Institutional balancing	Institutional balancing (with ADMM-Plus, institutional hedging)
ADMM-Plus	X	Institutional co-option	Institutional co-option	Institutional co-option (with ADMM, institutional hedging)

the Philippines to propose the enhancement of diplomatic cooperation with other ASEAN member states and to issue a collective condemnation against China's behavior. As the situation was not satisfactorily alleviated in the late 1990s, ASEAN and China began to negotiate a COC, which resulted in the formulation of the Declaration of the Conduct of Parties in the South China Sea (DOC) in 2002 through the ASEAN–China Post Ministerial Conference (PMC). After the 2016 SCS Arbitral Tribunal's award was issued and rejected by China, both China and ASEAN began to expedite the conclusion of the COC. At the same time, the ADMM created rules and norms which were extended to the ADMM-Plus. Therefore, the strategic environment is critically important in understanding potential shifts in institutional strategies.

Second, ASEAN had more strategic options due to the proliferation of ASEAN-led institutions. In the early 1990s, the AMM was the only ASEAN institution that regularly held ministerial meetings to discuss political and security issues. In 1992, the AMM produced the first ASEAN statement regarding the SCS situation—the 1992 ASEAN Declaration on the SCS. It was also the AMM that responded to the Mischief Reef incident in 1995 by issuing a statement, conducting institutional balancing. However, as other institutions were established from the 1990s, ASEAN started to have various responses to manage the SCS situation. After the ARF was established in 1994, ASEAN member states reiterated the importance of peaceful resolution and respect for international law to China, the United States, and other regional powers, conducting institutional hedging. Additionally, the EAS and the ADMM-Plus functioned as another tool for institutional hedging by including regional powers. On the other hand, ASEAN–China dialogues were actively utilized to discuss the creation of a COC after ASEAN failed to impose on China its 1992 declaration. As such, the proliferation of institutions provided ASEAN with more strategic options to deal with great powers and nurtured an implicit division of labor among the institutions.

Third, the membership of ASEAN-led institutions largely determines the stickiness of institutional strategy. The theoretical model of institutional strategy shows that while there is a possibility of strategy shift in any regional security institution, some strategy shifts are more difficult than others. Despite a change in the strategic environment which would trigger strategy shifts, the membership of institutions becomes a crucial factor to determine how flexibly the institutional strategy can shift. In fact, the AMM, the ASEAN Summit, and the ADMM were able to maintain

institutional balancing in a different strategic environment from 1990 to 2020 because their membership was strictly limited to the Southeast Asian states, excluding China. For their parts, ASEAN–China dialogues and the ADMM-Plus continually conduct institutional co-option or hedging because ASEAN decided to create new rules and norms or impose existing ones on China to constrain its behavior in the SCS. Since membership change is unusual, the membership structure generally defines the range of institutional strategies.

When an institution changes its membership, therefore, its institutional strategy would also likely change. The most notable case is the EAS, an ASEAN-led institution that admitted Russia and the United States in 2011. Prior to this, the EAS did not touch on the SCS issue. From 2011, however, the United States began raising the issue to emphasize the importance of international law including UNCLOS; since then, the SCS disputes have regularly been on the agenda, which transformed the EAS into a tool for institutional hedging. Of course, the AMM and the ASEAN Summit also added new members—Cambodia, Laos, Myanmar, and Vietnam—in the 1990s. However, this membership change was essentially different because they were small Southeast Asian states that sought institutional means to prevent external intervention. They were more aligned with ASEAN’s principles and strategic posture than with external great powers.

Fourth, the effectiveness of each ASEAN and ASEAN-led institutions’ strategies is ultimately difficult to assess without examining the overall configuration of its strategy. This is because the strategies have generally become persistent and resilient to environmental change over time. To be sure, as with any state strategy—either balancing, bandwagoning, or hedging—they do not easily generate an intended consequence because the effectiveness largely depends on the development of the strategic situation, which is often hard to predict. In this context, states attempt to respond to the rapidly evolving strategic situation by adjusting their strategies. However, as discussed above, ASEAN’s institutional strategies are considered to be stickier than state strategies unless there is a change in membership. Primarily because ASEAN adopts consensus decision-making, it is difficult to immediately reach consensus on a strategy shift and effectively respond to the evolving strategic situation in the SCS. This has become more so when ASEAN expanded its membership by including Cambodia, Laos, Myanmar, and Vietnam in the 1990s. The more members, the more divergent their preferred responses, given the

different interests and perspectives among them. As a result, despite the quickly evolving situation, there was no swift shift in strategy for the AMM, the ARF, the ASEAN Summit, ASEAN–China dialogues, the EAS, and the ADMM/ADMM-Plus from 1990 to 2020 except when they changed their membership. This shows that no ASEAN institution is consistently effective in managing the SCS situation and great-power relations, and it is necessary to assess which institution is the central player of the day.

With these four general findings, what can we say about the strategic role of ASEAN and ASEAN-led institutions on the SCS issue? As ASEAN now has a wide range of strategic repertoire through ASEAN-led institutions, there is no immediate need for each institution to change its strategic orientation whenever there is an environmental change. ASEAN can select the institutions suitable for managing the SCS situation and its relations with great powers at any given period of time. While ASEAN needs to alter its institutional strategies quickly if there is no suitable institution, the institutional diversification helps ASEAN overcome the weakness of institutional stickiness through forum shopping as well as the difficulty in creating consensus among ASEAN member states. In fact, ASEAN faced difficulty in pursuing institutional hedging vis-à-vis China in the late 1990s when it attempted to create its own COC to impose it on China. Consequently, ASEAN enhanced ASEAN–China dialogues through the PMC and the summit, so that it could conduct institutional co-option in creating a COC together. When the COC negotiation process through ASEAN–China dialogues slowed down and the SCS situation deteriorated from the late 2000s, ASEAN altered the EAS institutional format by including the United States to monitor and check China’s assertive behavior in the SCS.

Through institutional diversification and the institutional division of labor, ASEAN has created a “strategic institutional web” where each institution has its own institutional strategy and tends to play a central role in responding to the SCS situation whenever it serves member states’ national interests. Also, as the division of labor becomes more consolidated, it is likely that the institutional strategies of ASEAN and ASEAN-led institutions will become more persistent. Because they cover institutional balancing, hedging, and co-option, and there is no urgent need to alter their strategies, they only need to finetune their own strategy when the need arises.

What institutional division of labor, then, would likely be consolidated? As the trend of institutional development within ASEAN and ASEAN-led institutions shows, there are three types of institutions dealing with the SCS issue. The first is institutions that conduct institutional balancing: AMM, ASEAN Summit, and ADMM. These are the core institutions that have been the very source of ASEAN's rules and norms, including the "ASEAN Way" and ASEAN centrality, which determine their institutional posture toward the SCS disputes. Without them, it is difficult to sustain ASEAN unity and autonomy. These institutions are thus least likely to change their institutional strategy, characteristics, and membership.

Admittedly, as the AMM, ASEAN Summit, and ADMM sections show, institutional balancing is not always activated or effective in responding to the rapidly changing situation. Indeed, consensus decision-making often hinders the consolidation of ASEAN unity. At the same time, the 2012 Scarborough Shoal incident clearly showed that ASEAN unity is the imperative foundation for enacting the institutional strategies of ASEAN and ASEAN-led institutions. This is why ASEAN issued "ASEAN's Six-Point Principles on the South China Sea" to amend intra-member relations. But this presents an inherent diplomatic dilemma for member states that want a more effective means to maintain the status quo in the SCS. One of these means is to closely align with regional powers to counter China, but such a move will further divide ASEAN and risk losing regional autonomy.

However, ASEAN member states are fundamentally unwilling to be too dependent on a single great power given its risk of political, diplomatic, and economic domination. Therefore, they constantly seek alternative sources to diversify the risk, such as international institutions or regional middle powers, and the AMM and the ASEAN Summit are the main alternatives for ensuring regional autonomy. Interestingly, the ADMM has been less contentious than the AMM when members discuss whether they would touch on the SCS issue. This is partly because the ADMM initially focused more on functional cooperation than on political discussions, and even if it discussed political and security issues in the region, there would be less strategic implications on the SCS.

Also, the AMM and the ADMM play an important role in signaling ASEAN's basic diplomatic posture on the SCS matter. They function as a tool for ASEAN to gauge great-powers' reaction by taking a tentative diplomatic position and some action, such as the issuance of joint

statements and declarations. In doing so, ASEAN as a whole can formulate a more concrete diplomatic posture and action to shape its relations with great powers. The ASEAN Summit then plays a role in consolidating ASEAN's posture and action by endorsement, altering them by correction, or simply downplaying or ignoring them.

The second type is institutions that conduct institutional co-option, particularly ASEAN–China dialogues. They operate on various levels, ranging from senior officials' meetings to ministerial meetings to the summit. At the beginning of the 1990s, China expressed deep reluctance to conduct multilateral negotiations on the SCS issue with non-claimant states and insisted on bilateral negotiations. Thus, it refused to discuss the SCS matter at the ARF because of the presence of non-claimant states. Nevertheless, China began to take a softer stance when ASEAN started discussions on a COC and assured that multilateral dialogues would not attempt to resolve the territorial disputes. After the late 1990s, when China and ASEAN strengthened their political and economic ties by holding the ASEAN–China Summit in 1997, both started to discuss the SCS issue through ASEAN–China dialogues. Although ASEAN also has non-claimant states, this has become an institutional path dependence, and the international community has taken this aberration for granted.

Admittedly, China's preference to discuss the SCS issue, including the COC, without extra-regional actors, particularly regional major powers, and disallowing ASEAN members to discuss their own COC ideas have impeded the COC negotiations. Further, while a relatively stable SCS situation created positive prospects for the early conclusion of a COC in the early 2000s, the negotiation process was prolonged, and the SCS situation deteriorated in the 2010s. Breaking through the stalemate therefore required external events, such as the 2016 arbitral award. Even under such a circumstance, ASEAN unity was less likely to be maintained, and ASEAN would have quickly become a victim of China's "divide and conquer" strategy. However, it is also true that without ASEAN–China dialogues, ASEAN would not have had the means to conduct institutional co-option in negotiating a COC when an opportunity arose.

Other institutions, such as the ARF, the EAS, and the ADMM-Plus, can also be tools for institutional co-option as their membership includes ASEAN member states and China. Particularly, the ADMM-Plus, as discussed below, nurtures consensus and agreement on informal rules and norms in the maritime domain. However, as China strongly

prefers ASEAN–China dialogues for the COC negotiations and minimizing external interference as much as possible, it is highly unlikely that these institutions would become another avenue for negotiations, that ASEAN–China dialogues would expand its membership, or that China would use other avenues for the COC negotiations.

The third type is institutions that mainly conduct institutional hedging: ARF, EAS, and ADMM-Plus. Theoretically speaking, institutional hedging can be converted into institutional co-option, but institutional co-option is difficult when member states do not have the diplomatic will to nurture rules and norms with other member states. The ARF and the EAS have become such institutions because rival great powers, particularly the United States and China, are members, and China has been consistently unwilling to discuss rules and norms for the SCS through these institutions.

In response, states that are concerned about the SCS situation in terms of the stability of sea lines of communication (SLOCs) and freedom of navigation and overflight—such as Australia, Japan, and the United States—reiterate the importance of international law, particularly UNCLOS, in these forums. Given that most ARF and EAS member states have already signed or ratified UNCLOS, it is reasonable to ensure member states' adherence to international law. As ASEAN member states regularly express their support and respect for the law, with the support of external major powers, the ARF and the EAS become convenient avenues for ASEAN to conduct institutional hedging. The strategy aims to constrain China's behavior in the SCS using international law while allowing other great powers, including Australia, Japan, and the United States, to monitor the SCS situation, and at the same time continually internationalize the issue.

This institutional division of labor among ASEAN-led institutions has provided ASEAN with a range of strategic options to manage its relations with great powers and the SCS situation. It is also noted that among these institutions, the ADMM and the ADMM-Plus are institutionally more coordinated than others. This is mainly because their core participants are defense ministers of ASEAN member states, which makes it easier to reflect ADMM decisions at the ADMM-Plus while making the ADMM a focal point for defending ASEAN's strong institutional norms, rules, and principles such as ASEAN centrality, consensus decision-making, and non-interference. In this institutional structure, institutional knowledge

is more effectively accumulated, which helps the ADMM to facilitate organizational learning.

Furthermore, unlike the ARF, ADMM-Plus membership is limited to regional states in East Asia that share similar security concerns, and therefore it is more manageable for the ADMM to find areas for cooperation. In fact, the ADMM currently functions as a norm-generating institution, as shown in its creation of the Direct Communications Link and Guidelines for Air Military Encounters, as well as in its attempts to extend the norms to ADMM-Plus. Although these norms are not directly linked to the SCS, they can be applied to the maritime domain and be part of the COC's early harvest measures.

With these strategies of ASEAN and ASEAN-led institutions, what are the prospects of ASEAN's role in managing the SCS situation in the context of intensified US–China rivalry amid the turbulence caused by the pandemic in the 2020s? Because of the diplomatic disruption caused by COVID-19, the ASEAN–China COC negotiation process has significantly slowed down as face-to-face dialogue became difficult. Negotiations eventually resumed in 2021, and both ASEAN and China showed willingness to expedite the process. However, it remains uncertain whether the pandemic would continue to impede diplomatic interactions while diverging opinions still exist among claimant states (ASEAN Secretariat, 2021a, 2021b). Furthermore, the US–China rivalry has yet to be mitigated despite the change in US administration from Trump to Biden in 2021. The Biden administration succeeded Trump's firm stance vis-à-vis China, despite its declared strategic posture to keep the channels of communication open and seek areas of cooperation with China (The White House, 2021a). US allies in Asia, such as Australia and Japan, are more closely aligned with the United States, and the strategic environment in East Asia is more severe than before.

Despite these precarious elements, the roles of ASEAN and ASEAN-led institutions with regard to the SCS issue are likely to remain stable. As discussed above, their institutional strategies vis-à-vis the SCS disputes are largely locked in and path-dependency has ensued. This means that unless there is an abrupt change in the strategic balance in the SCS, the status quo would likely be maintained. The AMM and the ASEAN Summit conduct institutional balancing; the ARF and the EAS are tools for institutional hedging and they keep the SCS issue internationalized; ASEAN–China dialogues are a source of institutional co-option for the



COC's conclusion; and the ADMM and the ADMM-Plus conduct institutional balancing and institutional co-option, respectively, but together they function as institutional hedging. Currently, the ADMM and the ADMM-Plus are the key institutions for setting regional maritime norms in the SCS. While their processes are not necessarily efficient and their effectiveness depends on the diplomatic support they receive from regional major powers, they provide member states with the opportunity to maintain stability in the SCS.

To be sure, there is a growing concern regarding the emergence of a new geographic concept, the Indo-Pacific, which is the current trend of the strategic environment caused by US–China rivalry. In response to China's growing influence over a broader Asia through its Belt and Road Initiative, the United States and its allies, particularly Japan, expanded their geostrategic scope from Asia–Pacific to Indo-Pacific (e.g., He & Li, 2020; Hughes et al., 2021; Katada, 2019; Koga, 2020; Medcalf, 2015; Satake & Sahashi, 2021; Tow, 2018). One of the primary purposes is to check and balance China's behavior by strengthening ties with India and prevent China from dominating the region. These US-oriented visions were gradually incorporated into the strategic narrative of the region, and the Indo-Pacific has become a new geographic focal point that cannot be easily dismissed. In fact, ASEAN also responded by issuing its own vision, "ASEAN Outlook on the Indo-Pacific" (AOIP), in order to mitigate the great-power rivalry and emphasize the importance of ASEAN centrality (ASEAN Secretariat, 2019). Given the emergence of the Indo-Pacific as a new regional focus that ASEAN would not be able to cover because of its limited resources, there is a danger of ASEAN being diplomatically marginalized by regional powers (Koga, 2021, 2022).

However, this does not mean that the importance of ASEAN in the SCS would be marginalized. First, ASEAN still possesses institutional power to manage the SCS situation more than the initiatives and institutions by major powers. Because of this institutional power, all regional powers diplomatically support ASEAN centrality (The White House, 2021b). Second, ASEAN's geographic scope has yet to clearly expand to the Indo-Pacific. Despite the AOIP, ASEAN has not been eager to deeply engage in political security issues in the Indian Ocean region. With this passive posture, it is unlikely that ASEAN would attempt to diffuse the principle of ASEAN centrality beyond East Asia in the future. Simply, doing so is not in ASEAN's vital interests because expanding its strategic reach to the Indian Ocean region would not only overstretch ASEAN's

scarce resources but also heighten the possibility of being entrapped by great-power politics. As a result, unless ASEAN's security interests and regional autonomy are significantly threatened, ASEAN would likely remain in East Asia and focus on the regional security issues, including the stabilization of the SCS situation.

In sum, ASEAN is the institutional focal point in East Asia because it has nurtured various institutions and created a regional institutional web to monitor the security situation, including the SCS. While each institution's development path has been rather contingent, implicit and explicit coordination between ASEAN and ASEAN-led institutions has afforded ASEAN a strategic device to manage great powers and the SCS situation. At the same time, ASEAN has attempted to create institutional frameworks, norms, and strategies to serve member states' interests, which would ensure relative regional autonomy vis-à-vis the great powers.

This institutional development is significant given that traditional security issues such as territorial disputes are often considered to be in the realm of power struggle—the more material capabilities a state has, the more likely it can attain relative gain. Numerous diplomatic arrangements in the politico-military realm that ASEAN has created have empowered non-great powers to prevent great powers from resorting to pure power politics.

ASEAN and ASEAN-led institutions are not always effective in constraining state behavior, let alone resolving territorial disputes in SCS, as international institutions are never the panacea for international conflicts or disputes. Further, ASEAN's institutional proliferation is sometimes a source of criticism because of the institutions' overlapping and inefficient functionalities. Nevertheless, from the perspective of institutional strategy, it is this strategic institutional web that has enabled ASEAN to diversify its strategies to confront, constrain, and co-opt regional great powers in the SCS. Utilizing the great powers' material capabilities and its diplomatic legitimacy that stems from the core of regional multilateralism, ASEAN has played a significant role in maintaining strategic stability in the SCS.

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