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Indirect Cost Imposition Strategies in the South China Sea: *U.S. Leadership and ASEAN Centrality*

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About this Series

Maritime tensions in the East and South China Seas have raised significant questions about the long-term peace and stability that has enabled Asia's economic rise over the last several decades. While these disputes are longstanding, recent years have seen attempts to unilaterally change the status quo through tailored coercion that falls short of war. These activities do not appear to be abating despite growing international concern. While policy efforts to alleviate tensions must include engagement and binding measures, a comprehensive approach must include countering coercive moves by imposing costs on bad behavior. This series aims to explore various types and facets of strategies to deter, deny and impose costs on provocative behavior in maritime Asia. Hopefully these papers will, jointly and severally, generate new thinking on how to both maintain security and build order across the Indo-Pacific region.

The views expressed in this paper are those of the author alone and do not represent the views of ASEAN, its member states, or the ASEAN Secretariat.

Cover Image

ASEAN leadership at the 25th ASEAN Summit Plenary Session, November 2014.

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By Carlyle A. Thayer

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INTRODUCTION

By Carlyle A. Thayer

Any discussion about cost imposition strategies to deal with coercion in the South China Sea should begin with a discussion about critical background and institutions within Southeast Asia. In August 1967, when the foreign ministers from Indonesia, Malaysia, the Philippines, Singapore, and Thailand met in Bangkok to form the “Association of South-East Asian Nations” (ASEAN), they declared that ASEAN was “open for participation to all States in the South-East Asian Region.”¹ This aspiration was met over the following years with the admission of Brunei in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999. Timor-Leste’s membership is pending.

Since its founding, ASEAN has sought to place itself at the center of Southeast Asia’s security architecture, most notably with the creation of the ASEAN Regional Forum (ARF) in 1994, ASEAN Plus Three in 1997, the East Asia Summit in 2005, the ASEAN Defence Ministers’ Meeting Plus in 2010, and the Expanded ASEAN Maritime Forum in 2012.

ASEAN has also sought to preserve Southeast Asia’s autonomy from intervention by external powers. The first step toward this end was taken during the Cold War with the adoption of the Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN) in Kuala Lumpur in November 1971.² The declaration stated:

1. That Indonesia, Malaysia, the Philippines, Singapore and Thailand are determined to exert initially necessary efforts to secure the recognition of, and respect for, South East Asia as a Zone of Peace, Freedom and Neutrality, *free from any form or manner of interference by outside Powers* [emphasis added];
2. That South East Asian countries should make concerted efforts to broaden the areas of cooperation which would contribute to their strength, solidarity and closer relationship.

A major turning point in reinforcing ASEAN's centrality in regional security affairs and as a guarantor of Southeast Asia's autonomy was reached in 1976 with the adoption of the ASEAN Treaty of Amity and Cooperation (TAC) by the heads of state/government of the five founding members.³ This treaty noted the desire of ASEAN states "to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia" by adhering to six principles:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
- b. *The right of every State to lead its national existence free from external interference, subversion or coercion* [emphasis added];
- c. Non-interference in the internal affairs of one another;
- d. Settlement of differences or disputes by peaceful means;
- e. Renunciation of the threat or use of force;
- f. Effective cooperation among themselves.

The ASEAN Treaty of Amity and Cooperation was "open for accession by other States in Southeast Asia" and became a prerequisite for membership in the Association. Later, accession to the ASEAN TAC became a requirement for external states in order to join the East Asia Summit.

Finally, in December 1995 ASEAN adopted the Treaty on the Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ).⁴ The treaty committed each member of ASEAN:

... not to, anywhere inside or outside the Zone:

- (a) develop, manufacture or otherwise acquire, possess or have control over nuclear weapons;
- (b) station or transport nuclear weapons by any means; or
- (c) test or use nuclear weapons.

This treaty for the first time defined the geographical limits of Southeast Asia as follows:

- (a) "Southeast Asia Nuclear Weapon-Free Zone," hereinafter referred to as the "Zone," means the area comprising the territories of all States in Southeast Asia, namely, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, *and their respective continental shelves and Exclusive Economic Zones (EEZ)* [emphasis added];
- (b) "territory" means the land territory, internal waters, territorial sea, archipelagic waters, the seabed and the sub-soil thereof and the airspace above them [emphasis added].

Each new member of ASEAN was required to subscribe to all of the above declarations and treaties.

A second major turning point in ASEAN's endeavor to ensure its centrality in regional security affairs and as guarantor of Southeast Asia's autonomy came in October 2003, when ASEAN heads of government/state adopted the Declaration of ASEAN Concord II (Bali Concord II).⁵ The declaration announced the goal of establishing an ASEAN Community "comprised of three communities: ASEAN Political-Security Community (APSC), ASEAN Economic Community and ASEAN Socio-Cultural Committee" by 2020. This deadline was later brought forward to the end of 2015.

The Declaration of ASEAN Concord II stated that:

The Treaty of Amity and Cooperation in Southeast Asia (TAC) is the key code of conduct governing relations between states and a diplomatic instrument for the promotion of peace and stability in the region ... and the ASEAN Regional Forum (ARF) shall remain the primary forum in enhancing political and security cooperation in the Asia Pacific region, as well as

the pivot in building peace and stability in the region. ASEAN shall enhance its role in further advancing the stages of cooperation within the ARF to ensure the security of the Asia Pacific region.

In 2009, ASEAN adopted a blueprint for the APSC that reiterated ASEAN's centrality and proactive role in the regional architecture.⁶ The blueprint also declared that the APSC would "uphold existing ASEAN political instruments" such as ZOPFAN, ASEAN TAC, and SEANWFZ, "which play a pivotal role in the area of confidence building measures, preventive diplomacy and pacific approaches to conflict resolution."

As ASEAN has progressed in its plans to establish an ASEAN Community and an ASEAN Political-Security Community by the end of 2015, no single issue has been as divisive in reaching these objectives as territorial disputes in the South China Sea between and among ASEAN members and China.

I. THE SOUTH CHINA SEA CONUNDRUM

ASEAN first raised its concerns about territorial disputes in the South China Sea in the early- and mid-1990s.⁷ In July 1992, ASEAN issued its first statement on the South China Sea in response to rising tensions between China and Vietnam (not yet a member of ASEAN) over oil exploration in contested waters. ASEAN called on the unnamed parties "to exercise restraint."⁸ This call went unheeded, and both China and Vietnam proceeded to take control of unoccupied islets and reefs within the Spratly archipelago.

In March 1995, ASEAN issued its second statement on the South China Sea in response to China's occupation of Mischief Reef, claimed by the Philippines. ASEAN ministers expressed their "serious concern" and urged the two parties "to refrain from taking actions that de-stabilize the situation."⁹ Over the next five years ASEAN and

China entered into fruitless negotiations on a Code of Conduct (CoC) in the South China Sea.

In December 2002, the two sides expediently agreed to a nonbinding political statement titled "Declaration on Conduct of Parties in the South China Sea." Point 5 stated:

The Parties undertake *to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability* including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner [emphasis added].

The declaration of conduct (DoC) set out four trust- and confidence-building measures and five voluntary cooperative activities. Significantly, the parties reaffirmed "that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and *agree to work, on the basis of consensus, toward the eventual attainment of this objective* [emphasis added]."¹⁰ It took another 25 months before ASEAN and China reached agreement on the terms of reference for a Joint ASEAN-China Working Group (JWG) to implement the DoC.¹¹ The JWG spent the next six years debating 21 drafts before they agreed in 2011 on Guidelines to Implement the DoC.¹²

In January 2012, ASEAN and China agreed to set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime based on four of the five cooperative activities included in the 2002 DoC. Significantly, no expert committee on safety of navigation and communication at sea was established due to its contentious nature.

Another two years passed before ASEAN and China at long last commenced their first formal consultations on a CoC within the framework of the Joint Working Group on the Implementation of

the DoC. As of February 2015, despite subsequent meetings of the JWG, not one trust- or confidence-building measure or cooperative activity has commenced.

In January 2012, ASEAN and China agreed to set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime based on four of the five cooperative activities included in the 2002 DoC. Significantly, no expert committee on safety of navigation and communication at sea was established due to its contentious nature.

Most recently, at an ASEAN Foreign Ministers Retreat held in Malaysia in late January 2015, according to the ASEAN chair, “the ministers instructed our senior officials to intensify efforts towards achieving the full and effective implementation of the Declaration on Conduct of Parties in the South China Sea and work vigorously towards the early conclusion of the Code of Conduct on the South China Sea.”¹³

Since 2009, when Beijing officially tabled its ambitious nine-dashed line map claiming all the land features (rocks, reefs, submerged shoals and islands) and adjacent waters, comprising an estimated 62 percent or more of the South China Sea,¹⁴ China has undertaken a number of assertive – if not aggressive – actions to consolidate and expand

its control over the South China Sea. These actions include but are not limited to:

- harassment of Vietnamese, Filipino, and other fishermen operating in waters within China’s nine-dashed line in the South China Sea, including ramming, sinking, destroying and/or stealing property, and arrest of their crews and confiscation of their fish catch;
- threats to and/or cutting the cables of ships engaged in seismic surveys within the EEZs of Vietnam and the Philippines;
- the virtual annexation of Scarborough Shoal¹⁵ and the contestation of Second Thomas Shoal – which the Philippines claims and on which it maintains a small garrison of marines – by permanently stationing armed Chinese maritime enforcement vessels in surrounding waters and harassing Filipino attempts to resupply the marines;
- encouragement of Chinese fishermen to poach in waters where China’s nine-dashed line claim overlaps with the EEZs of littoral states;
- coercion by Chinese maritime law enforcement ships to force Southeast Asian authorities to release Chinese fishermen who have been apprehended for illegal fishing;
- deployment of the HD 981 mega oil drilling platform, accompanied by an armada of 80 to 100 escorts (including naval warships, maritime enforcement agency vessels, tugboats, and fishing craft associated with China’s militia) into Vietnam’s EEZ and the use of such tactics as ramming and high-pressure fire hoses against Vietnamese Coast Guard and Fisheries Surveillance Force vessels;
- harassment and other dangerous encounters with U.S. Navy ships and aircraft operating in international waters and airspace in the South China Sea (e.g., USS *Cowpens* and P-8 Poseidon maritime patrol aircraft); and

- extensive land reclamation and construction activities on five features in the South China Sea, including the construction of an airstrip and docks capable of berthing military vessels.¹⁶

Throughout ASEAN's years of development, its major policy documents and treaties included implicitly or explicitly Southeast Asia's maritime domain within their geographic scope. As noted above, the SEANWFZ defined Southeast Asia's geographic boundaries as including the land territory, internal waters, territorial sea, archipelagic waters, EEZs, continental shelves, the seabed and the subsoil thereof, and the airspace above them.

China's assertive and aggressive actions, combined especially with recent land reclamation activities, represent nothing less than the slow and deliberate excision of ASEAN's maritime heart from the Southeast Asian region. China's actions threaten to undermine ASEAN's 48-year endeavor to bolster Southeast Asia's autonomy from external intervention through altering "facts on the ground" by annexing the South China Sea and placing it under Chinese administrative and military control.

China also aims at undermining U.S. alliances and security guarantees by using civilian maritime enforcement ships and fishing fleets to conduct carefully orchestrated acts of intimidation and coercion against the Philippines and Vietnam, advancing China's physical control over the South China Sea – a stratagem to which the United States has yet to work out an effective response. Finally, China seeks to exploit differences among ASEAN members and draw ASEAN into East Asian exclusivist security arrangements, thus undermining ASEAN's centrality in regional security affairs.¹⁷

The next sections offer proposals to impose costs on China's unilateral efforts to change the status quo in Southeast Asia's maritime domain.

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II. U.S. LEADERSHIP AND LEVERAGING ALLIANCES AND PARTNERSHIPS

It is unlikely that any one cost imposition strategy will dissuade China from its present course of action. It is more likely that multiple overlapping cost imposition strategies implemented by various sets of actors will be more effective. This section considers two options for the United States acting in part on its own but also in conjunction with allies and security partners – an "information warfare campaign" and joint and combined exercises and deployments between coast guards.

First, the United States should take the lead in a campaign of "information warfare" to publicize details of Chinese unilateral destabilizing activities in the South China Sea, ensuring that this information is put in the public domain for use by the media, scholars, security specialists, other analysts, and elected officials. For example, the Defense Department should be required to include a detailed section on Chinese activities in the South China Sea in its *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China*. The commander of the U.S. Pacific Command should be required to report in detail on Chinese activities in the South

China Sea in his or her annual posture statement to the respective Armed Services Committees of the House and Senate.

U.S. officials who attend ASEAN-related security meetings, such as the ARF, Expanded ASEAN Maritime Forum, and ASEAN Defence Ministers' Meeting Plus should use these occasions to provide detailed background briefings on Chinese activities in the South China Sea. U.S. scholars who regularly attend Track 1.5 and Track 2 regional workshops and conferences should be offered briefings on a voluntary basis.

The Department of Defense and the State Department should provide funds and other assistance to American-based think tanks to research and report on current Chinese activities in the South China Sea and how these are likely to impact adversely on regional security. Funding should be made available to support specialized conferences and workshops to which Southeast Asian scholars and officials are invited.

The purpose of this “information warfare” campaign is to maintain unrelenting public pressure on China to be more transparent about its activities and to bring its actions into accord with regional norms such as the self-restraint clause in the DoC. Another aim of this campaign would be to counter Chinese propaganda.

Second, the United States should develop a strategy to counter Chinese activities using primarily – but not exclusively – nonmilitary assets. Under this new strategy, the United States should avoid directly confronting People's Liberation Army Navy warships with its own naval forces. Nor should the U.S. Navy directly confront Chinese paramilitary law enforcement agency ships and fishing craft because this would raise the risk of conflict and/or scare off some Southeast Asian states.

The United States should implement a cost imposition strategy involving joint and combined cooperation between civilian maritime agencies of like-minded external powers and the Philippines and Vietnam. This strategy should be carried out on three levels: among like-minded ASEAN dialogue partners (Australia, Japan, South Korea, New Zealand, and India); multilaterally with regional allies and security partners; and bilaterally with regional states.

The United States should implement a cost imposition strategy involving joint and combined cooperation between civilian maritime agencies of like-minded external powers and the Philippines and Vietnam.

The United States should use its two trilateral security dialogues (U.S.-Japan-Australia and U.S.-Japan-India), at the same time promoting a quadrilateral security dialogue with India, Japan, and Australia, to coordinate their approaches to ASEAN and individual Southeast Asian states. For example, in 2014 Vietnam was reported to have conducted diplomatic soundings for a trilateral security dialogue with Japan and the United States. This sort of ad hoc arrangement should be pursued.

Japan, the United States, and Australia are currently providing material assistance to the Philippines to improve its capacity for maritime security, including the provision of patrol boats and training. This assistance should be stepped up and better coordinated through closer cooperation bilaterally and multilaterally. It could serve as a model for similar activities by other external and regional coast guards.

At the same time, the United States and other maritime powers, such as Japan, could conduct their own bilateral engagement activities. The United States and Vietnam already have an agreement for cooperation between their Coast Guards, but this entails training on land in the form of short courses. U.S.-Vietnam cooperation now needs to move offshore in the form of joint training exercises that gradually expand their scope from search and rescue to anti-piracy drills and maritime surveillance patrols.

Vietnam recently joined the Proliferation Security Initiative. This provides an opportunity for the United States to help Vietnam further develop its capacity for maritime domain awareness.

The purpose of these maritime interactions is to build trust to reach the stage where both sides can agree to exchange observers on each other's ships and patrol aircraft. Initially this exchange could take place during planned training exercises; over time it could lead to the cross-posting of Coast Guard officers for longer deployments. Joint patrols should be carried out either in the EEZs of littoral states or on the high seas that are notionally within China's nine-dashed line.

This model could be expanded to include similar activities between the U.S. and Philippine Coast Guards, the Japanese and Philippine Coast Guards, and the Philippine and Vietnamese Coast Guards. Over time, these bilateral arrangements could be expanded to trilateral or even multilateral exercises. China would be confronted with the uncertainty of directly challenging vessels containing maritime officials from the United States or its treaty allies. This could involve, for example, the deployment of U.S. and Japanese Coast Guard personnel on Coast Guard vessels operated by the Philippines and Vietnam. It could also involve a mix of Filipino and Vietnamese maritime enforcement personnel.

U.S. Navy maritime surveillance aircraft based in the Philippines under the recent Enhanced Defense Cooperation Agreement could operate flights with Philippine military observers. U.S. Navy maritime surveillance aircraft could be deployed over the South China Sea and land in Vietnam on a temporary basis before returning to their base in the Philippines. U.S. maritime patrol aircraft could also conduct joint maritime surveillance missions with their Filipino and Vietnamese counterparts. U.S. military personnel could fly on Philippine and Vietnamese reconnaissance planes as observers and vice versa.

Regional security analysts expect China to continue mounting annual aggressive naval displays in the South China Sea from May to August. This provides an opportunity for the U.S. Navy and Japan Maritime Self-Defense Force to organize a series of continuing maritime exercises and surveillance flights with Vietnam, the Philippines and other like-minded regional states prior to the arrival of Chinese forces each year. The details of all operations should be completely transparent to all regional states, including China.

The United States and its treaty allies should conduct regular naval operations designed to assert freedom of navigation and overflight in the waters and airspace near the artificial islands currently being built by China, to prevent China from making excessive claims to maritime space or intimidating regional naval forces.

The indirect cost imposition strategy provides the means for the United States to give practical expression to its declaratory policy of opposing intimidation and coercion to settle territorial disputes. An indirect strategy does not require the United States to directly confront China. This strategy puts the onus on China to decide the risk of confronting mixed formations of Coast Guard and naval vessels and aircraft involving the United States, Japan, the Philippines, Vietnam, and other like-minded states.

The United States and its treaty allies should conduct regular naval operations designed to assert freedom of navigation and overflight in the waters and airspace near the artificial islands currently being built by China, to prevent China from making excessive claims to maritime space or intimidating regional naval forces.

These combined maritime and air forces would operate in international waters and airspace that traverse China's nine-dashed line. Interchanging the naval and aircrews in all exercises could promote deterrence. The objective would be to maintain a continuous naval and air presence to deter China from using intimidation and coercion against Vietnam, the Philippines, and other regional states by raising the risk of directly confronting the United States or a U.S. treaty ally. The scope and intensity of these exercises could be altered in response to the tempo of Chinese naval activities.

III. AN INDIRECT COST IMPOSITION STRATEGY FOR ASEAN

ASEAN as an organization is unlikely to support collectively the indirect cost imposition strategy suggested above, because that would lead to direct political confrontation with China. ASEAN, however, could pursue an indirect cost imposition strategy using legal, diplomatic, and political

means that would reinforce Southeast Asia's autonomy and ASEAN-central role in the region's architecture. A central feature of this strategy might be adopting an ASEAN Treaty of Amity and Cooperation in Southeast Asia's Maritime Domain (hereafter "the Treaty").¹⁸

The geographical limits of Southeast Asia's maritime domain, following SEANWFZ, should include the respective continental shelves and EEZs of all ASEAN members (and future members).¹⁹ This treaty should have a protocol of accession inviting all ASEAN dialogue partners to sign. This treaty would be in essence a binding code of conduct for Southeast Asia's maritime domain.

ASEAN's dogged pursuit of confidence-building measures under the DoC and a binding Code of Conduct in the South China Sea with China, while an important security goal, is fundamentally flawed for five reasons:

First, this approach reinforces divisions in ASEAN between (a) front-line claimant states, the Philippines and Vietnam, and the other claimant states, Brunei and Malaysia, and (b) claimant and nonclaimant states, thus undermining ASEAN unity.

Second, China will not agree to a binding CoC that has treaty status; this will result in a compromise CoC that falls short of meeting the security and other concerns of Southeast Asia's claimant states.

Third, because ASEAN and China have agreed to proceed with consultations on the drafting of a CoC on the basis of consensus, China can delay these proceedings indefinitely.

Fourth, because there is no agreed road map and time limit on this process, China can continue to consolidate its presence in the South China Sea and extend its de facto control over waters that overlap with the EEZs of littoral states.

Fifth, the geographical area of ASEAN's proposed CoC cannot be defined until China either clarifies or withdraws its nine-dashed line claim to the South China Sea.

Why should ASEAN adopt a Treaty of Amity and Cooperation in Southeast Asia's Maritime Domain? There are five reasons:

First, the security of Southeast Asia's maritime domain is indivisible for all ASEAN members, whether coastal or landlocked states.

ASEAN's proposed CoC, because it is focused solely on the South China Sea, does not cover many other waterways of critical importance to ASEAN states, including maritime approaches to the Malacca Strait on the western seaboard of Myanmar, Thailand, and Indonesia; the Gulf of Thailand; the waters surrounding the Indonesian archipelago; or waters to the north, east, and south of the Philippines archipelago.

Second, international law, including the United Nations Convention on the Law of the Sea (UNCLOS), applies equally throughout Southeast Asia's maritime domain and not just the South China Sea. It is applicable to all states.

Third, the Treaty would incorporate the norms and legal obligations that are unlikely to be included in the CoC.

Fourth, China would be put under pressure to join other dialogue partners in acceding to the Treaty or bear the political costs of remaining outside its provisions.

Fifth, the Treaty would reinforce ASEAN unity and Southeast Asia's autonomy by placing ASEAN at the center of relations with outside maritime powers. The Treaty would overcome differences between claimant and nonclaimant states by making all ASEAN members stakeholders, including Cambodia, Myanmar, and landlocked

Laos.²⁰ The Treaty would also reinforce ASEAN's corporate and legal identity and enhance its ability to deal with external powers.

...the security of Southeast Asia's maritime domain is indivisible for all ASEAN members, whether coastal or landlocked states.

What should be included in a Treaty of Amity and Cooperation in Southeast Asia's Maritime Domain?

The Treaty's preamble should include pledges by all ASEAN members to bring their maritime boundaries and claims into accord with international law, including UNCLOS, with particular attention to eliminating excessive baselines and clearly distinguishing islands from rocks for purposes of maritime delimitation.

The Treaty should include provisions for setting up an independent panel of technical and legal experts who could be called on to assist in determining base lines and the classification of islands and rocks.

The Treaty should commit all signatories to renounce the threat of and use of force to settle their disputes over sovereignty and sovereign rights and disruption of good order at sea, including safety of navigation and overflight.

The Treaty should include a pledge to resolve all outstanding disputes regarding land features in Southeast Asian waters, overlapping EEZs and delimitation of continental shelves between and among ASEAN members.

The Treaty should incorporate references to previous ASEAN treaties, such as the TAC and SEANWFZ, and international maritime conventions such as UNCLOS, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Code for Unplanned Encounters at Sea, and other relevant conventions.

The Treaty should include a binding commitment to resolve all disputes through peaceful means, including political-diplomatic negotiations, third-party mediation, or international legal arbitration.

The Treaty should include a provision for the demilitarization of islands and rocks and prohibit the deployment of specified types of weapon systems, such as land-based anti-ship missiles. However, for purposes of general security, including protection against piracy and armed criminals, the Treaty should permit the stationing of coast guard and police personnel on occupied features.

The Treaty should contain a provision requiring all signatories to cooperate in marine scientific research, marine pollution, fisheries management, search and rescue, anti-piracy, and other agreed areas.

Finally, the Treaty should make provision for setting up a mechanism to handle complaints and disputes that may arise. Such a mechanism should be included under the ASEAN Political-Security Community Council.

The proposals presented in the paper are unlikely on their own to cause China to cease its unilateral destabilizing activities in the South China Sea. The recommendations are designed to increase political pressure on China to act in conformity with international law and regional norms by taking the initiative away from China. In addition to actions that can be undertaken by the United States and like-minded ASEAN dialogue partners

in cooperation with claimant states, the above proposals are also aimed at reinforcing Southeast Asia's autonomy.

Finally, the proposals in this paper should be combined with other cost imposition strategies proposed by other papers in this series to create a web of multiple overlapping pressures on China to accept the new status quo.

ENDNOTES

1. Association of Southeast Asian Nations, *The Asean Declaration (Bangkok Declaration) Bangkok, 8 August 1967* (August 8, 1967), <http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration>. At the meeting, Malaysia was represented by its deputy prime minister.
2. Association of Southeast Asian Nations Foreign Ministers Meeting, "Joint Press Statement Special ASEAN Foreign Ministers Meeting To Issue The Declaration Of Zone Of Peace, Freedom And Neutrality Kuala Lumpur, 25-26 November 1971" (November 26, 1971), <http://www.asean.org/communities/asean-political-security-community/item/joint-press-statement-special-asean-foreign-ministers-meeting-to-issue-the-declaration-of-zone-of-peace-freedom-and-neutrality-kuala-lumpur-25-26-november-1971>.
3. Association of Southeast Asian Nations, *Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976* (February 24, 1976), <http://www.asean.org/news/item/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976-3>.
4. Association of Southeast Asian Nations, *Treaty on the Southeast Asia Nuclear Weapon-Free Zone* (December 15, 1995), <http://www.asean.org/news/item/treaty-on-the-southeast-asia-nuclear-weapon-free-zone>.
5. Association of Southeast Asian Nations, *Declaration of ASEAN Concord II (Bali Concord II)* (October 7, 2003), <http://www.asean.org/news/item/declaration-of-asean-concord-ii-bali-concord-ii>.
6. Association of Southeast Asian Nations, *ASEAN Political-Security Community Blueprint* (March 1, 2009), <http://www.asean.org/archive/5187-18.pdf>.
7. For an overview of ASEAN efforts to implement the DoC and reach agreement with China on a Code of Conduct, see Carlyle A. Thayer, "ASEAN, China and the Code of Conduct in the South China Sea," *The SAIS Review of International Affairs*, 33 no. 2, (Summer-Fall 2013), 75-84.
8. ASEAN Ministerial Meeting, *1992 ASEAN Declaration on the South China Sea* (July 22, 1992), <http://cil.nus.edu.sg/rp/pdf/1992%20ASEAN%20Declaration%20on%20the%20South%20China%20Sea-pdf.pdf>.
9. ASEAN Foreign Ministers, "1995 Joint Communiqué of the 28th ASEAN Ministerial Meeting," quoted in "Documents on ASEAN and the South China Sea" (Singapore: National University of Singapore Centre for International Law, June 2011), 33, <http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/Documents-on-ASEAN-and-South-China-Sea-as-of-June-2011.pdf>.
10. Association of Southeast Asian Nations, *Declaration on the Conduct of Parties in the South China Sea* (November 4, 2002), Point 10, <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.
11. Association of Southeast Asian Nations, "ASEAN-China Senior Officials Meeting on the Implementation of the Declaration on the Conduct of Parties in the South China Sea Kuala Lumpur, 7 December 2004," December 7, 2004, <http://www.asean.org/asean/external-relations/china/item/asean-china-senior-officials-meeting-on-the-implementation-of-the-declaration-on-the-conduct-of-parties-in-the-south-china-sea-kuala-lumpur-7-december-2004>; and Association of Southeast Asian Nations, "Terms of Reference of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea," December 7, 2004, <http://www.asean.org/asean/external-relations/china/item/terms-of-reference-of-the-asean-china-joint-working-group-on-the-implementation-of-the-declaration-on-the-conduct-of-parties-in-the-south-china-sea>.
12. Tran Truong Thuy, "Recent Developments in the South China Sea: From Declaration to Code of Conduct," in *The South China Sea: Towards a Region of Peace, Security and Cooperation*, ed. Tran Truong Thuy (Hanoi: The Gioi Publishers, 2011), 104.
13. Kyodo News Agency, "ASEAN seeks early conclusion of a maritime pact for South China Sea," *South China Morning Post*, January 28, 2015.
14. United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, *Limits in the Seas: China: Maritime Claims in the South China Sea*, No. 143 (December 5, 2014). The media and many South China Sea specialists cite figures upward of 80 or even 90 percent. As the State Department analysis says on page 4, "The exact percentage depends upon the assumed geographic extent of the South China Sea."
15. Carlyle A. Thayer, "The China-Philippines Face Off at Scarborough Shoal: Back to Square One?," *E-International Relations*, April 26, 2012, <http://www.e-ir.info/2012/04/26/the-china-philippines-face-off-at-scarborough-shoal-back-to-square-one/>.
16. For an analysis of the most recent satellite imagery taken by Airbus Defence and Space, see Michelle FlorCruz, "South China Sea Land Reclamation: Satellite Images Show Chinese Progress on Made-Made Island," *International Business Times*, February 17, 2015, <http://www.ibtimes.com/south-china-sea-land-reclamation-satellite-images-show-chinese-progress-man-made-1818986>.
17. Carlyle A. Thayer, "Southeast Asia: Patterns of Security Cooperation" (Australian Strategic Policy Institute, 2010), 13-30.
18. This proposal is a modification of an idea first articulated by the author in "Maritime Security: Towards a Regional Code of Conduct" (presentation to Eighth Council for Security Cooperation in the Asia Pacific General Conference, "Dangers and Dilemmas: Will the New Regional Security Architecture Help?," Hanoi, November 21-22, 2011). This proposal was refined in two subsequent presentations: Carlyle A. Thayer, "Positioning ASEAN between Global Powers" (presentation to the 14th Regional Outlook Forum, Institute of Southeast Asian Studies, Singapore, January 5, 2012); and Carlyle A. Thayer, "Beyond Territoriality: Managing the Maritime Commons in the South China Sea" (paper delivered to the 28th Asia-Pacific Roundtable, International Institute of Strategic Studies, Kuala Lumpur, June 2-4, 2014).
19. Such as Timor-Leste.
20. Cambodia and Myanmar were the only members of ASEAN to remain silent when maritime security/South China Sea issues were first raised at the November 2011 East Asia Summit Leaders' Retreat. Cambodia played a spoiling role when it was ASEAN chair in 2012 by preventing any mention of South China Sea issues in the customary joint statement; none was issued for the first time in ASEAN's history. Cambodia and Laos both demurred when ASEAN foreign ministers held a retreat in early 2015 to discuss China's land reclamation activities in the South China Sea. On Cambodia's role in 2012, see Carlyle A. Thayer, "ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?," *The Asia-Pacific Journal*, 10(34) No. 4 (August 20, 2012), 1-23.

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