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## Principled Negotiation: The Final Answer to the South China Sea Dispute

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# PRINCIPLED NEGOTIATION: THE FINAL ANSWER TO THE SOUTH CHINA SEA DISPUTE

by Hoa Nguyen\*

## ABSTRACT

*Principled negotiation suggests that in any conflict there are interests that motivate a party's claimed position. Identifying and focusing on these interests instead of the position itself is the best way to solve the underlying conflict, whether it concerns a family quarrel, a business contract, or an international settlement among nations. On the surface of the South China Sea dispute, China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan all make conflicting claims over various features in the South China Sea, particularly the Spratly and Paracel Islands. However, in reality, each nation has particular interests in mind when asserting its claiming position. Although the countries share overlapping interests in the South China Sea, each of them weighs the interests differently. By applying principled negotiation to the South China Sea dispute, the parties involved would forget about their positions and work together to create a solution that addresses each nation's concerns.*

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## I. INTRODUCTION

Traceable to the 1951 San Francisco Treaty, which failed to name the possessors of the Spratly Islands when Japan lost ownership after its defeat in World War II,<sup>1</sup> the South China Sea is the subject of one of the most hotly contested maritime territorial disputes of the twenty-first century. Located between East Asia and the Indian Ocean, the South China Sea is known for its strategic location and its wealth of natural resources.<sup>2</sup> It is estimated that the South China Sea could potentially yield 130 billion barrels of oil, and if this is correct, that means the only area on the planet that contains more oil than the South China Sea is Saudi Arabia.<sup>3</sup> Whether this estimation is true or not, the South China Sea's designation as "the throat of the Western Pacific and Indian oceans — the mass of connective economic tissue where global sea routes coalesce" is indisputable.<sup>4</sup> For these reasons, journalist Robert Kaplan famously calls the South China Sea "the 21st century's defining battleground," and the "throat of global sea routes."<sup>5</sup>

In 1953—understanding the importance of the South China Sea—China declared its nine-dash line or "cow's tongue" as its maritime territory.<sup>6</sup> This line includes the heart of the entire South China Sea, surrounding the "island groups from China's Hainan Island south 1,200 miles to near Singapore and Malaysia."<sup>7</sup> In response to China's excessive nine-dash line claim, neighboring countries in the region, most prominently the Philippines, Vietnam, Malaysia, and Taiwan, have made many fruitless efforts to resolve the problem. With the dispute continuing to escalate, the livelihoods of millions of people and the economies of many countries are at stake. More than ever, an effective and timely solution is needed. This Comment is written to provide that solution.

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1. David Martin Jones & M.L.R. Smith, *Can ASEAN Ever Solve the South China Seas Dispute Through Multilateral Dialogue?*, TELEGRAPH (Nov. 24, 2015, 6:00 AM), <http://www.telegraph.co.uk/news/worldnews/asia/china/12012915/Can-Asean-ever-solve-the-South-China-Seas-dispute-through-multilateral-dialogue.html> [https://perma.cc/2ZA3-82GM].

2. James R. Holmes, *Strategic Features of the South China Sea*, 67 NAVAL WAR C. REV. 30 (2014).

3. Robert D. Kaplan, *Why the South China Sea Is So Crucial*, BUS. INSIDER AUSTL. (Feb. 20, 2015, 11:07 PM), <http://www.businessinsider.com.au/why-the-south-china-sea-is-so-crucial-2015-2>.

4. *Id.*

5. Holmes, *supra* note 2, at 31 (footnote omitted).

6. *See China's Maritime Disputes*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#!p31345> [https://perma.cc/MY6M-ZGGN].

7. Robert D. Kaplan, *The South China Sea Will be the Battleground of the Future*, BUS. INSIDER (Feb. 6, 2016, 6:10 PM), <http://www.businessinsider.com/why-the-south-china-sea-is-so-crucial-2015-2>.

This Comment argues that instead of continuing to use *positional* negotiation, where each party creates a position for itself and sticks to it, parties involved in the South China Sea dispute should apply *principled* negotiation in their future efforts to resolve the conflict. Principled negotiation suggests that every party in a dispute has its own interests. Often, these interests are the motivating forces behind a party's declared position. Figuring out these interests not only helps parties come to an agreement but also maximizes each party's gains because in contrast to the common assumption that parties in a dispute share the same interests with each other, empirical studies show that this is almost never the case.

This Comment proceeds in six main sections. Section II provides information about the South China Sea and the historical context that led to the current conflict. Section III analyzes current attempts to resolve the dispute and explains why they fail in that regard. Section IV describes the theory of principled negotiation and provides guidance on how to apply it in any real world situation. Section V applies principled negotiation to formulate a solution to the South China Sea dispute. It particularly explores the interests of China, the Philippines, and Vietnam in the South China Sea. Section VI proposes possible resolutions to the conflict. Finally, Section VII provides a conclusion to the Comment.

## II. ORIGIN OF THE SOUTH CHINA SEA DISPUTE

Famous for its geostrategic importance and potential abundance of natural resources, the South China Sea connects all littoral territories of Southeast Asia and has served as a vital sea route for international commerce dating back to the late fifteenth century.<sup>8</sup> Historically, the Persians, Arabs, Indians, Chinese, and the people of Southeast Asian countries had used the South China Sea for commercial trade routes before the introduction of colonial power in the region.<sup>9</sup> When Western empires established colonies in Southeast Asia, they used the South China Sea as the main means for maritime navigation, and for developing trading stations and natural resource suppliers.<sup>10</sup> "Several archipelagoes in the South China Sea were marked and named on world maps by Western adventurers and colonizers."<sup>11</sup> In particular, a group of territorial features in the Paracel Islands was named "Amphitrite" after the shipwreck of the Amphitrite under the reign of King Louis XIV in 1698, when it was on its way from France to

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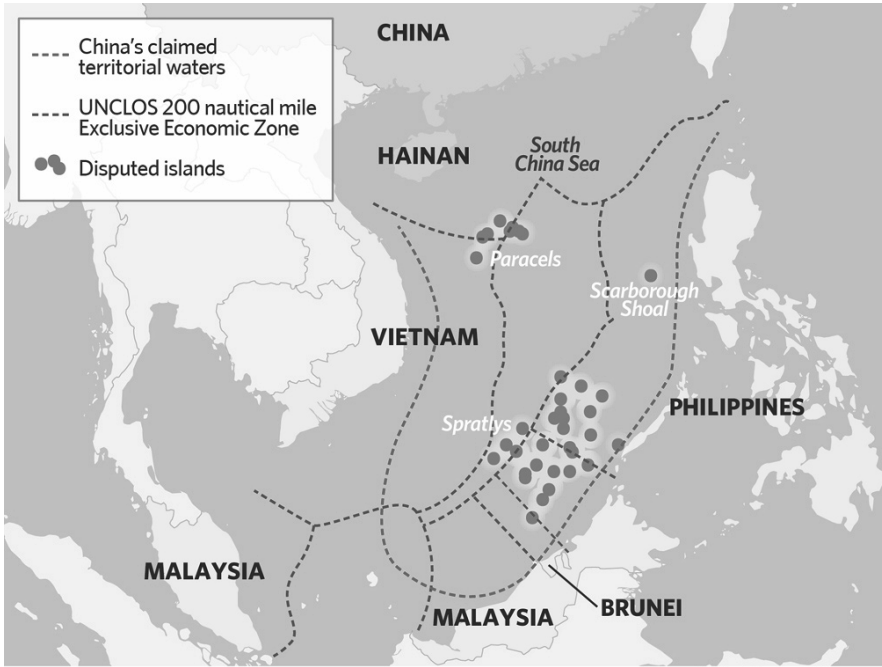
8. Nguyen Thi Lan Anh, *Origins of the South Sea Dispute*, in TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA: NAVIGATING ROUGH WATERS 15 (Jing Huang & Andrew Billo eds., Palgrave Macmillan 2014).

9. *Id.*

10. *Id.* at 15–16.

11. *Id.* at 16.

China.<sup>12</sup> Similarly, the Spratly Islands were named by British seafarers in 1843 after the captain who commanded the discovery, Richard Spratly.<sup>13</sup>



graphic by Lindsey Burrows

FIGURE 1: MAP OF THE SOUTH CHINA SEA DISPUTE  
(Source: UNCLOS and CIA)

Together, the Paracels and Spratlys occupy vast areas in the middle of the South China Sea,<sup>14</sup> which make them the targets of ongoing territorial disputes dating back to the beginning of the twentieth century. Particularly, in 1927, the French began occupying the Paracel and Spratly Islands after carrying out a patrol trip in the South China Sea to prevent smuggling and to conduct scientific surveys on the islands.<sup>15</sup> On July 26, 1933, France formally declared its sovereignty over the two islands, took physical possession, and marked a stone pillar on which was written “République Francaise – Royaume d’Annam – Archipel des Paracels 1816 – Ile de Pattle – 1938,” which

12. *Id.* at 16–17.

13. Ed Umbao, *Spratly Islands Disputes Escalates Between China, Vietnam, Taiwan and the Philippines*, PHILIPPINE NEWS (June 15, 2011), <http://philnews.ph/2011/06/15/spratly-islands-disputes-escalates-between-china-vietnam-taiwan-and-philippines/> [<https://perma.cc/TRX4-KD5V>].

14. Nguyen, *supra* note 8, at 17.

15. *Id.*

means “Republic of France – Royal of Annam – Paracels Archipelago 1816 – Pattle Island.”<sup>16</sup>

During World War II, Japan occupied the Paracels and Spratlys by force and placed the two islands under the jurisdiction of the Governor General of Taiwan through the Kao-hsiung District.<sup>17</sup> However, the end of the war marked the end of the occupation by Japan and France in the Paracels and Spratlys and left the fate of the islands unclear.<sup>18</sup> Although there were four international documents regarding the sovereignty of the islands,<sup>19</sup> these documents lacked clarity and were subjected to different and conflicting interpretations.<sup>20</sup> While China and Taiwan claimed that the Paracels and Spratlys were given to them under the Cairo Declaration, which was released in response to Japan’s territorial occupation during World War II, Vietnam claimed its sovereignty from the original French occupation and declaration.<sup>21</sup> In contrast, the Philippines argued that the uncertainty of the islands’ status made them belong to no one and thus gave other countries the freedom to claim sovereignty.<sup>22</sup>

The South China Sea dispute officially began in 1953, after the new People’s Republic of China removed the eleven-dash line of the previous Republic of China’s territorial claim over the South China Sea and simplified the border to nine dashes.<sup>23</sup> Through this new claim, famously known as the nine-dash line or the Cow’s Tongue line, China asserted sovereignty over roughly 90% of the total area of the South China Sea, which included the Paracel and Spratly Islands.<sup>24</sup> While this claim mainly conflicts with the claims of Vietnam and the Philippines, it also clashes with those of Taiwan, Brunei, Malaysia, and Indonesia.<sup>25</sup>

In 1958, “China reaffirmed its sovereignty over the South China Sea . . . when it declared a twelve nautical mile (nm) territorial sea.”<sup>26</sup> Similar declarations were made in 1992, 1996, and 2009.<sup>27</sup> Along with these assertions, China also enacted various laws to ensure its exclusive sovereignty:

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16. *Id.* at 17–18.

17. *Id.* at 18.

18. *Id.*

19. The four international documents are the San Francisco Treaty, The Cairo Declaration, The Potsdam Declaration, and the Joint Communiqué between the People’s Republic of China and Japan. *Id.*

20. *Id.* at 18–19.

21. *Id.* at 19.

22. *Id.*

23. *China’s Maritime Disputes*, *supra* note 6.

24. *Id.*

25. Dustin E. Wallace, *An Analysis of Chinese Maritime Claims in the South China Sea*, 63 NAVAL L. REV. 128, 130–31 (2014).

26. Raul (Pete) Pedrozo, *The Building of China’s Great Wall at Sea*, 17 OCEAN & COASTAL L.J. 253, 255 (2012).

27. *Id.*

[T]he 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, which . . . claimed security jurisdiction in the contiguous zone; the 1998 Law on the Territorial Sea and the Contiguous Zone, which . . . required foreign [military ships] to give prior notice before [entering] the Chinese territorial sea in innocent passage; the 1999 Marine Environment Protection Law, which . . . applied China's environmental laws to all ships, including [military ships in China's water]; and the 2002 Surveying and Mapping Law, which . . . regulated all marine data collection [in China's water.]<sup>28</sup>

Because many of these laws were inconsistent with international law, the international community reacted strongly against China's anti-access strategy, which led to many armed conflicts in the region.<sup>29</sup>

At the beginning of the twenty-first century, the South China Sea dispute has escalated as the region has sparked the reemergence of geopolitical concerns, competition for nationalism, and economic interests. This phenomenon began after modern scientific research estimated that the area possesses a large quantity of oil and gas reserves. For instance, "[i]n November 2012, the Chinese National Offshore Oil Company (CNOOC) estimated" that the South China Sea has "around 125 billion barrels of oil and 500 trillion cubic feet of natural gas."<sup>30</sup> According to the U.S. Energy Information Administration's ("EIA") 2013 report, the area may also contain significant deposits of undiscovered hydrocarbon resources "anywhere between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas."<sup>31</sup> Additionally, the South China Sea is also "one of the richest fishing grounds in the world, with many varieties of fish such as round scads, sardines, big-eye scads, mackerel, and tuna."<sup>32</sup> Just in the waters around the Spratly Island, annual fishing capacity is estimated at 7.5 metric tons per square kilometer.<sup>33</sup> In total, every year, the countries surrounding the South China Sea produce over eight million metric tons of marine fish, "accounting for 10% of the total world catch and 23% of that of Asia, making it vital for the fishing industries of regional countries."<sup>34</sup>

China's territorial claim over the South China Sea escalated to a new level when in early March 2010, in a meeting between the People's Republic of China (PRC) and the United States, PRC Councilor Dai Bingguo announced: "The South China Sea is a PRC 'core inter-

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28. *Id.* at 256–57.

29. *Id.* at 257–58.

30. *South China Sea*, U.S. ENERGY INFO. ADMIN. (Feb. 7, 2013), [https://www.eia.gov/beta/international/analysis\\_includes/regions\\_of\\_interest/South\\_China\\_Sea/south\\_china\\_sea.pdf](https://www.eia.gov/beta/international/analysis_includes/regions_of_interest/South_China_Sea/south_china_sea.pdf) [<https://perma.cc/763G-SBAR>].

31. *Id.*

32. Nguyen, *supra* note 8, at 23.

33. *Id.*

34. *Id.*

est' which concerns its sovereignty and territorial integrity."<sup>35</sup> This announcement officially placed the issue of China's territorial claims in the South China Sea as "the highest possible level of its national security interests on par with only Taiwan, Tibet, and Xinjiang—the Uyghur Autonomous Region."<sup>36</sup> Since this announcement, Chinese authorities have taken more aggressive steps to protect China's territorial claims. This position has been reflected by a series of armed clashes that were initiated by Chinese officials against Vietnamese and Filipino fishermen when they were fishing on the water of the Parcel and Spratly Islands.<sup>37</sup>

In addition, China started building islands with a speed and scale that alarmed other countries in the region.<sup>38</sup> In June 2015, China announced that its effort to create islands by "moving sediment from the seafloor to a reef . . . would soon be completed. . . . [And] it has constructed port facilities, military buildings and an airstrip on the islands, with recent imagery showing evidence of two more airstrips under construction."<sup>39</sup> With the new airstrips, China can land any plane—from fighter jets to large transport aircraft—in the islands that are more than 500 miles from the Chinese mainland.<sup>40</sup>

Alarmed by China's aggression, other countries in the region have taken further steps to protect their interests in the South China Sea. Vietnam, in particular, spent more than \$3 billion on defense in 2013.<sup>41</sup> The country has also been upgrading its air defenses by obtaining western fighter jets and drones.<sup>42</sup> Ian Storey of the Institute of Southeast Asian Studies in Singapore said that "[a]lthough Hanoi knows that its military will always be outnumbered and outgunned by China's, a strong navy and air force provides it with a limited deterrence and, if push comes to shove, the ability to give China a bloody nose in battle."<sup>43</sup> On the other hand, the Philippines has attempted to solve the dispute with China in a more peaceful manner by filing a lawsuit against China at the Arbitral Tribunal to determine the legality of China's territorial claim under the United Nations Convention

35. Wallace, *supra* note 25, at 133.

36. *Id.*

37. H.R. 772, 113th Cong. § 1 (2013).

38. Derek Watkins, *What China Has Been Building in the South China Sea*, N.Y. TIMES (Oct. 27, 2015), [http://www.nytimes.com/interactive/2015/07/30/world/asia/what-china-has-been-building-in-the-south-china-sea.html?\\_r=0](http://www.nytimes.com/interactive/2015/07/30/world/asia/what-china-has-been-building-in-the-south-china-sea.html?_r=0).

39. *Id.*

40. *Id.*

41. Oliver Holmes, *Vietnam Sends Message to China with Bid to Buy Fighter Jets and Drones*, GUARDIAN (June 5, 2015), <http://www.theguardian.com/world/2015/jun/05/vietnam-message-china-fighter-jets-drones-south-china-sea> [https://perma.cc/335H-BMGS].

42. *Id.*

43. *Id.*



on the Law of the Sea (“UNCLOS”).<sup>44</sup> While the Philippines has been “praised by nations around the world” for being “the first country to have dared . . . to take China to the court,” critics argue that the Philippines cannot rely solely on UNCLOS to solve this critical situation because “China has refused to engage [in] the legal proceedings” and “is actually changing the facts on the ground on a daily basis.”<sup>45</sup>

### III. THE LIMITS OF CURRENT APPROACHES

Over the years, there have been many attempts to resolve the South China Sea dispute. One approach that has received extensive media coverage is the Philippines’ decision to bring suit against China in the international court. Another approach is the attempt of various countries to use the Association of Southeast Asian Nations (“ASEAN”) as a third party to help facilitate negotiations with China. Although each approach has its own strengths and weaknesses, they are unlikely to yield timely and effective solutions to the dispute at hand.

#### A. *The Philippines’ Attempt to Use International Arbitration*

In 2013, the Philippines attempted to resolve the South China Sea dispute peacefully by filing suit against China in the Permanent Court of Arbitration in The Hague.<sup>46</sup> In its pleading, the Philippines asked the court to decide four primary issues: (1) “the status of Beijing’s nine-dash line claim in the South China Sea”; (2) whether “the nine-dash line is an excessive maritime claim”; (3) whether “China is illegally exploiting natural resources within . . . the Philippines’ exclusive economic zone (“EEZ”) under UNCLOS”; and (4) whether “China has interfered with [the Philippines’] ability to freely navigate its own EEZ.”<sup>47</sup> Alleging that the court lacked jurisdiction over the matter because its claims in the South China Sea were based on “history rather than legal precedent,” China refused to participate in the proceeding.<sup>48</sup>

After two years of deliberation, on October 29, 2015, the court ruled that China’s “non-appearance” did not preclude the Court’s jurisdiction over the case.<sup>49</sup> Although the Philippines welcomed the de-

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44. Richard Javad Heydarian, *The Moment of Truth: Philippines vs. China at The Hague*, CNN (July 9, 2015, 3:09 PM), <http://cnnphilippines.com/news/2015/07/09/moment-of-truth-philippines-vs-china-the-hague-richard-heydarian.html> [https://perma.cc/8ZJX-MP3V].

45. *Id.*

46. Jane Perlez, *In Victory for Philippines, Hague Court to Hear Dispute Over South China Sea*, N.Y. TIMES (Oct. 30, 2015), [http://www.nytimes.com/2015/10/31/world/asia/south-china-sea-philippines-hague.html?\\_r=0](http://www.nytimes.com/2015/10/31/world/asia/south-china-sea-philippines-hague.html?_r=0).

47. Ankit Panda, Philippines v. China: *Court Rules Favorably on Jurisdiction*, DIPLOMAT (Oct. 30, 2015), <http://thediplomat.com/2015/10/philippines-v-china-court-rules-favorably-on-jurisdiction-case-will-proceed/> [https://perma.cc/GCS3-E3JU].

48. Perlez, *supra* note 46.

49. Panda, *supra* note 47.

cision and prepared to argue the merits of its case before the tribunal, China responded to it unfavorably.<sup>50</sup> In response to the court's decision, China's Foreign Ministry declared "the country would not accept any ruling from the court."<sup>51</sup> Given China's aggression and the court's limited power to enforce its judgment, even if the court ultimately granted a favorable decision to the Philippines and against China, it would be uncertain whether China would comply with any legal remedy that the court granted.

The Philippines understood the limitations of its chosen strategy. In analyzing the situation, Philippines Supreme Court Senior Associate Justice Antonio Carpio commented: "If we win, all those reclamations of China are illegal and China has no right to stay there and China must vacate; but of course that's the big problem [of] how to enforce the ruling."<sup>52</sup> Carpio argued that, ultimately, China would have to yield to the international community's pressure and comply with the Court's ruling.<sup>53</sup> However, it would be a multi-generational struggle.<sup>54</sup> According to Carpio, "[t]his generation will win that ruling, the next generation will convince the world, and the generation after that will convince China but we should not expect instant gratification here if we win this."<sup>55</sup> As a result, even if the Philippines successfully resolved the South China Sea dispute through such a legal proceeding, it would still take the country years, if not decades, to achieve its objectives. Given the nature of the dispute, especially regarding the limited number of natural resources, time might be a price that no party can afford to give.

### B. *The Attempt to Involve ASEAN as a Third Party*

Established in 1967, the Association of Southeast Asian Nations ("ASEAN") is a "respectable, ten-country regional organization that has managed to create peace and stability in the region."<sup>56</sup> Since 1969, ASEAN member states have negotiated and concluded more than a

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50. Perlez, *supra* note 46.

51. *Id.*

52. Tetch Torres-Tupas, *Carpio: Even if PH Wins Case vs China, Struggle Will Continue*, INQUIRER.NET (July 3, 2015, 10:34 AM), <http://globalnation.inquirer.net/125548/carpio-even-if-ph-wins-case-vs-china-struggle-will-continue> [<https://perma.cc/3PVQ-7A8B>].

53. *Id.*

54. *Id.*

55. *Id.*

56. Arif Havas Oegroseno, *ASEAN As the Most Feasible Forum to Address the South China Sea Challenges*, 107 AM. SOC'Y INT'L L. PROC. 290, 291 (2013). The ten member countries are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. *Association of Southeast Asian Nations (ASEAN)*, NTI (May 9, 2016), <http://www.nti.org/treaties-and-regimes/association-southeast-asian-nations-asean/> [<https://perma.cc/KP9T-JEAD>].

dozen bilateral and trilateral boundary treaties.<sup>57</sup> Yet the ASEAN Dispute Settlement Mechanism (“DSM”) as contained in the 1976 Treaty of Amity and Cooperation’s (“TAC”) Chapter IV does not create “a tribunal, court, or judicial procedure as a means to resolve disputes within the context of the recommendation of the High Council.”<sup>58</sup> This lack of a legally binding DSM is often criticized as one of ASEAN’s limitations.<sup>59</sup>

Despite that limitation, ASEAN member states have been continuously seeking ASEAN’s support in their efforts to resolve the South China Sea dispute. For thirteen years they have tried building a framework with China with the support of ASEAN officials.<sup>60</sup> However, during the 27th ASEAN Summit in November 2015, ASEAN member states acknowledged that effort has fallen apart.<sup>61</sup> Instead, they have adopted a “blunter strategy for dealing with China: strengthening alliances between countries anxious about Beijing’s increasingly assertive behavior.”<sup>62</sup> Although member states still have confidence in ASEAN, one diplomat who participated in the negotiations was quoted as saying, “some of the countries are looking at other options to stop the situation from getting worse.”

Although policymakers continue to voice support for ASEAN’s inconclusive settlement mechanisms,<sup>63</sup> it is indisputable that ASEAN has not achieved its objectives in its recent efforts to negotiate with China. If ASEAN wishes to continue its role as a third party in the process, maybe it is time to adopt a new negotiation strategy—one that does not focus on the positions, but rather the interests of each party involved.

#### IV. THE CONCEPT OF PRINCIPLED NEGOTIATION

Negotiation is a fact of life. However, negotiation is not easy, and standard negotiation strategies often leave people dissatisfied, worn out, or alienated. The most common form of negotiation is positional bargaining, where “[e]ach side takes a position, argues for it, and

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57. Oegroseno, *supra* note 56, at 292. For example, in 2011, ASEAN successfully facilitated an agreement for the Thai-Cambodia land boundary dispute that had escalated into low level military clashes. *Id.*

58. *Id.* at 291.

59. *Id.*

60. Trefor Moss & Chun Han Wong, *Asian Nations Look Beyond ASEAN to Solve South China Sea Disputes*, WALL ST. J. (Nov. 22, 2015, 5:47 AM), <http://www.wsj.com/articles/asian-nations-look-beyond-asean-to-solve-south-china-sea-disputes-1448171986> [<https://perma.cc/PC2G-VXJV>].

61. *Id.*

62. *Id.*

63. David Martin Jones & M.L.R. Smith, *Can ASEAN Ever Solve the South China Seas Dispute Through Multilateral Dialogue?*, TELEGRAPH (Nov. 24, 2015, 6:00 AM), <http://www.telegraph.co.uk/news/worldnews/asia/china/12012915/Can-Asean-ever-solve-the-South-China-Seas-dispute-through-multilateral-dialogue.html> [<https://perma.cc/3MRA-WZCC>].

makes concessions to reach a compromise.”<sup>64</sup> As negotiators bargain over positions, their egos become identified with their positions.<sup>65</sup> They now “have a new interest in ‘saving face’. . . making it less and less likely that any agreement will wisely reconcile the parties’ original interests.”<sup>66</sup>

Developed at the Harvard Negotiation Project, *principled negotiation* is an alternative to positional bargaining: a method that helps produce a wiser agreement while making the process more efficient and amicable.<sup>67</sup> In contrast to positional bargaining, principled negotiation suggests that negotiators avoid taking positions and follow a four-point approach where each point is designed to address a basic element of negotiation: people, interests, options, and criteria.<sup>68</sup> This method allows negotiators to reach an agreement on a joint decision efficiently while avoiding all the transactional costs of digging into positions only to later dig out of them.<sup>69</sup> It also helps to produce an amicable outcome since it separates the people from the problem. It thus “allows [the negotiator] to deal directly and empathetically with the other negotiator as a human being regardless of any substantive differences.”<sup>70</sup> Because determining the people and interests elements are essential in applying the options and criteria elements, this Comment will analyze the people and interests elements in depth and will provide a quick summary on the options and criteria elements.

#### A. *People: Separate the People from the Problem*

The first point of principled negotiation deals with the *people* element in negotiation. Since human beings are “creatures of strong emotions,”<sup>71</sup> they often let their emotions “become entangled with the objective merits of the problem.”<sup>72</sup> Consequently, people “draw from comments on substance unfounded inferences, which they then treat as facts about that person’s intentions and attitudes toward them.”<sup>73</sup>

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64. ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 3 (Bruce Patton ed., Penguin Books 3d ed. 2011) (1981). See also Rodney Hartsis, *Contrasting “Principled Negotiation” with the Adversarial Model*, 20 VICTORIA U. WELLINGTON L. REV. 91, 93 (1990) (N.Z.).

65. FISHER, *supra* note 64, at 5.

66. *Id.*

67. *Id.* at 11.

68. *Id.*

69. *Id.* at 15.

70. *Id.*

71. *Id.* at 11–12; see also Alison Wood Brooks, *Emotion and the Art of Negotiation*, 93 HARV. BUS. REV. 57, 58 (2015) (“Until 20 years ago, few researchers paid much attention to the role of emotions in negotiating . . . . Over the past decade, however, researchers have begun examining how specific emotions—anger, sadness, disappointment, anxiety, envy, excitement, and regret—can affect the behavior of negotiators.”).

72. FISHER, *supra* note 64, at 12.

73. *Id.* at 22.

This process is usually automatic and people are often unaware that other explanations may be equally plausible.<sup>74</sup>

To address this “people problem,” principled negotiation suggests that each negotiator analyze the situation in terms of three basic categories: perception, emotion, and communication.<sup>75</sup> First, in perception, a skillful negotiator not only needs to understand the other side’s thinking, but also needs to understand the power of the other side’s point of view and to feel the emotional force of their belief.<sup>76</sup> Just as it is not enough to study the beetle under a microscope in order to influence the beetle, the negotiator needs to know what it feels like to be a beetle. Because different parties usually have different perceptions,<sup>77</sup> one effective way to deal with these differences is to make them explicit and discuss them as much as possible with the other side.<sup>78</sup> As long as the negotiators do this in a “frank, honest manner without either side blaming the other for the problem as each sees it,”<sup>79</sup> the discussion may help in providing the understanding that is critical for each party to take what the other side says sincerely and seriously.<sup>80</sup>

Second, in negotiation it is important to know that feelings may be more important than the substantive matters of the talk.<sup>81</sup> Therefore, the emotion category suggests that a negotiator should recognize and understand both his and the other side’s emotions, “[m]ake [these] emotions explicit and acknowledge them as legitimate.”<sup>82</sup> Moreover, in order to deal with people’s anger, frustration, and other negative emotions, the negotiator should help them release these feelings.<sup>83</sup> Because “[p]eople obtain psychological release through the simple process of recounting their grievances to an attentive audience,”<sup>84</sup> allowing an emotional party to let off steam may make it easier for the party to be more rational later.<sup>85</sup>

Finally, since negotiation is “a process of communicating back and forth for the purpose of reaching a joint decision,”<sup>86</sup> the communication category suggests that the negotiators talk directly and clearly to the other side, listen actively to what the other side says, and make attempts to avoid misunderstanding, especially where the parties

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74. *Id.*

75. *Id.* at 24.

76. See CARL LYONS, *I WIN, YOU WIN: THE ESSENTIAL GUIDE TO PRINCIPLED NEGOTIATION* 54 (2007) (“Our perception of the world and other people is usually based upon our beliefs about things.”).

77. *Id.*

78. FISHER, *supra* note 64, at 27.

79. *Id.*

80. *Id.*

81. *Id.* at 31; see also Brooks, *supra* note 71.

82. FISHER, *supra* note 64, at 31–33.

83. See Alain Burrese, *Listen Up*, 32 MONT. LAW. 22 (2006).

84. FISHER, *supra* note 64, at 33.

85. *Id.* at 34.

86. *Id.* at 35.

speak different languages.<sup>87</sup> A negotiation is not a trial or a debate; rather, it is a process of persuasion. Therefore, to reduce domination and other distracting effects, “it is useful to establish private and confidential means of communicating” so each party feels comfortable working together with the other side, voicing his or her concerns, and contributing to developing an agreeable solution that addresses the interests of all parties.<sup>88</sup>

### B. *Interests: Focus on Interests, Not Positions*

Interests define the problem. Interests motivate people’s behaviors. While a party’s position is something he has decided upon, his interests are what caused him to make that decision. In contrast to the common assumption that parties on the same side of a dispute share the same interests with each other, empirical studies show that this is almost never the case.<sup>89</sup> Mary Parker Follett, who is known to be the mother of modern management,<sup>90</sup> has one famous story:

[T]wo men [were] quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three-quarters of the way. No solution satisfies them both.

Enter the librarian. She asks one why he wants the window open: “To get some fresh air.” She asks the other why he wants it closed: “To avoid the draft.” After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.<sup>91</sup>

Like the story above, in many instances solutions have been developed when negotiators look at the other party’s interests instead of the negotiators’ own position.<sup>92</sup> But how can one identify the interests of the other party? To figure out the other side’s interests, negotiators should put themselves in the other side’s shoes and ask “why?”<sup>93</sup> Why did the other side take that position? Why, for instance, does one man want to have the window open? Assuming that the man does not tell the librarian his need for fresh air, the librarian can still figure out this interest based on her observation, her understanding of the needs, hopes, fears, or desires that the position of opening the window serves. On the other hand, the negotiators can also uncover the inter-

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87. *Id.* at 35–36; see, e.g., Peter Osborne & Robbie Huston, *Taking the Time to Listen, Learn and Act—An Example of Complex International Dialogue*, 9 J. PUB. AFF. 201 (2009).

88. FISHER, *supra* note 64, at 38.

89. *Id.* at 49.

90. Jeanne Dininni, *Management Theory of Mary Parker Follett*, BUSINESS.COM (Mar. 28, 2010), <http://www.business.com/management/management-theory-of-mary-parker-follett/> [<https://perma.cc/8QXP-EPF3>].

91. FISHER, *supra* note 64, at 42.

92. See Harris, *supra* note 64.

93. FISHER, *supra* note 64, at 46.

est by asking “why not?”<sup>94</sup> Going back to the story above, why does the first man not want to have the window closed? Which of his interests stand in the way? In this entire process, it is important to understand that one does not need “to try for great precision.”<sup>95</sup> Because decision-makers rarely write down and weigh the pros and cons of their interests, in dealing with them, negotiators “are trying to understand a very human choice, not making a mathematical calculation”<sup>96</sup>

In addition, in almost every negotiation, each side has not one, but multiple interests.<sup>97</sup> In looking for the basic interests behind a declared position, a negotiator should look at the basic human needs, the five “core concerns,” that motivate all people: appreciation, affiliation, autonomy, status, and role.<sup>98</sup> These basic human needs are easy to overlook in negotiations. Even in a negotiation over money, many independent interests can affect a party’s position. Consider the following example:

What does a spouse really want in asking for \$1,000 a week in alimony? Certainly they are interested in economic well-being, but what else? Possibly they want the money in order to feel psychologically secure. They may also want it for recognition: to feel treated fairly and as an equal. Perhaps their partner can ill afford to pay \$1,000 a week, and perhaps that is more than is actually needed, yet the spouse will likely accept less only if their need for security and recognition are met in other ways.<sup>99</sup>

These core concerns of individuals apply equally for groups and nations.<sup>100</sup> Like negotiations between individuals, negotiations between groups and nations can only make progress when all sides believe that their basic needs are being valued and considered by the other parties. In contrast, negotiations are not likely to be successful if one party believes that the other side is threatening their basic needs.<sup>101</sup> For example, the United States wanted to buy Mexican natural gas for a low price:

Assuming that this was a negotiation over money, the U.S. Secretary of Energy refused to approve a price increase negotiated with the Mexicans by a U.S. oil consortium. Since the Mexicans had no other potential buyer at the time, he assumed that they would then lower their asking price. But the Mexicans had a strong interest not only in getting a good price for their gas but also in being treated with respect and a sense of equality. The U.S. action seemed like

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94. *Id.*

95. *Id.* at 49.

96. *Id.*

97. *Id.*

98. Leonard L. Riskin, *Annual Saltman Lecture: Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation*, 10 NEV. L.J. 289, 292 (2010).

99. FISHER, *supra* note 64, at 50–51.

100. *Id.* at 51.

101. *Id.*

one more attempt to bully Mexico; it produced enormous anger. Rather than sell their gas, the Mexican government began to burn it off, and any chance of agreement on a lower price became politically impossible.<sup>102</sup>

Since a party may have multiple interests at one time, a negotiator should keep track of these interests and take them into consideration when dealing with the other side.

In conclusion, principled negotiation suggests that negotiators should commit to their interests rather than their positions.<sup>103</sup> This objective can only be achieved if each party clearly communicates the party's own interests to the other side.<sup>104</sup> Advocating for their own interests is the place where negotiators should spend most of their aggressive energies. Skilled negotiators can do this by first stating their interests and reasoning and then later their conclusions or proposals. When two negotiators push hard for their own interests and keep in mind the other side's interests, they will often stimulate each other's creativity in developing mutually advantageous solutions—ones that produce maximum gain for one side at the minimum cost to the other.<sup>105</sup> This is how a successful negotiation begins.

### C. Options: Invent Options for Mutual Gain

Usually parties in a negotiation believe that there is no way to split the pie in a way that would satisfy both parties. This common problem, however, is a result of the lack of creativity in inventing options for mutual gain. To overcome this problem, parties should understand the obstacles that inhibit their creativity and consciously broaden the pie before dividing it.<sup>106</sup>

In the majority of negotiations, there are four main obstacles that prevent parties from being creative: “(1) premature judgment; (2) searching for the single answer; (3) the assumption of a fixed pie; and (4) thinking that ‘solving their problem is their problem.’”<sup>107</sup> Since “[i]nventing options does not come naturally” and they often believe that bringing in new ideas “will only delay and confuse the process,” negotiators tend to accept the situation as essentially either/or (either I get what is in dispute or you do) and that each side's concern is not the other side's problem.<sup>108</sup> In order to overcome these obstacles, parties can instead look for mutual gain in the dispute. First, they should

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102. *Id.*

103. *Id.* at 56. See also Harris, *supra* note 64.

104. FISHER, *supra* note 64, at 52.

105. *Id.* at 56.

106. Carrie Menkel-Meadow, *What Will We Do When Adjudication Ends? A Brief Intellectual History of ADR*, 44 UCLA L. REV. 1613, 1619 (1997). See also Carrie Menkel-Meadow, *Chronicling the Complexification of Negotiation Theory and Practice*, 25 NEGOT. J. 415, 416 (2009).

107. FISHER, *supra* note 64, at 59.

108. *Id.* at 59, 61.



identify the shared interests that motivate both parties.<sup>109</sup> In contrast to common beliefs, “shared interests lie latent in every negotiation.”<sup>110</sup> To identify them, negotiators should ask themselves: “Do we have a shared interest in preserving our relationship? What opportunities lie ahead for cooperation and mutual benefit? What costs would we bear if negotiations broke off?”<sup>111</sup> “Shared interests are opportunities.”<sup>112</sup> Once the negotiator can figure out their shared interests and stress them in the negotiation process, he or she “can make the negotiation smoother and more amicable.”<sup>113</sup>

#### D. *Criteria: Insist on Using Objective Criteria*

Despite how well negotiators understand the interests of the other side, they will “almost always face the harsh reality of interests that conflict.”<sup>114</sup> Often, negotiators try to settle these differences by insisting their will against the other side’s will. This practice can be costly because everyone values their autonomy. Thus, the solution is to negotiate on the basis of objective criteria—the basis independent of the will of either side.<sup>115</sup>

Often there is more than one objective criterion available as a basis for any negotiation.<sup>116</sup> “Ideally, to assure a wise agreement, objective criteria should be not only independent of will but also both legitimate and practical.”<sup>117</sup> Thus, in choosing objective criteria as a basis for their dispute, negotiators should apply the criteria to the situation and determine whether each “proposed criterion is fair and independent of either party’s will.”<sup>118</sup> For example, if a real estate agency selling you a house offers to use a standard form contract, you should ask if that is the same standard form they use when they buy a house.<sup>119</sup> If the sale contract is the standard form used in the industry, there is less risk that either party will feel that he was treated unfairly or will later try to repudiate the agreement.<sup>120</sup> This is especially important in multilateral negotiations where a party might not conform to an agreed solution if one feels that they were taken advantage of by the dominant parties.

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109. Harris, *supra* note 64 (“Searching for common interests and the exploitation of different interests go hand in hand with a genuine respect for the needs, values and perceptions of the other parties—which are not to be frustrated by an absorption with immediate self-interest.” (footnotes omitted)).

110. FISHER, *supra* note 64, at 74.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 82.

115. *Id.* at 86.

116. *Id.*

117. *Id.*

118. *Id.* at 87.

119. *Id.*

120. *Id.* at 84.

V. APPLICATION OF PRINCIPLED NEGOTIATION TO THE SOUTH CHINA SEA DISPUTE

In contrast to negotiations where there are only two or three parties involved, the South China Sea dispute contains various prominent players wherein China competes against every other party. In addition to China, the primary claimants to the South China Sea include the Philippines and Vietnam.<sup>121</sup> Other claimants include Taiwan, Brunei, Malaysia, and Indonesia.<sup>122</sup> Since together, China, the Philippines, and Vietnam claim more than 80% of the South China Sea, this Article will explore only their interests in the dispute. Because these three primary claimants are the ones most actively involved in deciding the fate of the South China Sea, identifying their respective interests would be an important first step in using principled negotiation to ultimately achieve an effective solution to this hotly contested dispute.

A. *China's Interests*

To understand China's interests in the South China Sea, one must revisit the geopolitical strategic importance of the Sea itself. Stretching approximately 800,000 square kilometers, or 310,000 square miles, the South China Sea not only teems with natural resources but also lies at "one of the world's most critical and vulnerable geographic chokepoints—the Strait of Malacca."<sup>123</sup> This strategic location contains "myriad critical sea lines of communication, and [is] host to daily interaction and all too frequent stand-offs between the world's two most powerful navel forces—the United States and the [People's Republic of China]."<sup>124</sup> Given China's dramatic transformation from "her slumber to claim the status of a global superpower,"<sup>125</sup> the power-wrestle in the South China Sea undoubtedly has become one of the nation's most critical battles in foreign policy.<sup>126</sup>

Thanks to its strict one-party rule, China's foreign policy has remained fairly consistent.<sup>127</sup> During the presidency of Deng Xiaoping (1992–1997), China experienced great economic expansion.<sup>128</sup> However, it was under President Hu Jintao (2002–2012) that "China's economy flowered,"<sup>129</sup> propelling China to become the "biggest trad-

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121. Wallace, *supra* note 25.

122. *Id.*

123. *Id.* at 130.

124. *Id.*

125. Phoenix X. F. Cai, *Trading with Foreigners: An Interdisciplinary Analysis of China's Core Interests in Trade and Foreign Policy*, 47 AKRON L. REV. 809, 810 (2014).

126. See Peter Dutton, *Three Disputes and Three Objectives: China and the South China Sea*, 64 NAVAL WAR C. REV. 42 (2011).

127. Cai, *supra* note 125, at 813.

128. *Id.* at 813–15.

129. *Id.* at 815.

ing nation in the world in terms of trade volume.”<sup>130</sup> Under President Hu’s leadership, China also “abandoned [the] low-profile diplomacy” and adopted a “more assertive, even aggressive” strategy.<sup>131</sup> For the last ten years, this foreign policy has been driven by three core interests: “(1) ensuring the permanence of China’s governing system and the maintenance of internal security, (2) protecting state sovereignty and territorial integrity, and (3) the continued economic development and stable social order.”<sup>132</sup> Since the South China Sea dispute is one of China’s most important foreign policies, the nation’s policy and recent aggression in the South China Sea would likely be influenced by these core interests.

With three different interests acting as a driving force, it is important to figure out how China weighs each one of them. First, among the three core interests, internal state security is likely to be China’s top priority. The Chinese Communist Party has ruled China since October 1, 1949, when Mao Zedong officially announced the founding of the People’s Republic of China.<sup>133</sup> This is the longest span of time in modern history that a single political party has been in power.<sup>134</sup> Although China has been through tremendous changes and political turmoil, the Communist Party has been resilient through it all. To survive countless internal and external attacks, the Chinese government spends an enormous amount of money every year on internal state security.<sup>135</sup> In particular, it spent \$111 billion in 2012 and even more in 2013.<sup>136</sup> This amount includes spending for “police, state security, armed militia, courts and jails, and other items it categorizes as ‘public security.’”<sup>137</sup> A majority of this spending goes to maintaining the power of the Communist Party, thus explaining the government’s top priority in keeping the one-party rule in China despite any catastrophic change in the future.

Second, China’s increased willingness to assert its state sovereignty and territorial integrity strongly suggests that sovereignty over the South China Sea is China’s second priority.<sup>138</sup> For decades, China adopted a delaying strategy and avoided physical escalation regarding territorial disputes with its Asian-Pacific neighbors.<sup>139</sup> However, during the last three years of the Hu presidency, “China began to overtly and aggressively assert sovereignty over the disputed maritime territo-

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130. *Id.* at 810.

131. *Id.* at 815.

132. *Id.* at 813.

133. *The Chinese Revolution of 1949*, U.S. DEP’T STATE OFF. HISTORIAN, <https://history.state.gov/milestones/1945-1952/chinese-rev> [<https://perma.cc/N63C-BFBA>].

134. Cai, *supra* note 125, at 816.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 817.

139. *Id.*

ries.”<sup>140</sup> “Beginning in 2009, China made repeated diplomatic and military attempts to prevent Philippine and Vietnamese vessels from exploring oil and gas in the disputed waters of the South China Sea.”<sup>141</sup> In 2012, in response to the Japanese government’s decision to nationalize the dispute in the Senkaku/Diaoyu islands (China’s other maritime territorial dispute), Chinese public outrage against Japan ran high, resulting in widespread protests and raiding aimed at Japanese businesses, which resulted in the shutdown of many Japanese factories in China.<sup>142</sup> In September 2012, after Japan’s national announcement, thousands of Chinese engaged in marches and demonstrations in over eighty-five cities.<sup>143</sup> Consequently, there were substantial economic ramifications generated by the demonstrations and corresponding violence.<sup>144</sup>

Japanese companies operating in China reported significant losses due to the unrest. Japan Airlines and All Nippon Airways, the country’s two largest carriers, reported that over fifty-five thousand seat reservations had been canceled during the three months through November. Similarly, Japanese automobile manufacturers saw their sales in China [decrease] by roughly 40 percent.<sup>145</sup>

China also showcased its naval supremacy during these incidents, “flexing its muscles in a manner reminiscent of war games in the China/Taiwan Formosa Strait, but rarely seen elsewhere.”<sup>146</sup> Most recently, in February 2016, China deployed surface-to-air missiles on a disputed island in the South China Sea, a move that China considered “appropriate and reasonable,” yet was strongly opposed by other countries.<sup>147</sup> Together, these incidents show that China highly values

140. *Id.*

141. *Id.* (citing Jane Perlez, *Dispute Flares Over Energy in South China Sea*, N.Y. TIMES (Dec. 4, 2012), [http://www.nytimes.com/2012/12/05/world/asia/china-vietnam-and-india-fight-over-energy-exploration-in-south-china-sea.html?\\_r=1](http://www.nytimes.com/2012/12/05/world/asia/china-vietnam-and-india-fight-over-energy-exploration-in-south-china-sea.html?_r=1)).

142. Paul J. Smith, *The Senkaku/Diaoyu Island Controversy: A Crisis Postponed*, 66 NAVAL WAR C. REV. 27, 27–28 (2013). By early October 2012 the economic impact of the protests had become so significant that Christine Lagarde, chief of the International Monetary Fund, warned that they had the potential to negatively influence the global economy. *Id.* at 28.

143. *Id.* at 27.

144. *Id.* at 28.

145. *Id.*

146. Cai, *supra* note 125, at 818. The China/Taiwan Formosa Strait crisis occurred in 1949 after the establishment of the People’s Republic of China. Fleeing from the communist-controlled Chinese government in Mainland China, Chiang Kai-shek and his Nationalist followers relocated to Taiwan (formerly known as Formosa) with the hopes of regaining control of China one day. During the next few years, Taiwan became one of the focal points of “the most contentious episodes of Cold War history.” *Taiwan Crisis*, COLD WAR MUSEUM, [http://www.coldwar.org/articles/50s/taiwan\\_crisis.asp](http://www.coldwar.org/articles/50s/taiwan_crisis.asp) [<https://perma.cc/2WCC-D8Z3>].

147. Katie Hunt et al., *China Said to Deploy Missiles on South China Sea Island*, CNN (Feb. 17, 2016, 10:27 PM), <http://www.cnn.com/2016/02/16/asia/china-missiles-south-china-sea/> [<https://perma.cc/HZT2-LMF8>].

its sovereignty and would be willing to assert its claims against other countries, despite the risks of armed clashes and economic losses.

Finally, maintaining economic growth is likely China's third priority. Since President Deng's economic reforms, China's rapid economic expansion has helped millions of people out of poverty and created an enormous middle class.<sup>148</sup> Until now, this new middle class has been politically inactive in exchange for the direct economic gains. However, increasingly, this middle class desires not only the economic privileges but also the social and political freedoms of their counterparts in the West.<sup>149</sup> Thus, unless the Chinese Communist Party can prove its ability to sustain economic growth, it would face a great challenge in maintaining internal security. The South China Sea, famous for its abundance in natural resources, provides a solution to China's problem. In the past twenty years China's fishing industry has expanded massively thanks to its activities in the South China Sea. In 1990, China's revenue from fishery exports was around \$1.6 billion.<sup>150</sup> In 2009, the revenue increased six times to over \$10 billion, which made the country sixth ranked among the world's fishery exporters.<sup>151</sup>

In conclusion, China's interests in the South China Sea are driven by three core interests. Those interests, from highest priority to lowest, are: maintaining internal state security, protecting state sovereignty and territorial integrity, and maintaining economic growth. Any possible settlement between China and other countries involved in the South China Sea dispute should address these three core interests in a creative and mutually beneficial way.

### B. *The Philippines' Interests*

In contrast to China, the Philippines' strategy regarding the South China Sea dispute is only driven by two core interests: external state security and economic growth. Bounded on the east by the Philippine Sea, on the south by the Celebes Sea, and on the west by the South China Sea, the Republic of the Philippines comprises about 7,100 islands.<sup>152</sup> Given its unique geographical location, the Philippines undeniably has strong security and economic interests in the South China Sea dispute. A close examination of the two interests shows that security is likely the Philippines' top priority while economics is the country's second priority. This conclusion is supported by a variety of observations.

The Philippines' top priority in external state security is shown through both its military development and its responses to China's

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148. Cai, *supra* note 125, at 818.

149. *Id.* at 819.

150. Nguyen, *supra* note 8, at 23.

151. *Id.*

152. *Geography of the Philippines*, ASIANINFO.ORG, <http://www.asianinfo.org/asianinfo/philippines/pro-geography.htm> [<https://perma.cc/RCU2-G6CT>].

aggressions. Among all the claimants in the South China Sea dispute, the Philippines has the weakest military. Once home to two United States' military bases, after the end of the Cold War, the Philippines decoupled from the U.S. and tried to build its own independent defense system.<sup>153</sup> However, due to lack of funds and the opposition from the Senate, the plan to modernize the national defense became fruitless.<sup>154</sup> On June 30, 1992, Fidel V. Ramos, a West Point graduate,<sup>155</sup> was inaugurated as President of the Philippines.<sup>156</sup> Unlike his predecessors, Ramos paid more attention to the Philippines' security.<sup>157</sup> Ramos's primary concern was the Philippines' inability to defend its territorial claims in the South China Sea.<sup>158</sup> As China became more aggressive, Ramos, speaking in July 1992 on the South China Sea, stated that there was "an urgent necessity to seek a solution. . . Lest the unsettled situation lead to parlous developments."<sup>159</sup> "Recognizing the deficiencies of [the country's military], Ramos made the modernization of the Philippine military one of the goals of his administration."<sup>160</sup> Although his plan failed due to budget constraints and political opposition, Ramos's concern has raised awareness in the country and helped place external state security at the top of his successors' priorities.<sup>161</sup>

Moreover, Philippines' interest in security heightened in 1995 after the Mischief Reef incident, a turning point in China–Philippines relations.<sup>162</sup> The reef is a submerged coral reef that extended more than 135 nautical miles west of the Philippine province, Palawan.<sup>163</sup> In January 1995, a captain of a Philippine fishing vessel and his crew were detained for several days by Chinese troops on Mischief Reef—"a small, rocky outcrop lying 135 miles west of Palawan and well within the Philippine-claimed 200-mile Exclusive Economic Zone (EEZ)."<sup>164</sup> The captain reported discovering Chinese-built structures on Mischief

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153. Hong Zhao, *Sino-Philippines Relations: Moving Beyond South China Sea Dispute?*, 26 J. E. ASIAN AFF., Fall/Winter 2012, at 57, 66–67.

154. *Id.* at 66.

155. Ian James Storey, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, 21 CONTEMP. SE. ASIA 95, 104 (1999).

156. *Ramos Is Declared New President 6 Weeks After Philippine Election*, N.Y. TIMES (June 23, 1992), <http://www.nytimes.com/1992/06/23/world/ramos-is-declared-new-president-6-weeks-after-philippine-election.html>.

157. Storey, *supra* note 155, at 104.

158. *Id.* at 105.

159. *Id.*

160. *Id.*

161. *Id.* at 105–06.

162. Daojiong Zha, *Security in the South China Sea*, 26 ALTERNATIVES 33, 44 (2001) ("Like many other features in the Spratly island group, Mischief Reef, the waters around it, and the space above are claimed in whole or in part by six governments—China, Taiwan, the Philippines, Vietnam, Malaysia, and Brunei.").

163. *Id.*

164. Storey, *supra* note 155, at 97.

Reef.<sup>165</sup> His allegation was later confirmed by reconnaissance aircraft, which discovered “four platforms on stilts, with three to four octagonal bunkers on each platform, equipped with satellite communication equipment” along with eight Chinese naval vessels near the Reef.<sup>166</sup>

Following the incident, the Philippines actively redefined its relationship with the United States and strengthened its security tie with Japan to bolster its own military capability.<sup>167</sup> In January 2012, the Philippines announced that it would grant the United States military “greater access to its territory for re-supply, refueling and repairs.”<sup>168</sup> It also received military aid from Japan, including twelve patrol boats for use by the Philippine Coast Guard, ten new forty-meter long vessels packed with modern electronics gear, and two additional bigger vessels.<sup>169</sup> Together, these activities were aimed at creating a stronger national military to deter Chinese boats from entering the Philippines’ exclusive water and threatening the country’s national security.<sup>170</sup>

Meanwhile, a stronger economy is likely the Philippines’ second priority given its economic dependence on the South China Sea’s natural resources. Like the majority of its neighbors, the Philippines possesses a considerable fishery industry. In 2009, fishery export revenue yielded \$569 million.<sup>171</sup> Fish in these waters provide about 25% of the protein necessary for the 500 million people in the surrounding states.<sup>172</sup> In terms of energy supply and demand, “due to Philippines domestic political and religious reasons, its relations with Arab countries and Indonesia are complex, leading to its unstable energy supply.”<sup>173</sup> In 2010, it was estimated that the country’s oil consumption was 282,000 bpd (barrels per day).<sup>174</sup> However, its 2008 production was only 23,000 bpd, “most of which was from the Malampay and Palawan fields in the South China Sea.”<sup>175</sup> Thus, given a population density of 342 persons per square kilometer, the Philippines faces a more serious pressure to develop its marine resources than most countries in the region.<sup>176</sup>

In conclusion, the Philippines’ strategy in the South China Sea is driven by two core interests: external state security and economic growth. A careful analysis of the two interests shows that security is likely the Philippines’ top priority while economic growth is the coun-

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165. *Id.*

166. *Id.*

167. Zhao, *supra* note 153, at 68.

168. *Id.*

169. *Id.* at 68–69.

170. *Id.* at 69.

171. Nguyen, *supra* note 8, at 24.

172. *Id.*

173. Zhao, *supra* note 153, at 65.

174. *Id.*

175. *Id.*

176. *Id.* Despite its reputation for overpopulation, China has a lower population density of 140 persons per square kilometer. *Id.*

try's second priority. In negotiations to settle the South China Sea disputes, negotiators should understand the Philippines' two interests and invent creative solutions to address them accordingly.

### C. Vietnam's Interests

Together, Vietnam and China are the two claimants that have the most overlapping claims in the South China Sea.<sup>177</sup> As a country with over 3,200 kilometers or 1,988 miles of coastline stretching along the South China Sea and the Gulf of Thailand,<sup>178</sup> like the Philippines, Vietnam undoubtedly has an interest in the South China Sea, both for economic and external security reasons. As both interests are inextricably intertwined, it is difficult to determine which interest is more important to Vietnam as a driver of the country's strategy regarding the dispute. A careful examination of both interests shows that although Vietnam's security interest in the South China Sea has long been established, the country's economic considerations have emerged as an increasingly important determinant of Vietnam's strategic thinking regarding this maritime territorial dispute.<sup>179</sup>

A number of observations substantiate that economic growth is likely to be Vietnam's top priority. First, beginning in 1993, the Vietnamese Communist Party adopted many resolutions that set guidelines for the development of sea-related industries, especially oil and gas and fishery.<sup>180</sup> In February 2007, the government adopted the most important resolution, the *Vietnam Maritime Strategy toward the Year 2020*.<sup>181</sup> The Strategy set the target that "sea-related economic activities would account for 53–55 percent of Vietnam's GDP and 55–60 percent of its exports by 2020."<sup>182</sup> In June 2012, Vietnam's National Assembly passed the *Sea Law of Vietnam*.<sup>183</sup> The law establishes "Vietnam's sovereignty over its islands and archipelagos, including the Paracels and the Spratlys, as well as its sovereignty, sovereign rights and jurisdiction over its [South China Sea's] waters in accordance with the 1982 United Nations Convention on the Law of the Sea."<sup>184</sup>

Additionally, since the late 1980s, Vietnam has increasingly depended on the South China Sea for its economic development. Under *Doi Moi*, a process of reform started in 1986, Vietnam's oil and gas

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177. Le Hong Hiep, *Vietnam's South China Sea Disputes with China: The Economic Determinants*, 26 KOREAN J. DEF. ANALYSIS 175, 176 (2014).

178. *Id.* at 177.

179. *Id.*

180. *Id.* at 178.

181. *Id.*

182. *Id.* (citing VCP, *Communiqué of the Fourth Plenum [tenth tenure] of the Party Central Committee*, XAY DUNG DANG (Jan. 25, 2007), <http://www.xaydungdang.org.vn> (Viet)).

183. Hiep, *supra* note 177, at 178.

184. *Id.*



and fishery industries have helped boost the country's economic growth significantly.<sup>185</sup> Since North and South Vietnam's unification in 1975, the oil and gas industry has developed quickly and has become a major source of revenue for the country. By early 2010, PetroVietnam—a state-owned oil and gas company<sup>186</sup>—has become Vietnam's biggest organization, accounting for about 20% of the country's GDP and generating up to 30% of the government's annual revenue.<sup>187</sup> In September 2009, the company's total production reached 300 million tons of oil equivalent, most of which came from the South China Sea.<sup>188</sup> As the country's energy demand continues to soar, the South China Sea oil and gas has become even more important to the country's continued economic development.<sup>189</sup>

Similarly, the fishing industry has played an important role in Vietnam's economic growth under *Doi Moi*. In 2009, Vietnam ranked fourth among world fishery exporters with total revenue of \$4.3 billion.<sup>190</sup> In 2011, the industry produced 5.2 million tons and accounted for 6.34% of the country's GDP.<sup>191</sup> The industry also “provided 4.5 million jobs to the country's workforce and helped lift thousands of people out of poverty.”<sup>192</sup> The importance of the fishery industry has also been acknowledged in various official documents. One of them, the *Master Plan for Developing Vietnam's Fishery Industry until 2020, with a Vision to 2030*, stressed the importance to “‘monitor activities at sea,’ ‘prevent foreign ships from intruding Vietnam's waters,’ and ‘implement tasks regarding sea and islands security and defense.’”<sup>193</sup> To implement these objectives, the Vietnamese Government has “invested considerably in upgrading the capacity of its offshore fishing fleet,”<sup>194</sup> as well as modernizing its naval ships and warfare technology.<sup>195</sup> Together, these activities prove that Vietnam highly values its economic interests in the South China Sea and the country is determined to protect it against China's aggression at all costs.

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185. *Id.* at 178–79; see also *Achievements of Viet Nam “Doi Moi” Policy*, VIET. TRADE PROMOTION AGENCY (Dec. 11, 2014, 9:58 AM), [http://www.vietrade.gov.vn/en/index.php?option=com\\_content&id=2256:achievements-of-viet-nam-doi-moi-policy-&Itemid=287](http://www.vietrade.gov.vn/en/index.php?option=com_content&id=2256:achievements-of-viet-nam-doi-moi-policy-&Itemid=287) [<https://perma.cc/TP7A-TK7P>].

186. *Petrovietnam: A Strong Economic Group in Vietnam*, PETROVIETNAM (May 5, 2010), [http://english.pvn.vn/?portal=news&page=detail&category\\_id=8&id=1056](http://english.pvn.vn/?portal=news&page=detail&category_id=8&id=1056) [<https://perma.cc/P3ED-39UG>].

187. Hiep, *supra* note 177, at 179.

188. *Id.*

189. *Id.*

190. Nguyen, *supra* note 8, at 24.

191. Hiep, *supra* note 177, at 182.

192. *Id.*

193. *Id.* (footnote omitted).

194. *Id.*

195. See John Braddock, *Vietnam Accelerates Military Build-Up, Plans for War*, WORLD SOCIALIST WEB SITE (Jan. 5, 2016), <https://www.wsws.org/en/articles/2016/01/05/viet-j05.html> [<https://perma.cc/965W-CT6E>]; Holmes, *supra* note 41.

Besides economics, external state security is likely to be Vietnam's second priority in the country's strategy regarding the South China Sea dispute. Given its unique coastline stretching along the South China Sea, for centuries, Vietnam has always been sensitive to its vulnerability to seaborne invasions.<sup>196</sup> Historically, several different Chinese dynasties had invaded Vietnam from the sea.<sup>197</sup> A more recent invasion occurred in 1858, when the French started a seaborne attack on Da Nang, a city along the coastline.<sup>198</sup> Moreover, in light of the traditional power asymmetry between Vietnam and China, "should Vietnam lose its control of the [South China Sea] to China, Vietnam's ability to resist a military invasion from its northern neighbour would be further undermined."<sup>199</sup>

In addition, the control of the Paracels and the Spratlys is important to Vietnam's external security. Since the South China Sea is "the only gateway for Vietnam to access international maritime trade routes in both the Pacific and Indian oceans," if Vietnam loses control of the two islands, its enemies might use their forces to impose a naval blockade on the country.<sup>200</sup> Meanwhile, since Vietnam's essential military assets, such as Cam Ranh Port and its submarine, are based in the Spratlys, the safety and accessibility of Vietnam's military force would be significantly constrained if Vietnam loses control over the Spratlys and the surrounding waters.<sup>201</sup>

In conclusion, Vietnam's economic interest in the South China Sea has emerged as the country's top priority. This interest is shaped by the country's continued economic development, especially from the oil and gas and fishery industries. In addition, Vietnam's second priority—external security—has been shaped by its particular geographical conditions as well as its historical experience. Any possible settlement regarding the South China Sea dispute should take into consideration Vietnam's two interests and find ways to address them sufficiently.

## VI. POSSIBLE RESOLUTIONS TO THE SOUTH CHINA SEA CONFLICT

The above analysis suggests that even though China, the Philippines, and Vietnam have overlapping interests in the South China Sea, each claimant weighs the interests differently. China's strategy in the South China Sea is driven by three core interests, from top to bottom,

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196. Hiep, *supra* note 177, at 177.

197. *Id.* All Chinese dynasties since the Qin Shi Huang reign, the first king of China, had sent troops to invade Vietnam. Many of them attacked through the South China Sea, leaving a hard-learned lesson for Vietnamese leaders. *All Invasions of Vietnam Have Ended in Badly for Chinese Dynasties*, VIET. NET (May 21, 2014) (Viet.), <http://english.vietnamnet.vn/fms/special-reports/102724/all-invasions-of-vietnam-have-ended-in-badly-for-chinese-dynasties.html> [<https://perma.cc/WQG9-DP95>].

198. Hiep, *supra* note 177, at 177.

199. *Id.*

200. *Id.*

201. *Id.*

respectively: (1) protect internal state security, (2) protect state sovereignty and territorial integrity, and (3) maintain economic growth. Alternatively, the Philippines' and Vietnam's strategies in the South China Sea are driven by two identical interests: external state security and economic growth. It should be noted that external state security means insuring the nation's security from external threats. It is not the same as China's top priority, which is insuring security from internal oppositions. Table 1.1 illustrates the three countries' interests and how much value they place on each one of them.

Priorities	China	The Philippines	Vietnam
First Priority	Internal State Security	External State Security	Economic Growth
Second Priority	State Sovereignty	Economic Growth	External State Security
Third Priority	Economic Growth	n/a	n/a

TABLE 1.1: CLAIMANTS' PRIORITIES

Since principled negotiation suggests that parties in a dispute do not share the same interests with each other, that suggestion does not apply to the South China Sea dispute. However, because each claimant weighs the interests differently, negotiators can still apply principled negotiation to the conflict at hand. Given the interests of China, the Philippines, and Vietnam, there are three possible resolutions for reaching a settlement, there are three possible resolutions that the parties can choose to reach an agreeable settlement.

- *Resolution 1:*
  - China will have exclusive territorial sovereignty of the South China Sea. However, it will provide access to the neighboring countries, especially to Vietnam and the Philippines. In return, these countries will pay an annual access fee to China to enjoy their fishing and oil and gas exploration privileges.
- *Resolution 2:*
  - China, the Philippines, Vietnam, and other claimants will all share territorial sovereignty of the South China Sea according to the boundary lines that were created by the UNCLOS. All parties will withdraw their ships, oilrigs, and any other machines that are currently located in the other country's maritime territory. The parties will acknowledge and respect each other's boundaries and will no longer enter each other's exclusive water without prior permission.
- *Resolution 3:*
  - China will have territorial sovereignty of the South China Sea as it claims in the nine-dash line. Vietnam, the Philippines, and other claimants will divide the remaining area amongst themselves. However, China will let these claimants enter its territory to conduct fishing, oil and natural gas ex-

plorations, and other researching activities. These countries will pay an annual fee to China, which will be recalculated each year to reflect the revenue that comes from their economic activities in China's maritime territory.

While each party might prefer one resolution to the others, all of the above resolutions can address the interests of each party involved in the South China Sea dispute. Since China weighs internal state security and territorial sovereignty above economic interest, China may prefer exclusive control of the South China Sea, as set out in Resolutions 1 and 3. At the same time, these resolutions give other countries access to the South China Sea's navigation and a chance to exploit its wealth in natural resources. Since China obtains its first and second priorities, it would be more willing to share those economic advantages with other countries, especially with an annual licensing fee. However, there is one downside to these resolutions: they might not adequately address the external-security interests of other countries in the region. If China can figure out a way to show its neighbors that it would not threaten their external security and that it highly values regional stability, these resolutions would help the parties settle the dispute and come to agreeable terms.

Meanwhile, Resolution 2 would be preferable to every other party in the dispute. Since the resolution divides the territorial boundary based on international law, it would likely be more acceptable to other claimants. The UNCLOS' law is a reasonable, objective criterion that fairly divides the Sea among each claimant. However, given China's recent aggressions, it is uncertain whether the country will likely accept this resolution. At the same time, since China does not want to be viewed as an "unreasonable big-power player" who wants to "bully" neighboring countries and ignore international law, China might consider this resolution with an open mind if other countries' negotiators know how to stress the importance of using objective criteria, as well as fairness and reasonableness during their negotiations.

Although the above resolutions are speculative in nature, they strongly suggest that by applying principled negotiation, countries involved in the South China Sea dispute can resolve the problem in a peaceful and amicable way. Since all the claimants do not publicly express how they weigh their interests in the dispute, it is uncertain whether the ranking of different interests in this Comment actually reflects reality. However, with available information at hand, each claimant can easily complete this task. By understanding their own preferences, the claimants can come together to create a possible resolution—one that takes into consideration all parties' interests and resolves the South China Sea dispute once and for all.

## VII. CONCLUSION

In conclusion, given the long history behind the South China Sea dispute, principled negotiation would provide a timely and effective solution to one of the most hotly contested maritime territorial disputes of the twenty-first century. Although China, the Philippines, and Vietnam have overlapping interests, each party weighs these interests differently. With skills and creativity, negotiators can figure out an agreeable solution to this territorial dispute. The above resolutions prove that the South China Sea dispute can be settled in a peaceful and diplomatic way. While each resolution has its pros and cons, taken together, they provide an adequate framework for claimants in the dispute to build upon and come to an agreeable settlement—one that would protect the livelihoods of millions of people and preserve peace and stability in the region.