

ASEAN Focus

A QUARTERLY PUBLICATION PROVIDING CONCISE ANALYSES AND PERSPECTIVES ON ASEAN MATTERS

Strengthening
ASEAN Food Trade
During COVID-19

Conflicting
Maritime Visions of
the South China Sea

Perspectives of
the SCS Arbitration
Award

45 Years of ASEAN-
New Zealand
Relations

Tattoo Traditions in
Southeast Asia



The South China Sea
Arbitration Award:
Four Years On

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ISEAS-Yusof Ishak Institute (formerly Institute of Southeast Asian Studies) is an autonomous organisation established in 1968. It is a regional centre dedicated to the study of socio-political, security, and economic trends and developments in Southeast Asia and its wider geostrategic and economic environment. The Institute's research programmes are grouped under Regional Economic Studies (RES), Regional Social and Cultural Studies (RSCS) and Regional Strategic and Political Studies (RSPPS). The Institute is also home to the ASEAN Studies Centre (ASC), the Temasek History Research Centre (THRC) and the Singapore APEC Study Centre.

Editorial Notes

The tea leaves of the US-China rivalry have made for grim reading in recent months amidst all the disruptions and wreckages of the COVID-19 pandemic. In Southeast Asia, sabre-rattling between Beijing and Washington has intensified in the South China Sea (SCS) as China doubles down on its territorial claims and the US steps up its military presence in the area. Meanwhile, littoral Southeast Asian states have increasingly rallied around the 2016 Arbitral Tribunal's award on the SCS case between the Philippines and China to defend their maritime rights and interests against Chinese encroachments. ASEAN also tunes in to international law at the 36th ASEAN Summit on 26 June 2020 with the Chairman's Statement reaffirming that "the 1982 United Nations Convention on the Law of the Sea (UNCLOS) is the basis for determining maritime entitlements, sovereign rights, jurisdiction and legitimate interests over maritime zones."

These events provide a poignant backdrop to the fourth anniversary of the historic ruling – the focus of this issue's *Spotlight*. Prof. Clive Schofield examines how China's rejection of the ruling continues to cast a long shadow over the SCS disputes as well as the rules-based maritime order in the region, followed by a debate by Dr. Nong Hong on key legal issues arising from the Arbitral Tribunal's decisions. Prof. Jonathan G. Odom considers how the arbitration ruling has featured in the Trump Administration's policy statements and influenced US military operations in the SCS. Then, Mr. Leonardo Bernard highlights the significance of the ruling to Indonesia's position against China on the North Natuna Sea, and its maritime boundary negotiations with other neighbours. Expounding on the Philippines' perspective, Prof. Jay Batongbacal calls on ASEAN to uphold UNCLOS as interpreted and applied in the ruling. Ms. Vo Ngoc Diep argues why the ruling has influenced and informed Vietnam's evolving legal positions on the SCS disputes. Ms. Hoang Thi Ha and Dr. Ian Storey round out the discussion by arguing that the Arbitral Tribunal's findings should form part of the legal basis for ASEAN member states during their negotiations with China on a Code of Conduct for the South China Sea (COC).

While US-China tensions surge at sea, the battle against COVID-19 rages unabated on land. The number of confirmed cases worldwide has crossed the 10-million mark, with Southeast Asia accounting for more than 140,000 of them. Even as several member states begin to

ease lockdown measures, COVID-19 is not behind us yet and full-scale intra-ASEAN travel is not forthcoming in the immediate term. At the same time, the pandemic also underlines the importance of data-sharing and supply chain connectivity to facilitate a coherent and effective regional response. In this issue's *Analysis*, Dr. Sithanoxay Suvannaphakdy and Ms. Pham Thi Phuong Thao suggest trade reforms to ensure ASEAN's food security, and Ms. Melinda Martinus explains why open and integrated data within ASEAN would benefit its member states during and beyond the pandemic.

Amidst these headwinds, there remain bright spots in the region that give us cause for cautious optimism. This year, ASEAN and New Zealand commemorate 45 years of their dialogue relations – an impressive achievement that owes much to the steadfast commitment and collaborative efforts of both sides to pursue meaningful cooperation and uphold the rules-based regional order. To commemorate this anniversary, *ASEANFocus* is privileged to have The Right Honourable Winston Peters, Deputy Prime Minister and Minister of Foreign Affairs of New Zealand, share his *Insider Views* on the ingredients that give meaning and value to ASEAN-New Zealand longstanding partnership. Dr. David Capie elaborates further on the achievements of ASEAN-New Zealand cooperation and the challenges facing both parties in an era of growing strategic competition. Mr. Glenn Ong and Ms. Hoang Thi Ha then explore how small powers like ASEAN and New Zealand can leverage one another to navigate perils and seize opportunities in an uncertain world. Finally, *ASEAN in Figures* highlights the numbers undergirding ASEAN-New Zealand relations on trade, tourism, development assistance, immigration and education.

Beyond the realm of high politics, there is much to celebrate about ASEAN's diversity and resilience. This issue's *Sights and Sounds* explores oft-overlooked repositories of the region's heritage. Ms. Anuthida Saelaow Qian embarks on an immersive digital tour of the region's arts and culture, while Mr. Glenn Ong navigates the labyrinth of indigenous tattoo traditions in Southeast Asia.

On a last note, we are delighted to welcome Ms. Sharon Seah Li-Lian to our family as Coordinator of the ASEAN Studies Centre and Managing Editor of *ASEANFocus*.

We hope you are staying healthy and safe in these difficult times! 🍷

Strengthening ASEAN Food Trade During COVID-19

Sithanonxay Suvannaphakdy and Pham Thi Phuong Thao suggest trade reforms to improve food security in ASEAN during and beyond the pandemic.

ASEAN member states have deployed all possible instruments to combat the COVID-19 pandemic and alleviate its socio-economic impacts over the past few months. On 15 April 2020, ASEAN Ministers of Agriculture and Forestry reaffirmed their commitment to ensure food security, food safety and nutrition in the region. As COVID-19 continues to spread and wreak havoc on ASEAN economies, food trade serves as a powerful, low-cost tool to improve access to basic food supplies in the region.

ASEAN has solid food stockpiles under normal circumstances. The food balance data of the Food and Agriculture Organization (FAO) shows that total rice stocks in Vietnam, the Philippines and Cambodia rose by 6,717,000 tonnes from 2016 to 2017, which was significantly greater than the decline in rice stocks of 2,488,000 tonnes in Thailand, Indonesia, Malaysia, and Myanmar over the same period. The surplus rice stocks could then be exported to other rice import-dependent member states such as Brunei Darussalam and Singapore. This diversity reinforces the need to enhance food trade in ASEAN.

ASEAN is one of the key food suppliers in the world. ASEAN member states produce food to trade regionally and export it to the rest of the world. UN trade data for 2018 indicates that some member states were among the top ten global exporters of food products. These include Thailand for cereals (mainly rice), Vietnam for fruits, vegetables, coffee and fish; and Indonesia for palm oils and fish. The total value of global food exports was US\$553

billion in 2018, more than 55% of which was from the top ten exporters. ASEAN member states represented about 12% of global food exports, about one-fifth of which was traded within ASEAN.

But not every member state produces all the food products to meet the demand of their domestic consumption. In 2018, Thailand and Myanmar were net exporters of cereals, while Indonesia, the Philippines, Malaysia, Vietnam, Singapore and Brunei were net importers. Indonesia, the Philippines, Vietnam, Myanmar, Laos and Cambodia were net exporters of vegetables and fruits, while Thailand, Malaysia, Singapore and Brunei were net importers. Thailand was the only country in ASEAN being a net meat exporter. Brunei and Singapore were net importers of all food products. The specialisation in producing particular food products means that an individual member state cannot necessarily produce all needed food products by itself. The ability to source food from within and outside the region is critical for food security in ASEAN.

During the COVID-19 outbreak, the production and distribution of food across ASEAN member states are constrained by their governments' control measures. At the national level, community lockdowns impede workers from travelling to work in farms and hamper the transportation of fertilizers and pesticides to plantation areas of rice, corn, and vegetables. This increases both the costs of farming and the risk of bad harvests, which further raise food prices for consumers. In addition, although social distancing is enforced as part of pandemic control



Workers in a noodle factory in Hat Yai, Thailand

drburtoni@Flickr



Fertilising a rice field in Vietnam

measures, the food processing industry requires social proximity to function effectively.

At the regional level, some member states have imposed temporary export controls on food products to ensure local food security during the pandemic. For example, Vietnam, the world's third largest rice exporter in 2018, suspended rice exports on 24 March, which resumed on 1 May as the country successfully contained the outbreak within its territory. Cambodia suspended all white rice and padi exports starting from 5 April as well as fish exports to stabilise domestic supply during the pandemic. In early April, Myanmar temporarily suspended the issuance of rice export permits until a new rice export system is put in place.

Another food supply problem has to do with panic food buying. As of May 2020, most ASEAN member states have implemented COVID-19 containment measures such as social distancing, travel bans and community lockdowns. These measures have raised public concerns over food shortage, which resulted in panic food buying. Following the nationwide lockdown in Thailand on 3 April 2020, for instance, many Thais started to hoard eggs, which caused egg prices to increase by up to three to five times.

Against this backdrop, any policy to strengthen food security should aim at stimulating production and facilitating cross-border food trade in ASEAN. On the supply side, export restrictions can jeopardise cooperation among ASEAN member governments, erode trust and engender mutual retaliation. These restrictions can also result in the loss of future export sales abroad, which discourages local firms from ramping up production and investing in new capacity.

On the demand side, the importation of food products in ASEAN has been constrained by tariffs and non-tariff measures (NTMs). The ASEAN Tariff Finder database reveals that most member states impose high tariffs on imported food, especially from countries that do not have any free trade agreement (FTA) with ASEAN. The most-favoured-nation (MFN) tariffs on imported rice from

non-FTA partners range from 30% in Thailand to 40% in Malaysia, the Philippines and Vietnam. Other imported food products such as pork also face high MFN tariffs, ranging from 25% in Vietnam and Malaysia, 30% in Laos and the Philippines, to 40% in Thailand. For intra-ASEAN food imports, tariff rate is low for pork, but high for rice.

Another type of import barrier is the presence of NTMs. The NTM database of the United Nations Conference on Trade and Development (UNCTAD) reveals that member states impose NTMs on imported pork, ranging from 22 measures in Cambodia to 68 measures in the Philippines. The trade-distorting effect of NTMs depends on how they are designed and managed. More than half of these NTMs are the sanitary and phytosanitary (SPS) measures (i.e. requirement of import permit from the relevant food safety authorities, a requirement limiting the use of hormones in the production of meat), which aim to ensure food safety and prevent the dissemination of diseases. But complex licensing and testing procedures of SPS measures can increase transaction time and costs for fulfilling all regulatory requirements, which further raises the prices of imported pork.

Working together, ASEAN member governments should expedite their trade reforms to remove those tariff and non-tariff barriers that impede trade flows of food products where they are desperately needed. Removing export curbs can generate more jobs and income for workers in the food industry in the exporting countries, while eliminating tariffs and non-tariff barriers increases the variety of food and reduces food prices in the importing countries. Governments can act unilaterally, bilaterally or in sub-regional groups, and other member states can join later as momentum gathers pace. Trade reforms require both bottom-up and top-down initiatives if ASEAN is to secure a stable food supply during COVID-19 and future pandemics.✘

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Open and Integrated Data is Key to ASEAN Development

Melinda Martinus underlines the need for ASEAN to harness open and integrated data to reap the benefits of innovation.

Since the first case of COVID-19 was recorded in the region, there has been extensive media coverage on the pandemic, and a lot of data has been shared and analysed by experts. Such real-time data has become a critical resource to assist ASEAN member governments in synchronising trade, travel, and healthcare policies despite the pandemic disruptions. The success of data sharing during the COVID-19 crisis among ASEAN member states should stimulate a much-needed conversation about the need to develop the region's open and integrated data in the future.

Development experts have comprehensively studied the benefits of data sharing. The World Bank refers to data as global commodities. McKinsey estimates that open data could unlock a total of US\$3 to 5 trillion in global economic value across various sectors, namely, education, transportation, consumer product, healthcare, and finance. Open data would further advance industries to tap new business opportunities. These include assisting governments in delivering better public services, optimising operations, creating jobs, and improving the climate for foreign investment. Therefore, building open data infrastructure should not be seen as an expenditure, but a long-term investment.

Economic benefits aside, integrating data boosts information sharing and breaks down silos across government agencies and regional countries. In the case of COVID-19 response, ASEAN has established the ASEAN Health Sector Efforts on COVID-19. This platform allows ASEAN member states to consolidate risk assessment data that further harmonises a wide range of activities, including preparedness, detection, mitigation, and emergency responses. This has enabled government

agencies to analyse risks in various ways, not only leveraging the available data to their use but also scaling-up regional coordination.

Harnessing Open and Integrated Data in ASEAN

Experts estimate that digital technologies in ASEAN could potentially be worth up to US\$625 billion by 2030. A region-wide digital regulatory framework must be established to capture this opportunity. The Master Plan on ASEAN Connectivity 2025 thus recommends programmes to develop the ASEAN Open Data Network under the Digital Innovation Frameworks. These frameworks include, among others, micro-small-medium enterprise technology platform, digital financial inclusion, and digital data governance.

Much of the work on the ASEAN Open Data Network is designated to the ASEAN Community Statistical System (ACSS) Committee, the highest regional policy-making and coordinating authority on ASEAN statistics. The ACSS Committee's primary mandate is to synergise data collection and harmonisation between the national statistical bodies across the ten ASEAN member states, the ASEAN Secretariat, and the ASEAN Community's three pillars.

The ACSS has made notable progress since its establishment in 2011. It has published a wide range of statistical products, such as the ASEAN Statistical Yearbook, an annual publication covering the economic, demographic, and social indicators of all ASEAN member states. Other publications, such as the ASEAN Economic Community Chartbook and the ASEAN Community in Figures, come in a bite-sized and graphical format to represent selected statistical indicators and analysis on ASEAN's economic performance to a broader audience. All publications and datasets are free to download and reuse from the ASEANStats website. This open and integrated digital infrastructure has facilitated knowledge sharing among experts and scholars, supporting research production and quality on ASEAN development over the years.

The ASEAN youth is riding the wave of the fourth industrial revolution. 60% of ASEAN's workforce is under 35 years old, and they need to adapt to evolving global employment challenges. Therefore, promoting data



The 9th Session of the ASEAN Community Statistical System Committee held in Bangkok, Thailand

literacy and a greater sense of the region's development issues must be undertaken simultaneously with enhancing digital infrastructure. Since 2017, the ASEAN Foundation and enterprise software company SAP have organised the annual ASEAN Data Science Explorers (ASEAN DSE) competition. ASEAN DSE has thus far trained more than 9,000 young students across 250 ASEAN institutes of higher learning. In this competition, tertiary education students submit their data-driven proposals to provide solutions towards regional issues and the United Nations Sustainable Development Goals, particularly in health and well-being, education, gender equality, and sustainable cities.

A group of students from RMIT University Vietnam, the first winner of the ASEAN DSE 2019 cohort, for instance, proposed a project to improve ethnic minorities' livelihood and well-being. Utilising cross-sectoral data, the team analysed the numbers of ASEAN minority labour forces and their potential, identified policy gaps, and proposed programmes to empower them. Trung Vu, a member of the winning team said: "We were just excited and delighted that our ideas and our solutions were acknowledged by ASEAN, the UN, and other governmental agencies to turn our vision into reality. We also got exposure to diverse cultures from students from other countries that we've become friends with". This is a way in which open data can be used not only to enable policy by governments but also to enhance interactive learning processes that catalyse innovative ideas for positive social impact.

Challenges Ahead

More work needs to be done to harness open and integrated data within ASEAN. The biggest challenge remains the highly fractured data standardisation, methodologies, and interpretation across ASEAN member states. Therefore, the ACSS Committee targets data harmonisation as a pivotal outcome in the immediate term. Some development donors have provided workshops and training to improve the ACSS Committee's coordination capacity. The statistical offices of all ASEAN member states and the ACSS Committee need to tap into this growing source of knowledge as well as technical and financial support.

It is critical to make the ASEAN Open Data Initiative a single point of access that covers many regional issues. One exemplary model of regional data platforms is the Data Europa Portal which funnels European Union (EU) data points and its member states' public data into millions of datasets for public usage. It displays a wide range of information such as election results, legal documents, and the utilisation of public funds by the member states, thus keeping EU citizens informed of current issues in the region.

Moving forward, it is also important to strengthen efforts to mainstream regional open data, including incorporating more data into the ASEAN Open Data Initiative. Currently, most of the data available on the ASEANStats platform is a collection of national



Teams taking part in the ASEAN Data Science Explorers 2019 competition

government statistics, or economic indicators provided by international banks and development organisations. Many ASEAN universities, think-tanks, and civil society organisations are capable of producing high-quality and reliable data and analysis. Private sectors in banking and finance, retail, transportation and services with extensive operations in Southeast Asia also have big data about consumer behaviours and preferences. Integrating their data to the ASEAN Open Data Initiative will not only fill data gaps and avoid top-down bias but also build a sense of belonging among different stakeholders in the ASEAN Community.

In the future, ASEAN socio-economic issues will become even more cross-cutting and complex. Hence, there is a greater need to access more comprehensive and specific data about healthcare, transportation, agriculture, education, and emerging socio-economic sectors. ASEAN must therefore continuously enhance human resource skillsets in data processing and management, and step up promotion activities to encourage data sharing, usage and transparency among its member states and across the three pillars of the ASEAN Community. It is also equally important to improve preparedness for cyber-attacks and systemise compliance in the large-scale data deployment.

The trend towards more extensive provision and use of open and integrated data will only grow in the digital economy that all ASEAN member states are bracing themselves for. ASEAN should continue to promote regional data sharing and develop new ways of engaging with business, research, civil society and other communities to deliver high-quality information so as to nurture the economic and societal benefits of innovation. ❧

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ASEAN-New Zealand Relations: Embracing Tough Times Ahead

David Capie reviews the achievements of ASEAN-New Zealand cooperation and ponders their challenges in the changing regional order.



Since New Zealand became ASEAN's second Dialogue Partner in July 1975, the relationship has deepened and broadened in a myriad of ways. The economic connection has been transformed, with annual two-way trade now amounting to almost NZ\$20 billion in 2019. The ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) signed in 2009 has provided a firm foundation for growing trade in goods and services, supported by bilateral free trade agreements with Singapore, Brunei and Thailand.

People-to-people ties have also flourished. Each year more than a quarter of a million New Zealanders travel to ASEAN member countries for work and pleasure, while almost 200,000 visitors fly in the other direction. Two-way visitor numbers have doubled in the last decade. Alongside tourism, education has been a vital connection. One in eight international students in New Zealand are from Southeast Asia.

As a political-security partnership, the relationship has also grown deeper and broader. New Zealand is an active participant in the East Asia Summit (EAS), the ASEAN Defence Ministers Meeting Plus (ADMM-Plus), and the ASEAN Regional Forum (ARF). These various forums provide an opportunity for high-level dialogue on a host of issues from regional security to climate change. For Wellington, they are valued as an opportunity to work with both Southeast Asian neighbours and extra-regional big powers. For a small, distant state like New Zealand, the ASEAN-centred regional architecture provides a seat at the table and a way to amplify its voice.

An observer of the ASEAN-New Zealand relationship, writing at the start of 2020, might have expected to mark 45 years of friendship and be able to look forward confidently to an even deeper and closer partnership in the years ahead. A special summit between Prime Minister Jacinda Ardern and her ASEAN counterparts was scheduled for April in Hanoi. But two critical challenges have emerged in the last few months: the global COVID-19 pandemic, and the rapid deterioration in US-China ties. Both raise significant questions about the future of regional cooperation.

First, the COVID-19 pandemic has inflicted a heavy toll across the world, with more than eight million infections and hundreds of thousands of deaths. At the time of writing, large parts of the global economy are shut down, trade has been disrupted, and the movement of people internationally has slowed to a trickle. Initially at least Asia seemed to cope better with the virus than other parts of the world, including Western Europe and the Americas. Southeast Asia has seen some remarkable success stories, most notably Vietnam's, and New Zealand has also performed very well. But while almost no nation has been spared the impact of the pandemic, there have been few signs of close international cooperation to combat it. At the global level, the UN Security Council and the World Health Organization have come in for criticism. At the regional level, the most important responses have come from national capitals, not through the use of the existing cooperative architecture. Some have even called this a crisis for multilateralism.



New Zealand's English training course in support of Vietnam's ASEAN Chairmanship 2020

New Zealand turned to key Southeast Asian partners as part of its pandemic response. An agreement between New Zealand and Singapore to keep open supply chains of food and medical goods quickly expanded to include Brunei and Myanmar, among others. Vietnam joined New Zealand and five other countries for discussions to share lessons learned from managing COVID-19. This ad hoc minilateralism has been a valuable part of the response, but it begs questions about the role of existing frameworks. Informal personal interactions have long been an important part of the ASEAN way of diplomacy. While virtual meetings are useful, how effective can regional diplomacy be when leaders cannot meet in person?

A second challenge comes from the deterioration in US-China relations. Regional prosperity has been built on the foundation of a peaceful and open regional order. This assigned a leading place for the US, with China playing an increasingly influential role but largely within the existing rules and norms which ASEAN's diplomacy helped shape. This order worked well for ASEAN and for New Zealand, but it is under challenge on multiple fronts. Under Xi Jinping, China has become more assertive and more willing to challenge the status quo, including in the South China Sea. At the same time, the US under President Trump has been less predictable than at any time in decades, castigating allies and walking away from longstanding American positions. The competitive relationship between Beijing and Washington seems to be hardening into an openly adversarial contest. Across many different dimensions – political, trade and technology – small and middle powers are increasingly being faced with a host of small choices that would see them align with one side or the other.

How well will ASEAN fare in this much colder regional order? One of the things that has made ASEAN's model of regional dialogue important to New Zealand is its commitment to inclusiveness. For example, New Zealand initially shared some Southeast Asian countries' concerns

about the emergence of the Indo-Pacific as a strategic concept. The 2019 ASEAN Outlook on the Indo-Pacific, with its emphasis on inclusivity and connectivity, provided a basis upon which Wellington could sign up to the idea.

In recent years, ASEAN has struggled to maintain unity in the face of outside pressure. This pressure looks certain to only increase. The consensus principle will be harder to maintain not just among the ASEAN-10 but also within broader groupings like the ADMM+ and the EAS. Will we see the importation of stark US-China confrontation into regional dialogues? If so, what will that mean for these platforms' ability to address the more pressing issues of the day? What will that mean for their ability to evolve their memberships and modalities in ways that could make them more relevant?

These are indeed challenging times. While it is easy to focus on the big problems, the reality remains that on many issues, in Southeast Asia and beyond, ASEAN and New Zealand have important common interests. New Zealand will surely continue to look to ASEAN as an important economic and political partner. It will want ASEAN to retain its vital convening power at the centre of regional multilateralism. And it will need to work harder with all the members of ASEAN to understand their interests and to ensure the continued relevance of the regional architecture in an era of growing strategic competition.✂

Dr. David Capie is Director of the Centre for Strategic Studies and Associate Professor in International Relations at the Victoria University of Wellington.

ASEAN-New Zealand: Steady Partnership Amidst Uncertainties

Glenn Ong and Hoang Thi Ha examine the basis of ASEAN-New Zealand relations and how both parties can cope with systemic changes in the global order.

This year, ASEAN and New Zealand commemorate the 45th anniversary of their dialogue relations under especially sombre international conditions. The COVID-19 pandemic has forced countries to retreat behind their borders, and accentuated existing geopolitical faultlines, especially the rise of an assertive, authoritarian China, the unreliability of America's global leadership under the Trump presidency, and the downward spiral of US-China rivalry. The crisis also exposed the dysfunction of multilateral organisations as they increasingly become the punching bags between Washington and Beijing. These disruptions in the global order will render the 45th anniversary of ASEAN-New Zealand relations an occasion for both celebration and reflection. What is the nature of this partnership, and how can these small powers weather these systemic changes?

Shared Principles and Interests

ASEAN-New Zealand relations are underpinned by many decades of mutual respect and reciprocity accompanied by a convergence of shared principles, especially in upholding international law, free trade, and an open and inclusive regional architecture. In 1975, New Zealand became the second country to establish dialogue relations with ASEAN, formalising many years of prior bilateral interactions with Southeast Asian states that now proceed alongside regional cooperation. Since then, Wellington has stood out as an exceptionally tactful partner that pursues its interests in the region in tandem rather than in competition with ASEAN.

Indeed, New Zealand's respect for regional partners and the ASEAN Way is keenly felt and appreciated. Former ASEAN Secretary-General, Ambassador Ong Keng Yong, recalls with fondness that New Zealand "gives us good feelings," while many old hands from the ASEAN Secretariat lavish high praise on Wellington as their "favourite Dialogue Partner that is very understanding and not pushy." In the State of Southeast Asia 2020 survey conducted by ISEAS-Yusof Ishak Institute, New Zealand polled disproportionately well in soft power domains relative to its material capacity. It outperformed Australia, India, South Korea, and Russia in "maintaining the rules-based order and upholding international law." As a choice for higher education and travel destination for Southeast Asians, New Zealand came well ahead of China, India, and South Korea.

Given its small-state capacity, relative geographical isolation and high trade dependency, New Zealand's pursuit of its diplomatic, strategic, and economic interests is best exercised through international partnerships and multilateral processes, of which ASEAN holds special importance as the region's diplomatic convenor. Through ASEAN, New Zealand became a founding member of the ASEAN Regional Forum (ARF), the ASEAN Defence Ministers' Meeting Plus (ADMM-Plus), and the East Asia Summit (EAS). These platforms have enabled Wellington to project its positions far beyond its borders and to have a meaningful say in regional affairs that have a bearing on its security and interests.

In turn, New Zealand has proven itself as a responsible, congenial, and active participant in ASEAN-led mechanisms, especially in the ARF and the ADMM-Plus. It has co-chaired ADMM-Plus Expert Working Groups (EWGs) in each of the past three three-year cycles, with meaningful contributions in peacekeeping, maritime security, and cybersecurity. For example, under New Zealand's co-chairmanship with Brunei Darussalam, the EWG on Maritime Security 2014–2017 was packed with multiple initiatives, including the New Zealand-initiated Maritime Security Future Leaders' Programme (2015), the Maritime Security Field Training Exercise Mahi Tangaroa (2016), and the ADMM-Plus Maritime Security and Counter-Terrorism Exercise (2016). Most remarkable, according to ASEAN insiders, is the way New Zealand diplomats conduct themselves as team players and bridge builders who seek common ground rather than domination.



New Zealand university students on a visit to the ASEAN Secretariat in January 2020

Also, as an initiator of various regional free trade agreements, ASEAN provides avenues such as the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Regional Comprehensive Economic Partnership (RCEP) for New Zealand to exercise its free trade agenda and expand trade with the states that do not have bilateral FTAs with Wellington. ASEAN-New Zealand two-way trade reached US\$10.1 billion in 2018, an increase of at least 30% since the AANZFTA's implementation in 2010. ASEAN and New Zealand's shared interest in open and free trade has played a meaningful role in fostering these multilateral platforms as a springboard to boost their economic fortunes.

Small States Agency in an Uncertain World

The rules-based international order and multilateral processes, which are vital for the security of small and middle powers, are coming under huge pressure due to the deepening US-China rivalry. Their clashing foreign policy agendas, driven by domestic political considerations, have frustrated international efforts to fight the pandemic at multilateral institutions, including at the UN, G-20, and the World Health Organization (WHO). Instead of providing America's global leadership, the Trump Administration has invested most of its diplomatic capital in a blame game towards China and the WHO, and eventually abandoned the world health body altogether.

China has sought to fill the vacuum by providing COVID-19 medical supplies and a pledged US\$2 billion assistance to other countries to mitigate the pandemic impact. But no amount of generosity can gloss over China's responsibility in the first place due to its lack of transparency in the early days of the outbreak. Furthermore, for ASEAN and New Zealand, it is jarring to see China's recent moves to consolidate its claims in the South China Sea, its emerging "wolf-warrior" diplomacy, and its trade punishments towards Australia for initiating an international inquiry into the COVID-19 outbreak.

Against this backdrop, small powers like New Zealand and ASEAN should expand their strategic horizons by enhancing coordination and collaboration with one another, and with other powers beyond the US-China duo. This would enable them to shift away from the "binary choice" narrative, and focus instead on their practical needs, such as the development of and access to a COVID-19 vaccine, or the preservation of supply chain connectivity in essential supplies.

There is no doubt that the US-China rivalry will cast a longer shadow over ASEAN-led mechanisms, which even prior to COVID-19 had become an arena of contestation between Washington and Beijing. ASEAN and New Zealand should leverage these mechanisms for more proactive small and middle power diplomacy so that their voices and interests will not be drowned out in these heady days of great power competition. For example, both parties should harness the collective courage to voice

their common concerns over the US-China rivalry and coordinate their positions to prevent such competitive dynamics from frustrating the functioning and cooperative outcomes of ASEAN-led mechanisms.

In this connection, the ASEAN Outlook on the Indo-Pacific (AOIP), which speaks to the interests of smaller states in the wider Indo-Pacific setting, provides a good platform for New Zealand and ASEAN to bolster the normative ballast and practical cooperation for a rules-based regional order. As the Indo-Pacific discourse figures into New Zealand's foreign policy thinking, Wellington would find in the AOIP substantial flexibility and common ground to embrace this construct for cooperative ends.

COVID-19 also calls into question the most fundamental assumption underpinning life as we know it throughout the 20th and 21st centuries: that an integrated world economy and global supply chains are essential for growth and can be pursued with acceptable and manageable trade-offs. The rapid global spread of the disease has dismantled that confidence and compelled a push-back against unchecked globalisation. This shifting ground of the global trade agenda could witness the rise of localised and decentralised supply chains in its wake.

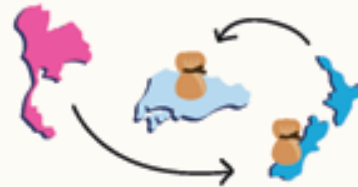
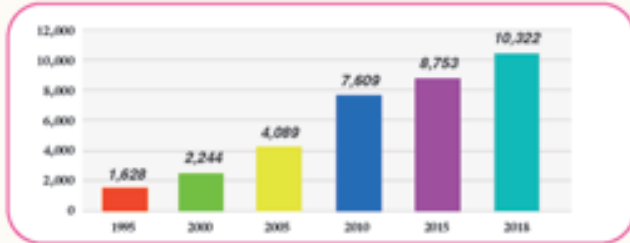
What would the future then hold for the RCEP to which both ASEAN and New Zealand would be members? The notion that a minus-India RCEP would drive regional countries further into China's economic orbit may well be challenged by the ongoing trend of diversifying the global supply chains away from over-concentration in China. As many uncertainties as there are potentials and possibilities lie ahead. Regardless, the value of the RCEP to ASEAN and New Zealand goes beyond the balance sheets. The trade pact would represent their firm commitment to free trade, and their contribution to regional trade rulemaking to guard against discriminatory, politically motivated trade remedies. For example, the RCEP should also regulate, among others, the trade policy tools such as the safeguards that China recently levelled against Australian barley and beef.

The many mechanisms and agreements that underpin ASEAN-New Zealand ties have allowed them to have meaningful impact on the footprint of regional developments, which will only grow more contested in time. Moving forward, ASEAN and New Zealand should continue to join forces to amplify their voice on the international stage, both in hard power and soft power domains. The past 45 years have provided both parties with a sound foundation and extensive statecraft to ensure that the platforms through which they cooperate will remain relevant, responsive, and resilient to future systemic shocks lurking in the horizon. 🇸🇮

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ASEAN-New Zealand Relations

ASEAN's Trade with New Zealand in 2005-2018
(in US\$ million) ^{(1) (7)}



Within ASEAN, **Singapore** was the largest importer of goods from New Zealand (NZ\$1.64 billion) while **Thailand** was the largest goods exporter to New Zealand (NZ\$2.84 billion) in 2019. ⁽⁸⁾



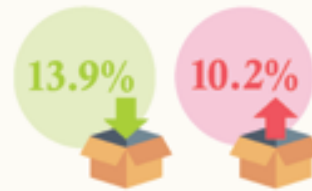
Thailand, Malaysia, Singapore, Indonesia, and Vietnam are among New Zealand's **top 15 merchandise trading partners**. ⁽⁶⁾



Increase in ASEAN-New Zealand trade since the implementation of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) in 2010. ⁽²⁾



ASEAN is New Zealand's **4th largest trading partner** and **3rd largest merchandise export destination**. ⁽²⁾



ASEAN makes up **12%** of New Zealand's total merchandise trade, **13.9%** of New Zealand's goods imports and **10.2%** of New Zealand's goods exports. ⁽⁶⁾



New Zealand's major exports to ASEAN in 2019 were dairy products, fruit, wood, and meat. ⁽⁶⁾



New Zealand's major imports from ASEAN in 2019 were vehicles, petroleum, and electrical and mechanical machinery. ⁽⁶⁾



New Zealand's trade architecture with Southeast Asia: AANZFTA, bilateral FTAs with Singapore, Thailand, and Malaysia, CPTPP, and the P4 agreement (New Zealand, Singapore, Brunei, and Chile). ⁽²⁾

ASEAN investment in New Zealand reached **NZ\$4.3 billion** as of July 2019, accounting for **4%** of total FDI in New Zealand. ⁽²⁾



New Zealand investment in ASEAN reached **NZ\$843 million** as of July 2019, accounting for **4%** of total New Zealand outward FDI. ⁽²⁾



New Zealand's aid partnership with Southeast Asia focuses on: agriculture, education, governance, renewable energy and disaster resilience. ⁽⁹⁾



The ASEAN region is the second largest recipient of New Zealand's ODA after the Pacific, with **NZ\$491 million** over the past five years. ⁽²⁾

Sources:

- 1) ASEANStats Database, ASEAN Secretariat
- 2) New Zealand Ministry of Foreign Affairs and Trade
- 3) New Zealand Aid Programme Strategic Plan 2015-2019
- 4) Survey Report on The State of Southeast Asia 2020, ASEAN Studies Centre, ISEAS-Yusof Ishak Institute
- 5) New Zealanders' Perceptions of Asia and Asian Peoples: 2018 Annual Survey, Asia New Zealand Foundation
- 6) Statistics New Zealand
- 7) ASEAN Statistical Year Books 2008
- 8) New Zealand Ministry of Transport
- 9) New Zealand Ministry of Education



New Zealand delivered **605 places** of scholarships for ASEAN participants and capability-building programmes in New Zealand and ASEAN countries in 2019.⁽¹⁾



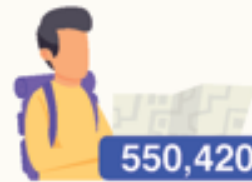
New Zealand has provided English language training to more than **1,890 officials** in ASEAN countries since 1991.⁽²⁾



Since 2015 alone, the New Zealand English Language Training for Officials (NZELTO) programme has provided training for more than **670 ASEAN officials**.⁽³⁾



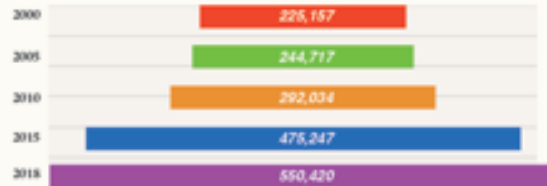
11,000 ASEAN officials have been provided training under the AANZFTA Economic Cooperation Support Programme.⁽⁴⁾



550,420

Visitor arrivals from New Zealand to ASEAN in 2018, 2.5 times larger than 2000.⁽⁵⁾

Visitor arrivals from New Zealand to ASEAN in 2000-2018⁽⁵⁾
(In person)



In 2019, **263,000 New Zealanders** travelled to ASEAN, and **193,000 people from ASEAN** travelled to New Zealand.⁽⁶⁾

New Zealand's notable development assistance programmes in ASEAN since 2015:⁽⁷⁾



Cambodia
NZ\$8.4 million project on niche crops, private sector microfinance partnerships, and food security.



Indonesia
NZ\$30 million Renewable Energy Programme.



Lao PDR
NZ\$5.3 million on the Lao Tourism Support Activity assists, and more than **993,000 doses of foot and mouth disease vaccines**.



Myanmar
NZ\$3 million to build civil society leadership through the Myanmar Young Leaders Programme, and more than **2.3 million doses of foot and mouth disease vaccines** have been delivered across **1,968 villages** in Myanmar.



Philippines
NZ\$5 million project to improve cow nutrition and milk production.



Vietnam
NZ\$5.5 million dam safety to reduce the risk and impact of dam failures and flooding in the Ca River catchment.

Top three tourist arrival sources from ASEAN to New Zealand from May 2018 to May 2019:⁽⁸⁾



Top three travel destinations in ASEAN for New Zealanders in 2018:⁽⁹⁾



8.2% of ASEAN respondents choose New Zealand as their preferred travel destination, ahead of Australia (7.3%), Republic of Korea (4%) and China (2.1%).⁽¹⁰⁾



38
in a week

In 2019, there were **38 direct flights** a week, in each direction, between ASEAN and New Zealand cities.⁽¹¹⁾



In 2019, there were **7,555 ASEAN tertiary students** in New Zealand, making up **12.5%** of total international tertiary students.^{(12) (13)}

There were more than **12,700 ASEAN students** in New Zealand in 2016.⁽¹⁴⁾



>10%
total number of people born overseas

In the 2018 census, **132,492 people** resident in New Zealand identified their birthplace in ASEAN, more than **10%** of the total number of people born overseas.⁽¹⁵⁾

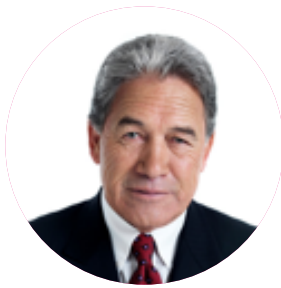


31%

31% of New Zealanders rate themselves as knowing "a fair amount" about Southeast Asia behind Northeast Asia 38% and ahead of South Asia 20%.⁽¹⁶⁾

ASEAN-New Zealand Relations: Making Meaningful Progress Together

This year marks the 45th anniversary of ASEAN-New Zealand dialogue relations since the partnership was established in 1975. *ASEANFocus* is privileged to interview New Zealand's Deputy Prime Minister and Minister of Foreign Affairs, **The Right Honourable Winston Peters**, to understand the significance of this relationship and how to navigate it in an uncertain world.



The Right Honourable Winston Peters is New Zealand's Deputy Prime Minister, and Minister of Foreign Affairs, State-Owned Enterprises, Disarmament and Arms Control, and Racing. Mr. Peters is Leader of the New Zealand First Party, which is part of the current coalition government. Since entering Parliament for the first time in 1978, Mr. Peters has served in previous governments as Deputy Prime Minister, Minister of Foreign Affairs, and as Treasurer. He has also practiced as a barrister and solicitor, and is a former primary and secondary school teacher. Mr. Peters is a former New Zealand Māori rugby representative.

AF: New Zealand is one of ASEAN's oldest and most steadfast partners. How do you assess the evolution of ASEAN-New Zealand dialogue relations over the past 45 years? What has changed, and what remains constant?

WINSTON PETERS: New Zealand has been a strong supporter and proponent of ASEAN since the earliest days of its formation. Right from the start, we saw ASEAN's potential as a force for unity and cohesion in a region which had endured, and worked to overcome, many challenges in the preceding decades. Our partnership has come a long way since it was formalised in 1975, and subsequently elevated to a Strategic Partnership in 2015. We have worked closely with ASEAN to make our region safer and more prosperous for our peoples, and together we have achieved many outcomes that we can be proud of.

Today, our cooperation spans a wide range of areas, from capacity building and furthering economic integration, right through to working together to combat transnational crime, respond to climate change and strengthen regional security. These connections and successes have driven greater understanding between our countries and brought greater prosperity for our peoples. The geostrategic and trade environments around us are ever-changing, competitive and uncertain, but what remains vital is that New Zealand and ASEAN hold fast to our shared commitment to uphold important international rules and principles.

AF: Why ASEAN? Where does the organisation stand in the pecking order of New Zealand's foreign policy?

WINSTON PETERS: ASEAN and the Indo-Pacific region are of critical importance to New Zealand. Along with Australia and the Pacific Islands, ASEAN member states are among New Zealand's nearest neighbours. It is in the ASEAN region where we find many of our close political friends and trading partners, and where we can reflect together on our shared histories and experiences.

In light of that, it's perhaps no surprise that New Zealand was one of the two earliest ASEAN Dialogue Partners. It means that today ASEAN is a key pillar of our foreign policy, and has risen to be New Zealand's fourth largest trading partner, helped along by one of the highest quality free trade agreements in the region. Generations of students from ASEAN countries have studied in New Zealand and we have many communities of ASEAN migrants in our country.

Our engagement with ASEAN also supports New Zealand's most important foreign policy objectives, including being an active member of multilateral and regional processes; addressing mutual environmental concerns and threats to the global commons; and ensuring we have a resilient Indo-Pacific region that is peaceful and prosperous.

AF: Former ASEAN Secretary-General Ong Keng Yong once said that Wellington “gives us good feelings” thanks to your country’s demonstration of patience, sensitivity and respect to the “ASEAN way”. How do you explain this tactful approach that New Zealand adopts towards ASEAN?

WINSTON PETERS: New Zealand has always strived to be an independent and honest partner by taking an approach to international relations that is fair minded and constructive. We put a particular value on listening to others, and respecting their views. New Zealand instinctively understands the challenges facing small and medium sized states in the Indo-Pacific region – and the importance of regional and multilateral processes in resolving these challenges.

New Zealand sees its value to ASEAN as being anchored in our reliability and predictability as a close friend and natural partner, and the importance we attach to being an active and engaged Dialogue Partner. Our relationship with ASEAN will always be conducted from a standpoint of respect and support for ASEAN centrality and the sovereignty and independence of its member states.

AF: What more can be done to elevate the substance of the ASEAN-New Zealand relationship? What would be New Zealand’s priority areas in its partnership with ASEAN in the next five years? Will New Zealand have any new initiatives to mark the 45th anniversary of its dialogue relations with ASEAN?

WINSTON PETERS: A key priority will be regional economic recovery in light of the impacts of the COVID-19 pandemic. This will require us all to work together to keep trade and supply chains open, and support regional economic integration. We will also need to work together in responding to environmental challenges and further efforts around peace-building and security. All of this will require us to continue building on the strong ties between our peoples.

We are keen to ensure that New Zealand’s cooperation builds on the expertise that we have to offer and the priorities of our partners in the region. New Zealand is therefore working with ASEAN on a package of four partnership programmes for the next five years – “People, Prosperity, Planet and Peace”. These areas reflect both the depth and breadth of our cooperation with ASEAN. Through these programmes we will build on successful activities and also cover new ground. For example, our well recognised capacity-building programmes will include new areas such as defence policy.

AF: Fostering quality education and human development, and grooming young leaders, have been hallmarks of New Zealand’s aid partnership with ASEAN member states. How do you see this evolving in the context of digitisation and the Fourth Industrial Revolution?

WINSTON PETERS: New Zealand recognises the diversity that exists within ASEAN’s membership and the evolving priorities in the region as new social and

economic trends emerge. Our development partnership with ASEAN is a particularly important part of working towards increasing the region’s prosperity and narrowing the development gap. The work we do in this space should keep pace with these trends.

Our ASEAN people-to-people programmes have included forward-thinking activities like young business leaders’ programmes centred on technology, regular exchanges to build expertise in good governance, and training for senior officials in areas such as digital economy and renewable energy. We are also exploring innovative ways of delivering our scholarships through digital learning, in response to the impacts of the COVID-19 pandemic.

AF: If you were to name the biggest transnational challenge facing both New Zealand and ASEAN, aside from the COVID-19 pandemic, what would it be? How can both parties cooperate to address it?

WINSTON PETERS: One of the most pervasive transnational challenges facing us all is climate change. The Indo-Pacific region is at direct risk from rising temperatures, extreme weather events and sea level rise. This means there is a major risk of adverse environmental, economic and social impacts, and as a result, heightened security challenges.

This is why cooperation on climate change issues will become an even bigger focus for New Zealand-ASEAN cooperation going forward. We have done good work in this area already, including renewable energy projects in Indonesia, Myanmar, and Laos, and capacity-building on the implementation of the Paris Agreement. New Zealand also works actively alongside some ASEAN members on climate smart agriculture and fossil fuel subsidy reform. We hope to broaden this cooperation to include more ASEAN countries in the future.

AF: The Indo-Pacific has gained significant traction over the past few years, but a common understanding of the concept remains elusive. What does the Indo-Pacific mean to New Zealand? In what ways can it dovetail with the ASEAN Outlook on the Indo-Pacific?

WINSTON PETERS: New Zealand is a strong supporter of the ASEAN Outlook on the Indo-Pacific. Where the Outlook has real value is that it sets out the key principles ASEAN wants to see applied across the region. This dovetails with New Zealand’s own Indo-Pacific policy priorities and principles.

Like ASEAN, we want to see an Indo-Pacific that is open and inclusive; committed to transparency; respects sovereignty; adheres to international law; upholds the freedoms of overflight and navigation; where markets are open; and is grounded in ASEAN centrality. Given this strong alignment of views, the work we are doing to refresh our cooperation with ASEAN this year will provide an opportunity to consider how future activities can also support the implementation of the ASEAN Outlook on the Indo-Pacific.

AF: Speaking of the regional rules-based order, the South China Sea (SCS) would be a key litmus test. Four years ago to this day, the arbitral tribunal released its historic ruling on the SCS. To China, it remains “just a piece of paper”. How will New Zealand navigate its relations with China while contributing to the rule of law in the SCS?

WINSTON PETERS: Maintaining the international rule of law in the maritime domain is of vital importance to New Zealand. Our economy relies heavily on the oceans, with 85 percent of our total goods trade relying on international shipping, much of which goes through Asia. Maritime peace and stability also plays a critical role in New Zealand’s security. We are therefore a strong supporter of the United Nations Convention on the Law of the Sea (UNCLOS) as the legal framework for all activities in the oceans.

Maintaining peace and stability in the South China Sea is vital to the ongoing prosperity of the wider region. New Zealand has consistently called for peaceful resolution of the disputes in accordance with international law, particularly UNCLOS, through diplomacy and dialogue. Like ASEAN, China is an important partner for New Zealand. As with any relationship, we think it is important to be able to discuss issues where we don’t see eye-to-eye in a professional manner.

AF: COVID-19 has shaken the world to its core. What do you think would be the most disruptive changes that post-pandemic ASEAN and New Zealand must adapt and adjust to?

WINSTON PETERS: One of the biggest challenges we see is to global trade. The World Trade Organization (WTO) predicts that world merchandise trade will reduce by up to 32 percent in 2020. There has already been an alarming uptake in protectionist measures, with impacts on essential supply links. This is a daunting reality for open and internationally connected economies like ASEAN member states and New Zealand.

We are working with our partners to adapt to this challenge. Our Government has refreshed our trade strategy to get the export sector back up and contributing to our wider economic recovery. This includes shoring up support for the WTO and expanding our free trade agreements, including upgrading existing agreements like the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and pushing ahead with the conclusion of the Regional Comprehensive Economic Partnership (RCEP).

New Zealand is also working to re-energise our key trading relationships. ASEAN, as our third largest market for merchandise exports, is a cornerstone of this approach. We both share a strong commitment to the rules-based trading system and a recognition that we all benefit from a prosperous region, where businesses can operate freely and easily. Although there are challenges ahead, we remain optimistic that we can navigate these turbulent times together.

AF: US-China strategic rivalry has undermined international efforts to fight the COVID-19 pandemic through multilateral institutions. How do you think small and middle powers like New Zealand and ASEAN can step up their agency and diplomacy to protect their interests?

WINSTON PETERS: COVID-19 has certainly sharpened tensions in the Indo-Pacific and tested our multilateral institutions. Against this backdrop, it is vital that small and middle powers like ASEAN and New Zealand work together to shore up regional institutions that support the rules and norms we value in the Indo-Pacific region. One of the reasons for New Zealand’s long-standing support for ASEAN centrality is our belief that ASEAN-centric forums play an important role in building confidence and trust, promoting understanding, and fostering practical cooperation.

These forums are ideal vehicles to promote the kind of initiatives that can help reinvigorate the multilateral system. Middle and small powers like ASEAN member states and New Zealand should therefore work together to identify areas of common interest, and pioneer initiatives that respond to some of the challenges facing the region today, making it easy for other countries to come on board at a later date when they feel comfortable to do so. If done successfully, this can take some of the sting out of strategic rivalry and foster constructive dialogue.

AF: What is one milestone you hope the ASEAN-New Zealand strategic partnership will achieve by its 50th anniversary?

WINSTON PETERS: Our 50th anniversary will be a significant milestone to reflect on New Zealand and ASEAN’s legacy of partnership. The challenges we will all face following the COVID-19 pandemic means it is vital that we stay focused on making meaningful progress together. New Zealand has many ambitions for its relationship with ASEAN across the next five years which will contribute to a vision for a more connected and resilient region.

As an example, we would like to see our trade relationship fully flourish and realise even greater potential. Important steps to achieve this include: upgrading the AANZFTA, signing and fully implementing the RCEP, and enhancing our connectivity through concluding the ASEAN New Zealand Regional Air Services Agreement. These steps will contribute to greater prosperity for our countries and our peoples, and in turn underscore our region’s safety and stability. 🇳🇿



Spotlight: The SCS Arbitration Award: Four Years On

Conflicting Maritime Visions of the South China Sea

Clive Schofield argues that China's rejection of the arbitration ruling will ensure ongoing disputes and incidents at sea, thus presenting an enduring challenge to the rules-based order in the South China Sea.

The Arbitral Tribunal in the South China Sea (SCS) case between the Philippines and China delivered a highly detailed ruling which, although binding only on China and the Philippines in its specifics, has broader implications for the rules-based maritime order both regionally and globally. This stems from the fact that the award is founded on and robustly asserts the primacy of the United Nations Convention on the Law of the Sea (UNCLOS) as the overarching legal framework governing claims to maritime jurisdiction. UNCLOS is generally accepted and has gained widespread international recognition with 167 states (plus the European Union) being parties to it, including all of the SCS coastal states, with the exception of Taiwan.

International Legal Implications of the Award

The award did not touch on the sovereignty over islands and island groups in the SCS. That is, clockwise from the north, the Paracel Islands in the north-west, Pratas Island in the north, Scarborough Reef in the north-east and the Spratly Islands in the southern part of the South China Sea. This is because the basis of the case was the dispute resolution provisions of UNCLOS and thus, by its very nature, only concerned maritime issues rather than territorial sovereignty.

However, in international legal terms at least, the award substantially undermined China's maritime claims in the SCS. Notwithstanding China's rejection of the case, in the absence of alternative and contrary interpretation of the legal issues at stake, the award remains their authoritative, and highly detailed, international legal interpretation.

Critically, the legal basis for China's claim to historic rights within the Nine-Dash Line (NDL) was dismissed where they conflict with the maritime zones set out under UNCLOS. The primary reasoning for this finding was that UNCLOS was drafted to be comprehensive with respect to rights within the system of maritime zones established under the Convention. This means that UNCLOS supersedes earlier rights and agreements to the extent that they are incompatible with those under the Convention. The Tribunal therefore sought to preserve the integrity of the fundamental international legal framework for the rules-based maritime order globally, i.e. the balance of rights and obligations set out under UNCLOS.



Further, the Tribunal found that none of the disputed features subject to the case, i.e. the Spratly Islands and the Scarborough Reef, is capable of generating exclusive economic zone (EEZ) or continental shelf. Here, the Tribunal provided the first detailed interpretation by an international judicial body of the Regime of Islands, particularly the issue of how to distinguish between above high-water insular features which are able to generate extended maritime claims, and those that should be classified as “rocks” which, in accordance with Article 121(3) of UNCLOS, “cannot sustain human habitation or an economic life of their own” and therefore “shall have no exclusive economic zone or continental shelf”.

The Tribunal established that the term “rock” need not be interpreted in a strict geological sense. Further, it ruled that assessment should be on the basis of the feature's “natural capacity” to sustain human habitation or an economic life of its own, “without external additions or modifications intended to increase its capacity”. In so doing, the Tribunal confirmed that large-scale reclamation and island building efforts such as those undertaken by China, and to a lesser extent by other states in the SCS in recent years, cannot transform a feature that was a rock within the meaning of Article 121(3) of UNCLOS in its natural condition into a fully entitled island.

More controversially, the Tribunal ruled that only features with a capacity to sustain either “a stable community of people” or economic activity that is “oriented around the feature itself, and not focused solely on the waters or seabed of the surrounding territorial sea”, and not dependent on outside resources or that is purely extractive in nature, are capable of generating extended maritime claims. This sets a high threshold for the fully entitled island status and represents an important development in the international law of the sea.

Conflicting Maritime Visions

In combination, these findings, if implemented, have the potential to dramatically reduce the extent of claims to maritime jurisdiction in the SCS and thus the extent of areas subject to overlapping maritime claims from the current 80% of the SCS with the NDL in place (Figure 1) to 12-nautical-mile breadth pockets of contested territorial sea surrounding islands over which the sovereignty is disputed, as well as any disputes between adjacent neighbouring States (Figure 2). What follows from this is that the Philippines and, by extension, Malaysia, Brunei Darussalam, Indonesia and Vietnam, are free to claim rights over the sea to 200 nautical miles from their coasts as part of their EEZ. A further consequence of the Tribunal’s ruling is that it confirms the existence of a pocket of high seas in the central SCS seawards of EEZ limits measured from mainland and main island coastlines. Such a high seas pocket would not exist in the SCS if the disputed islands were able to generate 200-nautical-mile-breadth EEZs.

Additionally, in keeping with the award, the international maritime boundary issues in the SCS are reduced to potential territorial sea boundaries between certain disputed islands, depending on which countries are ultimately determined to have sovereignty over them, and a series of lateral maritime boundaries that exist between the coastal states bordering the SCS. These include, clockwise from the northwest, (i) China and Vietnam (already partly determined through an agreement on the Gulf of Tonkin/Beibu Gulf); (ii) China (and Taiwan) and the Philippines; (iii) the Philippines and Malaysia (made unlikely as a consequence of the Philippines’ territorial claim to Sabah); (iv) Malaysia and Brunei Darussalam (partly delimited in 1958 and subject to an exchange of letters in 2009); (v) Malaysia and Indonesia (seabed but not water column boundaries agreed); and (vi) Indonesia and Vietnam (continental shelf boundary agreed but not water column jurisdiction). Additionally, in the eastern part of the Singapore Straits, in the far south-west of the SCS, Indonesia, Malaysia and Singapore will need to delimit maritime boundaries in the vicinity of Pedra Branca, subsequent to the International Court of Justice’s clarification of sovereignty over insular features in 2008.

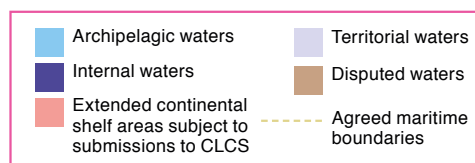
Negotiations on the delimitation of these generally bilateral maritime boundaries between adjacent SCS neighbours will inevitably lead to further disputes with China as such lateral boundaries will necessarily intrude into the part of the SCS within the NDL. The significant challenge in this context is, of course, that China has



Figure 1: Disputed waters in the SCS within China’s Nine-Dash Line



Figure 2: Disputed waters in the SCS after the Arbitration Award



These maps are adapted from Clive Schofield (2017), “Contested ocean spaces: A case study of the South China Sea”, *Geography Review*, Vol. 31, No. 2, pp. 22–26.

“Four years on from the SCS arbitration award, this ominous reality of fundamentally opposed, overlapping and contested spatial visions of maritime rights in the SCS sets the scene for ongoing maritime incidents and disputes.”

consistently and robustly rejected the ruling, and there are no mechanisms by which it can be enforced. Consequently, although there appeared to be some desire on the part of China to de-escalate regional tensions in the immediate aftermath of the Tribunal handing down its award, there is every indication that China remains committed to its claims not only to sovereignty over all of the disputed SCS islands but to maritime areas within the NDL as well.

This is illustrated by recent disputes between China and other SCS coastal states, especially over marine resource issues. In general, as other SCS littoral states have sought to access and develop maritime spaces proximate to their coasts, China has sought to intervene, disrupt and protest those activities. Marine resource-related disputes of this nature have included fisheries-related confrontations between China and Indonesia off the Natuna Islands, as well as seabed hydrocarbons incidents in areas of the SCS off the coasts of Brunei Darussalam, Malaysia and Vietnam.

Additionally, in their counter-protests in response to China’s December 2019 note verbale to the United Nations Secretary-General (UNSG) regarding seabed rights in the central parts of the SCS, Indonesia, Malaysia and Vietnam emphasised that maritime claims in the SCS must be made on the basis of UNCLOS. It is especially notable that Indonesia and Malaysia directly referred to the Arbitral Tribunal’s award in their diplomatic notes, while the language in Vietnam’s diplomatic note is entirely consistent with its findings. These diplomatic communications were delivered to the UNSG in March-June 2020 with a view to their distribution among all UN members. Therefore, they provide a strong confirmation that these states both reaffirm their reliance on UNCLOS to govern maritime entitlements and consider the Arbitral Tribunal’s award to be authoritative concerning maritime claims in the SCS.

China has also taken fresh steps designed to underpin its claims in the SCS. For example, in April 2020 China unilaterally named 80 geographical features, including 55 submerged ones in the SCS, many of which are located close to the coasts of other SCS states. Additionally, the city of Sansha, located on China’s Hainan Island, has established two new districts to “administer waters in the South China Sea” including the Xisha and Zhongsha Islands. While the Xisha Islands correspond in English to the Paracel Islands, the Zhongsha “Islands” comprise the entirety and permanently at least nine metres below water Macclesfield Bank and the 5-7 “miniscule” coral protrusions that are the only above high-tide features present on Scarborough Reef.

The divergent perceptions or visions of maritime entitlements in the SCS were thrown into stark relief by Indonesia’s recent rejection of China’s offer of talks on conflicting maritime claims and boundary delimitation in May 2020. From Jakarta’s perspective, no such overlapping claims exist. In a letter addressed to the UNSG, Indonesia asserted that whilst its claims are based on UNCLOS, China’s NDL map implying a claim to historic rights was “tantamount to upset UNCLOS 1982”, citing the Tribunal’s findings on both the NDL and the regime of islands.

A Recipe for Ongoing Conflicts

Four years on from the SCS arbitration award, this ominous reality of fundamentally opposed, overlapping and contested spatial visions of maritime rights in the SCS sets the scene for ongoing maritime incidents and disputes. China continues to assert what it views as its historic rights in the SCS while other coastal states attempt to use the resources, such as oil and fish, that lie within what they firmly regard as their waters. While fears that China might withdraw from UNCLOS have subsided, its ongoing and seemingly unshakable rejection of the award, and thus rejection of the maritime jurisdictional norms that underpin the existing maritime rules-based order, threatens not only to undermine that order but to compromise the protection of the region’s precious marine biodiversity and management of its abundant fisheries resources. ❧

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The Impact of the SCS Arbitration Award: A Chinese Perspective

Nong Hong debates key legal issues arising from the Arbitral Tribunal's ruling on the South China Sea.

It has been four years since the South China Sea Arbitral Tribunal rendered its award in July 2016. Though the arbitration case has not led to the settlement of the maritime disputes in the South China Sea (SCS), it does motivate China and ASEAN to speed up the negotiations on a Code of Conduct (COC). The ruling also created an opportunity for the Philippines and China to restart bilateral talks on the disputes. The temperature in the SCS has cooled down after July 2016 thanks to the efforts made by the regional states.

There has been substantial literature on the legal implications of the ruling from the Chinese perspective, ranging from the debate on the jurisdictions and admissibility, interpretation and applicability of Article 298 of United Nations Convention on the Law of the Sea (UNCLOS), the impact of China's non-presence, to island regime and the legality of the U-shaped line.

One important legal and policy implication is China's attitude towards dispute settlement mechanisms, especially those concerning sovereignty and boundary delimitation. In light of the ruling, will China become more open to third-party resolution in settling disputes with neighbouring countries; or will China persist with its traditional approach to dispute resolution through bilateral negotiations and consultations? The arbitration case is a test of the efficacy of the compulsory dispute resolution mechanism under UNCLOS. Despite the value

ascribed to this mechanism, it may not be the only, or the best, option to address the SCS disputes. State practices in maritime dispute management in the region suggest that there is no unique or single answer on the best approach to dispute resolution.

The ruling also raises the question on preference between sources of international law. The scope and contemporary relevance of historic claims were significantly restricted by the Tribunal which found that UNCLOS supersedes any previous historic titles or rights apart from those explicitly recognised in Articles 10 and 15 of UNCLOS. Historic rights, relating to a particularised regime, reflects a continuous, long-established and undisturbed situation. They should be assessed on a case-by-case basis according to the historical particularities and realities of the claim. What matters most for China and other claimants in the SCS is how to balance between new maritime regimes, such as the exclusive economic zones (EEZ) stimulated by the UNCLOS as a treaty law, and historic concepts, such as historic waters, historic titles, or historic rights recognised as customary international law.

Another legal question concerns the application of straight baselines to continental states' outlying archipelagos. It remains debatable whether such application is an established or an emerging custom given varied state practices. Some continental states have claimed rights over the sea areas around such archipelagos in their entirety on the basis of drawing baselines – especially straight baselines – around the entire outlying archipelago. The surrounding states of these archipelagos accept or acquiesce to the claim that such archipelagos have exclusive rights to the sea area. Maritime countries are normally not opposed to outlying archipelago claims of exclusive rights to the entire sea area. For instance, the United Kingdom expressly accepts Norway's claim to exclusive rights over the continental shelf and EEZ of the Svalbard Islands. Although the US expressed its concerns in 1972 over the straight baselines drawn around the Svalbard Islands by Norway, it did not object to the maritime demarcation between Norway and its neighboring countries, which was based on granting full rights over the seas surrounding the Svalbards.

China has consistently endorsed straight baselines throughout its preparation for and in her participation in the United Nations Conference on the Law of the Sea. In September 1958, China issued a declaration announcing the extension of its territorial sea to 12 nautical miles and the adoption of the straight baseline method for delimiting



PLA sailors carry out the launching training of guided missiles during real combat training in the South China Sea

the territorial sea boundary. The straight baseline method in the declaration was based upon the Anglo-Norwegian Fisheries case (1951), the Draft Articles on the Law of the Sea, the Geneva Convention on the Territorial Sea and the Contiguous Zone, and the practice of various states. In July 1974, China submitted a working paper to Sub-committee II of the Seabed Committee that defended how the archipelago principle applies to archipelagos of mainland states as well. This principle was tacitly accepted for the Informal Single Negotiating Text (ISNT) produced at the end of the third session but was later omitted in the Revised Single Negotiating Text (RSNT) and the Informal Composite Negotiating Text (ICNT). However, the bigger challenge for China is how to demonstrate that other claimants in the SCS are not opposed to outlying archipelago claims of exclusive rights to the sea area as a whole.

The arbitration ruling also breaks the balance between the two famous doctrines in the marine system: *Mare clausum* (“closed sea”) and *mare liberium* (“free sea”). These two doctrines generated two major principles of the law of the sea – the principle of domination (“land dominates the sea”) and the principle of freedom of the high seas. UNCLOS is a package deal after decades of hard negotiation that maintained a delicate balance of different interest groups. As the combination and compromise of the two above principles, UNCLOS not only absorbed the coastal states’ diversified claims on maritime rights, but also maintained the principle of freedom on the high seas, limiting the rights of coastal states in the exclusive economic zone (EEZ) to economic activities. The existing practice of litigation or arbitration shows that the manner and approach concerning the interpretation and application of some provisions of UNCLOS lacks prudence and needs to be carefully reviewed. One example is the interpretation and applicability of Articles 121 and 298 in the SCS arbitration case.

The SCS arbitration case brought to the forefront other competing interpretations, including the applicability of the tribunal’s award to the outstanding SCS maritime entitlement disputes, and the enforcement of the award’s provisions. More broadly, the arbitration case shone the spotlight on the sensitive issue of “judicial law making”. As a general practice, when adjudicating a dispute, international judicial institutions must identify, elaborate, and apply relevant international laws and rules to eliminate the source of the dispute. Judicial interpretations should hew to the letter and spirit of the relevant laws and rules and, ideally in contested interpretive areas, pay due regard to prevailing state practices. Disputing parties resort to international judicial institutions on the basis of their mutual trust in international law and their expectation of fair redressal.

Of late, however, the principle of “judicial law making” in the international maritime jurisprudential space has been damaged by the SCS Arbitral Tribunal to fashion fresh legal rules that depart from the intent of the legal texts as well as prevailing state practices. Additionally, in the process of doing so, this trend has disturbed the regularity



The PLA conducts main-gun firing at sea during real combat training in the South China Sea in May 2020

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and legal stability that state parties have come to expect when they submit to the dispute settlement chapter under UNCLOS. Legal scholar Anthony Carty has criticised the Arbitration Tribunal for overstepping in making new legal policy governing disputed islands. Some analysts also opined that the role of the judiciary in any legal order has to be limited to the interpretation of norms about whose meaning there is a broad social consensus.

UNCLOS was not intended to be comprehensive to the extent that there would be no need to create further law. Although UNCLOS made use of vagueness, ambiguity, and silence at certain points and on certain controversial matters, it could be regarded as legally effective to the extent that it clearly provides for a system within which to address substantive issues as they arise. The goal of UNCLOS is to provide for a system of governance rather than to deal with all substantive matters. In almost 70 of its provisions, UNCLOS refers to the possibility that the subject in question may be governed by another international instrument, bilateral or multilateral, anterior or posterior.

Rather than the UNCLOS regime itself, coastal states assume a large share of the responsibility for responding to the most pressing problems of ocean governance confronting us at this time. Because the most serious problems involve areas under the jurisdiction of coastal states and the UNCLOS regime grants far-reaching authority to these states to handle matters arising within their EEZs, there is no escaping the conclusion that the burden of confronting many problems of ocean governance rests squarely with the relevant coastal states. After all, the UNCLOS regime encompasses legal arrangements that feature the devolution of authority from the centre to the individual coastal states with regard to events occurring in their EEZs. It is the states’ responsibility to follow up with the implementation and improvement of UNCLOS in its various forms, such as national marine legislation, ocean governance system, and state practice in ocean dispute settlement. ❌

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The SCS Arbitration Award – Four Years Later: A US Perspective

Jonathan G. Odom examines how the arbitration ruling features in the Trump Administration's policy statements and operational actions.

Because the Arbitral Tribunal's ruling in the South China Sea (SCS) arbitration predated the transition between US presidential administrations by six months, the official US "perspective" of the ruling has been viewed twice, by the outgoing Obama Administration and subsequently by the Trump Administration. President Trump has governed only in a period when the ruling already existed, so it is difficult to assess precisely how much the ruling "influenced" his Administration's policies. To glean the current US "perspective" on the ruling, one should consider a number of the Trump Administration's lenses, including its SCS policy, its public words about the ruling, and its operational actions to effectuate US policy and the ruling.

Official statements by the Trump Administration about the SCS situation are consistent with long-standing US policy. Basic tenets of the US' SCS policy espoused during the Bush, Clinton, and Obama Administrations include the following: preserving maritime freedom, taking no

side on competing territorial claims, and promoting peaceful dispute resolution. Likewise, President Trump has issued joint statements in 2017 with several East Asian countries, including Malaysia, the Philippines, Vietnam, Japan and Singapore, reiterating these same fundamental elements of US policy on the SCS.

President Trump has apparently not commented about the ruling, but senior Trump Administration officials and high-level US documents have repeatedly invoked the ruling and its significance, for example:

- Both of Trump's Secretaries of State have issued joint statements with US allies in 2017 and 2019, which "called on China and the Philippines to abide by the Arbitral Tribunal's 2016 Award in the Philippines-China arbitration, as it is final and legally binding on both parties" as reflected in the Joint Statement of the 2017 Australia-Japan-United States Trilateral Strategic Dialogue Ministerial.



Warships from the US, Indian, Japanese, and Philippine navies participating in their first joint sail in the South China Sea in May 2019

Japan Maritime Self-Defense Force

- Former Secretary of Defense James Mattis during the first two years of Trump's presidency commented favourably about the ruling in his 2017 and 2018 speeches at the Shangri-La Dialogue, with a clear message to this international audience, "[W]e have been on the record about international tribunals that say there is no such thing as a nine-dash line, or is no legal basis for this – we stand by international law. We stand by international tribunals."

- The current Commander of US Indo-Pacific Command testified in 2019 before a committee of the US Senate: "Beijing maintains maritime claims in the South China Sea that are contrary to international law and pose a substantial long-term threat to the rules-based international order. Beijing ignored the 2016 ruling of an Arbitral Tribunal established under Annex VII of the Law of the Sea Convention, which concluded that China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the 'nine-dash line' are contrary to UNCLOS and without legal effect."

- The US Department of Defense's 2019 report to Congress about China's military power described the continuing significance of the ruling: "In July 2016, a tribunal established pursuant to the Law of the Sea Convention ruled that China's claims to 'historic rights' over the South China Sea encompassed by the 'nine-dash line' could not exceed its maritime rights under the Law of the Sea Convention. China did not participate in the arbitration, and Chinese officials publicly voiced opposition to the ruling. By the terms of the Convention, the ruling is binding on China."

- Most recently, the US Representative to the United Nations invoked the ruling in a June 2020 letter to the UN Secretary-General. The US letter objects to China's unlawful claim to "historic rights", any claim by China to straight baselines around SCS island groups and resulting internal waters, and any claimed maritime entitlements by China derived from submerged features in the SCS. After identifying these specific objections, the letter states, "These positions are consistent with the decision of the Tribunal in the South China Sea Arbitration." It also enclosed a copy of a note verbale, which the US had communicated to China in December 2016, protesting China's statements about the ruling. In the letter's conclusion, the US "urges" China "to comply with" the ruling. Immediately after the US Representative issued this letter, US Secretary of State Mike Pompeo tweeted, "Today, the US protests the PRC's unlawful South China Sea maritime claims at the @UN. We reject these claims as unlawful and dangerous. Member States must unite to uphold international law and freedom of the seas."

The US has also enhanced its military presence and activities in the SCS during the Trump Administration. Specifically, the US has streamlined its approval process for freedom of navigation operations (FONOPs) in the SCS, as stated by the Chairman of the Joint Chiefs of Staff General Dunford in his testimony before the Senate Armed Services Committee on 26 September 2017. The US



USS Gabrielle Giffords (LCS 10) conducts operations near the Panamanian flagged drill ship, West Capella in May 2020

conducts FONOPs in the South China Sea more frequently, with nine FONOPs last year, according to the US Pacific Fleet record. Furthermore, the US now cooperates in "joint sails" in the SCS with allies and partners, including Australia, France, India, Japan, the Philippines, and the United Kingdom. These include, among others, the first joint sail by US, Indian, Japanese, and Philippine navies through the SCS in May 2019, and the recent passage exercises between US and Australian navies in the SCS in April 2020.

Most notably, each year after the ruling, the US has conducted FONOPs to challenge a new category of excessive maritime claims by China: "actions/statements that indicate a claim to a [territorial sea] around features not so entitled", as detailed in the US Department of Defense's Annual Freedom of Navigation (FON) Reports. These FONOPs effectuate two binding decisions by the Arbitral Tribunal in its ruling: (1) low-tide elevations in the South China Sea, such as Mischief Reef occupied by China, "do not generate entitlements to a territorial sea" of their own; and (2) "[a] low-tide elevation will remain a low-tide elevation under [UNCLOS], regardless of the scale of the island or installation built atop it."

Taken together, these senior US officials' statements, high-level US documents, and US operational actions demonstrate that the US repeatedly invokes elements of the Tribunal's ruling to help manage and resolve aspects of the SCS situation.✂

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Indonesia and the SCS Arbitration Award

Leonardo Bernard examines the significance of the award to Indonesia's position against China on the North Natuna Sea, and its maritime boundary negotiations with other neighbours.



Fishermen unloading fish caught in the waters around the Natuna islands

Dzikra Amanati Imron@Shutterstock

On 26 May 2020, Indonesia invoked the 2016 arbitration award on the South China Sea (SCS) between the Philippines and China in a diplomatic note to the Secretary-General of the United Nations (UNSG). The note was in response to China's objection to submissions from Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf on the continental shelf beyond 200 nautical miles in the SCS. In its objection, China claimed to have rights and jurisdiction in the SCS waters within the Nine-Dash Line (NDL). Indonesia has repeatedly argued that China's claim based on the NDL has no legal basis under international law. However, this is the first time that Indonesia formally referred to the award to refute China's claim.

The SCS arbitration case was initiated by the Philippines under the rules of Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of China's activities such as fishing and islands building in the SCS. The Arbitral Tribunal issued its award on 12 July 2016 despite China's non-participation in the proceeding and denial of its legality. The award deals with various important issues on aspects of law of the sea, including among others, the jurisdiction of the Arbitral Tribunal, the legal status of maritime features, claims of historic rights, and the duty to preserve the marine environment. The Arbitral Tribunal's award is only binding to the parties in dispute. However, since it involves interpretation of relevant provisions under UNCLOS, the Arbitral Tribunal's award could have bearing on unresolved maritime issues in other parts of the world involving maritime features, zones and boundaries.

More importantly, it may influence the position of the neighbouring states in the SCS who are affected by China's claim based on the NDL, including Indonesia.

Indonesia is not a party to the arbitration proceeding, nor does it have any sovereignty disputes in the SCS. Jakarta has been clinging to its time-honoured stance that it does not have any dispute with China and it is an 'honest broker' in the SCS disputes. However, Indonesia has been battling against what it sees as China's incursion into its exclusive economic zone (EEZ) in the North Natuna Sea, which overlaps with China's NDL. Since 2015, Indonesia has intensified its security patrol in the waters around the Natuna islands, as confrontations involving Chinese vessels become more frequent.

Over the past year, Indonesia's diplomatic reaction against China's 'continuous incursions' in the North Natuna Sea has become more robust. In January 2020, Indonesia's Ministry of Foreign Affairs issued a statement rebuking China's actions in the North Natuna Sea. In the statement, Indonesia referred to the SCS arbitration award to highlight the illegality of China's NDL. This position was reiterated in Indonesia's recent diplomatic note to the UNSG, which reads:

“Indonesia reiterates that the Nine-Dash Line map implying historic rights claim clearly lacks international legal basis and is tantamount to upset UNCLOS 1982. This view has also been confirmed by the Award of 12 July 2016 by the Tribunal that any historic rights that the People's Republic of China may have had to the living and non-living resources were superseded by the limits of the maritime zones provided for by UNCLOS 1982.”

The arbitration award made it clear that China's claim in the SCS based on the NDL is not supported by international law. More specifically, the Arbitral Tribunal ruled that China's claim to historic rights over the living and non-living resources in the waters within the NDL is incompatible with UNCLOS to the extent that it exceeds the limits of the maritime zones that China can claim



Indonesian President Joko Widodo inspects troops on an Indonesian Navy vessel in January 2020

from its mainland or from islands over which it claims sovereignty. This ruling confirms Indonesia's position that the NDL cannot be used as a basis for China's claim of rights over the resources in the SCS, including in the North Natuna Sea.

Another important aspect of the award is the Arbitral Tribunal's interpretation of Article 121(3) of UNCLOS on rocks and islands. The award draws the distinction between 'islands' capable of generating extended maritime claims (that is, the EEZ and continental shelf entitlements) and 'rocks' which can only generate a 12-nautical-mile territorial sea. The decision sets a high bar for a feature to constitute a 'fully-fledged' island capable of generating the full suite of maritime zones. The Arbitral Tribunal noted that "[t]he term 'human habitation' should be understood to involve the inhabitation of the feature by a stable community of people for whom the feature constitutes a home and on which they can remain." It also decided that "the term 'economic life of their own' is linked to the requirement of human habitation, and the two will, in most instances, go hand in hand."

In particular, the Tribunal determined that there is no island in the Spratly Islands group (the sovereignty of which is disputed between China, Vietnam and the Philippines) capable of generating EEZ and continental shelf. This means that even if China has sovereignty over the Spratly Islands group, none of these features is capable of generating an EEZ or continental shelf. As the Arbitral Tribunal already found that China's use of the NDL was inconsistent with international law, this left China with no basis to claim the marine resources in a large swathe of the South China Sea, including the North Natuna Sea.

This interpretation of Article 121 of UNCLOS is important to Indonesia as it has outstanding maritime boundaries to negotiate with its neighbours, including with Palau. Palau uses Helen Reef, a chain of reefs in the Pacific Ocean, as a basis for its EEZ claim. In contrast, Indonesia argues that Helen Reef at best is a 'rock' under Article 121(3) of UNCLOS and can therefore generate only a 12-nautical-mile territorial sea.

It is still unclear if the SCS arbitration award will have an enduring influence on how states negotiate maritime boundaries with each other. However, the fact that Indonesia is using the Arbitral Tribunal's interpretation of Article 121 of UNCLOS in its ongoing maritime boundary negotiations with its neighbors is important. Whether or not states will follow the jurisprudence of the award, the Arbitral Tribunal has made a huge contribution to the discussions regarding whether a feature is a rock or an island.

Now that the SCS arbitration award has figured into Indonesia's official position against China's claim over the resources in the waters surrounding the Natuna islands, it is there to stay. The fact that Indonesia – the largest and most influential member in ASEAN – is the first ASEAN member country to officially invoke the award would likely have impact on how other Southeast Asian claimant states would navigate their way forward in dealing with China on the SCS disputes. ❏

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Waters That Run Deep: The SCS Arbitration in 2020

Jay L. Batongbacal calls for a unified ASEAN position that upholds UNCLOS as interpreted and applied in the arbitration award.

After a radical shift in foreign policy from 2016 onwards, the South China Sea (SCS) arbitration case seemed to have been cast adrift as the Philippines shunned discussion of the Arbitral Tribunal's award at any ASEAN diplomatic forum. Speaking about the agenda of the ASEAN Summit under the Philippines' chairmanship in 2017, President Rodrigo Duterte declared that the Philippine victory did not concern other ASEAN members. He has been proven completely wrong.

Duterte's strategy was simple: Not to assert the award in exchange for infrastructure and development assistance, as China promised billions in infrastructure and development projects. But Duterte went beyond mere silence, he also gave other breathtaking concessions such as a blanket verbal permission to conduct marine scientific research, non-enforcement of jurisdiction against foreign fishing in the Philippines' exclusive economic zone (EEZ) though prohibited by law, turning a blind eye to destructive clam-digging activities on fragile coral reefs, maintenance of the moratorium on offshore petroleum exploration, silence on China's continued development of its artificial islands, scrapping of planned joint patrols and distancing from US freedom of navigation operations (FONOPs), and negotiation of a joint exploration and development agreement for petroleum.

With two years left in his term, Duterte has yet to realise a substantial return. Japan and other partners still hold the lead in infrastructure projects actually commenced, and

even members of Duterte's economic team have expressed misgivings about the very slow pace of fulfillment of China's promises. Worse, Manila's openness to tax-free Chinese offshore gambling operations, which pay directly into the Presidential coffers, have opened the floodgates to associated criminal activities like prostitution, kidnap for ransom, undocumented foreign workers, and money-laundering. China's continued decimation of the marine environment and enhancement of its military facilities add further to growing public dissatisfaction with Duterte's China policy.

In the meantime, the security sector has grown increasingly wary and uncomfortable. From late 2017 and throughout 2018 to 2019, increasing numbers of Chinese maritime militia vessels began constantly guarding the Philippines' largest outpost on Pag-asa Island, and its smallest (and most vulnerable) ones in Kota and Panata islands, Ayungin (Second Thomas) Shoal, as repairs and renovations were undertaken to improve facilities. Radio warnings against breaching undefined exclusion zones became increasingly frequent as Philippine aircraft approached Pag-asa for landing, and Chinese ships kept Philippine boats from coming near empty sandbars just four nautical miles away from Pag-asa's shore. Continuing giant clam harvesting devastated the interior area of Chinese-controlled Scarborough Shoal despite a supposed agreement to keep both sides' fishermen from using it to conserve and protect the fishery resource. One year ago, a Chinese trawler struck and sunk a Philippine fishing boat leaving its 22 crewmen without assistance in the cold and dark waters of Reed Bank. This year, a Chinese warship trained its weapons on one of the Philippine Navy's newest and not-even-fully-armed corvette while it was on a routine patrol and resupply mission.

Elsewhere, no doubt encouraged by the Philippines' silence and accommodation, China became increasingly bold and coercive against the other littoral states, who decided to push back rather than follow the Philippine example. Vietnam experienced direct pressure to withdraw from its latest petroleum exploration projects, and China conducted months of seismic surveys all along Vietnam's southern EEZ. Malaysia also became the object of Chinese maritime pressure tactics as it tried to explore for oil. Indonesia faced increasing fishery incursions around the Natuna Islands.





Four years onward, Vietnam, Malaysia, Indonesia, and the Philippines have all directly or indirectly invoked aspects of the award in official statements and diplomatic communications as they tussled over resources and activities in the SCS. There is a slow but sure convergence among states to finally start making use of the award as a means of pushing back against Chinese assertions.

The Philippines has lost four valuable years and opportunities for building a unified ASEAN position on the SCS, a formidable enough task even without China's pressures. Despite the convergence in referring to the ruling in response to recent Chinese assertions, maritime ASEAN member states have other competing interests and their own conflicting claims vis-à-vis each other, which will make front-building a long and difficult task. But at least, all the smaller Southeast Asian states have the same starting point to base their interests and positions upon – international law, particularly UNCLOS – as a means of legitimately and equitably balancing each other's interests.

The need for such unification has become increasingly urgent as the world undergoes major geopolitical uncertainties and potential transformation. Decades of the post-World War II liberal democratic order provided the means and opportunities for ASEAN member states to emerge from colonial domination and come into their own as independent nation-states. The 21st century held such promise for economic and political development, but the surge of populism and the release of pressures against social and economic inequalities in recent years have threatened different outcomes. With China's insistence on expansive and pre-emptive rights, ASEAN stands on the threshold of a new era of unequal state relations where power dictates the regional and world order instead of mutually acceptable principles and the Rule of Law.

As ASEAN continues to negotiate with China on a Code of Conduct in the South China Sea (COC), ongoing frictions and confrontations in the disputed waters provide a preview of China's future behavior. China's three No's policy (no recognition, no acceptance, and no

implementation) of the SCS arbitration award is just as applicable to its views on Southeast Asian states' maritime rights and entitlements: no recognition of their EEZs, no acceptance that they have legitimate rights under UNCLOS, and no implementation of mutually-accepted and equitable legal principles.

The Philippines' recent experiment with China on the SCS, seeking reciprocal favours for vast concessions made in advance, should be taken as a lesson in the harsh realities of devaluing Law and regressing to realpolitik in managing international relations in the modern world. In a community of diverse nation-states with greatly unequal political and economic powers and resources, equality before the Law and life under the Rule of Law remain the only feasible means for creating a just and stable international community.

It is in the interest of not only the maritime ASEAN member states, but also of the mainland members to unify their positions behind international law as expressed in UNCLOS, and interpreted and applied in the SCS arbitration award. The award is a focal point in the ongoing struggle to define the direction and structure of the regional order and the Southeast Asian states' future. For ASEAN to remain true to its vision of unity in diversity and achieve its lofty goals of peace, stability, and dynamism, it must continue to hold fast to the SCS arbitration award and insist upon it as the only true and acceptable means of allocating its maritime heart. The South China Sea should not become the exclusive property of only one entity by virtue of raw power that imposes a false past history, but be transformed into a Southeast Asian sea that hosts the ASEAN members' common heritage and supports their shared future. 🇵🇭

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Vietnam Is Revitalising the SCS Arbitration Award

Vo Ngoc Diep argues that the arbitration award has quietly firmed up Vietnam's legal position on the South China Sea disputes.



Protestors outside the Embassy of China in London following China's placement of the Haiyang Shiyou 981 oil rig in disputed waters in 2014

On 12 July 2016 – the day the Arbitral Tribunal on the South China Sea (SCS) case between the Philippines and China issued its award – the Ministry of Foreign Affairs of Vietnam welcomed the issuance and announced that it would make a statement on the merits of the award. However, Vietnam has not released the statement yet, and has not invoked the award in any official channels to counter China's claims. This article argues that Vietnam, in its own nuanced way, has been influenced and incentivised by the award to take a more forward-leaning legal stance on the SCS disputes, in line with the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

In December 2019, Malaysia made a partial submission to the Commission on the Limits of the Continental Shelf (CLCS) regarding its extended continental shelf in the northern part of the SCS. The event triggered an exchange of communications between China, the Philippines, Malaysia, Indonesia, Vietnam and the US through their notes verbales to the Secretary-General of the United Nations (UNSG). In their communications, the Philippines, Indonesia and the US openly invoked the award to challenge China's claims in the SCS while Vietnam's note verbale did not. However, the absence of such an explicit reference does not suggest that Vietnam disrespects or disregards the ruling.

In fact, Vietnam has demonstrated its intention to comply with the award with two substantial moves. First, Vietnam has clarified for the first time the legal status of all high-tide features in the SCS over which it claims ownership. As indicated in its diplomatic notes and statements in the last

four years, Vietnam considers that all high-tide features in the SCS are “rocks”, which is in line with the key findings of the award. Second, the reasonings and considerations of the Arbitral Tribunal in the award provide a solid legal basis for Vietnam to develop an official objection to China's “Four-Sha” claim.

Only “Rocks” in the Paracels and Spratlys

The Tribunal ruled that none of the high-tide features in the Spratly Islands is an “island”, and therefore cannot generate maritime entitlements to an exclusive economic zone (EEZ) or continental shelf. Since then, Vietnam has adopted a comparable position on at least three occasions.

On 12 July 2016, China issued a statement and a white paper to protest the Tribunal's award. On 19 July 2016, Vietnam sent a diplomatic note to China in response to these two documents. The diplomatic note states that “Vietnam resolutely opposes and rejects any Chinese claim over “historic rights” as well as sovereign rights or jurisdiction based on the “nine-dash line” or any other Chinese claim based on reefs/rocks in the East Sea which is incompatible with UNCLOS and other rules of international law.” The SCS is known as the East Sea in Vietnam. The word “reefs/rocks” in the diplomatic note is noteworthy since Vietnam appears to argue that all maritime features in the Paracels (or Hoang Sa in Vietnamese) and Spratlys (Truong Sa) are not “islands”. The features that are specified as “rocks” cannot generate maritime entitlements to an EEZ or continental shelf; therefore, China cannot claim its sovereign rights and jurisdiction in the SCS based on those features.

From mid-June to October last year, China Coast Guard vessels persistently harassed a drilling rig operating in a Vietnamese oil and gas block near Vanguard Bank, an underwater feature located within a 200-nautical-mile distance from Vietnam's coastline. Vanguard Bank is also 172 nautical miles from the nearest disputed high-tide feature in the Spratly Islands. Regarding these developments, China warned that "no country, organisation, company or individual can, without the permission of the Chinese government, carry out oil and gas exploration and exploitation activities in waters under Chinese jurisdiction. We urge relevant parties to earnestly respect China's sovereign and jurisdictional rights [...]" As the oil block is thousands of miles away from China's mainland, China seems to argue that the block is located within the EEZ and continental shelf measured from its occupied features in the Spratly Islands, and thus China enjoys sovereign rights and jurisdiction in the area.

Meanwhile, Vietnam asserts its sovereign rights and jurisdiction over the oil block based on its continental territory. On 12 September 2019, the Ministry of Foreign Affairs of Vietnam reaffirmed that "all oil and gas exploration and exploitation activities of Vietnam are conducted entirely in the exclusive economic zone and continental shelf measured from the continental territory of Vietnam in accordance with UNCLOS [...]" Any illegal claims which are incompatible with UNCLOS could not generate disputed or overlapping zones with other lawfully claimed maritime zones in the SCS."

Vietnam and China both claim sovereignty over the Spratly Islands and Paracel Islands. However, unlike China, Vietnam does not rely on a claim of EEZ and continental shelf generated from the Spratly Islands for its legal defense of the oil block. In other words, Vietnam does not consider those features as "islands" which can generate maritime entitlements to an EEZ and continental shelf. Vietnam's statement also illustrates a key finding of the award that China's claim to the EEZ and continental shelf from the features in the Spratly Islands is incompatible with UNCLOS; therefore, China cannot claim the oil block which is located entirely within Vietnam's continental shelf.

More recently, Vietnam directly objected to China's position in its note verbale on 30 March 2020. The note verbale states, among others, that "[T]he maritime entitlement of each high-tide feature in the Hoang Sa Islands and the Truong Sa Islands shall be determined in accordance with Article 121(3) of UNCLOS." In other words, Article 121(3) of UNCLOS provides the sole legal basis to determine the maritime entitlements of all of these features, and as such none of them is entitled to an EEZ or continental shelf. The note verbale hence constitutes the most explicit representation of Vietnam's position regarding the legal regime of high-tide features in the SCS.

Official Objection to China's "Four-Sha" Claim

China is of the view that each of the four groups of features in the SCS (Dongsha, Xisha, Zhongsha and Nansha) should be enclosed within a system of

archipelagic or straight baselines which are drawn by joining the outermost points of each group and entitled to an EEZ and continental shelf. China's notes verbales to the UNSG on 12 December 2019 and 23 March 2020 reflect this line of argument, known as the "Four-Sha" doctrine. In 1996, China also drew a system of baselines joining the outermost features of the Paracel Islands, which was protested by Vietnam.

It is noteworthy the Arbitral Tribunal had rejected maritime entitlements claimed from the Spratly Islands as a whole. The Tribunal provided detailed explanations on the application of various UNCLOS articles to conclude that UNCLOS does not allow continental states to use straight baselines to lay claims to maritime zones surrounding their offshore archipelagos.

In its note verbale on 30 March 2020, Vietnam also adopts a comparable position that "[T]he baselines of the groups of islands in the East Sea, including the Hoang Sa Islands and Truong Sa Islands, cannot be drawn by joining the outermost points of their perspective outermost features." The objection is formulated in a generalised language, indicating objection to any use of those baselines in the SCS, whether in the Paracel Islands, the Spratly Islands or any other constituent group of the "Four Sha". Arguably, the Tribunal's reasoning on this subject might have provided the incentive and legal basis for Vietnam to formulate such a position.

A New Chapter in the South China Sea Disputes?

In general, all claimant states to the SCS, except China, have adopted a positive attitude towards the Arbitral Tribunal's award. The Philippines and Indonesia have invoked the award to consolidate their respective positions in the recent note verbale debate. Vietnam has not explicitly referred to the award but has been complying with and implementing it in its own way. Vietnam's two newly developed positions as analysed above, alongside its enduring objections to China's claim based on the Nine-Dash Line (NDL), have contributed to revitalising the impact and significance of the award, and strengthening a rule-based maritime order in the region.

The award has now become a common denominator of the positions of the Philippines, Malaysia, Indonesia and Viet Nam. Regardless of their existing differences and/or overlapping claims in the SCS, they have developed a common position that high-tide features in the Spratly Islands are "rocks" and China's NDL claim has no legal basis. Since 2016, China has been, verbally and materially, protesting, ignoring, and violating the award. However, more and more states are rallying around the award to defend their maritime rights and interests, and China can no longer turn a blind eye to an emerging new chapter in the SCS disputes. ❌

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The Arbitration Award: An Historic Opportunity Lost for ASEAN

Hoang Thi Ha and Ian Storey examine the (dis)connect between the ASEAN-China Code of Conduct negotiations and the arbitration ruling.

Why did the Philippines launch a bold and unprecedented legal challenge against China's jurisdictional claims in the South China Sea (SCS) in 2013?

According to a leading member of the Philippines' legal team who spoke with the authors while the case was underway, above all Manila sought a definitive legal judgment on the rights of coastal states within their exclusive economic zones (EEZ) and the legality of China's Nine-Dash Line (NDL) as well as its so-called "historic rights" within that line.

When the Arbitral Tribunal handed down its verdict on 12 July 2016, the Filipino legal team received everything they had set out to achieve. The ruling declared that the NDL was incompatible with the United Nations Convention on the Law of the Sea (UNCLOS), that Beijing's claims to "historic rights" had been extinguished when it ratified the agreement, and that China's activities in the SCS had violated the Philippines' sovereign rights in its EEZ.

The team's euphoria was, however, all too short-lived. Not only did China reject the ruling but the newly-minted Duterte administration chose to shelve it in the hope of improving economic ties with China. ASEAN itself barely acknowledged the award, thereby missing an historic opportunity to mount a robust principled position in support of the maritime rules-based order in Southeast Asia.

To deflect international criticism away from its rejection of the award, shortly thereafter China started to take its negotiations with ASEAN on a Code of Conduct in the South China Sea (COC) more seriously than when the talks had begun in 2013. In the initial stages of the process, China had dragged its feet and rebuffed entreaties from some ASEAN members to expedite the talks. Then in November 2018, China took everyone by surprise when it reversed its longstanding position that the parties should not impose an "artificial deadline", and did just that by calling for the COC to be concluded by the end of 2021.

But had all the parties to the COC talks committed themselves to the ruling, the talks would have been streamlined and simplified. For it would, as the Philippines had hoped, restricted discussions to expected behaviours in and around the disputed features only. As the NDL is found to have no legal basis and no feature in

the Spratlys is qualified as an island that could generate maritime entitlements to an EEZ and continental shelf, the scope of the disputed features and overlapping maritime areas in the SCS would have been significantly reduced. Compliance with the award would also have strengthened the parties' commitment to UNCLOS which has been repeatedly stressed throughout the COC process. Ultimately, it would have made the COC more credible, both for the parties concerned and for the international community.

Instead, the parties now find themselves discussing the rights and wrongs of incursions into another country's EEZ and the harassment by warships and coast guard vessels of survey ships and drilling rigs in areas where the coastal states' sovereign rights are guaranteed by UNCLOS. Had the parties recognised the Tribunal's ruling, these issues would have been moot.

Calm Waters in the South China Sea?

Since the ruling, China has promoted a narrative that "all is calm" in the SCS consisting of two elements: first, the progress in ASEAN-China COC discussions means that there is no need for the US or other external countries to "meddle" or "interfere" in the SCS; second, that the main cause of tensions is America's increased military presence in the SCS and especially its freedom of navigation operations (FONOPs) in the Paracels and Spratlys.

To some extent, ASEAN was bought into the first part of this narrative. For example, at the ASEAN-China Summits in 2018 and 2019, their joint statements "warmly welcomed the continued improving cooperation between ASEAN and China, and were encouraged by the progress of the substantive negotiations for an early conclusion of an effective COC".

But the reality on the water belies this narrative. In the past 12 months alone, tensions have ratcheted up several notches. In late December 2019, Chinese fishing vessels protected by China Coast Guard vessels illegally cast their nets into Indonesia's EEZ surrounding the Natuna Islands. In June 2019 and again in April 2020, Chinese-flagged vessels rammed and sank Philippine and Vietnamese fishing boats. Between June and October 2019, a Chinese survey ship operated illegally in Vietnam's EEZ; between March and May 2020, the same survey ship undertook operations in Malaysia's EEZ while Chinese ships harassed a Malaysian-contracted drilling rig. In April

2020, China created two new administrative districts to govern the Paracels and Spratlys. And since the Tribunal made its award four years ago, China has completed the reclamation of seven artificial islands in the Spratlys, allowing Beijing to project power into the heart of maritime Southeast Asia and exert military pressure on the other claimants.

Meanwhile, ASEAN and China have claimed progress in their COC. In 2017 they issued a one-page COC Framework, followed by a 19.5-page Single Draft Negotiating Text (SDNT) in 2018, and a 20-page First Reading in 2019. Yet, all these ‘cosmetic achievements’ have done little to resolve the substantive differences between both sides. According to some officials involved in the process, the COC draft after the First Reading remains an assortment of vastly divergent, if not irreconcilable, positions between China and the Southeast Asian claimant states.

The growing chasm between the situation at sea and ASEAN-China COC talks has led the international community to express skepticism about the effectiveness of the future code. Some of ASEAN’s Dialogue Partners, including Australia, India, Japan, New Zealand and the US, have called for the COC to be “meaningful” and “compatible with international law”. ASEAN has exercised a great deal of caution and patience to keep China engaged in the COC process, so as to maintain its credibility and relevance in addressing regional security problems. However, by buying into China’s narrative that “the SCS is calm and the region is in harmony”, ASEAN is at the risk of compromising this very goal.

Connecting the Disconnected

In all Chinese messaging on the COC, the emphasis on the regionality and exclusivity of ASEAN-China arrangements to deal with the SCS disputes is unmistakable. Speaking at the 2019 Shangri-La Dialogue, Chinese Defence Minister Wei Fenghe said: “We hope that relevant parties will not underestimate the wisdom and ability of regional countries to properly handle differences and maintain peace.” This emphasis on regional solutions, through regional norms and rules that China hopes to enshrine in the COC threatens not only to exclude external powers from the SCS but also to compromise the near-universal applicability of UNCLOS.

It is therefore imperative to keep the arbitration ruling alive to guard against the COC being framed towards some form of regional exclusivism to international law. Among other things, the ruling provides the legal basis for the formulation of applicable parameters for practical maritime cooperation under the COC, including their modalities, scope and locations. Since China has proactively pushed for maritime cooperation activities as a key objective of the COC, this is to make sure that such activities are not in contravention of UNCLOS and compromise the rights and interests of third parties.

In fact, the disconnect between the ruling and the COC talks is only skin-deep. The SDNT indicates that Southeast Asian coastal states, especially Vietnam, the Philippines, Malaysia, Singapore and Indonesia, have



ASEAN-China Maritime Exercise 2018

installed UNCLOS safeguards every step of the way during the drafting process. Given the complicated and contentious issues at stake, some of them are reluctant to endorse China’s proposal to conclude the COC by 2021. In an interview last year, Singapore Prime Minister Lee Hsien Loong said: “I don’t think we can compromise on the content in order to say the deadline is here, let’s just make a deal. We have to make sure that we preserve our vital interests. And I think the vital interests will not be easy to reconcile.”

Furthermore, Indonesia, Malaysia, the Philippines and Vietnam, in their practice and statements, have directly or indirectly invoked the Arbitral Tribunal’s ruling to protest China’s claims and actions, as recently demonstrated in Malaysia’s submission to the UN Commission on the Limits of the Continental Shelf (CLCS) in December 2019, and the subsequent notes verbales by the Philippines, Vietnam and Indonesia to the UN Secretary-General. It appears that in a global forum like the UN, individual ASEAN member states have more guts to invoke the ruling in defence of their maritime rights and interests, and the sanctity of international law has a better chance to stand tall against the exigencies of ASEAN-China power asymmetry.

Since the arbitration ruling was handed down, Beijing has tried to push what it considers “just a piece of paper” into the dustbin of history. ASEAN, bound by the divergent interests among its members and pressured by China, has been unable to speak out in defence of the ruling. Even so, the Arbitral Tribunal’s findings have provided the pervasive subtext for Southeast Asian littoral states in the SCS throughout the COC negotiations. As for ASEAN as a whole, a healthy dose of realism is urgently needed to guard against drinking too much of Chinese Kool-Aid on the narrative of “COC progress” and “regional harmony”. ASEAN’s credibility is more at stake with a bad COC than with no COC. ❌

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The Show Must Go On(online): A Virtual Cultural Tour of Southeast Asia

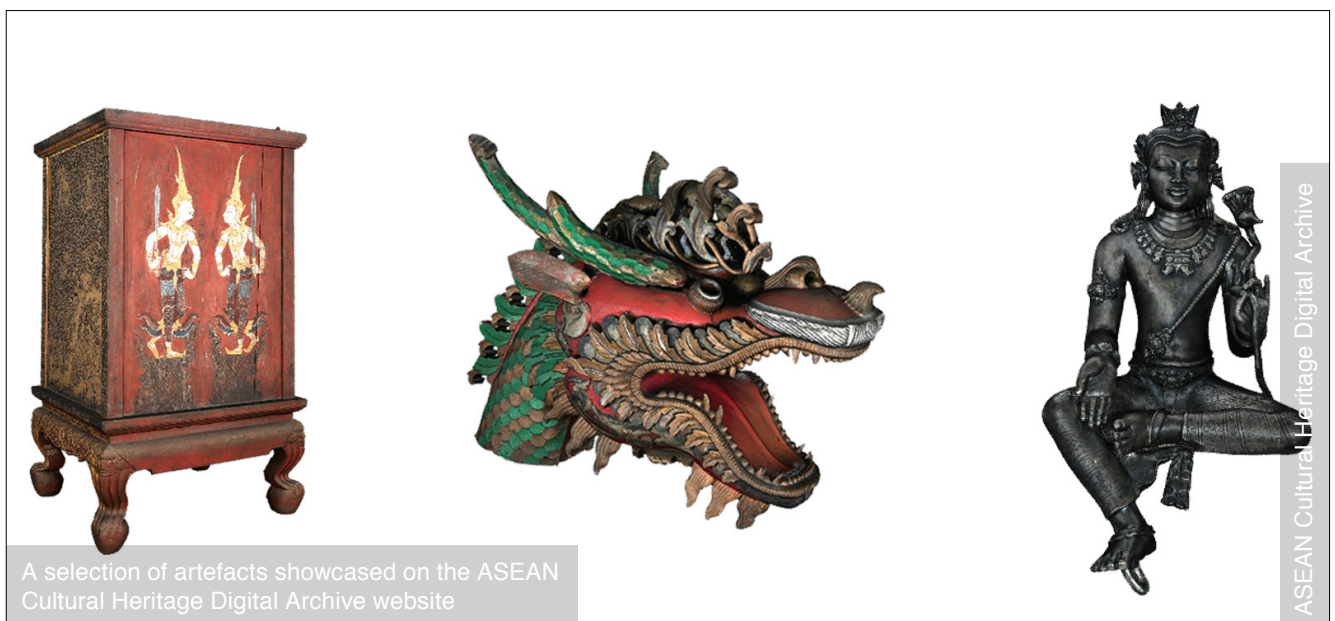
Anuthida Saelaow Qian takes a digital deep dive into some of the region's finest cultural institutions.

All around the world, daily life has been transformed by the COVID-19 pandemic. Since the emergence of the coronavirus in December last year, most governments have imposed travel restrictions and some form of stay-at-home order, bringing once bustling cities to a standstill. Streets, shopping centres, restaurants, parks and offices usually heaving with people have been plunged into silence, painting uncanny scenes of desolation and stillness. Life has shifted online, with technology seamlessly replacing face-to-face interactions for the most part and helping to break up the monotony and loneliness of self-isolation: food delivery and shopping applications, online courses, streaming services and video conferencing calls have become *du jour* for those adjusting to the “new normal”.

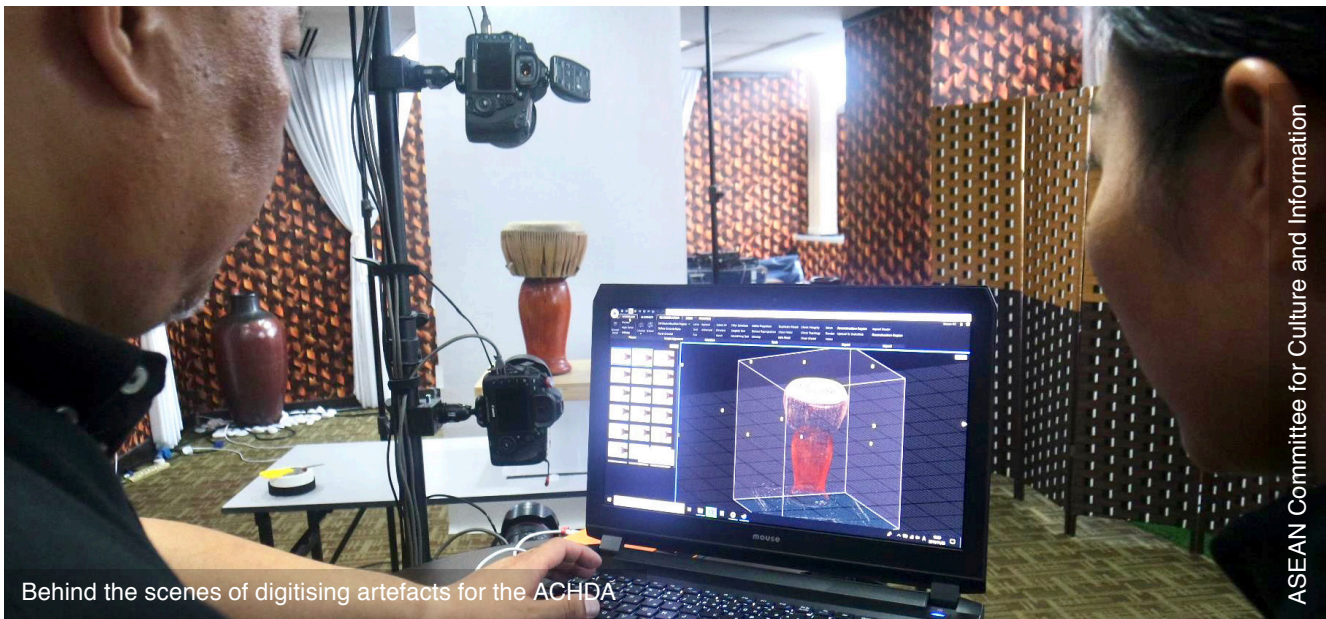
With most places of entertainment also forced to shutter, digital alternatives to cultural amenities have gained momentum over the last few months as people are no longer able to simply pop into a museum, cinema, theatre or concert hall to while away time. In the ASEAN region alone, a plethora of arts and cultural attractions are now available online and on demand, allowing patrons to experience the best of Southeast Asian culture from the comfort of one's home. While jetting off to neighbouring countries to explore their cultural offerings might not

be currently possible, a whole host of virtual experiences are available to satiate your cultural cravings from home. The launch of the ASEAN Cultural Heritage Digital Archive (ACHDA) on 27 February 2020 marks one such push towards promoting open access to regional arts and heritage.

Currently in its first phase, the ACHDA website offers a detailed look into more than 160 artefacts from six Indonesian, Malaysian and Thai cultural institutions comprising museums, libraries and galleries. Relics such as the *Yupa* inscriptions from Indonesia, traditional musical instruments from Malaysia, and manuscript cabinets and chests from Thailand are on display in the form of three-dimensional (3D) models, allowing users to zoom in on every area of interest and fully appreciate the intricacies of their handiwork. Other highlights also available for one's viewing pleasure are an entrancing recorded performance of *Mak Yong*, a traditional Malay dance drama that was inscribed on UNESCO's Representative List of the Intangible Cultural Heritage of Humanity in 2008, as well as the impressive *La Galigo* script collection of the National Library of Indonesia, a fourteenth-century epic written in the indigenous Buginese script which was included in UNESCO's Memory of the World registry in 2011.



A selection of artefacts showcased on the ASEAN Cultural Heritage Digital Archive website



With Cambodia, Laos, Myanmar and Vietnam slated to digitise museum collections in the project's next phase, and the remaining ASEAN member states to follow suit in the coming years, ACHDA serves not only to preserve and showcase Southeast Asia's storied history and profound cultures to the rest of the world, but also to bring the region's peoples together in common appreciation of their rich cultural heritage. Addressing attendees at the ACHDA's launch, Deputy Secretary-General of the ASEAN Socio-Cultural Community Kung Phoak shared his hopes that the ACHDA will inculcate "a greater regional sense of belonging" and "foster ASEAN identity" among ASEAN citizens.

For nature and history buffs, the smorgasbord of Southeast Asian heritage and historical sites on offer online provides a brief respite from COVID-19-related cabin fever. Expeditions that usually require extensive and time-consuming planning can now be completed in the span of a day, without even needing an itinerary. With just a few clicks and swipes, one can easily traverse the wonders of Southeast Asia's trove of UNESCO World Heritage Sites and other iconic landmarks.

For instance, using Google's Street View Treks, one can experience the scale and grandeur of thousands-of-years-old temples in Angkor, Cambodia. Apart from the spectacular panoramic views of Angkor, one can learn more about each temple's features and history in greater depth by tapping on various blurbs scattered throughout the virtual maps or flicking through accompanying stories and digital simulations of medieval life in Angkor. Whether it is analysing the elaborate pink sandstone carvings of Banteay Srei, wandering through the sun-dappled courtyards of Angkor Wat, or climbing over the dense thicket surrounding Beng Mealea, the sprawling complex of one of the region's most important and awe-inspiring archaeological sites can be explored down to the most minute detail.

Through the Virtual Historic Parks website created by the Fine Arts Department of Thailand, visitors can also trek through Thailand's ten historical parks and unpack their histories. From traversing the great ancient cities of Ayutthaya and Sukhothai to marvelling at the natural beauty of Phu Phra Bat and Phanom Rung, accomplishing the feat of seeing all ten parks is entirely within reach.



online platforms has served as a great equaliser, allowing everyone to discover and groove to any genre of music through live streams and recordings with just the touch of a button. Even world-class productions that might normally be physically or financially inaccessible are now only a few clicks away.

As part of the #SGCultureAnywhere campaign launched by Singapore's National Arts Council, listeners can tune into an eclectic mix of music performed by Singaporean artists, from classical favourites by the Singapore Symphony Orchestra to beautiful renditions of Malay evergreens by the Nusantara ensemble and veteran singers Ann Hussein and Sheila De Niro. The low barriers to entry on the Internet also introduce an interactive and participative element for music fans looking to dip their toes in music production while self-isolating. Whether it is joining the Singapore Virtual Choir or participating in the National University of Singapore's online course on classical music composition, there is bound to be something for everyone.

While we might have never felt so far away from the rest of the world, digital media has brought us closer to the many great galleries, museums, concert halls, and heritage sites on offer in Southeast Asia. It connects us to an abundance of experiences we might not have otherwise discovered. With so much of the art world logging on to share their craft, it also allows us to support and show appreciation for the talented artists and makers who might have lost work and income due to the coronavirus outbreak. Beyond the pandemic, the multitude of virtual arts and culture offerings will continue to position Southeast Asia as a global cultural hub, as well as provide many opportunities for people all over the world to engage with the region's rich cultural heritage. The next time you find yourself longing for a cultural fix or consumed by a desire to travel, why not curate your own art exhibition, music festival line-up, or adventure? 🌏

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Shadow puppets on display at Ban Nang Talung Suchart Subsin

Kent Wang@Flickr



Details of Dinh Tien Le's interior as seen on VR3D's website

VR3D.vn



The Singapore Symphony Orchestra might have taken an interlude from performing live concerts, but their music can still be streamed online

Choo rut Shing@Flickr

Permanent Ink, Evolving Art: Southeast Asian Tattoos

Glenn Ong maps the uneven terrain of tattoo traditions in the region.

The 14-hour journey from Metro Manila to Buscalan village is a pilgrimage that will test even the most determined travellers. Each year, hundreds of tourists and Filipino locals endure overnight bus rides and a gruelling two-hour uphill trek not to visit the Cordillera mountains of Kalinga, but to seek an audience with 103-year-old Maria Oggay. Better known as Whang-od, the centenarian is the oldest *mambabatok* (traditional Kalinga tattooist) alive, and the last from Buscalan's headhunting culture.

Like many tribes in the Philippines, the Butbut ethnolinguistic community that Whang-od belongs to has a proud martial heritage. Victorious warriors who could produce the severed heads of slain adversaries would receive tattoos (*batok*) as a reward for their bravery. Some ink designs, such as the snake motif, are also intended as talismans for protection, and even function as camouflage patterns to help warriors escape detection in the dense Kalinga foliage.

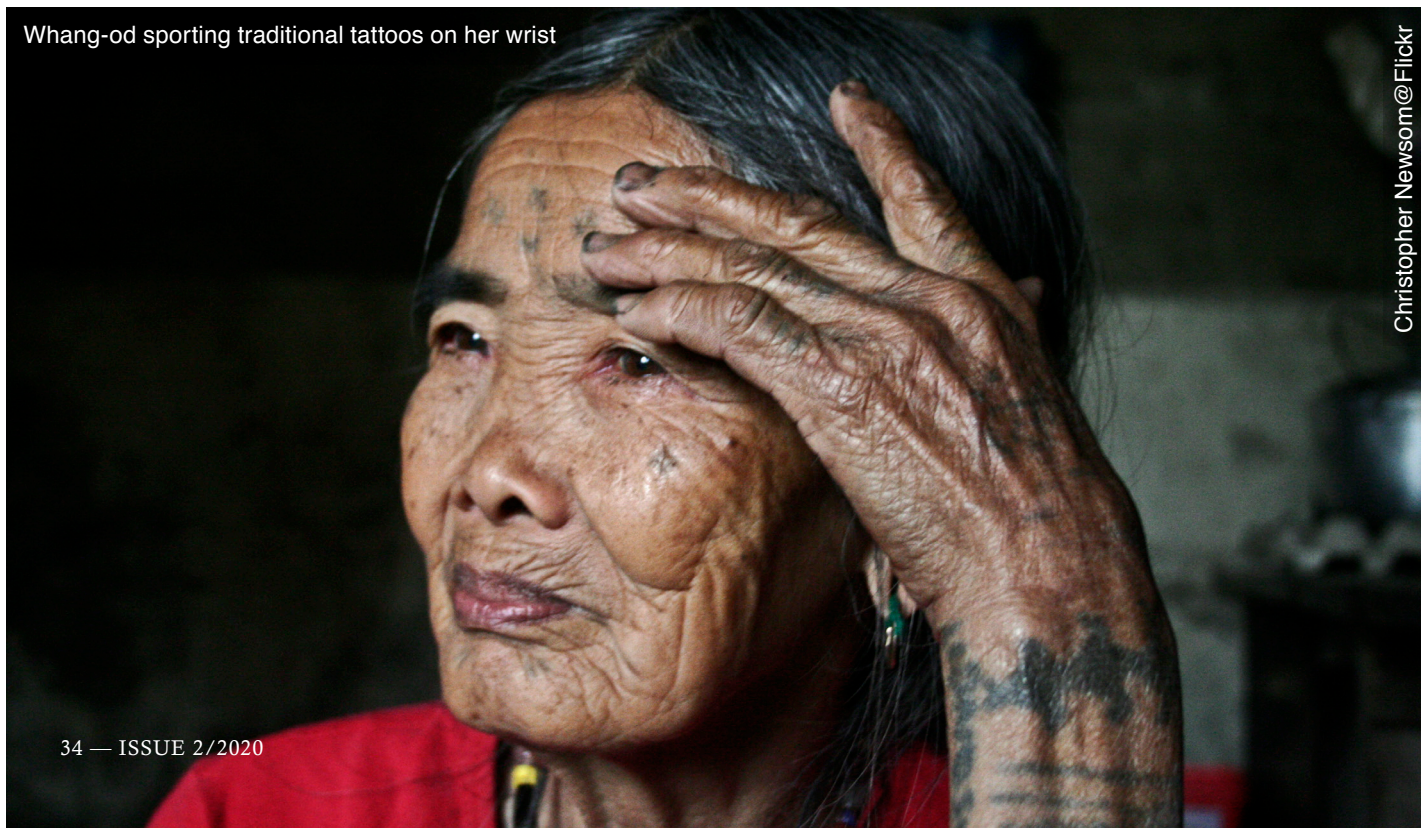
Females, on the other hand, were inked to mark their transition to adulthood and to signal their fertility and eligibility for marriage. Tattoos for women often drew inspiration from everyday objects or natural surroundings, such as bamboo shelves, rice terrace steps, and woven grass mats. Other designs, like python or centipede scales,

are common to all, given their significance as deliverers of powerful omens and “friends of the warriors” (*bulan ti mangayaw*) in Kalinga folklore.

Nowadays, traditional tattoos no longer demand feats of courage on the battlefield or tribe membership to acquire. This liberalisation has helped diasporic Filipinos to reconnect with their roots and allowed tattoo enthusiasts from around the globe to engage with cultures they would otherwise have neglected. “Whether it is shared among us or with outsiders, to us, it is our ancestors’ legacy, and it defines who we are as a people, so we must continue,” Whang-od once quipped to a reporter. Using ink concocted from a blend of water and charcoal, Whang-od carefully hammers her signature tattoo – three dots in a line – with a lemon thorn needle fastened on a small bamboo stick. For more intricate designs, Whang-od hums a comforting *ullalim* – a Kalinga chant – to imbue the tedious act of repetition with a soothing rhythm, though the chants are said to be reserved for locals of Kalinga birth.

Although Kalinga *batoks* are rarely sought by tourists for their spiritual or healing properties today, Whang-od's tattoos continue to be held in high regard for their authenticity and symbolism. Indeed, in the Kalinga province where she resides, tattoos are “a cutaneous ‘archive’ – a repository of stored memories, remembrances

Whang-od sporting traditional tattoos on her wrist



Christopher Newsom@Flickr



An *ajarn* applying a *sak yant* on a follower

Sheila Dee@Flickr

and other information,” writes Filipino anthropologist Anlyn Salvador-Amores. Besides Whang-od and her disciples, Grace Pelicas and Ilyang Wigan, at least 15 other *mambabatoks* continue to ply their craft in Buscalan. Beyond Kalinga, hand-tapped tattoos can also be found across the Philippines, attesting to their enduring popularity among urbanites. More accessible tattooists like Katribu Tatu have set up shop in the bustling city of Pasig in Metro Manila, practicing the traditional craft of hand-tapping tattoos, albeit with modern tools and contemporary designs. The cutaneous archive of Filipino tattoos is witnessing a changing of the guard, its sentinels evolving alongside the stories they tell.

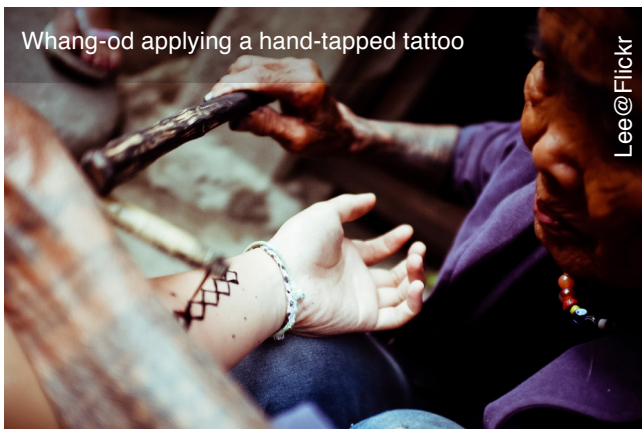
Across the sea in mainland Southeast Asia, more than 10,000 Thai tattoo bearers are marching towards the Wat Bang Phra monastery for a pilgrimage of another

kind. Held every March, the Wai Kru Festival recharges the magic contained within the sacred *sak yant* ink, derived from a syncretic blend of imagery with Buddhist, Brahman, and animist roots. “*Sak*” translates to “tattoo”, while “*yant*” refers to yantra, a mystical diagram with origins in Dharmic religions. When selected and applied by an *ajarn* (*sak yant* master) in accordance with traditional protocol, these tattoos are said to confer luck, power and protection. Unlike the years-long procedures of other Southeast Asian tattoos, *sak yant* have been described as “relatively brief” affairs. Equally fleeting is the longevity of the tattoos’ magical properties, requiring them to be recharged periodically.

After a series of opening prayers, the participants enter into an animated trance called *Khong Khuen* and assume the primal traits of their tattoo subjects. Jumping and screaming as they hurtle towards the temple, the crowds embody the crocodiles, tigers, and monkey gods etched onto their bodies. Before they can breach the temple grounds, however, the participants are restrained and have their ears rubbed to lift the trance. Gradually, the crowds shake off the euphoria, their writhing bodies easing into a state of tranquillity. Much like the *sak yant* themselves, tattoo traditions in Thailand seem poised to be reinvigorated with each passing year.

Other Southeast Asian communities with tattoo cultures have not been as fortunate. Owing to a combination of pressures from foreign missionaries and dwindling interest, indigenous Kayan tattooists from the Malaysian state of Sarawak have not practiced their art since the 1950s. Alongside those of the Sihan and Lahanan communities living along the Rejang River, the tattoo cultures of north Borneo are being swept away by the currents of time.

The decline of this artform has also translated into the loss of one key window into the cultural milieu of Rejang’s communities, as Kayan tribal tattoos (*tedek*) have a distinct ritualistic component. Before any ink is applied, tattooists make contact with the spirits to announce the beginning of the procedure and to ask for blessings. Such rituals reflect the Kayan’s belief that the ink – which is often inscribed on the knuckles, wrists, or forearms using wood, thorns, grass fibres and pigments – acts as a “torch” for the dead to find their way in the afterlife. Kayan tattooing is said to be a long and painful process, with some designs



Whang-od applying a hand-tapped tattoo

Lee@Flickr



A disciple of Whang-od at work

Lee@Flickr

taking as long as four years. Once complete, however, tattoos such as the *lukut* – or antique bead motif – are revered for their ability to “keep the soul from wandering away from its human host.”

Many of the Kayan’s last tattoo artists may have passed, but all is not lost for other north Bornean tattoo cultures. The tattoo artform of the Iban people, known as *pantang*, lives on through the Borneo Headhunters Tattoo and Piercing Studio located in Kuching, Sarawak. Its founder, Ernesto Kalum, was first trained as a lawyer in Britain and later as a tattooist in Switzerland. A sojourn in the scenic city of Lausanne sparked a desire to rediscover his roots in Sarawak. Visiting the longhouses of Batang Ai, Bintulu, and Lambir, Kalum acquainted himself with the intricacies of traditional wooden tapping tools (*kayo tatok*) and culturally significant motifs like the Bungai Terung. The latter, a coming-of-age tattoo symbolising fresh beginnings, features the Borneo eggplant flower with a spiral in the middle (*Tali Nyawa*) denoting the “rope of life”. It is bestowed upon Iban natives to mark the *bejalai*, an Iban tradition meaning “to go on a journey”. From Lake Geneva to the Rejang River, Kalum’s eclectic experience with contemporary electric tattooing and traditional Iban hand-tapping embodies the adventurous spirit of *bejalai*. Through those who pass through his tattoo studio, this spirit lives on.

Some 2,000 kilometres west of Borneo live the Mentawai people. Scattered across the Indonesian islands of Siberut, Sipora, North Pagai, and South Pagai, the Mentawai believe that tattoos help preserve the harmony between the human soul and the spirits that govern the world. Besides safeguarding an individual’s corporeal integrity, the Mentawai use tattoos to differentiate between clans and to help their ancestors recognise them in the afterlife.

The vital role that tattoos play as connective tissues between the physical and spiritual worlds means that the responsibility of applying them falls on *sikerei*, or “one who has magic power”. Today, few such shamans exist.

The population of fully tattooed Mentawai people is likewise nearly extinct. On South Pagai near Western Sumatra, just one 90-year-old woman remains as the last of the island’s 9,000 inhabitants to have tattoos on the hands, arms, back, neck, and chest.

The decline of Mentawai traditional tattooing was a natural outgrowth of sustained pressures by Dutch Protestant missionaries during the colonial period and Indonesian authorities after independence. Mentawai expressions of identity gradually yielded to new and alien forms of modernity. As Aman Lau Lau Manai – a Mentawai shaman-tattooist and Siberut community figure – bemoaned to a journalist, many of the bonds between the people and their heritage have been severed through the course of time. Efforts at reconciliation and preservation have come just a little too late. “The younger generation no longer want to get their bodies tattooed,” lamented Aman. “They’ve travelled to the end of the river, and they’ve seen people wearing T-shirts, shoes, and modern clothes. And they want a modern lifestyle, too. So they are leaving our tattoos behind.”

Imperial encounters, nation-building and globalisation have all had uneven effects on the region’s tattoo cultures. While these processes pose challenges for some tattoo traditions, the rise of mass tourism and social media has popularised others. This patchy landscape of tattoo traditions in Southeast Asia mirrors the ongoing dialogue between local and global expressions of one’s place in the world. Indigenous tattooists have responded differently to changes in tastes while remaining faithful to the heritage they draw inspiration from. Far from being emblems of backwardness, traditional Southeast Asian tattoos are symbols of the region’s dynamism and resilience; they provide a steady anchor of identity amid the shifting currents of time.✎

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A participant of the Wai Kru Festival being taken out of the trance

Sheila Dee@Flickr



An elder of the Saibokolo Clan with traditional Mentawai tattoos

ccdoh1@Flickr



A Mentawai elder poisoning an arrow

ccdoh1@Flickr

Participants at the Wai Kru Festival assume the behavioural traits of animals tattooed on their bodies



Sheila Dee@Flickr

Borobudur Temple

Indonesia

Borobudur is the world's largest Buddhist monument built during the Syailendra Dynasty in Central Java, Indonesia, in the 8th and 9th century. It consists of three tiers set around a hill: a pyramidal base, five concentric square terraces, and three circular platforms containing 72 stupas, topped by a large central stupa. The tiers represent the three spiritual spheres of Buddhist cosmology: *Kamadhatu* (the realm of desire), *Rupadhatu* (the realm of form), and *Arupadhatu* (the realm of formlessness). More than 2,670 relief sculptures around the monument spanning a surface area of 2,500 square metres depict Buddhist imagery, and a total of 504 Buddha statues adorn the compound. After its rediscovery in 1814 following centuries of abandonment, as well as its restoration in the 20th century, Borobudur has become a popular place of pilgrimage and one of the most impressive archaeological sites in Southeast Asia. (Source: UNESCO, Ministry of Tourism and Creative Economy of the Republic of Indonesia)

