



RECENT DEVELOPMENTS IN THE SOUTH CHINA SEA: CAUSE FOR CONCERN

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Tensions are on the rise in the South China Sea and this has worrisome implications for peace, stability and cooperation in the region, the subtitle of this session. In my presentation this afternoon I would like to address recent developments by examining three broad themes: first, the underlying causes of rising tensions, particularly the role played by China; second, ASEAN's lackluster response to increased friction over the past two years and the shortcomings of the dispute management mechanisms it has put in place with the PRC; and third, the implications of rising tensions on regional stability.¹

PART I: WHY ARE TENSIONS ON THE RISE IN THE SOUTH CHINA SEA?

In the first half of this decade the South China Sea dispute moved to the back burner of Asian security concerns. This was partly due to the Al Qaeda attacks of September 11, 2001 which put the spotlight on the threat posed by transnational terrorist groups, and the subsequent US-led military interventions in Afghanistan and Iraq. Mainly, however, the relaxation in tensions in the South China Sea can be attributed to the more flexible and accommodating stance adopted by the PRC. Cognizant that its assertive posture in the South China throughout the 1990s had fueled fears of a "China threat" in Southeast Asia, in 1999 Beijing agreed to discuss the problem with ASEAN in a multilateral setting. These discussions led to the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC). The DoC was one component of China's "charm offensive" towards Southeast Asia, a diplomatic campaign designed to assuage regional fears over its rising political, economic and military power — other measures included the 2001 proposal to establish a China-ASEAN Free Trade Area (CAFTA) and China's

¹ For a comprehensive overview of recent developments in the South China Sea see Clive Schofield and Ian Storey, *The South China Sea Dispute: Increasing Stakes and Rising Tensions*, Jamestown Foundation Occasional Paper, November 2009.



accession to the Treaty of Amity and Cooperation (TAC) in 2003, ASEAN's 1976 non-aggression pact. Although the claimants continued to protest each other's moves in the South China Sea, in general, there was a noticeable relaxation in tensions in the disputed waters. The DoC also set out to promote confidence building measures among the claimants, and the 2005 Joint Marine Seismic Undertaking (JMSU) — an agreement among the state-owned energy companies of China, the Philippines and Vietnam to conduct seismic surveys in the South China Sea — was widely hailed as a potentially significant breakthrough in the long-running dispute.

Since 2007, however, tensions have ratcheted up, particularly between China and Vietnam and China and the Philippines. Why is this?

As the most powerful actor among the claimants, China's behaviour sets the tone of the dispute, and since 2007-2008 its behaviour has become more assertive. This can be ascribed to several factors. First, China's insatiable demand for energy resources is an important driver of the dispute. China is not only keen to diversify its energy resources away from the Middle East, but also to exploit hydrocarbons closer to home and advances in technology allow energy companies to drill in deeper waters and further from the coast. A related concern is Beijing's imperative to secure its sea lines of communication (SLOCs) that bring vital energy supplies from the Middle East and Africa through the maritime chokepoints of Southeast Asia, particularly the Malacca, Sunda and Lombok-Makassar straits, which some Chinese analysts view as a strategic vulnerability.

Second, China has moved to reinforce its jurisdictional claims in the area and undermine those of the other claimants. In late 2007, for instance, the NPC passed new legislation creating a county-level city called Sansha in Hainan Province to administer Beijing's claims in the Paracels and Spratlys, an act which led to anti-Chinese protests in Vietnam. China has rejected Hanoi's assertions of sovereignty in the South China Sea and even exerted pressure on foreign energy corporations not to undertake projects around Vietnamese coastal waters. In 2007 and 2008, reports emerged that Chinese officials had hinted at unspecified action against several foreign companies, including British Petroleum and ExxonMobil, unless they suspended work on oil and gas projects off Vietnam's southeast coast.² This tactic was confirmed by both the Chinese Foreign Ministry and later, the U.S. Department of State.³ The unilateral imposition of fishing

² "Tussle for oil in the South China Sea," *South China Morning Post*, July 20, 2008.

³ "China opposes any act violating its sovereignty," *Xinhua News Agency*, July 27, 2008.



bans in the South China Sea by the Chinese government since 1999 are also designed to reinforce its sovereignty rights in the area.

Third, the activities of other claimants have also led China to pursue a more hard-line policy. Earlier this year China made strenuous attempts to dissuade the Philippines from enacting its revised March 2009 baselines law but was ultimately unsuccessfully. This action earned the Philippines a sharp reprimand from Beijing. Furthermore, in early May 2009 China also reacted swiftly and vigorously to the joint submission made by Malaysia and Vietnam and a further submission on the part of Vietnam alone. Claims to the CLCS have added an extra dimension of complexity to the dispute.

The fourth factor that has given China more confidence to pursue its claims more vigorously is the modernization of the People's Liberation Army Navy (PLAN). The acquisition of advanced submarines, frigates, destroyers, and patrol boats, plus long-range aircraft, allows the Chinese military to project and sustain greater power in the South China Sea. China's emergence as Asia's pre-eminent naval power is potentially a game changer in the context of the territorial disputes and puts the other claimants, who cannot match the PLAN's increasing capabilities, at a disadvantage. China's growing military capabilities in the South China Sea also has implications for Sino-US relations. The build-up of naval forces at the Sanya Naval Base on Hainan Island has led the United States to increase surveillance of the PLAN in the South China Sea, a development that the Chinese government considers provocative and illegal. A number of confrontations between U.S. and Chinese vessels took place in early 2009, culminating in the standoff between the surveillance vessel USNS Impeccable and five Chinese-flagged vessels 75 miles off Hainan Island in March.⁴ Although the two countries have begun discussions over the issue, given their differing interpretations of international maritime law, and the build-up of military forces in the area, incidents such as those involving the Impeccable could well become more frequent.

The fifth factor is rising nationalism, both in the PRC and several of the other claimants. In the PRC the South China Sea dispute is not quite as emotive as "core" sovereignty issues such as Taiwan Xinjiang and Tibet, but the Chinese government cannot be seen as compromising the country's sovereignty claims in the maritime domain. Commentaries addressing the issue of other countries "stealing" China's maritime resources are increasingly common in the state-controlled press. In the

⁴ Ian Storey, "Impeccable Affair and Renewed Rivalry in the South China Sea," *China Brief*, Vol. 9, Issue 9 (April 30, 2009).



Philippines allegations that the administration of President Gloria Macapagal Arroyo had sold out the national patrimony and violated the Constitution by agreeing to participate in the JMSU helped seal the fate of that agreement in June 2008. In Vietnam too sovereignty is a highly sensitive issue, especially when it comes to perceived attempts by its giant neighbour to the north to infringe that sovereignty. Moreover, sovereignty issues can be exploited for political purposes by exiled groups overseas.

The sixth reason is the failure of existing mechanisms to manage and ameliorate tensions in the South China Sea. That brings me to my second theme, the role of ASEAN.

PART II: ASEAN'S LACKLUSTER RESPONSE

Efforts by ASEAN to manage the South China Sea dispute have thus far proved of limited utility, and its response to rising tensions has been very disappointing.

The only extant agreement between ASEAN and China to address the dispute directly, the 2002 DoC, has deterred claimants from occupying vacant features in the South China Sea but failed to prevent states from building up their physical infrastructure on the disputed islands. As a result, since 2002 all of the disputants in possession of atolls have continued, and in most cases substantially accelerated, the construction of civilian and military infrastructure in the Spratlys, a development that has gone largely unnoticed by the media given the remoteness of the area. Infrastructural improvements have included reclamation projects to expand the area around the atolls, the construction of sea walls, typhoon shelters, piers, landing docks, lighthouses, civilian amenities and barracks, helicopter landing pads and airstrips, and the provision of clean water supplies and telecommunications networks.

Moreover, confidence building measures (CBMs) outlined in the DoC have failed to promote meaningful cooperation. While seductive in concept, the JMSU proved fundamentally flawed in execution. The contents of the agreement were never made public in order to forestall criticism, and it was not until 2008 that it was revealed that one-sixth of the survey area lay within Philippine territorial waters and outside the claims of both China and Vietnam. The JMSU became embroiled in controversy in 2008 as a result of which the Arroyo government sought to distance itself from the agreement. The JMSU was allowed to lapse in June 2008, essentially putting the dispute back to square one. Since the JMSU's demise, no cooperative projects among the disputants have been launched. Nevertheless, all parties continue to express support for the DoC and ASEAN



has repeatedly pledged to achieve full implementation and oversight of the agreement.⁵ Yet, seven years after the Declaration was issued, ASEAN and China have not yet even drawn-up guidelines on how to implement the DoC.

The DoC was designed as an interim measure while ASEAN and China worked towards a more comprehensive and binding regional Code of Conduct in the South China Sea (CoC). While both ASEAN and China remain rhetorically committed to the eventual conclusion of the CoC, no substantive discussions towards such an agreement are currently underway. Unfortunately, the DoC may be the best ASEAN and China can hope to agree on, at least for the near future.

As tensions have risen in the South China Sea, ASEAN has noticeably failed to highlight the issue at any of the countless meetings the organization hosts. In July 2009, ASEAN foreign ministers, ASEAN Plus Three⁶ ministers, and the ARF discussed a host of pressing issues from the global financial downturn to the political situation in Myanmar. Yet, on the South China Sea issue, ASEAN merely reiterated its support for the DoC, encouraged “the continued exercise of self-restraint by all the parties concerned and the promotion of confidence building” and looked forward to the eventual conclusion of a CoC.⁷ The sovereignty dispute was not discussed at the 12th ASEAN-China Summit in Cha-am, Thailand in October 2009.⁸

ASEAN’s lackluster response to rising tensions may be ascribed to three main factors. First, a growing tendency among the ASEAN states to accentuate the positives in their relationship with China—especially growing economic interaction—while downplaying the negatives. Second, the lack of consensus within the organization—which includes both disputants and non-disputants, as well as countries with close ties to Beijing—over how to deal with China over the issue. Third, China has been able to take advantage of the above two factors to prevent meaningful discussion on the dispute at multilateral forums such as the ASEAN Regional Forum (ARF).

⁵ ASEAN Political-Security Community Blueprint, March 1, 2009, <http://www.aseansec.org/22337.pdf>

⁶ The ASEAN Plus Three process is participated in by the 10 ASEAN countries, China, Japan, and South Korea.

⁷ See, for instance, Joint Communique of the 42nd ASEAN Foreign Ministers Meeting, Phuket, Thailand, July 20, 2009, <http://www.aseansec.org/PR-42AMM-JC.pdf>; Chairman’s Statement the 10th ASEAN Plus Three Foreign Ministers Meeting, July 22, 2009, <http://www.aseansec.org/PR-42AMM-Chairman-Statement-ASEAN+3.pdf>; and Chairman’s Statement 16th ASEAN Regional Forum, July 23, 2009, <http://www.aseanregionalforum.org/PublicLibrary/ARFChairmansStatementsandReports/tabid/66/Default.aspx>.

⁸ Greg Torode, “A diplomatic victory for China,” *South China Morning Post*, October 31, 2009.



ASEAN's failure to address the problem head-on has allowed tensions to simmer. Indications suggest that when Vietnam takes over the rotating chairmanship of ASEAN in January 2010 it is likely to use its position to put the South China Sea on the formal agenda, including at meetings with China. Absent a consensus within ASEAN, however, it is unclear how far the other members will allow Vietnam to push the issue and how China will react. In anticipation of Vietnam's chairmanship of ASEAN, Beijing seems to be pre-empting moves to give greater prominence to the South China Sea issue. Prior to the ASEAN-China Summit in Cha-am, China's Ambassador to ASEAN, Xue Hanqin, stated that because ASEAN members included both claimant and non-claimant states, it was not an appropriate venue to discuss the South China Sea issue and that the Chinese government wanted to resolve the territorial dispute through bilateral negotiations.⁹ At a seminar at ISEAS, Singapore on 19 November 2009, Ambassador Xue clarified China's position on this issue by stating that while Beijing was willing to discuss measures to relax tensions and promote stability in the South China Sea with ASEAN as a group, a resolution to the problem could only be achieved through bilateral negotiations – bilateral negotiations between China and each of the four ASEAN claimants, and between the four ASEAN claimants themselves.¹⁰

PART III: IMPLICATIONS FOR REGIONAL STABILITY

If ASEAN is serious about ameliorating tensions in the South China Sea, at a minimum it needs to address the issue head on with China and move towards a formal CoC. ASEAN and China must also operationalize the CBMs they have discussed over the years. Despite the failure of the JMSU, joint development offers the most sensible way forward, though admittedly the obstacles are daunting. One thing is for sure: if the South China Sea disputes are to be settled, such resolution will derive from a political rather than essentially legal process.

If tensions are left to fester, the implications for regional security are grave. The asymmetries in power between China and the ASEAN claimants will widen as the Chinese military enhances its capabilities, including, as seems increasingly likely, the acquisition of one or more aircraft carriers around 2020. In the short to medium term, friction over energy and fishing resources will increase, raising the possibility of naval clashes in the area. More ominously, any curtailment in freedom of navigation in the area

⁹ Stephanie Ho, "Beijing: South China Sea territorial disputes not on ASEAN agenda," *VOA.News.com*, October 21, 2009, <http://www.voanews.com/english/2009-10-21-voa20.cfm>; "We want good ties, says China," *Straits Times*, October 22, 2009.

¹⁰ Ambassador Ms. Xue Hanqing, "China-ASEAN Cooperation: A model of good-neighborliness and friendly cooperation", ASEAN Ambassadors Seminar Series, ISEAS, Singapore, 19 November 2009.



risks provoking US intervention, thus placing the ASEAN countries in an invidious position.