

## **Can the South China Sea Dispute be resolved? ASEAN's choices before an assertive China.**

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### **Introduction**

The South China Sea is a dispute over the sovereignty of the islands and the sea territory of the South China Sea involving China, and five ASEAN countries, Vietnam, the Philippines, Malaysia, Brunei and Indonesia. It involves complicated issues relating to the International Law of the Sea which does not offer clear guidelines in situations where claims to sea territory, islands and Exclusive Economic Zones [EEZ] overlap. Factors in the dispute are competing claims to oil and gas reserves, fishing rights, and for the main claimant China strategic access to the area. This paper will argue that the strategic factor has become most significant and has overshadowed the others. The dispute is becoming integrated with wider strategic issues relating to the Western Pacific affecting both China and the US. The strategic significance of the South China Sea has been elevated by China's rising naval power and its need for open access to the Malacca straits and the Pacific. As China develops its anti access and sea denial strategy the US is obliged to make a stand to defend its strategic position in the area. Chinese officials have included the area as a "core interest" which may not have official sanction but which expresses a strong feeling about the significance of the area. ASEAN's choices in this situation are limited for as long as it remains divided and unable to develop a consensus on how to respond. The longer these divisions persist within ASEAN the greater the likelihood that it would be overwhelmed by events which would place the future of the area in the hands of the great powers.

### **Attempts at resolution, the UN and ASEAN**

A diplomatic or political resolution of the issue at present is unlikely. Proposals for the dispute to be referred to the International Court of Justice for arbitration are not acceptable to the claimants. The UN does not get involved in territorial disputes as a mediator unless there is a direct appeal from the claimants. The UN commission on the Limits of the Continental Shelf requested claimants to lodge submissions relating to their claims to the continental shelf before the deadline of 13 May 2009. Vietnam and the

Philippines filed a joint submission on the South China Sea on 6 May which was followed by a Chinese protest note on the following day. The Chinese note included a map of their nine dash claim to the South China Sea which still does not clarify the exact nature of the claim. The UN committee, however, would not rule on a submission if it involved disputed territory. The Philippines on 5 April appealed to the UN after Chinese patrol vessels in March 2011 harassed a Philippine oil exploration vessel in disputed waters.<sup>1</sup> China responded on 14 April claiming that the Philippines “invaded” the area in the 1970s when it claimed the area.<sup>2</sup> As the UN was in no position to adjudicate the issue the Philippine effort had no results but it did at least publicize its position. There have been various bilateral and multilateral approaches towards the resolution of the issue; the latter have involved bilateral contacts between Vietnam and the Philippines, Vietnam and China, Malaysia and China. Bilateral negotiations are China’s preferred approach but work to the ASEAN claimants obvious disadvantage. The multilateral approach offered greater hope for the resolution of the dispute and for this purpose the ASEAN Regional Forum [ARF] was created in 1994. Its goal was to engage China in the task of maintaining regional security and to obtain its endorsement of the current order. However, China has opposed ARF involvement in the issue and has insisted that negotiations be conducted bilaterally and not multilaterally.<sup>3</sup>

Nonetheless, China did sign a multilateral document with ASEAN called the Declaration on the Conduct of Parties in the South China Sea [DOC] on 2 November 2002 which was a very promising development at the time. China agreed to sign a document with ASEAN as a group even though it was only a declaration and not a formal code of conduct. This was followed by China’s accession to the Treaty of Amity and Cooperation on 8 October 2003 according to which disputes are to be settled peacefully. On the same day a “master plan” to deepen and broaden ASEAN-China relations over 2005-2010 was adopted by ASEAN which proposed various ways to implement the DOC; one was through regular ASEAN-China Senior Officials Meetings [SOM], another was to establish a working group which would draft recommendations on the implementation of the DOC and to offer policy guidelines to the ASEAN-China SOM.<sup>4</sup> In December 2004 ASEAN China senior officials decided to establish the ASEAN-China Joint Working Group on the Implementation of the DOC [ASEAN-China JWG]. They also agreed to move forward to the eventual conclusion of a code of conduct. The JWG has met six times, the

first was in Manila in 2005 and the sixth was held in March 2011 with few results.

The ARF took up the issue of the code of conduct but it has remained a hope rather than a practical proposal. In July 2009 at the 16<sup>th</sup> ARF which was held in Phuket the Chairman's statement noted the hope that ASEAN and China would "expeditiously conclude the Guidelines on the implementation of the DOC." It also declared that they "looked forward to the eventual conclusion of a Regional Code of Conduct."<sup>5</sup> Vietnam had high hopes of making progress on the code of conduct when it was ASEAN chair in 2010. The Chairman's statement from the 17<sup>th</sup> ARF which was held in Hanoi in July 2010 noted that members "encouraged efforts towards the full implementation of the Declaration and the eventual conclusion of a Regional Code of Conduct."<sup>6</sup> What indeed is the problem? One major difficulty is the extent of the code and the area to which it would be applied. Vietnam has pressed for its application to the Paracel/Hoàng Sa/Xisha islands which the Chinese side opposes. Chinese Ambassador to the Philippines Liu Jianchao claimed that China was willing to negotiate a code of conduct with ASEAN but there has been no progress on this issue.<sup>7</sup> China has resisted the notion of the code of conduct which would restrict is freedom of action in the area and which could open the door to multilateral negotiations of the issue. Indonesia has been strongly pushing for a code and Vietnam obtained Philippine agreement to a code when Philippine acting Foreign Affairs Secretary Albert del Rosario visited Hanoi on 5 April 2011.<sup>8</sup> American support for the code, which was expressed by Hillary Clinton during the 17<sup>th</sup> ARF in Hanoi and also by Ambassador to the Philippines Harry Thomas, stiffens Chinese resistance. In any case the code of conduct has been overtaken by other developments which hinder the resolution of the issue.

### **Strategic factors**

The South China Sea has been described as the "geo-political focus" of Southeast Asia and it is rapidly becoming a pivotal area for East Asia.<sup>9</sup> It is a "vital transport corridor" for trade and energy supplies for Japan, Korea as well as China; an estimated 75% of annual world oil and natural gas is shipped through the area and the volume shipped is expected to double by 2020.<sup>10</sup> As East Asia becomes more dependent upon trade and

external sources of energy to sustain its economic growth the security of the South China Sea becomes critical. China, Japan and South Korea have developed naval programs to protect their sea lanes in varying degree. China, however, is the main claimant to the area and its programs of naval expansion have a direct impact upon the area. China is in the process of developing a naval capability which includes new classes of submarines, surface vessels and aircraft carriers for two missions. One is access denial which is intended to keep the American naval vessels away from sea zones in the Western Pacific around Taiwan. This mission is linked to Taiwan and its purpose is to prevent the American navy from coming to the defence of a Taiwan in a conflict triggered by a declaration of independence, or resistance to reunification with the mainland. The second mission is SLOC or sea lane protection which would entail a naval capability to venture beyond the Malacca Straits into the Indian Ocean to protect China's oil lifeline to the Middle East. China's economic rise has indeed made it more dependent upon imported oil supplies which reached 52% of consumption in 2009 and is expected to rise to 65% in 2020. China has become much more vulnerable to external interdiction of its sea lanes which is one reason for its interest in an Ocean going navy with carriers and supporting escort vessels.<sup>11</sup>

The South China Sea has become more important to China as it provides a convenient outlet into the Pacific and Indian Oceans for the Chinese Navy. If bases further north were used the Chinese navy would be vulnerable to attack in the open sea. Control over the South China Sea would give China protection to its naval deployments there and would allow it to reduce the vulnerability of its sea lanes. China has constructed an underground base for nuclear submarines in Sanya in Hainan Island since 2002. Sanya will probably become its major base for SLOC protection and ocean going naval operations. Sanya would house not only new types of nuclear ballistic missile carrying submarines [SSBNs], but also aircraft carriers and their escort vessels when they are deployed. These deployments would allow China to project power further south to reinforce its claim to the Spratly Islands and also to challenge the American navy in areas where it operates close to Chinese waters. In October 2010 it was reported that two *Shang* class nuclear submarines

had docked in Sanya and the number is expected to increase.<sup>12</sup> The Americans see a direct correlation between the development of Sanya base and Chinese assertiveness in relation to U.S. surface and air activity in the area.<sup>13</sup> This explains Chinese sensitivity to American surveillance vessels and why they confronted the USNS *Impeccable* when it came too close to Sanya on 9 March 2009. The Beijing media has followed the progress of the reconstruction of the ex Soviet aircraft carrier the *Varyag* which is nearing completion. It will be renamed the Shi Lang and will carry SU 33Ks and MIG 29Ks, and will probably be based at Sanya for SLOC protection duties.<sup>14</sup> One carrier makes no sense unless the plan is to deploy supporting ASW escort vessels and air defence vessels which would entail a major commitment. These deployments would change the situation in the South China Sea and would reshape China's policy towards the area.

Most revealing was the Chinese categorization of the South China Sea as a "core interest" which first appeared in the press in March 2010. A "core interest" would imply that Beijing would go to war to protect it. The notion of "core interest" was made public from the communiqué of President Obama's visit to Beijing when he met Chinese leader Hu Jintao. The communiqué called upon the parties "To respect the core interest and major concern of each other is the precondition of building strategic mutual trust between the two countries."<sup>15</sup> China's "core interest" was then limited to Taiwan but subsequently it was unofficially extended to embrace the South China Sea. Assistant Minister of Foreign Affairs Cui Tiankai told two senior U.S. officials, NSC director Jeffrey Bader and Deputy Secretary of State James Steinberg, that China regards the South China Sea as its "core interest," similar to Tibet and Taiwan.<sup>16</sup> Chinese commentaries then picked up on the cue. A *Xinhua* commentary claimed that "by adding the South China Sea to its core interests, China has shown its determination to secure its maritime resources and strategic waters." The commentary asserted that China's "territorial sovereignty, strategic resources and trade routes comprise its core interests, and like any other country China will never compromise them."<sup>17</sup> US Assistant Secretary of State for East Asian and Pacific Affairs, Kurt Campbell claimed that Chinese language material had referred to the South China Sea as a "core interest" but that it was not official policy.<sup>18</sup> Michael Swaine who examined the use of the term concluded that there was no evidence that the

South China Sea was included as a Chinese "core interest," and if low ranking officials had used the term to refer to the South China Sea it was not authoritative.<sup>19</sup> When Hu Jintao visited in Washington in January 2011 the communiqué mentioned only Tibet and Taiwan as core interests.

The application of the term to the South China Sea may not have received the endorsement of the top leadership but there has been much debate about it amongst lower ranking officials.<sup>20</sup> If this idea represents the feeling within the Chinese government amongst lower ranking officials then it may only be a matter time before a more assertive and nationalist leadership would also embrace the term. Their intention would be to put the world on notice that China's claims to the South China Sea are to be respected. Nationalism is rising in China stimulated by economic success and memories of humiliation of the 19<sup>th</sup> century at the hands of the Western powers and Japan, which have been emphasized by the communist party's educational efforts to strengthen its legitimacy. Moreover, the application of the term to the South China Sea conforms to China access denial naval strategy whose purpose is to deter the US navy from coming close to China's shores along a zone which stretches along the Western Pacific. As China's naval power grows and aircraft carriers are deployed for long distance operations China would move to enforce the access denial strategy to prevent the US from threatening its communication lines in the South China Sea, and to forestall any American attempt to support a defiant Taiwanese government that refuses to reunify with the mainland. The development of China's naval capabilities would bring greater pressure upon the top leadership to regard the South China Sea as a "core interest" and to declare its own version of the Monroe Doctrine in the Western Pacific.

Reportedly, China's military is gaining greater influence in decision making relating to security which should not be surprising. The Party's relationship with the military has changed over the years as the military's professional autonomy has been recognized by the top leadership which retains ultimate control. Professional autonomy allows the military greater influence over decisions that are properly within its domain such as Taiwan and the defence of China's maritime interests. Nominally the top leadership may retain control but increasingly foreign policy becomes driven by security considerations and naval strategy which reduces the flexibility of

decision makers to meet the concerns of affected states over the South China Sea, ASEAN and the US. Chinese military representatives have spoken publicly about the need to defend "sacrosanct" territorial integrity in a way which ratchets up the expectations and compels others to do the same lest they be accused of lack of patriotism. Positions would harden and opportunities for the peaceful resolution of disputes would be missed or even neglected in the face of pressure to demonstrate patriotism. Policy towards the South China Sea would become increasingly directed by naval strategy in which case the pressure to declare the area a "core interest," in effect if not in name would be strengthened. Already China's naval strategy has outgrown stated policy towards the area and the discrepancy between the reassurances of Chinese diplomats and the activities of China's naval and fishing protection vessels has widened.<sup>21</sup> Naval strategy has goals and purpose that go well beyond the area which will be increasingly treated as an exclusive deployment zone over which compromise and negotiations would be impermissible.

China has engaged in a pattern of assertive deployments in the South China Sea which has raised tensions with ASEAN claimants sparking new incidents. "Fishery patrol" vessels such as the *Yuzheng 202, 303 and 311* which are really converted naval vessels have been regularly dispatched to the area. These vessels operate alongside Chinese fishing vessels and provide protection for their activities in what appears to be an effort to intimidate ASEAN claimants. A Vietnamese fishing boat and its 12-man crew was seized around the Paracels in March 2010 which prompted a Vietnamese protest and a demand for their release.<sup>22</sup> In June 2010 an Indonesian coast guard vessel seized a Chinese fishing boat operating in the EEZ of the Natuna Islands but when the *Yuzhung 311* and *303* arrived was obliged to relent in a standoff for which negotiations continued for 10 hours.<sup>23</sup> China has enforced a fishing ban in the South China Sea which creates recurrent problems for Vietnamese fishermen who are regularly arrested and their vessels confiscated. China's unilateral fishing ban in 2010 was imposed over ten weeks from May to July. The extent of the ban was kept vague though it covered an area around the Paracels but not as far south as the Spratlys.<sup>24</sup> Vietnamese fishermen have been strongly affected by what is regarded as arbitrary action on the part of the Chinese. In July 2010 China staged naval exercises in the South China Sea as a response to the US-South Korean naval

maneuvers which had been planned for the Yellow Sea, against which it protested so vehemently. The Chinese media claimed that the scale of the exercises was unprecedented as vessels from three naval fleets participated. PLA Chief of General Staff Chen Bingde and naval commander Wu Shengli both members of the Central Military Commission were directly involved which signified its importance.<sup>25</sup>

### **Conclusion**

In the face of the trends and developments that have been analyzed above several observations can be made. First, China's position over the issue will be increasingly shaped by naval strategy; as carrier and accompanying fleet escort vessels are deployed in the area for SLOC protection and maritime defence policy would become increasingly exclusivist and demanding. Secondly, the US would be unlikely to concede the South China Sea to China because of its strategic significance for maritime trade and the sea lanes which run through it which connect East Asia to the oil fields of the Middle East. Thirdly, it is likely to become an area of rivalry between China and the US as both powers view for influence and seek to prevent the other from controlling the area. Already the US is developing security cooperation with Vietnam and also Indonesia for this purpose and China's assertiveness over the dispute would strengthen that cooperation and would exacerbate that rivalry. Fourth, the South China Sea as an issue has been taken out of the hands of ASEAN as it increasingly involves the US and China. ASEAN may press for a resolution of the issue, it may demand that China accept a code of conduct for the area but the Chinese would keep deflecting these efforts. Indeed, the Chinese would be unresponsive to proposals to resolve the issue at this juncture while they feel confident in their own power and expect others to accommodate it.

Nonetheless, it may be useful to explore ways and to formulate proposals for a resolution which may become relevant when, as Qian Qichen as Chinese Foreign Minister once said, "conditions are ripe." When the Chinese leadership encounters external limits to its ambitions it may move to prevent the development of an anti China coalition which could arise as a consequence of its assertive actions. Alternatively it may experience a loss of confidence precipitated by internal conflicts or economic crisis which could oblige it to negotiate and to respond to ASEAN's proposals. To prepare for that time ASEAN should overcome its habitual fear of offending China and

realize that this justifies the Chinese belief that it would offer little resistance and would eventually accept China's control over the area. ASEAN's lack of confidence before China and its inability to forge a united position over the issue has undermined its effectiveness. ASEAN has underestimated its own strength in negotiating with a China that would lose considerably if it alienated its Southeast Asian neighbours and pushed them towards the US. If ASEAN could demonstrate greater firmness over the issue China in time would be compelled to reconsider its assertive approach. If ASEAN cannot overcome its divisions over the issue it would not be taken seriously by China and its predicament would worsen. Claimants would then have every incentive to develop security relationships with external powers such as the US and would boost their naval capabilities in a way which would divide the region further.

## Endnotes

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