

ASEAN and the South China Sea Dispute

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Introduction

The main thrust of this paper is to look at ASEAN's approach towards the South China Sea dispute, examine its effectiveness in dealing with the irredentist claims of China, the central player in the dispute, and to evaluate the prospect of easing of tension in the region within its current policy framework. The dispute over the Spratlys and Paracel islands involves some ASEAN member countries, namely Vietnam, Malaysia, the Philippines and Brunei. Indonesia is not a claimant to the dispute, but was actively involved for a long time in organizing confidence-building measures with the objective of diffusing tension and avoiding eruption of any major conflict in the region. The inclusion of the Natuna archipelago in the Chinese claim a few years ago, however, dismayed the Indonesians and prompted them to take part in their biggest military exercise around the Natuna for three weeks in October 1996 with more than 19,000 troops, 50 naval vessels and 41 aircraft including fighters from the three services. The remaining members of ASEAN are not involved in any way with the dispute, but nevertheless are concerned about the South China Sea as a potential flashpoint in the Asia-Pacific region.

Since all ASEAN countries are not equally involved in the dispute and consequently have no equal stakes, there is not one ASEAN approach to the South China Sea dispute, even though they may all be subscribing to the idea of building of confidence and engagement of China to contain the dispute and manage conflicts in the region. In fact, despite the talk of consensus and ASEAN solidarity, each member country pursues its own policy, particularly vis-à-vis China that claims practically the whole of South China Sea. One can even argue that the ASEAN countries are in reality divided over their approach towards China, as well as over the way to diffuse tension in the region. Each member country looks at China from the point of view of their national interests –whether it perceives China as a threat or as a source of economic benefit. As a result, ASEAN's position on political and strategic issue vis-à-vis China is rather weak. To compensate this weakness, ASEAN had often used diplomacy and tried internationalization of regional issues to involve external powers to balance China's rising power. Such a strategy may have often accorded the ASEAN a higher diplomatic profile as in the Cambodian conflict in 1980s and early '90s, and may have helped it to avert regional tension in the short term; nevertheless it failed to hide its inherent weakness in dealing with the regional hegemon, China.

Secondly, China understands ASEAN countries' differences over itself and takes full advantage of it to drive further wedge in their ranks. This is quite evident from the sharp divergences in the past between the Philippines and Malaysia over a proposed code of conduct for its members and China covering a host of issues ranging from search and rescue to joint exploration in the South China Sea. After years of assurances that they have nothing to fear from a rising China, newly assertive Beijing was using divide-and-conquer tactics against its neighbors in Southeast Asia, trying to

isolate claimants of disputed islands in an area rich in oil and gas. Chinese Foreign Minister Yang Jiechi acknowledged that “there are territorial and maritime rights disputes” between China and some of its neighbors but, he said, “those disputes should not be viewed as ones between China and ASEAN as a whole just because the countries involved are ASEAN members.” That statement shows that China wants to divide ASEAN into countries which have territorial disputes with China over tiny islands in the South China Sea — the Philippines, Vietnam, Brunei and Malaysia and those who don’t have any territorial disputes, countries like Indonesia, Thailand, Laos, Cambodia, Myanmar and Singapore.

Thirdly, since ASEAN countries are not united in their stand on China, all of them, individually and collectively, in effect have gone out of their way at different times to pursue a policy of accommodation of Chinese interests on the issue. China surely has its own compulsions to lay claim to practically the whole of South China Sea and continue with its ‘creeping occupation,’ but at the same time ASEAN’s accommodative approach may also have emboldened the former to pursue what the former Filipino defense secretary Mercado in 1990s called ‘talk and take’ policy. Even the limited success ASEAN achieved in engaging China in various dialogues on the South China Sea issue, like the ASEAN-China dialogue, South China Workshops organized by Indonesia and the ARF initiatives, is largely because of the former’s accommodation of the latter’s essential interests and reservations with regard to national sovereignty and non-interference in the internal affairs of other states. The reformulation of the “three-stage process” (confidence-building’ preventive diplomacy and conflict resolution) outlined originally in the ARF goal of conflict management in the region into a vague and watered-down final aim of the “elaboration of approaches to conflict,” and the redefinition of preventive diplomacy in the CSCAP working Group meeting in Bangkok in February-March 1999 are examples of such ASEAN attempts at going out of their way to accommodate Chinese sensitivities and interests.

We would like to argue in this paper that ASEAN’s policy of engagement of China and its ‘soft’ and accommodative approach towards the South China Sea issue has brought only temporary benefits in terms of only shelving the conflict, but it has not been very effective in managing the latter or restraining it from escalating the conflict level in the Spratlys. China’s actions in the South China Sea over the last two decades only prove that it pays lip service to Confidence-Building Measures process at sea, which the ARF (Asean Regional Forum), CSCAP (Conference on Security Cooperation in Asia-Pacific), the various ASEAN statements and diplomacy, as well as bilateral agreements with China, have been trying to achieve. So long China remains uncompromising on the question of sovereignty over the South China Sea; it is also not very sincere on the issue of joint development of resources in the area.

At the root of the problem is a tangled web of claims of sovereignty over hundreds of islands and reefs. Control of the area has important implications for free passage of shipping and the eventual development of oil and natural gas investments are unlikely to be made until the sovereignty issues are settled. Hence each contending parties has tried to firm up its claims. Of the 53 or so features in the Spratlys occupied by various claimants, China holds 11; the Philippines has 8, Malaysia 5, Taiwan 1,

while Vietnam occupied the remainder. The claimant countries invoke history, geography and the UN Convention on Law of the Sea to support their claims. The ongoing efforts of the various claimant states, though sporadic, to beef up the defenses of the Spratly islands under their occupation seem to suggest that the Spratly dispute, in the absence of any satisfactory solution, might eventually lead to open military conflicts especially in concert with the mainland issues.

Military analysts, however suggest that despite strengthening of garrison forces and defense infrastructure developments, none of the Spratly islands is militarily defensible. They also suggest that military coordination between the claimant states and the Spratly islets they occupy can be disrupted by serious logistic problems. Thus the defence of Spratly islets under its occupation will impose upon a claimant state the need to develop formidable power projection capabilities This explains why China in recent years stepped up development of blue water naval warfare capability and construction of a modern fleet coordinated with ground and air units in battle to defend its maritime sovereignty. It also partly explains why China has, since 1994, conducted several military exercises at sea despite repeated indications of its intention to shelve sovereignty dispute. To match the Chinese activities, the ASEAN states, partly in view of a possible crisis situation that may develop out of the Spratlys dispute, have also expended their armaments and military cooperation with the United States.

We would further argue that the way of managing China is not through display of ASEAN's own weaknesses and accommodation of former's vital interests in South China Sea but only through firm and united stand conveying a message that the ASEAN foreign ministers were able to deliver on 18 March 1995 after China's occupation of Mischief Reef came into light. It was only after that statement that China not only agreed to deal multilaterally with ASEAN but also showed quite a bit of flexibility on the issue. China's Asia strategy is to deal with everyone bilaterally so that its weight can be used to maximize advantage because of the asymmetrical relationship. But by using solidarity as a substitute for military power, ASEAN, on the other hand, had forced China to deal with its members as a group. At times the Chinese have adopted a more conciliatory approach. For example, in July 1995, the Chinese foreign ministry spokesman insisted that it had no interest in disrupting freedom of navigation in the Spratlys area and said that China felt the issues could be resolved without any outside mediators or interference. ASEAN has not been able to show the same unity in the subsequent period as conflicting national interests began to divide ASEAN again and also as the Asian economic crisis crippled the member countries and the association itself.

South China Sea Dispute and the Creeping Occupation

Before we elaborate on some of the points made above, it is essential to mention briefly the South China Sea dispute as such. Although China and Vietnam have been the main players in the struggle for supremacy over the islands and the surrounding reefs and islets, Philippines on various occasions laid claims to these resource-rich islands, as have others like Taiwan, Malaysia and Brunei. Before the 1990's, however, only China and Vietnam had been engaged in military combat over

the islands. Using historical events and archaeological findings to substantiate their claims, they first clashed in 1973 when China forcibly occupied the Paracel islands from an embattled and weak South Vietnam, renamed them as the Xisha islands and made them part of the Hainan island province. This was followed by a serious naval clash in 1988 at Johnson Reef in the Spratly islands in which the Chinese sank several of the Vietnamese boats and almost 70 Vietnamese soldiers lost their lives. A few years before this incident, China had launched a land offensive against the country “to teach the Vietnamese a lesson.” In 1992 China had also passed its law on the Territorial Sea and Contiguous Zone in February 1992 declaring, among other things, not only its claims on these islands, but also the right of hot pursuit against foreign ships if they are seen to be violating Chinese laws and regulations. In the same year, Vietnam had the occasion to accuse China of drilling for oil as the latter gave a concession to an oil exploration company from Denver, Cretonne Energy Corporation in a disputed area around Vanguard reef, which the Chinese called Wan-an Bei 21(WAB21). The timing of the announcement of the Chinese concession to the American company was quite significant as it was done about the same time when representatives of the claimant countries including participants from China and others were meeting in Jogjakarta under the auspices of the Indonesian foreign ministry to find out a possible solution to the South China Sea problem. This had prompted one Malaysian scholar to comment: “Whether the act was intended to embarrass some parties or not could be debated, the action left behind a chilling effect on ASEAN relations with China.”¹ Despite the occurrence of several military run-ins in the past two decades the issue over the ownership claims over the Spratlys has not reached any clear outcome. In the absence of any clear regional consensus the age-old law of ‘might is right’ appears to have prevailed in the South China Sea.

China’s incursions in the South China Sea brought into direct conflict a non-Communist ASEAN member, the Philippines. According to the Filipino sources, on February 8, 1995, Chinese forces supported by eight squadron ships occupied Mischief Reef, about 200 kms from what the Filipinos call Palawan province and hoisted the Chinese flag. In March that year the Philippines military managed to flush out the Chinese and erase all Chinese markers. But in 1996 undeterred the Chinese naval vessels had engaged in a gun battle with a Philippines naval gunboat near Campones Island. In April 1997 the Philippines navy found a Chinese speedboat and two fishing boats in Scarborough Shoal area where China was trying to put up structures. In 1998 and 1999 again China built further structures in the Mischief Reef raising the tension in the relations between the two countries. China had rejected the Philippines’ diplomatic protest over the construction activity on the reef, insisting that it was part of Beijing’s territory and that its people merely were engaged in the repair of fishermen’s shelters damaged by the sea and the wind. Manila insisted the reef be well within its 200 nautical mile exclusive economic zone (EEZ) accorded to archipelagic countries like the Philippines by the United Nations Convention on the Law of the sea. The area is about 1100 kms from Hainan Island, the nearest Chinese territory. China is doing everything possible to gain ground, physically and politically, in the South China Sea scramble.

Thus it seems that China is pursuing a policy of what many people now describe as ‘creeping assertiveness’ – a gradual policy of establishing a greater presence in the South China Sea without recourse to military confrontation. Operationally this policy has simultaneously adopted two major strategies to achieve the final goal of a preeminent position in the South China Sea. The first employs diplomacy in which China does not hesitate to put forward its irrevocable position of its ownership of the Spratlys and that its sovereignty is non-negotiable, but that it is prepared to shelve the sovereignty issues for the time being, to cooperate with other claimants to work toward a peaceful resolution of the dispute based on international law and jointly develop the natural resources with them. The second employs methods to establish either physical or cartographic presence in the region it claims as its own. These involve laying down territorial markers and, wherever possible, seizing unoccupied reefs and building structures on them, as they did in the case of the Mischief Reef in 1995 and 1999. These markers and structures are then indicated on the Chinese maps to delineate Chinese Sea boundaries and are presented as reference point for bilateral and multilateral discussions, including the Indonesian-sponsored workshop on the South China Sea. To show its commitment to the international law, China also declared that it would abide by the United Nations Conference on the Law of the Sea (UNCLOS). For example, the Joint Statement between the President of China and the Heads of State/Government of the ASEAN Member States on 16 December 1997 states: “Recognizing that the maintenance of regional peace and stability served the interests of all parties, they undertook to resolve their differences or disputes through peaceful means, without resorting to the threat or use of force. The parties concerned agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law including the 1982 Convention on the Law of the Sea.” Interestingly, when pressured by ASEAN states to accept a code of conduct to reduce tension in the South China Sea, China generally argues that this joint statement adequately serves as the standard of conduct. However, in practice, China since 1982 has been following the second strategy by laying down territorial markers and occupying a number of reefs.

ASEAN Approach to South China Dispute

As early as 1992, the year after ASEAN made China a dialogue partner, ASEAN issued a declaration of principles on the South China Sea in which the organization-not member countries-urged “all parties concerned” to exercise restraint to create “a positive climate for the eventual resolution of all disputes.” Ten years later, in 2002, China signed a document called the Declaration on the Conduct of Parties in the South China Sea with ASEAN as a whole and not only with countries with which it had unresolved territorial disputes. Since then, ASEAN and China have been working on a “Regional Code of Conduct in the South China Sea,” but agreement has been elusive. To claim now, after 19 years of dialogue, that ASEAN as a whole is not involved is to be disingenuous, if not worse. Moreover, China knows that the members of ASEAN have agreed that before countries with territorial disputes meet with China on the South China Sea disputes, all 10 member countries will meet first to hammer out a common position. ASEAN members should know that individually they have little strength but, if they stay united, they can be a formidable

political force. The agreement signed between China and ASEAN in 2002 has received international recognition. Last year, after the annual meeting of the ASEAN Regional Forum, which was attended by foreign ministers from 27 countries, a statement was issued in which the ministers “reaffirmed the continuing importance of the Declaration on the Conduct of Parties in the South China Sea of 2002 as a milestone document between the member states of ASEAN and China.” Despite this historical record, the Chinese foreign minister insisted in his rebuttal to Hillary Clinton that “the non-claimant ASEAN countries tell the Chinese side that they are not part of the disputes, they don't take sides and they hope these disputes will be settled through bilateral consultations between the countries concerned.” This sounded very much like China is trying to turn some ASEAN members against their own regional organization, dividing ASEAN into two blocs.

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may develop out of the Spratlys dispute, have also expended their armaments and military cooperation with the United States.

We would further argue that the way of managing China is not through display of ASEAN's own weaknesses and accommodation of former's vital interests in South China Sea but only through firm and united stand conveying a message that the ASEAN foreign ministers were able to deliver on 18 March 1995 after China's occupation of Mischief Reef came into light. It was only after that statement that China not only agreed to deal multilaterally with ASEAN but also showed quite a bit of flexibility on the issue. China's Asia strategy is to deal with everyone bilaterally so that its weight can be used to maximize advantage because of the asymmetrical relationship. But by using solidarity as a substitute for military power, ASEAN, on the other hand, had forced China to deal with its members as a group. At times the Chinese have adopted a more conciliatory approach. For example, in July 1995, the Chinese foreign ministry spokesman insisted that it had no interest in disrupting freedom of navigation in the Spratlys area and said that China felt the issues could be resolved without any outside mediators or interference. ASEAN has not been able to show the same unity in the subsequent period as conflicting national interests began to divide ASEAN again and also as the Asian economic crisis crippled the member countries and the association itself. Once ASEAN countries realized that China was becoming too assertive about what she described 'core interests' and included South China Sea within it, they could not remain indifferent any more to the problems that bedeviled their relations with China. First, Malaysia and Vietnam made a joint submission on 6 May 2009. Vietnam made an additional submission on 7 May 2009. China objected to these submissions. The Philippines objected to the submissions of Malaysia and Vietnam, made a partial submission in an area outside the South China Sea, and brought its baselines law into conformity with the UNCLOS provisions on archipelagic baselines. China and Brunei have submitted preliminary information. The joint submission of Malaysia and Vietnam suggests that they have taken the position that sovereign rights to the resources in the South China Sea should be determined by principles governing the continental shelf as measured from the mainland coast. By not measuring their continental shelves or EEZs from any of the islands which they claim in the South China Sea, they have in effect taken the position that no islands in the South China Sea should be entitled to more than a 12 nm territorial sea -- the maximum permitted by UNCLOS. Secondly, ASEAN leaders lobbied hard with the United States to take an active role in the security of the sea lanes of communication in the South China Sea and thus in the security of the region.

China's Assertiveness and ASEAN attempt at Internationalization of the Dispute

The dispute between China and ASEAN erupted into the open after U.S. Secretary of State Hillary Clinton, in Hanoi for the annual meeting of the 27-nation ASEAN Regional Forum, offered American support for "a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion." In the aftermath, it became obvious that many countries, in and out of ASEAN, welcome such a United States role so as to balance China. Those who spoke on the issue involved not just the claimant countries but also Indonesia, Japan and Australia. The assertion that Beijing's dispute is only with some member countries

rather than with ASEAN as a whole is difficult to reconcile with the record. While claiming sovereignty over virtually all of the South China Sea, Beijing proposed postponing resolution of the dispute to instead discuss the joint development of undersea resources. To ease regional concerns, China signed a standstill agreement a so-called Declaration on the Conduct of Parties in the South China Sea with a pledge to exercise restraint. The effect of that had been to divert attention away from China's continued effort to strengthen its military control over its possessions and expanding its de facto boundaries by barring its neighbours from fishing in disputed waters or drilling for oil in waters far away from China. In 2007 and 2008, it even stopped BP and Exxon Mobil from drilling in waters offshore Vietnam. China took its expansive claim to the South China Sea a notch higher by challenging (in 2009) a US Navy survey ship, the Impeccable, some 75 miles from the shore of China's Hainan Island effectively extending its 12 nautical miles territorial waters to a 200-mile Exclusive Economic Zone (EEZ). The US maintains that under the UN Law of the Sea, its naval vessels have the right of free passage through the EEZ. In March, China told senior US officials that its sovereignty over the South China Sea was undisputed and one of the core issues that brooked no compromise.

This growing Chinese assertiveness, coupled with the double-digit growth of its defence budget, has increasingly worried East Asia. Encouraged by the newfound interest shown by the Obama administration, countries in the region have quietly lobbied Washington to play a more active role in regional affairs. Partly at ASEAN's urging, the US has resumed contact with Myanmar in a bid to coax it towards democratic reform and wean it away from China's embrace. Since its assumption of ASEAN's rotating chairmanship last summer, Vietnam has made a sustained effort to draw US attention to the danger of China's rising power in the South China Sea; Malaysia, Indonesia and the Philippines too have raised concerns with Washington. Some South East Asian leaders attending the April 2010 Nuclear Security Summit in Washington held talks with President Barack Obama and other senior officials to voice their worries. At the time, Senator John Kerry, chairman of the Senate Foreign Relations Committee, had publicly assured Vietnamese Prime Minister Nguyen Tan Dung, who also met Obama, "We're going to follow up on that in a significant way. It goes to the heart of freedom of passage in that region."

Conclusion

The foregoing analyses show that ASEAN's policy of engagement of China and restraining her behavior in the South China Sea had limited success only to the extent of shelving the conflict for the time being. None of the three mechanisms ASEAN adapted to tame China – ASEAN-China dialogue, South China Sea Workshop and the ARF- have brought so far any tangible result as to the resolution of the problem, which continues to create tension in the region. As we have pointed out earlier that at the root of the problem is China and its creeping assertiveness in the South China Sea. ASEAN's main objective was to encourage China to agree to resolve the dispute peacefully and no further attempts to occupy any of the features in the disputed Spratly. Until now China has paid lip service to both these commitments. It had used both diplomacy and physical occupation to promote its goal in the South China. While it had talked with the ASEAN, it had also occupied features like the Mischief Reef. As for ASEAN countries, the Chinese behavior has undoubtedly

caused anxieties, but at the same time they went out of their way to accommodate Chinese interests and sensitivities. In fact, most ASEAN-China dialogues or interactions could be possible only on China's terms. This, we have argued above, is essentially because of ASEAN's weakness vis-à-vis China, militarily and otherwise. We would further argue that the current ASEAN approach towards China is too soft and weak. China understands this quite well and pursues its goal undeterred. While it gives the appearance of reasonableness and a responsible international actor, China is uncompromising on the issues it considers vital to her national interests. The Spratlys issue is one such vital interest. The change in China's domestic political culture and the international environment may bring about a shift in China's position on the Spratlys, but a determining factor for such shift would have to be ASEAN's own unity and a more determined stand on the issue as they were able to present jointly in March 1995 immediately after the Mischief Reef incident, and also in 2010 that led eventually to Hillary Clinton's statement at the Hanoi summit. The conciliatory tone China adopted at the time was the result of such a joint statement and internationalization of the issue.

The question now for ASEAN is not whether to confront or to ignore China, but how best to manage their ties with China so that the element of threat in the latter's geo-economic expansion is removed or at least reduced to a more "acceptable" level and the positive aspects of the relationship between the two parties made more constructive and mutually rewarding. It is still quite uncertain whether the ASEAN strategy of constructive engagement of China will succeed or not. For the time being, however, it is hoping against hope that some day China could be put under leash. In the absence of any other viable alternative, this is possibly the best option that ASEAN can choose to resolve its security dilemma vis-à-vis modernized confident and resurgent China. Such a strategy, however, will require ASEAN to play a constructive role in the relationship between the United States, Japan, India and China, the key powers that would determine the future of Asia-Pacific. It is only by maintaining a careful balance in its dealings with these key players that ASEAN can play a constructive role in regional diplomacy and create a space within which the member countries can pursue their economic and political developments in a climate of peace and stability. ASEAN's close relationship with India could be particularly stabilizing factor. Above all, it is the ASEAN unity that will not only determine its future diplomatic profile, but also its ability to handle assertive China.