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“ASEAN+1” Regime in the South China Sea Issues:

A Review of the Past and A Prospect for the Future

Dr. Nong Hong, Postdoctoral Fellow, China Institute, University of Alberta
Associate Research Professor, Research Center for Oceans Law and Policy, National
Institute for the South China Sea Studies

Introduction

Four member states of ASEAN, Vietnam, the Philippines, Malaysia and Brunei claim wholly or partly of the Spratly Islands, causing territorial disputes and pending maritime delimitation with China, another major claimant in the South China Sea (SCS). As two major actors on the SCS stage, the ASEAN-China relationship develops parallel with the evolution of the SCS dispute. This paper observes closely the development of ASEAN-China relations, from the past, present to the future, and its impact on the changing attitude of China on what approach should be taken to address the SCS disputes. The uncertainty in ASEAN-China relations on the SCS issues in recent years will also be analyzed, e.g. the role of United State in Southeast Asia security framework, whether it helps balance the regional powers or jeopardizes the existing confidence building regime between China and ASEAN; the post-DOC development in the region, whether it is a setback or a progress of the dispute settlement of the SCS; as well as the ASEAN's attitude towards the dispute settlement and conflict management in this region, whether it reflects disagreement or shows unity among ASEAN.

A Review on China-ASEAN Relations

Southeast Asian countries used to view China as a clear and present danger to their security. In non-communist Southeast Asia, China was seen as supporting subversive and rebellious forces that sought to overthrow regimes in place by force — Malaya, Thailand, the Philippines. The new order in Indonesia attributed to China support for the attempted coup in that country in 1965.¹ At the height of the Great Proletarian Cultural Revolution, China was perceived as instigating anti-government riots in Burma. In 1974, Chinese forces seized the Paracels from Vietnamese troops stationed there. In 1988, the Chinese and Vietnamese navies clashed fatally in the Spratlys. Up to the

¹ Rodolfo C. Severino, “ASEAN-China Relations: Past, Present and Future Paper”, *ASEAN Studies Centre, Institute Of Southeast Asian Studies*, At the Third China-Singapore Forum.

early 1990s, Brunei Darussalam, Indonesia and Singapore withheld formal diplomatic relations from the People's Republic of China. In 1995, the Philippine discovery of a substantial Chinese presence on Mischief Reef, a feature claimed by China, also located within the Philippines' claimed EEZ, sent alarms all across Southeast Asia.²

Today, all Southeast Asian countries have diplomatic relations with the People's Republic of China on the basis of one China policy. Despite the disagreements and differences, ASEAN and China have had occasions to work together on specific problems in the past. In the 1980s, ASEAN and China found common cause in resisting forcible regime change in Cambodia, consulting each other frequently. They cooperated in bringing about a political settlement of the Cambodian problem in 1991. By the mid-1990s, China had emerged as a strong economic power and a potential strategic partner, so that ASEAN granted it the status, first of a 'consultative partner' and then, in 1996, of a full 'Dialogue Partner'. China was a founding participant in the ASEAN Regional Forum, engaging constructively in political and security matters not only with ASEAN and its members but also with non-ASEAN participants in the ARF, like the United States, Russia, Japan and Australia.

China has formed part of the Asian side in the ASEAN-initiated Asia Europe Meeting, started in 1996 and now a going concern. It is a keystone of the 'ASEAN+3' process, which now covers 20 areas of cooperation and almost 50 mechanisms to manage them, including annual ASEAN Plus Three and ASEAN+1 Summits.³ In the Chiang Mai Initiative, which is part of the 'ASEAN+3' process, China is a party to several of the 16 bilateral currency swap and repurchase agreements. China's proposal for an ASEAN-China free trade area and ASEAN's quick acceptance of it led the way for similar ASEAN FTA arrangements with others, including those with South Korea, India, and Japan. It helped to lend momentum to the economic cooperation process between the ASEAN Free Trade Area and the Closer Economic Relations of Australia and New Zealand. The trade in goods and trade in services components of the ASEAN-China Framework Agreement on Comprehensive Economic Cooperation, signed in 2002, are now in place. Indeed, China and ASEAN have each rapidly become one of the other's leading trading partners. In 2007, Hong Kong aside, the two were each other's fourth largest trading partner, after the United States, Japan and the European Union. Chinese and ASEAN companies have also started to invest in each other's country.

China has built or improved transport links with mainland Southeast Asia, planning to construct oil and gas pipelines through Myanmar, widening navigational channels on the Mekong, financing roads from China to the countries to its south, and probably funding another bridge across the Mekong

² ASEAN-China Relations: Past, Present And Future, *Paper Presented By Rodolfo C. Severino, ASEAN Studies Centre, Institute Of Southeast Asian Studies ,At The Third China-Singapore Forum*

³ Ibid.

between Laos and Thailand. Special links have been forged between ASEAN's and China's ministries of trade and industry in the ASEAN Mekong Basin Development Cooperation process, whose flagship project is the Singapore-Kunming Rail Link. The SKRL would be a further transport connection between southern China and mainland Southeast Asia.⁴

China has helped ease tensions arising from conflicting territorial claims in the SCS. It has done so by agreeing to discuss the matter with ASEAN as a group in place of its former preference for dealing with individual Southeast Asian claimants. Such discussions led to the conclusion in 2002 of the Declaration on the Conduct of Parties in the Southeast China Sea. This joint declaration committed both ASEAN and China to self-restraint, to the non-use of force, to the peaceful settlement of disputes, to refraining from occupying unoccupied features in the area, and to agreeing on a more formal code of conduct in the future.⁵

From Bilateral to Multilateral: China's Changing Approach to the South China Sea Issues

Competition on the SCS and its implications for national and regional security and economic development has become a matter of increasing concern to ASEAN states individually and collectively. On 22 July 1992, just after Vietnam acceded to the ASEAN Treaty of Amity and Cooperation, the ASEAN foreign ministers' meeting took the unprecedented step of issuing a security-related Declaration on the SCS calling for peaceful resolution of territorial disputes and restraint by all parties, to which China acceded.⁶ China has offered to shelve the sovereignty issue and negotiate joint development agreements, but only on a bilateral basis. ASEAN states fear any bilateral solutions, especially between China and Vietnam, which could have a negative impact on other claimants or the region.

ASEAN has sought to deal with SCS issues on a multilateral basis, but China consistently has refused and the matter was not even discussed at the 1994 ARF meeting. When China took over Mischief Reef in 1995, both Vietnam and ASEAN protested. Following that incident, China made it clear that it would not accept ARF's use as a vehicle for multilateral conflict resolution. Over China's protest the matter was discussed at the 1995 ARF meeting and SCS territorial issues were raised again at the 1996 meeting. They have also been tabled at the ASEAN-PRC dialogue.⁷

⁴ Ibid.

⁵ Ibid.

⁶ Farrell, *the Socialist Republic of Vietnam and the Law of the Sea: an Analysis of Vietnamese Behavior within the Emerging International Oceans Regime*, p. 282

⁷ Ibid.

Created in 1994, ASEAN-China Dialogue marked the first time in history that China consented to multilateral negotiations.⁸ This event was seen as the capstone of a great transformation which began five years earlier in Tiananmen Square. That revolution was, of course, the conversion from unilateralism to multilateralism in the SCS.⁹ Heralded as the turning point in a long and complicated conflict, the conversion to multilateralism and the renunciation of the use of force led to conflict prevention rather than conflict resolution.¹⁰

Many scholars and government officials see this shift to multilateralism and military restraint in the early 1990s as a transformation in the nature of the conflict. Citing the absence of full-blown military confrontations, the increasingly pragmatic diplomacy of China in regards to its claims, and the various multilateral declarations and joint statements produced to control the conflict, academics, and diplomats have a tendency to dismiss the SCS as a set of disputes swept under the rug by *mulin zhengce*, or 'good neighbor policy'.¹¹

Some chalk it up as a result of changes in China and the end of the Cold War.¹² Tiananmen Square was a public relations disaster for China. The global outrage expressed through criticisms and economic sanctions forced China to soften its stance against political dissension at home, and to conduct a foreign relations campaign aimed at saving face and establishing friendships. It also forced China to curb its military actions at home and abroad, thus ending an era of unilateralism in regional disputes. The fall of the Soviet empire and the end of the Cold War put an end to the Golden Triangle of China-USA-USSR relations and caused China to redefine itself in a different context of relationships. Attention turned towards becoming a regional power with regional influence. Wariness on the part of external powers such as the United States and Japan furthered, but also checked, this ambition.

Others attribute the transformation to the increasing political and economic influence of ASEAN, increasing interdependence in Southeast Asia, or to the very introduction of multilateral talks within ASEAN and between ASEAN and China. ASEAN was becoming a more powerful voice in regional affairs. It provided a security mechanism able enough to prevent wars between its members and repel any communist insurgencies. It was also flexible enough to avoid superpower meddling during the Cold War. Furthermore, it

⁸ Jason Ray Hutchison, "The SCS: Confusion in Complexity", at <http://www.politicsandgovernment.ilstu.edu/downloads/icspapers/2004/Hutchison1.pdf>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Zhao Suisheng. "China's Periphery Policy and Its Asian Neighbors." *Security Dialogue* 30.3 (1999), p. 335.

¹² The focus of domestic changes in China rests clearly on the Tiananmen Square massacre in 1989, which is credited with setting off the profound reforms of the 1990s.

provided a forum of cooperation in which Brunei, Malaysia, and the Philippines were able to develop a more unified approach towards China, Vietnam, and Taiwan in the SCS. Economic interdependence between the rapidly industrializing countries provided an ever-increasing incentive to avoid the escalation of disputes, reinforcing a spiral of increasing economic cooperation and interdependence in Southeast Asia. A number of scholars claim that the 'ASEAN Way' of slow, informal talks and negotiations has been the catalyst for change.

Any integral interpretation of the SCS disputes must address the role of multilateralism, and specifically that within ASEAN and between ASEAN and China. A true believer of the transformed conflict theory (TCT)¹³ would claim that before the late 1980s and early 1990s, the SCS disputes were marked by unilateralism and Chinese demands that any negotiations occur on a bilateral basis. After the great transformation of 1989-1991 with Tiananmen Square and the fall of the Soviet empire, China changed its ways and consented to multilateral talks. Within a few years it joined the Indonesia Workshops on Managing Potential Conflicts in the SCS, the ASEAN-China Dialogue, and the ARF. By the time Vietnam acceded to ASEAN in 1995, China was ensnared in the trap of multilateralism. From this point on, Beijing was unable to force its will in the SCS and to play one ASEAN country against another in bilateral negotiations. In short, China's acquiescence to a multilateral framework ensured that the dispute would be negotiated on a regional platform with all claimants except Taiwan being party to the same deliberations. Scholars cite several factors in the movement from unilateralism and bilateralism to multilateralism. First and foremost, are always the changes in China and the outside world in the late 1980s and early 1990s.

Snyder adopted the realist power-politics approach and also the neo-liberal institutionalist approach to explain the behavior of ASEAN states and how policymakers often choose different approaches (either multilateral or bilateral) to deal with different situations.¹⁴ He remarked that the multilateral approach has had some success in the SCS through joint development and increased transparency among the claimants. For example, after more than a decade of engagement with ASEAN, China is now moving towards this approach, often referred to as the 'smile diplomacy'. The Philippines, on the other hand, has been one of the strongest supporters of a multilateral approach, being the first to call for a regional code of conduct. In addition to the various multilateral discussions, several bilateral and trilateral initiatives have also been developed. These range from bilateral codes of conduct for state action in the area to the establishment of bilateral working groups to discuss territorial boundary issues.

¹³ See detail on TCT at Timo Kivimaeki, "What Could Be Done?" in *War or Peace in the South China Sea*, pp.131-165

¹⁴ Craig Snyder's comment in the Conference Report of "The South China Sea: Towards a Cooperative Management Regime", May 16-17, 2007, Singapore.

While other claimants have engaged each other on a bilateral basis, the primary proponent of the bilateral process has been China. Snyder opined that the power-politics theory best explains state behavior in the SCS, i.e. all states seek to maximize their own power. For example, by adopting the strategy of a cooperative hegemon, China could shape the multilateral mechanism to achieve its policy objective while conceding only limited power or influence to the smaller states. The Philippines and Vietnam seek the multilateral approach to enhance their national objectives while adopting the hedging strategy to engage China on a bilateral basis. Malaysia, on the other hand, has assumed a pragmatic position as it feels that it is able to reach a bilateral deal with China. Ultimately, the ASEAN nations seek to engage China in the multilateral forum with the hope that the rules and norms of the institution will, over time, be gradually integrated into the official Chinese thinking that could eventually provide real restraint in its behavior.

Stein Tønnesson downplays the changes indicated in China's consent to multilateral talks, as signaled by its 1991 attendance at the ASEAN post-Ministerial Conference, and its movement into formal discussions on the SCS disputes via the Code of Conduct in 2002.¹⁵ He is also quick to emphasize that these changes amount to little in the grand scheme of the dispute, and that any real transformation beyond gradual shifting of policy is yet to come. Pointing out the general watered-down declarations produced by the ASEAN-China Dialogues he argues that the ASEAN Way is not as much of a conflict resolution mechanism as it is a means of conflict prevention. If one looks at the vigor with which China, Vietnam, Malaysia, and others have opposed external intervention it is far-fetched to conjecture that ASEAN-China multilateral talks are in fact a "holding operation" designed as a ploy to keep the USA, UN, and ICJ out.¹⁶ This suggestion can be supported by the slow progress of the Indonesian Workshops on Managing Potential Conflicts in the SCS and the ARF even to discuss the disputes, as well as by China's reassertion at the signing of the Code of Conduct in late 2002 that it will only negotiate a settlement on a bilateral basis. The crux of the argument here is basically to admit that there has been a series of small shifts in the format of the dispute, but that the fundamental character of the negotiations remains the same.

No matter what caused China to join in 1994 an ASEAN-China Dialogue, it was a decision of profound significance. Never before, had China, in its long history, consented to embed itself in a regional framework. Whether the action is occurring at the multilateral ASEAN-China Dialogue or in a series of bilateral negotiations with ASEAN members, the fact that China has decided to sit down at the table and contemplate the fallibility of its territorial claims is a

¹⁵ Kivimaki, Odgaard and Tønnesson, *War or Peace in the South China Sea*.

¹⁶ See S. Tønnesson, in Jason Ray Hutchison, "The South China Sea: Confusion in Complexity".

transformation that cannot be denied.¹⁷ The paradoxical situation with general multilateral talks combined with detailed bilateral negotiations may not be ideal but it is a step in the right direction. One must not forget that the assemblage of claimants is far from evenly balanced.

Obviously, China will stick to bilateral approach in addressing the disputes with regard to sovereignty and maritime jurisdiction claims. When the term 'bilateral' is used, it does not necessary refer to Country A vs. Country B. When three parties get involved, then the "bilateral" means "trilateral", but any discussion may start from bilateral talks as well as depend on the nature of the disputes. In other aspects of the SCS issues, especially on many non-traditional security issues, such as piracy, marine environmental protection, China is already open to multilateral approach, such as the Declaration on the Conduct of Parties in the SCS (DOC) and the Workshop of "Managing Potential Conflicts in the SCS".

DOC

In November 2002, China and the 10 member ASEAN adopted the DOC, laying a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region.¹⁸ The DOC builds on earlier declarations and codes of conduct. The signatory parties agree to resolve the territorial dispute by peaceful means, without resorting to force or threat of force, through friendly consultations and negotiations, and with respect to international law. According to paragraph five of the DOC, the parties "undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability" — as such, the DOC prohibits claimants from occupying presently unoccupied geographical features. But it does not prohibit claimants from upgrading existing facilities on presently occupied features. Paragraph five also identifies five kinds of cooperative activities; parties are allowed to undertake, either bilaterally or multilaterally, the following CBMs: marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operations; and combating transnational crime.

However, the DOC suffers from a number of weaknesses. It is neither a binding treaty, nor a formal code of conduct. The DOC has no teeth: it does not enumerate sanctions in the event of an infringement and does not have a geographical scope. Moreover, one of the claimants — Taiwan — is not a party to the DOC because Beijing regards Taiwan as part of the PRC while the ASEAN states, in accordance with the One China policy, do not recognize

¹⁷ See L. Xiang in Jason Ray Hutchison, "The South China Sea: Confusion in Complexity".

¹⁸ For details of DOC see the ASEAN website at <http://www.aseansec.org/13163.htm>.

Taiwan as an independent sovereign state. Yet despite these flaws, the DOC represents a political statement meant to reduce tensions in the region and engage in cooperative activities. It is also an agreement to work toward a formal and binding code of conduct. This commitment was reaffirmed in the October 2003 ASEAN-China Joint Declaration on Strategic Partnership for Peace and Prosperity and the subsequent November 2004 Plan of Action to implement the 2003 Declaration.¹⁹

ASEAN and China have held a few senior officials meetings to discuss policy issues concerning implementation of the DOC. In a bid to thwart military aggression, political tension, and keep the vast area open to trade, China and ASEAN decided to espouse a legally binding code of conduct in the SCS, which would bolster regional stability and cooperation. However, the progress on the negotiation of code of conduct seems slow. It is reported that a major stumbling block to such a mechanism is China's reluctance to deal with ASEAN collectively on the issue. China instead wants the matter discussed bilaterally with the group's members which have territorial claims, while some ASEAN states want to speak as a group, especially Vietnam.

Informal Workshop on the SCS

Since 1990 a series of workshops on "Managing Potential Conflicts in the SCS" have been held in Indonesia under the auspices of the Research and Development Agency within the Department of Foreign Affairs. The initiative is the brainchild of Ambassador Hasjim Djalal of Indonesia, a leading authority on ocean affairs and one of the more influential participants at the Third United Nations Conference on the Law of the Sea. A detailed strategy for its implementation was worked out by Dr. Djalal and Prof. Ian Townsend-Gault, co-directors of the project, entitled "Managing Potential Conflicts in the SCS".²⁰ These non-governmental gatherings, once a year in different locations in Indonesia, attended by government and military officials in their private capacities as well as by academics from the region and Canada, have been convened to explore ways to engender cooperation among the nations bordering on the SCS.

A series of technical working group meetings, including those on Marine Scientific Research (Manila, May 1993), Resource Assessment (Jakarta, July 1993), Legal Matters (Phuket, July 1995) and Shipping, Navigation and Communications (Jakarta, October 1995), Marine Environmental Protection (1997), Legal Matters, Safety of Navigation, Shipping and Communication (1998), Safety of Navigation, Shipping and Communication (1999),

¹⁹ Schofield and Storey, "Energy Security and Southeast Asia: The Impact on Maritime Boundary and Territorial Disputes".

²⁰ Hasjim Djalal, Ian Townsend-Gault, "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention", in Crocker, Hampson and Aall (eds.), *Herding Cats: Multiparty Mediation in a Complex World* (Washington, D.C., United States Institute of Peace Press, 1999.), pp.107-134

Environmental Legislation (1999 and 2000), Hydrographic Data and Information Exchange (2000), and Marine Database Information Exchange (2006), Marine Ecosystem Monitoring, in the following respective years, have also been organized.

The workshops had aimed to move states from engaging in forceful exchanges to peaceful joint development in the SCS region in promoting the idea of cooperation.²¹ “The workshop process tried to move beyond the fixation of sovereignty issues and worked on getting states to take a functional approach towards non-traditional security concerns, namely, scientific marine research, environmental and ecological research, sea-lanes of communication management, living and non-living resource management and conservation, and institutional mechanisms for cooperation.”²² What makes the workshop run smoothly since 1989 is that claimant states were given a platform to talk about the disputes in a ‘non-confrontational’ and informal ‘off-the-agenda’ basis, by providing the grounds for cooperation on nontraditional security issues without focusing on jurisdictional and sovereignty issues. Townsend-Gault holds that the workshop was a step towards a peaceful response, if not resolution, to the conflicts in the SCS region.²³

Questions on the workshop process are raised, such as what needed to be changed and done differently if the Workshop Process were to be re-crafted and conducted all over again. Djalal holds that the workshop has been successful in minimizing the amount of forceful confrontation and heated exchanges among the claimant states. The peace-promoting mechanism of the workshop should persist and not change.²⁴ As different positions on territoriality continue to be a contested issue among states, subsequent workshops should try to concentrate more on ‘peace-building’ and ‘cooperative projects’.²⁵ There was also criticism that both Southeast and Northeast Asia lack a collective, substantial and binding treaty that would help to ensure maritime security and safety in the region. “Economic development might drive cooperative measures in the region but there is still a general lack of political willingness by states to commit themselves to the joint development of the SCS.”²⁶

²¹ Ian Townsend-Gault, See the conference report of “ The SCS: Towards A Cooperative Management Regime” (May 16-17, 2007, Singapore), p.4

²² Ibid.

²³ Ibid.

²⁴ The author interviewed Ambassador Djalal in December 2004 in Shanghai in person and in June 2009 via email.

²⁵ See Hasjim Djalal and Ian Townsend-Gault , "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention", in Crocker, Hampson and Aall, eds., *Herding Cats: Multiparty Mediation in a Complex World* (Washington, D.C., United States Institute of Peace Press, 1999.). pp.107-134, p.127

²⁶ For details see the discussion part of the conference report “The SCS: Towards A Cooperative Management Regime” (May 16-17, 2007, Singapore).

Some scholars see China's participation at the informal multilateral level as a good chance for China and the ASEAN countries to work towards progress and peace in the region at an official level.²⁷ In essence, attempts to solidify the current conditions of peace and security would become the regional interest. In other words, the region ought to look more closely at issues that are of common regional concern, of a certain degree of urgency and cannot be tackled by any individual state. In addition, the workshop could also help strengthen cooperative commitments in the region, especially if a state is made to adopt a theme of interest to work on. "Although there may be a stark gap between legal theories and the political reality of the situation in the SCS, the truth remains that states ought to shelve their sovereignty and delimitation issues and move towards cooperation and joint development."²⁸

Djalal and Townsend-Gault sought to explain the Informal Workshop in the SCS as an approach of 'diplomacy for conflict prevention' or 'track-two' initiatives.²⁹ In the case of the SCS, the uncertain nature of the formal relationships between the claimant states sets obstacles in achieving the regional security and solving regional problems of marine management. Political pressures in both China and ASEAN countries tend to list disputed boundaries as top political agendas while leaving aside other issues such as living resources, the marine environment, and the safety of shipping and navigation. The informality associated with 'track two' initiatives allows for discussion and dialogue without being bound by political fetters.³⁰ 'Informality' provides for a "flexibility and inclusiveness that is simply not possible at the formal level."³¹ Not only can a broader range of issues be discussed, participation from Chinese Taipei/Taiwan becomes possible under the 'informality' banner. 'Track two' diplomacy therefore "fills the holes in the long road of formal dialogue by providing a forum for discourse between players and on issues that simply cannot take place at the formal level, which are needed to advance cooperation and mutual understanding."³²

Uncertainty in ASEAN-China Relations on the South China Sea Issues

US's Role: Balancing Regional Powers or Jeopardizing the Existing ASEAN+1 Framework

Most Southeast Asian states consider continued US military balancing of China a necessity, as Southeast Asian military capabilities are no match for

²⁷ Ibid.

²⁸ Ibid, p.13

²⁹ Hasjim Djalal and Ian Townsend-Gault, "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention", pp.109-133.

³⁰ For discussion on 'track two' initiative, see the South China Sea Information Working Group at University of British Columbia, at <http://faculty.law.ubc.ca/scs/>.

³¹ Ibid.

³² Ibid.

those of China and a common ASEAN defence identity is absent.³³ ASEAN has not explicitly defined China as a potential threat. However, in 1992 ASEAN recommended that the USA maintain its forces in the region since Chinese advances into the South China Sea had implied that Southeast Asia was not immune to the consequences of the strategic choices of China and the USA.³⁴ By the late 1990s, most Southeast Asian states had established some form of military cooperation with the USA, ranging from defence dialogues to alliance agreements requiring mutual defence against aggression. Singapore, Thailand and the Philippines constitute the core US partners in Southeast Asia. Cooperation agreements involve large-scale exercises, frequent visits of US troops and, in Singapore's case, the permanent stationing of a small US logistics unit. US military cooperation with Indonesia, Malaysia and Brunei is more modest. This principally involves limited transit, refuelling and visiting rights, and joint training. Malaysian and Indonesian support for continued US military presence is particularly noteworthy since, during the Cold War, these countries tended to consider US regional engagement a potentially destabilizing factor.

Of the new member-states – Vietnam, Laos, Myanmar and Cambodia –only Vietnam has even considered establishing a nascent military relationship with the USA. The three other states, constituting the periphery of ASEAN in terms of military, economic and diplomatic capabilities and geographic location, are closer to China and remain suspicious of any form of US interference in Southeast Asia. Their inclusion in ASEAN in the late 1990s may nevertheless aid a Sino-Southeast Asian rapprochement.³⁵ The presence of states amenable to understanding and promoting Chinese concerns in the South China Sea arguably reduces China's fears that its interests are ignored in multilateral settings touching upon security issues. ASEAN's inclusion of Laos, Myanmar and Cambodia implies that Southeast Asia has invited Sino-US strategic competition into the region.³⁶ This development indicates Southeast Asian recognition that the region is not able to opt out of such competition. The states differ on the appropriate position of Southeast Asia within this framework. However, they agree on the prevalence of strategic competition between the Great Powers and do not expect this to preclude a Sino-Southeast Asian rapprochement.³⁷

China expressed concern over US's increasing engagement in the SCS, stressing that it opposes the internationalization of the maritime issue. China holds that the SCS issue is a sovereignty dispute about territory and maritime

³³ Liselotte Odgaard, *Maritime Security Between China and Southeast Asia: Conflict and Cooperation in the Making of Regional Order* (Aldershot: Ashgate, 2002) pp.108–157)

³⁴ Tasker, 1992

³⁵ Odgaard, 2003

³⁶ Ibid.

³⁷ Ibid.

rights between the relevant countries, and not an issue between China and the ASEAN, nor a regional or international issue.

Some U.S. scholars argue that China's opposition to the "internationalisation" of the SCS issue is tantamount to an attempt to de-internationalise an international sea. Once the South China Sea has been de-internationalised, China will be able to bring its strength to bear on the Southeast Asian countries and impose its own rules, rather than internationally accepted ones from international law on these waters.³⁸ In the workshop on US-China relations on the SCS issues in September 2010, some Chinese scholars tried to clarify the interpretation of "bilateral approach" which China always insists on in solving conflict with relevant states. In the context of SCS issues, China believes that the best approach to solve islands sovereignty and maritime delimitation is through direct negotiation with the countries involved. On other issues on non-traditional security, such as safety and security of sea lanes, anti-piracy, marine environmental protection, China is open for multilateral approach for cooperation. One best example is the DOC signed in 2002 and other regional agreements with ASEAN.

US Secretary of State Hillary Rodham Clinton said in July 2010 that the United States had a "national interest" in the South China Sea and could facilitate talks, worrying China that it was going to step into the territorial rivalry. On June 22 2011, the Chinese vice foreign minister warned the United States to stay out of the increasingly tense territorial disputes and maritime conflicts in the South China Sea.³⁹ China always opposes the internationalization of the South China Sea. Such a practice of internationalizing the SCS issue could undermine its longstanding policy of engaging the claimant states on a bilateral basis. China argued that China's policy of regional engagement has produced good results until the recent US high profile presence in the South China Sea. China, like most of Asian countries, has historically approached the problem using a bilateral approach to an international issue.

Since Sino-US strategic competition allows little latitude for Great Power collaboration, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers.

Post-2002 Development: a Setback or Progress?

DOC laid a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. Though the DOC has been criticised for a number of weaknesses, as many argue, e.g. neither a binding treaty, nor a formal code of

³⁸ Workshop on US-China relations on the South China Sea issues in September 2010, Hawaii.

³⁹ Edward Wong, "Beijing Warns U.S. About South China Sea Disputes", *The New York Time*, June 22, 2011

conduct, the signing of this document helped keep the South China Sea (SCS) quiet for a couple of years, at least before 2009.

The year of 2009 has seen several major developments that stirred up controversy in the SCS all over again, and highlighted the difficulties of maintaining stability in the region. In mid-February 2009, the Philippines Congress passed a territorial Sea Baseline Bill, laying claim to Scarborough Shoal (sovereignty claimed by China) and a number of islands in the SCS. Another event is the clash on 8 March between Chinese vessels and a U.S. ocean surveillance ship “Impeccable” in China’s EEZ. On 6 May 2009, Malaysia and Vietnam lodged a joint submission with the United Nations Commission on the Limits of the continental Shelf (CLCS). Vietnam also lodged a separate submission in relations to the northwestern part of the central SCS. These extended continental shelf submissions have served to highlight existing disputes and appear likely to add an extra dimension to them. Indeed, there are already indications that the situation is escalating.

2010 witnessed the escalation of the controversy in the SCS, with US’s increasing presence in this region, and with a serial of US-Sino spats on the SCS dispute. In March, as first reported by a Japanese media and followed by US medias, Chinese officials told two visiting senior Obama administration officials that China would not tolerate any interference in the South China Sea, now part of China’s “*core interest*” of sovereignty. In July, US Secretary of State Hillary Clinton made a statement at the 10th ASEAN regional forum (ARF) that the disputes over the highly sensitive South China Sea were a “leading diplomatic priority” and now “pivotal to regional security”.⁴⁰ This backdrop certainly contributed to increasing concerns in Beijing who sees Hillary’s statement as a signal that US will change its neutral position on the SCS dispute and back other claimant states, especially Vietnam.

The concern from international community is that Chinese for the first time labelled the SCS a core interest, on par with Taiwan and Tibet. Chinese scholars argue that China never publicly declared a “South China Sea = core interest” policy, it came first from Japanese media and followed by US journalists which served as the subtext for the whole “US defends freedom of navigation in the South China Sea” story. Zhu Feng, a Chinese political scientist, in an IISS (International Institute of Strategic Studies) workshop in Singapore in November 2010, gave another explanation on the “core interest”. He said the Chinese officials did use the term “core interest”, but the original text is that “the peaceful resolution of the South China Sea is the core interest of Chinese government”, which was misinterpreted by the media.

Chinese concern over Hillary’s statement that “United States has a national interest in resolving the claims” indicates that Obama Administration has changed its SCS position since 1990s from neutral to active engagement. In a Sino-US workshop on the SCS in Hawaii 2010, some scholars from think

⁴⁰ Ernest Z. Bower, “Hillary Clinton—A Secretary of State Fluent in ASEAN, July 20, 2010, CSIS, at ” <http://csis.org/publication/hillary-clinton-secretary-state-fluent-asean>

tanks like Rand, APCSS (Asia-Pacific Center for Security Studies), CNA (Center for Naval Analysis) argue that Hillary's remarks may be in response to what many US Medias' report on China's recent statement in March when Beijing defined the SCS as one of its "core interests". So who is to be blamed for provoking the escalation of the SCS issues?

The tension continues to grow in 2011 with a serial of events occurring in rows in the SCS. Vietnam in May accused China of cutting the exploration cables of an oil survey ship. In a similar incident in June, it said a Chinese fishing boat had "intentionally rammed" the exploration cables of another of its boats.⁴¹ China, however, claimed that its fishing boats were chased away by armed Vietnamese ships in the incident. The fishing net of one of the Chinese boats became tangled with the cables of a Vietnamese oil exploring vessel, which was operating illegally in the area, and was dragged for more than an hour before it was cut free, the Chinese foreign ministry said. China accused Vietnam of "gravely violating" its sovereignty and warned it to stop "all invasive activities. In June, Vietnam held live-fire drills in the South China Sea amid high tensions with China over disputed waters. Chinese state media denounced the exercises as a military show of force to defy Beijing.

Standoffs have also taken place this year between Chinese and Philippine vessels. In March, two Chinese maritime surveillance ships ordered a Philippine survey ship away from an area called Reed Bank. The Philippines later sent in military aircraft. President of the Philippines Benigno Aquino's office said on June 13 that it was renaming the South China Sea as the "West Philippine Sea", as tensions with Beijing mount over the disputed area.⁴² Starting from May, the Philippines Navy has removed foreign marker posts that were placed on reefs and banks, part of the much-disputed Spratly group of islands.⁴³ US Secretary of State Hillary Clinton has said Washington is committed to the defence of the Philippines, amid rising tensions in the South China Sea. She said the US would honour its mutual defence pact with Manila and offer the Philippines affordable weapons.⁴⁴

The comparison of the period between 2002 and 2009 and the most recent development since 2009 raises a question for debate: is the recent development of the SCS clarity of claims and enhanced prospects for regional cooperation, or a setback for the regional security and peace in this region?

With ASEAN: Internal Disagreement or Unity?

⁴¹ "Vietnam in live-fire drill amid South China Sea row", BBC Asia-Pacific, June 13, 2011

⁴² "Philippines renames South China Sea", *AFP*, June 13, 2011

⁴³ Simone Orendain, Philippines Removes Foreign Markers From Disputed South China Sea Reefs", *BBC*, at

<http://www.voanews.com/english/news/asia/east-pacific/Philippines-Says-it-Removed-Disputed-South-China-Sea-Markers-123900539.html>

⁴⁴ Kate McGeown, "US 'stands by Philippines' amid South China Sea tension", *BBC*, June 24, 2011

The South China Sea disputes are conflicts of jurisdiction over territory and maritime space. As such, they are not formally an ASEAN issue, but only involve the claimant states. Four states of ASEAN, Vietnam, the Philippines, Malaysia, Brunei, are directly involved in the SCS disputes. Some argue that each individual state will be a weak position to negotiate with China on a bilateral basis. Instead, ASEAN nations should bargain collectively with China on this issue. However, other states in ASEAN not having overlapping claim with China don't necessarily agree with this collective approach which will impact their bilateral relations with China. Cambodian Prime Minister Hun Sen has urged the parties concerned to strictly abide by the code of conduct in the SCS, warning against internationalizing the issue of SCS. Hun Sen stressed that the parties concerned should use existing mechanisms to solve the problem through consultation and should not try to put pressure on China allying with the United States or Japan. At the informal ASEAN Foreign Ministers' meeting on January 21st 2011, Indonesian Foreign Minister Marty Natalegawa voiced his concern over American and Japanese engagement in the sovereignty dispute in the SCS.

Malaysia has been an outspoken critic of US interference in Southeast Asian political and economic affairs. For example, former Malaysian Prime Minister Mahathir Mohamad characterized US opposition to ASEAN's admission of Myanmar on grounds of human rights as an attempt at foreign coercion of ASEAN.⁴⁵ Malaysia has been very active in the Sino-Southeast Asian informal dialogue on the South China Sea that began in 1990 and has included China since 1991. Malaysia has criticized attempts at pressurizing China into cooperation, arguing that nothing will be gained from trying to force China to concede, other than superficial compliance that is unlikely to last in the long run.⁴⁶ Indonesia is a non-claimant that harbours second thoughts on Chinese regional engagement. Indonesia is traditionally suspicious of any Great Power overtures for collaboration that may come at the cost of indigenous regional governance.

Claimant states Vietnam and the Philippines have experienced the most serious conflicts with China in the South China Sea. As such, they are also the ASEAN states most concerned about China's intentions. Sino-Vietnamese hostilities in the South China Sea have twice resulted in naval battles – in 1974 in the Paracels and in 1988 in the Spratlys. The Philippines regards containment of China as a necessary precautionary measure against Chinese expansion in the South China Sea.⁴⁷ Recurring bouts of anti-US nationalism necessitate continued public downplaying of the USA's centrality for Philippine security following the closure of Subic Bay and Clark Air Force Base in 1992.

⁴⁵ *FBIS Daily Report* (Hong Kong AFP), 1997. 'Malaysia: Further on Prime Minister's Remarks at ASEAN Meeting', FBIS-TAC-97-205, 24 July.

⁴⁶ Nayan Chanda, 1994. 'Divide and Rule: Beijing Scores Points on South China Sea', *Far Eastern Economic Review* (Hong Kong), 11 August.

⁴⁷ Odgaard, 2003

However, not confident of ASEAN's ability to counter the Chinese advances, the Philippine government prefers to rely on continued US military balancing. In 2000, the USA resumed large-scale military exercises in the Philippines, allowing it to familiarize itself with conditions in the South China Sea. In addition, the war on terrorism led to the deployment of more than 1,000 US troops in the Philippines to assist in the fight against the Muslim guerrillas Abu Sayyaf. This strengthened military alignment with the USA allows the Philippines to be less confrontational towards China than Vietnam. Vietnam and the Philippines have been anxious to see tangible results from the South China Sea dialogue, expressing dissatisfaction with ASEAN's resolve to accept Chinese constraints on the informal dialogue and calling for increased pressure on China to achieve progress in formal negotiations.⁴⁸

Singapore and Thailand, not involved in maritime disputes with China, enjoy cautious, but friendly, relations with the regional power.⁴⁹ Sino-Singaporean relations are strengthened by close cultural and economic links and compatible views on issues such as press freedom, democracy and human rights. China's proximity to Thailand, mutual economic interests and common security concerns about Vietnam's occupation of Cambodia in 1978 have strengthened Sino-Thai relations since the establishment of diplomatic relations in 1975. Thailand and Singapore advocate the view that cordial, cooperative ties with China are best reached with continued US military presence in the region. Singapore is the most vocal supporter of preserving US regional engagement. The permanent stationing of Commander, US Logistics West Pacific in Singapore makes it the only Southeast Asian country to permanently host an administrative unit of the US armed forces. Singapore has built and financed the new Changi naval base to facilitate deployment of the US Seventh Fleet in Southeast Asia and has called for stronger ties between ASEAN and Japan to counter Chinese influence.⁵⁰ Nevertheless, Singaporean support for the fundamentals of US Asia-Pacific policy confirms that Singapore is the most reliable advocate of continued US military presence in Southeast Asia. Despite the US–Thai military alliance, Thailand maintains a cautious attitude to the USA because of recurring trade and economic disputes between the two countries and because Thailand's proximity to China encourages it to avoid entanglement in Sino-US strategic competition. Singapore and Thailand are not involved in maritime boundary and sovereignty disputes with China, but its presence in the maritime centre of Southeast Asia has an impact on their security. They support the South China Sea dialogue because they both advocate enhanced Sino-Southeast Asian multilateral cooperation to secure regional peace and stability. Thailand and

⁴⁸ Odgaard, 2003

⁴⁹ Ibid.

⁵⁰ Zi Hua, 2000. 'As the Security Situation of East Asia Undergoes Change, the United States Shifts its Security Strategic Focus to the East', *FBIS Daily Report* (Hong Kong Wen Wei Po), FBIS-CHI-2000-0710, 10 July.

Singapore are also in favour of a code of conduct, arguing that explicit multilateral rules of behaviour are necessary to prevent the use of force.⁵¹

Myanmar, Laos, Cambodia and Brunei have a subdued foreign policy profile that also characterizes their SCS policies. Having no disputes with China in the SCS, Myanmar, Laos and Cambodia mainly have indirect interests in keeping peace in the area. Consequently, they tend to follow the official ASEAN policy line and rarely voice an independent opinion on the matter.

Despite the disagreement, the disputes of the SCS are set within a political framework largely defined by ASEAN principles of regional security and member-states' foreign policies. Furthermore, the disputes affect the security of all Southeast Asian states, because China's presence in the South China Sea makes it a Southeast Asian power outside the ASEAN security framework. Consequently, common ASEAN positions and the foreign policies of singular states on the South China Sea have a bearing on the ability of ASEAN to maintain unity on this issue.⁵²

Concluding Remarks

As two major actors on the SCS stage, the ASEAN-China relationship develops parallel with the evolution of the SCS dispute. ASEAN's attitude towards China evolves from fear of threat to enhanced mutual confidence building. China's approach to the SCS dispute also evolves from bilateralism to multilateralism, with the DOC signing in 2002, and the informal workshop on "Managing Potential Conflicts in the SCS" as two good examples, despite the criticism on their effectiveness. However, there are still many uncertain factors which have significant impact on the ASEAN-China relations on the SCS dispute. First, US's increasing presence in the SCS, on the one hand, may be interpreted by some ASEAN states as one key card to balance the increasing power of China in the region, on the other hand, it is not necessarily welcomed by all as other states in ASEAN not having overlapping claim with China are cautious about US's engagement in the SCS. China argued that China's policy of regional engagement has produced good results until the recent US high profile presence in the South China Sea. Since Sino-US strategic competition allows little latitude for Great Power collaboration, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers. Second, DOC laid a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. However, the most recent development since 2009 has stirred up controversy in the SCS all over again, and highlighted the difficulties of maintaining stability in the region. The comparison of the period between 2002 and 2009 and the

⁵¹ South China Morning Post, 1999; Bangkok Post, 2001.

⁵² Liselotte Odgaard, "The South China Sea: ASEAN's Security", Concerns About China", *Security Dialogue* vol. 34, no. 1, March 2003

most recent development since 2009 thus raises a question for debate: is the recent development of the SCS clarity of claims and enhanced prospects for regional cooperation, or a setback for the regional security and peace in this region. Third, difference voices are heard with ASEAN itself on how the dispute settlement in the SCS should be pursued. Nevertheless, there is a consensus among ASEAN and China that a Sino-Southeast Asian practice of consultation and negotiation will contribute to regional peace and stability by ensuring that pending disputes between the states will be settled by peaceful means between the indigenous powers. Consequently, ASEAN is united in the fundamental principles of sustaining peaceful coexistence with China. Since Last, Sino-US strategic competition allows little latitude for Great Power collaboration on the SCS issues, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers.

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