

**Intra-ASEAN Dynamics and the South China Sea Dispute:
Implications for the DoC/CoC Process and ZoPFFC Proposal**

Dr. Ian Storey

Senior Fellow, Institute of Southeast Asian Studies, Singapore

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In addition to China’s intransigence, conflict management and a resolution of the South China Sea dispute has been hindered by problems of inter-ASEAN dynamics, and especially the issue of consensus. Because the South China Sea is vital to the economic and food security prospects of Southeast Asia, ASEAN member states have a strongly vested interest in stability and a peaceful settlement of the dispute. But ASEAN does not support the claims of four of its members nor does it take a position on the validity of China’s claims. While Vietnam and the Philippines have championed a Code of Conduct (CoC) for the South China Sea, China’s reluctance to pursue such a code presents a significant obstacle. The Philippine proposal to transform the South China Sea into a Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) is also problematic due to opposition from Beijing and because it may require ASEAN to take a position on China’s expansive claims. In short, the prospects of realizing a CoC and the ZoPFFC are not very bright.

Heightened tensions over contested territorial and maritime boundary disputes in the South China Sea over the past few years have propelled the issue to the top of Asia’s security agenda. The problem has displaced other regional “flashpoints” such as rivalry on the Korean Peninsula, China-Taiwan relations and tensions between India and Pakistan, despite the fact that conflict in any three of these areas has the potential for massive loss of life, the possible use of nuclear weapons, and overt military intervention by the Great Powers, including the United States. By contrast a major confrontation in the South China Sea seems very unlikely at this moment in time.

Minor naval skirmishes are possible, either through accident or design, but such incidents would not lead to large-scale casualties.

Nevertheless, due to the economic and strategic importance of the South China Sea, mismanagement of the problem carries high risks for claimant and non-claimant countries. The sea lines of communication (SLOCs) which pulse through the sea function as vital arteries of global commerce; and while tensions have not hindered the free flow of maritime trade —and may never do so— their safety has become a concern, especially in an era of economic uncertainty. Access to maritime resources such as fisheries, crude oil, natural gas and seabed minerals, continues to be an important driver of the dispute, and the energy security imperative is likely to become an even more salient factor in an age of growing resource demand and scarcity. Nationalist rhetoric concerning irredentist rights has become louder and more fervent, especially in China and Vietnam, making compromise difficult. And most importantly, the South China Sea dispute has become subsumed in the evolving geostrategic competition between the People's Republic of China (PRC) and the United States which, if it intensifies, could force the littoral states into making hard choices.

A great deal of commentary on the South China Sea dispute has appeared over the past several years, much of it focused on China: its growing military capabilities, the drivers of its increasingly assertive, even aggressive behaviour; the interplay of bureaucratic politics; and the impact of the dispute on Sino-US relations.¹ Relatively less attention has been given to intra-ASEAN dynamics. The purpose of this paper is to explore how ASEAN as a group has responded to rising tensions, the degree to which consensus has been forged, and the political realities of the limits of that consensus. The paper focuses on the Declaration on the Conduct of Parties in the South China Sea (DoC) and Code of Conduct for the South China Sea (CoC) processes and ASEAN's reaction to the Philippine's proposed Zone of Peace, Freedom, Friendship and Cooperation (ZOPFFC).

ASEAN Consensus and the South China Sea Dispute

The South China Sea dispute has been high on ASEAN's agenda since the early 1990s. Up until that point in time the organization had been focused on a resolution of the Cambodian problem, a ten-year crisis precipitated by Vietnam's 1978 invasion of

that country in December 1978. While there was consensus among the six members —Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand— on the need to effect a Vietnamese withdrawal, there were sharp divisions among them over how that goal should best be achieved, and particularly the role China should play.² Despite differences of opinion within ASEAN, the member states were able to stay focused on the core goal of achieving Vietnam's withdrawal from Cambodia and a peaceful settlement of the problem. Consensus was maintained and the organization played a significant role in the resolution of the Cambodian crisis.

Achieving a robust consensus on the South China Sea dispute within ASEAN has been a challenge for the organization over the past two decades largely due to differing national interests of the member states, a problem compounded by the expansion of the membership from six to ten members between 1997 and 1999. Four members —Brunei, Malaysia, the Philippines and Vietnam— not only have overlapping territorial claims with the PRC, but also with each other. That said, however, Malaysia and Brunei seem to have resolved their overlapping claims in the Spratly Islands. In an Exchange of Letters in 2009, Malaysia recognized Brunei's claimed exclusive economic zone (EEZ) and by extension its sovereign rights therein, including over Louisa Reef, a semi-submerged feature.³ Indonesia is also a party to the dispute because the 200 nautical mile EEZ generated by the Natuna Islands overlaps with China's 9-dashed line which encompasses nearly 80 per cent of the South China Sea. Singapore is not a claimant, but as an island nation dependent on the free flow of maritime trade for its prosperity and future development, has repeatedly expressed concern at the potential for the dispute to generate instability. Cambodia, Laos, Myanmar and Thailand are not claimants and do not see themselves as directly impacted by the dispute. These three countries, to varying degrees, also have close economic, political and security ties to the PRC and may not want to damage those ties by supporting initiatives in the South China Sea which Beijing may perceive as inimical to its interests. For instance, at the July 2010 ASEAN Regional Forum meeting in Hanoi, 12 countries raised their concerns about recent developments in the South China Sea: of the ASEAN members, only Cambodia, Laos, Myanmar and Thailand chose to remain silent on the issue.

As Ambassador Tommy Koh has written, ASEAN does not take a position on the claims of Brunei, Malaysia, the Philippines and Vietnam in the South China Sea.⁴ Such a position would, of course, be impossible given that ASEAN decision-making

is based on consensus and that the four states have overlapping claims in the Spratly Islands. Moreover, as Koh goes on “The group has also not taken a position on the merits of the disputes between China and ASEAN claimant states. Therefore, any perception that the claims of Brunei, Malaysia, the Philippines and Vietnam is backed by ASEAN is incorrect.” Collectively the ASEAN states do, of course, have significant interests in the South China Sea, be they claimant or non-claimant. The SLOCs are not only vital to the health of the world economy, but also to the economic well-being of all ASEAN members. The rich fishing grounds of the South China Sea are vital to the food security of hundreds of millions of people across the region. All ASEAN members are keen to promote good relations with China and wish to see cooperative relations between the PRC and the United States. In short, while ASEAN does not take a position on the various claims, it is committed to stability in the South China Sea and a peaceful resolution of the problem —this forms the basis of its consensus.

The origins of this consensus can be traced back to the early 1990s when the dispute became a source of serious inter-state tension. In 1992, in response to PRC domestic legislation which made expansive maritime claims, ASEAN issued its first policy pronouncement on the dispute, the ASEAN Declaration on the South China Sea, which, without naming China, called on the claimants to resolve the dispute peacefully, exercise restraint and pursue cooperative confidence building measures (CBMs).⁵ Three years later, following China’s dramatic occupation of Philippine-claimed Mischief Reef, ASEAN foreign ministers issued a statement expressing “serious concern” at developments and urging all parties to abide by the 1992 Declaration.⁶

Attempts by Vietnam (which joined ASEAN in 1995) and the Philippines in the second half of the 1990s to issue further statements of concern censoring assertive PRC behaviour proved unsuccessful. When a stand-off between Vietnamese and Chinese vessels took place in the Gulf of Tonkin in 1997 ASEAN deemed the matter a bilateral issue and took no action.⁷ ASEAN unity on the issue broke down altogether during the 1997-98 Asian Financial Crisis. When China upgraded its structures on Mischief Reef in November 1998, Manila failed to extract a joint statement from ASEAN protesting the move, and in 1999 Malaysia earned a sharp rebuke from the Philippines for occupying Erica Reef and Investigator Shoal, two atolls claimed by Manila and Hanoi. ASEAN cohesion had come under stress as a result of the

economic and political fallout from the crisis. The South China Sea dispute was not considered a priority issue, especially by those countries in receipt of financial aid from China such as Indonesia and Thailand. Moreover, ASEAN consensus on a range of issues had become harder due to expansion of membership to include Myanmar and Laos in 1997, and Cambodia in 1999.

The DoC Process

In the early 2000s, as the economic crisis passed and China's relations with all the ASEAN states developed quickly and smoothly, it became possible for ASEAN and the PRC to pursue conflict management mechanisms for the South China Sea. ASEAN members the Philippines and Vietnam had long championed a code of conduct for the South China Sea aimed at reducing tensions and building trust, though China had resisted such an approach until 1999 on the grounds that the dispute should be handled bilaterally. This change of tack in 1999 reflected China's growing comfort levels with multilateral diplomacy. Two years of talks between the two sides finally produced the DoC. But due to differences among the ASEAN claimants, and between some ASEAN states and China, the DoC was a compromise agreement that ultimately proved unsatisfactory and did little to manage the problem. During the negotiations China objected to several key clauses, including explicit reference to the geographical scope of the agreement (thereby removing mention of the Paracel Islands) and a prohibition on upgrading existing facilities on occupied atolls. Malaysia was uncomfortable with the designation of the agreement as a "code", a term it found overly legalistic. As a result, "declaration" substituted "code".⁸ Yet the change in language was more than a matter of mere semantics: "declaration" suggested the agreement was more a political statement of intent rather than a binding instrument with legal overtones. Vietnam in particular was unhappy with the change of wording, preferring instead to see a more formal code of conduct.⁹ A compromise was reached which went somewhat towards assuaging Hanoi's concerns: the final draft contained a clause reaffirming that the ultimate goal of the parties was a formal code of conduct for the South China Sea. The compromise draft was accepted by ASEAN leaders on 31 October 2002, and by Chinese officials the following day. Beijing's willingness to accept the draft was part of its so-called "charm offensive" towards Southeast Asia, a diplomatic campaign designed to reassure regional countries that China's rise

represented an economic opportunity and not a strategic threat, burnish the PRC's image and counter America's heightened diplomatic and security profile in Southeast Asia post-11 September 2001.

Tensions subsided in the South China Sea in the early 2000s, and the DoC was often invoked as having contributed to this calmer state of affairs. In fact the agreement had little impact on the dispute as none of the CBMs outlined in the DoC were effectively implemented. In 2005 China, the Philippines and Vietnam agreed to a 3-year joint seismic survey in disputed waters —the Joint Marine Seismic Undertaking— but it became entangled in a domestic Philippine political scandal and when it lapsed in June 2008 no attempt was made to revive it.

Progress on implementing the DoC was minimal for two reasons. First, it was not until 2005 —three years after the agreement was first inked— that ASEAN and China agreed to set up a Joint Working Group (JWG) tasked with drawing up implementation guidelines. Second, between 2005 and 2008 the JWG met only three times and when it did its work was stymied by disagreement between ASEAN and China over a point of procedure: China objected to formal inclusion in the guidelines of a clause stating that ASEAN would confer as a group before meeting with Chinese officials. Under the ASEAN Charter, member states are required to “coordinate and endeavour to develop common positions” in the conduct of external relations.¹⁰ Nevertheless, an effort to accommodate China, ASEAN officials rephrased the clause more than 20 times, but to no avail.¹¹ There also seems to have been disagreement among the ASEAN members over whether the clause should be dropped altogether.¹²

A breakthrough of sorts was achieved in July 2011 prior to the ARF meeting in Bali. As tensions ratcheted up in 2010, and the situation took a turn for the worse between March to June 2011 when Chinese maritime law enforcement vessels aggressively harassed survey ships chartered by the Philippines and Vietnam, it was apparent that the failure to reach agreement on implementation guidelines was damaging ASEAN's credibility and especially its oft-repeated claim of “centrality” to Asia's regional security architecture. According to Ernie Bower, ASEAN was faced with an “historic challenge” to convert the South China Sea “from the sea of potential conflict to waters that bind and propel Asian prosperity”.¹³

As chair of ASEAN in 2010, Vietnam was able to use its considerable diplomatic skills to give the South China Sea issue greater prominence on the ASEAN agenda. Some progress was achieved: the JWG met twice and the dispute was

addressed at the ARF in July for the first time ever. When Indonesia took over the chairmanship in 2011, it made a rhetorical commitment to make the South China Sea dispute a priority, though Jakarta's political energies quickly became focused on the Thai-Cambodia territorial dispute over Preah Vihear. Indonesian leaders publicly articulated their frustration at the lack of progress on the DoC process. In January Foreign Minister Marty Natalegawa warned that unless a breakthrough was achieved the dispute could "spiral out of control" and undermine regional stability.¹⁴ In July he opined that a continuation of the status quo was "not an option".¹⁵ At the same time, Indonesian President Susilo Bambang Yudhoyono noted that ASEAN needed to "send a strong signal to the world that the future of the South China Sea is a predicable, manageable and optimistic one".¹⁶

Rising tensions in the South China Sea seems not only to have been a concern for most of the ASEAN states, and particularly those in maritime Southeast Asia, but has also shone a spotlight on ASEAN's credibility and ability to manage regional security problems. Under Indonesian leadership, and with support from the Philippines and Vietnam, a stronger consensus emerged within ASEAN in the first half of 2011 that the impasse with China needed to be broken. This consensus was reflected in the official communiqués of ASEAN meetings. In May, ASEAN defence ministers discussed the South China Sea, reportedly for the first time, and in their final communiqué they reaffirmed their commitment to implement the DoC.¹⁷ In July ASEAN foreign ministers expressed "serious concern" at recent incidents and also called for the DoC to be fully implemented.¹⁸

To make agreement with Beijing on implementation guidelines possible, ASEAN dropped its insistence that formal mention be made of its practice of prior consultation before meeting with China, though according to Barry Wain, the "summary record" of the meeting between ASEAN and Chinese officials indicates that the organization intends to continue the practice of prior consultation.¹⁹ China had secured a diplomatic victory at ASEAN's expense: China had conceded nothing, and yet because agreement was reached, it emerged looking like a constructive player. But it was not the great breakthrough portrayed in the media, as the guidelines are rather vague and lacking in specifics. The guidelines call for the implementation of the DoC in a "step-by-step" manner; that participation in cooperative projects be voluntary; and that CBMs be decided by consensus. In short, they do not go beyond similar clauses contained in the DoC. China was clearly satisfied with the outcome.

Foreign Minister Yang Jiechi called the conclusion of the guidelines of “great significance.”²⁰ Vietnam seems to have put a brave face on it; a foreign ministry official called it a “significant and good start for us to work together to continue dialogue and cooperation”.²¹ But the Philippines, which had lobbied for a stronger and more detailed agreement, could barely conceal its disappointment. Philippine Foreign Secretary Albert del Rosario stated that “the necessary elements to make the guidelines a success are still incomplete” and that the DoC “lacked teeth”.²² As always, however, Manila had little option but to abide by the consensus of its ASEAN partners.

What are the Prospects for a Code of Conduct for the South China Sea?

With the impasse over the implementation guidelines over, in theory progress may be achievable on two fronts: first, the negotiation, design and operationalization of CBMs; and second, the drawing up of a formal Code of Conduct for the South China Sea (CoC). In practice, however, both issues are fraught with difficulties and the pursuit of the former may actually hinder the goal of achieving the latter.

The DoC enjoins the claimants to undertake cooperative activities in a number of areas including marine environmental protection and scientific research, safety of navigation at sea, search and rescue and combating transnational crime. ASEAN and China have begun discussing how to pursue CBMs in these areas. But at the talks proceed, ASEAN would also like to begin drafting the CoC. Not surprisingly, it is the Philippines and Vietnam who are the most ardent supporters of a code. In the first six months of this year, Philippine President Benigno Aquino lobbied his counterparts from Indonesia, Singapore and Brunei for a code.²³ According to Vietnam’s deputy foreign minister, Ho Xuan Son, there is “high consensus” within ASEAN for a CoC.²⁴ Evidence of consensus for a code was reflected in statements released by the ASEAN defence ministers in May and ASEAN foreign ministers in July. Indeed the July communiqué noted that ASEAN members had already begun discussions on a code and had been asked to submit a progress report to the 19th ASEAN Summit in November 2011.²⁵

ASEAN recognizes that a code of conduct can only be successful if China is on board; if China is not consulted it will almost certainly reject an ASEAN CoC. But China has indicated that it would rather focus on implementing the DoC first and

discuss a CoC “when the time is ripe”, a phrase Chinese government officials generally use to describe a mid to long term goal.²⁶ According to Barry Wain, China’s preference to focus on the DoC has been interpreted by some senior ASEAN officials as a tactic designed to stall progress on a binding code.²⁷ Moreover, it remains to be seen how quickly CBMs can be negotiated and operationalized. Progress is likely to be slow, meaning that agreement on the implementation guidelines is unlikely to have a significant impact on tensions in the South China Sea, at least in the short term.

Foreign Minister Natalegawa has described a legally binding code as “the main game”.²⁸ Indeed he has implied that ASEAN was willing to make the concession to China in July so as to make progress on a CoC possible.²⁹ ASEAN Secretary-general Surin Pitsuwan has expressed the hope that a code can be signed in 2012.³⁰ But achieving this goal will be a tall order for two reasons. The first is that, as noted, China has voiced reluctance to proceed with a code. And the second reason concerns the chairmanship of ASEAN from 2012 to 2015. During 2010-11, both Vietnam and Indonesia exercised leadership within ASEAN over the South China Sea issue which enabled some progress to be made, including, of course, agreement with China on the implementation guidelines. Both Vietnam and Indonesia have strong national interests in the South China Sea. In 2012 Cambodia will take over the chairmanship; in 2013 it will be Brunei’s turn; in 2014 it is likely that Myanmar will become chair, followed by Laos in 2015. This line-up does not bode well for progress towards better managing the South China Sea dispute. For non-claimants Cambodia, Myanmar and Laos the dispute does not seem to be a priority issue. Moreover, all three countries have close political, economic and security ties with the PRC, and it is unlikely that they will want to risk damaging those ties by pursuing initiatives on the South China Sea that Beijing may perceive as inimical to its interests. And while Brunei is a claimant, it has never taken the initiative on the dispute and it lacks strong political influence within ASEAN. As a result, the diplomatic momentum that has been built up within ASEAN over the past two years over the South China Sea dispute could well be lost during 2012-15.

ASEAN and Legal Issues in the South China Sea

As noted earlier, ASEAN does not take a corporate position on the legal claims of any of its members in the South China Sea dispute nor those of the PRC. However, this

has not prevented a convergence of thinking among some of the member states pertaining to certain legal aspects of the dispute, such as the status of the geographical features, EEZ rights and whether China's expansive claims have any validity under international law.

The legal distinction between what constitutes an island and what is a mere rock is an important issue in the context of the South China Sea dispute as it has implications for access to maritime resources. Under UNCLOS, islands are capable of generating 12 nautical mile territorial seas, 200 nautical mile EEZs and a continental shelf, while rocks can only generate a territorial sea. Features that are below the water at high tide—including those which claimants have constructed artificial structures over—are not even entitled to a territorial sea.

Disagreement exists among the various claimants over the legal status of the features in the South China Sea, though an emerging consensus among the coastal states of Southeast Asia is discernable. While some of the features may be classifiable as islands capable of generating the full suite of sovereign rights, experts are of the view that the majority are rocks or low-tide elevations. In a significant development, in their joint submission to the United Nations Commission on the Limits of the Continental Shelf (CLCS) in May 2009, Vietnam and Malaysia strongly implied that the disputed "islands" are no more than rocks. Indonesia has also adopted this view. In July 2010, Indonesia submitted a letter to the UN in which it asserted that small, uninhabited rocks, reefs and atolls in the South China Sea could not generate EEZs or continental shelves.³¹ If this view is adopted by all the South China Sea claimants it would simplify the dispute by substantially removing the maritime claims associated with the disputed atolls.³² China, however, takes the contrary view, at least in the South China Sea. When China lodged a response with the CLCS on 14 April 2011 over an earlier note submitted by the Philippines, it stated for the first time that the South China Sea "islands" are entitled to a territorial sea, EEZ and continental shelf.³³ But as Robert Beckman has pointed out, over Okinotorishima, a small coral reef located in the Philippine Sea and claimed by Japan, China has made the opposite case: that small, remote, uninhabited features cannot generate an EEZ or continental shelf of their own.³⁴

Some ASEAN members have become increasingly unnerved by the nature of China's claims and Beijing's reluctance to explain how they can be justified under international law. Two ASEAN countries have officially challenged China's claims at

the UN. In July 2010, Indonesia submitted a letter to the UN in which it asserted that that China's 9-dotted line map "clearly lacks international legal basis" and was contrary to UNCLOS.³⁵ On 4 April 2011 the Philippines formally objected to the 9-dotted line map that China had lodged with the CLCS in May 2009 in protest at the joint Malaysia-Vietnam submission. In a letter to the CLCS, Manila asserted that the Kalayaan Island Group (the name the Philippines gives to the islets it claims in the Spratlys) is an integral part of the Philippines, that it exercises sovereignty over the waters surrounding them, and that China's 9-dash line map has "no basis under international law".³⁶ In his comments, Del Rosario has been even more forthright, describing the map as "the crux" of the South China Sea problem and a "stumbling block" to its resolution: "The Philippines contends that the 9-dash claim of China is, to put it plainly, illegal. It is arbitrary and bereft of any basis or validity under international law, specifically UNCLOS".³⁷ While Vietnam has not formally protested the map, Vietnamese leaders have declared that it has no legal basis.³⁸ Singapore is not a claimant, but has expressed its reservations about the legality of China's claims. In a keynote address during an academic conference in Singapore, former senior minister and law expert Professor S. Jayakumar described the map as "puzzling and disturbing" because it has no basis in UNCLOS and could be "interpreted as being a claim on all the maritime areas within the nine dotted lines".³⁹ Several days later Singapore's Ministry of Foreign Affairs called on China to clarify its claims in the South China Sea "with more precision as the current ambiguity as to their extent has caused serious concerns in the international maritime community".⁴⁰ Ambassador Tommy Koh has pointed out that if China is only claiming the maritime features within the 9-dotted line, this can be consistent with UNCLOS, but that if it is claiming sovereignty over the features and the waters, this is incompatible with UNCLOS.⁴¹ Thus of the 10 ASEAN members 4 have explicitly or implicitly rejected the legal basis of China's claims.

The Philippines would like to see, in the words of Foreign Secretary Alberto del Rosario, ASEAN "united and question the definition and reason" for China's claims as the first steps towards transforming the South China Sea into a Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC).⁴² Essentially the initiative is designed to provide a framework for disputants to shelve their sovereignty claims and jointly manage the maritime resources of the Spratly Islands. In other words, ZoPFFC seeks to provide a framework for former Chinese paramount leader Deng Xiaoping's

proposal that the claimants shelve their sovereignty disputes and engage in joint exploitation. The concept envisages a two step process. The first is to separate disputed areas from areas which the Philippines considers should not be contested such as coastal waters and continental shelves. The second step calls on the claimants to demilitarize the atolls and establish a joint cooperation area to manage maritime resources.

Manila's letter to the CLCS in April 2011 in which it rejected the legal basis of China's claims can be interpreted as the first step in the process of segregating disputed and non-disputed areas. Manila suggested to Beijing that the two sides submit their claims to the International Tribunal on the Law of the Sea for adjudication, but the PRC has rejected it: according to China's Foreign Ministry "China always maintains that the South China Sea dispute should be resolved through direct negotiation between directly concerned parties."⁴³ And while the Chinese government has not officially commented on the ZoPFFC specifically, commentaries in the state-run media have derided the proposal as a "trick" and accused the Philippines of lacking sincerity.⁴⁴ China, it seems, wants to strangle Manila's proposal at birth.

Undeterred, the Philippines is seeking to forge a consensus within ASEAN on the ZoPFFC proposal. In July ASEAN foreign ministers agreed to consider the Philippine plan and in September legal representatives from the member states met in Manila to discuss it. In another indication of China's opposition to ZoPFFC, Beijing apparently protested the meeting.⁴⁵ The ASEAN experts reportedly concluded that the Philippine proposal had a legal basis.⁴⁶ But the future of the ZoPFFC remains highly uncertain for two important reasons. First, China is unlikely to clarify its claims especially in the sensitive period in the run-up to the 2012 Chinese Communist Party congress and also thereafter when the new leadership will be working to consolidate their rule. Beijing also opposes legal arbitration, preferring instead bilateral negotiations, a long-standing Chinese position. As with the CoC, without China's cooperation the ZoPFFC is doomed to fail, though it does put the ball firmly in China's court. Second, China's opposition to the proposal makes achieving consensus within ASEAN extremely difficult, partly because some members will not want to antagonize the PRC and partly because, as noted above, ASEAN avoids taking a position on the legal basis of China's claims which ZoPFFC explicitly does. Moreover, as discussed earlier, the next four ASEAN chairs are unlikely to use their

positions to champion the Philippine proposal. Thus far, only Vietnam has openly endorsed it.⁴⁷ It may be the only ASEAN member to do so.

Conclusion

Conflict management and conflict resolution of the South China Sea problem has not only been hindered by China's intransigence, but also by complications posed by intra-ASEAN dynamics. Decision-making within ASEAN is based on consensus, and due to differing national interests is often based on the lowest common denominator. Because the South China Sea is so vital to economic growth and food security in Southeast Asia, all members have a vested interest in stability and a peaceful resolution of the problem. These considerations underpin ASEAN's long-standing consensus over the need for conflict management mechanisms such as the DoC, despite differences of approach and emphasis.

The two principal Southeast Asian protagonists in the South China Sea dispute, the Philippines and Vietnam, have endeavoured to use their diplomatic influence to persuade ASEAN to adopt a more proactive stance, with mixed success. Both countries have championed a code of conduct, and while ASEAN seems to have made a rhetorical commitment to a CoC, China's opposition presents a significant obstacle. The Philippines has also tabled the ZoPFFC as a way of building on the DoC/CoC process. But as China opposes the initiative, and also because ASEAN avoids taking a position on China's claims, prospects for its eventual realization do not look very bright.

NOTES

¹ See “The South China Sea Dispute” a special issue of *Contemporary Southeast Asia* 33, No. 3 (December 2011).

² See Chapter One in Ian Storey, *Southeast Asia and the Rise of China: The Search for Security* (Abingdon, Oxford: Routledge, 2011).

³ Ian Storey, “Brunei and China” in Bruce Elleman, Stephen Kotkin and Clive Schofield (eds.), *China and its Borders: Twenty neighbors in Asia* (New York: M.E. Sharpe, forthcoming 2011)

⁴ Tommy Koh, “Mapping out rival claims in the South China Sea”, *Straits Times*, 13 September 2011.

⁵ ASEAN Declaration on the South China Sea, Manila, Philippines, 22 July 1992 <<http://www.aseansec.org/1196.htm>>.

⁶ “ASEAN ministers express concern over Spratlys”, *Reuters*, 18 March 1995.

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¹¹ Comment made by Mr. Termsak Chalermphanupap, Director of the Political and Security Directorate of the Asean Secretariat at “Maritime Security in the South China Sea”, Center for Strategic and International Studies, Washington D.C., June 20, 2011.

¹² “China amends ASEAN Summit’s S. China Sea Statement at Vietnam Behest”, *Kyodo*, 18 May 2011.

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¹⁴ Michael Richardson, “South China Sea clashes possible”, *Straits Times*, 24 January 2011.

¹⁵ “Risk of conflict in the South China Sea is set to prompt ASEAN pact with China”, *Bloomberg*, 21 July 2011.

¹⁶ “Speed up talks on South China Sea code”, *AFP*, 19 July 2011.

¹⁷ “Defense chiefs push for South China Sea rules”, *Jakarta Post*, 20 May 2011; Joint Declaration of the ASEAN Defence Ministers on Strengthening Defence Cooperation of ASEAN in the Global Community to Face New Challenges, Jakarta, 19 May 2011 < <http://www.asean.org/26304.htm>>.

¹⁸ “ASEAN Community in a Global Community of Nations,” Joint Communiqué of the 44th ASEAN Foreign Minister’s Meeting, Bali, Indonesia, July 19, 2011.

¹⁹ Barry Wain, “A South China Sea Charade,” *The Wall Street Journal Asia*, August 22, 2011.

²⁰ Remarks with Chinese Foreign Minister Yang Jiechie Before Their Meeting, U.S. Department of State, July 22, 2011.

²¹ “China, ASEAN agree on guidelines”, *Straits Times*, 21 July 2011.

²² Ibid.

²³ “Singapore calls for peaceful Spratlys resolution, joint use of resources”, *Philippine Daily Inquirer*, 10 March 2011; “South China Sea disputes up in Brunei”, *Manila Standard Today*, 31 May 2011.

²⁴ “Vietnam, China to pursue ‘guiding principles’ on sea disputes”, BBC Monitoring Asia Pacific, 15 May 2011.

²⁵ “ASEAN Community in a Global Community of Nations,” Joint Communiqué of the 44th ASEAN Foreign Minister’s Meeting, Bali, Indonesia, July 19, 2011.

²⁶ “ASEAN working group to draft S. China Sea code of conduct”, Kyodo, 4 October 2011.

²⁷ Barry Wain, “China faces new wave of dispute”, *Straits Times*, 17 October 2011.

²⁸ “Risk of conflict in the South China Sea is set to prompt ASEAN pact with China”, *Bloomberg*, 21 July 2011.

²⁹ “China wants to be a good neighbour”, *Straits Times*, 22 July 2011.

³⁰ “RI to steer talks at ASEAN meetings”, *Jakarta Post*, 19 July 2011.

³¹ See

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf

³² Clive Schofield and Ian Storey, “The South China Sea Dispute: Increasing Stakes, Rising Tensions”, The Jamestown Foundation, November 2009, p. 18.

³³ See

<http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf>.

³⁴ Robert Beckman, “Islands or Rocks? Evolving Dispute in the South China Sea”, *RSIS Commentaries*, No. 75/2011 (10 May 2011).

³⁵ See

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf

³⁶ See

<http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf>.

³⁷ “Secretary Del Rosario says China’s 9-dash line is ‘crux of problem’ in WPS”, Department of Foreign Affairs, 5 August 2011 <<http://dfa.gov.ph/main/index.php/newsroom/dfa-releases/3533-secretary-del-rosario-says-chinas-9-dash-line-is-crux-of-the-problem-in-wps-proposes-preventive-diplomacy-solutions>>.

³⁸ During the Question and Answer session at the 2010 Shangri-La Dialogue, Vietnamese Defence Secretary General Thanh said the map had no legal justification.

³⁹ Keynote Address by Professor S. Jayakumar, CIL Conference on Joint Development and the South China Sea, Singapore, 16 June 2011.

⁴⁰ “MFA spokesman’s comments in response to media queries on the visit of Chinese maritime surveillance vessel Haixin 31 to Singapore”, 20 June 2011.

⁴¹ Tommy Koh, “Mapping out rival claims in the South China Sea”, *Straits Times*, 13 September 2011.

⁴² “S’pore neutral on maritime dispute”, *Straits Times*, 21 July 2011.

⁴³ “China nixes Philippines bid for UN court”, *Philippine Daily Inquirer*, 13 July 2011.

⁴⁴ “People’s Daily warns of consequences over South China Sea issue”, Xinhua, 2 August 2011; “Matching words with deeds”, *China Daily*, 5 August 2011.

⁴⁵ “ASEAN meeting attempts to calm SCS row”, Associated Press, 22 September 2011.

⁴⁶ “Philippine plan for joint SCS development has legal basis”, VOA, 23 September 2011.

⁴⁷ “Manila, Hanoi ink maritime pacts”, *Straits Times*, 27 October 2011.