



Issue Brief

The South China Sea Issue: Is there a way out for ASEAN?

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Tensions in the South China Sea region have heightened following actions by the Chinese Marine Surveillance (CMS) during the last six months. The first incident occurred on March 3, when CMS vessels “bullied” a Philippine Survey Vessel, the MV Veritas Voyager into departing from the region, in what was to later be dubbed as the Reed Bank Incident.ⁱ Following this, on May 26, Vietnam accused CMS ships for having cut cables that were towing seismic survey equipment attached to the Binh Minh 02, a PetroVietnam ship.ⁱⁱ On June 9, another PetroVietnam survey ship, the Viking 2, was harassed by CMS vessels.ⁱⁱⁱ

These incidents elicited a strong response from the Filipino and the Vietnamese governments. The Philippines responded immediately by deploying multiple aircraft to the region. They followed this by providing the MV Voyager with a Coast Guard escort, enabling it to complete its Surveying activities. On the other hand, Vietnam responded by conducting live-fire drills a few weeks later and by protesting the incident through various diplomatic channels.^{iv}

The South China Sea issue stems from conflicting claims laid by various countries to islands in the South China Sea - the Spratly and the Paracel Islands. The People’s Republic of China (China)^v, The Republic of China (Taiwan)^{vi}, Vietnam, Malaysia, Philippines and Brunei (The Spratly Six) have all laid claim to various parts of the South China Sea. The claimant countries believe that this region is a part of their respective national territories and that they have the right to occupy and utilize

these islands the way they want to. One should note that all countries involved in this dispute, with the exclusion of China and Taiwan, are members of the Association for South East Asian Nations (ASEAN)^{vii}, which showcases the stakes of the regional body in the dispute.

The situation is set to get worse with China's growing energy needs coupled with the increasing scarcity of resources. This paper is going to explore the South China Dispute, with the focus on the stakes for ASEAN in the dispute, the role of ASEAN towards dispute settlement and what can be done to achieve perhaps a more desirable future.

Claims and Counter-claims

The various claimants have used different arguments to substantiate their respective claims to the Spratly Islands. The Chinese, Taiwanese and Vietnamese arguments are based upon historical rights to the islands. On the other hand, The Philippines, Malaysia and Brunei have based their arguments on various provisions facilitated by the United Nations Convention on the Law of the Sea (UNCLOS), which all of the "Spratly Six" have, indeed, ratified.

The Historical Rights Claims are primarily based upon archaeological evidence such as Ship Wrecks from the Song Dynasty^{viii} and Yang Fu's observations in the Records of Rarities^{ix} and documents such as maps that describe the disputed region as part of the respective claimants' sovereign territory. They argue that the islands were discovered by their forefathers, who laid a claim and established control over these islands. Other claimants oppose this argument by pointing out that there are no provisions in the UNCLOS for historical claims and they also point out that these claimants have not been able to maintain continuous control over the disputed territories, which significantly weakens these claimants' argument.^x

The EEZ and Continental Shelf claims are primarily based on provisions made in UNCLOS's Part V (Specifically, Article 57) and Part VI (Specifically, Articles 76 and 77).^{xi} They argue that their claim is in accordance with international law and because of this, the parts of the South China Sea that come under their respective

EEZs and Continental Shelves rightfully belong to them. Other claimants argue that their historical claims supersede the EEZ and Continental Shelf claims.^{xii}

Importance

There are various factors that have contributed to the increase in assertion of claims over the region. First, the South China Sea is believed to be rich in various natural resources, especially oil and natural gas. The South China Sea region has proven oil reserves of approximately 7.5 billion barrels. Due to the high amount of oil present in the immediate vicinity of the South China Sea, it is believed that the region also plays host to large amounts of oil. This is yet to be proven due to a lack of exploratory drilling in the area.

Second, South China Sea is the world's second busiest shipping lane (by tonnage) and is responsible for almost one-third of the world's shipping transiting through the region, with the Strait of Malacca, the Sunda Strait and the Lombok Strait accounting for most of the freight. This showcases the economic importance of the region and some argue that tensions in the region might have an adverse effect on navigation.

Finally, South China Sea is also seen as having immense strategic importance. It is argued that one of the primary reasons China has become increasingly assertive in its claims of the South China Sea is because it wants to expand its naval presence in the region, especially in the Indian Ocean. This is further complicated with the addition of the PLAN's Submarine Base on the Hainan Island, this base allegedly plays host to China's new Type 094 ballistic missile submarines, classified as the *Jin* class.^{xiii}

What has ASEAN done?

ASEAN is a regional body that consists of ten South East Asian countries,^{xiv} of which, four are involved in the South China Sea dispute. ASEAN offers a platform for other countries that have stakes in peace and stability of the region, but aren't directly involved, to raise concerns with regard to any developments that take place in the region. ASEAN's various groupings, like the East Asia Summit and

ASEAN Regional Forum, offer alternative platforms to discuss the South China Sea Dispute on a multi-lateral basis.

Though the lack of a proper legal framework to govern conduct in the region can be considered fairly alarming, ASEAN has, in fact, taken many proactive steps towards the establishment of such a framework. ASEAN has helped facilitate talks between various claimants on several occasions. In 1992, ASEAN established the 1992 ASEAN Declaration on the South China Sea. This was an extremely important step forward due to the fact that this was the first time when ASEAN (or any stakeholder in the dispute) took a positive step toward resolving the dispute and as such, helped set a foundation for further steps. This declaration was successful as it mentioned various important issues that needed to be addressed. However, this wasn't a great leap forward, as the declaration was fairly vague and failed to mention any concrete steps that could be taken to address the issue. It was also limited to ASEAN countries, which was another considerable shortfall. But, it was still a step in the right direction.

After the 1992 Declaration, various talks were held between the parties, as they looked toward solving the issue. The talks between the various claimants finally showed results with the establishment of the 2002 Declaration on the Conduct of Parties in the South China Sea, which many consider to be the first concrete step forward in resolving the issue. The DoC was effective as it addressed all important issues and proposed various methods through which the dispute could, eventually, be resolved. However, it failed to address the application of the DoC, which made it vulnerable to intentional and unintentional misinterpretation. But, it was the first concrete step forward and has paved the way for a more effective and perhaps more comprehensive Code of Conduct (CoC).

The progress in the establishment of a CoC has been very limited since the creation of the DoC in 2002 until the recent ASEAN-China meeting in Bali in July 2011. ASEAN and China agreed upon the establishment of non-binding guidelines on the implementation of a CoC. This is an extremely welcome step considering the tense environment in the region at this point in time. However, the claimants need to

make a genuine effort to establish a CoC in the region as soon as possible, as it could possibly be essential in maintaining peace and stability in the region.

At the 44th ASEAN Foreign Minister's Meeting, ASEAN countries repeatedly stressed the importance of promoting a "peaceful, friendly and cooperative environment."^{xv} They also noted the effectiveness of Track 2 mechanisms and acknowledged the effectiveness of the Workshop on Managing Potential Conflicts in the South China Sea.^{xvi} An important development was proposal made by the Philippines, with regard to the creation of a "Zone of Peace, Freedom, Friendship and Cooperation" or ZoPFF/C, which is to be studied by ASEAN SOM, who will make recommendations with regard to the same prior to the 19th ASEAN Summit.^{xvii}

Limitations of the ASEAN Initiatives

The effectiveness of ASEAN has been questioned on various occasions throughout its short, yet colourful, history. The South China Sea Dispute is perhaps one of the most important issues for the regional body as the way this issue plays out can have repercussions for all member states. The path for ASEAN is clear. It needs to remain united and it needs to work together to address this issue. ASEAN needs to strengthen its institutions and it needs to engage in proactive diplomacy to ensure that this issue is handled in a manner to ensure peace and stability in the region for a very long time.

As much as ASEAN's attempts at making a valuable contribution are commendable, it has left a lot to be desired. Even though ASEAN was effective in the creation and ratification of the DOC and of the Declaration on the South China Sea, it has, however, failed to reinforce and consolidate its position in the South China Sea region. The divergence in policy when it comes to dealing with China has repeatedly been highlighted when it comes to the involvement of international arbitrary bodies. The Philippines has repeatedly called for the involvement of a UN-backed international arbitrary body like the International Tribunal for the Law of the Sea.^{xviii} But, Vietnam, advocates using ASEAN as a forum for multi-lateral negotiations and has repeatedly refuted the jurisdiction of International Arbitrary Bodies while asserting its own claim to the region.

China's stance with regard to negotiations and talks on the South China Sea dispute is clear- it will only engage in bilateral talks with claimants, stating that ASEAN has no role in territorial issues. This is an effective strategy from China's point of view because by maintaining such a policy, China maintains its superiority and by doing this, it is able to, till some extent, intimidate the much smaller country and is ultimately able to consolidate its position in the South China Sea, which is exactly what ASEAN is attempting to prevent. ASEAN argues that its own charter ensures that its member states consult^{xix} with each other, as is applicable before each working group meeting. However, even though consulting each other would be a good place to start, it is in no way adequate to deal with the situation. ASEAN *needs* to cooperate with each other and work together and develop a common policy to deal with China.

Possible Solutions: Towards an ASEAN Way Out

Today, ASEAN (specifically the claimants) and China have an excellent opportunity. Never before has the South China Sea region experienced such a sustained period of diplomatic engagement to resolve the issue. But, aggressive tactics by China have put the region at risk of a conflict. It has become clear that ASEAN has to play a much more important role in the region and needs to get more involved in the dispute. However, as China has repeatedly ensured that the issue is only discussed bilaterally, ASEAN and its member states need to internationalize the issue by repeatedly bringing it up in various summits such as the ARF and EAS.

The lack of unity in ASEAN enables China to practice a "divide and conquer" type of policy. ASEAN's main priority at this point in time has to be the resolution of disputes between member states. ASEAN claimants need to engage in talks with countries that they have disputes with and resolve these disputes to effectively eliminate any form of infighting in the group. If ASEAN countries are able to eliminate their differences, it could possibly enable them to work together and develop a common policy when dealing with China.

ASEAN Countries and China need to focus entirely on the establishment of the CoC. They need to do this by formulating a policy between themselves and then working with China. ASEAN needs to maintain its position and not be intimidated by

Chinese tactics. An effective way to improve ties and increase cooperation would be through the establishment of a joint monitoring body, which could ensure that all DOC signatories comply with its articles, specifically articles 4 and 5. Enhancing the predictability and transparency in the region could directly contribute as a confidence building measure, which could substantially improve peace and stability in the region. An effective CoC and Monitoring Group in the region will ensure long-lasting peace and stability in the region.

Currently the Situation in the South China Sea can be considered quite worrying, on a military basis alone. This is primarily due to the fact that, following a series of military exercises in the region^{xx} and different incidents involving an exchange of words; the situation in the South China Sea has begun to show signs of heightened tension. This can be attributed to the *somewhat* success of the Declaration of Conduct. The word “somewhat” has been used here due to the numerous instances of non-compliance (intentional and unintentional) by various signatory parties. The issue of non-compliance is one that needs to be prioritized and addressed immediately. This is primarily due to the fact that by not complying with the DOC and taking certain actions that *may* be considered provocative by the other party, countries risk increasing tensions in the region.

It is also worth mentioning that since the 2002 Declaration on the Code of Conduct of Parties in the South China Sea, there have been only 6 meetings between ASEAN-China Joint Working Group on the Implementation of the DOC, with the last one being held in April 2011. This is quite worrying because unless ASEAN and China work together they cannot hope to find a peaceful and mutually beneficial solution to the dispute. ASEAN and China need to work together to strengthen this institution by engaging in meaningful dialogue and multi-track diplomacy as it could effectively enhance cooperation and coordination in the region, which could help in reducing tensions and also in the creation of a more conducive environment in the long run.

Conclusion

This year has been an uneasy year for many of the involved parties. But, the situation looks set to improve after the progress that has been made between the

countries. As long as the claimants abide by the DoC and continue to take precautionary measures to avoid a conflict don't take any provocative actions there is a very real chance that the region can be stabilized for an extended period of time.

To find a way out, ASEAN needs to stay strong and it needs to apply the principles of ASEAN Way into the situation. The principles of cooperation, renunciation of the use of force, settlement of differences in a peaceful manner need to be embalmed within ASEAN common policy to deal with China. By doing this, ASEAN cannot guarantee a peaceful resolution of the dispute. But, it can surely get a better idea about whether or not there is a way out.

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12th September 2011

ⁱIan Storey, "China and the Philippines: Implications of the Reed Bank Incident", The Jamestown Foundation http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=37902 (accessed on 27th July, 2011)

ⁱⁱ Michael Wines, "Dispute Between China and Vietnam Escalates over Competing Claims in South China Sea", New York Times <http://www.nytimes.com/2011/06/11/world/asia/11vietnam.html> (accessed on 27th July, 2011)

ⁱⁱⁱTuoi Tre, "Vietnam's Vessel, Viking 2, harassed many times", VietNamNet <http://english.vietnamnet.vn/en/politics/9328/vietnam-s-vessel-viking-2--harassed--many-times.html> (accessed on 27th July, 2011)

^{iv}Tania Branigan, "Vietnam holds live-fire exercises as territorial dispute with China escalates", The Guardian <http://www.guardian.co.uk/world/2011/jun/14/china-vietnam-dispute-military-exercise> (accessed on 27th July 2011)

^v The People's Republic of China will be referred to as "China" throughout this paper.

^{vi} The Republic of China will be referred to as "Taiwan" throughout this paper.

^{vii} China is a member of ASEAN Regional Forum (ARF), ASEAN Plus 3, The East Asia Summit (EAS) and ASEAN Defence Ministers Meeting Plus(ADMM+) Processes

^{viii} Unmentioned, "Sunken Merchant Boat Raised From the Sea", Xinhua News Agency <http://www.china.org.cn/english/culture/236583.htm>;

^{ix} "There are islets, sand cays, reefs and banks in the South China Sea, the water there is shallow and filled with magnetic rocks and stones"

^x"Banyan", "A Sea of Disputes", The Economist <http://www.economist.com/node/21016161> (Accessed on 27th July 2011)

^{xi} Article 57, Part V of the UNCLOS with regard to the Breadth of the Exclusive Economic Zone, states, "The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."

^{xii} Furtado, Xavier; International Law and the Dispute over the Spratly Islands: Whither UNCLOS?

^{xiii}Hans M. Kristensen, "New Chinese SSBN Deploys to Hainan Island", Federation of American Scientists, <http://www.fas.org/blog/ssp/2008/04/new-chinese-ssbn-deploys-to-hainan-island-naval-base.php> (accessed on 27th July, 2011)

^{xiv} The Countries being: *Singapore, Thailand, Indonesia, Malaysia, the Philippines*, Vietnam, Laos, Cambodia, Myanmar, Brunei. The italicized nations were founder-nations of ASEAN.

^{xv} Joint Communiqué of the 44th ASEAN Foreign Ministers Meeting, Bali, Indonesia, 19 July 2011, ASEAN <http://www.aseansec.org/documents/JC44thAMM19JUL2011.pdf> (Accessed 27th July ,2011)

^{xvi} Ibid.

^{xvii} Ibid.

^{xviii} AFP, “Philippines Wants UN Body to Broker China Dispute”, AsiaOne News
<http://news.asiaone.com/News/Latest%2BNews/Asia/Story/A1Story20110711-288603.html> (accessed on 27th July, 2011)

^{xix} Article 20, clause 1 (Chapter 7) of ASEAN Charter states “1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.”

^{xx} In the last month there have been a series of exercises as a measure of show of force, with various countries trying to one up the other, to establish a sense of, for lack of a better word, superiority in the region, with the most recent exercise (between the US, Philippines and Vietnam) concluding on the 10th of July, amid staunch protests from China.