

South China Sea Rising Tension: The Quest for ASEAN's Role?¹

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Abstract

South China Sea has become a dispute for the last five decades. Several countries, involving China and some member states of ASEAN (Association of South East Asian Nations), have overlapping claims on this area. Its naturally rich resources, including fisheries, oil and gas, have become an attractive economic proposition for these states. Some observers assume the South China Sea dispute is both complex and complicated as the claims are not only territorial but also historical in nature. This suggests that the dispute necessitates more time and further efforts in order to facilitate some form of resolution. Although China and ASEAN have agreed a Declaration on Conduct of Parties in the South China Sea (DOC) in 2002, China has persistently refused to relinquish its claims to this strategically placed resource. This may signalize the failure of ASEAN's strategy to 'pour oil on troubled waters'. Additionally, it may well fail to bring China and its members to achieving a measure of resolution regarding this dispute; thereby failing to reach consensus regarding the exploitation of this valuable resource.

Introduction

In July 2012, the Chinese government approved the formal establishment of a military garrison in Sansha, a remote island 220 miles from its southernmost province. Sansha is located in the vicinity of Paracel Islands, one of disputed South China Sea Islands. By enacting this approval, China have emphasized their previous policy in creating Sansha as their administrative base for the whole South China Sea area; including the disputed territories of the Spratly Islands and the Scarborough Shoal. Although there are no apparent further details providing data such as timing and numbers of military deployment, the approval has subsequently provoked the United States, Vietnam and the Philippines to voice their concerns.³

The rising tension in the South China Sea has been the result of a dispute primarily contested by China, Vietnam, the Philippines and Brunei for decades; and it is therefore set to escalate. Vietnam has specifically protested against China's decision to establish the administrative city. In the meantime, diplomatic tensions are also high

¹ The paper is presented in the 3rd Convention of Indonesian Association of International Relations, in Universitas Muhamadiyah Malang, 12 October 2012.

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³ "China approves military garrison for disputed islands" accessed from <http://www.bbc.co.uk/news/world-asia-china-18949941> in 7 September 2012, 22.31 pm

between China and the Philippines after a standoff over the Scarborough Shoal, an area that is contested and claimed by both sides. Moreover, the disputes over resource-rich locations within the vicinity of the South China Sea, has sparked controversy at an ASEAN regional forum. Significantly, for the first time in its 45-year history, the 10 state-members were unable to establish a consensus on the construction of a closing statement in ASEAN Foreign Ministers Meeting in Phnom Penh, July 2012.⁴

Therefore, this paper will analyze the role of ASEAN in the South China Sea dispute. This paper primarily examines ASEAN's ability to resolve the problematic issue due to the imbalance created by some of its members' involvement in this growing conflict with China. Although there has been a Declaration on Conduct of Parties in the South China Sea (DOC), and a potential draft of Code of Conduct (COC) concerning management on the South China Sea, ASEAN remains failed to deter China from its aggressive stance. In addition to ASEAN's prior failure to construct a closing statement, the likelihood exists that any consensus regarding this dispute will become increasingly remote. This paper therefore suggests that ASEAN alone may not have the capacity to formulate a viable consensus or resolve this long-standing dispute.

To analyze and evaluate the above-stated issue, will necessitate that the following discussion be divided into three sections. The first section will describe the history of South China Sea dispute, recent developments and China's policy towards this area. The second section will focus on the reaction from states that strongly opposed to Chinese claims, with attention directed specifically towards Vietnam and the Philippines. This will be followed subsequently by an analysis on how ASEAN enabled efforts to resolve the issue, whilst some of its member states have ongoing conflict with China. This section will also examine the possibility exists that ASEAN can secure some form of resolution that is mutually acceptable by all participants. In the conclusion, this paper will include some recommendations with a view to facilitate strategies allowing the ASEAN member states to achieve a favorable outcome.

Understanding China's Claim on South China Sea

China's sovereignty over the Spratly and other island groups in the South China Sea

⁴ "ASEAN summit fails to agree on concluding joint statement," accessed from <http://www.channelnewsasia.com/stories/southeastasia/view/1213369/1/html>

was not challenged until the arrivals of invading powers. There are many classic Chinese poems and inscriptions that were written from *Xia* Dynasty (21st - 16th centuries B.C.) to the *Qing* Dynasty (1644 - 1911) as tribute to the South China Sea. This profoundly proves that China has established and maintained her sovereignty over these island chains by ways of discovery, naming, mapping, patrol and control, public and private use, administrative allocation of jurisdiction, and other manifestations of authority throughout history.⁵

China arguably enjoyed peaceful and uninterrupted control over the South China Sea Islands and the surrounding waters until the 1930's. It was then France in 1933 that initially seized the opportunity to occupy several islands in the South China Sea. However, Japan replaced the French government and took over the entire South China Sea chain of islands in 1939. Japan accordingly placed these Islands under the jurisdiction of Taiwan, which was administered by Japan. Following Japan's unconditional surrender to allied forces, in 1947 the Nationalist China Government sought to regain the possession of all islands in the South China Sea, by publishing a map that displayed nine bars enclosing almost its entire expanse.⁶

In 1951 San Francisco Peace Conference, Japan legally renounced its claim over the South China Sea Islands. However, a year later, Japan surrendered all of her right, title and claim to the Republic of China (Taiwan), by the bilateral Japan-Taiwan Treaty of Taipei. Along with Japan at the San Francisco Peace Conference, France (and later Vietnam), asserted their claims to the Spratlys and the Paracels. Notwithstanding, the Soviet Union recognized the full sovereignty of Chinese People's Republic over the Spratly and Paracel Islands.⁷ Thereby, in September 1958 Declaration on the Territorial Sea, Beijing included the Spratlys, the Paracels and Macclesfield Bank among People's Republic of China's territories, to which the twelve-mile breadth of the territorial sea applied.⁸

In mid 1950s, a Filipino group of marine educator led by Tomas Cloma claimed

⁵ Jianming Shen, "International Law Rules and Historical Evidence Supporting China's Title to the South China Sea Islands," in *Hastings International & Comparative Law Review*, vol. 40, 1997, pp. 15-17.

⁶ *Ibid.*, pp. 40-43. See also Rodolfo C. Severino, "ASEAN and the South China Sea," in *Security Challenges*, Vol. 6, No. 2, Winter 2010, pp. 37-47.

⁷ Jianming Shen, "China's Sovereignty over the South China Sea Islands: A Historical Perspective," in *Chinese Journal of International Law*, 2002, p. 99.

⁸ Severino, *op. cit.*

to have discovered the Kalayaan Islands, which is located in Spratly area. Yet, the first official claim by the Philippine government over the islands came in 1971, mainly in responding Taiwanese forces stationed on Itu Aba Island. When a Philippine fishing vessel was being fired by Taiwanese, the Philippine government reacted by protesting the incident and then asserted legal title by annexing islands in the Spratly group based on Cloma's claim. Subsequently, in 1978 the Marcos government formally annexed the archipelago to the Philippines and placed it under the administration of Palawan province.⁹

Meanwhile, Vietnam began to occupy some islands in both Spratly and Paracel Islands, which based in right of cession from a French claim to the islands first made in the 1933. In any event, Vietnam moved in 1975 to secure its claim to possession of the Spratlys when it occupied thirteen islands of the group. In September 1989 Vietnam occupied three more islets, and has since taken at least nine additional atolls.¹⁰ Contesting claims accelerated in late 1960s, 1970s, and 1980s, as Malaysia and Brunei joined the occupations. These newly emerged claims inevitably led to an increasing tension between claimants. In fact, there were several military encounters occurred between China and Vietnam as well as China and the Philippines.

The Chinese government confirms that her possession over the South China Sea Islands and the adjacent waters are backed not only by historical facts but also by international Law of Sea.¹¹ Therefore, as stated in her 2010 White Defence Paper, the Chinese authorities legalize all measures to “safeguard its national sovereignty, security and interests of national development” in their claimed-territorial in South China Sea. Like other’s national defence forces, China People’s Liberation Army (PLA) is mainly tasked to guard against and resist aggression, defend the security of its lands, inland waters, territorial waters and airspace, safeguard its maritime rights and interests, and maintain its security interests in space.¹²

⁹ Christopher C. Joyner, “The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation” can be accessed through <http://www.stimson.org/images/uploads/research-pdfs/cbmapspratly.pdf>.

¹⁰ John C. Baker, et al., “Cooperative Monitoring Using Commercial Observation Satellites: Case Study of a Transparency Regime for the South China Sea Disputes,” Washington, D.C., George Washington University Space Policy Institute, February 1999.

¹¹ Lowell B. Bautista, “Thinking Outside the Box: The South China Sea Issue and the United Nations Convention on the Law of the Sea (Options, Limitations and Prospects), in *Philippines Law Journal*, Vol. 81, No. 4, 2006, pp. 699-731.

¹² China’s National Defense in 2010, can be accessed through

In other words, China utilizes any efforts to proclaim her “complete sovereignty” over South China Sea Islands. On one hand, China conducted diplomatic mechanisms not only with Vietnam, but also with ASEAN regarding the South China Sea management. The dialogue between ASEAN and China in 1994 has signaled a great transformation in China policy. That revolution was, the conversion from unilateralism to multilateralism in the South China Sea.¹³ Furthermore, ASEAN-China Dialogue has resulted in the Declaration on Conduct of Parties in the South China Sea (DOC) in 2002.

On the other hand, by establishing its military presence on the Paracel group of islands recently, China wishes to reinforce its claims and ensure that the others are ousted from the region. China’s decision to post about 1,200 PLA soldiers in Sansha City, in July 2012 clearly explains its policy to protect and secure her sovereignty. This act performs that China wished to send a message to all other contenders that while it would wish for a diplomatic solution, it would react militarily to defend its position in the South China Sea.¹⁴ Essentially, this emphasizes what Al Capone says, *“You can get further with a kind word and a gun than you can with just a kind word.”*¹⁵

Responses from Other Claimants

The South China Sea is a huge area covering nearly 3.5 million square kilometres, where countries such as China, Vietnam, Philippines, Malaysia and Brunei are in serious contention. There are at least two arguments to trigger such countries claim the occupation of the region. Firstly, it is due to its wealth natural resources. Besides fisheries and other sea products, oil and gas deposits have been found in most of the littoral countries of the South China Sea. The region has proven oil reserves estimated at about 7.5 billion barrels, and oil production is currently over 1.3 million barrels per day. Moreover, natural gas might be the most abundant hydrocarbon resource in the South China Sea. Most of the hydrocarbon fields explored in the South China Sea

http://news.xinhuanet.com/english2010/china/2011-03/31/c_13806851_5.htm

¹³ Jason Ray Hutchison, “The South China Sea: Confusion in Complexity” can be accessed from <http://pdf-world.net/pdf/429137/The-South-China-Sea-Confusion-in-Complexity-pdf.php>

¹⁴ R.S. Kalha, “China’s Forward Policy in South China Sea,” can be accessed in http://www.idsa.in/idsacomments/ChinasForwardPolicyintheSouthChinaSea_RSKalha_300712

¹⁵ “The Untouchables” accessed from <http://www.imdb.com/title/tt0094226/quotes>

regions of Brunei, Indonesia, Malaysia, Thailand, Vietnam, and the Philippines contain natural gas.¹⁶

Secondly, the South China Sea is a significant medium of transportation and exchange. The main East Asian economic power such as China, Japan and South Korea, are heavily dependent on the safety and security of the South China Sea-lanes.¹⁷ Nearly 60,000 vessels pass through the Strait of Malacca toward South China Sea region carrying various cargoes every year.¹⁸ According to the U.S. Department of Homeland Security, approximately 30% of the world's trade and 50% of the U.S oil products pass through this waters.¹⁹ The report also says that nearly 15 million barrels oil per day flow from the Persian Gulf, go through the Strait of Malacca to Japan, South Korea, China, and other Pacific Rim states, including the U.S.

As previously mentioned, China exercises all efforts including her military capability to protect her sovereignty in the South China Sea and its adjacent waters territorial. China's defence strategy ultimately allows its PLA to build its naval, air and missile forces. In order to modernize her military, Chinese government has procured nuclear-powered submarines, frigates, amphibious landing craft warships, fighter-bombers, as well as destroyers since 2000.²⁰ These destroyers are also completed with supersonics and anti-ship cruise missiles. In 2010, China bought 15 S-300 anti-aircraft missiles from Russia, which have a range of more than 150 km and travel at minimum 2 km per second.²¹ Moreover, China has just launched its first aircraft carrier in 2010²² and obviously China will further continue its military procurement.

¹⁶ South China Sea Oil and Natural Gas, can be accessed from <http://www.globalsecurity.org/military/world/war/spratly-oil.htm>

¹⁷ R.S. Kalha., *op. cit.*

¹⁸ Mokhzani Zubir, The Strategic Value of the Strait of Malacca, accessed from <http://www.aspirasi-ndp.com/en/archive/ThestrategicvalueoftheStraitofMalacca.pdf> on 5 December 2011.

¹⁹ "Global Oil Choke Points, How Vulnerable Is the Global Oil Market?" accessed from <http://www.deepgreencrystals.com/images/GlobalOilChokePoints.pdf>

²⁰ Richard A. Bitzinger, "The China Syndromes: Chinese Military Modernization and the Rearming of Southeast Asia," in Working Paper no. 126, Singapore: S. Rajaratnam School of International Studies, May 2007.

²¹ "China Buys Air Defense Systems from Russia," accessed from <http://www.reuters.com/article/2010/04/02/us-russia-china-arms-idUSTRE6310WG20100402>

²² "China Launches First Aircraft Carrier on Maiden Sea Trial," accessed from <http://www.reuters.com/article/2011/08/10/us-china-military-carrier-idUSTRE77900D20110810>

Although China reaffirms that her arms build-up is aimed to “safeguard its national sovereignty, security and interests of national development,” its neighbors may view its policy differently. Japan, Vietnam, and the Philippines, particularly, perceive this action as a threat. In 2009 Vietnam Defence Paper, for example. Although Vietnam did not clearly mention about China, it noticed that territorial disputes over South China Sea have been more complicated and on the rise. According to Vietnam government, this is primarily due to many major powers have adjusted their military strategies, increased their defence budgets, speeded up the armed forces modernization, and developed advanced weapons and equipment, as well as military technologies.²³ This, of course, made the situation in South China Sea more complicated.

Similarly, Japan has viewed China’s arms build-up, particularly in navy capabilities, as a threat since they remain had the East China Sea dispute to settle. This is as written in Japan’s Defence Paper 2010:

“In its military modernization China appears to give particular priority to the Taiwan issue as an issue of national sovereignty and territorial integrity, and for the time being it will probably aim for the improvement of military capabilities to prevent Taiwan’s independence and others, but in recent years, China has begun to work on acquiring capabilities for missions other than the Taiwan issue. The military trends of China draw attention from countries in the region, as the country has been steadily growing as a major political and economic power in the region.”²⁴

Regarding this issue, a retired Lieutenant General and Corps Commander of Japan’s Northern Army, who later became a professor at Teikyo University, says, “We do not have any concern about their land forces, only maritime forces like the navy and missiles. A drastic expansion of that kind of capability could be a threat in the future.”²⁵

China’s policy with regard to its military modernization and South China Sea issue, to a greater extent, has led its neighbors to react in a similar strategy. As confirmed in its Defence Policy, Vietnam has developed its defence powers and

²³ “The 2009 Vietnam National Defence Paper,” can be accessed from <http://admm.org.vn/sites/eng/Pages/vietnamnationaldefence%28vietnamwhitepapers-nd-14440.html?cid=236>

²⁴ Japan’s Defense White Paper – 2010 accessed from http://www.mod.go.jp/e/publ/w_paper/pdf/2010/11Part1_Chapter2_Sec3.pdf

²⁵ “Japan Moves on from the Cold War,” accessed from <http://www.bbc.co.uk/news/world-asia-pacific-12015563>, in 13 September 2011.

closely coordinated defence-security and diplomatic activities in the last decade. This is carried out for two reasons; to protect its sovereignty as well as to support its military industrialization and modernization. The Vietnam People's Army modernization is performed by a significant increase in Vietnam's Defence budget. The 2006 defence budget was increased 20.89% from USD 781.34 million to USD 987.70 million. It was then increased 28.85% in 2007 and became USD 1,388.26 million. It was slightly decreased in 2008, but then dramatically increased to become USD 2,6 billion in 2011 and USD 3,3 billion in 2012.²⁶

Like Vietnam, the Philippines have also established a reformation in its defence strategy since 2003. Under the Philippines Defence Reform, the government focuses on 10 key areas, such as improvement of operational and training capacity, improvement of logistics capacity, personnel management systems, and level expertise, optimizing the defence budget and improving management controls, and also increasing the capability of the Armed Forces of Philippines to conduct civil military operations.²⁷ Initially, along with the US, the defence reform is directed to respond the 9/11 terrorist's attack. Yet, the program is specifically containing the mission to protect the Philippines national territory and its Exclusive Economic Zone from external aggression and transnational threats.²⁸

The Philippines has also performed an assertive stand towards China, with regard to Scarborough Shoal issue since 1994. A recent standoff has just ensued when a Philippine navy surveillance plane sighted eight Chinese fishing vessels anchored in a lagoon at Scarborough on April 8. Based on a report from Filipino sailors, the Philippines navy then deployed its largest warship, the BRP Gregorio del Pilar to the region.²⁹ The Philippines later withdrew its warship, but China sent out two Fishery Law Enforcement Command vessels. China's act obviously provokes standoff to escalate, with the Philippines requesting a diplomatic resolution to the crisis but

²⁶ The 2009 Vietnam National Defence Paper, pp. 38; see also <http://defense-studies.blogspot.com/2011/01/vietnam-defense-budget-in-2011.html> and <http://defense-studies.blogspot.com/2011/11/vietnam-announces-2012-defence-budget.html>

²⁷ Philippines Defense Reform, can be accessed from http://www.dnd.gov.ph/DNDWEBPAGE_files/html/pdrpage.htm

²⁸ Charles 'Ken' Comer, "Philippines Defense Reform, Are We There Yet?" can be accessed from <http://www.google.co.id/search?q=philippines+defense+reform&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>

²⁹ "Philippine Warship in Standoff with China Vessels," can be accessed from <http://www.guardian.co.uk/world/2012/apr/11/philippines-china-stand-off-south-china-sea>

refusing to retreat. Bilateral relations have quickly deteriorated, as China introduces restrictions on imports of Philippine bananas and calls on tour groups to leave, causing a severe blow to the Philippine economy. Moreover, the Chinese media is talking of war and provoking both citizens, although a fishing ban implemented by both sides may let tensions subside.³⁰

ASEAN's approaches in South China Sea Dispute

Rooted from its history, ASEAN obviously has its nature and origins. The national circumstances and inter-state relationships of its members has shaped ASEAN as an association and set the so-called "ASEAN Way." This is to mention the loose arrangements over legal instruments and binding agreements, the principle of non-interference, a pace comfortable to all member states and way of consensus in its decision making process. In addition, to dispel the notion that ASEAN was intended to be some kind of defence pact or military alliance, ASEAN has been devoted principally to economic, social and cultural cooperation.³¹ However, as former Singapore Prime Minister, Lee Kuan Yew said in his memoirs, in its development, ASEAN was banding together more for political objectives, stability and security.³²

With regard to this security and stability matters, ASEAN later had initiatives to seek solutions on the South China Sea dispute. There are at least two reasons that pulled ASEAN to pay attention on the issue. Firstly, the dispute on the South China Sea involved its member states namely Malaysia, Brunei, Vietnam and the Philippines. As far as it is concerned, the contention involves sensitive questions of sovereignty and jurisdiction of its claimants. Secondly, as previously mentioned, the dispute gives implications for national and regional security as well as economic development.

Accordingly, on July 1992, shortly after Vietnam acceded the ASEAN Treaty of Amity and Cooperation (TAC), the ASEAN Foreign Ministers' Meeting surprisingly

³⁰ "The Scarborough Shoal Standoff" accessed from <http://www.currentintelligence.net/analysis/2012/5/17/the-scarborough-shoal-standoff.html>; see also "Chinese Media Warns of War with Philippines" <http://www.telegraph.co.uk/news/worldnews/asia/philippines/9258225/Chinese-media-warns-of-war-with-Philippines.html>

³¹ Rodolfo C. Severino, *Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-General*, Singapore, ISEAS, 2006, pp. 1-37, and 161.

³² Lee Kuan Yew, *From Third World to First – The Singapore Story: 1965 – 2000*, Singapore: Times Media Private Limited, 2000, p. 370.

agreed to issue a security-related Declaration of the South China Sea. Essentially, it called for a peaceful resolution of territorial disputes, without resort to force, the exercise of restraint, possible cooperation in maritime safety, environmental protection, search and rescue and action against piracy, robbery at sea and drug-trafficking.³³ In the meeting, the ASEAN Foreign Ministers also praised the Workshops on Managing Potential Conflicts in the South China Sea, initiated and hosted by Indonesia, as it contributed to a better understanding of the issues.³⁴

Moreover, ASEAN has sought to deal regarding the South China Sea issues on multilateral basis with China. However, China consistently refused as Chinese government offered to solve the sovereignty issue and to negotiate joint development agreements on a bilateral basis.³⁵ Eventually in 1994, ASEAN-China Dialogue marked the first time in history that China consented to multilateral negotiations. Craig Snyder remarked that the multilateral approach has proven some success in the South China Sea through joint development and increased transparency among the claimants.³⁶

In a critical situation, in which four ASEAN members have conflicting claims to all or parts of South China Sea, ASEAN has also developed a united posture in dealing with China. The political solidarity posture was further manifested in November 2002, when the government of ASEAN's member states and the government of China signed the Declaration on the Conduct of Parties in the South China Sea.³⁷ Moreover, as the dispute between China and ASEAN came out into the open during the 2010 ASEAN Regional Forum in Hanoi, ASEAN reached a consensus with China to discuss a joint development of undersea resources.³⁸ ASEAN and China later agreed to adopt a set of guidelines to implement the declaration of

³³ "ASEAN Declaration on The South China Sea, Manila, Philippines, 22 July 1992" can be accessed through <http://www.aseansec.org/1196.htm>

³⁴ "Joint Communique 25th ASEAN Ministerial Meeting Manila, Philippines, 21-22 July 1992, point 17" accessed from <http://www.aseansec.org/1167.htm>

³⁵ Epsy Cooke Farrel, *The Socialist Republic of Vietnam and the Law of the Sea: An Analysis of Vietnamese Behavior within the Emerging International Oceans Regime*, Cambridge: Kluwer Law International, 1998, p. 282.

³⁶ Craig Snyder comment in the Conference Report of "The South China Sea: Towards a Cooperative Management Regime," May 16-17, 2007, Singapore.

³⁷ Declaration on the Conduct of Parties in the South China Sea can be accessed from <http://www.aseansec.org/13163.htm>

³⁸ "ASEAN: a united front to tackle the South China Sea issue," accessed from <http://www.eastasiaforum.org/2012/05/13/asean-a-united-front-to-tackle-the-south-china-sea-issue/>

conduct, and pledged to exercise restraint. Building on this progress, ASEAN senior officials have met several times since late 2011 to discuss a code of conduct on South China Sea matters.

In January 2012, one of the claimants, the Philippines circulated an informal working draft simply titled, Philippines Draft Code of Conduct. The document was eight pages in length and comprised ten articles. In line with official Philippine foreign policy promoting the South China Sea as a Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C). The draft of CoC proposed a Joint Cooperation Area in the South China Sea (Article III), a Joint Permanent Working Committee to implement the ZOPFF/C (Article IV), the Application of Part IX of the 1982 United Nations Convention on Law of the Sea in the South China Sea (Article V), and Dispute Settlement Mechanisms (Article VI). The remaining articles contained standard provisions such as principles (Article I), objectives (Article II), reservations (Article VII), signature and ratification (Article VIII), entry into force (Article IX) and review and amendments to the code (Article X).³⁹

The non-claimant state such as Indonesia also took the initiative to promulgate a CoC comprising confidence building and conflict prevention measures and conflict management measures, should conflict or an incident arise. This is essentially to prevent situations from worsening. Indonesia has also circulated a draft of CoC on the South China Sea to ASEAN foreign ministers in last September 2012. According to Indonesian Foreign Minister, Marty Natalegawa, the CoC draft will be further consulted by ASEAN Ministers before the ASEAN Summit November 2012.⁴⁰

Notwithstanding, the situation in the waters remains vulnerable. There are three arguments to support this statement. Firstly, any moves by any of the claimants, could become more and more sensitive and could agitate the area at any time. As Severino concluded, the issues are much too complex and their implications are much too great for the vital national interests of the countries involved.⁴¹

ASEAN-China dialogue may significantly improve their mutual understanding

³⁹ Carlyle A. Thayer, "ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?" accessed from http://www.japanfocus.org/-Carlyle_A_-Thayer/3813

⁴⁰ "RI circulates draft code of conduct on South China Sea," accessed from <http://www.thejakartapost.com/news/2012/09/29/ri-circulates-draft-code-conduct-south-china-sea.html>

⁴¹ Severino, *op. cit.*, p 189.

and confidence about the issue. However, the turning point in a long and complicated conflict, the conversion from bilateralism to multilateralism, and the renunciation of the use of force according to some observers led countries to conflict prevention rather than conflict resolution.⁴² In the meantime, ASEAN and China have been trying to exercise self-restraint, refrain from occupying any more territory, avoid any acts that could shake the stability of the area, build mutual confidence, and cooperate in dealing with matters that call for cooperation and yield common benefits to the cooperating parties. Yet, the territorial jurisdiction dispute itself remains unsolved.

Secondly, the contention between four ASEAN members as claimants of South China Sea, coupled with China, has failed the “ASEAN Way” to reach consensus. For the first time in ASEAN's history, the 10 members have failed to issue a joint communiqué at the end of its summit in Phnom Penh, 13 July 2012. With a sharply disagreeable of the issue, most likely any consensus regarding this dispute will become very difficult to achieve, if it is not impossible.

As a matter of fact, the whole issue of South China Sea is clearly not an issue between ASEAN as an organization and China. It is rather a judicial and sovereignty matter between claimants. Although Indonesia's foreign minister Marty Natalegawa said that ASEAN should be seen to be acting as one,⁴³ the unity is needed merely to maintain the peace and stability of the region. ASEAN has to make sure that any bilateral agreements regarding the territorial dispute will neither provoke other claimants nor constrain other ASEAN countries to utilize their freedom of navigation in the South China Sea and its adjacent waters.

Eventually, as the former Indonesian Minister of Defence, Juwono Sudarsono mentioned that along with its both economic and military development, China is most likely refusing to submit to international laws.⁴⁴ This also applies to the DoC and CoC on South China Sea issue. China will utilize its capacity entirely to place itself in a stronger bargaining position against other claimants, including with ASEAN member-states. With this condition, the South China Sea dispute settlement seems to take a longer time than predicted.

⁴² Jason Ray Hutchison, *op. cit.*

⁴³ “ASEAN summit fails to agree on concluding joint statement,” accessed from <http://www.channelnewsasia.com/stories/southeastasia/view/1213369/1/.html>

⁴⁴ “Tiru AS, China Tak Akan Tunduk Aturan Internasional,” (Emulating the US, China Refuses to Submit to International Laws.) Kompas, Saturday, 6 October 2012, p. 10

Conclusion

The South China Sea issue has called ASEAN for a significant role to resolve. The joint communiqués discussing the South China Sea issue between ASEAN's ministers has been held many times. However, the last communiqué performed the failure of ASEAN's way of consensus. Moreover, the dialogue between ASEAN states and China is nothing more than to build a mutual confidence and conflict prevention. Although China performs its peaceful diplomacy with its neighbors, it remains utilized its military for sovereignty protection. ASEAN may not have the capability to resolve the judicial dispute, yet it has the responsibility to maintain peace and stability to the region. As a regional association, ASEAN has to protect its members' interests. However, ASEAN and ASEAN countries might utilize both multilateral and bilateral mechanisms with China, particularly when it is related to the territorial border and jurisdiction dispute.

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