



The role of ASEAN

Gary Collinson

PhD candidate, National Security College, Australian National University

Christopher B. Roberts

Senior Lecturer and Research Convenor, National Security College, Australian National University

Recent diplomacy by the Association of Southeast Asian Nations (ASEAN) over the South China Sea disputes has been the subject of significant international focus. However, a deeper understanding of the factors informing ASEAN unity and the potential for an effective response also necessitates an analysis of the association's long-term diplomacy on the subject. Consequently, this brief paper is divided into two sections. The first section examines the historical basis for a relatively unified ASEAN position over the South China Sea during the 1990s. It then examines the various factors that led to a deterioration of ASEAN solidarity by the time of the 2002 *Declaration on the Conduct of Parties in the South China Sea*. The second section examines the more assertive diplomacy and sometimes coercive behaviour exhibited by Beijing since 2007. The examination of these two periods provides a more nuanced understanding of the feasibility of a unified ASEAN position in the future and the extent to which ASEAN solidarity may have a tangible impact in resolving or reducing tensions over the dispute.

ASEAN's early role – the transition from solidarity to disunity

In 1992, China claimed exclusive sovereignty over the bulk of the South China Sea by passing its *Law of the Territorial Sea and Contiguous Zone of the People's Republic of China*. The area claimed by China conflicted with the claims of four of the then six ASEAN members – Brunei, the Philippines, Malaysia and Indonesia. Further, China had authorised the US Crestone Energy Corporation to conduct exploration for hydrocarbon reserves within Vietnam's continental shelf. Given a history of tenuous relations between Beijing and many of the then ASEAN members, the association was able to respond quickly through its 1992 *Declaration on the South China Sea*. The declaration referred to the association's core principles, as elaborated in the Treaty of Amity and Cooperation, and urged 'all parties concerned' to resolve 'sovereignty and jurisdictional issues' over the dispute via 'peaceful means' and 'without resort to force'. The most significant clause concerned a call to establish a binding 'code of international conduct over the South China Sea'.¹

1 'ASEAN Declaration on the South China Sea (Manila),' ASEAN Secretariat, <http://www.aseansec.org/1196.htm>.

While China was unenthusiastic in its initial response, Vietnam's foreign minister, Nguyen Manh Cam, almost immediately issued a statement fully backing the declaration, stating that it was 'in conformity with the principles and policies that Vietnam has been pursuing'.² Given Hanoi's own claims to the South China Sea, the shift from a previously hostile position towards ASEAN was unsurprising. Hanoi's position was also informed by its own history with China, including the 1979 border war and a 1988 skirmish in which the Chinese People's Liberation Army Navy (PLAN) clashed with Vietnamese forces at Fierly Cross Reef, leading to the loss of three Vietnamese vessels and 77 crew members.

ASEAN's collective diplomacy regarding the South China Sea was further crystallised by China's occupation of Mischief Reef in November 1994 – discovered in 1995. Based on the United Nations Convention on the Law of the Sea (UNCLOS), the Philippines appears to have a clear legal claim to the natural resources in the area of the reef, e.g., fishing, as it is well within its 200 nm Exclusive Economic Zone – i.e., 127 nm from the Philippine territory of Palawan. From Marvin Ott's perspective, the occupation of 'Mischief Reef was significant, not as a military asset, but as a tangible demonstration of China's determination to project its power and presence into the South China Sea'.³ The timing of this occupation was within a few years of the withdrawal by the United States of its armed forces from the Philippines. In this sense, the end of the Cold War and associated perceptions of an incremental withdrawal from Southeast and East Asia by the US military since the 1970s – i.e., the Nixon Doctrine – appear to have contributed to a sense of empowerment within both the Chinese Communist Party (CCP) and the People's Liberation Army (PLA).

The Philippine government responded in early 1995 by providing the international press with photos that revealed 'clusters of octagonal-shaped concrete structures on steel pylons' constructed by Beijing at Mischief Reef. Despite these photos, Beijing initially denied that it had constructed anything other than shelters for Chinese fishermen. While the Philippine

2 'Southeast Asia: International Code of Conduct Urged for Spratleys', *Inter Press Service*, 22 July 1992.

3 Marvin Ott, 'Asean and the South China Sea: A Security Framework under Seige', Center for Strategic and International Studies, <http://csis.org/publication/asean-and-south-china-sea-security-framework-under-seige>.

government first resorted to military action by sending several naval vessels and – as stated by Colonel Felipe Gaerlan – its ‘entire force of F-5s ... , five of them’⁴ – the weakness of its armed forces soon forced the government to focus on diplomatic means, including its membership in ASEAN. ASEAN quickly responded through a mix of diplomatic sticks and carrots.

In March 1995, the ASEAN foreign ministers censured China through a joint statement expressing serious concern over developments in the South China Sea; the association referred to the spirit of the 1992 ‘ASEAN Declaration on the South China Sea’ in reiterating its call for restraint from destabilising actions. Meanwhile, ASEAN encouraged China to participate in ‘a network of regional organisations’ and workshops or, what Michael Leifer termed, an ‘embryonic structure of good citizenship’.⁵ Despite these efforts, Beijing maintained its long-held position that it was willing to enter into bilateral discussions with other claimant states but that it would not enter into multilateral negotiations with ASEAN. Nonetheless, China started to view the ASEAN states and their institutional modalities through a different lens and devoted more resources towards the exercise of greater soft power, or what Kurlantzick depicted as China’s ‘Charm Offensive’.⁶

The period between 1992 and 1995 represented the height of ASEAN solidarity over the South China Sea disputes. However, while ASEAN unity de-escalated public and official tensions over the dispute, China continued its ‘creeping assertiveness’ and by 1999 it had further fortified its structures in disputed territories, including Mischief Reef. Thereafter, ASEAN’s capacity to exercise a collective ‘diplomatic voice’ over the issue weakened considerably. This incapacity was not only complicated by intra-ASEAN divisions over their contradictory claims, but was also compounded by ASEAN membership expansion and the simultaneous impact of the East Asian financial crisis on both regional relations and confidence in ASEAN. Consequently, the

Philippines was unable to acquire the level of unity necessary to undertake a new attempt (1999) at finalising a binding Code of Conduct (COC). The final compromise was the non-binding *Declaration on the Conduct of Parties in the South China Sea* (DOC), signed in 2002. Within a year, Beijing demonstrated the ineffectiveness of the DOC when it negotiated an agreement for joint exploration with the Philippines – and later Vietnam – that alienated the remaining ASEAN claimant states.

Unilateral and multilateral responses amid escalating tensions

A notable shift in China’s approach to the South China Sea dispute has occurred since 2007. For example, in July 2007, Chinese paramilitary vessels forced Vietnamese fishing vessels away from the Spratly islands and sank three of them. A British-American-Vietnam oil consortium was also forced by Beijing to abandon its gas field development off southern Vietnam. Then, in 2009, Malaysia and Vietnam provided a joint submission regarding the southern parts of the sub-region to the United Nation’s Commission on the Limits of the Continental Shelf. This initiative angered Beijing, which responded with its own submission that included a new nine-dash map claiming sovereignty over almost the entire South China Sea.

Beijing’s response was indicative of a shift away from seeking a collective ASEAN position and towards a more instrumentalist use of multilateral institutions; some analysts believe that Hanoi applied its leverage as the Chair of ASEAN to internationalise the South China Sea issue. If true, and despite frequent warnings from Chinese officials against any such action, Hanoi sought a statement of support from the United States at the July 2010 ASEAN Regional Forum (ARF) meeting. Consequently, the US secretary of State Hillary Clinton declared that ‘the United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea’, noting also that the issue was a ‘diplomatic priority’ for the United States, offering to help to mediate the dispute. China was so incensed that it reportedly declared, behind closed doors, that it had elevated the South China Sea issue to one

4 Michael Richardson, ‘Chinese Gambit: Seizing Spratly Reef without a Fight,’ *International Herald Tribune*, 17 February 1995.

5 Cited in Barry Wain, ‘China Nibbles, Asean Dithers,’ *The Wall Street Journal*, 10 March 1995.

6 Joshua Kurlantzick, ‘China’s Charm Offensive in Southeast Asia,’ Carnegie Endowment for International Peace, <http://carnegieendowment.org/2006/09/01/china-s-charm-offensive-in-southeast-asia/979>.

of its 'core interests'.⁷ Beijing was also concerned about any actions designed to contain China's military rise and these concerns were reinforced when the United States announced the much-publicised 'pivot' back to Asia shortly after the ARF meeting.

As chair, Vietnam also resumed the sessions of the ASEAN-China Joint Working Group to implement the 2002 DOC. These efforts resulted in the conclusion of a vague set of guidelines in July 2011. However, this was only possible when ASEAN agreed to Beijing's request, supported by Cambodia, to remove a reference that required consultation between the ASEAN states prior to any agreement with Beijing. An additional guideline also required that any activity or project based on the DOC be reported to the ASEAN-China Ministerial Meeting.⁸ Thus, even within ASEAN's formal multilateral framework, China had effectively institutionalised a bilateral process of negotiation that would secure its capacity to divide and rule and maintain its asymmetrical primacy.

The 'Guidelines to Implement the DOC' had little impact as China's relations with both Vietnam and the Philippines continued to deteriorate and, in 2011, Vietnam alleged that Chinese vessels had twice cut oil exploration cables. In July 2012 more than a dozen Chinese fishing vessels, two Chinese law enforcement vessels, and a single Filipino naval vessel were involved in a standoff over Scarborough Shoal. Moreover, China also invited foreign tenders for oil and gas blocks in disputed waters (July 2012). The Scarborough Shoal development was further complicated by a Chinese frigate that ran aground on a nearby shoal. Contrary to previous reports, this demonstrated that China's paramilitary forces were operating in coordination with the PLAN and that Chinese operations in the South China Sea were far more centrally planned than some reports had contended.

Alarmed by these developments, several of the ASEAN members sought to reinforce the institutional constraints to coercion by Beijing through a renewed pursuit of a binding COC and further progress with

the implementation of the DOC guidelines. In the case of the latter, an agreement was reached in January 2012 concerning the establishment of four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime. However, ASEAN and China failed to agree to an expert committee concerning 'safety of navigation and communication at sea as it was deemed too contentious'.⁹ In the case of the COC, Beijing maintained that the DOC guidelines should first be implemented and only then, with 'appropriate timing' and 'appropriate conditions', would China consider negotiations regarding the DOC.¹⁰

Despite Beijing's formal objections, the Philippines government drafted a preliminary COC and circulated it between the ASEAN members. However, ASEAN's intramural negotiations were hindered by the non-claimant members and a continued divergence of perceptions concerning the potential threat of Beijing's rising power. For example, the ASEAN members became divided over Articles 1 to 6, as these covered issues such as 'joint exploration', the application of UNCLOS, and the establishment of a regional Dispute Settlement Mechanism. Meanwhile, at the twentieth ASEAN Summit (Phnom Penh 3–4 April 2012), China adopted a new position and requested a seat at ASEAN's intra-mural negotiations over the COC. As the then Chair of ASEAN, Cambodia supported this request, but the Philippines and Vietnam strongly objected. Compromise was reached whereby the ASEAN members would alone draft the COC, but Cambodia would regularly update Beijing about the negotiations.¹¹

Progress over the draft COC continued through intra-ASEAN deliberations at a Working Group (April 2012), followed by a Senior Officials Meeting (June 2012): these meetings resulted in the redrafting of

7 'Asia-Pacific,' *Strategic Survey* 111, no. 1 (2011): 355.

8 Interview by Christopher Roberts with scholar, Diplomatic Academy of Vietnam (Hanoi), January 2011.

9 Carlyle A. Thayer, 'ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community Building?' *The Asia-Pacific Journal: Japan Focus* 10, no. 34 (2012): 3.

10 *Ibid.*

11 'A New Wave of Chinese Assertiveness: Roping Off Scarborough Shoal, Oil Leases in Vietnam's EEZ, Military Garrison on Land and Fishing Armada at Sea,' in *2nd MIMA South China Sea Conference: Geo-Strategic Developments and Prospects for Disputes Management*, Kuala Lumpur: Malaysian Institute of Maritime Studies, 2012.

the key principles for a COC. The new draft was submitted at the 45th ASEAN Ministerial Meeting (AMM) on 9 July 2012. However, aside from references to two dispute settlement mechanisms under the Treaty of Amity and Cooperation and UNCLOS (both voluntary), the more contentious aspects of the initial Philippine draft had been removed or significantly reduced in their scope and level of enforceability.¹² The ASEAN foreign ministers then became embroiled in a dispute over a request by the Philippines and Vietnam to include a reference to Chinese aggression – e.g., the Scarborough shoal incident – and Beijing’s award of hydrocarbon exploration leases within Vietnam’s EEZ.

As the Philippines and Vietnam were not willing to withdraw this paragraph, Cambodia refused to issue the joint statement. Reports soon emerged that Cambodia had been simultaneously consulting with Beijing during the negotiations.¹³ Indonesia’s Foreign Minister, Marty Natalegawa, interpreted this as a significant setback for ASEAN and stated that ‘I think it is utterly irresponsible if we cannot come up with a common statement on the South China Sea’.¹⁴ Cambodia was willing to sacrifice the collective interests of ASEAN over the South China Sea, as China is now Cambodia’s principal source of investment and foreign aid.

Marty Natalegawa then attempted to resolve this disunity by embarking on a course of shuttle diplomacy to Cambodia, Vietnam, and the Philippines. Following these discussions, and in order to reduce the level of intra-mural tension between the ASEAN claimants, he personally drafted a ‘six-point plan’ which was publicly released in late July 2012. According to one analyst, all the ASEAN countries provided their ‘approval to the six principles of ‘ASEAN’s Common Position” on the South China Sea’, in particular a commitment to the DOC, and an ‘early adoption of a Code of

Conduct’.¹⁵ However, the six-point plan did not introduce anything new, and at best it may serve to shelve the dispute temporarily. For example, the limitations of this diplomacy were evident when the ASEAN members declined a request by the Philippines to renegotiate a unified position regarding the South China Sea at the November 2012 ASEAN Summit. Consequently, the Philippines has returned to unilateral diplomacy and sought recourse to international arbitration through the UN’s International Tribunal on the Law of the Sea (ITLOS).

The most common solution advocated by South China Sea analysts concerns setting aside sovereign claims to agree to mechanisms for joint exploration and exploitation. However, China has only indicated a willingness to consider this on a bilateral basis. Problematically, the absence of a multilateral arrangement would render it difficult to reconcile competing intra-ASEAN claims. Here the key difficulty concerns the inability of the ASEAN claimants to garner a common position while, in the case of China, it continues to insist on a bilateral approach to the dispute.

A further complicating factor involves the idea that for a number of claimants the South China Sea issue can be considered to be a ‘status quo dispute’. At one level, this is because a number of the claims are weak under international law and this explains the unwillingness of China, for example, to seek recourse to international arbitration. At another level, some countries have determined that any change to the status quo will not be in their favour given considerations such as China’s military power. For example, one senior military official from Vietnam stated that that ‘if anything changes regarding the dispute, it will not be in Vietnam’s favour, the best we can hope for is to maintain the current status.’¹⁶

12 ‘ASEAN’s Code of Conduct in the South China Sea: A Litmus Test for Community Building?’

13 ‘Cambodia’s Foreign Relations; Losing the Limelight,’ *The Economist*, 17 July 2012.

14 ‘Asean Struggles for Unity over South China Sea,’ *Agence France Presse*, 12 July 2012.

15 ‘The Tyranny of Geography: Vietnamese Strategies to Constrain China in the South China Sea,’ *Contemporary Southeast Asia* 33, no. 3 (2011).

16 Interview by Christopher Roberts with Senior Defence Official, Hanoi, January 2012.

Conclusions

The potential for a meaningful ASEAN consensus concerning the South China Sea remains low. The ASEAN states have not yet demonstrated a capacity to sacrifice 'national interests' for the 'collective interests' of ASEAN, even when the latter outcome would result in the most optimal – absolute – gain for all. The economic and strategic interests of some ASEAN countries are also highly interdependent with China. One option that may help to reduce this dilemma is the establishment of a sub-ASEAN working group, e.g., ASEAN-X, involving only the claimant states. While this would reduce the potential for disunity in broader ASEAN forums and protect the credibility of ASEAN's regional centrality, it would weaken the association's collective diplomatic voice. Nonetheless, should such an approach be adopted, it would also need to combine a willingness to pursue joint exploration in the areas that are more ambiguous regarding the application of UNCLOS. However, China is still likely to resist any initiative that it perceives to multilateralise or internationalise the dispute.