

TROUBLE IN FISHING WATERS: ASEAN, CHINA, AND THE SOUTH CHINA SEA

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The Association of Southeast Asian Nations was founded in 1967 to provide unity for the mostly small countries in the area, both among themselves and as a bulwark against powerful regional neighbors. In that era, the major concerns were communist insurgencies and fishing disputes. In subsequent years, the threat of the former diminished while the depletion of fishing stocks amid growing world demand greatly increased the importance of the latter. At the same time, the discovery of potentially lucrative oil and gas deposits in the area created an additional source of contention. The People's Republic of China (PRC) has claimed virtually the entire area on the basis of a unilaterally-declared nine-dash line; ASEAN members Brunei, Indonesia, Malaysia, the Philippines, and Vietnam claim parts of areas within the circumference of the line.

ASEAN's logo, paddy stalks representing each of the members, bound in the center, symbolizes its aspirations for unity. Each year, the foreign ministers of ASEAN's now-ten members, augmented by the PRC, Japan, and South Korea as observers ("ASEAN plus three"), meet to discuss and resolve outstanding issues.



China's increasingly assertive behavior in the area is putting the organization's unity to a severe test. While five of the member states have territorial disputes with the PRC, five do not—and, since trade with the PRC is an important part of their economic well-being, all have reason to want to avoid conflict with Beijing. Hence China has taken the position that disputes should be settled through bilateral negotiation, where its huge size would enhance its bargaining power. At a 2010 meeting, an imperious Chinese foreign minister stated that ASEAN members would have to understand that they are small countries whereas China is a big country. In 2012, host country Cambodia—a poor nation heavily dependent on Chinese aid—refused to put Vietnam and the Philippines' respective concerns with PRC encroachment on their exclusive economic zones (EEZs) on the agenda. The attendant disagreements resulted in the organization failing, for the first time in its history, to issue a communique. The 2013 meeting did succeed in producing a communique, though only by avoiding contentious issues ("We welcomed the proposals made by ASEAN and China to organize activities to commemorate the 10th anniversary of the establishment of the ASEAN-China Strategic Partnership in 2013...").

Causes for anxiety, however, increased even as the organization attempted collective avoidance. In January, Manila incurred Beijing's anger by referring its dispute to International Tribunal on the Law of the Sea, challenging the validity of the 9-dash line. Signatories to the United Nations Convention on the Law of the Sea are permitted to opt

¹ <http://www.indonesia-ottawa.org/wp-content/uploads/2012/12/Joint-Communique-46th-ASEAN-Foreign-Ministers-Meeting.pdf>

out of compulsory resolution of disputes involving questions of sovereignty, which the PRC has done. The suit will, however, proceed without China. In effect, Manila has cleverly turned the PRC's strategy of "lawfare,"—one of its three warfares plan to win wars without fighting—against it. The other two warfares, involving efforts to influence foreign media and public opinion, have also suffered due to high-handed Chinese behavior, as exemplified by the aforementioned foreign minister's 2010 comments. Manila has hired highly regarded legal talent, and its case may well succeed. While Beijing is highly unlikely to comply with a judgment against it, the ruling would at a minimum be a severe embarrassment.

Undaunted, Beijing in November unilaterally declared an Air Identification Zone in the East China Sea that overlapped territories claimed by two non-ASEAN states and asserted the right to establish others. Any ambiguity that these would include the South China Sea was removed when a senior Chinese naval officer said explicitly that a southern ADIZ is "crucial for China in the long term."²

This year Hanoi and Manila complained of fresh provocations. The Philippines, having already tacitly ceded Scarborough Shoal to China, was confronted with Chinese ships encircling Second Thomas Shoal and the aptly-named Mischief Reef. In March, Chinese coast guard ships blocked two Philippine vessels trying to resupply the country's marines on Second Thomas. A daring move by another Filipino skipper later succeeded in running the blockade by maneuvering through waters too shallow for the Chinese ships. The blockade remains; resupply is now carried out by air. Manila then discovered and seized a Chinese fishing boat poaching a globally protected species of sea turtles, with China protesting that the Philippine ships had no right to be in the area.

As for Vietnam, in an ongoing irritant, Chinese ships continue to chase the country's fishermen from their traditional trolling areas. However, just before the 2014 ASEAN conference and only a week after U.S. President Obama had assured nervous countries of American support, Beijing added a new element: with no warning, a Chinese oil rig, accompanied by an 83-ship flotilla, was installed inside Vietnam's EEZ. Hanoi complained, with video evidence, that eight of its vessels had been rammed by Chinese ships, which also fired water cannon. Six sailors sustained injuries. Beijing responded by accusing the United States of creating tensions in the area by encouraging countries to engage in dangerous behavior.³

With this as background, the 2014 meeting, hosted by Burma, opened. Chair U Thein Sein's address concentrated on the safe topic of climate change. Ironically, this echoed the words of American Pacific Commander Admiral Samuel Locklear a year before. At that time, anguished cries followed the admiral's remark that the biggest security threat to the Pacific region was climate change.⁴ In discussions, Vietnam's foreign minister, as quoted by the country's media, spoke out forcefully, calling China's behavior "brazen," with the Philippine foreign minister reportedly speaking out at well.⁵ In the end, however, after congratulating the organization on its commitment to an alphabet soup of consultative organizations on such worthy causes as trade, the environment, migrant workers, and youth, the communique merely expressed "serious concerns over the ongoing developments" in the area and "emphasized the need for expeditiously working towards an early conclusion of the Code of Conduct in the South China Sea."⁶

Even assuming that consensus on a CoC can be reached, the wording is apt to be rife with ambiguities that allow for different interpretations. And the PRC's compliance is far from assured. In April, immediately after Beijing agreed to a less contentious code of contact, involving maneuvering and communication among ships and aircraft that was signed by 21 Western Pacific states, a senior Chinese naval officer announced that China would not necessarily comply with its provisions. Asked to explain, the official said "We're just talking about the rules.

² Minnie Chan and Reuters, "Southern Air Defence Zone 'Crucial for China in Long Term,' PLA Expert Says," *South China Morning Post*, February 22, 2014, <http://www.scmp.com/news/china/article/1432938/southern-air-defence-zone-crucial-china-long-term-pla-expert-says>

³ *Reuters*, May 9, 2014.

⁴ Bryan Bender, Chief of U.S. Pacific Forces Calls Climate Change Biggest Worry," *Boston Globe*, March 9, 2013, <http://www.bostonglobe.com/news/nation/2013/03/09/admiral-samuel-locklear-commander-pacific-forces-warns-that-climate-change-top-threat/BHdPVCLrWEMxRe9IXJZcHL/story.html>

⁵ Hanoi, *Vietnam News Agency Online*, May 12, 2014,

⁶ "Chairman's Statement of the 24th ASEAN Summit: "Moving Forward in Unity to a Peaceful and Prosperous Community," May 11, 2014, <http://asean2014.gov.mm/cmiviews/workspace%253A%252F%252FspacesStore%252F94b4c1f1-0957-4a13-b1e7-13f78154135e%253B1.0>

Whether or where or when these rules will apply—it leaves that open, leaves it to bilateral [talks].”⁷

A major dilemma for Washington is what to do in these circumstances. Facing severe budgetary constraints and enmeshed in Middle Eastern conflagrations that show little prospect for resolution the United States can ill afford to involve itself in yet another conflict, particularly one involving complicated and overlapping claims. Moreover, the resolve of the nations impacted is less than assured. While Indonesian defense officials have stated unequivocally that China claims part of Indonesia’s Riau Islands Province⁸, the country’s foreign minister has said there is no territorial issue between the two countries.⁹ Malaysia has similarly waffled. The PRC has explicitly claimed James Shoal, which Malaysia considers its territory. Official Chinese media reported that, in February, while still in Malaysian-claimed waters, the crew took an oath to protect the nation’s sovereignty over the area including the shoal, which is located about 60 miles off the Malaysian coast.¹⁰ Malaysian sources have alternatively complained about Chinese ships off James Shoal and denied that they present any problem.¹¹ China is Malaysia’s largest trading partner, and the decision to look the other way is said to become directly from Prime Minister Najib Razak.

Given these realities, Washington would be ill advised to take a more assertive policy that could be perceived as encouraging the states most directly involved into behavior more provocative than their own leaders and citizens are firmly in support of. There are also, of course, costs to being too tepid. Many Filipinos find American assurances lacking in conviction. While official Manila welcomed the assurances of Chief of Naval Operations Jonathan Greenert and Pacific fleet commander Harry Harris Jr. that the United States would back its commitments under the Mutual Defense Treaty in the event that China invaded the islands the Philippine government claims, private comments were skeptical of promises that stuck them as excessively vague. China was well aware of how tenuous the U.S. commitment was, said one, and until American ships began patrolling the area, Filipinos could have little faith in such assurances.

However, until the ASEAN member states can agree among themselves to a more unified stance than they have heretofore evinced, quiet support from Washington is the most that they can reasonably expect. Its members do not appear to have accepted the validity of Benjamin Franklin’s aphorism that if they do not hang together they will surely hang separately.

There are positive signs: Malaysian Prime Minister Najib recently discussed security measures with President Aquino of the Philippines. Singapore’s foreign minister, speaking of China’s behavior, said that “neutrality is not the same as keeping quiet,”¹² and the Indonesian foreign minister has emphasized the need for consolidating an ASEAN community, which can be done only by the members themselves—i.e., without outside pressure.¹³ Some have interpreted these as a hardening of resolve against Chinese incursions. While acknowledging that a change in attitude does not necessarily portend a change in ASEAN’s collectively accommodative attitude toward the PRC’s assertion of control in the region, they point out that it does at a minimum increase the probability that such may happen. Meanwhile, however, the ties that bind the paddy stalks remain uncomfortably loose.

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⁷ (No author), “China Won’t Necessarily Observe New Conduct code for Navies,” *Wall Street Journal*, April 23, 2014.

⁸ (No author) “Indonesia’s Military Flexes Muscles as South China Sea Dispute Looms,” *Jakarta Globe*, March 14, 2014; <http://thejakartaglobe.com>.

⁹ Panca Hari Prabowo, “Natalegawa Denies Territorial Dispute with China Over Natuna Islands,” *Antara*, March 19, 2014.

¹⁰ *Xinhua*, January 26 2014; *Zhongguo Haijun Wang*, January 26, 2014.

¹¹ See, e.g. (No author) “Back in Hot Water,” *The Borneo Insider*, February 4, 2014. Opposition politicians have criticized this stance as a betrayal of promises the federal government made to the contiguous states at the formation of Malaysia in 1963.

¹² Chun Han Wong, “ASEAN Concerned over South China Sea Clashes,” *Wall Street Journal*, May 10, 2014.

¹³ “ASEAN Community Building Must Be the Core Issue, Inaction on COC Not an Option: Marty Natalegawa,” *Light of Burma*, May 12, 2014.