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# ASEAN'S AMBIGUOUS ROLE IN RESOLVING SOUTH CHINA SEA DISPUTES

Michael York<sup>1</sup>

## Abstract

*Maintaining regional peace and security is a major concern for the Association of South East Asian Nations (ASEAN) while preserving strong and strategic ties with China is also imperative for the protection of regional economic and security interests. In a territorial dispute that involves most ASEAN nations to a different extent, delicately crafting a diplomatic solution to protect good working relations among ASEAN nations and China will become increasingly difficult. China has been accused of intimidating and using other coercive tactics against the Philippines and Vietnam in its bid to claim large areas of the South China Sea against the interests of ASEAN member states. Despite these tensions, ASEAN, nor its member nations have "condemned" these actions, or sort to sanction the Chinese at the risk of damaging lucrative economic relations to the detriment of security and stability in the region. A lack of solidarity within the ASEAN community has the capacity to undermine its function and response which has thus far been limited in addressing this issue. This paper will discuss aspects of Philippine, Vietnamese and Indonesian government policy towards China and characterize ASEAN's role in resolving and managing the conflict. The Philippines and Vietnam have increasingly troubled and deteriorating relations with the Chinese, in contrast with the Indonesians, who are working expeditiously to strengthen ties with the Chinese across a plethora of foreign policy and defense cooperation issues. The prospect of a unified ASEAN response to the South China Sea territorial dispute remains unlikely. Indonesia's proposed code of conduct may be the first step in addressing peace and security, however is not a long term solution and governments throughout the region must continue ongoing robust diplomatic efforts through ASEAN, bilaterally and multilaterally, with international assistance and cooperation, to resolve these territorial disputes.*

**Keywords:** *South China Sea, ASEAN, International Relations, Regional Security and Stability, Regional Cooperation*

## I. INTRODUCTION

The growth of the Asian region in economic, military, political and social power has triggered a rise in tensions in the region as interests between these emerging powers overlap and exert pressure upon one another. Never before has the world witnessed the expeditious growth of powers within such a close proximity and with so many mutual overlapping national interests. During the Cold War era, the power base of the United States and the Soviet Union were located far from each

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other and the two entities had almost no agreements for cooperation, economic development or other overlapping interests. This reflects a very different reality to the ongoing territorial disputes of the South China Sea. China is an emerging power of approximately 1.3 billion inhabitants, while the Association of South East Asian Nations comprises of 10 nations with a population of over 600 million people, and the potential to exceed America in terms of trade volume, economic demand and strength. China has refused to deal with ASEAN as a block of nations or enter a process of international arbitration, instead demanding that China deal individually and directly with each nation involved in the territorial disputes. Many ASEAN nations have refused to deal directly with Beijing and wish to use the Association of South East Asian Nations as a union in which to negotiate with the Chinese.

This paper will firstly discuss the dynamics of ASEAN as an association of nations within the South East Asian region, followed by a discussion of the South China Sea territorial dispute making particular note of the fragile Vietnam-China and Philippine-China relations, two relations that have suffered severely as a result of these territorial dispute, as well as the Indonesian response to the disputes as a nation developing further cooperation with China. Through this lens, this paper outline the role of ASEAN in this disputes resolution process and assess the possibility of a joint, united and decisive ASEAN response to the South China Sea disputes and the capacity of this association to resolve the issue.

## **II. THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)**

ASEAN was established on the 8<sup>th</sup> August 1967 in Bangkok, Thailand in the form of the ASEAN Declaration. According to the aims and purpose of ASEAN, the association will accelerate economic growth and progress, promote regional peace and security through respect and justice, and promote collaboration and assistance while maintaining close and beneficial cooperation<sup>2</sup>. These ASEAN functions are

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<sup>2</sup> ASEAN Secretariat. "Overview. Aims and Purpose," Association of South East

discharged within the Political-Security Community (APSC), a body mandated with ensuring countries in the region live in peace with one another with the world in a just, democratic and harmonious environment<sup>3</sup>. This body is also responsible to “promote the development of norms that enhance ASEAN defense and security cooperation”<sup>4</sup>. The Philippine Government has noted that ASEAN is committed to establishing a politically cohesive, economically integrated, socially responsible, people-oriented, and people-centered Community by 2015<sup>5</sup> which will strengthen economic, social and political cooperation between ASEAN member states and develop its role and importance in regional and international political and defense matters. ASEAN is a regional organizations which supports “the pursuit of international peace, security and stability. With the wisdom that neighbors are in the best position to know one another, the regional organization has become the pre-eminent platform for dialogue and engagement”<sup>6</sup> Foreign Minister Del Rosario of the Philippines further notes “ASEAN contributed to the progressive development of international norms that are recognized in the region – the non-use of force or threat of force, the peaceful settlement of disputes, the primacy of international law, consensus, and non-interference”<sup>7</sup>. Based upon the aims of ASEAN, it’s inevitable that this association will be required to play a central role in dealing with the South China Sea disputes, which has heightened tensions and created an atmosphere of distrust in the region.

ASEAN was formed “to give smaller South East Asian nations a louder voice to counter the influence of larger nations”<sup>8</sup>. ASEAN how-

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Asian Nations, Available at: <<http://www.asean.org/asean/about-asean>>.

<sup>3</sup> ASEAN Political-Security Community.

<sup>4</sup> ASEAN Political Security Community, ASEAN Political Security Community Blueprint. B.1.5. 2009. Available at <<http://www.asean.org/archive/5187-18.pdf>>.

<sup>5</sup> Ministry of Foreign Affairs, Republic of the Philippines, Secretary Del Rosario Highlights ASEAN, Philippines” Contributions to Regional Peace, Security and Stability at NDCP Founding Anniversary Lecture 19 August 2014. Available from: <http://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/dfa-releases/3856-secretary-del-rosario-highlights-asean-philippines-contributions-to-regional-peace-security-and-stability-at-ndcp-founding-anniversary-lecture>

<sup>6</sup> Del Rosario, Minister for Foreign Affairs, The Republic of the Philippines. Ibid.

<sup>7</sup> *Ibid.*

<sup>8</sup> Al-Jazeera. ASEAN summit ends with walk-out by the Philippines’ Foreign Minister, 13 July 2012, Available at <<https://www.youtube.com/watch?v=zm9MRfQo7O0>>.

ever maintains the strong stance that nations do not have the right to toil within the domestic affairs of neighboring nations and the territorial integrity and sovereignty of nations will be upheld. This was seen as a positive step during the formulation of the association, however has fractured ASEAN cooperation in dealing with the South China Sea disputes and intern impacting the peace dynamics in the region. A durable peace is a situation where interparty relations have reached a high level of cooperation and reciprocity, and war is unthinkable. With stable peace, relations have transcended the stage where war does not happen and moved into a situation where war is perceived as something that will not happen, at least in people's minds<sup>9</sup>, however this no longer reflects the situation in the South China Sea.

### **III. CRACKS APPEARING WITH ASEAN COOPERATION**

The policy of conflict resolution via cooperation has not gone as smoothly as possible and nations have been diplomatically provocative in dealing with this issue. International powers exert their influence on the region through ASEAN and its institutions, compromising its capacity to resolve this issue. ASEAN could be considered in an "unstable peace". An unstable peace occurs under the circumstances where:

*"Tensions and suspicions between the parties are so high that peace no longer seems guaranteed and the parties perceive each other as enemies. Tensions and suspicion run high, however violence is either absent or only sporadic"*<sup>10</sup>.

ASEAN and China have been largely successful in maintaining peace and security in the region despite a number of close military encounters however this peace is becoming increasingly fragile. Al-Jazeera reported on the 13<sup>th</sup> July 2012, the Philippine Foreign Minister walked out of an ASEAN summit in Phnom Penh over a dispute regarding the Scarborough Shoal, islands off the coast of The Philippines that are recognized and claimed by China and Taiwan.

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<sup>9</sup> Weissmann, M. The South China Sea conflict and Sino-ASEAN relations: A study in conflict prevention and peace building. 2010. Asian Perspectives. Pro Quest.

<sup>10</sup> Weissmann, M. The South China Sea conflict and Sino-ASEAN relations: A study in conflict prevention and peace building. 2010. Asian Perspectives. Pro Quest.

According to The Philippines Foreign Minister, he ‘had simply asked for the communique to include the fact that the Scarborough Shoal issue was talked about at the summit, nothing more’. Despite having the support of most ASEAN nations, Cambodia, the host nation of the summit and a strong Chinese ally had simply refused to include this issue in the dialogue. Upon the departure of the Philippine Foreign Minister from Phnom Penh, he accused the Chinese of using pressure and tactics as well as intimidation on smaller nations to denigrate the Philippine’s sovereignty”. The Chinese reacted strongly to The Philippines telling them “not to cause trouble”, and face the facts that the Scarborough Shoal is not a disputed territory and belongs whole heartedly to China”. This undiplomatic language illustrates the tensions among nations regarding the issue. Cambodia’s stance could be considered in defiance of Section B.1.4. of the ASEAN Political-Security Community Blueprint which endeavors to “Strengthen efforts in maintaining respect for territorial integrity, sovereignty and unity of ASEAN Member States as stipulated in the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”<sup>11</sup>. The actions of the Cambodian Government have inhibited the opportunity of the Philippine Government to present its sovereignty dispute case to the ASEAN Community which has undermined the capacity of the association to deal with this issue. In section B.2. of the blueprint, it states that;

*“The settlement of differences or disputes should be regulated by rational, effective and sufficiently flexible procedures, avoiding negative attitudes, which might endanger or hinder cooperation, which seeks to preserve regional peace and harmony and prescribes that Member States refrain from threat or use of force. Section B.2.3. states that ASEAN must promote regional cooperation to maintain peace and stability.”<sup>12</sup>*

Administratively, ASEAN is highly and fatally vulnerable to the influences of powerful regional actors, especially the Chinese with

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<sup>11</sup> ASEAN Political-Security Community. ASEAN Political-Security Community Blueprint, 2009. Available at: <http://www.asean.org/archive/5187-18.pdf>

<sup>12</sup> ASEAN Political-Security Community. ASEAN Political-Security Community Blueprint, Conflict Resolution and Pacific Settlement of Disputes. 2009. Available at: <http://www.asean.org/archive/5187-18.pdf>

regards to this issue. This has the potential to undermine cooperation among ASEAN member states and stall the process of conflict mediation and resolution regarding this issue. Article 47 (2) of the ASEAN Charter states that 'this charter will be implemented with the agreement of each ASEAN member in accordance with their internal procedures'. As a consequence of this, upon the occasions that one ASEAN state refuses to codify or recognize a given document, the proposed document in question shall be rendered as void. Voting is not done on a consensus and a negative vote by one single ASEAN member will block the decision. It virtually provides veto rights to each ASEAN member and foreign powers that have the capacity to influence ASEAN members such as China and the United States which are becoming increasingly engaged in this region.

In addition to this, ASEAN nations have expeditiously developed their military capabilities through increased defense budgets. Military analysts at IHS Jane's Defense Analysis say that South-East Asian countries together increased defense spending by 13.5% last year, to \$24.5 billion. The figure is projected to rise to \$40 billion by 2016<sup>13</sup>. According to the article, Indonesian defense spending increased by 84% between 2005 and 2009, possibly as a result of the South China Sea tensions. Rapid economic growth has been mentioned as one contributing factor to this military expansion.

According to the ASEAN Charter, ASEAN is required to protect and increase peace, security and stability and further strengthen values that are orientated towards regional peace. The association is also required to advance wider political, security, economic and social cooperation between ASEAN members and a number of their regional partners. The ASEAN + 3 is an important forum in which ASEAN engages with the People's Republic of China, the Republic of Korea and Japan. The latest ASEAN + 3 dialogue was held in May 2014<sup>14</sup>, however issues regarding the South China Sea disputes were not addressed and no statement was released clarifying policies adopted by ASEAN in order to deal with these disputes. Transnational crime was discussed in much

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<sup>13</sup> The Economist. Countries are buying lots of weapons, but does it count as an arms race? 24 May 2012. Retrieved from: <http://www.economist.com/node/21551056>

<sup>14</sup> Association of South East Asian Nation. ASEAN + 3 Dialogue. 2014. Available at: <http://www.asean.org/news/item/asean-plus-three-cooperation-2>

more depth, however is a less prominent political issues in the region. This may be considered a deliberate attempt by ASEAN or China to ignore and avoid the issue in international forums.

#### IV. SOUTH CHINA SEA

Territorial claims and issues of sovereignty have been diplomatic irritants and triggers of conflict in the South China Sea for decades. China's first policy to claim large regions of the South China Sea were released by the Interior Ministry of the Chinese Government in 1947. This was a policy of nine dashes on a map representing the areas claimed by the Chinese Government 'that appears to enclose an area covering roughly 90% of the South China Sea'<sup>15</sup>.

**Figure 4. EEZs Overlapping Zone Enclosed by Map of Nine-Dash Line**



Source: Source: Eurasia Review, September 10, 2012.

China claims some of these regions based upon “historical events” and archeological findings and evidence. Claims of sovereignty over al-

<sup>15</sup> O'Rourke, R. Maritime Territorial and Exclusive Economic Zone (EEZ) Dispute Involving China: Issue For Congress. Congressional Research Service. September 26, 2014.



most the entire maritime area of the South China Sea have seriously upset the strategic equilibrium of the region and nations have worked vigorously to maintain their sovereignty. These maps and claims are highly ambiguous, there are many different versions of the map and there is no map provided by the Chinese Government of exactly which waters and islands are claimed. A ten-dash map was also released, claiming Taiwan within Chinese territory, as well as provocative moves by the Chinese Government depicting disputed regions as Chinese territory in the Chinese passport. Taiwan, the Philippines and Vietnam all lodged diplomatic complaints with the Chinese Embassy in the respected nation.

Some observers 'characterize China's approach for asserting and defending its territorial claims in the South China Sea as a "salami-slicing" strategy that employs a series of incremental actions, none of which by itself is a *casus belli* (action to provoke war), to gradually change the status quo in China's favor<sup>16</sup>. Despite the ambiguities of the claims, nations in the region have attempted to deal with this issue and maintain peace and security through a number of international legal mechanisms. "The United Nations Convention on the Law of the Sea (UNCLOS), article three states "every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention"<sup>17</sup>. This convention was implemented in 1994 and was aimed at establishing a series of legal measures on the economic rights of nations based on their territorial waters and continental baselines. Nations are also entitled to an Exclusive Economic Zone (EEZ) of 200 nautical mile that extends from the baseline of the coastal nation"<sup>18</sup>. Under Article 56 of the given convention, nations possess sovereign rights for the purpose of exploring and exploiting, conserving and managing their natural resources, whether living or non- living, of the waters superjacent to the seabed, of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents

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<sup>16</sup> *Ibid.*

<sup>17</sup> United Nations. *United Nations Convention on the Law of the Sea*.

<sup>18</sup> South China Sea: Conflicting Claims and Tensions. Lowy Institute for International Policy. 2013. Retrieved from. <<http://www.lowyinstitute.org/issues/south-china-sea>>.

and winds<sup>19</sup>. Other nations do not have the right to conduct activities within another state's waters without their consent and this will have economic implication on the region if these disputes areas cannot be resolved. Considering the economic potential of this region, nations are working vigorously to protect their economic interests.

## **V. ASEAN'S ROLE IN THE REGION**

Although ASEAN has not reacted to the South China Sea disputes in the same manner as the European Union and Americans have reacted to ongoing Russian aggression in Eastern Europe, ASEAN has played an important role in ensuring dialogue, the expansion of regional overlapping interests and the development of trust and cooperation between parties which has been imperative in preventing physical conflict. Significant sectors of the foreign policy establishment claim that "war is considered most unlikely as the South China Sea conflict cannot be separated from the overarching Sino-ASEAN relations"<sup>20</sup>. "Clinton articulated what she believed was the consensus among most of the world's maritime powers and proposed that ASEAN serve as a multilateral venue for South China Sea negotiations – a prospect supported by four ASEAN claimants (Malaysia, The Philippines, Vietnam, and Brunei), but vigorously opposed by China"<sup>21</sup>, which wishes to use its dominance over these nations and the region to push its own interests. Nations in the South China Sea rely heavily upon each other and have significant interests in the protection of rights such as freedom of navigation and economic trade. Some of the world most important trade routes move through the South China Sea, trade routes that China heavily relies on as an exporting nation. It is not within China's interests for these routes to be disrupted through conflict or heightened tensions.

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<sup>19</sup> United Nations, *United Nations Convention on the Law of the Sea*. Article 56.

<sup>20</sup> Weissmann, "The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building," *ASIAN PERSPECTIVE*, Vol. 34 (3), (2010), pp. 35-69.

<sup>21</sup> Simon, S. *US-Southeast Asia Relations: Deep in South China Sea Diplomacy*. 2011. Comparative Connections, East Asian Bilateral Relations. Arizona State University: Arizona.

The South China Sea conflict is linked with the overall peace-building process between China and ASEAN that has taken place over the past two decades. Efforts to develop mutually beneficial trust and ongoing dialogue have been important and play a pivotal role in achieving South East Asian peace. ASEAN has been praised for its capacity to maintain peace among nations despite the lack of any formal organization for security and military cooperation in the South East Asian and North Asian regions. ASEAN applies diplomacy in both a formal and informal manner and utilizes soft diplomacy as opposed to belligerence and threats of conflict.

ASEAN is working to counter the threat of warfare on the basis of territorial disputes through the expeditious development of strong and interdependent ties between ASEAN and its “plus three” external partners including China, Korea and Japan<sup>22</sup>. These three nations signed the Treaty of Amity and Cooperation in Southeast Asia. Chapter 1, Purpose and Principles Article 1 states “the purpose of this Treaty is to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strengths, solidarity and closer relations”<sup>23</sup>. The APT has become the platform for cooperation, reconciliation, and East Asian community building. Seen from the perspective of regional peace, the states have been able to use this platform for positive interstate relations that have developed to such an extent that there has been less need for deliberate efforts to avoid confrontations over conflictual issues<sup>24</sup>. It seems that ASEAN has taken the position that “institutions do not need to be formalized in the legal sense; they “may include organizations, bureaucratic agencies, treaties and agreements, and informal practices that states and non-state actors accept as binding”<sup>25</sup>. In addition to this, China’s emerging leadership aspirations in the context of the international community will also bound China to international law and a respect for their neighbor-

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<sup>22</sup> Association of South East Asian Nation. ASEAN + 3 Dialogue. 2014. Available at: <<http://www.asean.org/news/item/asean-plus-three-cooperation-2>>.

<sup>23</sup> Association of South East Asian Nation. ASEAN Charter. Available at: <<http://www.asean.org/archive/publications/ASEAN-Charter.pdf>>.

<sup>24</sup> Weissmann. “The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building.” *ASIAN PERSPECTIVE*, Vol. 34 (3), (2010), pp. 35-69.

<sup>25</sup> *Ibid.*

ing countries and their interests. China has made a commitment to deepen its ties and cooperation with ASEAN. However some of the steps as outlined by the government have not been as enthusiastically implemented.

Over the past few years, China has acted to maintain and strengthen good ties with its ASEAN partners, to the extent that Chinese Premier Li Keqiang noted the desire to turn a golden decade of cooperation to a diamond decade of cooperation. In the Premier's speech he stated "the past ten years have witnessed a golden decade of China-ASEAN cooperation, with bilateral trade volume increasing fivefold and the scale of cross-investment expanding threefold. Trade between China and ASEAN is expected to reach US\$1 trillion by 2020"<sup>26</sup>. Premier Li Keqiang proceeded to state that China is also willing to join hands with ASEAN to advance talks of Regional Comprehensive Economic Partnership (RCEP), and discuss exchanges and interactions with frameworks including Trans-Pacific Partnership (TPP) Agreement<sup>27</sup>. Despite these sentiments being passed in person by high level officials, Chinese provocative, assertive territorial stance and unwillingness to compromise is concerning and undermining cooperation building efforts. China is unlikely to concede on any of its territorial claims as this will be perceived as an embarrassing sign of weakness.

## **VI. CHINESE POSITION ON THE SOUTH CHINA SEA**

China states their position is clear and consistent. The Foreign Minister of the People's Republic of China states, "China has remained committed to resolving the disputes through bilateral negotiations, and has made every effort to maintain stability and to promote regional cooperation in the South China Sea. To resolve the disputes through negotiations by sovereign states directly concerned is also the consensus between China and ASEAN countries as stipulated in the Declaration on the Conduct of Parties in the South China Sea" (DOC)<sup>28</sup>.

<sup>26</sup> Diplomatic Focus. China, ASEAN can Build a Diamond Decade. 2013. Available at: <<http://diplomaticfocus.org/china-asean-can-build-diamond-decade/>>.

<sup>27</sup> Diplomatic Focus. China, ASEAN can Build a Diamond Decade. 2013. Available at: <<http://diplomaticfocus.org/china-asean-can-build-diamond-decade/>>.

<sup>28</sup> Hong Lei, Spokesperson for the People's Republic of China. Regarding its posi-

According to the Chinese Institute for International Studies, China has noted the protection of its territorial integrity and the rights to exercise its sovereignty as core interests. China will work with other nations on an economic level through joint exploration and economic activities in the region. However it will not accept joint sovereignty of the region. "China is unlikely to agree to anything that would erode its strongly-asserted claims. The loss of international face would bring shame to China's leadership and more particularly to the powerful military establishment"<sup>29</sup>. Based upon this analysis, all claimants will undertake vigorous diplomatic efforts to maintain peace and security in the region, which is contrary to Chinese behavior in the region and the Chinese have on numerous occasions used coercive tactics to stake its regional claim.

Numerous parties have raised concerns about the increasingly assertive China in territorial matters coupled with their response and attitude towards Russia's annexation of the Southern Ukrainian island of Crimea and eastern areas of the country which bears similarities to the current South China Sea dispute. China's position on the annexation of Ukrainian territory by the Russians is concerning and could forecast China's attitude towards the possible annexation of territories within its claimed waters. China has declined to take steps at any level against the Russian Government with regards to the annexation, and it can therefore be assumed that the Russians would not defy a Chinese policy of annexation against claimed waters. At the United Nations Security Council meeting on the Crimean

Referendum on the 15<sup>th</sup> March 2014 in New York, China stated that a "political solution needs to be implemented in Ukraine to address this issue and condemned the ongoing violence. China has always supported the sovereignty and territorial integrity of all states, which is the long standing fundamental position of the Chinese Government. The key to solving the issue is to act within law and order. China sup-

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tion on the South China Sea.

<sup>29</sup> Vatikiotis, M. *South China Sea Disputes: Diplomacy Key to Calming Troubled Waters*, 2012. Centre for Strategic and International Studies. Retrieved from: <http://cogitasia.com/south-china-sea-disputes-diplomacy-key-to-calming-troubled-waters/>.

ports a return to negotiations as a solution”<sup>30</sup>. This is however at odds with the international non-binding vote in which 100 nations voted that the referendum was illegal, politically partisan and in defiance of the political desires and aspiration of the Crimean population. Beijing however decided to abstain from this vote, not voting in support of Russia’s position, which would be seen as politically and internationally irresponsible, however in order to maintain positive relations with Moscow they also opted not to condemn the vote as invalid nor dismiss its outcome. This is concerning, as China’s voting position does not disapprove of this form of territorial annexation. Since this vote, the Chinese have attempted to seize areas of Vietnamese waters through the placement of an oil rig and engaged Vietnamese ships military which has raised concern.

## **VII. CHINESE UNPREDICTABILITY**

China has made clear its intention to work with ASEAN regarding all aspects of state relations, however its desire to move closer to ASEAN nations has been undermined by the degradation of Vietnamese and Philippine sovereignty. In a move that brought Sino-Vietnamese relations to their lowest point, “China sent a billion-dollar floating oil drilling platform deep into Vietnam’s exclusive economic zone and continental shelf. It also rammed Vietnamese surveillance vessels and fired at them with high-powered water cannon, severely injuring several crew members. At the same time, the Chinese media called on China to teach Vietnam a lesson if it dared to protest”.<sup>31</sup> This led to widespread protests throughout Vietnam and the evacuation of thousands of Chinese people from Vietnam. This further reiterates the seriousness of tensions in the region.

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<sup>30</sup> United Nations Security Council. 7138<sup>th</sup> Meeting. Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine’s Crimea Region. 15 March 2014. Available at: <<http://www.un.org/press/en/2014/sc11319.doc.htm>>.

<sup>31</sup> China ‘sending mixed signals to ASEAN, 2014. The Straits Times. Retrieved from <<http://www.straitstimes.com/news/opinion/eye-the-world/story/china-sending-mixed-signals-asean-20140513>>.

## **VIII.DETERIORATING RELATIONS BETWEEN VIETNAM AND CHINA**

The Chinese have acted to economically exploit territory that is claimed by the Vietnamese through the attempted construction of a Chinese oil rig by Chinese Company HYSY 981 Drilling. The Chinese Ministry of Foreign Affairs adopted the stance that the waters in which the Chinese rig was operating “falls well within China’s sovereignty and jurisdiction”<sup>32</sup>. Hanoi dispatched forces to the region to hamper and prevent the construction of the rig and “government ships from China and Vietnam then clashed there on several occasions, bumping and exchanging water cannon fire as Vietnam sought to block Chinese drilling operations”<sup>33</sup>. At the peak of the altercation, there were 63 Vietnamese ships “ramming the Chinese government ships for a total of 1,416 times”<sup>34</sup>. As a response to these actions, the Chinese Government released a statement noting “the actions of the Vietnamese side were serious infringements upon China’s sovereignty, sovereign rights and jurisdiction and grave threats to the safety of Chinese”<sup>35</sup>. It seems that the Vietnamese are aware of ASEAN’s lacking capacity to protect Vietnam’s sovereignty against Chinese pressure and aggression. Vietnam has therefore reached out to nations outside the ASEAN region for military protection and assistance. As reported on August 5th 2014, an Indian Navy Ship visited Vietnam on a goodwill visit. I was retorted “that Indian Navy warship INS Shivalik has reached the Hai Phong Port in Vietnam on a three-day goodwill visit for improving inter-operability between the two navies”<sup>36</sup>. In a press release the Indian Government said this is the operational reach and pursuit of India’s ‘Look East’

<sup>32</sup> Ministry of Foreign Affairs of the People’s Republic of China. The Operation of the HYSY 981 Drilling Rig: Vietnam’s Provocation and China’s Position. 2014. June 8. Available at <[http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1163264.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1163264.shtml)>.

<sup>33</sup> British Broadcasting Cooperation. Chinamoves VietnamDowover Oil Rig. 2014 Available at: <<http://www.bbc.com/news/world-asia-28322355>>.

<sup>34</sup> British Broadcasting Cooperation. Chinamoves VietnamDowover Oil Rig. 2014 Available at: <<http://www.bbc.com/news/world-asia-28322355>>.

<sup>35</sup> Ministry of Foreign Affairs of the People’s Republic of China. The Operation of the HYSY 981 Drilling Rig: Vietnam’s Provocation and China’s Position. 2014. Available at: <[http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1163264.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1163264.shtml)>.

<sup>36</sup> Business Standard. Indian Navy Warship Reaches Vietnam on Goodwill Visit, 2014. Available at: <[http://www.business-standard.com/article/news-ians/indian-navy-warship-reaches-vietnam-on-goodwill-visit-114080600002\\_1.html](http://www.business-standard.com/article/news-ians/indian-navy-warship-reaches-vietnam-on-goodwill-visit-114080600002_1.html)>.

policy, the Indian Navy's Eastern Fleet is on an operational deployment to the South China Sea and the North Western Pacific region"<sup>37</sup>. The Indians have their own territorial disputes with the Chinese on the Eastern border and the Chinese have made clear that Indian involvement in the region is unwanted. This has the potential to further strain relations. The Japanese have also sort to strengthen military ties with the Vietnamese to resist Chinese assertiveness.

## **IX. DETERIORATING SINO-PHILIPPINE RELATIONS**

Pilipino-Chinese relations have been significantly damaged by this decade long dispute and the attempt to involve international courts for arbitration, a step that has not yet been taken by other parties. China has demanded that the matter be withdrawn from the international court of arbitration and dealt with at a bilateral level. The Chinese side claim that the Philippine submission "contains many grave errors both in fact and in law, and includes many false accusations against China. China firmly opposes this"<sup>38</sup>The Chinese further rejected the Philippine Government's Triple Step Plan to reduce ongoing tensions in the region following a number of altercations between Chinese and Philippine Coast Guard vessels. The Chinese rejected this proposal on the grounds that "Beijing wouldn't accept proposals that would "interrupt" ongoing conflict-resolution talks and "damage the common interests" of China and its Southeast Asian neighbors. China is ready to listen to well-intended proposals on the South China Sea from all parties," Mr. Wang told reporters after meeting his Southeast Asian counterparts. "But these proposals should be objective, fair and constructive, rather than contributing to new problems or be driven by ulterior motives."<sup>39</sup>

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<sup>37</sup> *Ibid.*

<sup>38</sup> British Broadcasting Cooperation. Chinamoves Vietnam Dowover Oil Rig.2014 Available at: <<http://www.bbc.com/news/world-asia-28322355>>.

<sup>39</sup> Wang Yi, Chinese Foreign Minister, China Rejects Philippine Proposal on South China Sea Disputes Beijing Refuses to Accept Plan, Claiming it Would Interrupt Ongoing Conflict-Resolution Talks, Wall Street Journal. 9 August 2014. Available at: <<http://online.wsj.com/articles/china-rejects-philippine-proposal-on-south-china-sea-disputes-1407574262>>.



According to Manila, the Triple Steps Plan reflects the South China Sea Code of Conduct which was implemented in 2002. The Philippine Foreign Minister urged “China to immediately cease “provocative” actions that contravene the declaration, such as the construction of structures on disputed islands”<sup>40</sup>. The Japanese have urged the Chinese to do the same regarding disputed islands in the region. According to the Philippine Foreign Minister, “China is trying to actualize their [claims] in advance of arbitration and the conclusion of a code of conduct”.<sup>41</sup> The Chinese have criticized the Philippine Government and demanded their case for arbitration in international courts be withdrawn for the triple step plan as their “actions on the ground aren’t consistent with their public pronouncements”.<sup>42</sup> This occurred in a period of heightened tensions in the region as the United States and ASEAN nations criticize the Chinese for “taking unilateral and provocative actions to pursue claims in the South China Sea”<sup>43</sup>. The Chinese Government further warned the Philippines over their attempt to win economic contracts with energy companies in the region. The Chinese Foreign Ministry spokesperson stated “the bidding violated Chinese interests without the permission of the Chinese Government. Oil exploration done by any company or any country that enters China’s jurisdiction is illegal”. China urges the Philippines to adhere to the principal of the Declaration of the Conduct of Parties in the South China Sea. According to a statement by the US Department of State, “The United States does not take sides on any of the sovereignty disputes in Asia, but insists that parties to the dispute do not resort or threaten the use of force to settle disputes”.<sup>44</sup> Most nations both in the region and outside, have taken a similar policy stance.

The Philippines along with allied nations have been swift and vocal against act of Chinese aggression and intimidation which has resulted in the damage of Philippine military vessels. Despite the military su-

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<sup>40</sup> Wong, Chun Han. China Rejects Philippine Proposal on South China Sea Disputes. 9 August 2014. Wall Street Journal. Available at: <<http://online.wsj.com/articles/china-rejects-philippine-proposal-on-south-china-sea-disputes-1407574262>>.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Keck, Z. US ChallengesChina’sNine-DashLineClaim. 2014. The Diplomat. Retrieved from <<http://thediplomat.com/2014/02/us-challenges-chinas-nine-dash-line-claim/>>.

periority of the Chinese, it's is still unlikely that the Chinese launch an openly hostile act of military aggression against the Philippines, or any other nation in the South China Sea and historical conduct in the region supports this hypothesis. The current territorial disputes have been matters of contention in the South China Sea for decades, with a particularly sharp spike in tensions in the 90s. "At the time, military forces were seizing claims and a conflict between the Philippines and China over the Mischief Reef in 1995 stopped short of military conflict mainly because of the unequal power of the two nations".<sup>45</sup> This suggests that governments are likely to exercise restraint in the face of real conflict and reduce tensions.

## **X. THE PHILIPPINE'S CASE FOR INTERNATIONAL ARBITRATION**

The Europeans and Americans support the International Arbitration Case initiated by the Philippines to address this issues. Despite this support, the case has however been criticized by the Chinese. In February 2013, the Chinese Ambassador to the Philippines rejected and returned the *Note Verbale* and the attached Philippines' notification of arbitration and statement of claim. The notification provided to the Chinese Ambassador in Manila notifying the Chinese Government that the Philippines Government was bring the South China Sea before the arbitral tribunal in accordance with Article 287 and Annex VII of the Laws of the Sea Convention<sup>46</sup>. The Philippines Government "declares that China's maritime claims in the South China Sea based on its so-called "nine-dash line" is contrary to the United Nations Convention on the Law of the Sea and is invalid. The Philippines have also disregarded the Chinese historical claims to the region stating that decision must be based upon international law and not one state's ver-

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<sup>45</sup> Weissmann, "The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building", *ASIAN PERSPECTIVE*, Vol. 34 (3), (2010), pp. 35.

<sup>46</sup> Yann-Huei Song. Major Law and Policy Issues in the South China Sea. European and American Perspectives Support for International Arbitration Invited by the Philippines against China. 2013 Ashgate.

sion of history and other extraneous factors".<sup>47</sup> Based on the logic as displayed by the Chinese regarding this issue, the British, Spanish and Portugases would have the right to claim waters far for their own shores. In addition to this, the Philippines is also rising Beijing's claims for uninhabitable islands, submerged landmarks and Chinese harassment of Philippine vessels.<sup>48</sup> Beijing has accused Manila of violating the consensus in the 2002 DOC, because the declaration states that disputes should be solved through friendly talks and negotiations by sovereign states directly concerned. This is one of the most prominent factual and legal flaws as highlighted by the Chinese in the Philippines case.

## **XI. INDONESIAN REACTION**

This issue is one of concern in Indonesia and was noted in the 2014 Indonesian Presidential election. According to Indonesian Foreign Minister Marty Natelegawa, there are no Indonesian territories that are disputed by the Chinese. However this will no doubt become an issue that impacts Indonesia. European arbitration lawyers have warned the Indonesians against the adoption of this stance noting the ambiguity of China's nine-dash line policy has the potential to violate Indonesia's territorial integrity. Indonesia, as a non-claimant state, is attempting to mediate by calling for a special meeting on the issue on the sidelines of the next ASEAN leaders meeting but this head-on approach may be too direct for China to accept.<sup>49</sup> China has already expresses its unwillingness to deal with this issue at the ASEAN level.

It was reported on the 28<sup>th</sup> September 2014 by Indonesian's Official News Agency, *Antara* that Indonesia had mobilized military assists to the Province of Riau in the northern regions of Indonesia off the coast of Singapore and Malaysia. Indonesia's Defense Minister Purnomo

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<sup>47</sup> Dutton, P. A. The Sino-Philippine Maritime Row: International Arbitration and the South China Sea. East and South China Seas Bulletin #10. March 2013. Center for a New American Security. Available at <[http://www.cnas.org/files/documents/publications/CNAS\\_Bulletin\\_Dutton\\_TheSinoPhilippineMaritimeRow\\_0.pdf](http://www.cnas.org/files/documents/publications/CNAS_Bulletin_Dutton_TheSinoPhilippineMaritimeRow_0.pdf)>.

<sup>48</sup> *Ibid.*

<sup>49</sup> Vatikiotis, M. South China Sea Disputes: Diplomacy Key to Calming Troubled Waters, 2012. Centre for Atrategic and International Studies. Retrieved from: <<http://cog-itasia.com/south-china-sea-disputes-diplomacy-key-to-calming-troubled-waters/>>.

Yusgiantoro said the squadron of Apache war aircraft has been tasked to maintain the security and defense of the South China Sea. “The South China Sea is very strategic because of its large gas and oil reserves”<sup>50</sup>. This squadron will be further supplemented with the deployment of drone aircraft to the region. Indonesia notes the importance of this region as it borders four neighboring nations and has significant economic importance. Trade, sea traffic and organized criminality in this region has also developed expeditiously, which warrants an increase in security spending and Indonesian military power in the region.

Despite this, during the Indonesian Presidential Election debate, President Elect Jokowi stated his stance on Indonesia’s role in the disputes of the South China Sea. To this he stated “Indonesia does not have any territory within the disputed area. Indonesia’s role, if required, must be beneficial, and provide a solution it must ensure that this dispute do not expand across a greater area with the capacity to adversely impact Indonesia”. He further went on to say, that any “involvement in the disputes would be carefully considered for the potential to undermine Indonesian-Sino relations. Indonesia will play a diplomatic role in finding a solution to the disputes. Indonesia’s national interests remain number one in all the issues in the South East Asian Region”. China encourages greater Indonesian involvement and Indonesia’s main concern is the maintenance of relations with China, however this may limit its capacity to resolve this issue. The Chinese may have invited the Indonesians to play a greater role due to their economic and political dominance and leadership in ASEAN as well as its close relations with the Philippines and Vietnam. Nations throughout the world have called on ASEAN and the Indonesians to play a greater role in the region.

## **XII. CODE OF CONDUCT**

The 2002 Code of Conduct has been hailed by many, including the Europeans and Americans as an important step forward in addressing this issue and ensuring a peaceful resolution to ongoing disputes. While it is widely accepted that conventional war will not come to fruition,

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<sup>50</sup> Antara News Agency, Apache untuk Jaga Laut Cina Selatan. 2014.

ongoing tensions are a distraction to economic and social growth and development. "This is the case not only in the South China Sea but also in the broader East Asia region where, instead of perpetual conflict, the post-Cold War era has been characterized by integration and a focus on multilateralism and multilateral cooperation"<sup>51</sup>. The Regional Code of Conduct is one such example of this cooperation and will play an important role in eliminating possible distractions to ongoing development and growth. This Code of Conduct was announced at the 20<sup>th</sup> Summit in April 2012 by the 10 member states of ASEAN. At the following meeting of leaders in July 2012, no statement was released on the South China Sea which is the first time in 45 years that no statement had been released on the issue. This indicated possible tensions between ASEAN nations in addressing the issue. On the 20 July 2012, ASEAN did however release ASEAN's Six-Point Principles on the South China Sea. This includes the following six points:

- 1) The full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002);
- 2) The Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011);
- 3) The early conclusion of a Regional Code of Conduct in the South China Sea;
- 4) The full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);
- 5) The continued exercise of self-restraint and non-use of force by all parties; and
- 6) The peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>52</sup>

Despite the commitment of ASEAN to follow and implement these principles, this process of execution is being hindered by possible at-

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<sup>51</sup> Weissmann, "The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building," *ASIAN PERSPECTIVE*, Vol. 34 (3), (2010), pp. 35-69

<sup>52</sup> Council on Foreign Relations. ASEAN's Six-Point Principles on the South China Sea, July 20, 2012. Available at: <<http://www.cfr.org/asia-and-pacific/aseans-six-point-principles-south-china-sea/p28915>>.

tempts by ASEAN to avoid the issue, and China has made clear its position that the issue will not be dealt with at an ASEAN level. In November 2012, heads of ASEAN nations met in Cambodia. However ASEAN efforts to implement a code of conduct were not mentioned in statements following the meetings. This issue was also not brought to the table at the 15<sup>th</sup> ASEAN-China summit of November 2012 and the terms eventual realization of the regional code of conduct was mentioned at the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> ASEAN summits<sup>53</sup>. As previously discussed, parties outside ASEAN, especially the Chinese, have the capacity influence the association's agenda and have made clear that they do not welcome ASEAN involvement in dispute resolution. No further concrete steps were taken which possibly signals the lacking willingness and incapacity of ASEAN to play an effective role as arbitrator while dealing with the issue.

### **XIII. ENSURING PEACEFUL ENGAGEMENT GOING FORWARD**

Despite the growing tensions in the region, the increase of military spending and diplomatic provocations, it still remains unlikely that a state of warfare will transpire in the region. ASEAN still refuses to deal directly with the issue through dispute resolution and negotiations and its structure makes any negotiations process extremely fragile and almost impossible. Despite these issues, a level of peace has been maintained through cooperation and a joint understanding that conflict would be detrimental to the interests of all states in the region. "Greater emphasis needs to be placed on the role of preventive diplomacy, peace and trust building. This has been taken up by the ASEAN Regional Forum (ARF) and the Council for Security Cooperation in the Asia-Pacific, but so far with little practical impact on policy".<sup>54</sup> Despite the lacking effectiveness and its inability to resolve these disputes, this is the most effective role that ASEAN can play as a major

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<sup>53</sup> Yann-Huei Song. Major Law and Policy Issues in the South China Sea. European and American Perspectives Support for International Arbitration Invited by the Philippines against China. 2013 Ashgate.

<sup>54</sup> Valencia, M. J. The East China Sea dispute: Context, Claims, Issues, and Possible Solutions. 2000. *Asian Perspective*, 31(1), 127-167. Retrieved from <<http://search.proquest.com/docview/215884000?accountid=38628>>.

actor in the region. “The elite interactions have increased the regional ability to prevent conflicts from arising and escalating and have thus been an important peace-building mechanism. Not least, they have been an important force for regional trust and confidence building, and for the development of a regional identity through East Asian community building”.<sup>55</sup> ASEAN has fostered and nurtured these ties. Despite this ASEAN will not adopt a joint and comprehensive policy stance with regards to this issue. It is clear that ASEAN does not have either the resources, nor the structures and institutions that are capable of resolving these disputes. ASEAN’s principal role is therefore the protection of peace and the building of trust.

ASEAN has attempted this in a number of forums. On the 23<sup>rd</sup> of April 2014, ASEAN held the 7<sup>th</sup> ASEAN China Senior Officials’ Meeting (SOM) on the Implementation of the Declaration of Conduct (DOC) of Parties in the South China Sea and the 20<sup>th</sup> ASEAN-China Senior Officials’ Consultation (ACSOC). In a press release following the conferences “The 7<sup>th</sup> ASEAN-China SOM on DOC” agreed to continue building mutual trust and practical cooperation between ASEAN and China in order to maintain and promote peace, stability and maritime security in the South China Sea. The meeting stressed the need to pursue the full and effective implementation of the DOC in its entirety, which includes not only project-based confidence building activities but also full observance of the principles and norms of conduct as laid down in the DOC.<sup>56</sup> This will play an important role in developing the trust and goodwill between the two parties as well as reducing violent altercations and unfriendly diplomacy. Developing trust and cooperation among nations is also important for economic reasons. The large natural resource reserves in the area cannot be exploited until these territorial disputes have been resolved, therefore there is also an economic imperative to expedite the resolution process.

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<sup>55</sup> Weissmann, M. *The South China Sea conflict and Sino-ASEAN relations: A study in conflict prevention and peace building*. 2010. Asian Perspectives. Pro Quest.

<sup>56</sup> ASEAN Secretariat News. *ASEAN and China to Continue Building Mutual Trust and Cooperation*, 2014. ASEAN. Retrieved from <<http://www.asean.org/news/asean-secretariat-news/item/asean-and-china-to-continue-building-mutual-trust-and-cooperation>>.

#### **XIV. CONCLUSION**

ASEAN has received harsh criticism for its lacking capacity to formulate binding solutions to the numerous territorial disputes that continue to heat diplomatic relations to the point in which cooperation has been undermined in order to protect individual national interests. China's size, economic, military and diplomatic strength has managed to fracture cooperation amongst ASEAN nations which has granted the Chinese a greater influence over the loosely bound association of nations. The adoption of a formal stance will be difficult as each nation has its own interests to protect and further advance and ASEAN does not have the capacity to bind nations. This is also complicated by the structure of the association which allows one individual nations to render an ASEAN proposals invalid. This means consensus among ASEAN nations is nearly impossible. Sino-Philippine relations, Sino-Vietnamese relations and internal ASEAN relations have fallen to their lowest point while addressing territorial issues and the economic exploitation of natural resources in the South China Sea. This lack of faith in ASEAN's capacity to deal with this issue is further reiterated by the fact that ASEAN nations are reaching out to military powers outside ASEAN to ensure their security interests remain protected. Indonesia has played an important role in implementing a code of conduct to maintain peace in the region and is likely to become more involved over the coming decades.

ASEAN's role will therefore be trust building and relation strengthening exercises as well as initiatives to develop interdependence and cooperation. ASEAN has been criticised for its lacking involvement however it has managed to maintain peace and avoid conflicts despite the absence of any formal peacekeeping or defence mechanism. The strengthening of multilateral ties, ongoing dialogue will be the most effective and important peacekeeping tool, that will be advanced through ASEAN, its member states and international partners. It is likely that economic interests will prevail and reduce the willingness of any nation to become military involved and further develop cooperation to achieve economic prosperity and development.



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