

Slipping Away? A South China Sea Code of Conduct Eludes Diplomatic Efforts

By Ian Storey

Despite sustained attention from top regional leaders and diplomats, tensions in the South China Sea remain undiminished. Though a binding Code of Conduct (CoC) may help ameliorate the tensions, an agreement seems increasingly unlikely. Together, five underlying drivers of instability in the region coupled with inadequate conflict management efforts have increased regional tensions with little hope of effective diplomatic initiatives in the near future.

In late 2012, the outgoing Secretary-General of the Association of Southeast Asian Nations (ASEAN), Surin Pitsuwan, warned that the South China Sea could become as destabilizing for Asia as Palestine has been for the Middle East.¹ His hyperbole could be forgiven: During his five-year tenure, the maritime dispute quickly worked its way to the top of the regional security agenda where – together with the Sino-Japanese altercation over ownership of the Senkaku/Diaoyu Islands in the East China Sea – it is likely to remain. The South China Sea lies at the crossroads of some of the most important trends in the Asia-Pacific today: the rising power of the People's Republic of China (PRC); America's rebalancing toward Asia; and ASEAN's increasing desire to shape the regional security environment and take the sharp edges off the growing competition between China and the United States.

Some mitigating factors have, thus far, moderated the behavior of the South China Sea claimants. Though China, particularly, has pushed the limits, there is a collective interest in maintaining peace

About this publication

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and stability, as well as the free flow of maritime trade on which Asia's economic success has been built. As Indonesian Foreign Minister Marty Natalegawa admonished, "tinkering" with these fundamentals could open a Pandora's box.² Thankfully, the prospect of a major conflict in the South China Sea remains low. But absent a resolution – a distant prospect for reasons outlined below – the problem will continue to fuel regional instability, generate diplomatic and military tensions and spur governments to acquire more lethal and long-distance capabilities. Moreover, as the number of reported "incidents at sea" involving warships, patrol boats, trawlers and survey ships increases (even though many remain unreported), so too does the risk of an accidental clash that might escalate into a grave crisis that claims lives.

The Drivers of Instability

Many developments in 2012 provided further evidence that the situation in the South China Sea is moving from bad to worse. Five main drivers are responsible for the deteriorating situation. First, popular

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nationalism concerning sovereignty of the islands and features has intensified, especially in China and Vietnam, but also in the Philippines. Beijing and Hanoi in particular have fueled domestic nationalism to legitimize their regimes and, in the context of the South China Sea, to send warning messages to the other claimants. For example, the Vietnamese government promoted anti-China protests in July and December and the Chinese government fired nationalist broadsides through its

state-run media throughout the year. While governments have so far managed to contain nationalism, it limits their room for maneuver, as nationalists would see any attempt to compromise their claims as weakness. If a clash at sea were to occur, which government would risk a popular backlash by backing down first?

Second, and related, most of the claimants continued to try to strengthen their jurisdictional claims, through national legislation, administrative fiats and the use of hard-power assets such as patrol boats. In June, for instance, Vietnam passed legislation which reiterated its claims to the Paracel and Spratlys Islands; this prompted China to elevate the administrative status of Sansha City, a body it created in 2007 to "govern" the very same archipelagos.³ Far more serious was the tense standoff between Chinese and Philippine patrol boats at the disputed Scarborough Reef throughout April and May of

2012. During that incident the Philippines was forced to back down in the face of superior Chinese maritime capabilities, effectively ceding control of the reef to the PRC.

The third driver is the competition to exploit fisheries and hydrocarbons. In contravention of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), China appears to be claiming “historic rights” to all the living and non-living resources in the South China Sea in an area encompassed by the infamous nine-dashed line that appears on official maps.⁴ China has used its expanded fleet of civilian maritime law enforcement vessels – and occasionally warships – to dissuade the other claimants from trying to exploit those resources, even when UNCLOS gives them the right to do so within their 200-nautical-mile exclusive economic zones.⁵

The fourth driver is the ongoing militarization of the dispute and China’s willingness to apply coercive pressure on Vietnam and the Philippines. China announced in July 2012 that it had established a military garrison – albeit one with limited operational utility – on Woody Island in the Paracels.⁶ That same month, a People’s Liberation Army Navy frigate ran aground in disputed waters off the Philippine island of Palawan, prompting protests from Manila.⁷ China has also been deploying its fleet of maritime surveillance vessels aggressively in and around the East and South China Seas, often stretching the typical mission of those ships beyond their traditional role of patrolling territorial waters.⁸

Fifth, the growing competition between the United States and China in Asia has exacerbated divisions within ASEAN and called into question its aspirations for “centrality” in the evolving regional security architecture. Over the past few years, the United States has pursued diplomatic and security policies, such as relocating troops and equipment, to promote stability and reassure Southeast Asian countries of its commitment to the region that have fed China’s paranoid geopolitical views. When U.S. officials raise the South China Sea dispute at regional meetings such as the ASEAN Regional Forum and the East Asia Summit, the Chinese see this as “meddling” and part of a sustained effort to internationalize the problem. China views U.S. efforts to build the capacity of the Philippine armed forces as a way to strengthen Manila’s ability to confront China’s maritime agencies. The United States wants to discuss the South China Sea dispute bilaterally with China, but Beijing thinks it is none of Washington’s business. U.S. support for resolving the dispute multilaterally runs counter to China’s preference to resolve the disputes bilaterally with each individual claimant.

Taken together, these five factors have increased tensions among the claimants, putting the compromises that would be needed to amicably resolve the dispute further out of, and possibly even beyond, reach.

Conflict Management Efforts Lack Focus

As the waters of the South China Sea have grown more turbulent since the beginning of 2012, efforts by ASEAN and China to calm them have proved disappointing, to say the least. The only existing conflict management mechanism is the Declaration on the Conduct of Parties in the South China Sea (DoC), a non-binding, essentially toothless agreement signed in 2002 but which has yet to be operationalized.⁹ In July 2011, ASEAN and China finally agreed on a vague and non-specific set of implementation guidelines that opened the door to discussions on cooperative projects in areas such as search and rescue and marine conservation. But that modest diplomatic milestone failed to build momentum, and none of the cooperative projects have been put in place. Yet even if some projects progressed, they would not significantly affect the five drivers of conflict.

Even as talks on implementing the DoC continue, attention has shifted to the more urgent task of framing a binding code of conduct between ASEAN and China which, it is hoped, will establish “rules of the road” and prevent belligerent behavior. There is general consensus within ASEAN on the need for such a code. By mid-2012, the member states had agreed on a set of “proposed elements” as the basis for a CoC.¹⁰ Even though ASEAN’s suggested mechanisms for resolving disputes arising from violations or interpretations of the code seemed unworkable or inappropriate, it was a start.

China has never been enthusiastic about a CoC. It agreed in principle to discuss one with ASEAN in late 2011, but it reversed that decision in July 2012, when the Chinese Foreign Ministry announced that talks could only begin when conditions are ripe.¹¹ This coincided with an embarrassing public display of ASEAN disunity. Disagreement, especially between then-ASEAN Chair Cambodia and the Philippines, over whether discussions on the South China Sea should be officially recorded resulted in the organization’s failure to issue a final communiqué for the first time in its history. A similar debacle was only avoided at the eleventh hour at another meeting of leaders in November.

China views the timing as inauspicious for several reasons. First, the Chinese government believes that the Philippines and Vietnam have repeatedly violated the DoC by pursuing unilateral and provocative actions that breach the “self restraint” clause (Hanoi and Manila level the same accusation at Beijing).¹² As Vice Foreign

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Minister Fu Ying has stated, “What’s the point of a CoC when the DoC is not faithfully observed?”¹³ The Philippines’ decision to submit its overlapping maritime claims to U.N. arbitration in January 2013 without China’s consent – a move that Beijing rejected, seeing it as another gambit by Manila to “internationalize” the problem – provides an additional reason for China to postpone talks with

ASEAN on a CoC.¹⁴ Second, while ASEAN maintains that it does not take a position on competing territorial claims in the South China Sea, Beijing remains unconvinced and suspects that Manila and Hanoi seek to harness ASEAN’s agenda in pursuit of their own interests and those of the United States. Third, China is only willing to consider talks with ASEAN if its views on the South China Sea are equally

included. It does not want an ASEAN draft code to be the basis of negotiations. Moreover, China feels that the ASEAN states are trying to “bully” it into agreeing to talks, and that the organization’s behavior does not resonate well with Chinese public opinion.¹⁵

Both Brunei, this year’s ASEAN chair, and Le Luong Minh, the new Secretary-General of ASEAN, have stated that a CoC is a priority for the organization in 2013. Singapore and Indonesia are pushing for early talks. But China is in no hurry to parley with ASEAN on a code, and until it is, there will be no movement on the issue.

Implications for the United States

The dispute over a CoC poses a tricky policy dilemma for the United States, which has huge economic, strategic and political stakes in the South China Sea. The United States supports a CoC, but China suspects Washington wants a code that is designed only to constrain the behavior of the PRC and not that of the other claimants. And most importantly, Chinese officials often claim that the Obama administration’s “pivot” toward Asia is simply a long-term strategy to encircle or contain China, and that Washington has used the South China Sea as a pretext to “return” to Asia.

In reality, the United States has little choice but to maintain its policies prioritizing the Asia Pacific, supporting ASEAN-centered diplomatic efforts to quell tensions and produce a CoC, and initiating other steps that could restore a durable peace to the South China Sea. Likewise, the United States should continue to forge a coalition of like-minded states who can try to shape and influence China’s behavior and convince the Chinese leadership that its assertive posture in the maritime domain runs counter to its own interests and

those of the region. At the same time, America and its regional partners must also seek to reassure the PRC that it is not being ganged up on or that it is the target of a policy of containment. Whether the new Chinese leadership is in the mood to listen remains to be seen.

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