

# The 'South Sea' and ASEAN: Failing Unity amidst Beijing's Duplicitous Diplomacy

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The Association of Southeast Asian Nations (ASEAN) has sought to address the challenges of the disputes in the South China Sea for close to a quarter of a century. This paper examines the circumstances and extent to which ASEAN has been effective in its response to the South China Sea dispute as well as the manner and means by which Beijing's approach to the dispute has been influenced at the regional level. For this purpose, it proceeds in three parts. The first section examines how ASEAN was initially able to garner a strong 'consensus' position over the South China Sea, but later developments, such as membership expansion and the East Asian Financial Crisis, undermined such unity. The second section examines China's political and economic rise from 1995 and its associated impact on the utility of ASEAN in the traditional security sphere. The final section reviews the recent period when the maritime region became the more significant focal point of international attention (e.g., through the construction of seven artificial islands) and how this has decimated the goal of ASEAN centrality. Moreover, individual members have since abandoned their faith in the good offices of the Association and instead sought self-help measures such as international arbitration. This, in turn, has resulted in a relatively greater impact on Beijing's cost-benefit analysis regarding the South China Sea. Finally, this paper refers to the maritime region as the 'South Sea' rather than the 'South China Sea'. This is because the term 'South Sea' is far less biased than reference to a specific nation.<sup>1</sup>

## ASEAN: From Unity to its Gradual Loss of Leadership in the South Sea

Early ASEAN-China relations were turbulent and caught up in the bipolar cleavages of the Cold War. Aside from the resentment of certain ASEAN members about Beijing's support for some Southeast Asian communist insurgencies at the time, China perceived the original ASEAN five members (Indonesia, Singapore, Malaysia, Thailand, and the

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<sup>1</sup> As the Arbitral Ruling has declared that UNCLOS superseded any claims based on some notion of 'historic rights' and that there are no Islands in the South China Sea that could support life and therefore be entitled to 200 nautical mile Exclusive Economic Zone, this paper refers to the maritime region as the 'South Sea' as there is no basis (legal or otherwise) to justify that the Sea is Beijing's South China Sea. Further, reference to the 'South Sea' is neutral and does not favour, implicitly or otherwise, the claims of any individual country. This approach is further important given that all the countries with 'claims' in the South China Sea have ratified UNCLOS and the arbitral decision was, under the terms of UNCLOS, final and binding. To hold any contrary position is to be in breach of international law and the terms of the treaty to which each party to the dispute had freely agreed to.

Philippines) to comprise a pro-western capitalist block.<sup>2</sup> Given this state of affairs, and that it was only in 1990 when Singapore and Indonesia established diplomatic relations with China,<sup>3</sup> the accomplishment of a unified response by ASEAN was relatively easy when Beijing sought to reinforce its claim to 80 per cent of the South Sea through the 1992 'Law of the Territorial Sea and Contiguous Zone of the People's Republic of China'. The area claimed by this purported 'Law' conflicted with the claims of four of the then six ASEAN members (Brunei joined ASEAN in 1984). At the time, China had also authorised the US Crestone Energy Corporation to undertake a seismic survey of hydrocarbon reserves within Vietnam's continental shelf.<sup>4</sup>

On 22 July 1992, ASEAN responded through the ASEAN Foreign Minister's 'Declaration on the South China Sea' and urged 'all parties concerned to exercise restraint with a view to creating a positive climate for the eventual resolution of all disputes'. The foreign ministers further recognised that a failure to prevent 'adverse developments in the South China Sea [would] directly affect peace and stability in the region' and therefore called for the establishment of a 'code of international conduct over the South China Sea'.<sup>5</sup> During the same year, ASEAN indirectly reinforced its position on the South Sea through the treaty on the 'Southeast Asia Nuclear Weapon-Free Zone'. Beijing was quick to oppose it because, among other things, the treaty explicitly referred to and articulated the region's continental shelves and Executive Economic Zones. Because of this, Beijing was worried that its accession to the Treaty would, in a de facto sense, prejudice its own maritime claims and therefore declined ASEAN's subsequent offer for it to accede to the Treaty.<sup>6</sup>

In 1995, ASEAN was also able to garner a collective position in response to Beijing's construction of facilities on Mischief Reef. This reef is claimed by the Philippines and is well within its EEZ – situated just 145.5 nautical miles from the Philippines' coast (Palawan Island). The ASEAN Foreign Ministers again responded by expressing their 'serious concern over recent developments which affect peace and stability in the South China Sea'; a plea for all concerned parties 'to refrain from taking actions that destabilise the situation'; and added that '[w]e specifically call for the early resolution of the problems caused by recent developments in Mischief Reef'.<sup>7</sup> The statement also provided an early attempt to secure and maintain ASEAN centrality over such issues by encouraging 'all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea'.<sup>8</sup> These declarations, together with several other statements during the period, reinforced a perception that ASEAN could muster a

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<sup>2</sup>Shaun Narine, "From Conflict to Collaboration: Institution Building in East Asia," *Behind the Headlines* 65, no. 5 (2008), <http://dspace.cigilibrary.org/jspui/handle/123456789/23951>.

<sup>3</sup>Sheldon W. Simon, "China, Vietnam, and ASEAN: The Politics of Polarization," *Asian Survey* 19, no. 12 (1979): p.1172.

<sup>4</sup>Barry Wain, "China Nibbles, ASEAN Dithers," *The Wall Street Journal*, 10 March 1995.

<sup>5</sup>"ASEAN Declaration on the South China Sea (Manila)," ASEAN Secretariat, <http://www.aseansec.org/1196.htm>.

<sup>6</sup>Christopher B. Roberts, *ASEAN Regionalism: Cooperation, Values and Institutionalisation* (Milton Park: Routledge, 2012), p.78.

<sup>7</sup>Carlyle A. Thayer, "ASEAN, China and the Code of Conduct in the South China Sea," *SAIS Review of International Affairs* 33, no. 2 (2013): p.76.

<sup>8</sup>"Asia-Pacific," *Strategic Survey* 111, no. 1 (2011): p.355. While some Chinese scholars later disputed the occurrence of this statement, developments since this time reinforce the idea that Beijing is in fact treating the dispute as a core interest.

collective diplomatic voice when necessary. ASEAN's united response also impressed Hanoi and contributed to Vietnam becoming a member of ASEAN in 1995.<sup>9</sup>

ASEAN's early position on the South Sea has been attributed as one of the reasons why Beijing's strategy shifted to a more exclusive focus on the deployment of soft power or Joshua Kurlantzick's depiction of a 'charm offensive'.<sup>10</sup> However, it is important to acknowledge that Beijing's calculus was also affected by Manila's attempt to more strongly involve the United States in the dispute by restarting joint exercises and creating new defence agreements.<sup>11</sup> Therefore, Beijing's 'charm offensive', together with its increasingly significant economic inducements linked to Beijing's political and strategic interests, was designed to be much more subtle, incremental, and to maintain a benign appearance that avoided any noteworthy state 'costs'. This approach proved effective and the Association's leadership over the South Sea issue subsequently began to wane.

Between 1997 and 1999, Beijing's ability to create and then exploit divisions between the ASEAN members was greatly aided by the expansion of ASEAN to include Cambodia, Laos, and Myanmar as members. Moreover, the expansion of ASEAN's membership to embrace all of Southeast Asia was simultaneously undermined by the devastating effects of the East Asian Financial Crisis (1997–1998), which crippled several economies; led to leadership change in Indonesia and Thailand; and left the impression that the 'only shared regional value' was recourse to a Darwinian notion of survival of the fittest.<sup>12</sup> For the new ASEAN members, the early years in the Association were a bitter disappointment and their regimes had to depend as much as ever on foreign aid, investment, and other forms of assistance.

Amidst this setting, the ASEAN states took five years to complete a draft Code of Conduct (CoC) and, by this time, Beijing had also drafted its own CoC. In March 2000, both sides agreed to exchange their drafts and consolidate them into a single text.<sup>13</sup> However, as the late Barry Wain states, 'disunity developed on the ASEAN side, with Malaysia supporting China's preference for a non-binding statement which led to the Declaration of Conduct of Parties in the South China Sea' (DoC).<sup>14</sup> The DoC contains five confidence-building measures and a range of principles (guidelines) that were designed to prevent any escalation of tensions. However, there has been little tangible progress in their realisation and the DoC guidelines are primarily noteworthy for the extent to which they have been breached.

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<sup>9</sup>"Southeast Asia: International Code of Conduct Urged for Spratleys," *Inter Press Service*, 22 July 1992; Christopher B. Roberts, "The Future of East and Southeast Asian Regionalism," in *East and Southeast Asia: International Relations and Security Perspectives*, ed. Andrew Tan (London: Routledge, 2013).

<sup>10</sup>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>.

<sup>11</sup>Steven Stashwick, "The Danger of Letting China Set the Pace in the South China Sea," *The Diplomat*, 16 September 2016. See also: Leszek Buszynski, "ASEAN, the Declaration on Conduct, and the South China Sea," *Contemporary Southeast Asia* 25, no. 3 (2003): pp.343-62.

<sup>12</sup>David Martin Jones and Michael L.R. Smith, "Making Process, Not Progress," *International Security* 32, no. 1 (2007): p.161.

<sup>13</sup>Thayer, p.76.

<sup>14</sup>Christopher B. Roberts, "ASEAN: The Challenge of Unity in Diversity," in *The South China Sea Maritime Dispute: Political, Legal and Regional Perspectives* (Milton Park: Routledge, 2015), p.133.

Meanwhile, the fracturing of the ASEAN position continued to widen and the Philippines stunned its ASEAN counterparts when it unilaterally entered into the 'Agreement on Joint Marine Seismic Undertaking in Certain Areas of the South China Sea' (JSMU). While Hanoi was initially very opposed to this, it did eventually join the JSMU. At the time, interlocutors in Hanoi argued that there was little hope of a unified ASEAN position and so 'self-help' was the only option – a perception and reality that has continued to undermine the good offices of ASEAN through to this day.<sup>15</sup> In any event, by 2007, the JSMU collapsed.<sup>16</sup> However, most importantly, it appears that Beijing's experiment in limited collaboration with ASEAN – whilst conducting under-the-table negotiations with individual ASEAN states – did not lead to any tangible advance of its 'material interests'. Therefore, Beijing's strategy in the South Sea once again shifted.

### *Preventive Diplomacy Languishes amidst Increased Chinese Assertiveness and Intra-ASEAN Divisions*

During 2007, just as the JSMU started to collapse, Beijing forced a British-America-Vietnam oil consortium to abandon development of a gas field near Vietnam's southern coastline. Also, Chinese paramilitary vessels drove 'away Vietnamese fishing vessels from the Spratly islands, sinking three in July 2007'.<sup>17</sup> Then, in 2008, the global financial crisis further emboldened China as it created the impression of a weak 'West' that would be indefinitely distracted by domestic problems, terrorism and the Middle East. Given the huge pool of financial resources (e.g., foreign exchange reserves) that it could use for the purpose of providing financial assistance to developing countries, together with the breadth and depth of regional and western trade dependencies, Beijing appears to have concluded that it had, for the first time in centuries, an opportunity to shape the regional order in a manner that would accord with its vision for a 'harmonious East Civilisation'.<sup>18</sup> Such scholars and political elites have increasingly viewed this Civilisation as sharing a 'common destiny' (*ming yun gong tong ti*) involving a community of asymmetric dependence, akin to the former mandala system and China's time as the 'middle kingdom'.<sup>19</sup>

Given Beijing's emerging mindset – including, as some believe, a return to the 'old normal' – Beijing has become increasingly intolerant of any departure from its self-declared foreign policy preferences. These include the avoidance of any internationalisation of the dispute and its predilection for dual-track diplomacy where 'disputes are to be peacefully resolved through consultation by parties directly concerned, and stability in the South China Sea to be jointly maintained by China and the ASEAN'.<sup>20</sup> However, this is so dogmatically interpreted that even adherence to

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<sup>15</sup>Elisa I Horhager, "China-ASEAN Relations and the South China Sea: Beyond Balancing and Bandwagoning?," in *Power Politics in Asia's Contested Waters: Territorial Disputes in the South China Sea*, ed. Enrico Fels and Truong-Minh Vu (London: Springer, 2016), p.378.

<sup>16</sup> In the meantime, domestic opposition within the Philippines led to the collapse of the JSMU as it was revealed that the agreement included 24,000 square kilometres of territory that had not been previously claimed by China.

<sup>17</sup>Anne Barrowclough, "China and the Philippines in Stand-Off in South China Sea," *The Times*, 11 April 2013.

<sup>18</sup>Gilbert Rozman, "East Asian Regionalism and Sinocentrism," *Japanese Journal of Political Science* 13, no. 1 (2012): p.147.

<sup>19</sup>David M. Jones and Nicole Jenne, "Weak States' Regionalism: ASEAN and the Limits of Security Cooperation in Pacific Asia," *International Relations of the Asia-Pacific* 16 (2016): p.230.

<sup>20</sup>"Wang Yi: Stick to 'Dual-Track Approach' When Dealing with the South China Sea Issue," Ministry of Foreign Affairs, the People's Republic of China, [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1384511.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1384511.shtml). See

international legal obligations is punishable if it goes against the 'declared' interests of Beijing.<sup>21</sup> Therefore, when Vietnam and Malaysia made a submission to delimit certain boundaries at the southern end of the South Sea with the submission of the 'United Nation's Commission on the Limits of the Continental Shelf', China reacted by formally lodging its claim to most of the South Sea via the now well-known 'Nine-Dash Line' map. Then, Hanoi, as the ASEAN Chair, reportedly sought support from the US and following a statement at the 2010 ASEAN Regional Forum (ARF) by its then Secretary of State, Hillary Clinton, confirming Washington's interests in the region,<sup>22</sup> Beijing countered that it, in turn, had elevated the South Sea to one of its 'core interests'.<sup>23</sup>

The next year, in 2011, ASEAN sought to renew negotiations for a Code of Conduct. However, given all that had happened since 2007, Beijing unsurprisingly answered that the time was 'not yet ripe' because the principles of the DoC had not been implemented and Manila and Hanoi had been violating the 'spirit' of the declaration through unilateral actions and the deliberate internationalisation of the dispute. However, in reality, Beijing's actions were the most provocative including the 2011 harassment of survey ships at Reed Bank (within the EEZ of the Philippines), two incidents where Chinese ships cut oil exploration cables in 2012, the unilateral imposition of a fishing ban by Beijing over much of the waters claimed by Hanoi, and the associated harassment and expulsion of Vietnamese's fishing crews.<sup>24</sup> During 2012, these provocations culminated with a major incident at the strategically important Scarborough Shoal – located just 124 nautical miles west of the Philippines (Luzon Island). The incident erupted when Chinese maritime surveillance vessels blocked a Philippine warship from detaining Chinese fisherman operating in the Scarborough Shoal area. Despite a US brokered deal for both sides to withdraw, Chinese fishing vessels remained and Chinese maritime surveillance ships and, more recently, dredgers have reportedly been spotted since.

ASEAN then geared up to restart negotiations for a CoC at the ASEAN Ministerial Meeting (AMM) in Phnom Penh. However, the focus soon turned to whether it would even be possible to issue a joint communiqué for the first time in ASEAN's history due to the insistence of Vietnam and the Philippines for it to refer to recent adverse developments.<sup>25</sup> However, so significant was this development that Indonesia's Foreign Minister, Marty Natalegawa, argued that the failure of the communique was 'utterly irresponsible'<sup>26</sup> and that is called into question 'ASEAN Centrality'.<sup>27</sup> Consequently, he attempted to find a solution by embarking on an intensive round of shuttle diplomacy to Cambodia, Vietnam, and the Philippines within 72 hours. The outcome was a personally

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also: Hanling Wang, "China's Stance on Some Major Issues of the South China Sea," in *Entering Uncharted Waters?: ASEAN and the South China Sea*, ed. Pavin Chachavalpongpun (ISEAS–Yusof Ishak Institute, 2014), p.126.

<sup>21</sup> Jones and Jenne add that while the 'East Asian Community' involves a relationship based on 'reciprocity', 'when the Philippines and Vietnam rejected China's interpretation of its history and territory, they suffer Chinese sanctions in terms of investment and market access'. Jones and Jenne, p.230.

<sup>22</sup>William Choong, "Vietnam's Sino-US Dilemma," *Straits Times*, 30 August 2012.

<sup>23</sup>"Asia-Pacific," p.355.

<sup>24</sup>Ian Storey, "Rising Tensions in the South China Sea: Southeast Asian Responses," in *The South China Sea Dispute: Navigating Diplomatic and Strategic Tensions*, ed. Ian Storey and Cheng-Yin Lin (Singapore: ISEAS, 2016), p.143.

<sup>25</sup>Donald K Emmerson, "ASEAN Stumbles in Phnom Penh," *PacNet*, 23 July 2012.

<sup>26</sup>"ASEAN Struggles for Unity over South China Sea," *Agence France Presse*, 12 July 2012.

<sup>27</sup>Storey, p.141.

drafted the six principles of the 'ASEAN Common Position' on the South China Sea that referred to adherence to the DOC and an early adoption of the DoC – neither of which happened in practice. Given these failures, the Philippines lost faith and in January 2013 resorted to the filing of an arbitration case at the United Nations-backed Permanent Course of Arbitration (PCA) to settle its maritime dispute.

Recourse by the Philippines to arbitration, together with explicit references to the defence treaty it holds with the US, did contribute to new wave of rhetorical support from Beijing to accelerate the conclusion of the CoC. Thus, China made several statements of intent in support completing negotiations for a CoC within three months. According to the new Chinese Foreign Minister, Wang Yi, stated in April 2013 that China was ready to commence exploratory talks on the CoC under the 'framework of the implementation of the DoC' and in a 'Step by Step' manner.<sup>28</sup> However, at the time Brunei was serving as the Chair of ASEAN and its position was compromised by its agreement to a 'strategic partnership' and a 14 October agreement for joint exploration between Brunei's state owned National Petroleum Company Sendirian Berhad and Beijing's state owned 'China National Offshore Company' (CNOOC).<sup>29</sup> Nonetheless, as Ian Story argues, what became 'very low level talks' were likely designed to enable Beijing to focus on the East (China) Sea and its dispute with Japan over the Senkaku/Diayou Islands including its unilateral imposition of an Air Defence Identification Zone.<sup>30</sup>

However, 2014 witnessed a new level of assertiveness (indeed coercion) and a complete disregard for the interests of ASEAN was flaunted when Beijing located the Deep Sea Oil Rig ... to just x kilometres ... and just one week before the 24<sup>th</sup> ASEAN Summit (10-11 May) in Nay Pyi Taw, Myanmar.<sup>31</sup> There had been considerable debate between analysts as to whether Myanmar would act more independently of Beijing than Phnom Penh had back in 2012. The scale of China's unprecedented provocation was sufficient to bring the ASEAN members together to issue a joint statement, with Cambodia's support, that expressed 'serious concern' about the development and pushed for a 'resumption of work towards an early conclusion of the COC'. Nonetheless, while the cautious language contained within the statement – together with the consensus necessary for its delivery – did represent an achievement for ASEAN unity, global condemnation and Hanoi's threat to follow the example of the Philippines through recourse to arbitration likely gained more traction.<sup>32</sup> Beijing subsequently withdrew the oil rig before the commencement of the monsoon season and, far more importantly, did not return the following year – despite the predictions of a considerable number of analysts.

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<sup>28</sup>Ibid.

<sup>29</sup>Olivier Boyd, "China Pursues Hydrocarbon Co-Operation in South China Sea with Brunei Joint Venture," *IHS Global Insight Daily Analysis*, 17 October 2013.

<sup>30</sup>Storey, p.141.

<sup>31</sup>Critically, Vietnam does not have a treaty with the U.S. and does not maintain any military relationships that are strong enough or sufficiently independent of Beijing that would mean such countries might come to Vietnam's aid in the event of Chinese aggression. Even Vietnam's former ally, Russia, now shares a significant set of common material interest with China and one state funded academic commented, in 2014, that if conflict erupted between China and Vietnam then it would immediately deny the resupply of armaments to Hanoi.

<sup>32</sup>"Vietnam Poised to Sue China in Court over East Sea Tension," *Viet Nam News*, 26 May 2014; Trevor Moss, "The South China Sea: What Happens Now?," *Wall Street Journal*, 9 June 2014.

## Beijing's Artificial Islands, the Loss of ASEAN Centrality, and Recourse to 'Self Help'

In response to the fiasco of the 2012 joint communique, and in line with Foreign Minister Natalegawa's response, Ambassador Barry Desker warned that the event may be the 'the harbinger of things to come' concerning ASEAN unity and centrality.<sup>33</sup> Certainly, the following four years have tested this proposition and no more so than the release of satellite imagery in early 2015 revealing a massive project to create seven artificial islands. The size of the island construction amounts to 3,200 acres including the completion of a 3,000-meter runway in close to two years – one of the greatest engineering feats in modern history. The development represents a further example, albeit the most serious, of Beijing's complete disregard for the spirit of the DoC (despite rhetoric to the contrary) and is also a prima facie breach of international law.

China's Island construction did generate a degree of unity from ASEAN who, following a request from the Philippines, issued a Chairman's statement at the 26<sup>th</sup> ASEAN Summit (April 2015) that again expressed 'serious concerns' about the extent of the artificial island construction which had, from their perspective, 'eroded trust and confidence and may undermine peace and stability in the South China Sea'. As Carlyle Thayer illustrates through his examination of a series of five ASEAN declarations and/or statements between November 2015 and February 2016, there was an incremental 'sharpening of the language used by ASEAN arising from frustration over the slow pace of consultations with China on a DoC and CoC.'<sup>34</sup> Nonetheless, and despite the seriousness of the land-dredging in strategic, political, and legal terms, not even this action was sufficient to produce a united front between the ASEAN members that was consistent and enduring.

On 23 April 2016, Foreign Minister Wang Yi announced that China, Brunei, Cambodia and, the ASEAN Chair, Laos, had come to a four-point consensus on the South China Sea, namely: (1) the Spratly Islands are not appropriate for ASEAN to address; (2) that the unilateral will of any actor cannot be imposed on a sovereign state's right to choose how to resolve disputes; (3) the disputes should be resolved by direct bilateral negotiations between the parties concerned; and (4) that it is for 'China and ASEAN' to 'jointly maintain peace in stability in the South China Sea through cooperation'.<sup>35</sup> The four-point consensus represented an elaboration of Beijing's dual-track diplomacy. However, the agreement by Laos, Cambodia and Brunei to the four-point-consensus simultaneously represented another dent to the centrality of ASEAN.

In June 2016, Beijing's infiltration into the outcomes of the ASEAN decision-making processes was again evident regarding the strongest ever statement by ASEAN on the South Sea. Following the conclusion of the Special ASEAN-China Foreign Minister Meeting, Malaysia released a 'joint statement' that cautioned against 'militarisation' and the ministers 'expressed ... [their] serious concerns over recent and ongoing developments, which have eroded trust and confidence, [and among other things] increased tensions'. For the first time in ASEAN's history, the statement specifically referenced China when it added 'we also cannot ignore what is happening in the South China Sea as it is an important issue in the relations and cooperation between ASEAN

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<sup>33</sup>Barry Desker, "ASEAN Integration Remains an Illusion," *The Straits Times*, 4 March 2015.

<sup>34</sup>Carlyle A. Thayer, "Managing Security Tensions in the South China Sea: The Role of ASEAN," *National Security College, Australian National University* 2016, pp.4-5.

<sup>35</sup>"Wang Yi: Stick to 'Dual-Track Approach' When Dealing with the South China Sea Issue".

and China'. However, for Beijing, the statement contradicted its four-point consensus and, even more fundamentally, its 'dual-track' approach to the dispute. Therefore, it reportedly issued strong protests to several ASEAN ministers and, within three hours of its release, the statement was retracted on the grounds that it needed 'serious revision'.<sup>36</sup>

The most recent shift Beijing's 'ping-pong' diplomacy has been to once again support the good offices of ASEAN. This outcome can be largely accredited to the Philippines and its recourse to arbitration under Annex VII of UNCLOS. Much analysis has focused on ASEAN's failure to refer to the July 2016 ruling which invalidated significant aspects of China's claims in the South Sea. However, again Beijing appeared to capitulate to extra-mural developments and, one month after the ruling, China and ASEAN announced that they were on track to expedite the drafting and implementation of the CoC by mid-2017. Moreover, they cited as evidence of this progress, a draft joint statement to enforce a Code of Unplanned Encounters at SEA (CUES) as well as a guideline for an emergency communications hotline for senior foreign ministry officials.<sup>37</sup> In the case of the former, these CUES will apply to regular navies but not Beijing's 'armed' Coast Guard. In the case of the latter, the 'hotline' will only be useful when utilised in good faith. Such a hotline exists between China and Vietnam but during the HN-981 Oil Rig Crisis, 'Beijing refused to answer Vietnam's calls for a month'.<sup>38</sup> Nonetheless, on 7 September 2016, point 21 of 22 in the Chairman's statement of the 19<sup>th</sup> ASEAN China Summit announced the adoption by the Foreign Ministers of both the CUES agreement and also the Hotline. Beijing was even willing to permit specific reference to the 'importance of ... freedom of navigation in, and overflight above, the South China Sea'.<sup>39</sup>

In reality, if Beijing is willing to completely abrogate its obligations under UNCLOS, why would it ever submit to any provisions under a Code of Conduct? Who would enforce such a code? Even if Beijing did abide by such a CoC, it may only do so from 2017 because such a CoC would reinforce a new status quo that validates China's territorial acquisitions and normative framework – i.e., its Harmonious East Civilisation. Meanwhile, the new President of the Philippines, Rodrigo Duterte, has been a pillar of controversy both before and after his election; has been labelled the 'Trump of the East'; and has been scathing of the country's treaty partner – the United States. Moreover, at his first round of high level ASEAN meetings, he was not present for the ASEAN-India or ASEAN-US Summits. The timing of his election is all the more deleterious given that the Philippines will formally assume the responsibility of being the ASEAN Chair in January 2017.<sup>40</sup> Despite gaining the upper hand in the legal arbitration vis-à-vis China, he did not take advantage of his country's arbitral win at the recent ASEAN Summits and he has sent the wrong message to Beijing by indicating his willingness to consult bilaterally. Given the asymmetrical relationship between Beijing and the Philippines, together with the balance of analysis in this paper, adopting Beijing's long held

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<sup>36</sup>Hannah Beech, "What a Retracted Statement Says About China's Growing Power in the South China Sea," *Time*, 15 June 2016.

<sup>37</sup>Ina Parlina, Tama Salim, and Haeri Halim, "Breakthrough Talks on CoC Draft," *The Jakarta Post*, 18 August 2016.

<sup>38</sup>"China's Maritime Outlook," *The Wall Street Journal*, 19 August 2016.

<sup>39</sup>"Chairman's Statement of the 19th ASEAN-China Summit to Commemorate the 25th Anniversary of ASEAN-China Dialogue Relations," ASEAN Secretariat, <http://asean.org/storage/2016/09/Final-Chairmans-Statement-of-the-ASEAN-China-25th-Anniversary-Commemo....pdf>.

<sup>40</sup>Siew Mun Tang, "S.E.A View: Six Takeaways from ASEAN Summits," *The Straits Times*, 15 September 2016.



preference for bilateral negotiations will be unlikely to lead to a conclusion that will advantage of the Philippines' people.

For ASEAN, an equally crucial challenge is Indonesia. Jakarta is one of the few shining lights in terms of regional governance and democracy. However, President Joko Widodo has not emphasised ASEAN in his foreign policy to the extent that the previous government, under the leadership of Susilo Bambang Yudhoyono, did. In fact, some analysts argue that Indonesia's role as a consensus builder in ASEAN has been downgraded and this state-of-affairs has been exacerbated by his lack of foreign policy experience.<sup>41</sup> As noted, China's charm offensive also incorporated significant economic inducements for the purpose of swaying some of the smaller ASEAN economies to support its foreign policy preferences. Here, one of the most pertinent examples concerns the motives behind Cambodia's role in the failure to issue the 2012 joint communique. 'The Economist' and other outlets reported that, during the ASEAN foreign minister deliberations, the Cambodian Foreign Minister simultaneously consulted with Beijing about what wording would be acceptable.<sup>42</sup> This interpretation was seemingly confirmed two months later when the Cambodian Secretary of State for Finance publicly thanked Beijing for its 'high appreciation of the part played by Cambodia as the chair of ASEAN to maintain good cooperation between China and ASEAN' and acknowledged that Beijing had, moreover, provided US\$500 million in soft loans, among other things, as a reward for this support.<sup>43</sup>

In fairness to Cambodia, its own moral code (normative values) had been partly shaped by the failure of other ASEAN members, including Vietnam, to lend significant support during its conflict with Thailand over the Preah Vihear Temple.<sup>44</sup> Indeed, during a 2005 interview in Phnom Penh, an interlocutor from the Council of Ministers stated:

[I]t is very hard to build this security community because there is a lack of trust between ASEAN members and also a distinct lack of military transparency. Some members increase expenditure on their military every year even though there is no apparent threat but once you increase expenditure then weaker states feel a distinct threat from these expanding states. Some ASEAN countries want a blue sea navy. This is the case with both Indonesia and Thailand. Can we be a security community if we don't feel that ASEAN is secure? In this region the countries put first their own national interests and regional interests are a distant second place.<sup>45</sup>

A pilot survey undertaken by the author between 2005 and 2007 involving 100 ASEAN elite from all ten of the ASEAN nations indicated that 60 percent did not trust their ASEAN Neighbours to be good neighbours. Moreover, in this survey 47 per cent of the Singaporean elite and 45 per cent of Thai elite believed that armed conflict between ASEAN members states was foreseeable within the next twenty years.<sup>46</sup>

## Conclusion

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<sup>41</sup>Amitav Acharya, "Is ASEAN Losing Its Way?," *The Nation*, 8 October 2015.

<sup>42</sup>"Cambodia's Foreign Relations; Losing the Limelight," *The Economist*, 17 July 2012.

<sup>43</sup>"Brunei Carefully Pursues Binding Code to Settle South China Sea Dispute," *IHS Global Insight Daily Analysis*, 3 April 2013.

<sup>44</sup>Communication with a Cambodian Major General, 12 September 2016.

<sup>45</sup>Interview with Lay Vannak, ASEAN Department (Cambodian Council of Ministers), 29 July 2005.

<sup>46</sup>Roberts, *ASEAN Regionalism: Cooperation, Values and Institutionalisation*.

While ASEAN, led by Indonesia, established the interdependent goals of 'national resilience' and 'regional resilience' (linking to the notions of ASEAN centrality and autonomy), the case of the South China Sea has indicated anything but the realisation of the latter aspiration. Nonetheless, transient points of success and strength, whether by individual ASEAN members, Indonesia as the Association's unofficial leader (i.e., *primus inter pares*), or ASEAN as a whole, have affected the cost-benefit analysis of Beijing. Moreover, while Beijing's approach has been to take two steps forward, but only one step back, this analysis has demonstrated several junctures where China has been vulnerable to key periods of unity and/or international vulnerability. The latter factor links to Beijing's own vulnerability to international pressure and so ASEAN cannot separate its own approach from support by other major powers such as Japan and the United States. Therefore, the avoidance of the internationalisation of the dispute only plays into the hands of Beijing.

Nonetheless, the massive construction of artificial islands by Beijing, together with the willingness of Beijing to encroach into, on the balance of legal probability, the EEZs of both the Philippines and Vietnam, calls into question the extent to which DoC and the subsequent processes for a CoC have contributed to regional peace and stability let alone ASEAN centrality and an associated capacity to manage great power relations and points of friction. Despite the extremity of Beijing's provocations, none of the ASEAN statements have referred to Beijing by name, or explicitly called for removal of the HN-981 oil rig, or even explicitly called for a halt to island construction. Meanwhile, following the construction of seven artificial islands, a Code of Conduct may already be too late for ASEAN. Should China ever sign on to a CoC, it will likely be because such a Code of Conduct will codify a new status quo in Beijing's favour.

More positively, the amount of energy China has directed towards undermining ASEAN unity and blocking various chairman's statements, joint communiques, and other public declarations, reveals that it is genuinely concerned about the role that ASEAN could potentially play. The fact that ASEAN has not lived up to this expectation does not need to be so. ASEAN demonstrated a capacity to coordinate a unified position during the third Indo-China War; the core barrier to avoiding 'China's divide and rule tactics' concerns the initiation of a pattern of reciprocity where one state starts to act in the interests of the collective good and, once this is done, other states reinforce a reciprocal pattern of behaviour. That said, it would be easier for ASEAN if all its members internally consolidated to the point of the formation of efficient and effective bureaucratic (if not democratic) regimes. Under these circumstances, it would be more difficult for individual ASEAN members to normatively accept the behaviour of Beijing in recent times. Moreover, the 'human security' orientated nature of such regimes would render them more prone to aid and investment from countries other than China. In the process, Beijing's influence would become more balanced.

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