

## Defusing tensions in the South China Sea

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## Defusing Tensions in the South China Sea

By Barry Desker

### Synopsis

*As East Asia and Southeast Asia enter a more unpredictable period arising from growing territorial disputes, there is a critical need for mutual restraint on the part of all disputing parties lest the tensions get out of hand. At the same time, there are lessons to be learnt.*

### Commentary

CONFLICTING MARITIME territorial claims in East Asia will be a key source of tensions in the region in the decade ahead. While most of China's land boundary disputes have been settled on terms favourable to China's neighbours, except for its continuing disputes with India and Bhutan, its maritime boundaries in the East China and South China Seas are contested.

China has traditionally been a continental power focused on its landward Eurasian border. However, a resurgent China in the 21st century will pay increasing attention to its maritime space as its gaze turns eastwards towards the United States, the dominant power of the 20th century, and Japan, which it has overtaken economically but with whom China has had a difficult relationship bedevilled by memories of Japan's role as a colonial power and the trauma of its experiences during World War Two. The Sino-Japanese dispute over the Diaoyu/Senkaku islands will be the most intractable maritime issue in East Asia because of this historical baggage.

### Beijing's vague position unhelpful

In response to a submission by Vietnam and Malaysia informing the United Nations of the demarcation of their continental shelf boundary, China reiterated its territorial claims and submitted a map with 'nine dash lines' enclosing most of the South China Sea. This was the first time the map was circulated as a UN document although it was based on a 1947 Kuomintang Government map. The Chinese move unsettled several ASEAN states, especially the Philippines and Vietnam but also Malaysia and Brunei, which all have competing claims.

As this map is widely circulated in China, appears prominently in many government buildings and is now reproduced in Chinese passports, the Chinese public believes that the entire area falls within China's territorial waters, if the highly charged comments on the Internet are indicative of wider opinion. The failure by knowledgeable Chinese international lawyers and foreign policy makers to publicly clarify its position on the South China Sea has increased apprehensions.

China's public assertion of historical rights is not sustainable under the UN Convention on the Law of the Sea

(UNCLOS), although the claim to sovereignty over the rocks and islands within the line could be consistent with UNCLOS. Chinese naval and fishery protection vessels have mounted patrols in waters within the EEZ of claimant states while China has offered leases on petroleum exploration blocks within Vietnam's EEZ, even though China could not claim an EEZ overlapping with these areas extending from islands represented by its map.

### **Impact on China-ASEAN relations**

Because of these developments, ASEAN meetings continue to be distracted by the South China Sea issue. At the close of the summit of ASEAN leaders in Phnom Penh on 18 November, the Cambodian Prime Minister Hun Sen said that there was an agreement not to internationalise the issue. Left unchallenged, such an agreement would reflect the Chinese position on the issue. However, the Philippines and Vietnam, as well as Brunei, Indonesia, Malaysia and Singapore, submitted letters formally disagreeing with this view and the chairman's final statement did not contain such a reference.

If the Cambodian delegation had insisted on its version, the likely outcome would have been a repeat of the ASEAN ministerial meeting in July this year which failed for the first time in ASEAN's 45-year history to issue a joint communique. Cambodia had objected to inclusion of a reference to the South China Sea disputes as it argued that ASEAN did not discuss bilateral issues.

Ironically, Cambodia had raised its own bilateral border dispute with Thailand over land surrounding the Preah Vihear temple the previous year and had obtained a standalone ASEAN foreign ministers' statement on the issue and a reference in the Chairman's statement of the 19th ASEAN summit.

As a major power, China's preference is for bilateral negotiations where it exercises greater leverage. While China enjoys excellent ties with ASEAN, it has referred to ASEAN/China and ASEAN Plus Three (China, Japan, South Korea) as 10+1 and 10+3 meetings, highlighting China's approach of dealing with ASEAN members bilaterally. Attempts to nudge China in the direction of the adjudication of maritime boundary disputes by the International Court of Justice or the International Tribunal for the Law of the Sea will not succeed. In ratifying the UN Law of the Sea Convention, China opted out of compulsory binding dispute settlement. Instead, ASEAN and China have focused on developing norms, building mutual confidence and promoting cooperative behaviour, as seen in the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea.

The approach has been to avoid addressing the territorial claims at the ASEAN level, which will be taken up bilaterally by the parties directly concerned. ASEAN attention is now on engaging with China on a Code of Conduct in the South China Sea which will focus on issues such as the prevention of incidents at sea, crisis management, confidence building measures and encouraging joint development. But progress is likely to be slow.

### **Need for mutual restraint**

While a grand package should be envisaged, it would be timely to move first on the implementation of confidence building measures such as increasing exchanges and discussions at a non-official level aimed at reducing misperceptions and encouraging mutual confidence, establishing a hot line at the operational level between navies and coast guard units of regional states, agreeing on prior notification of military exercises in the South China Sea and facilitating the rescue at sea of people and vessels in distress.

Provocative gestures such as China's decision to include its nine dash lines' map in its new passports should be avoided. All claimant states are also guilty of occupying uninhabited islands and land features. They should agree to refrain from doing so. The aim should be to strengthen crisis management capabilities and to lay the groundwork for agreement on rules and procedures aimed at defusing tensions.

Despite the challenges posed by the conflicting claims in the South China Sea, it should be recognised that China is now a major engine of growth for the ASEAN region. The ASEAN-China Free Trade Area is the world's largest free trade area in terms of population and the third largest in terms of nominal GDP. At the East Asia Summit on 20 November 2012, Chinese Prime Minister Wen Jiabao also acknowledged China's willingness to increase dialogue and enhance cooperation with ASEAN members in the security and strategic fields.

From a Chinese perspective, the management of China's relationship with ASEAN is critical. As a resurgent power with an increasingly global presence, many states will be watching how China deals with its neighbours. Lessons will be drawn on the impact for them of a rising China.

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