ASEAN and the South China Sea disputes: the search for peace and stability through security cooperation

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Abstract

The South China Sea has sea lanes of global significance, rich fishing grounds, and potentially vast oil and gas reserves. ASEAN members are in conflict over China's claims in the area, but are working towards a binding code of conduct. Unity within ASEAN and continued diplomatic efforts will be essential to preventing disputes leading to armed conflict. By solving its internal inconsistencies and achieving stability, ASEAN will be able to promote its centrality in the region's security architecture as well as its importance in the global arena.

Roots of the disputes

The South China Sea

The South China Sea (SCS) is located in a highly strategic position. With an area of approximately 3,500,000 square kilometers (1,350,000 square miles), this sea is Southeast Asia's largest geographical feature. Its waters connect Southern China, the west coast of the Philippines and Borneo, the east coast of the Malay Peninsula, the Gulf of Thailand and the long Vietnamese coast. At the same time, the smaller Sulu, Celebes, Banda and Java Seas all flow into the SCS. The SCS is the central component of the region and this is one factor explaining its importance.

The SCS contains two archipelagoes, the Paracels and Spratlys. The Spratly “islands” are in fact rocks, reefs, atolls, and islets spread over 250,000 square kilometers of sea space, but with a mere 5 square kilometer of total land mass. Most of them are tiny and submerged

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during high tide. Out of the Spratlys’ approximately 230 geographical features (Acharya, 2009: 156), only one island has freshwater: Itu Aba. All others thus cannot host human life. In addition, their land is not arable, does not support permanent crops, and has no meadows, pastures or forests. For all these reasons, the Spratlys have not been occupied by humans until recently, when they rapidly became the focus of a fierce international dispute.

At the present time, the restless waters of the SCS are a theatre for complex territorial disputes. The Paracels are wholly occupied by China, while the Spratlys are variously occupied by Chinese, Taiwanese, Vietnamese, Filipino, and Malaysian military forces. These countries use military means—airstrips and armed forces—to defend their occupations and reinforce their claims. Why is the SCS so important? The SCS is pivotal for strategic reasons. This sea hosts strategic sea lines of communications (SLOCs) whose importance cannot be possibly overstated. A third of all world trade passes through them because the SCS is the shortest navigation line between the Pacific and Indian Ocean, connecting the main oil-importing industrial economies in Northeast Asia (Japan, South Korea, Taiwan, China) with India and beyond, including the Persian Gulf, the Middle East, West Africa, and the Mediterranean Sea. The SCS hosts SLOCs of global importance, but their security is endangered by the current situation. Due to the peculiar characteristics of the SCS, I consider it particularly useful to frame the study of the disputes around the concept of geopolitics.

There are three geopolitical attributes which interact in the disputes: territory, natural resources, and the distribution of power. Obviously, the three drivers of conflict do not just coexist, but they influence each other, participating in a veritable geopolitical interplay. Therefore, each factor needs to be considered in the context of other the two, i.e. the researcher has to analyze the relations and interactions that emerge between them (Emmers, 2010: 17).

The first attribute is territory, an indispensable condition of modern states. Territory can be “associated with statehood, national boundaries, territorial claims and nationalism” (Emmers, 2010: 1). Nationalist rhetoric on the defense of national boundaries and sovereign territory has been one of the main drivers of conflict in the SCS. Vietnam, which occupies the highest number of geographical features, as well as China and Taiwan, which claim a good part of the SCS,
keep reaffirming their “indisputable sovereignty over the Paracel and Spratly Islands.” This inflexible rhetoric should be understood in light of the highly nationalist sentiments of the states’ internal constituencies and the intention of the governments to be seen as determined by their citizens and other claimants (Emmers, 2010: 1).

Natural resources are the second driver of conflict because of the SCS’s fisheries and, most of all, its potential gas and oil resources. Fisheries are a great asset as the SCS’s rich bio-marine diversity and abundant species\(^8\) attract fishing boats from all the coastal countries. Over half a billion human beings in China, Taiwan, the Philippines, Malaysia, Singapore, Indonesia, Thailand, and Vietnam live within 100 miles of the SCS coastline (Rosenberg, 2010), and many depend on the sea for nourishment\(^9\) or income.\(^10\)

Although scientific estimates vary considerably and therefore there is no certainty on this issue, the SCS is suspected to have significant gas and oil deposits. Energy is nowadays a main concern of states, especially of rapidly growing industrial nations such as China, whose demand for energy has surged massively in the last two decades due to its double-digit growth, impressively rapid industrialization, and extraordinary growth in transportation. China became a net oil importer in 1993 after having been a net oil exporter for decades. Today, it is the third largest oil importer in the world, importing 55 percent of its oil supply, and likely to show continued dramatic growth for decades to come.\(^11\) Moreover, the Chinese ruling party’s legitimacy, and therefore survival, may depend on sustaining economic growth in order to distribute wealth and deliver modernity to its 1.3 billion citizens. For fast and sustained economic growth, energy supply is vital (Emmers, 2010).

But does the SCS really have significant gas and oil deposits? Chinese officials are particularly optimistic on this point,\(^12\) and their optimism appears to be increasing. On 19 April 2011, the Chinese daily *Global Times*\(^13\) published an article (Zou Le, 2011) calling the SCS “the second Persian Gulf”, “rich in natural resources of oil and gas,” and estimating that the disputed waters contain “over 50 billion tons of crude oil and more than 20 trillion cubic meters of natural gas.”\(^14\) The piece quoted Zhang Dawei, deputy director in the Ministry of Land and Resources, stressing the “key” importance of the SCS because “offshore oil and natural gas is the key to solving the crude oil predicament China is facing.”\(^15\)
Despite what Beijing seems to believe, the SCS’s “oil bonanza” may not be so extraordinary. A 1993/4 US geological survey judged the oil reserves at about 28 billion barrels, only a seventh of the Chinese claim. According to the Americans, proven reserves are about 30 times smaller than the Chinese estimations, about 7 billion barrels, while a 1995 Russian scientific estimate placed oil reserves in the area at an even smaller amount: 6 billion barrels (Emmers, 2010: 77). Therefore, the SCS’s energy wealth is uncertain, and Beijing’s optimistic figures may be unrealistic, designed to rally domestic support.

The concern over energy is not unique to Beijing; access to energy is also a major issue for the other claimant countries. With the exception of tiny and resource-rich Brunei, the other three ASEAN claimants are fast-growing nations with large populations and thus, at least to some extent, can be regarded as “small Chinas.” Taiwan, as far as energy is concerned, is one more “small China” because, in spite of its small size, it is ranked tenth among global net oil importers. Moreover, Japan and South Korea also have an interest in the security of the SCS as a SLOC, because their economies are heavily dependent on imported energy supplies which mostly arrive from the Middle East through the Malacca Straits. In conclusion, to understand the rationale behind the actions of the countries disputing the SCS, we must pay proper consideration to the energy issue. The increasing concern to control natural resources in order to secure energy supplies is a pivotal geopolitical factor behind the behavior of the claimants.

The third geopolitical factor in the SCS disputes is the distribution of power. Currently the balance of power appears to favor Beijing. China occupied the Paracels in 1974 and considers the matter closed. Recently, Beijing has begun developing the Paracels by adopting a policy of opening the islands to the public. China occupies seven spots in the Spratlys and has increased the number of ships stationed in the SCS to demonstrate its determination to consolidate control over the area. China has the most powerful military force among the claimants. However, despite this remarkable military force, the “Chinese threat” should not be exaggerated, especially if we take into account that Beijing “does not yet possess the technology, military capabilities, or power projection to impose ... a naval hegemony in the South China Sea” (Emmers, 2010: 82). According to the other claimants, China has taken an aggressive attitude towards the SCS issue by raising its mili-
tary presence, by the development of reefs, deep-sea fishing, scientific studies, petroleum and natural gas exploration that are “intrusions” on other claimants’ areas, and by lobbying foreign companies in order to stop their activities on behalf of other states. China’s “rebel province,” as Beijing calls Taiwan, is no passive actor either. Apart from claiming both the Paracels and Spratlys, Taiwan occupies Itu Aba, Spratlys’ largest geographical feature.

Among the Southeast Asian claimants, Hanoi is the strongest militarily. Vietnam’s military, economic, and demographic assets can turn this country into a middle-ranked power or a regional power in a few decades. Moreover, Hanoi is rapidly strengthening its diplomatic and military relations with Washington to the extent that some analysts believe it may soon become a pivotal US ally in the region, supplanting historically close American allies such as Manila and Bangkok. In the Spratlys, as many as 27 features are occupied by Vietnam. On one island, Hanoi has established a military command post with helicopter landing pads and runways. Hanoi feels that the SCS’s petroleum and gas will be pivotal for the country’s future development and prosperity. To the Vietnamese government, the SCS is a vital asset for the development of its highly populated country. This is the reason why Hanoi sought to work in partnership with leading Western oil companies to speed up the exploration and development of gas and oil reserves in those waters. Vietnamese people, who hold strong nationalist feelings, appear to support the intransigent stance of their government in the SCS disputes. By contras, the Philippine and Malaysian army and navy are weaker than those of China or Vietnam. Manila controls eight geographical features and has set up a military command post on Thitu Island, where a number of facilities have been built, including a short runway and docks. Malaysia occupies Swallow Reef, which hosts a garrison and has been the first islet in the SCS to be opened to the public, and the reefs near Sabah. The weakest of all claimants is Brunei, which does not occupy any features (Emmers, 2010: 83-84).

In the study of Southeast Asian balance of power politics it should be kept in mind that external actors play a very important role. Among them, the USA is unquestionably the most significant, being the sole world superpower and being particularly interested in freedom of navigation and SLOCs security. Relations between the regional great powers—USA, China and Japan—are marked by competition and
cooperation within a framework of security. This complex pattern of relations between great powers is overall good for Southeast Asia because it provides an external setting of relative stability which is fundamental for the region’s main goals: economic growth and prosperity (Yahuda, 2003). The problem is that it is uncertain whether such an external environment will persist or mutate.

As stated in the beginning, the three geopolitical factors (territory, resources, and power) cannot be easily separated because they are interrelated and constantly influence each other. Consequently, to understand a territorial claim made by a government, we have to consider the other two factors as well. As an example, it is easy to understand how the claimant states are not actually interested in controlling the tiny and scattered islets per se. They rather want to obtain territorial sovereignty on those features in order to project their rights on the waters surrounding them. In other words, territorial sovereignty is a tool to boost claims to fisheries and offshore oil and gas resources in a vast area of sea. However, if territory is wanted for the sake of resources, at the same time resources boost territorial claims and nationalist rhetoric. This implies that a territorial claim may be originated by, or interrelated to, the prospect of acquiring natural resources, as well as for controlling the SLOCs through the SCS. Therefore, a territorial claim may be manufactured by the ruling class or other hegemonic sectors of society with the prospect of gaining additional advantages such as economic gains resulting from the control and exploitation of strategic areas. Such acquired wealth, power, and prestige will then be redistributed by the rulers to the lower echelons of their society, which in turn will legitimize and sustain the continuation of the regime, together with the power-holders’ rule and hegemonic position.19

**ASEAN’s involvement**

In the years 1989-1991, the world witnessed a major revolution: the collapse of the USSR and end of the Cold War. The international system entered a phase of reorganization and potential instability. The rapid shift in the distribution of global power left the USA as the sole global power. In Southeast Asia, the 1991 Paris Accords ended the Cambodian conflict, potentially opening the first era of peace after decades of tragedy. In 1991, the Philippines did not renew the treaty
with Washington for hosting two US military bases, favoring the withdrawal of American military forces from the archipelago and downsizing the US presence in Southeast Asia. At the same time, Russia, the heir of the Soviet empire, lost its seat as a significant player in Southeast Asia due to its internal political and economic problems. The reduced presence in the region of the two Cold War superpowers caused uncertainty in the East and Southeast Asian security environment.\(^{20}\)

The prime beneficiary of the changing strategic context was Beijing.\(^{21}\) The sudden departures of the two great powers, together with China’s spectacular economic rise, were the main factors changing the regional balance of power (Yahuda, 2006: 14-29). China became more assertive.\(^{22}\) In this context, the SCS disputes entered a phase of expansion. The first tragic event occurred in 1988, when Beijing switched to gun-boat diplomacy in the Spratlys to secure Johnson South Reef from Vietnam: according to different sources, between 16 and 77 Vietnamese were killed. For such reasons, the post-Cold War security discourse in East Asia has been dominated by mounting concerns over the rise of Chinese power and its significance in relation to the region and to the world.

**Escalation**

In 1990, the UN Natural Resources Report indicated that there might be petroleum in the SCS. As a consequence, the situation became tenser, with disputes about sovereignty and drilling rights turning more and more serious, and occasionally leading to armed clashes.\(^{23}\)

In the early 1990s, ASEAN began developing new priorities. In particular, the regional organization began to pay attention to the security of the SCS, an issue which had been put aside in previous decades when it was considered secondary to the wars in Vietnam (until 1975) and Cambodia (1978-1989). In the beginning, the overlapping claims on the SCS complicated Sino-ASEAN relations. Beijing was reluctant to participate in multilateral regional forums, arguing that the issue was not between China and ASEAN, but between China and some ASEAN members, not all of them. Therefore, Beijing maintained its claim on the area shown in its 1947 U-shaped 9-dotted map and declared a willingness to discuss the dispute, but only bilaterally with each state.
ASEAN was not fully prepared to cope with China's assertiveness. Traditionally, ASEAN focused on conflict avoidance rather than conflict resolution, and lacked instruments for counterbalancing China in the SCS: there was no common threat perception and there were no joint military capabilities either. Moreover, ASEAN showed no disposition to evolve into a NATO-style defense arrangement (Emmers, 2010: 96-97).

ASEAN began to address the SCS disputes by playing down intramural differences. In 1990, Indonesia, and not ASEAN as an organization, convened an informal workshop, financed by the Canadian government, aimed at developing a common regional position on managing the SCS disputes (Acharya, 2009: 157). From 1991, China, Taiwan and Vietnam were invited too. The workshops avoided territorial issues, focusing on proposals for confidence building measures, including joint development and cooperation on a series of issues. As a result of this process, the six ASEAN nations signed a Declaration on the SCS in 1992. The Declaration called for a resolution of the disputes “by peaceful means, without resort to force” (Acharya, 2009: 157). It also asked the parties to exercise “restraint,” further “economic cooperation and growth,” and respect the principles contained in the Treaty of Amity and Cooperation in Southeast Asia (1976) as the basis for establishing in the future a code of conduct over the SCS (Acharya, 2009: 157). China, Taiwan, and Vietnam did not sign the Declaration.

Despite the Declaration, the escalation continued. In the same year 1992, Beijing adopted a territorial law of the sea which claimed the whole Paracels and Spratlys and “provided for the use of force in its support” (Acharya, 2009: 158). China already had a booming economy and became a net oil importer since 1993. The energy factor, together with rising domestic nationalist rhetoric which was somehow replacing the stress on Communist ideology, were probably the factors behind the rather rapid escalation of the dispute. The escalation led to the 1995 Mischief Reef Incident, when Chinese forces occupied an islet previously controlled by the Philippines. Although Filipinos saw the occupation as a Chinese “creeping invasion,” Manila limited its reaction to official condemnation and refrained from the use of force to expel the “invaders” in order to avoid an escalation in the conflict. Interestingly enough, there were different responses from Southeast
Asian capitals, revealing the existence of contrasting views on “China’s threat” and aggressiveness and, therefore, the lack of intra-mural unity and common perception of threats inside ASEAN.

Neutralization

In the mid 1990s the geopolitical situation changed again when two developments in Vietnamese foreign policy caused a shift in the balance of power in the SCS. In 1994, Vietnam normalized relations with the USA, and the following year was admitted to ASEAN. For Hanoi, this meant the end of decades of regional isolation. For ASEAN, the inclusion of Vietnam meant a further insurance and protection against China’s assertiveness. Even so, the significance of Vietnamese admission to ASEAN should not be exaggerated: ASEAN is not a collective defense organization, so it cannot practice conventional balance of power politics. Therefore, the shift in the balance of power should not be considered the only factor that caused Beijing to adopt a more conciliatory attitude from the mid 1990s. ASEAN’s progressive engagement of China was probably the cause. Beijing accepted to sit at the regional table. As a result, ASEAN-China relations improved, the escalation went into reverses, and a neutralizing phase began. In 1994, China joined the ASEAN Regional Forum, and in 1996 it got full dialogue status with ASEAN. In 1997, ASEAN+3 was created, meaning ASEAN plus Japan, South Korea and China. Since the 1995 Mischief Reef incident, the SCS has not recorded any new case of occupation (Emmers, 2010: 100-105). This positive process led to the 2002 Declaration on the Conduct of Parties in the SCS (DOC), a veritable landmark in the history of Sino-ASEAN relations.

The 2002 DOC reaffirmed a “determination to consolidate and develop the friendship and cooperation” and declared a “commitment to the purposes and principles” of the Charter of the UN, the 1982 UN Convention on the Law of the Sea (UNCLOS), the Treaty of Amity and Cooperation, and “other universally recognized principles of international law” (Emmers, 2010: 100-105). Moreover, the DOC called for “building trust and confidence,” “respect for freedom of navigation,” the solving of “disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations,” and a need to “exercise self-restraint in the conduct
of activities that would complicate or escalate disputes and affect peace
and stability” (Emmers, 2010: 100-105). The DOC was a political
declaration intended to prevent further tensions over the disputed
geographical features and to reduce the risk of military conflict. It
was also the first step towards a binding code of conduct, which was
assumed to be the future goal. The year 2002 was a milestone in
the establishment of Sino-ASEAN mutual confidence, on the path
of ensuring regional security, peaceful settlement of the conflict, and
future further cooperation among all claimants.

Yet the 2002 DOC was a toothless political statement, not a
binding code of conduct or a treaty. As a consequence, it was fated
to be disregarded by both China and the ASEAN nations. Neverthe-
less, the process of Sino-ASEAN engagement continued. In 2003,
China adhered to the Treaty of Amity and Cooperation, becoming
the first non-ASEAN signatory of the treaty signed by the five ASEAN
founding members in 1976. In 2006, joint exploration schemes were
agreed but their implementation was impeded by Filipino internal
nationalism (Emmers, 2010).

Re-escalation

From 2007 to the present, there has been a degree of re-escalation.
Some minor new incidents have been recorded. One major factor of
tension has been the unilateral Chinese Fishing Ban, called every year
since 1999 by local authorities of Hainan, China. The ban, which is
supposed to protect marine wildlife, is enforced on disputed waters
for a few months a year. Due to its proximity to China, Vietnam is
the country most affected. Hanoi has officially protested since 1999,
but has always received the official Chinese answer that the ban is
“indisputable” (People’s Daily, 2009). While the ban is in place, armed
Chinese surveillance vessels pursue Vietnamese fishing boats, fining
some, seizing fishing catch, detaining sailors, and accidentally sinking
boats. Fatalities have been reported. The tragedy is that Chinese fishing
bans are both an escalating factor and a useless tool for environmental
protection. They obstruct the process of managing the dispute because
they raise diplomatic tensions between Beijing and Hanoi, which inter-
prets the ban as an act against Vietnamese fishermen who fish in Viet-
namese waters. Moreover, in recent years the Chinese bans provoked
(genuine or orchestrated) rising nationalist and anti-Chinese feelings
in Hanoi, with demonstrators going to the streets and protesting in front of the Chinese embassy. The Chinese bans are also environmentally ineffective as they do not deter Vietnamese fishermen, who are backed by their national authorities, and offer no long-term strategy of conservation. Moreover, the bans are against the 2002 DOC, which stated that activities such as marine environmental protection should be undertaken in a cooperative manner, not unilaterally. This means that a one-sided act in a disputed area, even of good cause, is not justifiable. With this fishing ban, China has not followed the 2002 DOC of which it is a signatory.

The year 2010 was rather intense for ASEAN as an association and Southeast Asia as a region. The context of security was affected by three major events. First, US-China relations worsened when Beijing suspended military-to-military exchanges with Washington after the USA restarted arms sales to Taiwan. Second, Washington stepped up American re-engagement with ASEAN. In the past, despite its large naval presence in the Asia-Pacific, the US had never taken side in the SCS disputes. The SCS was low on Washington's list of concerns, but this changed with the Obama administration. In particular, the American offer to facilitate a solution in the SCS raised Chinese ire. Above all, Beijing did not appreciate US secretary of state Hillary Clinton's declarations made in Hanoi in July 2010, when she basically rejected China's claim to the SCS, although she also made clear that Washington would not take sides in the SCS territorial disputes. The US position can have significant implications, because Washington contests and can potentially block the realization of Beijing's claim over the SCS. It sounds like a conflict between America's "national interest" and China's "indisputable sovereignty" over the SCS (Thayer, 2011b). Third, and in part as a result of the first two points, Chinese assertiveness in the SCS emerged as a burning regional security issue.

These developments posed serious challenges to ASEAN and its role as the primary driving force in Southeast Asia's security architecture. ASEAN weathered these challenges by inaugurating the ASEAN Defense Ministers' Meeting Plus process and by agreeing to enlarge the East Asia Summit by including Russia and the USA as members. By the end of 2010, the situation appeared to have eased slightly, and Beijing resumed military-to-military contacts with Washington.

The first half of 2011 witnessed a revival of tension and
unprecedented behavior on the part of Beijing, which reportedly began interfering with Filipino and Vietnamese commercial and exploration operations (Thayer, 2011a: 2). Hanoi accused Chinese ships of having cut cable towing seismic monitoring equipment on May 26 and again on June 9, 2011, claiming the actions were “premeditated and carefully calculated” (Timberlake, 2011). Vietnamese prime minister Nguyen Tan Dung made a remarkably strong statement and repeated that Vietnam considers the Paracels and Spratlys its “incontestable maritime sovereignty” (Timberlake, 2011). In this period, Sino-Filipino relations were no better: between February and May 2011 Manila denounced six incidents caused by Chinese ships (Thayer, 2011a: 5-8). Manila claimed that Chinese vessels harassed Filipino fishermen and undermined peace and stability in the region. Beijing replied to official protests from Manila and Hanoi with its usual inflexibility plus a dose of belligerence (Thayer, 2011a: 2). Beijing’s Foreign Ministry spokesperson Hong Lei declared that the “Philippines should stop publishing irresponsible statements that do not match facts” and that the cable cutting incidents were not premeditated, but happened when Vietnamese vessels were operating illegally in a Chinese area (Xinhua, 2013; Reuters, 2011). Therefore, Mr. Lei turned back the accusations to Hanoi:

> By conducting unlawful oil and gas surveys in seas around the Wanan Bank of the Spratly archipelago and by driving out a Chinese fishing vessel, Vietnam has gravely violated China’s sovereignty and maritime rights [...] China demands that Vietnam cease all violations (BBC, 2011).

Because of these incidents, at the ASEAN Regional Forum held in Bali in July 2011, the SCS was one of the hottest issues. After days of work, China and ASEAN finally agreed to heed the 2002 DOC. This result represents one more building stone on the ASEAN process of engaging China. In spite of the minor skirmishes and incidents mentioned above, this process had built a fragile stability and prevented the occupation of any more islets. Nevertheless, no code of conduct has yet been signed, and thus the issue remains unsolved and impedes closer relations between states. The parties agreed on the necessity of avoiding violence, but the main stumbling block persists. As the inci-
dents and the reciprocal accusations demonstrate, the problem is that the claimants have contrasting claims and diametrically opposite views on how to interpret international law. In such a complicate entanglement, the most interesting development of year 2011 was the growing determination of ASEAN to tackle the disputes and, within ASEAN, the increasing Filipino leadership over the SCS disputes. First, Manila called on China to take the dispute to the International Tribunal of the Law of the Sea (ITLOS). Afterwards, when Beijing rejected the adjudication, Manila declared it would take the case to the ITLOS anyway (Huy Duong, 2011). At this point, Hanoi declared it would join the Filipino initiative and stressed the importance of the multilateral approach (Huy Duong, 2011). This example shows how, although the ASEAN claimants are rivals in the disputes, they can present a common front in order to achieve strength in numbers and cope with Beijing more effectively.

The Philippines were particularly active in the search for intramural unity on the issue in order to reach a common ASEAN position, and consequently approach Beijing with a stronger pose (Thayer 2011a: 9). In particular, Manila worked to launch a new initiative aimed at creating a China-ASEAN Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C).\textsuperscript{34} The proposal appears clear and detailed. The Filipino secretary for foreign affairs Albert del Rosario stated that it “clearly defines the next steps to be taken by ASEAN and other countries concerned” and gives an answer to the “need to segregate the disputed areas from the non-disputed area.”\textsuperscript{35} In this way, what clearly belongs to one single country according to the UCLOS will be definitely assigned and the country will be able to exploit its exclusive economic zone, while the areas contested will be managed through “joint cooperation.”\textsuperscript{36} In fact, the center of the Filipino proposal is the separation of disputed from non-disputed areas through the use of Article 121.3 in UNCLOS.\textsuperscript{37} If this article is applicable, then almost the totality of the geographical features in the SCS cannot be considered “islands,” but “rocks” with no right to an exclusive economic zone of more than 12 nautical miles. This is the same as saying that the most important factor to allocate sovereignties will be the 200 nautical miles exclusive economic zone that the UNCLOS grants to each coastal state. At the same time, the ZoPFF/C leaves space for cooperation and joint exploitation of the disputed areas. Anyway,
the proposition did not encounter the favor of China, whose claim would be dramatically scaled down if that interpretation was to be enforced.

Relations between China and the Philippines did not improve the following year, when the two nations engaged in a standoff over the Scarborough Shoal, which is claimed by Beijing, Taipei and Manila. As elsewhere in the SCS, at issue are the surrounding fishing grounds and, more importantly, the legal principles determining ownership and right of exploitation. The standoff began on 8 April, 2012 when the Philippine Navy spotted a number of Chinese fishing vessels in the area. The Filipinos soon discovered that the Chinese had caught marine species protected under Philippines law and international conventions. As the Chinese authorities came out in defense of their citizens, a diplomatic row arose. Both sides accused the other of trespassing on territorial waters. The tension continued to mount for weeks, with reciprocal accusations, suspected cyber attacks exchanges, fishing bans, economic sanctions, and nationalist protests in Manila, Beijing and Hong Kong. Eventually Manila withdrew its vessels, and has since protested Chinese presence there. China's strong response, a scholar argued, intended to show to other regional states the potential costs of confronting China over territorial disputes in the SCS (Thayer, 2012).

Later the same year, Cambodia hosted the 45th ASEAN Ministerial Meeting (AMM) in Phnom Penh. Following each summit, ASEAN traditionally issues a joint communiqué expressing common goals. However, at the conclusion of the 45th AMM on 13 July, 2012, the organization failed for the first time to issue a joint communiqué because of a major disagreement between Cambodia and the Philippines (BBC, 2012). Media tended to focus on this failure, exposing natural fault lines within ASEAN. Notwithstanding the exceptionality of this event, it may be as well stressed that, on the other hand, during the first days of the meeting the Foreign Ministers had reached agreement on “Proposed Elements of a Regional Code of Conduct in the South China Sea (COC) between ASEAN Member States and the People's Republic of China” and presented the proposal for Beijing's agreement. China's foreign ministry had said that Beijing would consider the proposals if the conditions were right. Moreover, after the Cambodian meeting Indonesia acted swiftly to restore ASEAN
unity and, already on July 20, it secured agreement on “ASEAN’s Six-Point Principles on the SCS.” In August, China’s Foreign Minister Yang Jiechi stated that Beijing was willing to implement the DOC ‘on the basis of consensus’ and to work toward the eventual adoption of the COC (Tarra, 2012).

Indonesia kept the helm of the initiative and incorporated the Six-Points into the “Zero Draft: A Regional Code of Conduct in the South China Sea,” also known as “Zero Draft COC,” comprising confidence building, conflict prevention measures and conflict management measures, should an incident or conflict arise, to prevent situations from worsening (Valencia, 2013). The Indonesian draft was circulated among ASEAN Foreign Ministers on the sidelines of the United Nations General Assembly in New York on 27 September, 2012, and it was eventually adopted by consensus as the basis for negotiations with China. The draft of a code is unlikely to collect the support it needs from all the parties involved (Valencia, 2013). Nevertheless, it represents progress and, partially as a result of it, China issued a joint statement with ASEAN at the 15th ASEAN-China Summit in Phnom Penh, Cambodia, in November 2012, agreeing to “keep momentum of dialogue” in moving towards a formal COC (Xinhua, 2012).

The situation did not seem to move fast enough for Manila, which in January 2013 lodged formal legal claim with the United Nations to establish an Arbitral Tribunal under the UNCLOS (Thayer, 2013). It is unclear to what extent the bold and unilateral step, which Beijing criticized, was a positive one for ASEAN as a whole. Anyway, the same month, January 2013, the ASEAN Chair passed from Cambodia to Brunei. Both the fresh Bruneian Chair and the ASEAN’s new Secretary General, former deputy foreign minister Le Luong Minh of Vietnam, pledged to give priority to stimulating discussions on the COC (Termsak, 2013). Prior to the ASEAN Foreign Ministers Meeting (AMM Retreat) in Brunei in April 2013, ASEAN Senior Officials drew up a new draft statement on the way forward to the COC. Later in April, ASEAN Secretary General Minh announced that China and ASEAN agreed to hold a ministerial level meeting within 2013 (Xinhua, 2013). China reiterated this commitment following the 19th China-ASEAN Senior Officials’ Consultation in April 2013. In the meantime, Manila has made a number of strategic overtures to the US,
including a call for the establishment of non-permanent US bases in the Philippines (Whaly, 2013).

Conclusion

Over the last three decades, Cold War ended, China rose to become a world superpower, Southeast Asia was relatively pacified, and its regional association, ASEAN, began playing an increasingly central role. International politics mutated radically but Southeast Asia continues to be a crucially important arena. Its largest geographical feature, the SCS, holds key significance for the global economy but it is also becoming ripe for potential hostilities between several nations. In a world where interdependence increasingly sees imperatives of geoeconomics trump issues of geopolitics, the SCS’s 3,500,000 square kilometers of waters are disputed by as much as six different nations, including China and four ASEAN members. The US, the world dominant nation, says it has no territorial ambitions in this sea, but it also asserted that it is in its “national interest” to maintain freedom of navigation, peace and stability in the region. China, on the other hand, opposes an internationalization of the issue.

The disputes are a veritable maze because of the overlapping nature of the claims and the complicated and constantly mutating regional and international environment. ASEAN has spent a lot of diplomatic capital in trying to build a regional architecture capable of coping with challenges posed by the new geopolitical environment, but the disputes over the SCS have to a certain extent frustrated such work and continue to be a thorn in the side of ASEAN-China relations as well as a factor of tension amid ASEAN members.

Recent years saw a phase of re-escalation, but due to Indonesia's diplomatic work, and with Brunei as host of ASEAN events in 2013, a relative sense of unity seems to have been restored within the group. Although the Philippines chose to submit a legal claim to ITLOS in January 2013, Sino-ASEAN talks towards a code of conduct continue. Despite the military show of force, the occasional verbal exuberance and the continually reiterated position that China will only negotiate bilaterally, yet it is easy to see how Beijing has already and it will foreseeable continue to accept a certain degree of multilateral negotiations. Beijing’s diplomatic strategy has been arguably affected by the inter-
nationalization of the SCS issue brought by Obama’s “Asia Pivot,” but also by ASEAN continuous efforts of forging intramural unity. On top of this, China, by relatively moderating its assertiveness and indicating that it is willing to move forward with the COC, has deflated the force behind the Philippines’ unilateral ITLOS submission.

2013 can be a rather constructive year because the ASEAN’s Chair, Brunei, is a claimant state which has given the SCS priority on the ASEAN agenda. Nevertheless, ASEAN will have to move swiftly if it hopes to make serious advancements on the COC, because already in 2014 the chair goes to Myanmar, which cherishes its good relations with Beijing, is not a claimant, and thus will not be particularly concerned with the SCS. In such a diplomatic maze making a prediction is hazardous, but it is possible to envision that no formal COC will be in place before 2017 or 2020, when Manila and Hanoi respectively hold the ASEAN chair.

Even if a binding code of conduct will not be possible for the time being, the key to end the impasse appears to lie on negotiations, dialogue and a collaborative diplomatic process. A solution is still elusive, but avenues of diplomacy are still open, and efforts to craft a code for all parties involved are indispensable to ensure that rows don’t escalate into armed conflict. As a large, diverse and democratic country—and not being a claimant in the disputes —Indonesia can play a key role in this process by mediating diverging positions, forging unity within ASEAN and leading the region towards a peaceful resolution of the SCS quandary, a progress which may elevate ASEAN among Twenty-First Century’s global powers. If efforts such as the Indonesian one are doomed to fail, then a disunited ASEAN risks to encourage some members, most notably the Philippines, to turn to external powers such as the United States for their own security. Such a development would frustrate the trajectory ASEAN has undertook since its foundation in 1967 by failing a number of its main purposes, including peace in the region and autonomy from external power intervention.
ASEAN and the South China Sea disputes

Notes

1 The author desires to express his gratitude to Associate Professor Dr. Withaya Sucharitthanarugse and Prof. Le Thanh Lam for their suggestions, support and patience. The Author can be contacted at: fratticcio1@gmail.com.

2 The total area of the SCS, minor gulfs included, is roughly equal to the land area of India, one third the territory of China, seven times that of Thailand, and ten times that of Vietnam.

3 The SCS’s geographical importance can be easily grasped by looking at a map of Asia, a massive continent with the Pacific Ocean on the east and the Indian Ocean on the south. Southeast Asia is a sub-region located in between the solid bulks of China and the Indian subcontinent. Among the two giants and the two oceans, Southeast Asia appears as an uneven region, partly mainland and peninsular, partly archipelagic. Coasts are ragged, the Malay Peninsula is a link between the mainland and a scattered archipelago. The SCS is the largest space in the region, it’s central and it connects each country with the others, as well as with more distant lands.

4 Located just in the middle of the SCS, Itu Aba is the largest geographical feature of the Spratlys: 1,400 meters long and 400 meters wide.

5 SLOCs are defined as the most important maritime routes between ports used for commercial, logistic and military purposes. States and blocs of states have an interest in ensuring that SLOCs are open in times of peace, and closed or controlled in times of war (Klein, 2007: 67–69).

6 According to a Chinese academic, Dr. Ji Guoxing (2000: 1), factors affecting SLOCs’ security include: “the unstable political relationship among regional countries; different interpretation over the freedom of the seas principle; islands’ sovereignty disputes and overlapping maritime jurisdictional claims; the emerging naval build-up; and non-traditional threats such as pollution, piracy, drug-trafficking, etc.”

7 Geopolitics is a theory or conceptual framework within the study of international relations which stresses territory and geography in understanding, explaining, and predicting the international political behavior of states, i.e., their foreign policies and international relations.

8 The SCS provides the habitat and spawning grounds for the world’s most valuable fisheries of shrimp and tuna, as well as many other different species of fish, including lobster, stopped groupers, mackerel, and perch. People from the southern coast of mainland China and from other surrounding coasts have fished here since ancient times.

9 For this part of humanity, fisheries are significant as an economical form of protein.
"A large portion of the coastal workforce is dependent on the marine environment through employment in fishing, marine transportation, offshore exploration and extraction of hydrocarbon and other natural resources, recreation and tourism" (Rosenberg 2010).

In year 2010 alone, its oil imports grew 17.5 percent compared to the year before (Zou Le, 2011).

"Resources claimed that the South China Sea would become one of China's ten major oil and gas sites: the oil reserves were estimated at 23–30 billion tons or 168–220 billion barrels" (Buszynski and Sazlan, 2007: 156).

The Global Times is the international edition of the official Chinese Communist Party newspaper, the People's Daily.

The state-owned China National Offshore Oil Corporation (CNOOC) was scheduled to invest $30 billion in deep water oil drilling in the SCS in keeping with the targets of the 12th Five Year Plan (2011-2016), the article stated (ibid).

Only at the end of the article, under the subtitle “fierce challenges,” the author states that China faces two obstacles. The first is technological, as Chinese oil companies are “still outdated when it comes to deep-water gas and oil exploration,” while the other problem is of a different sort: “some surrounding countries, including Vietnam, Philippines, Malaysia and Brunei, also have claims to the areas,” and these claims “will complicate the issue and therefore hinder China from exploiting the areas” (Zou Le, 2011).


In international relations, a balance of power exists when there is an approximate parity or stability between competing forces, i.e. competing states or blocs of states. More precisely, the theory of balance of power proposes that the main objective of states is their security and therefore their own survival and prosperity. Consequently, by trying to avoid the dominance of one particular state, states will seek alliances with other states until some sort of equilibrium is reached. The theory of balance of power is traditionally linked to the realist or neo-realist School, which tends to be particularly concerned with power relationships among states.

"In 2006, the US Department of Defense assessed that the PLAN [People's Liberation Army Navy] possessed around 75 major surface combatants, 55 attack submarine, and 50 amphibious craft" (Emmers, 2010: 81). In addition, the recent construction of an underground nuclear submarine base in Hainan Island adds a dose of fear in the Southeast Asian capitals (Harding, 2008).

Of course, other interplays are perfectly possible too. A scientific survey may state that oil and gas fields under the seabed of disputed water are
actually not as high as previously expected, and this information may downsize nationalist rhetoric, blur territorial claims, slow down naval build-ups and arm races, and favor cooperation. In the case of the power factor, a shift in the balance of power in the direction of rival countries can force a state to downsize its claims or, in the contrary, nationalism and energetic thirst may drive a process of rearming which may mutate the regional balance of power.

20 The question seemed to be: who will fill “the power vacuum” left by the Russians and Americans? See Leifer, 1991.


22 With the end of the Cold War and the disintegration of USSR, China was relieved from the threat of “Soviet imperialism,” and partially relieved from the presence in the region of the Americans. On the other hand, the demise of the Soviet threat, which since the early 1970s had encouraged a sort of alignment between Beijing and Washington, caused also a growing Sino-Japanese rivalry, which did not impede expanding Sino-Japanese economic interdependence and social interactions.

23 China and other claimants sent troops to occupy the SCS islets and reefs in order to explore the possibility of drilling for oil. This was conducted in secret, making it difficult to arrange collaboration.

24 In 1992 Vietnam, Laos, Cambodia and Myanmar were not yet ASEAN members.

25 The incident happened in early 1995, when the Philippine authorities realized that Chinese troops had occupied a reef 130 miles from the coast of the Philippines and 690 from Hainan Island, China. The Chinese had built structures on Mischief Reef while the Philippine navy was not patrolling the area due to the monsoon season.


27 As written by the British scholar in 1995 while discussing maritime disputes: “[ASEAN] has no power to deploy because it is neither a defense community nor a party to a countervailing structure of alignments” (Leifer, 1995: 141, cited in Emmers, 2010: 98).

28 After years of negotiations, China and ASEAN signed the DOC on the sidelines of the 8th ASEAN Summit in Phnom Penh, Cambodia on November 4, 2002.

29 “... the need to promote a peaceful, friendly and harmonious environment ... for the enhancement of peace, stability, economic growth
and prosperity in the region” (ASEAN, 2002).

30 Furthermore, China and ASEAN signed three additional agreements: the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China, the Memorandum of Understanding on Agricultural Cooperation, and the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues.

31 Mrs. Clinton (2010) said: “The United States, like every nation, has a national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea. We share these interests not only with ASEAN members or ASEAN Regional Forum participants, but with other maritime nations and the broader international community” (italics added).


34 When ASEAN foreign ministers met in Bali in July 2011, they deputed senior officials—with the assistance of maritime legal experts—to study Manila’s proposal. In a meeting in September, ASEAN maritime legal experts agreed to consider the ZoPFF/C a useful tool in the implementation of the 2002 DOC. Manila’s proposal contains a very methodical ten-step path. First, “not the whole” of the SCS is disputed. Second, “the area of dispute ... is specific, determinable and measurable.” Third, it “can be determined and measured by clarifying the nature of, and the distinction between ‘territorial disputes’ and ‘maritime claims’.” Fourth, the nature and distinction “can be clarified by: first, recognizing the distinction between geological features ... and waters (including continental shelf); and second, by applying the” UNCLOS rules. Fifth, “dispute on the water is ... caused by the dispute on the features.” Sixth, “however, the extent of adjacent waters projected from the island is ... measurable under UNCLOS (i.e. Article 121. Regime of Islands).” Seventh, “once the extent of adjacent waters is determined and measured ... then the extent of dispute ... can already be determined.” Eighth, once the extent of both waters and features is determined, they can be “segregated from the rest of non-disputed waters.” Ninth, segregation can be done by “enclaving the said disputed area.” This “will pave the way for ...
cooperation among the claimant countries.” Tenth, in the enclave, claimant countries will jointly cooperate, while outside the enclave single states will enjoy sovereign rights as disposed by UNCLOS (Banlaoi, 2012).

35 Ibid.
36 Ibid.
37 Article 121.3 of UNCLOS states: “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” (UN, 1982).
38 The feature has a water area of about 150 square kilometers and is marked by five rocks, the tallest of which projects 3 meters above water at high tide.

References


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