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Roundtable: The South China Sea and U.S.-China-ASEAN Relations  
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### **ASEAN and the South China Sea**

Over the years, the issue of territorial disputes in the South China Sea has evolved into a source of tension as well as opportunity for the Association of Southeast Asian Nations (ASEAN). In a grouping traditionally wedded to norms of non-interference and the strict observance of sovereignty, a territorial dispute pitting only four or five (depending on who is counting) of the 10 member-states against their largest trading partner, China, pushes the boundaries of ASEAN's agenda.

The grouping has vacillated over the last decade and a half between attempts at a united front, as in the negotiations leading to the 2002 Declaration on Conduct of Parties in the South China Sea (DOC), and a marked willingness to break ranks, as seen in more the lukewarm support for fellow member-states exhibited lately by Cambodia, Laos, and Burma. Whether the tendencies of members to come together in solidarity or pull apart for self-preservation prove dominant on the South China Sea will provide a crucial litmus test for ASEAN's ability to create a more integrated and effective regional architecture. To understand the view from the ASEAN Secretariat, however, it is first necessary to understand the perspectives of the individual member-states.

#### **Vietnam**

Vietnam has been at the center of the South China Sea disputes for longer, and with greater intensity, than the other ASEAN claimants. The earliest flashpoint for Vietnam came not in the Spratlys, which dominates the current dialogue, but in the Paracel Islands. Like the rest of the disputed features in the South China Sea, issues of history, geography, and occupation are complicated and seemingly unresolvable. Both China and Vietnam claim the Paracels based on historical documents and a long tradition of use, mostly by fishermen.

The real history of the dispute dates to the period of French colonization. The French claimed and occupied the islands as part of colonial Vietnam in the 1930s, but they were driven from the eastern half of the archipelago by Chinese forces following the Communist victory in 1949. At least three separate international treaties touching on the Paracels were signed during the 1950s, but with contradictory results as to who controlled the chain. The issue was finally decided by force when Chinese troops overran South Vietnamese forces and took control of the western Paracels in 1974.

This resolution by force in the Paracels has made China's claim a *fait accompli* to everyone but Vietnam. Given that China has maintained uncontested control of the islands for nearly four decades and maintains a sizeable naval presence on them, there is no chance that control will be returned to Vietnam, and this fact is not lost on Hanoi. There seems to be a sense in Vietnam that if the issue of the Paracel Islands is dropped, then the Vietnamese position on other features of the South China Sea, particularly the Spratlys, will be weakened while China's will be

strengthened. Vietnamese leaders are likely also concerned that if they recognize China's de-facto control, it will set a pattern of equating occupation and use with legal control, which would negate Vietnam's current claim to the entirety of the Spratly chain.

While Vietnam has shown little willingness to compromise on the issue of sovereignty over the Paracels and Spratlys, its claims to territorial waters and its exclusive economic zone (EEZ) have shown greater flexibility in recent years. For most of the modern history of the dispute, Vietnam claimed that its line of control extended to the east of the Spratlys and Paracels, making the majority of the South China Sea its territorial waters. Though not quite as extensive as China's "9 dashed lines," the rationale of this claim was much the same. While maps showing this claim are still used on occasion, the government of Vietnam has just as often put forth maps and material in recent years laying claim only to territorial waters 12 nautical miles and an EEZ 200 nautical miles from the Vietnamese mainland.

This EEZ claim was also explicitly made as part of Vietnam's 2009 submission to the UN Commission on the Limits of the Continental Shelf (CLCS), bringing its claims in line with the UN Convention on the Law of the Seas (UNCLOS), which all the ASEAN claimants have asserted as the basis of any resolution to disputes. In line with this more moderate, and more legally defensible, claim, Vietnam has joined the other ASEAN claimants in recognizing that the Spratlys are islets and atolls, not habitable islands. Unlike the Chinese claim, the Vietnamese claim does not demand that the Spratlys generate their own territorial waters and EEZ. Tellingly, the Vietnamese have maintained this position even in reference to Taiwan-controlled Taiping, or Itu Aba, Island, which it also claims. This has made it easier for Vietnam to seek cooperation with its fellow claimants, as control of individual features in the chain does not threaten others' maritime claims.

Vietnam's desire to bring its claim in line with UNCLOS has been driven by two factors – the realization that it cannot defend its claims against Chinese encroachment by itself and the desire to step up exploitation of offshore resources. The first realization likely dawned on Hanoi in the late 1980s-1990s with the Chinese occupations of Johnson South Reef and Mischief Reef, but has crystallized after repeated incidents in late-2010 and 2011. The second derives from Vietnam's ongoing shift from net energy exporter to importer. With domestic consumption rapidly outpacing production, Hanoi is desperate to tap potential off-shore hydrocarbons.

State-owned PetroVietnam has limited capacity for deep-water drilling and partnerships with foreign oil companies are needed to explore and exploit hydrocarbons in the South China Sea. However, ExxonMobil, ConocoPhillips, and other major oil and gas companies are unlikely to risk China's ire through cooperative exploration and drilling with Vietnam unless they are confident that their contracts are secure. This is only possible if Vietnam can fall back on UNCLOS to defend its EEZ. With recent revelations that ExxonMobil has found natural gas deposits in one of the off-shore blocks it leases from Vietnam, the centrality of oil and gas in Vietnam's South China Sea calculations is sure to rise.

## **Philippines**

The Philippines has much the same stake, and much the same motivations, in the South China Sea dispute as does Vietnam. The Philippines claims the majority of the Spratly Islands, based

upon a dubious “discovery” and occupation during the 1950s. Since the 1970s, the claim has been referred to as the Kalayaan Islands and declared part of Palawan province. Despite a claim of indisputable sovereignty nearly as extensive as Vietnam’s, the Philippines occupies only eight features in the Spratlys, as opposed to Vietnam’s 29.

Like Vietnam, the Philippines has remained unapologetic about its claims to the Spratlys themselves while relaxing its position on maritime control. Claims made by the Philippines still usually show its EEZ extending out to encompass the area of the Spratlys claimed as Kalayaan, which was not clarified by the Philippines’ 2009 submission to the CLCS. However, the government has maintained that the South China Sea dispute should be resolved according to UNCLOS. Manila has left the question of whether its Spratly claim is capable of generating an EEZ of its own as habitable islands, and has not ruled out a standard EEZ extending 200 nautical miles from its coast.

The Philippines has joined Vietnam in recent years in recognizing that it cannot hold the line against China without a multilateral effort involving all the ASEAN claimants. President Aquino in particular has proven willing to set aside the long-term issue of control over the Spratlys for the sake of finding an acceptable solution to maritime claims based on UNCLOS. Also like Hanoi, Manila has proven desperate to begin tapping potential hydrocarbons off-shore. With the highest electricity prices in the region, the Philippines is in need of affordable domestic energy production, and that has driven it to seek a resolution, at least among the ASEAN claimants, in order to attract foreign oil companies.

### **Malaysia/Brunei**

The other two ASEAN claimants in the Spratlys, Malaysia and Brunei, are less invested than their counterparts in the territorial disputes. Neither has made a historical claim comparable to Vietnam’s, nor do either enjoy the Philippines’ proximity to the Spratlys. Instead, the limited Malaysian and Bruneian claims to the Spratlys result from a handful of islets lying within their claimed extended continental shelf, and thereby affecting the EEZ that each is entitled to under UNCLOS. Malaysia claims 11 features but occupies only three of the southernmost Spratlys, and Brunei occupies none while maintaining an ambiguous claim to two features. They have, however, clung to their claims doggedly despite their apparent weakness.

Their motivation rests almost entirely on their determination to maintain access to offshore resources. Both are leagues ahead of Vietnam and the Philippines in exploiting offshore oil and natural gas, and Brunei in particular is reliant on offshore hydrocarbon reserves to drive its economy. Both Malaysia and Brunei fear that ceding their modest claims in the Spratlys to China or the other claimants, and thereby diminishing their EEZ, will only invite further encroachment. Given that a substantial portion of both their EEZs lies within China’s claimed “9 dashed lines,” these fears are not as unreasonable as they might appear.

Nevertheless, the stakes for Malaysia and Brunei are not as high as for their ASEAN counterparts, and the legal-rational basis for their claims is seemingly more secure. This has allowed the two to cooperate more robustly than the other claimants. The two delimited their respective EEZs in the South China Sea in a bilateral exchange of letters in 2009, and Malaysia submitted a joint statement with Vietnam to the CLCS recognizing their respective EEZs and

establishing their continental shelf claims. In a telling sign of flexibility, Brunei's CLCS submission laid claim to the extended continental shelf on which it bases its Spratlys claim, but noted that it was open to resolving any resulting overlap with other claimants via future negotiations.

## ASEAN

The perceived increase in Chinese aggressive behavior of late has convinced each of the four ASEAN claimants that they cannot protect their interests in the South China Sea without greater cooperation. This recognition of the need for greater cooperation first appeared in the 1990s and eventually resulted in the 2002 DOC between the 10 ASEAN member-states and China. Implementation of the DOC was allowed to languish for years, as China and the other claimants argued over the bilateral or multilateral nature of the document. Much of the blame for the lack of progress since the signing of the DOC can be laid at the feet of ASEAN's non-claimants. With the temporary reduction of tensions following the DOC and the increasing economic and political linkages between China and its neighbors, those ASEAN states not directly affected by the Spratlys dispute were content to kick the issue down the road.

That situation began to change substantially in May 2009, when China submitted its "9 dashed lines" claim to the CLCS as part of its Notes Verbale in response to the joint Malaysia-Vietnam submission. This was the first time China had officially made the claim, although the map had been put forth unofficially on many occasions. The perceived threat of Chinese territorial control over the vast majority of the South China Sea roused consternation and unease in even the non-claimant ASEAN member-states. Indonesia, which is not a claimant but found that the "9 dashed lines" overlapped with some of its previously-claimed extended continental shelf, submitted its own Notes Verbale in protest.

With China's submission of the "9 dashed lines" and the flurry of incidents between China, Vietnam, and the Philippines in the past year or so, most of ASEAN has been roused to action on the South China Sea. Indonesia and Singapore in particular, as non-claimants who nonetheless rely on freedom of navigation in the South China Sea for trade, fishing, and energy exploration have grown increasingly concerned by perceived Chinese belligerence. As a result, they have been more willing than in years past to see the South China Sea issue raised in ASEAN meetings, the ASEAN Regional Forum (ARF), and almost certainly in the upcoming East Asia Summit.

With Vietnam as the grouping's chair in 2010, the South China Sea issue was raised prominently at the ARF and other forums for the first time. That attention has continued during Indonesia's chairmanship this year. The issue was raised again at the Shangri-La Dialogue in Singapore in June, the ARF in Bali in July, an ad hoc maritime legal experts meeting in Manila in September, and at countless track-two ASEAN meetings throughout the year. The result, though far short of what outside observers would like, was the signing of new guidelines between China and ASEAN to implement the DOC in July. Whether these guidelines will actually be observed is uncertain. What is more important than the actual agreement is what it indicates about the new centrality of the South China Sea issue for ASEAN.