

# **The China-Philippines Face Off at Scarborough Shoal: Back to Square One?**

Written by Carlyle Thayer

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CARLYLE THAYER, APR 26 2012

The current standoff at Scarborough Shoal in the South China Sea between the Philippines and China will severely test the ability of the Association of Southeast Asian Nations (ASEAN) to maintain its central role in securing Southeast Asia's autonomy from external power intervention. A weak and divided ASEAN will only encourage China to press its sovereignty claims more assertively. Regional states are likely to encourage U.S. intervention to counter-balance China.

Regional tensions have come full circle over the past year. The first half of 2011 was marked by major incidents. Tensions abated in mid-year when diplomacy took center-stage. A dispute over fishing jurisdiction in April 2012 threatens to undermine diplomatic initiatives and raise regional tensions to new heights.

### **Declaration on Conduct of Parties in the South China Sea**

During the first half of 2011 tensions in Southeast Asia reached new levels as China moved to exert its jurisdiction over disputed waters in the South China Sea (Thayer 2011a). Chinese civilian ships were involved in three major incidents in which they interfered with the commercial activities of oil exploration vessels operating in the Exclusive Economic Zones of the Philippines and Vietnam. China justified its actions by claiming "indisputable sovereignty" over these waters on the basis of historic rights.

In July 2011 developments took an unexpected turn when China and ASEAN member states adopted Guidelines for the Implementation of the Declaration on Conduct of Parties (ASEAN Secretariat 2011). The Declaration on Conduct of Parties in the South China Sea was drawn up in 2002 (ASEAN Secretariat 2002) but no progress was made on implementing any of its provisions. A joint China-ASEAN working group was formed in 2004 (ASEAN 2004a and 2004b) and it spent the next seven years discussing twenty-one successive drafts of guidelines to implement the DOC.

The 2011 DOC Guidelines contained only two changes from the original draft (Thayer 2011b: 15). The most significant change was ASEAN's concession to drop its insistence on prior consultations among its members before meeting with China. This was altered to "the Parties to the DOC will continue to promote dialogue and consultations..." The second change involved adding a requirement to present a status report on the implementation of the DOC to the annual ASEAN-China Ministerial Meeting.

ASEAN dropped its insistence on prior consultations for two reasons (Thayer 2012:5). First, several members were concerned over the spill over of Sino-American strategic rivalry into Southeast Asian affairs and the prospect that they would have to choose sides. Second, the ASEAN Charter included a provision for ASEAN members to consult on important issues. In other words, there was no impediment to ASEAN members meeting as a group to confer on South China Sea issues before meeting with China.

China accepted ASEAN's concession because it was concerned to overcome a regional and international backlash caused by its assertive actions. By reviving the moribund ASEAN-China Joint Working group and agreeing to the

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DOC Guidelines, China sought to reassure Southeast Asian states of its peaceful intentions. China also sought to undercut further diplomatic intervention by the United States (Thayer 2012: 4-5).

From the adoption of the DOC Guidelines until the incident at Scarborough Shoal on April 10, 2012 there were no major incidents in the South China Sea of the type that occurred in the first half of 2011 (Thayer 2012:7).

## **A Code of Conduct**

Tensions in the South China Sea seemed to have abated with diplomacy taking center stage. For example, ASEAN and Chinese senior officials met in Beijing from January 13-15, 2012 and agreed set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime (Maulia 2012 and Xinhua 2012). These committees were derived from the five cooperative activities listed in the 2002 DOC. Significantly, no expert committee on safety of navigation and communication at sea was established due to its contentious nature.

The agreement on DOC Guidelines led to the revival of a long-standing proposal by the Philippines, dating to 2000, for a Code of Conduct (COC) in the South China Sea. In 2011, ASEAN senior officials began to draft the COC with the intention of reaching a common ASEAN position before presenting it to China for discussion (Antara 2012 and Pathoni 2012).

China took the position that the implementation of the DOC Guidelines should be given priority, and that China and ASEAN could discuss the COC at an “appropriate timing” or when “appropriate conditions” were met (Adamrah 2011). In an effort to influence ASEAN deliberations, China’s President Hu Jintao made an official visit to Cambodia on the very eve of the 20<sup>th</sup> ASEAN Summit scheduled for April 3-4. He reportedly told Prime Minister Hun Sen that China did not want talks on a binding code of conduct to move too quickly (Reuters 2012a). He also suggested that ASEAN and China appoint a ten-member group of experts and eminent statesmen that would help propose solutions (Gomez 2012a).

When the ASEAN Summit convened, it quickly became apparent that its members were divided on a number of policy issues related to the South China Sea. The most contentious issue was a proposal to include China in discussions on the draft COC (Abbugao 2012). The Philippines and Vietnam objected and, in the end, a compromise was reached. According to Indonesia’s Foreign Minister Marty Natalegawa, “first and foremost, [ASEAN] must have a solid consolidated position. But at the same time as we proceed, there will be constant communication through the ASEAN-China framework, so that whatever final position ASEAN comes up with will have benefited from having some kind of communication with China (Loy 2012).”

ASEAN members were also divided on two proposals tabled by the Philippines. The first concerned identifying and segregating areas in dispute from areas that were not in dispute. Only areas in dispute would come under the DOC Guidelines. The second proposal was for the inclusion of an enforcement mechanism based on provisions in the United Nations Convention on Law of the Sea (or UNCLOS (Reuters 2012b).

## **Issues Raised by the Standoff at Scarborough Shoal**

On April 10, six days after the ASEAN Summit, China and the Philippines became involved in a standoff at Scarborough Shoal when a Philippine navy frigate investigated the sighting of eight Chinese fishing boats in the lagoon (Gomez 2012b). An armed boarding party discovered that one of the boats contained large amounts of giant clams, live sharks and coral that were allegedly harvested in the Philippines’ Exclusive Economic Zone (EEZ).

Two unarmed civilian China Marine Surveillance (CMS) vessels intervened to prevent the frigate from detaining the Chinese fishermen. The Philippines withdrew the frigate and replaced it with a Coast Guard Cutter. China reinforced its presence with an armed Fishery Law Enforcement Command (FLEC) ship. During the continuing standoff, the Chinese fishing boats slipped away with their catch. Subsequently, China withdrew two of its ships, leaving one to confront the Coast Guard cutter (Yap 2012).

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The Scarborough Shoal standoff raises a number of legal, diplomatic, political and strategic issues that must be resolved – not only by China and the Philippines, but by ASEAN itself.

China and the Philippines contest sovereignty over the rocks comprising Scarborough Shoal (for background see Beckman 2012). Under UNCLOS these rocks are entitled to a twelve nautical mile territorial sea. China bases its claims on historic rights. The Philippines bases its claims on continual administration and intermittent occupation of the rocks.

This matter can only be resolved through bilateral negotiations or, if both parties are willing, arbitration by an international court or tribunal. The Philippines further claims that the waters surrounding Scarborough Shoal lie within its 200 nautical mile EEZ giving the Philippines sovereign rights over the resources in these waters. China rejects recourse to arbitration and the Philippines refuses to enter into bilateral negotiations.

Philippines Foreign Affairs Secretary Albert del Rosario appealed to ASEAN members and the international community for support, while a spokesperson for the Department said the Philippines should call for an emergency ASEAN meeting (Agence France-Presse 2012 and Esplandsa 2012). The most the Philippines can hope to obtain is a general statement encouraging both parties to settle the matter without the use or threat of force. This was ASEAN's response in 1995 after China occupied Mischief Reef (ASEAN 1995).

ASEAN is too divided to take a more proactive role. Only four of its ten members are claimant states – the Philippines, Vietnam, Malaysia and Brunei. Cambodia and Thailand have been strong advocates of a “softly, softly” diplomatic approach to China on this issue.

China's actions at Scarborough Shoal raise serious questions about the efficacy of ASEAN's single-minded diplomatic approach of relying on the DOC Guidelines to restrain China from acting unilaterally pending a resolution of sovereignty disputes. An ASEAN-China COC without an enforcement mechanism would fare no better.

The crux of the matter is China's ambit claim to all the islands, rocks and “adjacent waters” contained within its nine-dash line map of the South China Sea. China is in effect claiming sovereignty not only over the islands and rocks that it occupies, but also over the islands and rocks occupied by the Philippines, Vietnam and Malaysia as well as all other unoccupied rocks.

There would appear to be no basis for settlement of sovereignty disputes and disputes over sovereign rights in the South China Sea under international law until China abandons its assertion of historic rights, and bases its claim under current international law, including UNCLOS.

The current status quo is untenable. China is rapidly building up its civilian enforcement capacity by producing more ships and recruiting more personnel to crew these ships (International Crisis Group 2012: 41). Both the Philippines and Vietnam are building up their civilian enforcement capacities, albeit from a much lower base. If present trends continue, China will be able to assert mastery over the South China Sea with its expanding force of civilian paramilitary vessels.

## **ASEAN Centrality Under Challenge**

The standoff at Scarborough Shoal directly challenges ASEAN's oft-repeated assertion of its centrality in maintaining Southeast Asia's autonomy in its dealings with external powers (Thayer 2010: 22-30). If ASEAN cannot form a united front and convince China to act with greater restraint, it runs the risks of undermining its own cohesion. A weakened ASEAN will only encourage the Philippines, and other states, to turn to the United States for their security. These developments carry the danger of taking Southeast Asia “back to square one” of the 1960s, when it was the cockpit of great power contention.

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