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## CHAPTER 7

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# ASEAN and Recent Tensions in the South China Sea

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### **Abstract**

This chapter examines how ASEAN as a regional organization has responded to recent South China Sea disputes and maritime incidents amidst the emerging geostrategic competition between the U.S. and mainland China. It first traces the key drivers contributing to the heightened tensions, including the claimant states' legal maneuvers (domestic laws and UN Convention on the Law of Seas), the U.S. "Pivot" (or Rebalancing) Policy, and the claimants' increasing unilateral measures to create "facts on the ground." It then reviews ASEAN's successes and failures in forging institutional responses to mainland China's increasingly assertive moves by discussing its various mechanisms, such as ARF, ADMM Plus, Declaration of Conduct, and

endeavors to sign a binding Code of Conduct in the South China Sea. Although ASEAN as a collective body cannot itself be a party in territorial disputes and its various members may have variegated interests in the South China Sea conditioned by their individual relationships with mainland China, they all share common interest in maintaining regional peace and stability, as well as the solidarity and centrality of ASEAN on key regional issues. Thus, ASEAN's attempts to engage mainland China on the South China Sea via the development of COC are intertwined with ASEAN's own cohesion.

**Keywords:** ASEAN, South China Sea, Mainland China, DOC, COC

## **I. Introduction**

In recent years, tensions in the South China Sea have expanded beyond territorial disputes among claimants to include potential military conflicts and maritime security alerts to all of the stakeholders that use the waters. Issues of concern include military competition over the control of sea lanes, jurisdictional disputes over undefined or overlapping maritime boundaries, and threats to maritime safety and freedom of navigation. The situation has been exacerbated in recent years by multiple actors. A rising China has begun to behave more assertively and forcefully to claim and safeguard its perceived sovereign rights and territorial integrity in the region by declaring the South China Sea to be part of its "core interests," which are non-negotiable and that mainland China would use force to defend. The United States has begun to "push back" against mainland China's assertiveness (for example, former Secretary of State Hillary Clinton pointedly declared in the 2010 ASEAN Regional Forum (ARF) meeting in Hanoi that

the U.S. also had national interests in the South China Sea, becoming the first U.S. official to do so in regional multilateral forums). Meanwhile, other claimants have also intensified their own tactics to shore up their respective claims or exercise their rights. In addition to legal contention over border delimitation, geostrategic competition between the U.S. and mainland China and an increasing number of incidents at sea, two new driving forces are added in the South China Sea tensions mix.

For decades, the Association of Southeast Asian Nations (ASEAN), as a regional security organization, has tried to play a role in promoting peace and stability in the South China Sea. In 1992, ASEAN member states passed the ASEAN Declaration on the South China Sea<sup>1</sup> as a response (call for exercise of restraint) to mainland China's passage of the *Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China*. In 2002, ASEAN member states and mainland China signed the *Declaration on the Conduct of Parties in the South China Sea* (DOC) to explore cooperation as a means of preventing conflict.<sup>2</sup> Nevertheless, the non-binding nature of these two declarations and ASEAN's commitment to institutional informality

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1. Association of Southeast Asian Nations, "ASEAN Declaration on the South China Sea," July 22, 1992, adopted by the Foreign Ministers at the 25<sup>th</sup> ASEAN Ministerial Meeting in Manila, Philippines.

2. Association of Southeast Asian Nations, "Declaration on Conduct of Parties in the South China Sea," November 4, 2002, adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8<sup>th</sup> ASEAN Summit in Phnom Penh, Cambodia, <<http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>>.

have weakened both ASEAN's capacity to consolidate common positions among member states and ASEAN's credibility in dealing with mainland China collectively. The declared goal of ASEAN unity in the ASEAN Charter, which was adopted in November 2007 and went into effect in December 2008, gave the semblance that ASEAN might be able to act as a collective actor amidst the new dynamics of tension and opened a window for improving the situation. The objective of this paper is to review how ASEAN, as a regional organization, has responded to the recent South China Sea complexities driven by the geostrategic competition between the U.S. and mainland China and increased maritime incidents.

## **II. Dynamics of Tensions**

In March 2009, several developments combined to elevate tensions in the South China Sea. First, President Gloria Arroyo of the Philippines signed Republic Act No. 9522 (the Archipelagic Baselines Act), which incorporated the disputed Spratly Islands and Scarborough Shoal into the territorial sea of the Philippines. Second, mainland China justified the dispatch of Yucheng 311, a paramilitary fishery patrol ship, to safeguard its sovereignty and marine rights in the South China Sea. Third, the Impeccable incident near Hainan reinforced friction between the U.S. and mainland China over jurisdictional principles and policies over the exclusive economic zone (EEZ).

In May 2009, further fueling the tension were mainland China's responses to the Malaysia-Vietnam joint submission and Vietnam's individual submission to the Commission on the Limits of the Continental Shelf (CLCS). In notifications to the Secretary-General of the UN to protest Malaysia's and Vietnam's submissions, mainland China attached

a nine-dashed line map,<sup>3</sup> covering almost 80% of the South China Sea<sup>4</sup> and overlapping the exclusive economic zones of coastal countries. The map not only caused neighboring states great concern but also revealed mainland China's territorial claims. Since then, mainland China has been under international pressure to clarify its nine-dashed line map. Although the United States does not take sides on the competing territorial disputes over land features in the South China Sea, it urges claimants to pursue their territorial claims and accompanying rights to maritime space in accordance with *the UN Convention on the Law of Sea* (UNCLOS). As a signatory of UNCLOS, mainland China's reaction to international pressure, especially from the U.S., would have implications for its world image as a rising power that respects rule-based international order.

In addition to the legal contentions, the reaction of regional actors (both states and regional organizations) to Hillary Clinton's remarks in the 17<sup>th</sup> ASEAN Regional Forum Ministerial Meeting on July 23,

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3. People's Republic of China, "Letter to Secretary-General of the United Nations," Doc. CML/17/2009, May 7, 2009; People's Republic of China, "Letter to Secretary-General of the United Nations," Doc. CML/18/2009, May 7, 2009.

4. The estimation has been mentioned by numerous authors, for instance, Sigfrido Burgos Cáceres, *China's Strategic Interests in the South China Sea: Power and Resources* (London: Routledge 2013), p.112. Officially, however, mainland China reiterates that China is not claiming sovereignty over all the South China Sea. See Robert Beckman, "The China-Philippines Dispute in the South China Sea: Does Beijing Have Legitimate Claim?" <<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/12/ProfBeckman-RSIS-China-PhilippinesDisputeinSCS-7Mar2012.pdf>>.

2010 added a new force in recent dynamics. In her remarks, Clinton reiterated that the U.S. 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; supports a collaborative diplomatic process by all claimants for resolving territorial dispute without coercion; and opposes the use or threat of force by any claimant.<sup>5</sup> Suggesting multilateral approaches to dispute settlement in the South China Sea appears to challenge mainland China's position on negotiating territorial disputes bilaterally with the parties directly involved. Thus, mainland China responded with military actions and diplomatic condemnation. Despite mainland China's loud protest, however, most ARF member states welcomed Clinton's remarks.

Subsequent developments have thrust ASEAN into the limelight. First, military and diplomatic contests between the U.S. and mainland China over the South China Sea have become part of their respective overall strategies in the region. Such geo-strategic competition provides ASEAN member claimants with opportunities to engage with the U.S. and other U.S. allies in order to counterbalance Chinese assertiveness. Second, encouraged by the U.S. active participation in regional multilateral institutions, which is one of the pillars in Obama's rebalancing strategy,<sup>6</sup> members of ASEAN and ASEAN-extended

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5. Hillary Clinton, "Remarks at Press Availability," *U.S. Department of State*, July 23, 2010, <<http://www.state.gov/secretary/20092013clinton/rm/2010/07/145095.htm>>.

6. Hillary Clinton, "Remarks on Regional Architecture in Asia: Principles and Priorities," *U.S. Department of State*, January 12, 2010, <<http://m.state.gov/md135090.htm>>; Hillary Clinton, "America's Pacific Century," *Foreign*

regional mechanisms (such as ARF, ASEAN Defense Ministerial Meeting Plus, and East Asia Summit) have started to express their concerns about regional security ramifications and offer suggestions of tension management in the South China Sea.

Another developing trend that has contributed to recent tension is the adoption of more aggressive tactics for exercising sovereign rights by all the claimants. In addition to traditional measures, such as military presence, visits of high ranking officials, and construction of small fixtures in the disputed areas, claimants increasingly have dispatched paramilitary patrol vessels to safeguard their interests in the disputed waters. Those paramilitary actions have been augmented by domestic legislation, law enforcement, and administrative measures. With national sentiments and economic interests at stake, the private sector (mainly fishermen and oil companies) is now also frequently involved in sea incidents. Claimants have increasingly resorted to unilateral measures to create “facts on the ground” and eschew diplomatic negotiations. Consequently, incidents at sea have increased.

The situation has been exacerbated as mainland China began to more assertively enforce what Beijing perceives to be its maritime rights. Since mainland China reorganized its maritime administration in 2013, its capacity and determination for stricter law enforcement against unwelcome intrusion into territorial waters has been strengthened. When other claimants respond to mainland China’s assertive moves by adopting reciprocal or retaliatory measures, the risk of maritime skirmishes and conflicts increase dramatically. The most recent incidents



involved friction between Vietnam and mainland China over mainland China's building a deep-water oil rig in an area near the Paracel Islands. The dramatic standoff between Vietnamese and Chinese flotillas and the sinking of Vietnamese fishing boats by the PRC government vessels in May 2014 were followed by violent anti-Chinese demonstrations that turned into riots. Increases in the frequency and severity of incidents at sea call for collective responses to maritime insecurity. Although ASEAN countries individually have varying relationships with mainland China, they all share a common desire for regional stability. Therefore, developing a regional code of conduct to foster a norm-based order is taking on added importance as a collective goal for ASEAN.

### III. Institutional Responses

What has ASEAN done in response to the new tense dynamics in the South China Sea? Although ASEAN has enjoyed (in fact, taken pride in) a long history of practicing the so-called "ASEAN way" of diplomacy in promoting regional peace and stability, it lacks experience in dispute settlement and conflict management. The designated function of the High Council in *Treaty of Amity and Cooperation*<sup>7</sup> has never been utilized. Rather, informal diplomatic consultation seems to continue to be a commonly accepted approach to facilitate dispute resolution.

When tensions in the South China Sea escalated in 2010, Vietnam was the ASEAN Chair. One of Vietnam's South China Sea policies was to internationalize the issues. Vietnam was able to leverage the

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7. The treaty was first signed by ASEAN members in 1976 and was amended in 1987 to open the document for accession by non-ASEAN states.

U.S. policy preference for addressing the South China Sea issues in multilateral forums and successfully place the South China Sea issues on the agenda of ASEAN and ASEAN-centered multilateral dialogue forums. U.S. Secretary of Defense Robert Gates reaffirmed Hilary Clinton's remarks at ARF in the first ASEAN Defense Ministerial Meeting Plus (ADMM Plus) held in Hanoi in October 2010,<sup>8</sup> even when there was no pre-arranged agenda for discussing the South China Sea issue. Although ASEAN was undertaking negotiations on a regional code of conduct with mainland China, it also included UNCLOS in all the outcome documents of ASEAN and ASEAN-extended meetings to adhere to universally recognized principles of international law as the basis for ensuring peaceful resolutions to disputes in the area.

When Indonesia took over the ASEAN Chairmanship in 2011, "ASEAN community in a global community of nations" became the major mandate in ASEAN meetings. To ensure ASEAN would be heard in the global community, ASEAN leaders reaffirmed the principles of ASEAN, on the basis of unity and solidarity, to coordinate and to endeavor to develop common positions in its dialogues with its dialogue partners. Naturally, Indonesia exerted its leadership to ensure ASEAN unity and collective commitment to promoting peace and stability in the South China Sea.

In 2012, Indonesia passed its chairmanship to Cambodia, which enjoys close ties with mainland China. However, in the 45<sup>th</sup> ASEAN Ministerial Meeting, Cambodia was not willing or able to uphold

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8. Robert Gates, "Remarks by at ASEAN Defense Ministers Meeting Plus," *U.S. Department of Defense*, October 12, 2010, <<http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4700>>.

ASEAN unity in addressing the escalating tensions between ASEAN member claimants and mainland China. The meeting ended without issuing a joint statement for the first time in ASEAN's 45-year history. This outcome dealt a blow to the long-held desire for ASEAN solidarity.

The situation was soon ameliorated after Indonesian Minister of Foreign Affairs Marty Natalegawa conducted shuttle diplomacy to reach "ASEAN's Six-Point Principles on the South China Sea,"<sup>9</sup> in which ministers reaffirmed commitment to the full implementation of the DOC, *Guidelines for the Implementation of the DOC*, early conclusion of a regional COC in the South China Sea, full respect for the universally recognized principles of UNCLOS, continued exercise of self-restraint and non-use of force by all parties, and peaceful resolution of disputes in accordance with the universally recognized principles of international law, including the 1982 UNCLOS. Later in November, ASEAN leaders and mainland China adopted the *Joint Statement of the 15<sup>th</sup> ASEAN-China Summit on the 10<sup>th</sup> Anniversary of the Declaration on the Conduct of Parties in the South China Sea* to commemorate the 10<sup>th</sup> anniversary of the agreement.

The Philippines protested the way Cambodia had handled the South China Sea issue and hinted that the ASEAN route would not be the only route for the Philippines. In the 2012 ASEAN-Japan Summit, President Benigno "Noynoy" Aquino III stressed that as a sovereign state, "it is our right to defend our national interests."

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9. Association of Southeast Asian Nations, "Statement of ASEAN Foreign Ministers on ASEAN's Six-Point Principles on the South China Sea," July 20, 2012. Text can be found at <<http://cogitasia.com/asean-foreign-ministers-release-statement-on-the-south-china-sea/>>.

Reflecting its growing frustration with ASEAN's inability to forge a strong collective stance vis-à-vis mainland China, the Philippines, on January 22, 2013, without consulting ASEAN member states individually or collectively,<sup>10</sup> formally launched an arbitral tribunal under UNCLOS against mainland China.<sup>11</sup> *Notification and Statement of Claim on the West Philippine Sea* was sent to the PRC embassy in Manila.<sup>12</sup> The unilateral legal action of the Philippines raised concern among ASEAN member states. Nevertheless, the fear that a divided ASEAN might undermine the ongoing negotiation with mainland China was soon eased. Brunei took over the ASEAN chairmanship and continued ASEAN's engagements with mainland China on implementation of DOC. Both ASEAN and mainland China prefer that sovereignty disputes over features (islands and rocks) in the South China Sea can be settled

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10. Carlyle A. Thayer, "ASEAN, China and the Code of Conduct in the South China Sea," *SAIS Review* Vol. 33, No. 2, Summer-Fall 2013, p. 80.

11. Secretary Albert del Rosario, "Statement: The Secretary of Foreign Affairs on the UNCLOS Arbitral Proceedings against China," released on January 22, 2013, <<http://www.gov.ph/2013/01/22/statement-the-secretary-of-foreign-affairs-on-the-unclos-arbitral-proceedings-against-china-january-22-2013/>>.

12. Department of Foreign Affairs, The Philippines, "Notification and Statement of Claim on the West Philippine Sea," January 22, 2013, <<http://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/unclos>>. In September 2012, Philippine President Aquino II signed Administrative Order No. 29, mandating that all government agencies use the name "West Philippine Sea" to refer to the parts of the South China Sea within the Philippines' exclusive economic zone and tasked the National Mapping and Resource Information Authority (NAMRIA) to use the name in official maps to bolster the Philippines' claims to the Spratly Islands and Scarborough Shoal.

directly by the claimants themselves. ASEAN could be a facilitator to promote mutual trust among the parties involved but has no intention to turn itself into a party to the dispute. Thus, the alternative to ASEAN channels taken by the Philippines to defend its own national interests seems to be acceptable.

ASEAN and ASEAN-centered mechanisms have also called for responses to various maritime security concerns, such as marine environmental degradation, illegal fishing, piracy, terrorism, smuggling and trafficking, and other maritime transnational crimes. Concerted efforts of all state stakeholders are required to effectively address these issues. However, lack of trust due to disputes and military competition for control of the seas among great powers has inhibited the collaboration process. In the second ASEAN Maritime Forum, which was first launched in 2010 under the terms of the ASEAN Political Security Community Blueprint, participants agreed to expand their engagement with ASEAN dialogue partners in a separate meeting series. The First Expanded ASEAN Maritime Forum (EAMF) included delegates from EAS member states at official and non-official levels and was launched on 5 October 2012 to explore possible region-wide collaboration on maritime security. In addition to general exchanges on maritime security concerns, the forum recognized the importance of universally-recognized principles of international law, specifically UNCLOS, in providing a rule-based framework for maritime security and cooperation in the region, as well as addressing the issue of competing claims.

#### **IV. DOC and COC**

The aforementioned institutional responses reflect ASEAN's collective diplomatic effort in addressing concerns over the South China Sea issues and ASEAN's capacity for engaging non-ASEAN powers in tension management. As a political document, the DOC signed in 2002 at least reflected the intent by the parties involved (namely ASEAN and mainland China) to develop confidence-building measures and enhance maritime cooperation to promote peace in the South China Sea. Areas of cooperation specified in the DOC included marine environmental protection, marine scientific research, safe maritime navigation, search and rescue, and anti-transnational crime operations. The parties agreed that the task would be undertaken by senior officials of ASEAN member states and mainland China. In December 2004, the first ASEAN-China Senior Officials Meeting on DOC (SOM on the DOC) was held in Kuala Lumpur. The meeting concluded with the establishment of an ASEAN-China Joint Working Group on the Implementation of DOC (JWG on the DOC) to meet at least twice a year and report the progress to SOM.

However, the process of implementing DOC did not begin smoothly. In the first JWG, which was held in Manila in August 2005, mainland China and ASEAN failed to reach an agreement on a draft of guidelines for the implementation of DOC suggested by ASEAN. Mainland China's main point of contention was the second point in the seven-point guidelines, which stated that ASEAN would continue its current practice of consulting amongst themselves before meeting mainland China. Mainland China argued that only those member claimants, not ASEAN itself, should be relevant to the South China Sea issues. The second

point could be perceived as an effort in making ASEAN's policy toward the South China Sea; thus, it would not be appropriate. Without reaching an agreement on the guidelines, JWG failed to function as intended.

The second JWG was held in Sanya, China on February 8-9, 2006 to specify areas of cooperation. After that, however, the third JWG was not held until March 2008. The 4<sup>th</sup> JWG on DOC was not held until April 2010, another two-year delay after the third meeting. The momentum resumed only after the U.S. started to adjust its strategic pivot to Asia under the Obama administration. The fifth JWG was held in Kunming, China in December 2010. Both ASEAN and mainland China reaffirmed the importance of implementing the DOC. Nevertheless, mainland China continued to resist three things: (1) internationalization of the disputes by inviting parties not directly concerned into discussion; (2) prior consultation among ASEAN member states before meeting mainland China; and (3) coordinated ASEAN policies or actions regarding disputes vis-à-vis mainland China.

After ASEAN made concessions by dropping their prior consultations before meeting mainland China, ASEAN and mainland China agreed on the *Guidelines for the Implementation of the DOC* in the 44<sup>th</sup> ASEAN-China Foreign Ministers' Meeting in Bali, Indonesia, in July 2011. The second point of the original draft suggested by ASEAN in 2005 was amended as "to promote dialogue and consultation among parties." This compromise implies that ASEAN could come to the negotiation table with ten different views. This allows mainland China to lobby individual states for their support and effectively weaken ASEAN unity. In the agreed guidelines, a new point was added, which required activities and projects carried out under the DOC to be reported to the ASEAN-China Ministerial Meeting. This new point

upgraded JWG supervision from senior official level to the ministerial level.

The long-term objective of the DOC, as stated in the document, is to set the stage for discussing and concluding a formal and binding Code of Conduct of Parties in the South China Sea (COC). Despite the non-binding nature of the DOC, recognized rules or principles of international law, such as the UN Charter, UNCLOS, TAC, and the *Five Principles of Peaceful Coexistence*, were inked in the DOC to enhance its validity. Thus, a binding COC would take all of these elements into consideration. In the 5<sup>th</sup> JWG, a working group meeting on COC was held. Indonesia started to draft the COC in the 6<sup>th</sup> JWG in March 2011. Later, in the ASEAN-China Summit on November 18, 2011, Wen Jiabao formally expressed mainland China's interest in drafting the COC with ASEAN member states. This rekindled the debate over whether ASEAN member states should first consult among themselves before meeting mainland China or invite mainland China to draft the COC together. A compromise was reached under which the ASEAN Chair would communicate with mainland China simultaneously while ASEAN member states discuss the draft.

Although ASEAN Ministers failed to produce a joint statement after the 45<sup>th</sup> AMM in 2012, they reached an agreement on the "Proposed Elements of a Regional Code of Conduct in the South China Sea between ASEAN Member States and the People's Republic of China" in an earlier assembly session. In terms of dispute settlement, ASEAN members proposed such mechanisms as the ASEAN High Council (established under TAC) and those mechanisms under international law, including UNCLOS. In September 2012, Indonesia presented the Zero Draft, a Regional Code of Conduct in the South China Sea, to



Foreign Ministers of ASEAN member states on the sidelines of UNGA (United Nations General Assembly).<sup>13</sup> This document relied heavily on DOC, ASEAN's Proposed Elements of a Regional COC, and ASEAN's Six-Point Principles on the South China Sea.

Unfortunately, progress on COC negotiation did not proceed as ASEAN had hoped. Mainland China reiterated its insistence on the COC negotiation on different occasions. In the 19<sup>th</sup> ARF Foreign Ministers Meeting on July 11, 2012, Yang Jiechi emphasized that the COC discussions may be based on full compliance of the DOC by all parties. More confidence-building measures should be adopted to enhance mutual trust, promote cooperation and create necessary conditions for the formulation of COC. In the ASEAN High-Level Forum of the 10<sup>th</sup> Anniversary of ASEAN-China Strategic Partnership on August 2, 2013, Wang Yi presented a view that negotiation of COC should proceed in a gradual manner to seek broad consensus and to maintain the comfort level of all parties involved because the negotiation would require sophisticated and complex coordination of multilateral interests of parties involved. More importantly, external interference should be avoided.<sup>14</sup>

The bottom line of mainland China's position toward the COC has been that it can only be consulted under the umbrella of the DOC.

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13. Carlyle A. Thayer, "ASEAN, China and the Code of Conduct in the South China Sea", *SAIS Review* Vol. 33, No. 2, Summer-Fall 2013, p. 79.

14. Ministry of Foreign Affairs, the People's Republic of China, "Foreign Minister Wang Yi Attends China-ASEAN High-Level Forum" August 2, 2013, <[http://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/activities\\_663312/t1065124.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/activities_663312/t1065124.shtml)>.

The proper venue for it is the JWG on the DOC. Mainland China has no intention to negotiate the COC with ASEAN separately. Reportedly, healthy progress for the COC took place on September 14-15, 2013, in the back-to-back 6<sup>th</sup> SOM on DOC and the 9<sup>th</sup> JWG on DOC meetings in Suzhou, China. The participants agreed to follow the “step-by-step and reaching consensus through consultation” approach and to start from identifying the consensus to gradually expand the consensus and narrow the differences. Aside from continually and steadily pushing forward the COC process via the full and effective implementation of the DOC, the meeting also decided to authorize the JWG to conduct concrete consultations on the COC and agreed to take steps to establish an expert group.<sup>15</sup>

More concrete consultations on the COC took place on March 18, 2014, in the 10<sup>th</sup> JWG on DOC in Singapore. The meeting first reviewed the work plan on the Implementation of the DOC for 2013-2014. Then, following the conclusion from the 6<sup>th</sup> SOM on DOC, the JWG meeting discussed those areas of convergence in order to come up with commonalities in developing the COC as well as a program for its work in 2014. The previous agreement on creating an expert group also witnessed further development; all parties had

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15. Ministry of Foreign Affairs, the People’s Republic of China, “The Sixth Senior Officials Meeting and the Ninth Joint Working Group Meeting on the Implementation of the ‘Declaration on Conduct of Parties in the South China Sea’ Are Held in Suzhou,” September 15, 2013, <[http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1079289.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1079289.shtml)>. “The Sixth Senior Officials Meeting and the Ninth Joint Working Group Meeting on the Implementation of the ‘Declaration on Conduct of Parties in the South China Sea’ Are Held in Suzhou,” September 15, 2013.

exchanged preliminary views on preparing Terms of Reference of the Eminent Persons and Experts Group (EPEG) or other mechanisms to support the official consultations.

The most recent development of the COC was in the 7<sup>th</sup> ASEAN-China SOM on DOC on April 21, 2014 in Pattaya, Thailand. In this meeting, participants agreed to continue building mutual trust and practical cooperation between ASEAN and mainland China in order to maintain and promote peace, stability, and maritime security in the South China Sea. With regard to the COC, while acknowledging the importance of building consensus and expanding commonalities in this respect, ASEAN reiterated the importance of expediting the ongoing COC consultation to further substantive discussions towards its early conclusion. Confirmed by the director-general of the ASEAN Affairs Department of Thailand's Ministry of Foreign Affairs, more meetings will take place in order to accelerate the progress of the COC.<sup>16</sup> While progress seems slow, dialogue between ASEAN and mainland China on the South China Sea has moved the needle.

## **V. Conclusion**

ASEAN member states might have different interests in the South China Sea, in particular with regard to how to respond to mainland China. However, all of them share common interest in pursuing stability and security in the region as well as maintaining the solidarity and centrality of ASEAN on key regional issues. ASEAN does not have

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<sup>16</sup>“No Timeframe for South China Sea Code of Conduct: Thai ASEAN Affairs Official,” *Xinhuanet*, April 21, 2014, <[http://news.xinhuanet.com/english/china/2014-04/21/c\\_133278243.htm](http://news.xinhuanet.com/english/china/2014-04/21/c_133278243.htm)>.

sufficient institutional capacity to resolve sovereignty disputes over features in the South China Sea, but it has tried to facilitate peaceful resolution and prevent the use of force by any claimant. As tension has escalated, the South China Sea issues have been vigorously discussed in meetings of ASEAN and ASEAN-extended mechanisms despite mainland China's displeasure or opposition.

The ASEAN Chair still matters for ASEAN to play a decisive role in dynamics of South China Sea security. One of the major reasons that ASEAN could successfully regain the South China Sea agenda was Vietnam's chairmanship in 2010 and Indonesia's in 2011, respectively. Both countries have important stakes and national interests in the South China Sea. Cambodia's chairmanship in 2012 apparently was a setback due to its close ties with mainland China. The momentum resumed when Cambodia passed its chairmanship to Brunei and when a career Vietnamese diplomat, Le Luong Minh, replaced Surin Pitsuwan as ASEAN Secretary-General in 2013.

Although ASEAN unity was once challenged when no joint statement was produced in the 45<sup>th</sup> AMM and when the Philippines turned to the UN tribunal without prior consultation with ASEAN member states, the confidence of solidarity was soon restored. In response to mainland China's recent move of a drilling platform escorted by more than 80 armed paramilitary vessels in the disputed waters, the ASEAN foreign ministers issued a rare stand-alone statement in May 2014 expressing "serious concern" about growing tension over territorial claims. The statement suggests that member states share a higher degree of anxiety over the recent developments and that there is an enhanced commitment to maintaining ASEAN unity.

ASEAN, as a regional organization, will not and cannot be a

party in the territorial disputes. It will remain neutral to any claim. While facilitating a peaceful resolution process for parties involved, ASEAN, with structural inferiority vis-à-vis mainland China, has also been cautious not to conflict with mainland China's position on solving territorial disputes bilaterally or to jeopardize its overall economic relationship with mainland China. Although ASEAN member states hold a common position on implementing the DOC and negotiating the COC, it is often reiterated that their collective efforts should not be seen as the group's policy to counter mainland China. From ASEAN's perspective, a unified ASEAN that upholds Southeast Asian autonomy in its relations with external powers and maintains its centrality in the region's political and security architecture would better serve the region's security interests.