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## ASEAN DISCORD IN SOUTH CHINA SEA



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**T**he South China Sea encompasses an area of around 3,500,000 square kilometres (1,400,000 sq mi) from the Karimata and Malacca Straits to the Strait of Taiwan. It contains over 250 small islands, atolls, cays, shoals, reefs, and sandbars many of which are naturally under water at high tide, and some of which are permanently submerged. The features are grouped into three archipelagos (The Spratly Islands, The Paracel Islands, The Pratas Islands), Macclesfield Bank and Scarborough Shoal.

The region has proven oil reserves of around 1.2 km<sup>3</sup> (7.7 billion barrels), with an estimate of 4.5 km<sup>3</sup> (28 billion barrels) in total. Natural gas reserves are estimated to total around 7,500 km<sup>3</sup> (266 trillion cubic feet). According to studies made by the Department of Environment and Natural Resources, Philippines, this body of water holds one third of the entire world's marine biodiversity, thereby making it a very important area for the ecosystem.

The sea carries tremendous strategic importance being the main maritime crossroad for countries like China, India, Brazil, Japan and the UK. It is the second most used sea lane in the world. One-third of the world's shipping passes through it carrying over \$3 trillion in trade each year.

The South China Sea disputes involve both island and maritime claims among several sovereign states within the region, namely Brunei, the People's Republic of China (PRC), Republic of China (Taiwan), Malaysia, Indonesia, the Philippines, Brunei and Vietnam. Many non-claimant states want the South China Sea to remain international waters. To promote this, several states, including the United States, conduct "freedom of navigation" operations.

The disputes include the islands, reefs, banks, and other features of the South China Sea, including the Spratly Islands, Paracel Islands, and various boundaries in the Gulf of Tonkin. There are further disputes, including the



waters near the Indonesian Natuna Islands, which many do not regard as part of the South China Sea. Claimant states are interested in retaining or acquiring the rights to fishing areas, exploration and potential exploitation of crude oil and natural gas in the seabed of various parts of the South China Sea, and the strategic control of important shipping lanes.

The disputes involve a different collection of countries:-

- (a) The nine-dash line area claimed by China , which covers most of the South China Sea and overlaps the exclusive economic zone claims of Brunei, Indonesia, Malaysia, Philippines, Taiwan, and Vietnam.
- (b) Maritime boundary along the Vietnamese coast between China and Vietnam.
- (c) Maritime boundary North of Borneo between the PRC, Malaysia, Brunei, Philippines, and Taiwan.
- (d) Islands, reefs, banks and shoals in the South China Sea, including the Paracel Islands, the Pratas Islands, Macclesfield Bank, Scarborough Shoal and the Spratly Islands between the PRC, Taiwan, and Vietnam, and parts of the area also contested by Malaysia and the Philippines.
- (e) Maritime boundary in the waters North of the Natuna Islands between the PRC, Indonesia and Taiwan.
- (f) Maritime boundary off the coast of Palawan and Luzon between the PRC, Philippines, and Taiwan.
- (g) Maritime boundary, land territory, and the islands of Sabah, including Ambalat, between Indonesia, Malaysia, and the Philippines.
- (h) Maritime boundary and islands in the Luzon Strait between the PRC, Philippines, and Taiwan.

### Who Claims What?

China claims by far the largest portion of territory - an area defined by the “nine-dash line” which stretches hundreds of miles south and east from its most southerly province of Hainan.

A map issued by Beijing shows the two island groups falling entirely within its territory. Beijing says its right to the area goes back centuries to when the Paracel and Spratly island chains were regarded as integral parts of the Chinese nation, and in 1947 it issued a map detailing its claims. It showed the two island groups falling entirely within its territory. Those claims are mirrored by Taiwan.

However, critics say China has not clarified its claims sufficiently - and that the nine-dash line that appears on Chinese maps encompassing almost the entirety of the South China Sea includes no coordinates. It is also not clear whether China claims only land territory within the nine-dash line, or all the territorial waters within the line as well.

Vietnam hotly disputes China’s historical account, saying China had never claimed sovereignty over the islands before the 1940s. Vietnam says it has actively ruled over both the Paracels and the Spratlys since the 17th Century - and has the documents to prove it.

The other major claimant in the area is the Philippines, which invokes its geographical proximity to the Spratly Islands as the main basis of its claim for part of the grouping. Both the Philippines and China lay claim to the Scarborough Shoal (known as Huangyan Island in China) - a little more than 100 miles (160km) from the Philippines and 500 miles from China.

Malaysia and Brunei also lay claim to territory in the South China Sea that they say falls within their exclusive economic zones, as defined by UNCLOS - the United Nations Convention on the Law of the Sea. Brunei does not claim any of the disputed islands, but Malaysia claims a small number of islands in the Spratlys.

In the first half of the 20th century, the Sea remained almost quiet. In fact, at the end of World War II, no claimant occupied a single island in the entire South China Sea. China laid claim to the South China Sea in 1947. It demarcated its claims with a U-shaped line made up of **eleven dashes** on a map, covering most of the area. But two “dashes” were removed in the early 1950s to bypass the Gulf of Tonkin as a gesture to communist comrades in North Vietnam. The remaining ‘**nine-dash line**’ stretches hundreds of kilometres south and east of its southerly Hainan Island, covering almost 90% of South China Sea.

After 1960's when the huge reserve of oil and natural gas were discovered in the region, the territorial claims started growing in an unprecedented manner. **The United Nations Convention on the Law of the Sea (UNCLOS)**, which came into force in 1994, established a legal framework intended to balance the economic and security interests of coastal states with those of seafaring nations. While UNCLOS has been signed and ratified by nearly all the coastal countries in the South China Sea, based on their own interpretation of the UNCLOS, claimant countries started to legitimize their claims.

In 2002, ASEAN and China came together to sign the Declaration on the Code of Conduct of Parties in the South China Sea to keep disputes away. However, it didn't achieve the desired outcomes.

### **DOC 2002**

The ASEAN members and China jointly published the Declaration of the Conduct of Parties in the South China Sea (DOC) in 2002 for peaceful settlement of the issue. The DOC presents two aspects for peaceful settlement. One is the confirmation of peaceful resolution of territorial disputes and self-restraint of hostile attitudes. The other is the enhancement of confidence building through mutual exchange of military personnel and cooperation in environmental research. To cope with the intensifying conflicts, the ASEAN members and China agreed to formulate a more binding code of conduct by developing the DOC. However, a conflict of opinion over the nature of this code of conduct exists among ASEAN members as well as between ASEAN and China. The Philippines and Vietnam placed more importance on the first aspect of the DOC. That is, they insisted on incorporating dispute settlement procedures based on the United Nations Convention on the Law of the Sea (UNCLOS) into the code of conduct. By contrast, China emphasized the second aspect, insisting on confidence building through cooperative environmental research and the joint resource development. Cambodia and Thailand, which do not have direct interests in this issue, sided with China.

### **Code of Conduct South China Sea**

The process of negotiating a COC has been long and arduous. The 2002 ASEAN-China Declaration on the Conduct of Parties in the

South China Sea (DOC) had called on the parties to adopt a COC. ASEAN members, especially the Southeast Asian claimants, envisaged a legally-binding agreement that would be more comprehensive and effective than the DOC which was a non-binding political statement. It was not until 2013 that China agreed to start talks with ASEAN on the COC. However, it was not until after the Arbitral Tribunal at The Hague had issued its historic ruling on 12 July 2016 that China consented to accelerate the talks possibly to deflect criticism away from its rejection of the Tribunal's award and instead project the image of a cooperative partner.

At the 19th ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea (JWG-DOC) meeting in Bali, Indonesia on 27 February 2017, the two sides agreed on the basic outline of the draft framework. A longer, one-page version was subsequently discussed at the 20th JWG-DOC in Siem Reap, Cambodia on 30 March 2017. This version was amended slightly during the SOM-DOC meetings in Guiyang in May. The framework is slightly over a page and outlines the Bases of the COC, Interconnection and interaction between DOC and COC, Importance and aspirations with three objectives- "To establish a rules-based framework containing a set of norms to guide the conduct of parties and promote maritime cooperation in the South China Sea". Significantly the phrase "rules-based framework" is used rather than "legally binding" which some ASEAN states had long envisaged the COC to be. However, as China is opposed to a legally binding code because it would limit its freedom of action in the South China Sea, and because the ASEAN states themselves do not have a consensus on this issue, the phrase has been omitted. The second objective is "To promote mutual trust, cooperation and confidence, prevent incidents, manage incidents should they occur, and create a favourable environment for the peaceful settlement of the disputes. The third objective is "To ensure maritime security and safety and freedom of navigation and overflight".

The framework seeks to advance a 2002 Declaration of Conduct (DOC) of Parties in the South China Sea, which has mostly been ignored by claimant states, particularly China, which has built seven manmade islands in disputed waters, three of which are equipped

with runways, surface-to-air missiles and radars. The framework is only an outline for how the code will be established but fails to make the code legally binding and enforceable, or have a dispute resolution mechanism, it raises doubts about how effective the code will be. The framework does not mention the geographical scope of the COC. The absence of enforcement measures and arbitration mechanisms will weaken the effectiveness of the final COC.

### **Philippines and PCA-Ruling**

Both the Philippines and China laid their claims to the Scarborough Shoal which is a little more than 100 miles from the Philippines and 500 miles from China. The Philippines and China are both dependent upon fishing in the South China Sea, specifically in the Scarborough Shoal, for the economic development and livelihood of their people. A tense but bloodless stand-off between China and the Philippines over Scarborough Shoal in 2012, led to China gaining de facto control over the region.

But in 2013, the Philippines raised the dispute with China to the PCA(Permanent Court Of Arbitration), saying China's claims violated Philippines' sovereignty under the 1982 U.N. Convention on the Law of the Sea(UNCLOS). The Permanent Court of Arbitration ruled that Chinese claims over 90 percent of the South China Sea area were illegitimate and under UNCLOS, China is intruding into the Philippines' sovereign waters as the 9-dash line which includes the Scarborough shoal crosses into the Philippines EEZ. China outrightly rejected the ruling. China stated that it prefers bilateral negotiations with the other parties. Although the award was overwhelmingly in favour of the Philippines, Duterte decided to put it to one side and prioritize strengthening economic ties with China while addressing the two countries overlapping maritime territorial and jurisdictional claims on a bilateral basis. Duterte's approach led to a significant reduction of Sino-Philippine tensions in the South China Sea, especially after Beijing lifted its blockade of Scarborough Shoal in October 2016 which had prevented Filipino fishermen from fishing at the reef since May 2012.

During Duterte's four-day visit to China in October 2016, 13 agreements on cooperation in areas ranging from maritime security to agriculture were signed, one of which was a memorandum

of understanding between the Philippines' Department of Trade and Industry and China's Ministry of Commerce on strengthening bilateral trade, investment and economic cooperation.

At the second meeting of the bilateral consultation mechanism on the South China Sea between China and the Philippines on February 13 in Manila, vice-foreign ministers from both sides discussed cooperation in the areas of fisheries, oil and gas, marine scientific research and environmental protection.

China and the Philippines are now considering a series of resource-sharing agreements in the South China Sea, the latest development in a diplomatic warming trend that has reset the disputed maritime area's strategic calculus. The initiative was made public during the late March visit of Philippine Foreign Secretary Alan Peter Cayetano to Beijing.

The chief Filipino diplomat reiterated his country's interest in ensuring the "South China Sea disputes will no longer block the development of bilateral ties" but rather "will be turned into a source of friendship and cooperation between the two countries."

The two neighbours agreed to pursue "offshore oil and gas exploration" schemes based on a "suitable legal framework", which will be mutually beneficial and apparently skirt intractable sovereignty issues over contested features.

The improvement in the China-Philippines relationship has raised the possibility of building a constructive framework for resolving tensions in the South China Sea. Today, all the related parties can talk to each other in a more relaxed and friendly manner than a few years ago. The improvement in bilateral relations will contribute to stability in the South China Sea and promote prosperity in the region.

### **Brunei**

Brunei's claim is relatively limited in comparison to the other five claimant states. Brunei claims only a 200-nautical mile EEZ under the terms of UNCLOS, in addition to several land features falling within its legally delimited boundaries in the southern portion of the sea, including Louisa Reef, Owen Shoal and Rifleman Bank. In direct contrast to each of the other claimants, Brunei does not occupy any land features in the sea and maintains no permanent military presence in the area to enforce its claim.

Since publishing a map in 1984, which was followed by an updated version in 1988 depicting the boundaries of its proposed EEZ, Brunei has remained largely silent on the issue, leaving its long-term strategy for pursuing its claim shrouded in uncertainty. As disputes heated-up, ASEAN has become increasingly divided on the issue. China initially sought to entrench divisions within the bloc through diplomatic means, pressuring several of the non-claimant ASEAN states – namely Cambodia, Laos, and Myanmar – not to speak-out too forcefully on the issue. These three countries also happen to be Southeast Asia's poorest and the most reliant on China economically, providing further imperative not to criticize Beijing's South China Sea policy. Such pressure resulted in ASEAN failing to issue a joint communique after the Phnom Penh summit in 2012 for the first time in its 45-year history, over disagreement on how to approach the South China Sea dispute.

In recent years Beijing appears to have added Brunei – the smallest and arguably weakest claimant state – to the list of ASEAN nations potentially willing to display greater deference to China's claims in the South China Sea. The apparent shift manifested in April 2016 when Chinese Foreign Minister Wang Yi announced that China had reached a four-point consensus with Brunei, Laos, and Cambodia on the South China Sea issue, agreeing the disputes were not an issue for ASEAN and should instead be resolved through 'dialogues and consultations between the parties directly concerned.' This agreement was seen as a coup for Beijing, which through engaging Brunei managed for the first time to bring a claimant state into line with its own long-held position that the disputes should not be resolved through multilateral forums but instead through bilateral talks between the states involved.

Why has Brunei ignored calls for a unified ASEAN response and instead aligned itself more closely with China's view on the South China Sea? Much of the answer comes down to economics. Brunei can no longer rely on its oil and gas reserves – the bedrock of its economy for decades – for sustained growth as its domestic reserves are predicted to run out in the next few decades. The oil and gas sector has consistently accounted for more than 60% of Brunei's GDP and over 95% of its exports.

Brunei has already set in place an ambitious restructuring plan, dubbed *Brunei Vision 2035*, which aims for a dynamic and sustainable economy based on an educated and highly-skilled workforce, designed to enable the maintenance of high living standards in what is one of Asia's wealthiest per-capita nations.

To achieve this vision, the Sultan has looked to encourage outside investment. China has emerged as Brunei's dominant partner in this regard, with its combined investments in the country now totalling US\$4.1 billion. Several major Chinese-funded infrastructure projects have gotten underway in recent years, with more projects planned further down the line. Chinese firms are involved in the construction of ports and aquaculture projects along Brunei's coastline in the north, providing a boost to the fishing industry. In 2014 the two nations also announced the creation of the *Brunei-Guangxi Economic Corridor*, in an attempt to boost trade between the sultanate and China's southwestern coastal provinces.

In step with these financial arrangements and trading initiatives, bilateral relations have flourished. Recent years have seen an uptick in the number of high-level visits and formal meetings between the two countries' leaders and senior officials, who have spoken of their shared desire to enhance people-to-people exchanges through forging closer cultural and educational ties and encouraging tourism.

China has overtaken Malaysia and Singapore as Brunei's primary source of imported goods, with almost 25% of imports now coming from China. Given the increasingly central and influential role of China in Brunei's shifting economy, and the dependency this inevitably creates, Brunei is now even less likely to risk upsetting China by looking to advance its South China Sea claims in the near future.

### Vietnam

Since the Philippines has backed down on the South China Sea dispute, Vietnam has become the most vocal opponent of China's claims in the South China Sea. Located close to Hainan Island geographically Vietnam hotly disputes China's historical account, saying China had never claimed sovereignty over the islands before the 1940s. Vietnam says it has actively ruled over both the Paracels and the Spratlys



since the 17th Century - and has the documents to prove it.

### Recent Flashpoints

Some of the incidents in recent decades that flared between Vietnam and China include:

- In 1974 the Chinese seized the Paracels from Vietnam, killing more than 70 Vietnamese troops.
- In 1988 the two sides clashed in the Spratlys, with Vietnam again coming off worse, losing about 60 sailors.
- As per unverified claims Chinese navy sabotaged two Vietnamese exploration operations in late 2012 which led to large anti-China protests on Vietnam's streets.
- In May 2014, the introduction by China of a drilling rig into waters near the Paracel Islands led to multiple collisions between Vietnamese and Chinese ships.

Recent reports also indicate that China successfully pressured Vietnam to end work on a natural gas project in the South China Sea, in an area claimed by Vietnam as its Exclusive Economic Zone but also within China's nine-dash line claim.

On April 1, Vietnamese President Tran Dai Quang met with Wang Yi. According to Vietnam's foreign ministry, Quang focused on the South China Sea issue during this meeting. The statement said:

*He [Quang] requested settling issues at sea in the spirit of respect for each other's legitimate interests and international law, adding that both sides need to seriously follow common perceptions of the two Parties and countries' leaders and the Agreement on basic principles guiding the settlement of issues at sea in order to peacefully address disputes at sea. The two countries need to soundly manage disputes and prevent actions that further complicate the situation, contributing to peace and stability in the East Sea [Vietnam's name for the South China Sea].*

In comparison, China's state news agency, *Xinhua*, toned down the dispute, not even mentioning the term "South China Sea" in its statement. It quoted Wang as saying that "China stands ready to work with Vietnam to... cautiously handle maritime issues, explore ways

of joint development so as to create favourable conditions for the all-round cooperation between the two countries."

Instead, *Xinhua* emphasized the vast prospects of bilateral relations, considering that trade between China and Vietnam topped \$100 billion in 2017. Vietnam also vowed to deepen bilateral relations with China and "better dovetail China's Belt and Road Initiative with Vietnam's 'Two Corridors and One Economic Circle' plan and push forward trade and subnational cooperation between the two countries," according to *Xinhua*.

Faced with the latest U.S. FONOP in the South China Sea, Beijing aimed to pull Hanoi to its side by providing Hanoi more economic opportunities through Wang's latest visit. However, while Vietnam does show great interest in China's funding, it's highly doubtful if Hanoi will really bandwagon with Beijing as the Philippines has chosen to do.

Early in March, the U.S. aircraft carrier USS *Carl Vinson* made a historic visit to Vietnam, the first U.S. aircraft carrier to do so since the end of the Vietnam War in 1975. It was an obvious demonstration of Vietnam's intention to intensify its military cooperation with the United States.

### Indonesia Starts to Confront China's Territorial Claims

For decades, Indonesia's official policy has been that it is not a party to any territorial disputes with China in the South China Sea, however, Indonesia and China had three maritime skirmishes within Indonesia's 200-nautical-mile exclusive economic zone off its Natuna Islands, which lie northwest of Borneo.

The dispute largely centers on the Natuna Sea, a resource-rich waterway north of Indonesia that also lies close to Vietnam's exclusive economic zone.

On July 14, Indonesia's Ministry of Maritime Affairs and Fisheries held a conspicuously high-profile news conference to release its first national territorial map since 2005, including the unveiling of the newly named North Natuna Sea. The new map also included new maritime boundaries with Singapore and the Philippines, with which Indonesia had concluded agreements in 2015.

After the third skirmish, in June 2016, China's Ministry of Foreign Affairs issued a statement

in which it claimed for the first time that its controversial nine-dash line included “traditional fishing grounds” within Indonesia’s exclusive economic zone.

### **India’s Interests and Stakes**

The South China Sea issue does not have a direct impact on India’s security. However, the sea itself is an important waterway for Indian trade and commerce with Southeast Asia, Japan, Taiwan, South Korea and China. New Delhi has routinely signalled its concerns by strongly urging the importance of safeguarding the freedom of navigation of the seas, the right of overflight, and the importance of peaceful settlement of disputes within the ambit of international law. These have come out in several joint statements with countries like Vietnam, Japan and the United States.

India’s naval engagements have steadily increased since 2001 with Southeast Asia in South China Sea and with South Korea, Japan, Russia and the United States in the East Pacific. Anchoring on Singapore, Vietnam, Philippines in Southeast Asia and with Japan, South Korea and Russia in Northeast Asia, India has been able to credibly establish an enduring naval footprint in the region that serves to reinforce its soft presence in the form of energy development and its trade in the Far East. The Indian Navy has been able to sustain its initiatives in humanitarian relief in missions like the post-Tsunami rehabilitation effort in December 2004 besides joint exercises and constabulary missions and escort duties in maritime counterinsurgency, counter terrorism and antipiracy roles.

In addition, Indian companies have economic interests in the region especially in the oil sector. However, in recent years, these companies have been warned to avoid oil exploration in some blocks awarded by Vietnam because they are disputed by China.

Countries of the ASEAN have privately expressed their desire for India to play a greater (balancing) role vis-à-vis China in the region. As part of its “Act East” policy, India can boost economic ties with the region, as well as build up strategic networks, with a host of countries like Vietnam, Singapore, Australia and Japan.

India’s position in the region is one of economic engagement and security cooperation. Its engagement in ARF, EAS and the various bilateral engagements with Southeast Asia, China, Japan, South Korea and the United States shapes its role in the region. Similarly with a number of multilateral and bilateral agreements, the India-ASEAN trade has increased leaps and bounds from U.S. \$ 7.06 billion in 2000-01 to U.S. \$ 72 billion in 2016-17.

India would serve well by augmenting a robust economic role that would be an increasingly alternate and attractive pole to China; while offering a vital strategic and geopolitical balance that would be increasingly crucial in the region even as the turbulence of the regional disputes in the South China Sea could be expected to run into unchartered pathways.

### **Conclusion**

The improvement in the China-Philippines relationship has raised the possibility of building a constructive framework for resolving tensions in the South China Sea. Today, all the related parties can talk to each other in a more relaxed and friendly manner than a few years ago.

The improvement of the bilateral relationship makes it less appropriate for the US to intervene in the South China Sea dispute, either in the name of freedom of navigation or protecting the small ASEAN states from the new “hegemony” in the region. It can greatly ease tensions in the South China Sea on a strategic level and lessen the possibility of military conflict.

It can contribute greatly to build trust in the region, not only between Beijing and Manila, but also between China and other ASEAN countries. While the Philippines was once a vanguard against China in the South China Sea, now it has adopted a more constructive attitude. This would make other ASEAN members rethink relations with China.

Enhanced confidence is likely to facilitate progress in the consultation on the code of conduct in the South China Sea (likely to underpin regional stability and prosperity), the framework of which was adopted by the ASEAN foreign ministers’ meeting last year in Manila.

Further in courting Brunei economically and diplomatically, China has for the first time been able to persuade a claimant state to back its

own long-held view that the disputes should not be settled through multilateral mechanisms, further entrenching divisions within ASEAN over the South China Sea. Beijing also hopes to use Brunei as a positive example of the benefits that can arise from joint development and mutual co-operation in the maritime realm. If Brunei noticeably benefits from Chinese investment, other states in the region may be lured into pursuing a similarly co-operative path in search of joint economic gain.

China may have moderated some of its intimidation tactics for now, it continues to seek greater control over the South China Sea. Beijing continues to drag its feet on negotiating a binding code of conduct (CoC) with the Association of Southeast Asian Nations (ASEAN) and has rejected Manila's attempt to resolve its territorial dispute through arbitration under the United Nations Convention on the Law of the Sea (UNCLOS). Halting Chinese land reclamation activities may not be possible however all parties should pursue their claims peacefully and in accordance with the international law.

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