Institute for Security & Development Policy

Policy Brief
No. 150 March 31, 2014

The South China Sea: Challenge for ASEAN

Ramses Amer

ASEAN plays a proactive role in regard to dispute management in the South China Sea. In spite of this, it is argued here that the Association must overcome problems of internal cohesion to find a unified position, and reach an agreement on a Code of Conduct both among its member states and with China.

Disputes in the South China Sea are a preoccupation of ASEAN in its relations with China and within the Association itself with five of its member states having claims in the sea. It is therefore of particular importance to appraise what role ASEAN can play in the management of these disputes as well as the challenges it faces in doing so.

ASEAN and Dispute Management

ASEAN has pursued a proactive role in response to the challenges of dispute management in the South China Sea. This is reflected in its statements such as the "ASEAN Declaration on the South China Sea" issued in 1992, which puts emphasis on the necessity to settle disputes by peaceful means and urges restraint, the ASEAN-China dialogue which includes the South China Sea as part of the dialogue process, as well as the multilateral setting of the ASEAN Regional Forum (ARF) which held its first working meeting back in 1994. While not intended to formally act as a third-party mediator in the disputes involving its member states unless it is ascribed or asked to do so by its members, ASEAN does create conducive conditions for deeper cooperation under its umbrella, formulates and adopts mechanisms of dispute management for member states to utilize, and establishes principles of behavior—all of which are designed to serve the goal of peace and stability.

Within the dispute management framework, the "Rules of Procedure of the High Council of the Treaty of Amity and Cooperation (TAC) in Southeast Asia," adopted in July 2001, is a potential key mechanism to settling disputes in the South China Sea, since both ASEAN member states and China are parties to it. One of the three core principles of TAC for managing inter-state relations is peaceful settlement of disputes, while the other two are non-interference in the internal affairs of other countries and overall cooperation. Further, it is possible for ASEAN's member states with claims in the South China Sea to bring their disputes with other members in the area to the High Council; this also applies to disputes involving ASEAN member states and China. However, as thus far no member state of ASEAN has brought a dispute to the High Council, it would appear as though it is not the preferred option for dispute settlement. This indicates that mistrust still persists between some of the member states. Furthermore, if the ASEAN members do not utilize the High Council for dispute settlement between themselves it is highly unlikely that they will do so in regard to disputes involving China.

The ASEAN-China dialogue relating to the South China Sea provides a boost for confidence building measures and avenues for the parties to the disputes to talk. The "Declaration on the Conduct of Parties in the South China Sea" (DOC) signed by the ASEAN member states and China on November 4, 2002, is the most important agreement reached thus far, bolstered in July 2011 by the agreement on "Guidelines for the Implementation of the DOC"—the aim of which is to defuse tensions and promote the peaceful management of the situation as well as respect the status quo. Ongoing discussions within ASEAN as well as between ASEAN and China relating to a possible Code of Conduct (COC) for the South China Sea are further positive steps. The most recent talks took place at the 10th meeting of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea in Singapore on March, 17-18, 2014. The objective of the meetings was to maintain and push forward the momentum of dialogue and consultations in promoting the implementation of cooperative projects under the DOC framework as well as "ensuring substantive progress

in the discussions and ensuring substantive progress in the discussions" relating to a COC. As displayed by the "ASEAN Political-Security Community Blueprint"—adopted in March 2009—ASEAN is not only committed to the full implementation of the DOC but also "work[ing] towards the adoption of a regional Code of Conduct in the South China Sea."

Challenges of Cohesion

In spite of the progress made, the processes above have not been without their challenges. While the DOC was eventually signed with China, there existed differences of opinion within ASEAN in regard to agreeing to a common proposal, for example finding a unified position on the application of mechanisms, such as which areas of the South China Sea ought to be encompassed. The current process relating to a possible COC displays parallels to the process leading to the DOC.

The intra-ASEAN dimension demonstrates that in order to formulate an ASEAN policy toward the South China Sea, the views and interests of the member states with claims in the South China Sea have to be reconciled, that is, not only the four claimants to all or parts of the Spratly archipelago—Brunei Darussalam, Malaysia, the Philippines, and Vietnam—but also Indonesia which claims maritime zones in the South China Sea. In addition, the views and interests of the five member states with no claims in the South China Sea have to be taken into consideration.

Another relevant dimension of the intra-ASEAN process relates to how the member states perceive China and its policies and actions. This was of particular relevance in the 1990s, when tensions relating to the South China Sea between Vietnam and China and between the Philippines and China, respectively, caused considerable concern in the region. At the same time, Cambodia and Thailand had good and close relations (and no border disputes) with China. Different perceptions of and relations with China within the Association complicate the process of formulating a clear-cut ASEAN policy toward China on the South China Sea. Moreover, recent developments have again displayed how bilateral tensions with China relating to the South China Sea situation—in particular between the Philippines and China—can lead to public differences between member states of ASEAN, namely, Cambodia and the Philippines in 2012, which had ramifications on ASEAN cohesion.

Therefore, a major challenge for ASEAN is how to respond to the periods of tension between its member states and China. In such situations ASEAN solidarity calls for other member states to support the so-called "front-line state," but at the same time they do not want to jeopardise their overall relationships with China, which is of great importance both economically and geo-strategically. This dilemma also affects the responses and policies of the Association as a whole.

Conclusion

ASEAN and China should strive to strengthen the existing mechanisms for managing the situation in the South China Sea. This can be achieved by moving beyond the DOC and developing new arrangements such as an ASEAN-China Code of Conduct encompassing guidelines for self-restraint, cooperation, and the application of international law. In this regard, the adoption of guidelines for the implementation of the DOC in 2011 is a positive step as are on-going discussions relating to a possible COC among the member states of ASEAN as well as between ASEAN and China. However, a major lesson from the process leading to the DOC is that ASEAN must adopt a unified position and then through negotiation with China reach an agreement on a joint COC. In other words the path to a future COC involves two processes: an intra-ASEAN one and an ASEAN external relations one.

Dr. Ramses Amer is Associate Professor in Peace and Conflict Research at Uppsala University and an Associate Fellow at ISDP.

About ISDP

The Institute for Security and Development Policy is a Stockholm-based independent and non-profit research and policy institute. The Institute is dedicated to expanding understanding of international affairs, particularly the interrelationship between the issue areas of conflict, security and development. The Institute's primary areas of geographic focus are Asia and Europe's neighborhood.

Website: www.isdp.eu