

U.S. military presence as Asian countries seek to hedge against any potential miscalculation or conflict.

China's anxiety is reflected in its state media, particularly the *Global Times*, which is considered a bellwether of extreme nationalist sentiment. In a commentary published in January 2012, the *Global Times* called for punishing the Philippines and Vietnam for "balancing China by siding with the U.S." ("Make Philippines" *Global Times Online*).

With the strengthening of the military alliance between the U.S. and the Philippines, the *Global Times* issued a stern warning to Manila against acting as "a pawn in the U.S. geopolitical game against China" ("Make Philippines" *Global Times Online*).

Amid such a complex background of overlapping claims over sovereignty, competition over marine resources and intensifying strategic rivalry, it is difficult to expect an end to this diplomatic tug-of-war in the near future.

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Scarborough Dispute and Standoff in Asean Forum on Code of Conduct¹

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The debate on the failure of the 45th ASEAN Foreign Ministers' Meeting last July 9, 2012 to issue a joint communiqué appears to be unending especially among geopolitical analysts from the United States, the Philippines, Vietnam, and Australia. According to some observers, the differences among the ASEAN (Association of Southeast Asian Nations) foreign ministers had already caused a "nasty crack" within ASEAN over how best to deal with the disputes among the claimants in the South China Sea. And for some, it was "a first in diplomatic bungles in its 45-year history."

1. Who is to Blame for Forum's Failure?

It appears that most of the blame has been focused either on China and Cambodia or on the Philippines, Vietnam, and the U.S. Philippine Foreign Secretary Albert del Rosario charged that Cambodia refused to cater to Philippines' suggestion that

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any statement concerning the disputes in the South China Sea must mention its standoff with China at Scarborough Shoal.

Cambodia in turn accused the Philippines and Vietnam of trying to hijack the meeting by imposing their own positions on this issue on ASEAN. The Philippines and Vietnam were pushing for a multilateral solution and the inclusion of the U.S. as the leading arbiter to territorial disputes in the region, going against the important consensus reached by China and ASEAN countries in the Declaration on the Conduct of Parties in the South China Sea (DOC).

Some analysts, however, are not surprised by the outcome of the 45th ASEAN Foreign Ministers' Meeting or the use of ASEAN as a battleground between Beijing and Washington. They claim that Washington hopes to take over the leadership of ASEAN from China and is willing to break ASEAN altogether if it fails to do so. Its Plan B is to replace the ASEAN with the Trans-Pacific Partnership (TPP).

United States State Secretary Hillary Clinton may be on her last leg of assignment but she is making sure that the Asia Pacific region will be saddled with tensions between America's allies and China, particularly between China and the ASEAN. She deliberately stirred up disagreements as part of Washington's drive to block China's growing political, economic, and strategic influence throughout the region.

2. U.S. Wish to Exclude China

United States President Barack Obama started the provocative campaign against China in 2010 after China turned down America's offer of G-2 partnership in which he wanted China to implement America's foreign policy objectives around the world. He even proposed a new regional architecture to replace

the ASEAN – the TPP – an Asia-Pacific trade arrangement that does not include China.

The 21st century rules-based trade accord is far more comprehensive and legally binding than the trade arrangements forged among Asian countries. By crafting this new trade arrangement, there is no doubt that the U.S. and some other TPP participants actually intend to exclude China from their new regional architecture. They argue that the U.S. is trying to keep China out of the TPP and is trying to “contain China” in order to retard its economic and political influence in the region.

At an earlier ASEAN summit in Vietnam, Clinton made known that the U.S. not only had a “national interest” in ensuring “freedom of navigation” through the South China Sea, but it also wants a multilateral solution and the inclusion of the U.S. as the leading arbiter to territorial disputes in the region. This directly interferes with China's calls for bilateral negotiations with the other claimants.

The inclusion of the U.S. in the negotiations over contested territories again became one of the sources of the disagreements among the ASEAN ministers during the last days of the ASEAN ministerial meeting in Phnom Penh. The debate that emerged in the meeting was how ASEAN would go about presenting a united approach to negotiations on a long awaited code of conduct with China.

3. Lack of Unified Approach

While ASEAN ministers announced during the early days of the meeting that they have moved forward with “key elements” of a code of conduct, it appears, near the end that they failed to agree on a unified approach to a code of conduct.

The press reported: “Southeast Asian ministers have failed to

reach a common position on the maritime dispute involving the South China Sea. Senior officials emerged from a forum of the Association of Southeast Asian Nations, unable to reach their goal of hammering out a joint statement representing the members' views on the issue" ("ASEAN" *War News Updates Online*).

Some ministers reported that problems emerged when two of those assigned to draft the joint communiqué – Albert del Rosario of the Philippines and Pham Binh Minh of Vietnam – markedly differed in their positions. Del Rosario insisted that the communiqué should reflect the confrontation between the Philippines and China at the Scarborough Shoal while Pham wanted the declaration to address only the exclusive economic zone (EEZ). The draft submitted to the chair reflected both the Philippines' and Vietnam's disparate positions. Chair Hor Namhong, after careful review of the statements, rejected references to Scarborough and EEZs, claiming that these were bilateral issues and should not be part of the ASEAN joint communiqué.

After long drawn out discussions, ASEAN announced that there would be no joint communiqué. This was disturbing because the issuance of a joint communiqué was the supposed high point of the ASEAN Regional Forum. Worse, it reveals a divided ASEAN.

Indonesian Foreign Minister Marty Natalegawa told the press that it was "irresponsible" that ASEAN nations have not come up with a common statement (Sokha and Boyle "ASEAN slammed"). What has been overlooked in the attempt to make ASEAN condemn China for its "aggressiveness" in protecting its core interests in the South China Sea is that ASEAN did not question both the Philippines and Vietnam for similar aggressiveness in the South China Sea. Above all, since ASEAN is supposedly a zone of neutrality, as a matter of principle, it should also condemn the U.S. for shifting its center of gravity to the Asia Pacific region to "contain China" in order to retard its economic and political influence in the region.

4. China-U.S. Factor in Forum's Failure

There is no doubt that the disagreement between China and the U.S. contributed to the dismal outcome of the 45th ASEAN Foreign Ministers' Meeting. The issue that divides China and the U.S. can be gleaned from the meeting between Yang Jiechi and Clinton July 12, 2012 in Cambodia (before the ASEAN forum).

Yang reportedly told Clinton: "ASEAN is not the place to resolve these disputes because it is not about the regional forum, it is between China and some ASEAN members" (Stearns "China"). Clinton agreed that whenever possible, territorial issues should be resolved between claimants. But she insisted that broader questions about conduct in disputed areas and about acceptable methods of resolving disputes should be addressed in multilateral settings such as ASEAN "because approaching them strictly bilaterally could be a recipe for confusion and even confrontation." Clinton ignored the arguments of 34 Republican senators who refused to ratify the United Nations Convention on the Law of the Sea (UNCLOS) treaty. They argued that bilateral discussions among claimants in the Atlantic over maritime disputes have served U.S. interests well since the end of World War II.

The outcome of the ASEAN regional forum has undoubtedly shown that Clinton has managed to convince enough members of the ASEAN to prevent agreement in the crafting of a code of conduct but not enough to get the members to agree on multilateral approach in the proposed code of conduct.

Nonetheless, Clinton has created a standoff in the ASEAN regional forum in Cambodia. But whether Washington would win in its campaign to intervene in the affairs of the region remains to be seen in the next ASEAN summit. The U.S. officials have announced that in the meeting between Clinton and Yang before the ASEAN forum, the Chinese official gave Clinton: "a

careful indication” that Beijing is willing to join a dialogue on the code sometime in September, ahead of November’s ASEAN summit in Cambodia. The announcement implied that China has had some concessions to American diplomacy or pressure. Despite the American announcement, Chinese officials insist: “ASEAN is not the place to resolve these disputes because it is not about the regional forum, it is between China and some ASEAN members.”

5. China Underscores Friendly Negotiations

Indeed on August 5, Chinese Vice Foreign Minister Fu Ying, in an interview with *Xinhua* news agency, reiterated and elaborated on Minister Yang’s position. She said that the disputes in the South China Sea, particularly America’s insistence for a multilateral framework, have not changed China’s position: “The South China Sea is not an issue between ASEAN and China, but rather between China and relevant ASEAN countries” (underscoring mine). She added that China has consistently attempted to resolve the South China Sea issue “through friendly negotiations between sovereign countries directly concerned on the basis of historical facts and universally recognized international law” (“South China Sea” *Gov.cn Online*).

On the disputes between China and the Philippines and Vietnam, respectively, Fu said China is committed to properly managing and tackling them through friendly consultations and urged “not to let these differences affect the larger interest of bilateral relations and China-ASEAN relations as a whole” (“South China Sea” *Gov.cn Online*). On the failure of the 45th ASEAN Foreign Ministers’ Meeting held in Phnom Penh to issue a joint communiqué, Fu said the reason why the ministers’ meeting was not able to issue a joint communiqué was because certain ASEAN

members claiming sovereignty of parts of the South China Sea “tried to impose their own positions on this issue onto ASEAN... Such acts go against the important consensus reached by China and ASEAN countries in the Declaration on the Conduct of Parties in the South China Sea,” Fu said, adding that the acts were opposed by most ASEAN countries during the recent meetings. “This was not a situation the Chinese side had wanted to see,” the Chinese diplomat said (“South China Sea” *Gov.cn Online*).

The DOC signed by China and ASEAN countries a decade ago clearly provides that parties should “resolve their territorial and jurisdictional disputes by peaceful means – through friendly consultations and negotiations by sovereign states directly concerned,” Fu noted (“South China Sea” *Gov.cn Online*). An impartial third party analyst, Sourabh Gupta, senior researcher at Samuels International Institute, wrote on “China’s South China Sea jurisdictional claims: when politics and law collide:”

In its maritime dimension, joint development of commonly held resources has been the established mode to implement this principle. Here, Manila’s misjudgment in abrogating its joint seismic study agreement with Vietnam and China in 2008 (compounding the error by unilaterally issuing exploration licenses within a disputed section of the study area) has been the principal cause of the swift deterioration in bilateral ties with China (Gupta “China’s South China Sea”).

6. Positive Options

Given these developments, it is time that the Philippines re-examines its position for a multilateral framework that would bring in the U.S. to help resolve the disputes in the South China Sea. Above all it is not too late to re-examine the wisdom and utility of the Mutual Defense Treaty with the U.S. After all, Clinton already announced U.S. neutrality over the contested territories. Instead, we should seriously examine China’s pro-

posal for bilateral talks – if only to find out whether in a joint development scheme with China we can get a reasonable share of the underwater resources in the contested areas compared to the offers by Western non-claimants.

Should the Philippines and China come to an agreement, they must jointly craft, without giving up sovereignty claims, along with countries that have overlapping claims an economic development program and environmental protection plan in the South China Sea, which could lead to a new era of economic growth and environmental protection in the region. All joint development and exploitation policies in the South China Sea should be developed within a fair and mutually acceptable framework that emphasizes mutual benefit, respect for political, civil and economic rights and commitments to peace and security in the region. Military intervention could be justified only in the most extreme circumstances, when the nation's fundamental security is at stake. Otherwise all claimants should pledge not to interfere with the internal affairs of the other claimants.

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Domestic Policies

The 2012 Scarborough Shoal Standoff: A Philippine Perspective¹

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1. Introduction

The most prominent of hopes pinned upon the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was the desire for a common ground upon which to settle prospective competing claims to ocean resources, arising from the fear that the more technologically-advanced and militarily-powerful states would wield their great advantages to the detriment of those smaller and weaker than they. Since the negotiations for

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