

## **Shallow agreement in the South China Sea**

By **Brian McCartan**

SINGAPORE – Hot-button security issues in the South China Sea were at the top of the agenda at a series of Association of Southeast Asian Nations (ASEAN) meetings held last week with its top dialogue partners, including the United States and China.

Although the 10-country grouping and China agreed to a new set of guidelines for dealing with disputes in the contested maritime area, the agreement is non-binding and further reflects the weakness of ASEAN's preferred consensus-based approach to handling regional security issues.

ASEAN and China reached an agreement on July 21 on a set of guidelines to implement the Declaration on the Conduct of Parties in the South China Sea, which was first signed between the grouping and China in 2002. The guidelines are intended to develop a binding code of conduct for dispute resolution in the South China Sea.

ASEAN secretary general Surin Pitsuwan hailed the agreement as an important diplomatic achievement, opining that the application of the guidelines would create a process through which dialogue can be developed and mutual trust established to address outstanding conflicting territorial claims that have boiled over in recent months, particularly between China and the Philippines.

Others, however, are less sanguine about the agreement's ability to manage future crises. One major concern is its inability to deal directly with conflicting territorial claims. China, Brunei, Malaysia, the Philippines and Vietnam all stake claim to areas around the Spratly Islands, which are believed to be rich in oil-and-gas deposits.

Instead, last week's agreement deals largely with non-traditional security issues such as environmental protection, marine research, fisheries and transnational crime. Additionally, it lacks a deadline for implementation of a legal accord to resolve the increasingly volatile territorial disputes.

Additionally, the guidelines do not create a proper code of conduct for naval units of the nations involved in the disputes. There are also no provisions to govern the behavior of opposing naval units or establish communication channels between militaries to avoid potential confrontations at sea. By skirting hard security issues involving potential maritime conflict, the new agreement will likely have little impact on preventing or resolving incidents.

Several recent incidents indicate a pressing need for better communications between opposing forces and more robust dispute resolution mechanisms. In March, Chinese vessels chased away a survey ship working for UK-based energy firm Forum Energy Plc off the coast of the Philippines. Tensions between China and Vietnam rose after Chinese vessels cut the cables of a Vietnamese survey vessel on May 26. Chinese ships again cut the cables of a Vietnamese ship on June 9, only days after Chinese officials emphasized the peaceful resolution of disputes at the Shangri La Dialogue in Singapore.

Significantly, the incidents come at the same time that ASEAN and China are promoting greater economic integration. China is currently ASEAN's largest trade partner; this April ASEAN replaced Japan as China's third largest trading partner. Total ASEAN-China trade grew to US\$293 billion last year and in the last five months was up 26% year on year to \$141 billion.

Agreement on the new guidelines came just two days before the ASEAN Regional Forum (ARF) conference held in Bali on July 23. This may have been an effort to avoid discussion of the issue in a more international forum involving the US. By avoiding wider discussion on the South China Sea at the ARF, the would-be security grouping was relegated to making statements of support without offering ways to find durable solutions to the South China Sea's security problems.

Significantly, it took eight years to gather enough consensus to agree to the non-binding guidelines. The real work – establishing binding conflict resolution mechanisms – lies ahead while ASEAN's and the ARF's track record at devising enforceable solutions is not promising. This past year ASEAN has struggled mightily to develop a binding solution to the border conflict between Thailand and Cambodia.

In another indication of ASEAN's mediating impotence, Philippine president Benigno Aquino has indicated his government's intention to bring its security complaint against China issue to the United Nations' International Tribunal for the Law of the Sea.

Indeed, the attractiveness for many regional nations to join the ARF is that they can talk about issues without having to commit to action. Rather than confront issues openly, they are instead often dealt with in meetings on the larger event's sidelines.

As a test of the ARF's ability to manage maritime or other security issues, last week's meetings should thus be viewed as yet another inconclusive outcome. Although the new guidelines were established amid much multilateral fanfare, each individual country will decide whether or not to adhere to them.

China has repeatedly rejected the involvement of the international community in settling disputes involving the South China Sea. Beijing has even generally avoided discussing the issue with ASEAN, preferring instead to deal with related issues bilaterally with individual claimants. On July 22, Chinese foreign minister Yang Jiechi told reporters that China is committed to maintaining freedom of navigation and security in the South China Sea.

China is especially anxious to avoid US involvement in the issue. In the past year, the US has stepped up joint military exercises with several Southeast Asian claimants, including Vietnam, the Philippines and Malaysia. China has referred to the ramped up exercises as "inappropriate".

Beijing took particular umbrage to US secretary of state Hillary Clinton's remarks at last year's ARF meeting in Hanoi where she said that resolution of the disputes was an American national security interest, due to Washington's desire to ensure freedom of navigation and maritime security in the South China Sea.

The US has been notably less confrontational this year. At this year's ARF meeting, Clinton noted that the issue is complex and that the US would not take sides in the dispute. Instead she urged China and ASEAN member states to show restraint in the South China Sea and settle differences according to international law through the United Nations Convention on the Law of the Sea (UNCLOS).

She also proposed that each country base its claims on undisputed territory they already possess instead of arbitrary lines drawn on maps. Many Southeast Asian nations are concerned about a Chinese map with borders marked by nine dashes that effectively claims most of the South China Sea for Beijing. However, the US stance on the issue is somewhat weakened by its failure to ratify the UNCLOS.

A subtext to American statements is concern over China's growing blue water navy capabilities. Beijing's growing emphasis on naval power is also a matter of concern among its Southeast Asian neighbors. While China argues its expanding navy is geared strictly for defense, many in Southeast Asia believe that it could be deployed to project Chinese hegemony over the South China Sea as defined by its nine-dash map.

The encompassed territory is believed to contain potentially extensive oil and gas fields whose output could be crucial to China's burgeoning economy and mitigate its dependence on fuel imports from the Middle East. Security analysts note that in a potential conflict between the US and China, US warships could move to block China's fuel shipments through the narrow Malacca Straits.

After last week's ARF meeting, Clinton called the deal on guidelines an "important first step" but noted it was only that. She went on to condemn acts of "intimidation" in the South China Sea and called for urgent follow-on negotiations between China and ASEAN to establish a specific code to settle disputes in the area and avoid conflict in the vital maritime trade lanes. "There needs to be a lot of dialogue between [ASEAN] and China," Clinton said. "And the rest of the world needs to weigh in because all of us have a stake in ensuring that these disputes don't get out of control."

Yet there are already signs that the guidelines may not be enough to mitigate future conflicts. This week the Philippines announced it will go ahead with exploration for oil in its claimed portion of the South China Sea, where 15 exploration blocks were put up for tender last month. Two of those are within China's claimed zone of control.

Manila has said that all of the area is within its sovereign exclusive economic zone as defined by international maritime law. Over 100 energy companies, including Chevron Corporation and Total SA, expressed interest in bidding on the blocks during a June 11 road show in Singapore attended by Philippine energy officials. But without established conflict resolution mechanisms, the security of those contracts can not be guaranteed.

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