In addition to China’s intransigence, conflict management and a resolution of the South China Sea dispute has been hindered by problems of inter-ASEAN dynamics, and especially the issue of consensus. Because the South China Sea is vital to the economic and food security prospects of Southeast Asia, ASEAN member states have a strongly vested interest in stability and a peaceful settlement of the dispute. But ASEAN does not support the claims of four of its members nor does it take a position on the validity of China’s claims. While Vietnam and the Philippines have championed a Code of Conduct (CoC) for the South China Sea, China’s reluctance to pursue such a code presents a significant obstacle. The Philippine proposal to transform the South China Sea into a Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) is also problematic due to opposition from Beijing and because it may require ASEAN to take a position on China’s expansive claims. In short, the prospects of realizing a CoC and the ZoPFFC are not very bright.

Heightened tensions over contested territorial and maritime boundary disputes in the South China Sea over the past few years have propelled the issue to the top of Asia’s security agenda. The problem has displaced other regional “flashpoints” such as rivalry on the Korean Peninsula, China-Taiwan relations and tensions between India and Pakistan, despite the fact that conflict in any three of these areas has the potential for massive loss of life, the possible use of nuclear weapons, and overt military intervention by the Great Powers, including the United States. By contrast a major confrontation in the South China Sea seems very unlikely at this moment in time. Minor naval skirmishes are possible, either through accident or design, but such incidents would not lead to large-scale casualties.
Nevertheless, due to the economic and strategic importance of the South China Sea, mismanagement of the problem carries high risks for claimant and non-claimant countries. The sea lines of communication (SLOCs) which pulse through the sea function as vital arteries of global commerce; and while tensions have not hindered the free flow of maritime trade—and may never do so— their safety has become a concern, especially in an era of economic uncertainty. Access to maritime resources such as fisheries, crude oil, natural gas and seabed minerals, continues to be an important driver of the dispute, and the energy security imperative is likely to become an even more salient factor in an age of growing resource demand and scarcity. Nationalist rhetoric concerning irredentist rights has become louder and more fervent, especially in China and Vietnam, making compromise difficult. And most importantly, the South China Sea dispute has become subsumed in the evolving geostrategic competition between the People’s Republic of China (PRC) and the United States which, if it intensifies, could force the littoral states into making hard choices.

A great deal of commentary on the South China Sea dispute has appeared over the past several years, much of it focused on China: its growing military capabilities, the drivers of its increasingly assertive, even aggressive behaviour; the interplay of bureaucratic politics; and the impact of the dispute on Sino-US relations. \[i\] Relatively less attention has been given to intra-ASEAN dynamics. The purpose of this paper is to explore how ASEAN as a group has responded to rising tensions, the degree to which consensus has been forged, and the political realities of the limits of that consensus. The paper focuses on the Declaration on the Conduct of Parties in the South China Sea (DoC) and Code of Conduct for the South China Sea (CoC) processes and ASEAN’s reaction to the Philippine’s proposed Zone of Peace, Freedom, Friendship and Cooperation (ZOPFFC).

**ASEAN Consensus and the South China Sea Dispute**

The South China Sea dispute has been high on ASEAN’s agenda since the early 1990s. Up until that point in time the organization had been focused on a resolution of the Cambodian problem, a ten-year crisis precipitated by Vietnam’s 1978 invasion of that country in December 1978. While there was consensus among the six members —Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand— on the need to effect a Vietnamese withdrawal, there
were sharp divisions among them over how that goal should best be achieved, and particularly the role China should play. [ii]. Despite differences of opinion within ASEAN, the member states were able to stay focused on the core goal of achieving Vietnam’s withdrawal from Cambodia and a peaceful settlement of the problem. Consensus was maintained and the organization played a significant role in the resolution of the Cambodian crisis.

Achieving a robust consensus on the South China Sea dispute within ASEAN has been a challenge for the organization over the past two decades largely due to differing national interests of the member states, a problem compounded by the expansion of the membership from six to ten members between 1997 and 1999. Four members—Brunei, Malaysia, the Philippines and Vietnam— not only have overlapping territorial claims with the PRC, but also with each other. That said, however, Malaysia and Brunei seem to have resolved their overlapping claims in the Spratly Islands. In an Exchange of Letters in 2009, Malaysia recognized Brunei’s claimed exclusive economic zone (EEZ) and by extension its sovereign rights therein, including over Louisa Reef, a semi-submerged feature. [iii] Indonesia is also a party to the dispute because the 200 nautical mile EEZ generated by the Natuna Islands overlaps with China’s 9-dashed line which encompasses nearly 80 per cent of the South China Sea. Singapore is not a claimant, but as an island nation dependent on the free flow of maritime trade for its prosperity and future development, has repeatedly expressed concern at the potential for the dispute to generate instability. Cambodia, Laos, Myanmar and Thailand are not claimants and do not see themselves as directly impacted by the dispute. These three countries, to varying degrees, also have close economic, political and security ties to the PRC and may not want to damage those ties by supporting initiatives in the South China Sea which Beijing may perceive as inimical to its interests. For instance, at the July 2010 ASEAN Regional Forum meeting in Hanoi, 12 countries raised their concerns about recent developments in the South China Sea: of the ASEAN members, only Cambodia, Laos, Myanmar and Thailand chose to remain silent on the issue.

As Ambassador Tommy Koh has written, ASEAN does not take a position on the claims of Brunei, Malaysia, the Philippines and Vietnam in the South China Sea. [iv] Such a position would, of course, be impossible given that ASEAN decision-making is based on consensus and that the four states have overlapping claims in the Spratly Islands. Moreover, as Koh goes on “The group has also not taken a position on the merits of the disputes between China and ASEAN claimant states. Therefore, any perception that the claims of Brunei, Malaysia, the Philippines and Vietnam is backed by ASEAN is incorrect.” Collectively the ASEAN states do, of course, have significant interests in the South China Sea, be they claimant or non-claimant. The SLOCs are not only vital to the health of the world economy, but also to the economic well-being of all ASEAN members. The rich fishing grounds of the South China Sea are vital to the food security of hundreds of millions of people across the region. All ASEAN members are keen to promote good relations with China and wish to see cooperative relations between the PRC and the United States. In short, while ASEAN does not take a position on the various claims, it is committed to stability in the South China Sea and a peaceful resolution of the
The origins of this consensus can be traced back to the early 1990s when the dispute became a source of serious inter-state tension. In 1992, in response to PRC domestic legislation which made expansive maritime claims, ASEAN issued its first policy pronouncement on the dispute, the ASEAN Declaration on the South China Sea, which, without naming China, called on the claimants to resolve the dispute peacefully, exercise restraint and pursue cooperative confidence building measures (CBMs). [v] Three years later, following China’s dramatic occupation of Philippine-claimed Mischief Reef, ASEAN foreign ministers issued a statement expressing “serious concern” at developments and urging all parties to abide by the 1992 Declaration. [vi]

Attempts by Vietnam (which joined ASEAN in 1995) and the Philippines in the second half of the 1990s to issue further statements of concern censoring assertive PRC behaviour proved unsuccessful. When a stand-off between Vietnamese and Chinese vessels took place in the Gulf of Tonkin in 1997 ASEAN deemed the matter a bilateral issue and took no action. [vii] ASEAN unity on the issue broke down altogether during the 1997-98 Asian Financial Crisis. When China upgraded its structures on Mischief Reef in November 1998, Manila failed to extract a joint statement from ASEAN protesting the move, and in 1999 Malaysia earned a sharp rebuke from the Philippines for occupying Erica Reef and Investigator Shoal, two atolls claimed by Manila and Hanoi. ASEAN cohesion had come under stress as a result of the economic and political fallout from the crisis. The South China Sea dispute was no considered a priority issue, especially by those countries in receipt of financial aid from China such as Indonesia and Thailand. Moreover, ASEAN consensus on a range of issues had become harder due to expansion of membership to include Myanmar and Laos in 1997, and Cambodia in 1999.

(continuing)
[i] See “The South China Sea Dispute” a special issue of Contemporary Southeast Asia 33, No. 3 (December 2011).


