

## Diplomacy in the South China Sea

Written by Sheldon W. Simon

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SHELDON W. SIMON, AUG 12 2011

Diplomacy in the South China Sea disputes has dominated US actions in Southeast Asia over the past two years. Beginning with the ASEAN Regional Forum (ARF) meeting in July 2010, the Obama administration decided to play a major role in promoting resolution of the Spratly islands imbroglio as well as laying down a marker that South China Sea stability for maritime commerce constituted a significant American interest. Six parties are involved in a complex set of historically based territorial disputes in the Sea—Brunei, China, Malaysia, Philippines, Taiwan, and Vietnam. China's claims are the broadest, covering all of the Spratly and Paracel islands and most of the South China Sea. ASEAN's first ever declaration on the South China Sea was issued long ago—in 1992. Ten years passed before ASEAN and China agreed on a Declaration of Conduct, a set of principles that were supposed to stabilize the status quo at that time, though non-binding and lacking any enforcement mechanism. ASEAN's 2011 leader, Indonesian President Bambang Yudhoyono, stated at the Association's 44th Ministerial Meeting in Bali this July that the ARF could “finalize the long overdue guidelines because we need to get moving to the next phase, which is identifying elements of the Code of Conduct.” (1)

The United States backed ASEAN initiatives with respect to the Code of Conduct, when at the July 2010 ARF meeting, Secretary of State Clinton stated: “The United States, like every other nation, has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea. We share these interests not only with ASEAN members and ASEAN Regional Forum participants but with other maritime nations and the broader international community.” (2) In effect, Secretary Clinton articulated what she believed was the consensus among most of the world's maritime powers. She also proposed that ASEAN serve as a multilateral venue for South China Sea negotiations—a prospect supported by the four ASEAN claimants (Malaysia, Philippines, Vietnam, Brunei) but vigorously opposed by China.

The Obama administration has emphasized the importance of Asian politico-security organizations led by ASEAN: ARF, East Asia Summit (EAS), and the ASEAN Defense Ministers Meeting + (ADMM+). The Secretaries of State and Defense as well as the President in the upcoming November 2011 EAS have attended or will attend each of them. Washington sees ASEAN as an institution essentially supportive of international law, the peaceful settlement of disputes, and implicitly of the territorial status quo under which maritime commerce and resource exploration and exploitation can be peacefully conducted. While the United States insists that it does not take sides on territorial disputes and has no stake in them, it also holds that the disputes be reconciled according to customary international law, meaning the 1982 Law of the Sea through which there are rules for fixing maritime boundaries via Exclusive Economic Zones (EEZ). Applications of these principles would invalidate China's claims to most of the South China Sea in favor of the littoral states. (3)

Despite America's current economic problems and the prospect of a significant decline in its defense budget over the next decade, US military officials insist that Washington will maintain a “continuous presence” in Asia and will sustain its exercises with and assistance to ASEAN states' defense forces, according to US Pacific Command (PACOM) head Admiral Robert Willard as reported in the July 18, 2011 issue of *Defense News*. (4) The Obama administration's relatively relaxed “steady as she goes” assessment of South China Sea tension probably reflects its belief that Southeast Asia is a pro-US region and that US reassurance depends on Washington upgrading its diplomatic activity alongside an already robust security presence. Increasingly, the US Pacific Command features its unparalleled humanitarian relief capabilities as a form of military diplomacy. More generally, the Defense Department

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is also assisting ASEAN states to develop coastal monitoring and patrol capabilities. If one adds capacity building to internationalizing the South China Sea disputes, these constitute an easy and low cost way for the United States to inject itself into Southeast Asian international politics. (5)

Over the past four months, US diplomacy designed to implement the foregoing Southeast Asian strategy was displayed at the May 2011 ASEAN Summit, the June Shangri La Dialogue, as well as in the July ARF. US ambassador to the Philippines Harry Thomas endorsed the South China Sea Statement issued by the ASEAN Summit on May 18, which averred that ASEAN consultations are perfectly appropriate before any meeting with China on the territorial disputes, that “all claimants should sit down at the negotiating table.” (6) In effect, this was a confirmation of an independent ASEAN role in the South China Sea negotiations separate from the bilateral negotiations with each claimant preferred by China. This ASEAN approach was also endorsed by Secretary of Defense Robert Gates at the Shangri La Dialogue (International Institute for Strategic Studies Asia Security Summit) on June 4. Subsequently, in late June, US Assistant Secretary of State Kurt Campbell at the Hawaii inaugural US-China Asia-Pacific Consultations repeated American support for “strengthening the role of regional institutions on the challenges facing the region.” (7)

Although the July 2011 ARF meeting in Bali did not see a replay of the previous year’s Sino-American acrimony over an ASEAN role in resolving the South China Sea disputes, Secretary Clinton reiterated the necessity of an ASEAN role as well as America’s “strategic stake in how issues there are managed.” While China and the ten ASEAN members announced an agreement at the Forum on a set of guidelines to advance the 2002 Declaration of Conduct on the South China Sea, Assistant Secretary Campbell called them “an important first step...[but] clearly it’s just that: a first step.” (8) The guidelines cover the easiest issues for cooperation: marine environment, infectious diseases such as SARS, transnational crime, and navigation safety—collectively known as non-traditional security. They fail to address the most critical issues—energy exploration and military-security tensions.

In the aftermath of the guidelines agreement, Secretary Clinton called on the South China Sea rivals to back their claims with legal evidence—a challenge to China’s declaration of sovereignty over vast stretches of the South China Sea. More specifically, she urged that they “clarify their claims...in terms consistent with customary international law...derived solely from legitimate claims to land features.” (9) As stated above, this meant that the claims should be delineated according to the 1982 International Law of the Sea by which Exclusive Economic Zones (EEZ) could be extended only 200 nautical miles from the land borders of littoral countries. (Ironically, Washington itself has not yet ratified the Law of the Sea treaty.) Secretary Clinton went on to praise Indonesia’s leadership role in ASEAN, looking forward to its help in settling the conflicts. (10)

In fact, the guidelines do not create a proper code of conduct for navies involved in South China Sea disputes. There are no provisions for how contending navy ships should behave toward one another; nor are communications channels established in the event of such contact. In the past year, the United States has engaged in joint naval exercises with all the Southeast Asian claimants—Vietnam, Malaysia, the Philippines, and Brunei. Some of these exercises include protocols for appropriate naval relationships

Washington’s emphasis on multilateral diplomacy for the South China Sea underlines the point that ASEAN as a whole as well as other states have significant interests in the Sea that go beyond the territorial disputes between five states and China. Secretary Clinton has established the United States as a *de facto* party in the facilitation of a peaceful settlement. After all, Washington has a security treaty with one of the claimants, the Philippines, that could potentially draw the US into the conflict. Hence, its understandable stance for a negotiated future that takes into account the interests of maritime trading states, China, and the ASEAN countries. These concerns will continue to dominate Washington’s Southeast Asia diplomatic agenda as well as ASEAN’s politico-security relationships with both China and the United States.

**Sheldon W. Simon** is Professor at the School of Politics and Global Studies, Arizona State University. He is the author or editor of ten books, most recently co-edited volumes: *China, the United States, and Southeast Asia: Contending Perspectives on Politics, Security, and Economics* (Routledge, 2008) and *Religion and Conflict in South and Southeast Asia: Disrupting Violence* (Routledge, 2007). He is also the author of approximately 150

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*scholarly articles and book chapters.*

### Notes

- (1) President Yodhoyono's statement at the 44th ASEAN Ministerial Meeting as reported by *Antara Online*, July 19, 2011.
- (2) Quoted in Carlyle Thayer, "The South China Sea: China's 'Indisputable Sovereignty' Versus America's 'National Interest'" *Peace and Security*, June 23, 2011.
- (3) David Brown, "The Perfect Storm: ASEAN Adrift in the South China Sea," *Asia Times Online*, July 2, 2011.
- (4) Interview with the US Pacific Command's top combatant commander, Admiral Robert Willard, *Defense News*, July 18, 2011. p.16.
- (5) Peter Lee, "Southeast Asia Rises in the US Reset," *Asia Times Online*, June 4, 2011.
- (6) "Chair Amends ASEAN Summit South China Sea Statement at Behest of Vietnam," *Joyo News*, May 19, 2011; and "U.S. Calls For Restraint Amog Spratly Claimants," *The Philippine Star*, May 26, 2011.
- (7) "Assistant Secretary of State Campbell on U.S.-China Asia-Pacific Talks," *U.S. Department of State Texts and Transcripts*, June 26, 2011.
- (8) U.S. Has Strategic Stake in South China Sea," *Agence France Presse*, July 21, 2011.
- (9) "U.S. Calls for More Clarity on South China Sea Claims," *Reuters*, July 23, 2011.
- (10) "U.S. Believes Indonesia Can Settle Conflicts in Region," *detikcom* (Jakarta) July 24, 2011.