

# The Impact of China's 'Nine-Dash Line' Claim on ASEAN's Role in the Indo-Pacific Region

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#### Abstract

This paper examines China's claim to islands and adjacent waters in the South China Sea, as submitted to the UN in 2009, which has subsequently become known as the 'Nine-Dash Line' claim. It particularly analyses the claim in the context of its potential impact on ASEAN and the security environment of the broader Indo-Pacific region. The paper concludes that unless China's claim can be managed or resolved peacefully through an agreed form of reconciliation or arbitration, there is a risk that ASEAN's position of influence in regional issues will be marginalised by increasing strategic competition between the major parties.

### The Impact of China's 'Nine-Dash Line' Claim on ASEAN's Role in the Indo-Pacific Region

#### Introduction

A strategic shift that is affecting the Indo-Pacific region is the rise of China, accompanied by a more assertive foreign policy and force posture of its military.<sup>1</sup> China's rise is largely the result of its recent economic growth which, since the late 1970s, has averaged 9.5 per cent per annum.<sup>2</sup> There are some predictions that China's economy, already the third largest, as well as the world's fastest growing economy, will soon become the world's largest, most likely overtaking the US in about a decade.<sup>3</sup>

China may also become stronger militarily than any country in the region. And, as it continues to develop its military capabilities, there are indications that it is increasingly prepared to assert its territorial claims both in the South China Sea and East China Sea.<sup>4</sup> In May 2009, for example, China submitted a note to the UN claiming islands in the South China Sea and adjacent waters within an area bounded by nine short, interrupted lines, which has subsequently become known as the 'Nine-Dash Line' claim, asserting that:

China has indisputable sovereignty over the islands ... and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. The above position is consistently held by the Chinese Government, and is widely known by the international community.<sup>5</sup>

This paper examines that claim in the context of its potential impact on ASEAN and the security environment of the broader Indo-Pacific region. In doing so, the paper highlights ASEAN's role in the region, examines China's claim in the South China Sea, and evaluates what it may mean for ASEAN over the next decade. It concludes that unless China's claim can be managed or resolved peacefully, there is a risk that ASEAN's position of influence in regional issues will be marginalised by increased competition between the major parties.

#### **ASEAN's role in the region**

The aims and purposes of ASEAN, when it was founded in 1967, were about cooperation in the economic, social, cultural, technical and educational fields, and in the promotion of regional peace and stability through abiding respect for justice, as well as the rule of law and adherence to the principles of the UN Charter.<sup>6</sup> Since then, ASEAN has evolved into a mature, multilateral organisation, with its greatest contributions reflected in the peace, prosperity and geopolitical stability of the region.<sup>7</sup> This achievement is often attributed to the way that ASEAN makes decisions—which has become known as 'the ASEAN way'—specifically via consultation and consensus.<sup>8</sup>

ASEAN is also demonstrating its evolving maturity by implementing the ASEAN Economic Community project, with the goal of regional economic integration by the end of 2015, which will broaden its focus to become a genuine international actor.<sup>9</sup> Another indication that ASEAN is developing into a mature and successful multilateral organisation is reflected in ASEAN's vision of becoming a 'Political Security Community', being progressively implemented by developing its capacity to successfully manage regional peacekeeping operations.<sup>10</sup>

Furthermore, to achieve its missions and objectives in promoting peace and security in the region through strengthening regional resilience, ASEAN has successfully initiated multilateral forums with a number of non-member neighbouring countries, and with other countries which have interests in the region.<sup>11</sup> These include the ASEAN Regional Forum (ARF), ASEAN+3, the East Asia Summit, ASEAN+6 and the planned ASEAN+8.<sup>12</sup>

Although the foundation of ASEAN was for economic and socio-cultural cooperation, ASEAN also serves to foster cooperation in enhancing regional security through the establishment of initiatives such as the Zone of Peace, Freedom and Neutrality; the Southeast Asia Nuclear Weapon-Free Zone; and the ASEAN Convention on Counter Terrorism. ASEAN has also actively supported other international initiatives, such

as the Comprehensive Test Ban Treaty Organisation, the Conference on Disarmament, and the Non-Proliferation Treaty.<sup>13</sup>

ASEAN's willingness to expand its engagement in regional stability and security issues is an encouraging sign that it can make a meaningful contribution to this important role. However, the resolution of territorial disputes in the South China Sea, particularly involving China's claim, will likely be a formidable challenge for ASEAN and its member states over the next decade.<sup>14</sup>

#### Legal basis of the 'Nine-Dash Line' claim

As could be expected, China's claim is disputed by a number of commentators, as well as other claimants. Rodolfo Severino, for example, has asserted that China's claim is arguable because the 'Nine-Dash Line' formulation was an unclear denotation of a claimed maritime zone or region, and was not legally authoritative.<sup>15</sup> Furthermore, it is generally agreed that China has never controlled the sea-lanes or impaired the freedom of navigation in the South China Sea in the same sense as European states understand and apply these terms.<sup>16</sup>

However, Ye Qiang and Jiang Zongqiang have argued that the issue is not about the exercise of maritime jurisdiction. They assert that China's claim relates to the sovereignty of features within the area depicted and that, following the Chinese government's release of a map in February 1948 showing the location of islands in the South China Sea which it claimed, the claim should be interpreted in that light and be acceptable to the international community.<sup>17</sup>

China's claim also overlaps and challenges the claimed territories of a number of other states, namely Malaysia, Vietnam, Brunei, Indonesia and The Philippines. Most of their claims are based on territories and waters claimed by their former colonial powers, which existed before the UN Convention on the Law of the Sea (UNCLOS)—which is generally regarded as the applicable legal framework for assessing maritime claims—came into being.<sup>18</sup> Qiang and Zongqiang have argued that China was not the creator of UNCLOS, inferring that its provisions are not the legal basis for deciding China's claim.<sup>19</sup> However, others would argue that China is on the list of ratifying states, so China should be bound by its provisions.<sup>20</sup>

Part II of UNCLOS, and specifically Articles 5, 7 and 8 of Section 2, stipulate the rules to be used by coastal states in determining the limit of their territorial waters or claim.<sup>21</sup> Those disputing China's claim would argue that it is not based on these rules. Article 16 also requires that coastal states should provide a chart and list of geographical coordinates in support of their claim, which China has not done. Additionally, Part V of the convention sets forth provisions related to Exclusive Economic Zones (EEZs), which may extend to a maximum of 200nm from established baselines.<sup>22</sup> Because China's claim does not designate any fixed positions or coordinates, its parameters are unclear and open to different interpretations and challenges by the adjacent (and geographically closer) regional states.<sup>23</sup>

#### **Impact on ASEAN's role**

In 2009, China's 'Nine-Dash Line' claim led to five coastal states—The Philippines, Vietnam, Malaysia, Brunei and Indonesia—all of which have sovereignty and maritime jurisdiction claims in the South China Sea, submitting official *notes verbale* to the UN in response. In the 20 years before that, the Policy Planning and Development Agency within Indonesia's Department of Foreign Affairs had conducted 19 workshops, which included Chinese representatives, on managing potential conflict in the South China Sea.<sup>24</sup>

Hence, it is clear that the issue is longstanding and one that member states of ASEAN have been attempting to resolve for a considerable period. What is relatively new is China's increased assertiveness in pressing its claim, and the impact this may have on regional stability. That, in turn, will likely impact the reputation and credibility of ASEAN, whose approach to security cooperation will need to be different from the past because of China's claim.

According to Amitav Acharya, the ASEAN approach to security issues has been the adoption of a blend of traditional and synthetic cultures, which can be observed in the processes of interactions and socialisation evident in the dealings of ASEAN members with each other.<sup>25</sup> These culturally-sensitive

approaches have produced long-term attitudes and habits in managing conflicts and issues between ASEAN members as well as 'ground rules of conduct', exhibited as non-interference, the principle of pacific settlement of disputes, respect for each other's independence, and strict respect for the territorial integrity of each ASEAN member.<sup>26</sup>

This cultural approach has resulted not only in the evolution of an ASEAN identity ('the ASEAN way') but also in ASEAN's collective diplomacy approach, especially in managing territorial disputes in the South China Sea as exemplified by the 1992 *Declaration on the South China Sea*.<sup>27</sup> At the time, China did not figure prominently either in regional security issues or the day-to-day business of ASEAN. However, by 2002, as China's rise became increasingly evident, ASEAN and China agreed to sign a *Declaration on the Conduct of Parties in the South China Sea*, with both parties agreeing:

[T]o consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a  $21^{st}$  century oriented partnership of good neighbourliness and mutual trust.  $^{28}$ 

Disappointingly, from an ASEAN perspective, China has subsequently shifted away from dealing with a collective ASEAN position.<sup>29</sup> Specifically, China's position, represented by the Chinese Ambassador to ASEAN in 2009, has become that the issue of disputed claims in the South China Sea is not a matter between ASEAN and China but one for resolution between China and the relevant countries on a bilateral basis.<sup>30</sup> Moreover, the shift in China's approach is evident in the differing approaches that ASEAN countries themselves have been taking towards resolving their disputes with China.

For example, China demonstrated the ineffectiveness of the *Declaration on the Conduct of Parties in the South China Sea* as early as 2005 when it negotiated an agreement for joint exploration in the South China Sea with The Philippines, while Vietnam sought a statement of support from the US in the ARF meeting of 2010 following forays by China into its EEZ.<sup>31</sup> The difference in approaches became even more distinct when Cambodia declined to issue the joint statement developed during the drafting of a proposed regional code of conduct in July 2012.<sup>32</sup> In other words, the effort of ASEAN to unite opinion regarding the peaceful resolution of disputes in the South China Sea, consistent with 'the ASEAN way', has been substantially diminished.

This unilateralism in responding to China's 'Nine-Dash Line' claim also undermines ASEAN's latent capacity to act as a strategic counterweight to China. ASEAN's collective economy is the fourth largest in the world (after the European Union, the US, China and Japan), so it has considerable economic 'clout' if it chose to use it—and could get the agreement of its members to do so.<sup>33</sup> Similarly, while its individual states have relatively small military capabilities, its collective capability would obviously be more substantial—albeit that is a capability that ASEAN has never claimed or sought to use in any capacity other than one-off contributions to low-level peacekeeping and humanitarian aid type operations.<sup>34</sup>

China's recent activities associated with its territorial claim in the South China Sea, emboldened by its rising economic and military power, are probably intended in part to test the regional reaction to what is effectively a reshaping of the distribution of power in Asia.<sup>35</sup> It has resulted in some countries, such as Vietnam, seeking security guarantees from the US, demonstrating their lack of assurance that ASEAN has the capacity to effectively engage with China on their behalf in this matter.<sup>36</sup> The risk for such countries, in looking for another structure that can accommodate their interests, is that they will be sacrificing their neutrality in the emerging 'balance of power' competition between China and the US.

Since the establishment of ASEAN, the concept of Southeast Asia as a 'Zone of Peace, Freedom and Neutrality' has been a fundamental tenet of its member states. Consequently, ASEAN has been able to bring about many regional structural initiatives that have brought member states and major players in the region together to discuss regional issues in an atmosphere of equality and congeniality, without member states compromising their neutrality or being forced to take sides. To date, this effort has reduced tensions in the region and promoted regional stability.

However, if the prediction eventuates that the Chinese economy will become the world's largest within a few years, it also seems likely that China will continue to fund its military expansion and capability enhancement to be a military power of near-peer status with the US within several decades. Namrata Goswami contends it is inevitable that great powers will compete with each other for power.<sup>37</sup> So

increased competition and heightened tensions between China and the US over issues in the South China Sea in coming years cannot be ruled out, a view held by the US Director of National Intelligence, James Clapper, who expressed concern in early 2015 that China's activities in the South China Sea not only endanger world trade but also increase military tension as the disputants respond by upgrading their military capabilities.<sup>38</sup>

The impact on ASEAN in the coming decade is likely to be an increase in pressure for it to take a more active role as mediator or facilitator in this region-wide dispute. The challenge for ASEAN, as the strategic competition between China and the US escalates, is that several of its members may seek separate bilateral agreements from one or the other in support of their territorial claims, instead of relying on ASEAN to resolve the issue through discussion and reconciliation. Therefore, ASEAN will have to balance its role as an advocate for a unified ASEAN position in regard to dealing with China against acknowledging the interests of individual states in either negotiating a bilateral settlement with China or seeking a security guarantee from the US, at the expense of ASEAN unity.

What seems certain is that ASEAN's effort in maintaining security and stability in the region over the coming decade will be tested by this increasingly complex security situation. To cope with this concern, ASEAN will need to consolidate and demonstrate its unity as an organisation. It will also need to convince individual states that their interests are best served by a multilateral approach, rather than seeking bilateral solutions. It will also need to be innovative in proposing new solutions, such as establishing a binding code of conduct on all parties, including China, aimed at minimising the risk of heightened tensions and potential conflict over disputed claims.

Another option would be to refer the issue to an appropriate international jurisdiction, such as the International Court of Justice, to resolve the problem based on applicable international law, as Indonesia and Malaysia did in relation to their dispute over the islands of Sipadan and Ligitan in 2002.<sup>39</sup>

#### Conclusion

Although China's claim to maritime territory within the South China Sea dates back many decades, it initially involved less provocative actions and elicited less agitated responses by other claimants because China was engaged with ASEAN over a number of years in discussing the issue with what seemed to offer some prospect of peaceful resolution. More recently, however, the dynamics have shifted. China's 'Nine-Dash Line' claim to the UN in 2009 seems to have hardened its position, as well as making its parameters deliberately more ambiguous. As China's economy has continued to grow, and as it has become one of the dominant military powers in the region, China's language and its actions have also become more assertive in enforcing its claim.

This paper has examined China's current behaviour in terms of the way it impacts on ASEAN's approach to solving the dispute. It has argued that ASEAN is at risk of being marginalised and losing its role as a counterweight to other major players in any 'balance-of-power' scenario that might develop. It has suggested that if the matter is to be resolved peacefully over the coming decade, and that if ASEAN is to retain its position of influence on issues relating to the South China Sea, it will need to be innovative in proposing new solutions. That might include a binding code of conduct. Alternatively, ASEAN might seek to bring the issue to international arbitration, aiming to reach a peaceful resolution based on agreed international law.

#### **Notes**

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- <sup>8</sup> Mahbubani and Severino, 'ASEAN'.
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- <sup>11</sup> Nuclear Threat Initiative (NTI), 'Association of Southeast Asian Nations (ASEAN)', NTI [website], available at <<u>www.nti.org/treaties-and-regimes/association-southeast-asian-nations-asean/</u>> accessed 13 February 2015.
- <sup>12</sup> ASEAN+3 includes China, Japan and South Korea; ASEAN+6 includes India, Australia and New Zealand; ASEAN+8 would include the US and Russia.
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- <sup>27</sup> Garry Collinson and Christopher B. Roberts, 'The Role of ASEAN', in Leszek Buszynski and Christopher Roberts (eds.), *The South China Sea and Australia's Regional Security Environment*, Occasional Paper No. 5, National Security College: Canberra, 2013, p. 35, available at <<u>http://nsc.anu.edu.au/documents/occasional-5.pdf</u>> accessed 15 February 2015.
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- <sup>30</sup> Cited in Severino, 'ASEAN and the South China Sea', p. 46.
- <sup>31</sup> See, for example, He Shan (ed.), 'Timeline of major events of China-Philippines Diplomacy', China-Philippines Portal [website], 28 February 2012, available at <<u>http://cn-ph.china.org.cn/2012-</u>02/28/content 4841408.htm> accessed 3 August 2015. Also Mark Landler, 'Offering to Aid Talks, US Challenges China on Disputed Islands', New York Times [website], 23 July 2010, available at <<u>http://www.nytimes.com/2010/07/24/world/asia/24diplo.html? r=0</u>> accessed 3 August 2015.
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