

# WebMemo



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## The U.S. Cannot Rely on ASEAN in the South China Sea

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For weeks now, commentary has been flying about the “progress” made on the South China Sea dispute at the Association of Southeast Asian Nations’ (ASEAN) annual foreign minister consultations in Bali. Because America’s approach to South-east Asia, and to some extent East Asia broadly, is increasingly carried out in the ASEAN context, it is important to look at exactly what happened.

**2002’s Unsatisfactory Outcome.** In the late 1990s, in the wake of a series of dustups between China and the Philippines over the Spratlys, China and ASEAN set about negotiating a code of conduct to ameliorate conflict over territory and rights in the South China Sea.

China objected to a legally binding “code.” Preferring to negotiate one-on-one with relatively weak states, China also objected to the idea that territorial disputes were anything but bilateral.

The result was the 2002 “*Declaration on the Conduct of Parties in the South China Sea (DOC)*” (emphasis added). ASEAN lost concerning establishment of a “code,” with its ambition preserved only in the declaration’s expressed interest in working “toward (its) eventual attainment.” China also won with its insistence on the bilateral nature of the disputes. The 2002 declaration stipulates that “territorial and jurisdictional disputes” should be resolved “through friendly consultations and negotiations by *sovereign states directly concerned*” (emphasis added).

ASEAN has been trying to recoup these positions ever since.

**What Did and Did Not Happen in Bali.** The July Bali agreement is *not* a code of conduct. In fact, the 274-word “Guidelines for the Implementation of the DOC” do not address operations, i.e. conduct, of any sort. It is not, therefore, even a step in the direction of a code. The only reference to “code of conduct” is a brief expression of interest in its “eventual realization”—a simple paraphrase of the 2002 declaration.

The Bali agreement frames its subject matter very clearly: “These Guidelines are to guide the implementation of possible joint cooperative activities, measures and projects as provided for in the DOC.” “Cooperative activities” refers to yet another set of issues from 2002 that are still under consideration. The DOC gives the “*parties concerned*” (emphasis added) the option of “explor(ing) or undertak(ing) cooperative activities” in the areas of “marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation, and combating transnational crime.”

As far as confidence-building measures are concerned, the Bali agreement is again a simple paraphrase of the 2002 agreement. The DOC referred specifically to the need for defense dialogues, just

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and humane treatment of individuals in the disputed areas, notification of military activities, and exchange of information. At most, the Bali accord is an agreement in concept to prioritize confidence-building measures above other types of cooperation (above) covered in the document.

In exchange for these meager results, ASEAN again conceded on the matter of bilateral vs. multilateral.

In the lead-up to Bali, the negotiations became stuck on whether ASEAN members could meet as a body to discuss this basket of issues before meeting with China. One would think this is ASEAN's prerogative. But from the Chinese perspective, putting such a prerogative in the agreement multilateralizes the conflict—something China has rejected ever more vociferously since Secretary of State Hillary Clinton's intervention at the 2010 ASEAN Regional Forum. The Chinese won on this point, too.

All the 2002 agreement did was provide the opportunity to set aside ASEAN's disagreements with China for the cause of broader, lucrative economic engagement. The July 2011 Bali guidelines simply kick the can down the road again. And for this, ASEAN Secretary General Surin Pitsuwan called it an "historic" achievement.<sup>1</sup>

**Why Does This Matter to the U.S.?** This matters to the U.S. because ASEAN has assumed a central role in America's approach to East Asia. In Secretary Clinton's words, ASEAN is "a fulcrum for the region's emerging regional architecture" and is "indispensable on a host of political, economic, and strategic matters."<sup>2</sup>

The U.S. should be deeply engaged in the diplomatic and economic life of ASEAN. For better or for worse, it is the most logical, neutral forum for regional diplomacy. American policymakers, however, must keep ASEAN's value to American interests in perspective—its institutionally inept handling of the South China Sea dispute is the most current, stark reminder. The United States has other, more direct avenues to pursue its interest, which

prudent use of ASEAN forums can supplement. But America's interests in the South China Sea are too important to depend on it.

**What Should the U.S. Do?** The U.S. should continue to look out for its interests and those of its allies in East Asia independent of its involvement with ASEAN.

- **Protect freedom of the seas.** America's principal interest in the South China Sea is freedom of navigation, and its most effective instrument in this regard is the U.S. Navy. Under its Freedom of Navigation Program, the United States regularly asserts its rights in international waters. It also carries out necessary exercises, military survey activities, and intelligence gathering in waters seaward of China's 12-mile territorial limit. It should continue to do so, undeterred by complaints and threats from the Chinese. It should also bear in mind that several members of ASEAN and India are officially sympathetic to China's legal position on military activities in nearby waters.
- **Protect allies.** The U.S. has one treaty ally involved in this dispute: The Republic of the Philippines. The U.S. may very well find itself in a position where it cares more about the security of the Philippines than ASEAN. As chair of ASEAN in 2010, Vietnam stiffened ASEAN's spine. The discomfort some members exhibited over its assertiveness, however, does not bode well for the organization's staying power with regard to the Philippines, especially as the ASEAN chair is due to rotate through a number of cautious and/or China-deferential countries, such as Cambodia, Brunei, Burma, and Laos.
- **Strengthen and create partnerships.** America should keep its alliance network front and center, help provide the Philippines the military wherewithal to withstand PRC pressure, and continue to look for ways to expand bilateral strategic partnerships, with Vietnam and India in particular. Recent events obscure the fact that ASEAN

1. Michael Martina and Olivia Rondonuwu, "China, ASEAN Set 'Guidelines' on Sea Row, but No Deal Expected," Reuters, July 20, 2011, at <http://www.reuters.com/article/2011/07/20/asean-southchinasea-idUSL3E7IK1B620110720> (August 5, 2011).  
 2. Secretary of State Hillary Clinton, "America's Engagement in the Asia-Pacific," address at Kahala Hotel, Honolulu, HI, October 28, 2010, at <http://www.state.gov/secretary/rm/2010/10/150141.htm> (August 5, 2011).

is deeply ambivalent about China's rise. Its consensus-based diplomatic culture means that the members most averse to offending China discourage bold initiative. Any time real action is required, the U.S. must rely, as it has for decades, directly on its hub-and-spokes system of allies and partnerships.

**The U.S. Cannot Afford to Win on Engagement and Lose on Substance.** Sixteen years after China and the Philippines clashed over Mischief Reef, ASEAN has barely moved the needle on the South China Sea dispute. All that China has conceded in this time is the de facto willingness to discuss the issue (not the dispute itself) with ASEAN. China has held firm, opposing a code of conduct and has prevailed on keeping discussions bilateral.

And there is no indication at all that these positions are changing.

This is the PRC's negotiating style. Its negotiators are not looking for middle ground; they are looking for the conditions under which ASEAN will agree to their demands. ASEAN's negotiating style is a perfect fit, because its negotiators, conveniently enough, are looking for a way to agree, create a sense of movement, and move on. When one side cares about engagement and the other about substance, it's a win-win situation. ASEAN consistently wins on engagement and loses on substance. That is not a formula the U.S. can trust with its interests.

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