

# National Interests and the Role of Major and Middle Powers in the South China Sea: The Case of Indonesia

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Though officially not a claimant state, Indonesia finds it difficult to turn its back on developments related to the South China Sea. Although consistently claiming itself to be outside of the disputes and playing the role as an honest broker, there have been incidents when Indonesia's position has been questioned. Reading commentaries and news in the media makes one wonder whether it is in the interest of some parties to persuade Indonesia to commit as a direct party in these disputes.

This year (2016) has witnessed many developments related to the South China Sea. The principal issue is the ruling of the arbitral tribunal of the Permanent Court of Arbitration (PCA). The Philippines, as one of the claimants, filed an objection in 2013. In July this year the Tribunal ruled against China's claim on the South China Sea, which is marked by a nine-dash line. The decision was based on the consideration that China's claim did not have any legal basis. The claim, which is based on China's historic rights, failed because it was not in accordance with Exclusive Economic Zones as determined by the United Nations.

Following the Tribunal ruling, countries responded in various manners. For Indonesia, the official stance of the Indonesian government was announced by the foreign minister, who called on all parties to prioritise peace, maintain stability, practice self-restraint, and respect international law, particularly the UN Convention on the 1982 Law of the Sea. In contrast, China has responded to the Tribunal's determination by stating that it will not accept it. Dismissing the court's authority, China denounced the ruling as empty and asserted that the Tribunal has no binding power.

This background paper seeks to highlight where Indonesia stands in the disputes, particularly several incidents throughout 2016 and the official foreign policy stance as issued by the Foreign Ministry. Moreover, this paper seeks to determine what role Indonesia plays in efforts to manage the ongoing conflict, particularly the role of Indonesia in the ASEAN framework in relation to the South China Sea disputes.

## Indonesia and the Nine-Dash Line

Throughout the 1980s and 1990s, Indonesia was generally unaffected by the territorial disputes in the South China Sea; nonetheless, it viewed the disputes as a threat to key Indonesian interests in maintaining Southeast Asian stability. There were statements of concern that territorial disputes presented challenges to regional autonomy from outside hegemony, and to the ASEAN norms of the peaceful settlement of disputes.

Beginning in the late 1980s and extending to the mid-1990s, Indonesia initiated four informal workshops to reduce tensions and build confidence between rival claimants. At first, China refused to participate. But it sent delegates to these workshops after diplomatic ties were normalised.

In the 1990s China became more open to the multilateral frameworks initiated by ASEAN. In the ASEAN context, engagement is conceived as the institutionalisation of relations with China through a regular process of diplomatic dialogue, the purpose of which is to socialise China into accepting regional norms of behaviour, such as peaceful resolution of disputes and the non-use of force to resolve interstate problems. Southeast Asia's engagement with China was aimed at securing China's respect for norms of state conduct that have come to distinguish the collective culture of ASEAN and which serve the cause of a stable regional order.<sup>1</sup> Ultimately, ASEAN members and China signed the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), which committed the signatories to the peaceful settlement of disputes, the non-use of force, and the exercise of restraint. Importantly, it called for all claimants to refrain from occupying uninhabited islands, reefs and shoals in the South China Sea.

Unfortunately, only several years after the signing of the DOC, the disputes began to take a downward trend, which consequently directly affected Indonesia in 2009. During that year, China submitted to the Secretary General of the United Nations (UN) a *Note Verbale* in which it officially resorted to the now-famous "Nine-Dash Line" to delineate its claims in the South China Sea. This line was originally drafted in 1914 and harnessed by the Chinese Nationalist government in 1947. Problematically enough, Beijing's territorial claims would encroach on the Exclusive Economic Zone (EEZ) that Indonesia derives from its Natuna Islands, although it does not cover any of the landmass of the Natuna Islands.

In bold retort Indonesia outlined its position on the dashed-line map in its diplomatic note to the UN Secretary General in July 2010, contesting the validity and legality of China's "Nine-Dash Line." The *Note Verbale* highlights that the map lacked international legal basis and was tantamount to upsetting the UN Convention on the Law of the Sea (UNCLOS) 1982, and therefore is not recognisable in the eyes of International Law. It states: "Thus far, there is no clear explanation as to the legal basis, the method of drawing, and the status of those separated dotted-lines."<sup>2</sup>

Beijing refrained from making its case too vociferously, to avoid having to clarify – and possibly regularise – its position in relation to UNCLOS, thus maintaining a form of "strategic uncertainty."<sup>3</sup> Until now, no response has come directly from Beijing regarding Indonesia's 2010 *Note Verbale*. Nonetheless, Beijing has at least twice had to make statements to acknowledge that the Natuna Islands belong to Indonesia, the last one being in 2016 after an incident in the Natuna Waters, explained below.

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<sup>1</sup> Michael Leifer, "Indonesia's Encounters with China and the Dilemmas of Engagement," in Alastair I. Johnston and Robert S. Ross (eds.), *Engaging China: The Management of an Emerging Power* (New York: Routledge, 1999), p. 100.

<sup>2</sup> Indonesia, *Note Verbale*, doc. 480/POL-702/VII/10, New York, 8 July 2010, on the website of the Commission, *supra* note 5.

<sup>3</sup> Bruno Hellendorf and Thierry Kellner, "Indonesia: A Bigger Role in the South China Sea?" *The Diplomat*, 9 July 2014, <http://thediplomat.com/2014/07/indonesia-a-bigger-role-in-the-south-china-sea/>

## 2016: Incidents in the Natuna Waters

During the first semester of 2016 there were three incidents of fishing vessels from China operating without permission in Indonesia's Exclusive Economic Zone (EEZ). These incidents sparked off new tension in the South China Sea. It has again raised the question of Indonesia's position in the SCS disputes.

The first incident involved an intervention during 19–20 March 2016 by two armed Chinese Coast Guard ships in Indonesia's EEZ, 4.3 km off the Natuna Islands. A patrol boat from the Indonesian Ministry of Fishery and Marine Affairs (KKP) seized a 300-tonne Chinese fishing boat, Kway Fey 10078, and arrested her eight crew members for fishing within Indonesia's exclusive economic zone (EEZ).<sup>4</sup> The crew of Kway Fey was transferred over to the KKP boat and KKP personnel then commandeered the Kway Fey. During the escort return to base, a Chinese Coast Guard vessel crashed into the Kway Fey, forcing it to stop near the limits of the Indonesian territorial sea. At almost the same time, a second Chinese coast guard vessel also appeared in the vicinity. To avoid further escalation, the KKP officers had abandoned Kway Fey, after which the Chinese Coast Guard officers took over the and removed it from Indonesian waters.

As expected, the media relentlessly covered this incident, raising the question of whether Indonesia is now directly a part of the dispute. Will Indonesia affect a harsher stance against China? Will Indonesia cease to be an honest broker, a role it has so far persistently claimed to adopt? Pertinently, shortly after the incident the Foreign Ministry refuted any relation to the South China Sea dispute, seeking to avoid raising the issue.

During the second incident in May, a Chinese fishing vessel, the Gui Bei Yu 27099, was arrested for illegally fishing in the same waters as the Kway Fey, and successfully brought to Indonesian territory.<sup>5</sup> It took several rounds to be fired to halt the Gui Bei Yu in its escape attempt after being caught by the Indonesian destroyer Oswald Siahaan-354, which then blocked a Chinese Coast Guard vessel from rescuing the Gui Bei Yu. Unlike the March incident, in which larger Chinese Coast Guard ships managed to recapture the Kway Fey, the Indonesian Navy won the second incident's standoff because the Oswald Siahaan was equivalent in size and capacity to the Chinese Coast Guard vessel.

On board the Gui Bei Yu, in the captain's room on the ship was a map designating parts of Indonesia's EEZ as fishing areas, which were endorsed by the Chinese government. Indeed, in each of the protest notes following the three incidents, China always insisted that fishermen from China had the right to fish on the basis of the Traditional Fishing Ground concept.<sup>6</sup>

The last incident occurred on 17 June in the Natuna Waters, with the Indonesian Navy opening fire to force Chinese fishing vessels to comply with Indonesian demands to cease operations and allow Indonesian authorities to detain the vessel.<sup>7</sup> The recent

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<sup>4</sup> "RI Confronts China on Fishing," *The Jakarta Post*, 21 March 2016.

<sup>5</sup> "Fresh Natuna Incident Roils RI-China Relations," *The Jakarta Post*, 30 May 2016.

<sup>6</sup> Hikmahanto Juwana, "Opinion: Indonesia's Position on the South China Sea," *Kompas*, 23 June 2016.

<sup>7</sup> Lyle Morris, "Indonesia-China Tensions in the Natuna Sea: Evidence of Naval Efficacy over Coast Guards?" *The Diplomat*, 28 June 2016, <http://thediplomat.com/2016/06/indonesia-china-tensions-in-the-natuna-sea-evidence-of-naval-efficacy-over-coast-guards/>

deployment of Indonesia's Navy to Natuna appeared to replace, to some extent, the Ministry of Marine Affairs and Fisheries vessels that had been protecting Natuna waters from foreign fishing violations. Soon after that incident, the Indonesian Navy was tasked by Indonesian policymakers to patrol Natuna, presumably as a more forceful deterrent against the Chinese.

Prior to these incidents, there were a number of statements deriving from Indonesian officials that were interpreted as a policy shift. In March 2014 during an event in the Natuna Islands a member of Indonesia's defence strategy unit commented that China claimed Natuna waters as its territorial waters. Later in April, General Moeldoko, the Commander in Chief of the Indonesian Armed Forces wrote an opinion piece in the *Wall Street Journal* warning that Indonesia will strengthen its military forces in the Natuna Islands now that Beijing intended to occupy them. These statements were quickly followed by bombastic media coverage and expert analyses claiming that Indonesia is "no longer neutral," or "has formally recognised a territorial dispute with China in the South China Sea." The Foreign Ministry was quick to clarify Indonesia's position. Less than one week after the first comment the then Foreign Minister, Marty Natalegawa, made a statement to emphasise that there is no dispute between China and Indonesia over Natuna. He said that although Indonesia sent a *Note Verbale* regarding China's Nine-Dash Line to the UN, this does not translate to an unresolved territorial dispute.

In 2015, during a visit to Tokyo, President Joko Widodo publicly stated Indonesia's rejection to China's Nine Dash-Line claim. Later on in November, the then Coordinating Minister of Political, Legal, and Security Affairs made a statement that Indonesia could also take China to court over the South China Sea, a move to follow that of the Philippines. Both statements drew responses from Beijing, and were followed by clarifications from different offices in Jakarta.

After the last incident in June, a Chinese foreign ministry spokesperson reiterated Beijing's position that China and Indonesia "have no territorial disputes" and that China does not object to Indonesia's sovereignty over the Natuna Islands; however, "China and Indonesia have overlapping claims over maritime rights of some parts of the waters in the South China Sea."<sup>8</sup> The term "overlapping claims" may signal that Beijing is taking a tougher stance.

Could Indonesia also take a tougher stance? Previously notorious for placing high priority on domestic issues at the cost of neglecting Indonesia's foreign interests, Joko Widodo has shifted his approach to the South China Sea disputes after the 2016 incidents. He led a high-level delegation, including the Foreign Minister and armed forces chief, to the Natuna Islands in the South China Sea. At a meeting of ministers and security force chiefs on an Indonesian warship circled by airforce jets, which in the previous week detained a Chinese trawler and its crew in Indonesian waters, the President ordered defences around the Natunas to be increased. Does this signal a shift in Indonesia's approach to the disputes?

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<sup>8</sup> M. Taylor Fravel, "Traditional Fishing Grounds and China's Historic Rights Claims in the South China Sea," Maritime Awareness Project, 11 July 2016, <http://maritimeawarenessproject.org/2016/07/11/traditional-fishing-grounds-and-chinas-claims-in-the-south-china-sea/>

## The ASEAN Framework and the Long Road towards a Code of Conduct

The aims and purposes of ASEAN, when it was founded in 1967, concerned cooperation in economic, social, cultural, technical, educational and other fields, and in the promotion of regional peace and stability through abiding respect for justice and the rule of law, and adherence to the principles of the UN Charter. Now, in 2016, ASEAN claims to have made achievements in all these areas, particularly in contributing to the region in relation to peace, prosperity and geopolitical stability. Such achievement is attributed to the way that ASEAN makes decisions – the so-called ‘ASEAN way’, which has succeeded in shaping its identity – achieved by a process of consultation and consensus, and conflict management rather than conflict resolution. Moreover, it is ASEAN’s weakness as well as ASEAN’s strength that it has to operate within the mandate of its Charter, namely “respecting the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity”.<sup>9</sup>

A combination of weakness and strength also typifies ASEAN’s long process of dialogue with China on a Code of Conduct and its relation to the South China Sea. Indonesia has long been a vocal proponent of a legally binding Code of Conduct in the South China Sea. It has sponsored a series of dedicated workshops on the issue. Indonesia has continuously and consistently pushed for an ASEAN unity and centrality in handling this issue. Now, in 2016, Indonesia continues to push for a solution through ASEAN. This will likely continue to be the basis of Indonesia’s position, in spite of the incidents of 2016.

Indonesia's president Widodo has said that Indonesia was ready to act as an intermediary to calm rising tensions over territorial disputes in the South China Sea, and to help expedite drafting of a Code of Conduct between China and the ten member states of the Association of Southeast Asian Nations (ASEAN). Two important points should be emphasised as the basis of discussion. First, Indonesia maintains that it is not a claimant state in the South China Sea territorial disputes, nor does it have any territorial ambition in the area whatsoever; nonetheless, it has interests at stake. Second, Indonesia maintains continuous advocacy for a more united ASEAN front in relations with China.

The unity and integrity of ASEAN is a major concern for ASEAN manoeuvres after the Tribunal ruling. There is still an opportunity for Indonesia, as the largest country in ASEAN, to play its role in encouraging the resurgence of ASEAN centrality. This is Indonesia’s prospective position, as it is unlikely to alter its policy stance on the South China Sea. At this point there are limited policy options for Indonesia other than holding to the ASEAN framework.

## Concluding Notes

As mentioned at the beginning of this paper, there are calls for Indonesia not only to play a greater role in dispute resolution, but also to acknowledge its direct involvement in the SCS disputes.<sup>10</sup> However, this is still highly unlikely, judging by how Indonesia has conducted negotiations at the recent ASEAN Foreign Ministers Meeting in July and the

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<sup>9</sup> Agus Rustandi, “The South China Sea Dispute: Opportunities for ASEAN to Enhance Its Policies in order to Achieve Resolution,” *Indo-Pacific Strategic Papers*, April 2016.

<sup>10</sup> See, for example Evan Laksmana, “A Post-non-claimant South China Sea Policy,” *The Jakarta Post*, 20 June 2016.

Summit in September. Indonesia's stance is founded on its non-claimant status. Otherwise, Indonesia risks placing itself in the uncomfortable position of justifying China's request to negotiate over the maritime boundary and even legitimising China's claim that a border dispute exists – something that Indonesian foreign ministers have been both denying and attempting to avoid.<sup>11</sup>

As long as the Indonesian government continues its “inward looking” policies, there is little chance there would be a dramatic change in its foreign policy towards the South China Sea. There have been occasions throughout this year that gives signal to a possible shift in policy; nonetheless, aside from shows of force by the President and the military in the Natuna Islands, there is very little evidence in terms of policy. ASEAN will continue to be a vehicle for Indonesia, in spite of criticisms towards the effectiveness of ASEAN. At the very least, what we can expect at present is less of a shift in Indonesia's direct response to China; rather, whether Indonesia can increase its role in maintaining unity in ASEAN and making it a more effective framework in the management of the South China Sea disputes.

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<sup>11</sup> Amelia Long, “Indonesia's South China Sea Dilemma,” *The National Interest*, 24 June 2016, <http://nationalinterest.org/blog/the-buzz/indonesias-south-china-sea-dilemma-16707>