

# ASEAN NEWSLETTER

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## ASEAN News Updates

### ASEAN Trading Link

(Kuala Lumpur, May 31, 2012)

The soon-to-be-established Asean trading link will create an integrated Asean capital market that will raise the profile of the region's securities to the global investment community. The Asean Trading Link will start with Bursa Malaysia and the Singapore Exchange (SGX) in June, with the Stock Exchange of Thailand (SET) joining in August. Bursa Malaysia, SGX, SET, Indonesia Stock Exchange, Hanoi Stock Exchange, Ho Chi Minh Stock Exchange and the Philippine Stock Exchange Inc signed a memorandum of understanding in 2009 to form the Asean electronic trading link to enhance the competitiveness of their capital markets.

### ASEAN-New Zealand Expand Relations

(Jakarta May 30, 2012)

The 13<sup>th</sup> Joint Management Committee (JMC) decided to upgrade the JMC into a Joint Cooperation Committee (JCC). The new Terms of Reference provides an enhanced framework for the Committee of Permanent Representatives (CPR) and the Ambassador of New Zealand to ASEAN to interact and collaborate in bringing about mutual prosperity and benefits.

### 6th ASEAN Defence Ministers' Meeting

(Phnom Penh, May 29, 2012 )

Asean Ministers of Defence met to exchange views on ways and means to further enhance regional security and defence cooperation. It was agreed in the meeting that the ADMM-Plus will now meet every 2 years from 2013 onwards as compared to once in three years previously.

### Joint Council of the ASEAN-China Centre Launched to Enhance ASEAN-China Relations

(Beijing, May 21, 2012 )

The Joint Council, comprised of ASEAN Member States representatives, China, and the ASEAN Secretariat, approved a number of key documents to facilitate smooth operations of the ASEAN-China Centre . The Joint Council Meeting appointed Mr. Ma Mingqiang as the Secretary-General of the Centre who will serve a period of three years. The ASEAN Co-Chair of the Joint Council Meeting, H.E. KanPharidh, Ambassador of the Kingdom of Cambodia to ASEAN, called on the Centre to implement activities that would contribute to the deepening of ASEAN-China cooperation in trade, investment, education, culture, tourism as well as enhancing people-to-people interactions.

### ASEAN +3 Regional Financial Cooperation Strengthens

(Manila, May 7, 2012)

At the ASEAN +3 Finance Ministers met with Central Bank Governors, a unanimous decision was made to increase the size of the Chiang Mai Initiative Multilateralization (CMIM) Fund from US\$ 120 billion to US\$ 240 billion for managing regional short-term liquidity, as the needs arise. The portion of the fund which could be utilized without subjecting to IMF conditions has also increased from 20% to 30%. In addition, a separate crisis prevention facility has also been introduced known as the CMIM Precautionary Line. Also f a new roadmap for the Asian Bond Market Initiative (ABMI) was adopted to further develop efficient and liquid bond markets in the region through a more effective utilization of regional saving for regional investment. A work plan will be developed to implement the priorities under the new roadmap.

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## THE SOUTH CHINA SEA DISPUTES : CHALLENGES FOR ASEAN\*

Mark J. Valencia

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The China-Philippines sovereignty and jurisdictional disputes in the South China Sea in general and regarding the rocks of Scarborough Shoal in particular may appear as ‘much ado about nothing.’ But the Philippines’ firm opposition to China’s claims and actions and its appeal for US and ASEAN backing have propelled the disputes to the forefront of regional security concerns. They are driven by primal forces like nationalism, domestic politics, and the setting of political and legal precedents, and indirectly involve the US–China rivalry. The confrontation has already become a test of ASEAN solidarity, the meaning of the US–Philippine alliance, and the role and importance of US political power in the region.

This is the context of the Scarborough Shoal dispute which erupted on 10 April 2012 when Philippine naval personnel boarded, inspected and tried to arrest Chinese fishers and their boats for violating Philippine laws by harvesting coral, giant clams and sharks. A Chinese maritime enforcement vessel prevented the arrests and a standoff ensued. Raw nationalism and aggressive leadership are driving the issues forward in both countries. China’s bellicose blogosphere posts and media rants and Filipino anti-China demonstrations are but the smoke from smoldering nationalist fires that demand that leadership ‘defend the nation.’ For the Philippines, it is *déjà vu*. In 1994 China occupied Mischief Reef, a submerged feature on the Philippine continental shelf and within its EEZ. Despite vociferous protests by the Philippines, China still occupies the feature and has built structures on it.

Access to resources plays a role in the South China Sea disputes. Despite years of nay-saying by so-called experts and analysts with agendas – there does appear to be considerable gas resources within the disputed areas of the South China Sea, particularly on Reed Bank claimed by both China and the Philippines. The Sampaguita gas field is estimated to contain at least 3.4 TCF of gas and possibly as much as 20 TCF, a world class gas deposit, also including more than 400 million barrels of oil. A Philippines-licensed company is planning to drill on Reed Bank late in 2012. If China tries to prevent the drilling this could become a ‘flash point’. But access to resources is not the prime progenitor of this struggle.

The real issue is the political precedents that are being established. The Philippines has argued that other ASEAN claimants will be bullied by China if it is successful with it. Other claimants in the South China Sea –Brunei, Malaysia, and Vietnam-- as well as in the East China Sea – like Japan- are indeed closely watching this drama unfold. They hope to glean lessons as to how to deal with China’s claims and new assertiveness. Because the U.S. is a military ally of the Philippines and it has appealed to the US for support, the Scarborough Shoal incident has brought the two great powers face to face – at least behind the scenes. Indeed, China thinks that the U.S. is manipulating the situation to further entrench itself militarily in the Philippines. In the midst of the dispute the U.S. and the Philippines held joint military exercises in the South China Sea. Although they were previously scheduled and announced, they could have been postponed for the sake of good relations.

So far the U.S. has been very cautious and the Philippines has been clearly disappointed - some say politically “orphaned” -by the lack of strong US and ASEAN support. The Philippines clearly believes that the U.S. is obligated by their 1951 Mutual Defense Treaty to come to its aid if its forces are attacked in the South China Sea. However, despite Philippine government public pressure, the U.S. has remained ambiguous as to whether or not it would respond militarily in the event of a China-Philippines clash. According to US Secretary of State Hillary Clinton, “the U.S. supports a collaborative diplomatic process by all those involved for resolving the various disputes. We oppose the threat or use of force by any party to advance its claims.” The Philippines is belatedly discovering that the U.S. and ASEAN members have their own interests regarding China – both political and economic-- and that these take priority.

ASEAN has come a long way since it was just a twinkle in the eye of the founding generation. It has accomplished much thanks to several generations of visionary thinkers and astute leaders. But it is now facing perhaps its greatest challenge as an organization. Can it maintain neutrality and solidarity under the pressure of US-China competition for its members’ “hearts and minds”? This question raises critical challenges for the current generation of leaders.

Although the Philippines has appealed publically and directly to other fellow ASEAN claimants for support, will they or other ASEAN members – in addition to Vietnam – back the Philippines, or continue to demure? ASEAN has no official position on the South China Sea disputes. Indeed even the DoC was an agreement between ASEAN member states and China, not between China and ASEAN as an entity. Will it take a position? If not will it/can ASEAN remain central in regional security or will it be subordinated and marginalized by the US-China rivalry?

ASEAN continues to seek consensus among its members – claimants and non-claimants alike – as well as with China on a CoC for the South China Sea that would implement the DoC according to the agreed Guidelines. But progress has been slow and difficult. Can it negotiate among its members --and then with China a robust CoC that will stabilize the situation?

There are also legal principles involved that could set precedents affecting the disputes in other parts of the South China Sea and elsewhere. Will China and the Philippines agree to resolve the issues using the existing international legal system supported and partially shaped by the U. S.? Or will China try to change it to its advantage as have rising powers before it – like the U.S. itself? Will soft power implicitly backed by heavy “hard power” triumph over legal principles as China hopes, or is international law truly ‘the great equalizer’ as the Philippines proclaims?

Cooperation is one option although its prospects seem doubtful for the foreseeable future. Nevertheless both China and the Philippines have unilaterally banned fishing around the Shoal. This is a positive move. But can the disputants take the next step - agree to set aside the issues and to jointly manage the fisheries in an agreed area, thus providing a positive model for managing the rest of the disputes in the South China Sea?

Diplomatic efforts to resolve the Scarborough issue have so far been unsuccessful although tension has somewhat subsided. Of course the parties may allow this particular dispute to just fade away without a clear resolution. But even if it does it has already revealed quite a bit about China’s intentions and tactics, US resolve, ASEAN cohesion and the role and rule of international law in such matters. And there are more such incidents on the horizon. Perhaps in the end co-operation will be borne out of deadlock and its mother will be necessity. Otherwise the region needs to prepare for more and worse confrontations to come.

*\*This piece is based in part on Mark J. Valencia, Philippines-China spat tests ASEAN solidarity, Japan Times, 14 May 2012*

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## **The United States & China: ASEAN Among Giants**

*Elina Noor*

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If the intensity of US-China relations were to be plotted on a timeline of events, the graph in six months alone would probably look like the result of a rigorous cardiac stress test. Depending on what you read and when you read it, the relationship between these two Asia-Pacific heavyweights fluctuates anywhere between placid and promising to competitive and aggrieved. Sometimes, it is all of the above in the very same day.

On the one hand, US-China political ties at the highest levels look to be improving. President Obama may not have returned to Beijing since his official visit in 2009 but Chinese leaders have travelled to Washington in the last two years; President Hu in 2011 and his presumptive replacement, Vice-President Xi Jinping, earlier this year.

Xi's visit coincided with, amongst other things, a joint venture between DreamWorks Animation and China's Oriental DreamWorks. The deal, valued at \$330 million, opens up Hollywood access to a potentially lucrative Chinese market. It also paves the way for greater soft power - celluloid, in this case - diplomacy between the huge movie-making industries in the United States and China.

As ping-pong diplomacy of the 1970s showed, the potential for soft power outreach is not insignificant. Xi's visit, politically notable though it was, was also very nearly eclipsed by "LinSanity", the sudden wave of basketball fanaticism across Asia that rode on the instant stardom of Jeremy Lin and the temporary winning streak he led the faltering New York Knicks on. Other promising diplomatic initiatives are also unfolding following the 2010 US-China Consultation on People-to-People Exchange presided over by US Secretary of State Hillary Clinton and Chinese State Councillor Liu Yandong.

However, the optimism of such developments is grounded by an alternate reality. There is a fractious backdrop of economic, financial, military, and human rights irritants in the US-China relationship. The US trade deficit with China has grown to nearly US\$300 billion this year and US complaints of currency undervaluation by China will only be amplified as the US presidential election in November nears. Suspicions within US defence and foreign policy circles about Chinese military expansion and cyber warfare capabilities remain pervasive and China's movements in the South China Sea will continue to be closely watched by the United States because of its interests and treaty obligations in Southeast Asia. This tension is compounded by the US' operational execution of its "pivot" through force rotations and expanding military ties in the region.

A mixed bag of relations is only natural for countries with formal ties to each other. However, the complexity of those ties increases (a) the closer in geographical proximity those countries are to each other, and (b) the more powerful and influential they are in the existing or emerging international order. Friction and cooperation are therefore not only inevitable between the United States and China; they are also likely to have greater implications for the group of Southeast Asian countries sandwiched between them.

### **How should ASEAN respond?**

It is useful to remember that how ASEAN posits itself in the evolution of the US-China regional interplay will ultimately be shaped by the individual national interests of 10 very different countries. At least a third of these countries have a vital stake in the South China Sea dispute. Two have treaty alliances with the United States. A few have historical challenges with either one or both the United States and China. All have intricate and growing economic interdependence with both.

It is one thing for the United States to say that it will not push ASEAN to choose between America and China. It is a whole other thing for ASEAN to say for itself that it will not be pushed to make that decision. Thus far, there has been a dual-track approach to responding to the regional interplay involving the United States and China. As a grouping, ASEAN has done extremely well in attracting active engagement by both major powers. As individual countries, there have been marked differences in interacting with the two particularly in contentious issues such as the South China Sea.

At some point, these parallel approaches will have to converge especially if the Bali Concord III is to evolve beyond anything more than just a pledge. This does not have to happen overnight – and won't, in typical ASEAN likelihood – but the more convergent points there are in a number of different areas, the more effective ASEAN will be at responding to the dynamism of the region in a more “coordinated, cohesive, and coherent” fashion.

The natural area of convergence for the US-China-ASEAN trifecta has so far has been in trade. Given ASEAN's ambition of realising a socio-cultural community, and given expanding unconventional diplomatic initiatives involving culture, sports, and women's empowerment between the United States and China, and the United States and some ASEAN countries, this sphere should be the next natural area of convergence. Unlike trade, people-to-people initiatives yield neither tangible measurables nor results. They will not resolve the South China Sea dispute or tone down the occasional political bluster between countries. What they will do, however, is nurture relationships and partnerships for the future as well as a long-term internal code of conduct complementary to those of the documentary kind. An investment in sports, education, the arts – even big-screen movie collaborations – led by ASEAN and supported by both the United States and China will ensure pay-offs for generations to come.

If ASEAN is able to do this successfully, it will not only move one step closer towards fulfilling its people-oriented goal; it will also affirm its empowerment and stewardship of Southeast Asia. More importantly, it will contribute markedly towards reducing future flashpoints in the region and play an active role in shaping neighbourhood dynamics. To paraphrase Indonesian foreign minister, Dr. Marty Natalegawa, it will show that ASEAN is really a community in action; not only a community that is being planned for actions.

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## **AHRD—Protecting Regimes or Civilians?**

*By Natalie Shobana Ambrose*

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In six months, ASEAN will have its very own Human Rights Declaration (AHRD) patterned after the 1948 Universal Declaration of Human Rights (UDHR). The ASEAN Intergovernmental Commission on Human Rights (AICHR) is working toward a November deadline with the agreement by ASEAN members that the Declaration be adopted at the 21<sup>st</sup> ASEAN Summit to be held later this year in Phnom Penh.

The AHRD being a work in progress, AICHR representatives have been engaging with civil society and NGOs within the region to ensure that the declaration be inclusive. Ironically, this is being done without sharing the text of this vital declaration but discussing the content. Responding to this criticism, the AICHR representatives have stated that they are limited by the instructions that drafts have to first be submitted to the Foreign Ministers before it can be disseminated to the other organisations. ASEAN Foreign Ministers meet next in July and will assess the draft and set the agenda but not before AICHR meets in Myanmar June 3-6 and then in Kuala Lumpur June 22, 2012 for a series of closed door consultations.

On the surface this seems like sharp progress but after close to three years of mandate, many NGOs and civil society have hoped for greater advancement and transparency. The repeated defence cited of having to navigate between the various differences among member states - religious, government systems, language, ethnicity - now comes across as more of an excuse rather than a reason. One however has to acknowledge the very real difficulty of manoeuvring through agendas when each ASEAN member state has the privilege of veto power especially when it comes to sensitive concerns such as human rights.

At this point, ASEAN is pushing the time-limit of remaining relevant when it comes to implementing human rights mechanisms. Though these things cannot and should not be rushed, the longer it takes to unveil the AHRD, the more negative comments solidify a growing notion that the organisation is a talk-shop rather an action orientated regional body. Many have named ASEAN a toothless organisation and cited the shortcomings of the ASEAN-way in not being able to move forward fast enough, especially since almost all its initiatives are not legally binding. As such, there seems to be a tendency for this new rush to adopt the ADHR to be seen as just another task to tick-off from a long to-do list before the 2015 deadline of building an ASEAN community.

While there is plenty of apathy and distrust about a truly workable human rights mechanism being in place within ASEAN, the reality is that there are high hopes pinned on the AHRD and the vast content it has to address in order to be relevant. Civil society for now has a haphazard, un-collated list of what needs to be included in the AHRD, ranging from the protection of migrant workers, discrimination in law and policies, economic rights, trafficking of women, children and drugs to personal data protection, LGBTQ, political participation of women, statelessness, non-refoulement of refugees, protection of human rights defenders, border conflicts, money laundering, enforced disappearances, terrorism and even CSR – the content list seems rather daunting.

The question that then needs to be asked is how comprehensive or vague will the AHRD be in order to ensure that it includes the long list of issues that need to be addressed? Secondly, what will ASEAN contribute by shadowing the UDHR when there are other human rights mechanisms in place such as the Commonwealth Human Rights Initiative which some ASEAN countries are party to and that are also not legally binding. And thirdly, can ASEAN then prove its role as protector once the AHRD is in effect?

Sadly as per the Universal Declaration of Human Rights (UDHR) (which all 10 ASEAN member states are party to by default as UN members), the AHRD is also not binding by international law. This then leads to the fourth pertinent question, on how the AHRD will ensure that ASEAN countries follow through on legally binding treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) which all ASEAN countries have ratified. If the AHRD is weak, then it could provide an avenue for governments to neglect their responsibilities, a grave concern and rationale to ensure a comprehensive drafting process now instead of after the draft is complete.

In its current state, the AHRD has the potential of not only taking ASEAN leaps and bounds forward in how it is perceived as a protector of the ASEAN peoples but the AHRD could also be a game changer giving ASEAN more bite in its mandate – steering the regional organisation in a more relevant direction. The opportunity to set the tone of ASEAN’s seriousness in upholding the tenets of human rights to go beyond existing international human rights mechanisms is being sabotaged by the lack of meaningful discussion and an opaque drafting process.

In line with ASEAN Secretary-General Surin Pitsuwan calling it the “road-map for regional human rights development”, the AHRD also could play an important role in influencing member states to aspire towards setting the foundations of human rights tenets and upholding them within their own country boundaries.

However, the 10 member taskforce is in a delicate position of ensuring that the AHRD is a relevant timeless document. Certainly not being transparent during the drafting process will work against the AHRD being a document that will be accepted and is inclusive to all, and runs the risk of undermining the protection guaranteed by international human rights law. For these reasons it is vital that the drafting process be fully comprehensive in order for it to be complete, credible and meaningful.

Indeed hosting the next consultation meeting in Rangoon is a huge step forward for ASEAN- to be discussing human rights in a country accused of many human rights violations and atrocities. It would be a pity to trip up an opportunity to engage with those on the ground in their country, where years ago Aung San Suu Kyi while under house politely asked the world to ‘use your freedom to promote ours’.

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