

Remarks by

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Secretary-General of ASEAN

High-Level International Workshop 2015:

Managing South China Sea Conflict from ASEAN Perspective

26 June 2015, Hotel Borobudur, Jakarta

Excellency Retno Marsudi, Minister of Foreign Affairs of Indonesia,

Mr. Arisman, Executive Director of Center for Southeast Asian Studies (CSEAS)

Distinguished Participants,

I thank the Ministry of Foreign Affairs of Indonesia and the Centre for Southeast Asian Studies for inviting me to this conference on a topic that is of paramount significance to not only ASEAN but the whole Asia-Pacific region and the world at large. Managing the South China Sea disputes has for long been a topic of tremendous attention and discussion among both the academic circles and policy makers. It is self-evident that the magnitude and gravity of the challenges that are looming large in the South China Sea have commanded growing international attention and concern.

Occupying a large part of the Southeast Asian maritime domain and straddling between the Pacific Ocean and the Indian Ocean, the South China Sea, with its abundant natural resources and strategic position, is of great importance to countries in the region and beyond in both economic and security terms. The territorial and maritime jurisdiction disputes in the South China Sea, while directly concerning the claimant States, should be perceived in the larger context of peace, stability, maritime security and prosperity which are the common interest and legitimate concern of all nations. The on-going developments stand to undermine peace, stability and maritime security in the region. The potential of conflicts in the South China Sea has never been so alarming due to the negative trending of unilateral assertive actions and the growing risk of miscalculations.

The situation has become all the more complex in a shifting regional landscape characterized by geo-strategic competition among major powers.

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ASEAN especially has a key interest and significant role in preserving peace and stability in the South China Sea since there is an intimate linkage between a peaceful Southeast Asia and a prosperous ASEAN. Without peace, be it on land or at sea, as the bedrock for pushing forward regional integration, the ASEAN Community project could not be sustained.

The South China Sea is also a litmus test of ASEAN's centrality due to its significant impacts on the credibility of ASEAN-led norms and mechanisms that are being at the core of the regional security architecture. In fact, managing effectively regional flashpoints, especially the South China Sea disputes, is an important dimension of ASEAN Centrality amidst the changing geo-strategic landscape in the Asia-Pacific.

In striving and sparing no efforts to preserve peace and stability in the South China Sea, ASEAN has been pursuing its long-standing position that territorial disputes in the South China Sea should be settled by peaceful means, without resorting to the threat or use of force, in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This position has been crystallized in ASEAN's Six-Point Principles on the South China Sea adopted in 2012. Consisting of nothing other than most fundamental principles of international relations, ASEAN's Six-Point Principles constitute the basis for ASEAN to sustain its engagement with China on the South China Sea issue in two key fronts, namely: (i) the implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC), and (ii) the negotiations towards early conclusion of a Code of Conduct in the South China Sea (COC).

Concluded in 2002, the DOC is a milestone document governing the conduct of ASEAN Member States and China in the South China Sea. The DOC sets out the

fundamental principles for peace, stability and maritime security in the South China Sea, including peaceful settlement of disputes without resorting to the threat or use of force, in accordance with international law, including the 1982 UNCLOS. The DOC also lays down the norms of behaviour for parties in the South China Sea, particularly self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability. Furthermore, the DOC provides a platform for ASEAN-China cooperative projects and activities in maritime functional areas such as environmental protection, safety of navigation and communication at sea, search and rescue operation, and combating transnational crime.

Implementation of joint cooperative activities, however, has been very limited since it could only be pursued in clearly identified disputed areas, in accordance with international law, including the 1982 UNCLOS. The ambiguous nature and extensive extent of some territorial claims in the South China Sea, especially the Nine-Dash Line, are making the identification of disputed areas for joint cooperation all the more challenging.

Presently, ASEAN and China are exploring more action-oriented activities in practical areas of common interest and concern. A number of early-harvest measures have been agreed upon and are being operationalized, including the establishment of Hotline Communications on Search and Rescue between ASEAN Member States and China, Hotline Communications in Response to Maritime Emergencies, and a Table-top Exercise on Joint Search and Rescue.

In parallel with the implementation of the DOC, since 2013 ASEAN has been actively engaging China in consultations on the COC. Last year alone, ASEAN was able to engage China in two COC consultations at the senior official level and three consultations at the working group level. The frequency of meetings will be increased with two more rounds of consultations to be held next month in Malaysia.

However, it is the quality of the talks that matters. The focus so far has been more on the process than on the substance. Although both sides have come up with the First List of Commonalities and work is underway to develop the Second List, the necessity to

accumulate commonalities cannot disregard the most important need to discuss frankly and constructively issues where both sides still have divergent views. In the context of the prolonging serious and dangerous situation at sea, ASEAN has repeatedly stressed the need for both sides to agree on a concrete timeline for substantive negotiations on the structure and elements of the COC.

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At the same time, in both the implementation of the DOC and the consultations on the COC, we are finding a widening gap between the diplomatic track and the actual developments. ASEAN and China have had the DOC for 13 years and have engaged in COC consultations for three years, and yet, the South China Sea waters have never been really still, especially in recent years, when we have continued to witness incidents endangering peace, stability, maritime security, commercial activities, and freedom of navigation such as China's placement of an oil rig in an area that it, in no way conforming to international law, especially the UNCLOS, can justify its territorial and jurisdictional claims and the massive reclamation and the construction on features it occupied and the fact that the facilities on these features could be used for military purposes.

In the face of those dangerous developments, ASEAN has come out with collective response, upholding ASEAN's unity and credibility in our shared commitment and efforts to preserve peace, stability and maritime security in the South China Sea. Last year, when China placed its oil rig, the ASEAN Foreign Ministers for the first time since 1995 issued a collective statement which expressed their serious concerns and urged all parties concerned to exercise self-restraint and avoid actions which could undermine peace and stability in the region. Most recently, at the 26th ASEAN Summit last April, with reports by affected Member States on the destabilizing activities and the massive reclamation and the construction on occupied features and the fact that the facilities on these features could be used for military purposes, ASEAN Leaders expressed serious concerns that these had eroded trust and confidence, and may undermine peace, security and stability in the South China Sea. ASEAN then called for implementation of the DOC in its entirety, especially

Article 5, which calls for all concerned parties to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability. ASEAN also called for the intensification of COC negotiations so as to expedite the early conclusion of the COC.

A real grave concern is that the massive land reclamation and construction activities taking place are changing the status-quo, further complicating the disputes by changing the character of the features, create a *fait-accomplis* while the COC process is still on-going without any definite timeline, and upsetting the balance of power in the region. These activities run contrary to the provisions, especially Article 5, of the DOC on self-restraint and no change of status-quo, and could render the COC irrelevant if the diplomatic track fails to address the situation on the ground in a timely and effective manner.

In this context, it is all the more imperative that both ASEAN and China step up efforts to pursue the full and effective implementation of the DOC in its entirety. Such implementation should include not only practical cooperation and confidence building measures but also faithful adherence to the principles and norms as provided in Article 5 of the DOC. Such implementation should be pursued in more concrete and operational terms, such as developing the do's and don'ts lists to promote actions in conformity with the DOC and prevent destabilizing acts in violation of the DOC.

The above-mentioned developments also heavily underscore the need to speed up negotiations on the COC with a view to achieving its early conclusion. The COC should be a comprehensive and legally binding instrument to govern the conduct and behavior in the South China Sea with a view to preventing, managing and resolving incidents, and helping create a favorable environment for a comprehensive and durable settlement of disputes in the South China Sea. The development of the COC should proceed in parallel with the implementation of the DOC since these are two mutually reinforcing processes. The COC should build upon the DOC, but be upgraded in terms of both political commitment and legal status.

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While not taking side on the merits of territorial claims in the South China Sea, ASEAN appeals for the supremacy of the rule of law in the search for a sustainable and comprehensive solution to the current disputes in the South China Sea. The rule of law would dictate that claimant States should bring their claims into conformity with international law, particularly the 1982 United Nations Convention on the Law of the Sea. The rule of law would exclude the use of force, coercion, or other actions that raise tensions in the region or change the status quo. The rule of law would be a great equalizer in ensuring that the eventualities to these disputes would be determined by international law rather than the accumulation of sand wherever it may be brought from.

ASEAN Member States are bound by the ASEAN Charter to a shared commitment and collective responsibility in enhancing regional peace, security and prosperity. ASEAN unity and ASEAN centrality will continue to imbue its engagement with China to maintain peace and stability in the South China Sea. Addressing this sensitive and complex issue in an effective, constructive and peaceful manner is also a telling measure of the maturity of the ASEAN-China Strategic Partnership. Turning away from it will not resolve the issue. A shared destiny among nations could not be sustained by coercion or unilateral actions. Every nation has the legitimate right to rise and realize its dream, but that should not be done at the expense of the chance of other nations to thrive and pursue their legitimate interests.

As ASEAN continues to proactively engage with China to maintain peace and stability in the South China Sea, we welcome constructive contributions from the academe and think-tanks.

In that spirit, I wish success to the Conference!

Thank you!

