

Thayer Consultancy
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Background Brief

South China Sea Forecast for 2020

December 16, 2019

We request your assessment of the following issues:

Q1. What is your forecast for the general situation in the South China Sea in 2020?

ANSWER: Two separate but inter-related developments will play out in 2020.

First, China will continue to press ASEAN members to complete a South China Sea Code of Conduct through diplomatic negotiations. As witnessed by the ASEAN-China senior officials meeting in Da Nang this year, China will press to complete a second reading of the COC as soon as possible.

Why? Because both sides have agreed to three readings and it is in China's interest to speed up the process because the current draft contains many Chinese provisions that benefit its interests. ASEAN members will have less time to include issues that are not addressed in the current draft – geographic scope, legal nature and role of third parties.

Second, China will continue to maintain a forward presence in the South China Sea through the permanent stationing of People's Liberation Army Navy warships, China Coast Guard vessels, Maritime Militia trawlers and fishing boats. China will continue to conduct "sovereignty assertion" patrols in waters where its nine-dash line claim overlaps with the Exclusive Economic Zones (EEZ) and continental shelves of littoral states.

Q2. After illegally deploying the *Haiyang Dizhi 8* vessel to Vietnam's Exclusive Economic Zone for nearly four months, what concerning activities will China probably undertake in South China Sea in 2020?

ANSWER: This year a Chinese survey ship was forced to cease activities in waters near India's Andaman and Nicobar islands by the Indian Navy. China has since instructed its agencies to seek prior permission before entering other countries' EEZs and continental shelves. But China made an important exception. Chinese survey ships would not seek advance permission to enter waters claimed by China. The implication is that China claims the right to send a survey ship into Vietnam's EEZ at any time it chooses.

The year 2020 will be crucial. If Rosneft Vietnam resumes exploration in its block it risks harassment by China Coast Guard ships. China has proposed that the COC include a provision that "countries outside the region" not be permitted to operate in the

South China Sea. In 2020 we are likely to see a continuation of Chinese efforts to pressure South China Sea littoral states to suspend or halt the operations of foreign oil exploration vessels.

Q3. The Philippines and China officially establish an intergovernmental joint steering committee on oil and gas exploration on October 28, 2019. What will the two countries do in 2020?

ANSWER: China and the Philippines will negotiate the terms of Chinese involvement in hydrocarbon exploration activities in the West Philippine Sea. This could include production service contracts or joint development of oil and gas. Article 12, Section 2, of the Constitution of the Philippines states that all hydrocarbon resources are owned by the state, cannot be alienated (owned by foreigners), and “shall be under the full control and supervision of the State.” The state “may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.” In other words, China cannot hold more than forty percent of any joint oil and gas production project.

Q4. Chinese Premier Li Keqiang last November said that he hopes all sides will actively carry forward consultations on the Code of Conduct (COC) in the South China Sea according to the previously agreed timetable. Do you think China will push COC talks in 2020? Why does China want to complete consultations on COC while it was reluctant to do that?

ANSWER: In August 2018, ASEAN members and China agreed to the Single Draft COC Negotiating Text. China’s foreign minister unilaterally announced a three-year timetable. ASEAN’s position is that the timetable must be mutually agreed. Yet no ASEAN member has objected to China’s unilateral three-year time frame.

The three-year time frame (up to August 2021) benefits China for three reasons. First, President Duterte will still be in office as president of the Philippines. Second, the Philippines will continue to be ASEAN’s country-coordinator for dialogue relations with China and thus have special influence on the COC process. Third, Brunei will replace Vietnam as ASEAN Chair in 2021 (followed by Cambodia a year later).

China will press for a speedy conclusion of the COC because ASEAN members will have less time to haggle with China over contentious issues such as the geographic scope, whether the COC will be legally binding, how disputes will be settled and how dispute settlements can be enforced, and the role of third parties.

Q5. Vietnam will hold the chairmanship of ASEAN in 2020. How will this impact on the situation as well as talks on the COC?

ANSWER: As ASEAN Chair Vietnam will be in a position to exert strong leadership on COC issues through bilateral consultations with other ASEAN members and by setting the agenda and issuing the Chairman’s statement at all relevant ASEAN meetings and at all ASEAN Plus meetings. The former includes the foreign ministers’ ASEAN Ministerial Meeting, ASEAN summits, ASEAN Maritime Forum and ASEAN Defence Ministers’ Meeting. The latter includes: ASEAN Regional Forum, Expanded ASEAN Maritime Forum, ASEAN Defence Ministers’ Meeting Plus and the East Asian Summit.

Vietnam's strong leadership will be mitigated in part by the ASEAN norm of consensus.

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