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Re-Assessing Indonesia's Role in the South China Sea

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EXECUTIVE SUMMARY

- The March 19, 2016, incident at sea between Indonesia and China provides a new opportunity to reassess Indonesia's strategy to manage its maritime interests in the South China Sea area.
- Since 1993 Indonesia has sought through diplomacy to manage its issue with China over sovereign rights and jurisdiction in its EEZ while not disturbing the other areas of its relations with China. It continues to insist it has no territorial dispute in the South China Sea and to offer the possibility of becoming a mediator.
- Attempts to reframe the EEZ problem as a bilateral Indonesia-China fisheries issue ignore the core of the problem: China's ultimate objectives in the region. The confrontation with China is a challenge to Jokowi's vision of Indonesia as a Global Maritime Axis.
- More than three decades of ASEAN's attempt to persuade China to abide by a normative framework for state behavior in the South China Sea have been fruitless.
- Until Indonesian policy recognizes and Indonesia acts in the context of its shared interests with other Southeast Asian maritime states outside of ASEAN institutional positions, it can be expected that China's policy of subordinating Indonesia's and the other South China Sea bordering states' national interests to China's regional ambitions will continue.

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THE MARCH 2016 INCIDENT NEAR THE NATUNAS

On Saturday, March 19, 2016, an Indonesian Maritime Affairs and Fisheries patrol ship intercepted a Chinese trawler lowering its nets in waters at coordinates that placed it within Indonesia's Exclusive Economic Zone (EEZ) north of the Natuna Islands. The Indonesian ship, the *KP HIU 101*, was operating as part of Indonesia's Fisheries Monitoring Task Force charged with enforcing the country's maritime jurisdiction. The Indonesian ship arrested the Chinese trawler, the *Kway Fey 10078*, and its eight crew members for illegal fishing, put its crew on board and began a tow back to Natuna. Alerted to the arrest, an armed Chinese coast guard ship intervened and sought to break the tow. A second, larger, armed Chinese coast guard ship appeared on the scene and gave the skipper of the Indonesian-flagged official government vessel a 30-minute deadline to release its tow – with an unstated “or else.” With the Chinese fishermen on board, *KP HIU 101* proceeded to port without the trawler.¹ As far as China was concerned, its fishing vessel was carrying out “normal” activities in China's “traditional fishing” waters when “it was attacked and harassed by an armed Indonesian ship, a Chinese coast guard ship went to assist and did not enter the Indonesian territorial waters.”²

For China, Indonesian waters end at their intersection with China's now-famous nine-dash line, behind which are thousands of kilometers of Indonesia's legally determined EEZ. Indonesia's EEZ conforms to the United Nations Convention of the Law of the Sea, an international treaty signed on December 10, 1982, the provisions of which govern international maritime rights, jurisdictions, and duties.³ With respect to an Exclusive Economic Zone, Article 57 defines it as a maritime zone not to exceed “200 nautical miles from the baselines from which the [12 nautical-mile] breadth of the territorial sea is measured.” Indonesia's archipelagic baselines are drawn from the outermost point of the outermost islands (Article 47). Within its EEZ, Indonesia has sovereign rights for “exploring and exploiting, conserving and managing the natural resources” of the waters, seabed, and subsoil (Article 56). Legal activity by Chinese fishing vessels in Indonesia's EEZ would require Jakarta's prior approval in the form of agreements or licensing.

INDONESIA'S UNCOORDINATED RESPONSE

The March 2016 incident was not the first face-off in Indonesia's EEZ between Indonesian fishery patrol vessels and China's coast guard. There have been previously reported interventions by the Chinese coast guard preventing the arrests of Chinese fishing vessels.⁴ There may also have been incidents that were not made public.⁵ It is the first, however, in the administration of President Joko “Jokowi” Widodo. Like other aspects of Indonesia's

¹ “RI confronts China on fishing,” *Jakarta Post*, March 21, 2016.

² China Foreign Ministry Spokesperson's Regular Press Conference, March 21, 2016, accessed at <http://www.fmprc.gov.cn/mfc_en/xwfw_665399/s2410/665401/2211_665403/t1349416.shtml>.

³ *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea* (New York: United Nations, 1983).

⁴ Prashanth Paramswara, “China's Maritime Confrontation with Indonesia Is Not New,” *Diplomat.com*, March 22, 2016.

⁵ The author was in Jakarta at the time of the latest incident, and in discussion with informed Indonesians the probability of unreported confrontations was noted.

foreign policy, the government's reaction was uncoordinated, with the voices of different officials having different responsibilities being heard. Minister for Maritime Affairs and Fisheries Susi Pudjiastuti was outraged. Susi, the most popular member of Jokowi's cabinet, accused the Chinese of sabotaging Indonesia's war against illegal fishing and undermining Indonesia's efforts to promote a peaceful South China Sea. She demanded that China return the *Kway Fey 10078* to Indonesian custody. China, in turn, demanded the repatriation of the Chinese crewmen. This was flatly rejected by Coordinating Minister for Political, Legal, and Security Affairs Luhut Panjaitan, who said they would be prosecuted for poaching. Retno L.P. Marsudi, Minister of Foreign Affairs, took the diplomatic road, dispatching a protest note to the Chinese foreign ministry requesting an explanation. The verbal answer, delivered by the chargé d'affaires of China's Jakarta embassy, was that given earlier: the ship was operating in traditional Chinese fishing waters. Both Retno and Susi rejected China's appeal to "traditional" fishing grounds as not being consistent with international law and unjustifiable. The law of the sea embodied in UNCLOS does not support the Chinese position.

Coordinating Minister Luhut quickly announced a strengthening of Indonesia's military in the Natunas.⁶ Minister of Defense Ryamizard Ryacudu promised enhanced military capabilities based in Natuna. The purpose, according to Ryacudu, would be to keep the "thieves" away.⁷ In fact, the upgrades had been called for by SBY's military chief, General Moeldoko, who, in an unprecedented *Wall Street Journal* opinion piece, expressed Indonesia's "dismay in discovering that China has included part of the Natuna Islands within its nine-dash line, apparently claiming a segment of Indonesia's Riau Island province as its territory."⁸ The military has held exercises that "pay attention" to "the aggressive stance of the Chinese government by entering the Natuna area."⁹ The tactical response has been to beef up surveillance capability of air force and navy units stationed on Natuna, and it is planned to base five corvettes there. The unanswered question is whether Indonesia would, when presented with a situation such as that in March 2016, utilize its own military forces operating in Indonesian jurisdictions to try to force a Chinese coast guard ship to withdraw. Indonesia's diplomatic history in the South China Sea strongly suggests the answer is no. Any military buildup in Natuna, even with increased patrolling, is a show of force, but with no real expectation that there would be a use of force.

As public ire was aired, other officials tried to play down the possible political impacts of this most recent Chinese violation of Indonesia's EEZ. The deputy foreign minister emphasized that it was not a border dispute. "What should be underlined," he said, "is that

⁶ "Menkopolhukam, Luhut Panjaitan: Kami Akan Perkuat Posisi Militer di Natuna," Inddit.com, March 25, 2016, accessed at <<http://www.inddit.com/s-e1wgr6/menkopolhukam-luhut-panjaitan-kami-akan-perkuat-posisi-militer-di-natuna>>.

⁷ "Indonesia Will Defend South China Sea Territory With F-16 Fighter Jets," Bloomberg News, March 30, 2016, accessed at <<http://www.bloomberg.com/news/article/2016-03-31/Indonesia-to-deploy-f-16s-to-guard-its-South-China-Sea-territories>>.

⁸ Moeldoko, "China's Dismaying New Claims in the South China Sea," *Wall Street Journal*, April 24, 2014.

⁹ "Batam to Host Komodo Naval Joint Exercise," *Jakarta Post*, June 15, 2013.

Indonesia and China do not have a border problem.”¹⁰ He did not explain, however, what category of problem it might be. For China, the nine-dash line marks the sea border between Indonesia and China, despite its lack of geographic coordinates. An Indonesian assertion that there is no border or territorial dispute with China deliberately ignores this political fact. It is, however, consistent with Indonesia’s broader diplomatic strategy towards the conflict issues in the South China Sea. With no territorial stakes in the Spratly Islands, Indonesian foreign ministers, from Ali Alatas to Retno Marsudi, have promoted Indonesia as a possible mediator or honest broker in resolving the disputes; this despite the fact that China’s implacable position continues to reject third-party involvement in what China insists are bilateral issues.

A POLITICAL AND STRATEGIC CHALLENGE, MORE THAN A LEGAL ONE

China first displayed the nine-dash line to Indonesia on a map of China’s historical waters in 1993. This was at the second meeting of the Indonesia-organized Workshop on Managing Potential Conflict in the South China Sea. The Indonesians quickly noted that the line cut through Indonesia’s EEZ north of the Natuna Islands, an area of rich fisheries and potentially enormous natural gas deposits. The foreign minister, Ali Alatas, informally queried Beijing about the map but got no answer. He followed up by sending a formal diplomatic note to China in April 1995 asking for clarification of the legal basis of the Chinese maritime claim to the waters north of Natuna. It too went unanswered, but in June that year, the Chinese foreign ministry spokesperson stated that there was no issue over the Natuna Islands and that China was willing to discuss their *common sea border* [italics added]. As far as Indonesia was concerned, however, there is no common sea border. In July 1999, Alatas, visiting Beijing, was told that his note was being considered, but there was never a reply; nor has China ever responded to Jakarta’s request for clarification of the claim.¹¹ Alatas shrugged it off and let the matter rest. As far as Indonesia was concerned, the nine-dash line was on a Chinese map that showed no compliance with UNCLOS; a fiction that did not alter Indonesia’s rights. From the very beginning to the present, Indonesia has treated the defense of its EEZ as a legal problem subject to resolution by agreed-upon dispute resolution mechanisms even though China rejects their application to Chinese state behavior. Jakarta has deliberately diplomatically ignored the political heart of the matter: China’s sovereign ambitions in the South China Sea, the critical commercial and strategic marine highway between East Asia, the Middle East, and Europe with rich ocean fisheries and potentially rich sub-seabed energy resources.

China’s claim to sovereignty over the South China Sea waters behind the nine-dash line was put on record in a May 2010 note addressed to the UN Secretary General that stated “China has indisputable sovereignty over the islands in the South China Sea and their adjacent waters, and enjoys sovereign rights and jurisdictions over the relevant waters as well as the

¹⁰ “Wamenlu: Insiden Coast Guard Cina di Natuna Bukan Soal Perbatasan,” *Detik*, March 23, 2006, accessed at <<http://www.detik.com/berita/3171188/wamenlu-insiden-coast-guard-cina-bukan-soal-perbatasan>>.

¹¹ In discussion with Amb. Hasjim Djalal in April 2013, the author had the opportunity to review with him the early history of Indonesia’s South China Sea diplomacy.

seabed and subsoil thereof (see attached map).”¹² The attached map showed the nine-dash line that demarcates its maritime claims in the South China Sea. Responding to the assertion of sovereignty, Indonesia sent its own note to the Secretary General of the UN in July 2010. This is Indonesia’s definitive rejection of the Chinese claim. It concluded that the nine-dash line “clearly lacks international legal status and is tantamount to upset the UNCLOS 1982.”¹³ This has been reiterated by Indonesian presidents and foreign ministers ever since. President Jokowi created a stir during his March 2015 Japan stop on his way to Beijing when, in an interview with the *Yomiuri* newspaper, he was reported as saying that China had no legal claim to the South China Sea.¹⁴ Not only was this Jokowi’s first public utterance on the issue, but it was stronger than the public position taken by SBY’s government. It would seem to complicate Indonesia’s role in any negotiations with China. The next day, however, Jokowi rushed to clarify his position. He said he was only referring to the nine-dash line marking China’s maritime border, not to the South China Sea in general.¹⁵ This, of course, was already Indonesia’s official position. Foreign Minister Retno muddied the issue further by saying that what the president was referring to was the legal basis of territorial disputes inside the nine-dash line (which in fact is not Indonesia’s position). Jokowi did take the occasion to reiterate that Indonesia was neutral on the territorial disputes but was ready, if asked, to be an “honest broker.”

A major consideration for Indonesia in responding to the Chinese provocation is concerns about possibly negative impacts on the broader range of bilateral interests that Indonesia has in its relations with China. Speaking to reporters at the inaugural meeting of the Board of Governors of the Asia Infrastructure Investment Bank (AIIB) shortly after the *Kway Fey 10078* incident, Indonesian Minister of Finance Bambang Brojonegoro said that the maritime dispute would not affect Indonesia’s economic relations with China. He averred that “both the presidents of China and Indonesia are very close ... in terms of the South China Sea we don’t have any issue.”¹⁶ This was clearly intended to reassure everyone – especially China – that it would be business as usual. There is within Indonesia’s bureaucratic-oligarchic nexus a strong bias towards China. But, will it be business as usual in Indonesia’s South China Sea diplomacy if China continues to press assertively its claims in Indonesia’s maritime zone?¹⁷ As Indonesia’s “honest broker” stance is ignored by China, a different mix of diplomatic tools may be needed if Jakarta is to defend its sovereignty and resources at the risk of Chinese alienation. It is, as the Deputy Minister for Maritime Affairs

¹² The text of the note can be accessed at http://www.un.org/Depts/los/clcs_newsubmission_files/mysvnm33_09/Chn_2007re_mys_vnm_pdf.

¹³ The full text can be read at http://www.un.org/Depts/los/clcs_newsubmission_file/myvnm33_09/idh_2010re_mys_vnm_e.pdf.

¹⁴ “Indonesia’s President Jokowi says China has no legal claim to South China Sea: *Yomiuri*,” *Straits Times*, March 23, 2015.

¹⁵ “Jokowi Clarifies Indonesia Still Neutral in South China Sea Dispute,” *Jakarta Globe*, March 5, 2015.

¹⁶ “Indonesia – China economic relations unaffected by maritime row: minister,” Reuters, March 23, 2016, accessed at <http://www.reuters.com/article/us-indonesia-southchinasea-china-idUSKCNOWPOCT>.

¹⁷ Aaron Connelley, “Will Indonesia, Provoked, Choose to Lead on the South China Sea?” *CSIS CogitASIA*, accessed at <http://www.cogitasia.com/will-indoneisa-provoked-choose-to-lead-on-asia>.

and Fisheries put it, “a whole new ball game.”¹⁸ It should be pointed out that a pillar of President Jokowi’s concept of Indonesia as a Global Maritime Axis is the defense of its maritime borders and resources.

MORE THAN A FISHERIES DISPUTE OR A BILATERAL ONE

One of the ways in which Indonesia has tried to build a firewall between the EEZ issue and other, economic, elements of its China relationship has been to reframe it. Rather than a clash of sovereign claims, it is a fisheries dispute. This was the case made by Jokowi’s chief foreign policy advisor Rizal Sukma. “The problem between Indonesia and China,” he wrote, “lies with fishing rights, not territorial disputes.”¹⁹ The fish stocks in Indonesia’s EEZ have become an increasingly valuable natural fish resources as near-coast South China Sea fisheries are being depleted by pollution and uncontrolled overfishing. For Indonesia the problem is not just managing nationally permitted fishing, but suppressing illegal, unreported, and unregulated (IUU) fishing. Thousands of fishing boats are taking smaller catches and using indiscriminating methods. The state-backed Chinese fishing fleet is the largest in the region. Poaching in Indonesia’s EEZ is rampant by unlicensed flagged, falsely flagged, and unflagged vessels venturing farther from their national waters in search of catch.

It is estimated that the cost to Indonesia of IUU fishing is \$3.1 to \$5.2 billion a year.²⁰ President Jokowi has used the higher figure to justify his war on illegal fishing. Every day, the president estimated that 5,400 foreign fishing vessels were in Indonesian waters, of which, he claimed, “90 % of them illegal.”²¹ The number may have been exaggerated, but it made a valid point. Shortly after his inauguration, Jokowi launched an aggressive campaign against IUU fishing. The most dramatic and attention-getting tactic has been the blowing-up and sinking of seized foreign vessels. Through April 4, 2016, 174 boats had been sent to the bottom.²² The harsh measures were viewed by Indonesia as a necessary deterrent. According to Jokowi, illegal fishing boats sailing under the flag of any nation would be treated the same.²³ Shortly after the first round of fiery scuttling of foreign boats, Luhut was asked at a conference in Washington whether the policy applied to Chinese vessels. His answer was, “Why not?”²⁴ Only one Chinese boat has been sunk, compared to tens of Malaysian, Thai, and Vietnamese vessels. The boat that was sunk, sent to the bottom

¹⁸ “Indonesia calls China’s latest claim in boat incident new ball game,” *South China Morning Post*, March 23, 2013.

¹⁹ Rizal Sukma, “Fishing rights the crux of issue,” *Jakarta Post*, as reprinted in the *Straits Times*, April 2, 2016.

²⁰ The low figure is from the Indonesian Ministry of Maritime Affairs and Fisheries and the high figure from an industry group, the People’s Coalition for Fisheries, accessed at <<http://www.aseanews.net/illegal-fishing-costs-Indonesia-3-billion-dollars-a-year>>.

²¹ “President Jokowi orders ‘Shock Therapy’ For Illegal Fishing Boats,” *Wall Street Journal*, December 9, 2014.

²² “Government to continue crackdown on illegal fishing: Minister,” ANTARA, accessed at <<http://www.antaraneews.com/en/news/104017/government-to-continue-crackdown-on-illegal-fishing-minister>>.

²³ “Jokowi declares war on illegal fishing,” *Jakarta Post*, December 14, 2014.

²⁴ The author asked the question.

in May 2015, had been held since 2009, lying derelict and rotting on a mooring in North Kalimantan. China expressed its “serious concern” to Indonesia over the sinking.²⁵ In announcing the April 2016 round of sinkings, Minister Susi Pudjiastuti announced there were 10 Chinese boats whose appeals against arrest were making the way through the Indonesian courts. Susi expressed the hope that the final verdict would “allow them to be destroyed as soon as possible.”²⁶ This would be a real test of Luhut’s “why not?”

One can only expect the armada of Chinese fishing boats annually illegally trawling through Indonesian waters to increase. They will be protected by a fleet of larger coast guard vessels backed by the Chinese navy. That future was glimpsed several days after the most recent Indonesian encounter, when nearly 100 Chinese fishing boats accompanied by two coast guard ships were discovered by air surveillance deep in Malaysia’s EEZ, off the coast of Sarawak.²⁷ This underlines the fact that Indonesia’s problem of defending its EEZ is shared by its ASEAN partners who have EEZs bordering the South China Sea that are split by the nine-dash line. Even though Indonesia has no territorial claims in the Spratlys, its EEZ problem is the same as the others: China’s claim to sovereignty. To sovereignty, China has added another justification for its maritime penetrations and poaching of Indonesia’s fisheries, which is the claim of “traditional” fishing rights. Without reference to the actual historical patterns of fishing in the South China Sea, what seems absolutely clear is, as noted above, that the provisions of UNCLOS do not allow a nation’s rights in its EEZ to be overridden by another nation’s claims to maritime rights based on history.²⁸

Risal Sukama argued in the opinion piece cited above (note 18) that Indonesia and China should not allow a feud over fishing rights to develop into a political and territorial “feud.” He called for China to support Indonesia’s campaign against IUU and to never violate Indonesia’s sovereignty or infringe upon its EEZ and continental shelf. He dismissed China’s appeal to “traditional” fishing grounds as misleading and complicating the issue; and not recognized by law. Both countries, he said, should abide by UNCLOS. His conclusion: “It is inconceivable that the two nations cannot find an amicable solution to the problem.” What is conceivable? Given the Chinese policy record in the South China Sea, any “amicable” settlement for Indonesia or the other ASEAN countries confronted by China’s political and strategic southwards advance would require either Chinese restraint and forbearance or submission to China’s claims by its Southeast Asian targets. For “Star Trek” fans, China in the South China Sea is like the Borg, who in their relentless advance through the universe proclaimed: “Resistance is futile!” But, the United States Seventh Fleet is not the starship *Enterprise*, ready to take on the Borg singlehandedly.

²⁵ “Beijing voices concern after Indonesia sinks Chinese boat,” *Channel News Asia*, May 21, 2015, accessed at <http://www.channelnewsasia.com/news/asiapacific/beijing-voices-concern/186325.html>.

²⁶ “Appeal to Jakarta not to blow up 10 Chinese fishing boats,” *Straits Times*, April 6, 2016.

²⁷ “Over 100 Chinese boats spotted off Sarawak,” *Straits Times*, March 26, 2016.

²⁸ United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Ocean and Polar Affairs, *Limits in the Seas* No. 143, “China: Maritime Claims in the South China Sea,” p.23, accessed at <http://www.state.gov/documents/organization/234936.pdf>.

ASEAN AND THE SOUTH CHINA SEA

The ASEAN states, including Indonesia, realistically understand that the South China Sea issues require a political solution. They have approached it, however, by diplomatic efforts seeking to enlist China into normative regimes within which it would self-discipline itself to collective rules of behavior underpinned by appeal to law. Theoretically all the parties to the 1976 ASEAN Treaty of Amity and Cooperation in Southeast Asia (TAC) have renounced the threat and use of force and agreed to peaceful resolution of disputes (Article 2). China acceded to the TAC in 2006, but ASEAN has not tried to hold China accountable with reference to South China Sea issues to its TAC obligations, despite the instrument's detailed, elaborate dispute resolution mechanism. The grandfather of multilateral endeavors related to the South China Sea is the Workshop on Managing Political Conflict in the South China Sea, led by Prof. Dr. Hasjim Djalal (also ambassador), Indonesia's point man at the Third United Nations Conference on the Law of the Sea that produced UNCLOS. Conceived in 1990 in the Indonesian foreign ministry, the Workshop is a Track II process designed to find areas of functional cooperation that could lead to confidence-building measures leading to a Track I political atmosphere in which officials could tackle dispute resolution. Going into the 26th Workshop in 2016, there has been no spillover from the Workshop process into the diplomacy of conflict avoidance in the South China Sea. To keep China engaged in the process, workshop agenda items that might derogate China's sovereign claims were off limits.²⁹

ASEAN's diplomatic track began with its 1992 Declaration on the South China Sea. This was a worried response to Vietnam-China skirmishes in the Spratlys in 1988. After more than a decade of negotiations with China, the principles of the ASEAN declaration were elevated in the November 2002 "Declaration on the Conduct of Parties in the South China Sea" (DoC) that included China as a signatory.³⁰ The DoC commits the ASEAN states and China to peaceful settlement of disputes, non-use of force or threats of force, and self-restraint in conduct that would complicate or escalate disputes. This included "inhabiting on the presently uninhabited island, reefs, shoals, and other features" (Article 5). The parties agreed to settle their disputes in accordance with universally recognized principles of international law including UNCLOS (Article 4). The problem is that China refuses to recognize the application of UNCLOS jurisdiction in the South China Sea. Alarmed by China's steady assault on the principles of the DoC, ASEAN reaffirmed its faith in it by a 2012 restatement. Through the decade, ASEAN diplomacy focused on legally codifying the DoC in a binding Code of Conduct (CoC), even though China had made it clear that in practice ASEAN's appeals to norms and law did not affect its behavior in defense of its core interests which lay behind the nine-dash line.

Indonesia's Foreign Minister Marty Natalegawa doggedly pressed Beijing to come to the diplomatic table to complete a CoC agreement. In 2012, Marty presented a so-called "zero draft" for a CoC that took the DoC as its foundation. This was unacceptable to China. Beijing insisted that the drafting of a CoC had to start from scratch. Negotiations on how to negotiate a CoC began in 2013 with the formation of a working group whose task ran parallel with – still after 16 years – the Senior Officials' Meeting on the Implementation of

²⁹ The author interviewed Amb. Hasjim Djalal in April 2013 and again in March 2016.

³⁰ Text as cited at <<http://www.asean.org/?static=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2>>.

the DoC. As for the progress of the CoC negotiation; at the end of 2015, the working group had yet to move beyond procedural issues. An acquiescent ASEAN – and in ASEAN, Indonesia – allows Beijing to control the timetable. China is adamant that there can be no CoC until the DoC is fully implemented. But it is China that has held the DoC hostage to its assault on the other parties' rights and jurisdictions embedded in the DoC. China's ongoing forceful changes to the political and strategic status quo makes the CoC process simply a diplomatic delaying tactic while it accomplishes its goals. For China, full implementation of the DoC seems to mean ASEAN submission to Beijing's claims. Indonesian impatience at the pace of negotiations was openly expressed by President Yudhoyono, who complained that "Things do not necessarily have to be this slow," adding, "we need to send a strong signal to the world that the future of the South China Sea is predictable, manageable, and optimistic."³¹ For China, however, there is no sense of urgency. Indonesia and ASEAN cannot diplomatically acknowledge that they are heading toward a dead end. To do so would be recognition that ASEAN as presently constituted has no policy alternatives.

REASSESSING INDONESIA'S ROLE

After the years of ASEAN-China diplomacy about the management of conflict and tensions in the South China Sea zone, it cannot be expected that ASEAN as a group can extract compromise or concessions from China that would change its policies or limit its goals. With regularity, ASEAN issues anodyne statements about its undefined common interest with China in peace, security, and stability in Southeast Asia, but without addressing the competitive national interests at play or mentioning specific acts or incidents that have fueled the tension. China or its policies are never specified. ASEAN appeals are addressed to all parties, as if the aggrieved ASEAN counties were equally responsible for the problem. Within ASEAN, where decision is by consensus, the "friends" of China, and particularly Cambodia's agency for China, make sure that ASEAN does not take any position contrary to China's interests.

A veteran ASEAN diplomat has written that China "expects deference to its interests to be internalized by ASEAN members as a mode of thought" in ASEAN-China relations.³² The logic is that "correct thought" leads to "correct behavior." At present, Vietnam and the Philippines are thinking and behaving incorrectly. Indonesia is still in a "correct" mode. One conclusion that can be drawn from the diplomatic history of ASEAN's engagement in the South China Sea is that it does not provide a diplomatic platform for defending the maritime interests of its member states. Every member state is left to its own devices in responding to Chinese territorial and EEZ incursions. In fact, in attempting to defend their interests, Vietnam and the Philippines have been viewed by some ASEAN states as disrupting and threatening ASEAN-China relations. China has repeatedly warned ASEAN that any attempt to multilateralize the diplomacy of bilateral disputes would seriously damage ASEAN-China relations.

³¹ "We Need Ocean Code of Conduct, Yudhoyono says," *South China Morning Post*, August 14, 2012.

³² Bilahari Kausikan, "Pavlovian conditioning and 'correct thinking' on the South China Sea," *Straits Times*, April 1, 2015.

The Philippines became a special target of Chinese wrath, especially after it began its effort to hold China to legal account at The Hague Permanent Court of Arbitration (PCA), an UNCLOS 1982 dispute resolution body. China accused the Philippines of stoking tensions in the region, and behind Manila, the U.S. China's anger is partly because it realizes that the Philippines-American alliance puts limits on its coercion. Indonesia did not support the Philippines taking its case to the Hague. Foreign Minister Marty's point of view, filtered through an ASEAN lens, saw the Philippines' move as unhelpful; a unilateral act that undermined his CoC diplomacy. This Indonesian stance seemed to change when in November 2015, Luhut warned China that Indonesia's concern about the nine-dash line and Natuna might force Indonesia to follow the Philippines' lead and go to an international court.³³ Although there has been no follow-up on this caution to Beijing, even the hint of policy change caused one of former President Yudhoyono's senior foreign policy aides to worry that Jokowi's government is not getting China policy right.

China's response to Luhut's comment prompted what may have been the first admission that there might be (unspecified) maritime disputes between China and Indonesia. China's foreign ministry spokesman stated that China "has no objections to Indonesia's sovereignty over the Natuna Islands," a somewhat strange choice of words. Then he added that China was committed to peaceful settlement of disputes over territory and maritime rights and interests in the South China Sea on the basis of "historical fact" and international law.³⁴ In the Indonesia case, the historical fact is China's claim to "traditional" fishing rights. The spokesperson's comments were interpreted in Jakarta as confirmation of the maritime disputes. The Indonesian foreign ministry spokesperson tried to back away from Luhut's comment, saying "we cannot preempt things before we know how they evolve."³⁵ Of course, by that time no preemption is possible.

A second conclusion is that the Jokowi administration should close the gap between Indonesia's national interests in the contested issues in the South China Sea and its reflexive adherence to the ASEAN consensus on South China Sea issues. In this area of diplomacy, rather than holding true to its guiding foreign policy principles of being "independent and active" (*bebas dan aktif*), Jakarta has been dependent and passive in its commitment to an ASEAN solidarity that on South China Sea issues is shaped by ASEAN's "correct" thinking. If ever Indonesia was imprisoned in the "golden cage" of ASEAN – to use Rizal Sukma's image³⁶ – where Indonesian national interests are sacrificed to ASEAN solidarity, it is in the regional diplomacy on the South China Sea. Importantly, the Indonesian interests to be secured in the South China Sea are not limited to its EEZ. As a rising "middle power," Indonesia has its own maritime ambitions – exemplified in President Jokowi's vision of Indonesia becoming a Global Maritime Axis, the centerpiece of his foreign policy programs. These could hardly be achieved if the South China Sea became a Chinese lake, ruled and regulated by Chinese domestic law, not UNCLOS, and patrolled down to and even beyond

³³ "Indonesia also says it could take China to court over South China Sea," Reuters, accessed at <http://www.reuters.com/us-southchina-sea-indonesia-idUSCNOTOOVC30151111>>.

³⁴ Foreign Ministry Spokesperson Regular Press Conference, November 12, 2015, accessed at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665905/t1310406.htm>.

³⁵ As quoted in "China confirms maritime dispute with RI," *Jakarta Post*, November 13, 2015.

³⁶ Rizal Sukma, "Indonesia needs a post-ASEAN foreign policy," *Jakarta Post*, June 30, 2009. At the time Sukma was expressing his frustration about ASEAN's resistance to Indonesian calls for democracy and human rights in ASEAN.

the nine-dash line by China's coast guard and navy.³⁷ China's ambitions in the region threaten Indonesia's interest in the freedom of navigation and overflight as well as its security interest in the maintenance of a balance of power, which requires a credible American strategic presence.

An Indonesian reassessment of its policy towards its South China Sea problem could lead to a policy track that would recognize that its interest in defending the integrity of its EEZ is not politically different from and are threatened from the same source as the EEZs of four other ASEAN partners whose interests get lost in the ASEAN-China dialogue. Realists like Luhut understand this. In further comments on the nine-dash line, he said "The nine-dash line is a problem we are facing, but not only us. It also directly [affects] the interests of Malaysia, Brunei, Vietnam, and the Philippines."³⁸ This is not the basis, however, of Indonesian policy which treats it as a bilateral problem. By disconnecting its issues with China from the other ASEAN states it purposively ignores the fact that the territorial issues in the Spratlys are part of the broader political and strategic ambitions of China, which include the nine-dash line. A rethink of policy might establish that the nine-dash line is politically and strategically connected to the territorial disputes, being two manifestations of a Chinese grand strategy. Indonesia and the other four targets of China's South China Sea policy are in the same boat, but there is no captain or sailing directions.

Recently, Chinese Foreign Minister Wang Yi proposed, without details, the creation of a "cooperation mechanism" for coastal states in the South China Sea.³⁹ Although outside of ASEAN, it would include every ASEAN member except land-locked Laos and Andaman Sea- and Bay of Bengal-bordered Myanmar, and littoral states Cambodia, Singapore, and Thailand, which do not have EEZs behind the nine-dash line. If such a mechanism were to be set up, it would, like the Workshop process, likely focus on "soft" issues, but be led by China, not Indonesia, to further "correct" thinking.⁴⁰ The political goal seems obviously designed to mollify ASEAN members alarmed by the militarization of Chinese-held points in the Spratlys.

What is significant about Wang's proposal is not in its content. It suggests for the first time, a South China Sea multilateral forum outside of ASEAN. China-ASEAN states multilateralism does exist outside of ASEAN in another form and on different subjects. The Mekong Basin countries interaction with China is the prime example. In March 2016, the leaders of the six Mekong (Chinese-Lancang) riverine states met in Hainan to "deepen cooperation."⁴¹ Ostensibly the meeting focused on economic issues. The sub-text, however, was drought along the lower-Mekong attributed to a lower flow from the barrage of dams

³⁷ China's coast guard fleet with more than 200 ships is the largest in the world, with two 10,000 ton ships which are the largest in the world. ("China Coast Guard building up fleet," *Straits Times*, March 24, 2016). Their enforcement and protection activities are regulated by Chinese domestic law, and their unauthorized operations in the EEZs other countries is further evidence of China's claim to sovereignty.

³⁸ As quoted in "China confirms 'maritime disputes' with RI," *Jakarta Post*, November 13, 2015.

³⁹ "China moots S. China Sea 'cooperation mechanism,'" *Straits Times*, March 9, 2016.

⁴⁰ An example of "correct thought" about the artificial islands built on water-swept shoals is to accept the building process as "reclamation."

⁴¹ "Lancang-Mekong River countries reach cooperation agreement," accessed at http://www.org.cn/world/2016-03/24/content_3809976.htm.

on the Lancang. China agreed to release more water. If Indonesia were to associate its interests with those of the other regional states directly affected by China's South China Sea policies, it might truly find a way to be *bebas dan aktif* and demonstrate its claim to leadership in Southeast Asia, which is missing in ASEAN. To be able to address their issues with China in the framework of a unified maritime grouping, rather than isolated states, would lessen to a degree the inequities inherent in a bilateral dialogue with China. To get out of ASEAN's "golden cage" would free such a grouping from "correct" thinking and behavior.

A multilateralization of the political and security dialogues with China by the affected Southeast Asian states would only be possible if it could be shown to be in China's national interest to engage. China's interests in Southeast Asia extend well beyond simply having its way in the South China Sea. The Southeast Asian states worry about their economic ties to China being damaged by resistance to China in the South China Sea. Their thinking, however, is one-directional: China's economic value to Southeast Asia. But, it is a two-way economic exchange. Southeast Asia has value to China, but this has yet to become part of the political dialogue on the South China Sea. China must be concerned about the search for new external security partners by affected Southeast Asian states. Not only are they elevating and tightening security bonds among themselves, for example the new six-year Philippines-Vietnam security action plan, they are welcoming the increasing security presence of Japan, Australia, India and other countries. Probably most important for China, Beijing does not want to see currently "hedging" countries feel forced by China's actions to move closer to the United States. China's goal since the U.S. "pivot" has been a diminished American security role in Southeast Asia. The evidence is that the reverse is the case.

One of former president Yudhoyono's closest foreign policy aides has worried that a harder line on China in the South China Sea would not be "getting China policy right."⁴² In fact, the current government has not abandoned the elusive pursuit of a CoC. This may be getting China policy "wrong" by turning the defense of Indonesia's interests in the South China Sea over by diplomatic default to ASEAN's "correct" thinkers. It is doubtful, however, that a policy change in Jakarta to get it "right" is in the offing for at least three reasons: Jokowi's disinterest in foreign policy; uncoordinated sub-presidential dispersed responsibilities; and the bias and momentum of an ASEAN-oriented Ministry of Foreign Affairs.

⁴² Amb. Dino Patti Djalal, as quoted in "Indonesia Foreign Policy Needs to 'get China right,'" *Establishment Post*, August 27, 2014.

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