

[13 July, 2016] ASEAN regional experts on the South China Sea ruling – stress long term risks, including Australian overreaction

In the lead-up to the ruling by the Permanent Court of Arbitration on the South China Sea dispute between the Philippines and China, Asialink brought together experts from across Southeast Asia, seeking their views regarding the likely implications of the decision.

These experts include highly respected policymakers, former senior ASEAN officials and academics from the S Rajaratnam School of International Studies (RSIS) in the Nanyang Technological University, the ISEAS-Yusof Ishak Institute in Singapore, the Institute of Strategic and International Studies (ISIS) Malaysia, the Institute of China Studies in the University of Malaya, the Diplomatic Academy of Vietnam, the Institute of Security and International Studies (ISIS) Thailand, and the Institute for Strategic and Development Studies (ISDS) in the Philippines.

There is widespread interest in this court decision and impending reactions of the various nations involved - including China, the Philippines, Brunei, Indonesia, Malaysia, Taiwan and Vietnam. This ruling marks the first time an international tribunal has weighed in on the issue, and the outcomes could set precedents for the management of ongoing political tension.

These ASEAN perspectives may be challenging for Australians and other outsiders who tend to prefer legal and political clarity. ASEAN countries, however, are used to dealing with such complexity – and are, after all, on the front line in the South China Sea contests. Australia’s response needs to be informed by such ASEAN perspectives.

In an analysis of the dispute, the ASEAN experts have developed the following themes:

- While no one is pleased with China’s expansive claims, this does not amount to a vindication of the Philippines. There is considerable discontent at the Filipino handling of this issue and resistance to an “anti-China” position.
- Anxiety about the possibility that the decision will exacerbate division within ASEAN – and a continuing belief that ASEAN is essential to the stability of the region.
- While China’s activity is debated, its role in the region is complex and in many ways positive. The ASEAN-China relationship should not be ‘held hostage to what happens in the South China Sea’.
- While the United States, Australia and Japan have contributed to the stability of the region, some ASEAN specialists fear that they may respond to the court decision in ways that could aggravate the dispute and further divide ASEAN.
- There is a strong preference for ASEAN to focus on ‘managing’ the disputes, acknowledging that ‘resolution’ is highly ambitious. The hope among several experts is that the PCA ruling will inject new urgency into a finalised Code of Conduct for the South China Sea.
- There is a continuing faith in ASEAN diplomacy - in pursuing patient negotiations with China, seeking a workable accommodation.

Tony Milner and David Schaefer

Regional experts interviewed by Asialink:

Dr Termsak Chalermpanupap

Research Fellow at the ASEAN Studies Centre of the ISEAS-Yusof Ishak Institute in Singapore

Kwa Chong Guan

Senior Fellow at S Rajaratnam School of International Studies in Nanyang Technological University and Adj. Assoc. Professor in History at National University of Singapore

Dr Carolina Hernandez

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Dr Termsak Chalermpanupap

Research Fellow at the ASEAN Studies Centre of the ISEAS-Yusof Ishak Institute in Singapore

1. What are you most worried about in the coming decision?

A direct rejection of China’s controversial 9-dash of massive claims in the South China Sea. This will further infuriate China and cause it to intensify its land reclamation and construction of artificial islands in disputed areas in the South China Sea, particularly at Scarborough Shoals to show its defiance and contempt of the arbitral tribunal. Such a drastic decision can even lead China to decide to quit UNCLOS (UN Convention on the Law of the Sea).

2. How might it affect the ASEAN-China relationship in its 25th year?

It will certainly constitute a serious setback to ASEAN-China relations, because at least three ASEAN members (the Philippines, Viet Nam, and Malaysia) will be directly affected by the renewed aggressiveness of China in the South China Sea.

3. Are you worried that the decision could affect the unity of ASEAN?

Yes, ASEAN unity is too fragile right now. A few of our weaker members are too much dependent on Chinese aid and political support. The rest in ASEAN must realise that their aspiration of narrowing the development gaps are mostly empty words with little concrete progress to show. ASEAN needs to create real, significant and immediate benefits for the weaker members to see and enjoy, so that they can begin to rely more on ASEAN and less on China.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

My suggestion is to go for a positive common ASEAN statement – not to welcome or support the ruling (there is no need for any ASEAN endorsement, because the arbitral tribunal has the authority, expertise and jurisdiction to make the ruling) – to reiterate universally-recognised principles of rule of law, peaceful settlement of disputes, and friendly negotiations. By the way China is a party to the 1976 Treaty of Amity of Cooperation in Southeast Asia and is therefore legally bound to observe the peace-oriented principles of the Treaty. No use of force or threats to use force.

Collectively, ASEAN members can choose to be “pro-ASEAN” by making more efforts to work together in building the ASEAN Community, and in defending ASEAN unity and ASEAN centrality. Without unity, there can be no centrality of ASEAN. Without ASEAN, Southeast Asia will face the danger of balkanization by superpowers, and a return of the new Cold War in Southeast Asia.

Bilaterally, each in ASEAN can quietly remind China that ASEAN as a group can be a great potential friend of China, a supporter of China's Belt and Road Initiative. But China needs to reciprocate by supporting the constructive role of ASEAN in trying to reduce tensions and managing conflicts in the South China Sea.

Kwa Chong Guan

Senior Fellow at S. Rajaratnam School of International Studies (RSIS) at Nanyang Technological University and Adj. Assoc. Professor in History at National University of Singapore

1. What are you most worried about in the coming decision?

What concerns not only me, but most of us in ASEAN about the scheduled 12 July Award by the Permanent Court of Arbitration in the arbitration instituted by the Philippines against China is not only China's reaction to the forthcoming Award, but equally the response of the US and other regional countries, especially, Australia, India and Japan. In previous Awards by the ICJ, on Preah Vihear, on Pedra Branca, on Sipadan, and more recently the delimitation of the maritime boundary in the Bay of Bengal, there were no similar regional or international concerns or tensions over the impending Awards or Judgments.

Only the parties in the dispute probably experienced some trepidation about how the Judgment or Award could go, but all were agreed to accept the judgment. In this case, we do not know how the new Filipino President will respond to the Award. More critical is how China intends to register its declared intent to reject the Award is a major "known unknown" as we all wait with trepidation for the PCA to announce its Award on 12 July.

2. How might it affect the ASEAN-China relationship in its 25th year?

Much depends upon how China decides to respond to any statement on the Award issued by ASEAN as an institution, or its members individually. The ASEAN-China relationship can proceed along its present trajectory if China accepts that it is within the sovereign right of ASEAN countries to comment on the PCA award, and ASEAN as an association to say something on regional developments which affects its members. But this relationship could move into the realm of the "known-unknown" should China decide to persuade ASEAN and its members that they should not comment on the PCA Award, or better to dissociate themselves from it.

3. Are you worried that the decision could affect the unity of ASEAN?

The PCA Award is unlikely to affect the unity of ASEAN, as our experience with ICJ Judgments on Preah Vihear, on Sipadan, on Pedra Branca and the delimitation of maritime boundaries in the Bay of Bengal are that these Judgments have helped us resolve our otherwise intractable disputes. Within that context, we hope that this PCA award may help to clarify our disputes in the South China Sea and a way to manage our differences.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

The choice of whether to discuss or negotiate with China bilaterally or collectively as ASEAN is no longer a simple linear decision making chain. It is an increasingly complex decision that has to deal with unpredictable and uncertain “unknown-unknown” issues. ASEAN is itself changing. The “ASEAN Way” of how ASEAN members relate to each other and to the world around them, carefully evolved over the last fifty years, is today at a revolutionary juncture. In hindsight, the old norms we lived by were undermined by rapid and unexpected changes since 2012 which we are trying to make sense of.

Dr Carolina Hernandez

Emeritus Professor at the University of the Philippines and Founding President of the Institute for Strategic and Development Studies (ISDS) Philippines

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

My take is to not have a bilateral approach since the claimant parties have overlapping claims, a matter that logic tells us needs all of the 6 claimants to be present in any negotiation. In any event, I do not believe we can resolve the issue of ownership at this time. The best approach is still conflict management as ASEAN has done in regard to the DOC (Declaration on the Conduct of Parties in the South China Sea), the Guidelines on the DOC and the negotiations in regard to the COC (Code of Conduct in the South China Sea). Conflict management was also behind the decade-old Informal Workshop on the South China Sea led by Canada and Indonesia in the 1990s. I really prefer a multilateral approach where all party claimants are at the table and other parties who have no claims over the disputed features in the South China Sea should not be present in the negotiations at all.

Elina Noor

Director of Foreign Policy and Security Studies, Institute of Strategic and International Studies (ISIS) Malaysia

1. What are you most worried about in the coming decision?

My concern is that there might be a worsening/escalation of tensions in the South China Sea after the decision. This may include, among others, nationalism stoked either by discontentment at the decision or a cocksure sense of vindication; a further change in the physical landscape of the South China Sea with continued construction of artificial islands in violation of the DOC (Declaration on the Conduct of Parties in the South China Sea); declaration of an ADIZ (Air Defence Identification Zone);

aggressive manoeuvring by vessels in the South China Sea; and more intrusions into claimants' EEZs (Exclusive Economic Zone).

2. How might it affect the ASEAN-China relationship in its 25th year?

ASEAN and China will continue to celebrate their 25 years of improved and ever-growing relations, especially in the economic/trade/investment areas. Assuming (i) the PCA decision finds mostly against China and (ii) China reacts badly to the PCA award, we can probably expect some measures of China's displeasure to manifest. However, these will likely be directed only against certain parties within ASEAN to be made an example of.

Conversely, some countries may expect better treatment from China as a reward for their silence or implicit support in the South China Sea issue. I expect, though, that since the South China Sea is only one component of the overall relations between ASEAN and China - and even then, the issue is really one between China and the four claimant states of ASEAN - that it will not affect overall ASEAN-China relations too badly. Or at least, I hope it will not. Context is everything.

3. Are you worried that the decision could affect the unity of ASEAN?

Yes, ASEAN unity has already shown signs of fraying this year over the South China Sea issue.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

Collective discussions are still to be preferred though some countries may deem it more desirable to negotiate bilaterally after the decision in furtherance of their own national interests. Bilateral negotiations are problematic given the multi-claimant nature of the South China Sea dispute.

Dr Ngeow Chow Bing

Senior Lecturer and Deputy Director of the Institute for China Studies, University of Malaya

1. What are you most worried about in the coming decision?

The nationalist/hawkish opinions are already quite built up and galvanized, especially on the Chinese side. I am worried that the ruling, if it overwhelmingly favours the Philippines side, will harden those nationalist attitudes in China into an "us versus them" mentality, seeing the Philippines and other Southeast Asian claimant states, together with China's traditional rivals the US and Japan, as some sort of "ganging up" against China. This would be the most unwelcome geopolitical consequence.

On the other hand, I am also worried about the US. Yes, to a certain degree it is a reassuring presence, but lately the US perhaps might have gone too far, and the ruling might provide another justification for US to claim that it is only "upholding international law" and "helping the little guys standing up against a big bully."

2. How might it affect the ASEAN-China relationship in its 25th year?

China will want to steer this issue away as not affecting the China-ASEAN relationship because in its official discourse the South China Sea is not an issue between China and ASEAN but only between China and certain claimant states in Southeast Asia. This is of course a flawed conception but China does have a point in consistently arguing that the South China Sea should not be the issue that determines overall China-ASEAN relations, because there are so many other things that China and ASEAN could work on together. The ruling will undoubtedly cast a shadow over the 25th anniversary. However, I don't think that it will result in a long-term deterioration of China-ASEAN relations - if both sides manage the aftermath well.

3. Are you worried that the decision could affect the unity of ASEAN?

There has always been a somewhat accepted conception, especially among think tank circles in Southeast Asia and the West today, that China is interested in weakening ASEAN unity and cohesion because a weaker ASEAN is easier for China to handle in its ambitious drive to become a regional hegemon.

However, I do not think that China is interested in weakening ASEAN unity. In fact, when one looks at the real activities between China and ASEAN, one can see that China is one of the most active dialogue partners of ASEAN and has always been supportive of ASEAN's agenda. China values ASEAN unity but will not allow ASEAN to become a collective anti-China platform. When China senses this is happening, it will exercise influence over countries like Cambodia and Laos, and this will lead to interpretations that China is trying to divide ASEAN, which is not actually China's intention.

In addition, for countries like Cambodia and Laos, they may see that their future as more likely to be determined by China rather than fellow ASEAN countries. It is very natural for them to consider the China factor in their foreign policy, with or without explicit Chinese influence, although China will always get the "blame".

In short, China is not against ASEAN unity per se but when ASEAN becomes collectively seen as anti-China, then it will be a different story. This is basically the pattern we have seen in the last few years: China has been supportive of ASEAN (think about CAFTA, the Chiang Mai initiative, or Mekong cooperation) except when it comes to the South China Sea issue. In this arbitration case, it is likely to be the same. However, have we really seen real deterioration of ASEAN unity in the past several years? Not much in my view.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

As of now, I think the arbitration court is going to rule in favour of the Philippines. There are certain voices/opinions now in ASEAN (I have to say, these voices are pretty much pushed by the US, as I have seen firsthand) to use the outcome of this ruling as an opportunity to build a "united front" against China, that all claimant states should follow suit and initiate arbitration against China to collectively portray China as a consistent and malicious violator of international law bullying the weaker states in Southeast Asia, who should stand up to the bullying with law and justice on their

side. I think this would be a great mistake for the Philippines and other claimant states to do so. No doubt the ruling will make China look quite bad and will let the Philippines claim moral high ground. But it is important not to try to "shame" the Chinese as the US wants. Yes, after the ruling, the Philippines may feel that it is proven "right" and China is "wrong". However, in resolving a complex issue like South China Sea, who is right and who is wrong is not always the most important question, but what works.

On the other hand, China should also not overreact to any probable joint statement from ASEAN (or from the claimant states, excluding Cambodia and Laos) on the ruling and perhaps should understand this is something that fellow ASEAN countries should do in support of another member. In short, both sides should not overreact. What is being done is being done; it is time to look forward.

There is again a widely accepted conception that claimant states should not negotiate with China bilaterally. Actually, my personal view is, why not? It has been an impasse over whether negotiations should be bilateral or multilateral for so long, somehow a breakthrough has to be made. It is important to clarify here that ASEAN should not negotiate collectively over boundary demarcation issue, but only the claimant states might do.

In this sense, multilateral negotiation involves only China, Vietnam, the Philippines, Malaysia, Brunei (and possibly Indonesia), but not ASEAN as a whole. Actually there may not always necessarily have to be a binary choice between bilateral and multilateral negotiations -the disputed area is so large, that perhaps certain geographical sections can be negotiated via the bilateral format while others are multilateral.

Dr Tran Truong Thuy

Senior Research Fellow and Director of the Foundation for East Sea Studies at the Diplomatic Academy of Vietnam

1. What are you most worried about in the coming decision?

There are several issues that the Philippines brought up for arbitration. The two most important are the issue of China's 9 dash line and the regime of the islands. If the tribunal cannot decide on the jurisdiction over the 9 dash line or it decides in favour of China's position that is the most worrying scenario. China can use this ruling to expand its claim and activity within the whole of the 9 dash line. This would make the situation even tenser and more incidents would happen.

The dispute is not only relating to land features, but maritime space. If the tribunal decides that none of the features in Spratly can generate an exclusive economic zone of 200 miles, it will narrow significantly the area of dispute in the South China Sea. But if the tribunal gives an ambiguous statement, or decides that some of those features are islands capable of generating full maritime

space, it will expand the area of dispute and the situation will benefit those who want to maximize the area of dispute.

Other issues – for example, which features are rocks or low tide elevation, the requirements for environmental assessment – are significant, but not very crucial.

2. How might it affect the ASEAN-China relationship in its 25th year?

This is difficult to assess. It depends on the next move from China after the verdict. I don't think the ruling itself affects the relationship, but the activity of the parties after the ruling, especially from China, can do this. If the ruling went against China and it undertakes some assertive activity, either to ignore the tribunal or demonstrate it will not abide by its rulings, this may affect the relationship with ASEAN. China can follow or ignore the international legal system, but ASEAN has a huge stake in international law.

3. Are you worried that the decision could affect the unity of ASEAN?

For ASEAN the most important issue is unity, because unity relates to its image and credibility. This is a concern for its members. The decision and particularly China's lobbying campaign toward some members could affect ASEAN's ability to release its own joint statement on this issue, but whether it affects the unity of ASEAN at a fundamental level is questionable.

ASEAN is sometimes up and down but it has become much more concerned about the situation and the elements of ASEAN statements relating to the South China Sea have become more comprehensive. We have not witnessed any significant problems since the 2012 meeting in Cambodia. After that there were a lot of discussions within internal ASEAN meetings and meetings with external partners, and it has taken a more unified stance on the South China Sea issue.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

I think we should separate the South China Sea into different issues, and we have to deal with them based on their nature. ASEAN has interests concerning peace, security, international law, freedom of navigation, but also has a very important role in dealing with China collectively to manage disputes and promote cooperation.

That's why ASEAN and China are negotiating over the DOC (Declaration on the Conduct of Parties in the South China Sea) implementation and the Code of Conduct. ASEAN has played an important role in managing tension, to work out what kind of behaviour is acceptable or not acceptable. ASEAN and China can negotiate to promote practical cooperation in the South China Sea. The South China Sea since the 1990s has become an issue between China and ASEAN.

But to settle the dispute of sovereignty or overlapping maritime claims is an issue directly concerning the parties. For example the Paracel islands are an area of dispute between China and Vietnam and they can negotiate bilaterally, or between China and Philippines over the Scarborough shoals. The Spratly islands dispute is multilateral in nature and concerns several parties. If they want

to settle that issue, they can negotiate by themselves or agree for third party arbitration.

Dr Suchit Bunbongkarn

Professor Emeritus at Chulalongkorn University and Chairman of Advisory Board at the Institute of Security and International Studies (ISIS) Thailand

1. What are you most worried about in the coming decision?

I don't think the ruling will resolve the conflict in the region, but it might intensify the issues. This is one of the things we are concerned about. China would not respect the verdict of the PCA if it rules in favour of the Philippines. This would have some negative impact on regional security. China has emphasised that this is an internal issue and ASEAN doesn't agree with the Philippines over its territorial claims. Some ASEAN members are not very happy with the Philippines going alone to the PCA. We would like to see everything resolved peacefully, which guarantees security in the South China Sea.

2. How might it affect the ASEAN-China relationship in its 25th year?

Most of the ASEAN members are quite concerned that anything happening in the South China Sea does not impair ASEAN-China relations. We agree that China must play an important role in the security maintenance of Asia. A number of ASEAN members – Thailand, Laos, and Cambodia – have cordial relations with China, and don't want to see this issue have a negative impact on these.

3. Are you worried that the decision could affect the unity of ASEAN?

ASEAN cannot come to any agreement which might solve this issue, but one thing we do agree on is that we would like to see the Code of Conduct operate in the South China Sea. At the moment, ASEAN should not pick up the issue of maritime claims. China prefers to conduct these negotiations bilaterally, although the Philippines and perhaps Vietnam don't want that. ASEAN members want to see the Code of Conduct put into effect. We don't want to do anything to aggravate unity in ASEAN. ASEAN centrality has been under question for some time, and if this continues, then the role of ASEAN would be affected.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

We should be doing these two things at the same time, both bilaterally and collectively. To guarantee the freedom of navigation collectively; but for the territorial claims, ASEAN members want to negotiate with China bilaterally. The claimant countries in this case – Philippines, China – should be doing something for accommodation.

We cannot leave this issue to intensify because the conflict would have a negative impact. I don't want to see the Philippines neutralise the verdict of the PCA and China needs to come to the

negotiating table to discuss the Code of Conduct. I would think some sort of accommodation needs to come up.

Evan Laksmana

Researcher at the Centre for Strategic and International Studies (CSIS) Indonesia

1. What are you most worried about in the coming decision?

I don't think the ruling itself will create huge problems and isn't very worrying from Indonesia's stand point with regards to the process of upholding UNCLOS (UN Convention on the Law of the Sea). The merits of the case seem to be leaning towards Manilla and from Jakarta's standpoint we are the beneficiaries because we've been arguing for a while to affirm UNCLOS.

More worrying for Jakarta is what happens after the ruling. The key issue is to what extent the ruling can be enforced and China's response will be most concerning. Jakarta will seek to capitalise on the ruling because it strengthens Indonesia's case against the illegal fishing by Chinese ships in the EEZ (Exclusive Economic Zone). China's response and the potential for escalation is the something we will monitor more closely.

2. How might it affect the ASEAN-China relationship in its 25th year?

The indications from the last foreign ministers' meeting between ASEAN and China are that the situation is not good. China is creating a contradictory position for itself: on the one hand, it is going around Southeast Asia on multiple fronts - from officials in embassies to academics – saying this ruling is not really important, that it's a matter of sovereignty which China rejects, that ASEAN shouldn't comment. But China is also showing its hand by creating this sense of urgency. China believes ASEAN shouldn't say anything and it is trying to divide ASEAN. On the other hand, China is willing to bilaterally negotiate with ASEAN members, which undermines the process. These are strong arms tactics which create heightened tension.

This is not looking very good for ASEAN-China relations. I don't think the other ASEAN countries are okay accepting China's position or being divided on a common position. Developing a common position between ASEAN members will make the process to negotiate the Code of Conduct more productive. If the PCA ruling is the next escalatory step over the South China Sea, I don't see how things will get better. In fact, the situation could get worse before it gets better.

3. Are you worried that the decision could affect the unity of ASEAN?

Yes. Initially in 2013, Manilla brought the issue to the PCA without serious and sustained conversation with ASEAN partners, which was a key problem. If the Philippines case gets thrown out this could undermine ASEAN's position. If not, it could anger China and speed up the process of militarisation. There are lots of first, second, and third order effects, so ASEAN feels it should have been properly consulted first. That undermines a little bit of the support that Philippines could have received from ASEAN. From the get go, this is already a potential problem.

But if China behaves even more assertively, and bullies ASEAN over the PCA ruling, eventually ASEAN will be forced to unify around a common enemy. The grumblings against Manila will be superseded by China's strong intervention into ASEAN. Beijing could annoy ASEAN so much that it unifies ASEAN,

or Beijing could still divide ASEAN by using Cambodia and Laos. Will China's use of Laos and Cambodia unify ASEAN? It's see-sawing a little bit. In regard to joint statements, yes this can create divisions. But with regard to overall sentiment among regional policymakers, it could have the opposite effect – the more China intervenes, the more ASEAN rallies around a common process. My worry is that some ASEAN members will seek to create their own alliances with the US or Australia instead of rallying together. This undermines the entire regional security architecture around ASEAN. The more ASEAN members rally among themselves, the better.

If ASEAN members rely on competing security networks, as US Defence Secretary Ashton Carter puts it – using the US, Japan, Australia, or South Korea to balance China - the more China will feel contained and the more it will escalate behaviour in the South China Sea. Then the cycle goes on. It's hard to create a linear argument when so many factors come into play.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

I think this question will evolve in terms of the answer. On a normative benchmark, it will be good for ASEAN to come up with a joint statement. Because of ASEAN's nature, my sense is that any joint statement would be toothless. But if that means ASEAN has more urgency to complete the COC (Code of Conduct in the South China Sea) process, and revive the regional security architecture, this could be useful.

I think the ideal situation would be that even if ASEAN members issue individual statements, the next step is urgently completing the Code of Conduct. We are too far into this process to abandon it, but we are also unable to break the deadlock. Maybe the ruling can be the straw that broke the camels' back, as it were. This could give ASEAN more urgency to complete the Code of Conduct process.

I cannot see a long term solution without tension management and right now the Code of Conduct is the only ASEAN-China framework we have for this. It will not be the only goal for ASEAN-China relations – there has been a discussion of different ways to support the Code of Conduct with supplementary agreements, over marine and scientific cooperation or ways to preserve the coral reefs, collaborating over fisheries and the environment – but some believe we cannot do this until we have settled territorial claims.

There are three separate issues. The settlement of boundaries has to be done bilaterally. The management of tension is done through the Code of Conduct. And then the specific escalatory steps, which goes back to UN Shelf commission, the 9 dash line and the artificial islands. Hopefully the PCA ruling can help us disaggregate these, giving us sense of urgency about Code of Conduct process and more supplementary arrangements to strengthen the Code of Conduct. Whether these can be achieved in even 1 or 2 years is a big question mark.

Dr Lee Poh Ping

Senior Research Fellow, Institute of China Studies, University of Malaya

1. What are you most worried about in the coming decision?

What worries me most is a clear cut decision against China, and if that decision were used by the Americans and Japanese as part of a quasi- containment policy against China on the grounds that China is a rogue nation with no respect for international law. China will fight back by mobilizing for support from Southeast Asian countries, particularly mainland Southeast Asia other than Vietnam, and indeed the world. In the process, ASEAN may be forced into the dreaded position of having to choose sides. ASEAN could be split and the decades old ASEAN policy of staying neutral, a policy that has served ASEAN so well in terms of it contributing to the creation of a regional order conducive to economic development, will be very difficult to practise.

2. How might it affect the ASEAN-China relationship in its 25th year?

This depends on how the Philippines and the other ASEAN claimants will respond to a favourable decision for the Philippines. If the Philippines were to exploit the decision and if the other ASEAN claimants were to use the threat of resorting to international arbitration to extract concessions from China, then there will not be any joyous celebration of the 25th anniversary of China-ASEAN relations.

3. Are you worried that the decision could affect the unity of ASEAN?

Yes. China will do its best to counter any Filipino exploitation of a favourable decision even to the extent of splitting ASEAN if needs be. In my opinion it is not in the interest of China to have a disunited ASEAN. ASEAN has a good record in recent years of friendliness towards China or at any rate of not having been party to any scheme to contain China. But as one Chinese diplomat was reported to have said, China wants a united ASEAN but not united against China!

This needs not be the case if the Philippines were to play down a favourable decision and better still, if the decision of the arbitration court were ambiguous enough to allow wiggle room for the Chinese. Then perhaps some face-saving solution can be found as to lead to the realisation of everyone that the South China Sea issue is something that has to be approached with the greatest sensitivity by all concerned.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

The bilateral/multilateral approach is a vexing issue. The Chinese are dead against the involvement of third parties in the South China Sea dispute while many ASEAN claimants want ASEAN and even the United States to be involved. Those who argue for a multilateral approach state that a bilateral approach here is one of negotiation between two unequal parties, a giant China and a small ASEAN country.

What chance do the ASEAN countries have in terms of a fair deal with a much stronger China? China will argue that it has dealt successfully with many countries over territorial issues on a bilateral basis and sees no reason why this cannot be done in the South China Sea. The Chinese may have a point. Each individual claimant ASEAN country may differ from the other. It can be complicating to lump them together as part of a collective ASEAN position. Moreover if ASEAN were to take up the South China Sea as a collective group, what guarantee is there that it can be consistently united when it faces China over this issue?

Herman Kraft

Executive Director of the Institute for Strategic and Development Studies (ISDS) Philippines and Assistant Professor at the University of the Philippines

1. What are you most worried about in the coming decision?

That this might lead to an escalation of the moves and counter-moves undertaken by the claimant countries in the region. In particular, if the decision goes against China, it could increase its naval activities in the area, going beyond what it has done to assert its claim prior to the decision coming out, the most recent of which was a live-fire naval exercise near the Paracel islands. If this is responded to by Vietnam and the Philippines with moves to counter what is seen as Chinese intimidation, in addition to greater involvement of the United States Navy, this could easily create a hostile environment where hasty decisions could lead the situation into a crisis. This scenario, however, requires the ingredients of a perfect storm. It could easily be avoided if all parties act soberly in the aftermath of whatever decision is reached by the Permanent Court of Arbitration.

2. How might it affect the ASEAN-China relationship in its 25th year?

A heightening of tensions in the region would make it more difficult for ASEAN to conduct dialogue and other relations with China. It would in fact make it more difficult for ASEAN to reach any collective decision on matters that involve China. This is not an issue that could be compartmentalized from overall ASEAN-China relations. If, however, sober heads prevail in the relationship between the Philippines and Vietnam, and China, this could lead to a revival of ASEAN-China relations and strengthen the commitment to its further prosperity.

It has to be said, however, that ASEAN-China relations have already been damaged by the South China Sea issue. While diplomatic etiquette prevents it from being said out in the open, the actions of Cambodia, Laos and Myanmar clearly to the advantage of China on matters that have to do with the

issue have not contributed to ASEAN's health as a group, and, more importantly, to its credibility as an honest broker in the region. In the absence of alternative institutional arrangements, the ASEAN-led and -brokered multilateral mechanisms (e.g. ASEAN + 3, East Asia Summit, and the ASEAN Regional Forum) remain the mainstay of the regional political-security architecture in East Asia. But ASEAN centrality and leadership can no longer be taken for granted (and hadn't been before, but

more definitely since the Phnom Penh meeting in 2012). In a strategic environment increasingly dominated by the rivalry between China and the United States, ASEAN has little if any leverage in regional affairs more so with a membership divided in its appreciation of the strategic interests of ASEAN.

3. Are you worried that the decision could affect the unity of ASEAN?

There is a sense that the decision of the PCA would allow ASEAN to have clearer grounds on which to position itself on the issue. The situation of ASEAN, however, has never been about the decision by the PCA. Rather it is about whether the South China Sea is something that ASEAN should take a position on. China's political allies in ASEAN have always taken this position – that the issue does not concern ASEAN but only some of the member countries of ASEAN and therefore does not need to be a matter that ASEAN has to take up. Never mind that it has an impact on the stability of the region.

But it also reflects divisions in ASEAN that predate the South China Sea issue or the specific matter of the decision of the PCA. In this context, the Mekong issue has not really been a matter that ASEAN has really been involved in. The PCA decision should not really have any effect on the unity of ASEAN beyond the way the South China Sea issue has already affected ASEAN unity. On geopolitical and strategic issues, ASEAN's unity has for the most part been fragile (even more so with ASEAN expansion in 1998-99). That is the reason why hard decisions on these matters have largely been set aside.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

It is inevitable that bilateral discussions will have to be conducted between the different countries with claims to the land features in the South China Sea and the entitlements that may or may not emanate from them. There is no ASEAN negotiating group – only an ASEAN Declaration on how the parties involved in the dispute should conduct themselves. Since the ASEAN states involved in the dispute have refused to settle the issue among themselves, there can be no collective ASEAN position. It would be best that a common position should be taken by the ASEAN states that have claims to the area which would allow them to take a collective stance in negotiations with China. Unfortunately, a move along these lines is not likely to take place given historical trends on the issue.

Ong Keng Yong

Executive Deputy Chairman, the S Rajaratnam School of International Studies (RSIS) in the Nanyang Technological University in Singapore

1. What are you most worried about in the coming decision?

An agitated Chinese reaction which will further complicate ASEAN diplomacy to rebuild mutual respect between ASEAN member states and China to facilitate the implementation of the DOC (Declaration on Conduct of Parties in the South China Sea) which could lead to a legally binding COC (Code of Conduct in the South China Sea). In return, the Philippine government may be forced to take a hardened stand vis-a-vis the Chinese government and this will pitch ASEAN member states with different persuasion against each other and prevent any consensus over ASEAN decision making.

2. How might it affect the ASEAN-China relationship in its 25th year?

The ASEAN-China relationship is multifaceted and wide ranging. It should not be held hostage to what happened in the South China Sea. Unfortunately, recent actions by Chinese officials seem to suggest that China will link the South China Sea to the broad spectrum of ASEAN-China interactions.

It may create a hollow atmosphere in the future direction of ASEAN-China ties. ASEAN initiatives such as the RCEP (Regional Comprehensive Economic Partnership) could be delayed and participation in China projects such as One Belt One Road and those under the Asian Infrastructure Investment Bank are likely to be on individual country basis instead of an ASEAN coordinated move.

3. Are you worried that the decision could affect the unity of ASEAN?

Analysts and experts have concluded that the ASEAN consensus-based decision making is now more difficult because of the different positions taken by the ASEAN member states in response to the Chinese stand on the arbitral tribunal process initiated by the Philippine government.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

The DOC (Declaration on Conduct of Parties in the South China Sea) spells out the possible way forward. Bilateral talks between parties in dispute have been specified in the DOC. It is better not to reinvent the wheel. ASEAN and China should go back to what has been painstakingly negotiated and laid down to move the issue forward.

Bilahari Kausikan

Ambassador-at-Large in the Ministry of Foreign Affairs of Singapore

1. What are you most worried about in the coming decision?

I suspect that the forthcoming decision will be something of an anti-climax, not in a legal sense where the Tribunal's award will have great significance, but what happens after the award. To take the more excitable sort of commentator seriously, is to expect war. This is not going to happen.

There will be a lot of shouting by both sides but nobody wants trouble, certainly not the ASEAN countries, the US or China. Of course accidents can happen, but the US and China have worked out rules of engagement and by and large kept to them.

US-China competition in the South China Sea is becoming ritualized. Even Admiral Harris of PACOM (US Pacific Command) – no dove – has admitted on the sidelines of this year's Shangri-La Dialogue that dangerous incidents are rare. Dai Bingqiao recently visited Washington DC and met Susan Rice; Secretary Kerry called Wang Yi that same week. I see this as both sides taking steps to ensure that incidents do not occur because of miscommunication. Besides, China hopes to cut a deal with Filipino President Duterte and I think apart from statements denouncing the award, Beijing's reaction will be limited, at least initially.

In the longer-term, I think China will certainly take actions to assert its claim of sovereignty despite the Tribunal's award, perhaps by deploying military assets. But China will not – it cannot – stop the US from operating in and through the South China Sea and on the surface nothing much will change. Still, when a major power and Permanent Member of the Security Council ignores an international regime to which it is party, that regime is to some degree degraded. That is what we should all be concerned about far more than what toys China may eventually deploy on the artificial islands it has created. In the event of a major conflict, those islands will be vaporized within minutes. But if UNCLOS (UN Convention on the Law of the Sea) is undermined, it is not easy to restore confidence in an international regime.

2. How might it affect the ASEAN-China relationship in its 25th year?

ASEAN-China Relations are broader than just the South China Sea. We are neighbours and cannot ignore each other. That said, how a large country deals with small countries on issues of sovereignty will certainly cast the deepest shadows over the relationship and China has failed to reassure ASEAN on this count. This predates the award but China's response to the award could either make the situation worse or mitigate it. It will be a signal of what kind of relationship China really expects to have with smaller countries on its periphery, and not just in Southeast Asia.

3. Are you worried that the decision could affect the unity of ASEAN?

On the South China Sea issue ASEAN is already divided and will remain divided. Cambodian Prime Minister Hun Sen has made it clear that on this issue he sees Cambodia's interests as standing with China. When there is an experienced Chair like Malaysia last year, ASEAN can put together a good statement. But a statement is only a statement. ASEAN is still very useful – indeed irreplaceable – for other purposes but it is not going to play much of a role on the South China Sea. The main players

are the US and China. This is a reality. It is utterly pointless to criticise a cow for being an imperfect horse, which is what much commentary on ASEAN and the South China Sea amounts to.

4. What is the right way for ASEAN to deal with tensions after the decision – should the countries discuss/negotiate with China bilaterally or collectively as ASEAN?

Negotiate about what? It is obvious that a dispute over sovereignty can be settled only by the parties to the dispute by whatever modality they should agree on. But on something like a Code of Conduct, it is equally obvious that ASEAN will have to discuss and agree to this with China as a group. You can't have 10 different Codes of Conduct. Whether the game is worth the candle is of course an entirely different matter.