

# Intellectual Discourse

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# *Intellectual Discourse*

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# ASEAN, China and the South China Sea Territorial Disputes: Analysis of Conflict Management Strategies

Siti Noralia Mustaza\*  
Mohd Irwan Syazli Saidin\*\*

**Abstract:** This article analyses the effectiveness of existing mechanisms in ASEAN in addressing the South China Sea dispute with China. It highlights the ASEAN's position on the issues as well as examines China's approaches in asserting sovereignty over the disputed waters and further the responses of other claimant states towards China's actions. This article utilises both primary and secondary sources including official ASEAN documents, meeting proceedings, speeches from ASEAN Leaders and Ministers, media releases, as well as presentations from the ASEAN Summits. The analysis of ASEAN's efforts derives from the work of ASEAN-led security mechanisms, ASEAN-China Relations and other frameworks in managing the disputes. This article establishes that ASEAN have played a major role to preserve peace and security among its member states and between China.

**Keywords:** ASEAN, China, South China Sea, dispute management, peace, security

**Abstrak:** Artikel ini menganalisis keberkesanan mekanisma sedia ada dalam ASEAN dalam menguruskan pertikaian berhubung status Laut Cina Selatan dengan China. Tumpuan dihalakan terhadap pendirian ASEAN berhubung isu ini disamping menilai pendekatan China dalam menuntut kedaulatan terhadap

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kawasan perairan yang menjadi pertikaian dan juga reaksi negara-negara lain yang terlibat terhadap tindakan China. Artikel ini menggunakan sumber primer dan sekunder seperti dokumen ASEAN, prosiding mesyuarat, ucapan pemimpin dan menteri ASEAN, kenyataan media, dan pembentangan Sidang Kemuncak ASEAN. Analisis terhadap usaha ASEAN adalah berpandukan kepada beberapa mekanisme keselamatan yang diterajui ASEAN, Hubungan ASEAN-China dan kerangka-kerangka lain dalam menguruskan pertikaian. Artikel ini mendapati bahawa ASEAN telah memainkan peranan penting dalam mengekalkan keamanan dan kestabilan dalam kalangan ahli-ahlinya dan terhadap China.

**Kata kunci:** ASEAN; China, Laut Cina Selatan, pengurusan pertikaian, keamanan, keselamatan

## Introduction

For the past several decades, the South China Sea has become a locus of conflicts among its claimants. The competing claims by China, Brunei Darussalam, Malaysia, the Philippines and Vietnam and the assertive stance of China on sovereignty over the entire South China Sea have escalated tensions in the Southeast Asia region. Due to the number of claimants and the complexity of the dispute, the South China Sea has been labelled as “the mother of all territorial disputes” and has the potential to escalate into serious international conflicts (Baviera, 2004). The disputes involve: 1) China’s claim on the nine-dash line area that overlaps the Exclusive Economic Zones (EEZ) of Brunei Darussalam, Malaysia, the Philippines and Vietnam; 2) China, Vietnam, the Philippines and Malaysia claims on the whole or some parts of the Spratly islands; 3) China and Vietnam claim over Paracel islands; 4) Brunei Darussalam claim of the seabed around Louisa Reef, but not any features in the South China Sea (Emmers, 2010).

Having seen the uncertainties towards the on-going dispute, this article argues that ASEAN has played a key role to diffuse the tension in the region as an entity, in line with its role to preserve the stability among member states. This article considers the effectiveness of existing frameworks in ASEAN in addressing the South China Sea dispute with China. It begins by reviewing the status of Paracels and Spratly Islands and the approaches of the claimant states, and further analyse China’s



interests, strategies and policies with regard to the South China Sea. It will then examine ASEAN frameworks, security architecture and efforts to address the conflict, both from structural and theoretical viewpoints. Finally, the paper proposes perspectives in moving forward with the issue.

### **Historical Overview and Status of Disputed Areas within the South China Sea**

The two main disputed areas in the South China Sea are the Paracels and Spratlys. The Paracels is claimed entirely by China and Vietnam as their indisputable sovereignty. The dispute over Spratly islands on the other hand, is more complicated because of the number of claimants. China and Vietnam claim the archipelago entirely, while Malaysia, the Philippines and Brunei Darussalam claim only parts of the archipelago. China has claimed sovereignty over the entire South China Sea as its indisputable sovereignty based on historical surveying expedition, fishery activities, and naval patrols. The nine-dashed line also has continued in official maps issued by China, based on the UNCLOS in 1996, which requires states to renounce the majority of their historic maritime claims in favour of the maritime zones awarded under the convention. However, China has submitted its map with the nine-dashed line to the United Nation in 2009 and used the term “relevant waters”, implying that China might claim “historical waters” notwithstanding its ratification of UNCLOS.

On the other hand, Vietnam continuously reiterates its sovereignty over the Paracels based on the legal and historical evidence through a map drawn by Vietnamese Scholar Do Ba between 1630 and 1653, which asserts that as early as the 17<sup>th</sup> century, Vietnamese authorities had been sending ships and men to the Paracels on a regular basis (Pedrozo, 2014). In the 18<sup>th</sup> century, Vietnamese Nguyen Dynasty claimed sovereignty over the Paracels based on the collection of goods from shipwrecks and reportedly erected a marker and built a pagoda (Tønnesson, 2002). In the Spratlys, Vietnam and the Philippines’ claims are based on legal and historical backgrounds. Vietnam’s claim on the Spratlys devolves from a legal document issued by the French colonial in 1933 that indicates specific coordinates that affect specific areas. The legal annexation by France, at that time was a legitimate method of territorial conquest and its rights devolved to Vietnam in the 1950s (Rosen, 2014; Pedrozo,

2014). The Philippines claims its sovereignty on the western section of the Spratlys, comprising 53 features that are known collectively as the Kalayaan Island Group (KIG). The Philippines claims on the KIG was declared by President Marcos in Presidential Decree number 1596 in 1978 which specifies the coordinates of the KIG and declared that it was “subject to the sovereignty of the Philippines” (Government of the Philippines, 1978). However, the Philippines claims on the KIG is much like Chinese nine-dash line claim, and this methodology is not likely to be regarded as legally adequate to demonstrate sovereignty over ocean territories (Rosen, 2014).

Malaysia claims sovereignty over seven islands or rocks in the Spratly archipelago, and occupies four of them. Malaysia has also built small naval bases with small boat basins on each of these features. It also claims two low-tide elevations and three submerged reefs that are on its continental shelf (Roach, 2014). All of Malaysia’s claims are based on the 1982 UNCLOS. However, while the provisions on the continental shelf of UNCLOS support Malaysia’s claims to seabed resources, the features that are permanently above sea level are subject to appropriation.

### **China’s past approach in managing its claims**

In managing a territorial dispute, a state may pursue any of these three general strategies: cooperation, escalation or delaying (Fravel, 2011). Through cooperation strategy, a state may offer to either transfer control of contested territory or drop its claim to the territory, without threats or the use of force. In escalation strategy, a state may engage in coercive diplomacy to achieve a favourable outcome at the negotiating table or use threats or force to gain control of the contested territory. In delaying strategy on the other hand, a state may maintain its claims on the dispute without offering concessions or using force. The delaying strategy allows the claimant state to buy time to consolidate its position and achieve a more desirable outcome. This strategy also allows the state to strengthen its claim and its control over the disputed territory, either through diplomatic means or through military actors.

In managing its various claims in the South China Sea territory, China has pursued the delaying strategy, as evidenced in several occasions. It started in 1959, when South Vietnam asserts control over the Crescent Group (part of Paracels), detaining and ousting Chinese

fishermen whom had frequently operated in the area. Following the move, until 1974, China pursued a delaying strategy towards South Vietnam, in an effort to bolster its position in the area and reinforce its military capabilities to defend its claims. China also established a Chinese garrison in Woody Island and conducted routine patrols to the neighbouring islands. Between 1960 and 1973, China conducted five patrols per year, on average, between Hainan and the Paracels. It continues to maintain its claims to all of the Paracels through numerous official statements (Tønnesson, 2002). Despite China's control over the islands in the Paracels, its position in other parts of the South China Sea, particularly the Spratlys remained weak. While other claimants, namely Vietnam and the Philippines began occupying islands in the Spratlys, China continued with the delaying strategy, at the same time improving its naval capabilities to project its power over the Spratly Islands (Fravel, 2011).

Beginning mid-1980s, China pursued escalation strategy to manage its claim in the Spratlys. In early 1987, Chinese leaders decided to consolidate its position by occupying permanently nine unoccupied features of the South China Sea. This was accomplished in January 1998 when People's Liberation Army Navy (PLAN) arrived at the Fiery Cross Reef (part of Spratlys). The Chinese move prompted Vietnam to also occupy other vacant reefs in the area. On 14 March 1988, after China had occupied three features, a clash occurred over Johnson Reef that killed 74 Vietnamese (Storey, 2012). In the end, China only managed to occupy six of the nine features from its original plan. However, the strategy adopted by China has led towards instability and competition to occupy other vacant features through military presence in the South China Sea. China has also pursued the same strategy to occupy Mischief Reef in 1994.

After China had gained control of the Mischief Reef, it reverted back to delaying strategy to further strengthen its position, while managing the diplomatic blowback from the Southeast Asian states due to its assertiveness for the next decade (Fravel, 2011). After the Mischief Reef incident, ASEAN sought initiatives that could prevent existing disputes from escalating into conflicts. In 2002, China and ASEAN signed the DOC, a milestone document "embodying the collective commitment to promoting peace, stability and mutual trust" in the South China Sea

and to “ensure a peaceful resolution of disputes” in the area (ASEAN, 2010).

### **Beijing’s policies in the dispute**

The fundamental dynamics of the Chinese policy on the South China Sea has remained consistent for the past three decades: emphasising its commitment to peace, stability and cooperation while simultaneously asserting its jurisdictional claims and expanding its physical presence in the South China Sea (Storey, 2012). Chinese leaders have subsequently reaffirmed that China’s approach to the dispute should be based on Deng Xiaoping’s guideline of “sovereignty is ours, set aside disputes, pursue joint development”. Deng Xiaoping’s guideline for managing the South China Sea dispute was developed in the 1984. It emphasised on delaying the resolution of the disputes and focus on joint development instead, to prevent tensions in the dispute from damaging China’s broader bilateral ties with other claimant states (Storey, 2012).

China’s assertive actions between 2009 and 2011 raised questions about whether China still holds on to Deng’s guideline in managing the disputes in the South China Sea. China has sought to reassure other claimants by repeatedly highlighting its peaceful intentions and willing to cooperate in joint developments of the maritime areas, while seeking to prolong discussions on the problem and delaying the resolution of the dispute at the same time (Storey, 2012; Fravel, 2011). This would allow China to strengthen its claims, particularly to maritime rights or jurisdiction over the South China Sea waters and to deter others from consolidating their own claims at China’s expense (Fravel, 2011). Only in the mid-2000’s, China has increased its pace to consolidate its claim through diplomatic, administrative and military means.

Generally, China prefers to engage other claimants through bilateral negotiation on the disputes, rather than multilaterally. In the ASEAN platform, China opposed the discussion of the South China Sea issue at regional security meetings until 2010. China also rejects all efforts to “internationalise” the dispute and the involvement of third parties to manage the tension. This includes international legal arbitration, as it involves a multilateral institution, but it is also because China does not have a strong case (Storey, 2012). Although China has reiterated its peaceful intentions in managing the disputes with other claimants, but it is taking steps to claim territorial sovereignty and gradually expands

its physical presence in the South China Sea. These acts were achieved by sending regular patrols by PLAN and maritime law enforcement agencies such as the South Sea Regional Fisheries Administration Bureau (SSRFAB) and China Marine Surveillance (CMS).

There were periodic reports of aggressive actions of PLAN vessels shooting at the Filipino and Vietnamese fishing boats and confronting Malaysian naval forces. In addition, China has enforced annual fishing bans through the SSRFAB while there were also reports of CMS boats harassing Malaysian and the Filipino survey ships. In 2011, CMS vessels deliberately cut off the exploration cables of surveying equipment belonging to Vietnam, which was operating on Vietnam's EEZ. In a separate incident in April 2012, China and the Philippines were involved in another friction in the waters surrounding Scarborough Shoal. It was reported that a Philippines navy detained Chinese fishermen accused of illegally catching clams, poaching sharks and harvesting corals protected under the Philippines anti-poaching laws, but two Chinese marine surveillance vessels intervened in the situation, leading to a confrontation (Yoshimatsu, 2017). The confrontation continued until mid-June when China gained effective control over the reefs.

The Chinese Foreign Ministry has stated that they will not use force to resolve the disputes (BBC, 2011). In addition, the 1976 ASEAN TAC which China acceded to in 2003 prohibits the use of force to settle interstate disputes. Chinese PLAN vessels have not been involved in any serious maritime clash in the South China Sea since it attacked the Vietnam troops in Johnson Reef in 1988, resulting in 74 Vietnamese fatalities. China well understands that any aggressive military actions would be counterproductive to its mantra to settle the disputes in the sea peacefully (Storey, 2012).

### **Analysis on ASEAN Frameworks and its critical role in managing the dispute**

ASEAN's position in the disputes and tensions arising in the contested waters is largely reflected through its two main political documents annually. First, is the Joint Communiqué of the ASEAN Foreign Ministers' Meeting (AMM) and second, the Chairman Statement of the ASEAN Summit which reflects the views and discussion of ASEAN Leaders during the Summit. In essence, ASEAN's core position on the South China Sea is that the disputes should be negotiated between its

claimants, but ASEAN and China should manage to avoid the escalation of conflicts in the region. It is worthy to note that under different ASEAN Chairmanships, the current Chair tends to put different emphasis on the language concerning the South China Sea when issuing these two political statements annually.

In general, ASEAN stressed that the territorial disputes should be settled among the parties concerned and ASEAN maintains the lowest common denominator in its stance by continuously reiterating its commitment to the principles of international law, including the 1982 UNCLOS, without resorting to threat or force, as well as ASEAN's concern to maintain regional stability, peace and freedom of navigation and over-flights (ASEAN, 2002; ASEAN, 2011a; ASEAN, 2012b; ASEAN, 2017a; ASEAN, 2017b; ASEAN, 2017c). ASEAN also carefully directs the position of China through direct or indirect referencing of the South China Sea or China itself in the statements as well as the situation on the ground. Regarding the dispute, ASEAN has also provided a number of platforms for dialogue and cooperation by setting shared values and norms through different instruments such as the 1976 TAC, and by providing trusted mechanisms such as the ASEAN Plus One, the ASEAN Regional Forum (ARF), East Asia Summit (EAS), ASEAN Defence Ministers Meeting/ ASEAN Defence Ministers Meeting-Plus (ADMM/ADMM-Plus) and track II workshops. In this respect, ASEAN plays its role as a facilitator when invited by parties concerned, as long as it is within the limits set by the ASEAN framework for conflict management.

### **Treaty of Amity and Cooperation in Southeast Asia (TAC)**

To reinforce the ASEAN centrality in regional security issues, the five founding fathers of ASEAN adopted the 1976 TAC. The TAC is essentially a conflict management mechanism that establishes a guideline among its member states and dialogue partners to discourage the use of threat or force in settling disputes among themselves. This treaty noted the desire to “enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia” through adherence to six principles to frame the code of conduct including “settlement of differences or disputes by peaceful means”, “renunciation of the threat or use of force” and “effective co-operation” (ASEAN, 1976). The TAC was open for accession by other states in Southeast Asia and later became

a prerequisite for all ASEAN member states when the bloc expanded. Following that, the accession to TAC became a requirement for external states in order to join the East Asia Summit. China acceded to the TAC in 2003. The TAC provided for the ASEAN dispute settlement mechanism under Chapter IV: Pacific Settlement of Disputes which outlined the way in which TAC signatories should behave where disputes may arise or have risen (ASEAN, 1976).

In the context of the South China Sea, while the TAC is not legally binding, the dispute settlement mechanism must be viewed in the context of establishing a code of conduct of among member states to discourage the use of threat or force in settling disputes among themselves (Oegroseno, 2013). In addition, the TAC allows for other signatories who are not claimant to the South China Sea to make a concrete contribution to the dispute. This is stipulated in Article 16 of the TAC, which states that “shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute. Parties to the dispute should be well disposed towards such offers of assistance” (ASEAN, 1976). In this case, Indonesia has played a huge contribution by actively facilitating Track II Workshops on the South China Sea since 1990 in order to manage the conflict, reduce tension and create and enhance confidence using the 1982 UNCLOS (Oegroseno, 2013).

### **ASEAN Defence Ministerial Meeting (ADMM)/ADMM-PLUS**

ADMM was established in 2006, aimed to foster cooperative behaviour of ASEAN member states under defence-related cooperation (ASEAN, 2007a). To ensure strategic stability and stable distribution of power in East Asia, particularly in Southeast Asia, ADMM extended its membership to eight dialogue partners, namely Australia, China, India, Japan, the Republic of Korea, New Zealand, the Russian Federation and the United States, forming ADMM-Plus. Since its inauguration in 2010, ADMM-Plus has played a huge role in advancing multilateral cooperation through strategic dialogue and practical security cooperation by offering the eight dialogue partners an opportunity to engage with ASEAN collectively on non-traditional security issues and build trust and confidence.

Through ADMM-Plus, ASEAN member states are able to gain material assistance for capacity building from economically and

militarily capable “Plus” partners to address transnational security issues including maritime security, counter-terrorism, disaster management, peacekeeping operations, and military medicine (Koga, 2018; ASEAN, 2014). ADMM-Plus serves two-pronged functions for ASEAN member states: first, it allows ASEAN member states with “differing capacities” in “addressing shared security challenges” to tap into the economic and defence resources of dialogue partners in building capacity (Koga, 2018). Second, it serves as a platform to promote confidence building and enhance defence cooperation in the areas of non-traditional security with extra-regional great powers.

Although the ADMM-Plus establishment was not motivated by China’s rise, its establishment was sped up due to China’s assertive actions in the South China Sea in 2009. ASEAN member states expected ADMM to play a positive role in diffusing the tension in the South China Sea, largely because ADMM-Plus is a defence-oriented cooperative security arrangement and possibly function to promote confidence building measures and enhance defence cooperation with China in a multilateral setting. Furthermore, ASEAN defence ministers have also confirmed that ADMM-Plus could meet its objectives in confidence and capacity building of its member states and enhance and cooperation in non-traditional security issues (ASEAN, 2007a).

Beginning 2011, ADMM has actively discussed the South China Sea issue in its joint statements and declarations. The joint declaration in 2011 reaffirmed ADMM’s commitment to “fully and effectively implement the DOC” and encouraged for the adoption of a regional Code of Conduct in the South China Sea (ASEAN, 2011c). Since then, ADMM joint declarations have continued to reiterate on the commitment to implement the DOC and the conclusion of the COC. Specifically after 2013, these documents have made specific reference to the stability in the South China Sea, ASEAN Six-point principles on the South China Sea, in addition to the commitment on DOC in accordance with the 1982 UNCLOS and the early conclusion of the COC (ASEAN, 2013). As ASEAN political documents are negotiated documents, the inclusion of the South China Sea issue is an indication of ASEAN general stance in relation to China.

In addition to political statements, ADMM has put in place mechanisms to facilitate a peaceful and stable environment in the



South China Sea among its member states. First is the establishment of a Direct Communications Link (DLC), a hotline developed for other crisis or emergency situations, including terrorism, maritime security and natural disasters (ASEAN, 2014). As proposed in the 22<sup>nd</sup> ASEAN Summit and supported by ASEAN Defence Ministers, this measure could also avoid undesired incidents at sea. ADMM also has established Code for Unplanned Encounters at Sea (CUES) in September 2016 between the ASEAN member states and China (ASEAN, 2016). This effort is complementary to the CUES arrangement established at the Western Pacific Naval Symposium in 2014. In essence, 2016 CUES is a de-escalation mechanism for navy forces, to reduce chances of accidents in the Sea, especially in the South China Sea. Noting that six out of eight “Plus” members are already a signatory to the 2014 CUES, ADMM has proposed to extend the 2016 CUES to involve all ADMM-Plus members (Ng, 2016). Should this proposal be materialised, it could pave the way for ADMM-Plus member states to undertake multilateral maritime exercise, by leveraging on their good record in military-to-military cooperation to further ensure a peaceful and stable South China Sea. Such mechanisms display cautious institutional balancing towards China.

### **ASEAN Regional Forum (ARF)**

The ARF was established in 1994 as a platform to discuss and consult on current regional security issues and develop cooperative measures to enhance peace and security in the Asia-Pacific Region. ARF is not a collective defence or regional security management, but rather an institution to achieve long term peace by fostering mutual trust (Simon, 2013). The ARF process would proceed in three states towards comprehensive security in ASEAN, from confidence building (stage 1) to preventive diplomacy (stage 2) and finally the elaboration of mechanisms for conflict resolution (stage 3) (ASEAN, 2007b). The ARF adopts ASEAN’s strategy of consensus diplomacy, which is to manage and mitigate problems rather than resolve them (De Castro, 2017).

The ARF was originally envisioned to domesticate the foreign policy behaviour of China and entice China into accepting ASEAN’s norms (De Castro, 2017). The strategy is hoped to stop China’s aggressiveness against other South China Sea claimant states by enhancing defence transparency and promoting peaceful and cooperative solutions to the

disputes. The membership is also extended to other regional powers, namely the U.S. and Japan to constraint and balance China power (Sen, 2000). China on the other hand, joins the ARF to avoid being left out from the regional grouping. It also saw the need to participate in the ARF to signal its engagement with Southeast Asia and dismiss concerns about Chinese threats to the region (De Castro, 2017). Thus, the ARF is seen as a useful means to cope with China's rise. Using a cooperative security approach, the regional grouping intends to "socialise" China to the point where the country would act as a "responsible regional power" (Sen, 2000).

It is noted that the ARF has contributed in increasing China's engagement with other countries. During several public engagements, Chinese officials have continuously emphasised their government's commitment to a peaceful settlement of disputes in the region. During the first meeting of the ARF in 1994, Chinese Vice Premier and Foreign Minister Qian Qichen has agreed that "peaceful settlements should serve as norms in handling disputes". At the second ARF meeting in 1995, he had adopted cooperative security language more specifically by proposing that the Asia-Pacific states should replace "the resort to force and threat" to "the use force with peaceful negotiations, dialogues and consultations". During the same meeting, the Vice Premier had also publicly agreed that conflicting claims should be resolved with the reference to the 1982 UNCLOS and reiterated China's position for joint development of resources in the contested waters (Sen, 2000)

Since 1995, ARF has exchanged views on the developments in the South China Sea which is reflected in their annual chairman statement. Particularly, the ARF Ministers expressed their "concern on the overlapping sovereignty claims" and "encouraged all claimants to reaffirm their commitment" to international laws (ASEAN, 2007b). While China has discussed and expressed its sovereignty on the South China Sea during the meeting, but the fact that China is willing to raise the issue at all, has demonstrated a softening of China's stance to discuss the dispute in a multilateral platform (Sen, 2000). Towards the beginning of 1997, it was agreed that the South China Sea became the principal agenda in ARF annual meetings. China has also actively participated in the ARF and the track II processes that complement the official consultations in the forum. Through its membership in the ARF, China has steered the forum in further exploring and developing dialogues

and cooperation in addressing non-traditional security challenges and in expanding the forum to include the participation of defence officials (De Castro, 2017). In March 1997, China has offered to co-host with the Philippines, an Intersessional Support Group (ISG) meeting on the ARF on Confidence Building Measures in Beijing (ASEAN, 2007b).

### **China-ASEAN Mechanisms**

Although China has reiterated its preference to settle the South China Sea disputes bilaterally, China has begun to slowly participate in ASEAN platforms since the early 2000s, and actively discuss South China Sea issues beginning 2010. As China rejects all efforts to “internationalise” the dispute and involvement of third parties, its participation in ASEAN is a positive indication that it is willing to settle the disputes peacefully. The first engagement between China and ASEAN led to the 2002 DOC and accession to the 1976 TAC. The DOC is intended to prevent escalating tensions over the contested waters and decrease the risks of military intervention in the South China Sea. The DOC is considered as a successful milestone in the dispute management. However, it is merely a political declaration and does not serve as a preventive measure to help reduce the potential incidents in the South China Sea. However, nine years after, only in 2011, China agreed on the implementation guidelines of the DOC (Zhang, 2015).

The proposal on the DOC begins in the mid-1990s after China seized the Mischief Reef. In order to reduce the heightened tension in the South China Sea among the claimant states, ASEAN agreed to set up a code of conduct (Storey, 2012). As the dispute is multilateral in nature, the code is intended to function not as a dispute resolution mechanism, but to manage conflicts to encourage a conducive atmosphere in finding a political or legal resolution to the problem. ASEAN first consulted China in 1999 about participating in negotiations, but was rejected by China. However, in the early 2000’s China reversed its position and indicated its willingness to participate in negotiating a code to manage tension. This change of position is important as it reflected the shift in the Chinese foreign policy that recognises the value of multilateral platforms to convey the message that China’s rising power did not pose a threat to regional stability.

During the negotiation of the DOC text, China, supported by Malaysia pushed to have the agreement designated as a “declaration”

rather than a “code” while the Philippines and Vietnam proposed for the opposite. A declaration would have been a political declaration of intent rather than a legally binding instrument. Nevertheless, all parties eventually agreed that the ultimate goal of the DOC is to adopt a code of conduct for the South China Sea. Through the DOC, the signatories agreed to respect the “freedom of navigation in and overflight above the South China Sea”, peaceful resolution of disputes “without resorting to the threat or use of force”, “to exercise self-restraint in the conduct of activities”, not to occupy “presently uninhabited” features and to work towards achieving a code of conduct (ASEAN, 2002).

Only in 2011, ASEAN began discussion on a code of conduct and actively engaged China in consultations on the COC. The Chairman statement of the 19<sup>th</sup> ASEAN Summit “reaffirmed the importance of the DOC” and highlighted the need “to intensify efforts” to conclude a regional code of conduct (ASEAN, 2011a). Six years later, after prolonged discussions on the code, ASEAN and China eventually adopted the framework of the COC in August 2017, and commenced the negotiations on the COC after (ASEAN, 2017a). ASEAN Leaders noted this development as “an important milestone” while ASEAN Foreign Ministers were “encouraged” by the adoption of the framework that would “facilitate the work for the conclusion of an effective COC on a mutually-agreed timeline” (ASEAN, 2017a; ASEAN, 2017c). While the framework was broadly welcomed by ASEAN and Chinese leaders, it noticeably lacks a “legally-binding” phrase, as well as the geographical scope of the agreement and enforcement and dispute settlement mechanisms (Storey, 2017). The framework also failed to mention whether it applies to both disputed Paracel or Spratly Islands or only some area of the waters. The absence of enforcement measures and arbitration measures also is seen to weaken the effectiveness of the COC. Currently, both ASEAN and China are optimistic to achieve the code of conduct (Yong 2018). The negotiation of the COC is crucial and its successful conclusion depends on the ASEAN cohesion and the pressure it could exert on China to find solutions to the issue.

In addition to the DOC and COC, ASEAN and China have explored more action-oriented activities in areas of common interest and concern to mitigate the maritime tensions among the claimants. This includes a series of economic means and infrastructure development. Among the measures that are in place are the establishment of Hotline

Communications on Search and Rescue between the ASEAN member states and China, Hotline Communications in Response to Maritime Emergencies, and ASEAN-China Joint Maritime Exercise (ASEAN, 2018b). ASEAN and China also have adopted the Joint Statement on Port Development to strengthen port development and cooperation as well as ASEAN-China Maritime Transport Agreement to increase cooperation and facilitate international maritime passenger and cargo transportation (Yoshimatsu, 2017).

### **Different paths to one goal: ASEAN, China and the Southeast China Sea Waters Dispute from the perspectives of international relations theories**

The South China Sea disputes appear to have developed based on the realism's emphasis on power, liberalism's focus on the opportunity for cooperation between states and international institutions as well as neoliberal institutionalism's stress on the role of third parties to adjust state behaviour. In these disputes, it is important to note that there exists no single theory to explain the situation on the ground. However, each theory contributes towards understanding the position of claimant states and their actions as well as the role played by ASEAN as a third party. In essence, realism and liberalism support several policy options for the claimant states. Claimants can pursue either three options: unilateral action by using power; negotiation such as bilateral or multilateral joint development initiatives; or third party facilitation such as mediation, arbitration or litigation (Sherrill, 2014).

#### **Unilateral Action**

As realism focuses on power, states are likely to pursue unilateral actions when dealing with a conflict. In the case of South China Sea disputes, as China is the dominant power against other claimants, it is most associated with taking unilateral actions to advance its interest in the contested waters. In this case, China has used military force to obtain possession over some of the disputed areas in the South China Sea as demonstrated by several incidents (Liu, 2010). For example, China has dislodged South Vietnam naval forces to take control of the Crescent Group (part of the Paracels) in 1974. China also attacked the Vietnam troops in Johnson Reef in 1988, resulting in 74 Vietnamese fatalities. In 2011, a Chinese frigate shot at the Philippines fishing boats after the latter failed to leave the Jackson atoll (Jamandre, 2011). As

China prefers to negotiate the dispute bilaterally, it has rejected all efforts to “internationalise” the dispute and involvement of third parties to manage the tension, including international legal arbitration (Storey, 2012).

China has also used its economic power to protect its interest in the disputes. For example, the Philippines has responded to China’s assertiveness by protesting every single Chinese approach to consolidate its claims in the disputed waters (Sherrill, 2014). This led to Chinese retaliation by blocking certain agriculture exports from the Philippines to China and cancelling Chinese tourist visits to the Philippines costing the latter tens of millions of dollars. China’s aggressiveness has prompted the smaller ASEAN claimants to seek closer ties with the U.S. Since China’s assertiveness peaked in 2010, there has been cooperation and Memorandum of Understanding (MOU) among the ASEAN claimants and the U.S. including the 2011 U.S.-Vietnam MOU; 2014 U.S.-Philippines Enhanced Defence Cooperation Agreement; 2014 Visit of President Obama to Kuala Lumpur; and 2013 visit by Secretary of Defence Chuck Hagel (Sherrill, 2014). This is in line with the theory of realism where smaller states seek to balance against the Chinese power by turning to another great power.

### **Negotiation**

Negotiation on the other hand, represents both realism and liberalism. China prefers to resolve the disputes through bilateral means with other claimants, so that it could pressure the weaker state to accept unequal commitments. This represents a realist policy. In contrast, negotiation between two parties with equal power may lead to a compromise and cooperation, which is the liberal side of the policy. Recent developments have seen that China has been more cooperative in regional cooperation when dealing with ASEAN countries. The economic interdependence between the disputants opens up the possibility of conventional settlement of the South China Sea disputes. From a liberal perspective, China has adopted closer economic relations with ASEAN to promote a cordial atmosphere, with both sides agreeing to co-develop energy resources, share fishing rights, and establish multilateral policing authority. ASEAN claimant states have also increased their cooperation among each other to push for one voice under the ASEAN platform with

a view to increase their visibility and bargaining power when dealing with China.

### **Third Party Facilitation**

Neoliberal institutionalism emphasises on the role of third parties to adjust state behaviour and encourage cooperation by reducing transaction costs and providing greater transparency. Third parties can facilitate conflict management, either through the creation of institutions or actors playing the role of honest broker in negotiations. In this dispute, ASEAN and China have agreed to the 2002 DOC, a milestone document in which claimants agreed to comply with the international law and commit to exercise self-restraint in the conduct of activities in the contested waters (ASEAN, 2002). There are also ASEAN-led institutions such as the ARF and ADMM-Plus that provide avenues for discussion and cooperation on various areas in the South China Sea. There has been no rules-based order established yet to date under these institutions, but they have established transparency, minimised misunderstanding and created mutual trust among its claimants.

Alternatively, another important institution that played a huge role in this dispute is UNCLOS, which has been in force since 1994 and which all the claimant states have ratified to (Sherrill, 2014). UNCLOS governs the use of the world's oceans, including establishing the scope of territorial waters (12 nautical miles), contiguous zone (another 12 nautical miles), EEZ (200 nautical miles) and continental shelf (up to 350 nautical miles), along with delineating the rights of the state within each of those areas. Although UNCLOS provides for dispute resolution mechanisms, it does not provide for settlement of disputes over sovereignty. In addition, Indonesia has attempted to serve as an honest broker to bring together all claimants through a series of informal workshops since the early 1990s. These informal workshops have provided inputs to Track I diplomacy that led to the adoption of the DOC (Oegroseno, 2013).

### **Conclusion**

This article has discussed the importance of the South China Sea, economically and geopolitically as well as elaborated on the background of the disputed areas and highlighted on the origin of the claims based on the historical and legal basis of claimant states. The article underscored

that ASEAN's existing mechanisms including ASEAN-led institutions have played an effective role in addressing the South China Sea disputes. ASEAN has successfully facilitated the region's engagement with China, and softened China's foreign policy and behaviour on the dispute from strictly bilateral discussion towards a multilateral approach. As reflected in the article, China was adamant to settle the disputes bilaterally and rejects all efforts to "internationalise" the disputes and the involvement of third parties. However, beginning 2000, China has opened up to ASEAN and began to discuss the South China Sea issue actively starting 2010. Although China insisted on its claims in all its engagement with ASEAN, but the fact of the matter is that China is willing to raise the issue at all, has demonstrated a softening of China's stance and a shift in its foreign policy to discuss the disputes in a multilateral platform. In recent years, China has also embarked on joint development efforts with ASEAN and individual claimant states through various ASEAN platforms. China's participation in the ASEAN-led forum, such as the ADMM-Plus and the ARF has softened China's stance, making it more flexible in committing to talks with ASEAN on the South China Sea issue. The findings suggested that the involvement of ASEAN in the dispute has enhanced confidence building, understanding and mutual trust among Southeast Asian claimants and China. The region has preserved its peace and stability, and prevented military conflicts through various ASEAN and ASEAN-led mechanisms including the 1976 TAC, ADMM/ADMM Plus and the ARF.

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