

# Issue-Based Cooperation on Conflict Resolution in the South China Sea: Exploring Roles for ASEAN Beyond the Code of Conduct<sup>1</sup>

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## Structured Abstract

*Article Type:* Research Paper

*Purpose*—This article explores the roles of the Association of Southeast Asian Nations (ASEAN) in cooperation on conflict resolution in the South China Sea.

*Design, Methodology, Approach*—Employing the issues approach to international relations, this article introduces an original framework that breaks down the South China Sea disputes into their component issues and identifies the types of conflict resolution and modes of cooperation implied in each.

*Findings*—ASEAN-led cooperation on conflict resolution in the South China Sea has concentrated on concluding a code of conduct with China as an attempt at conflict prevention, management, and transformation. Progress has been slow, but efforts can be complemented by engaging in cooperation of other types (e.g., conflict settlement), in other modes (e.g., “minilateralism”), and on other issues (e.g., maritime rights, maritime power projection, and marine economic development).

*Practical Implications*—The findings can help foreign policy makers craft targeted strategies to enhance cooperation on conflict resolution in the South China Sea.

*Originality, Value*—The article offers an original framework that can be used to examine other aspects of conflict resolution in the South China Sea or analyze similar multiparty conflicts.

Keywords: ASEAN, code of conduct, conflict resolution, issues approach, South China Sea

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## I. Introduction

Growing uncertainty from recurring tensions in the South China Sea underscores the urgency of cooperation to resolve the disputes. The South China Sea lies at the heart of Southeast Asia. As the leading organization in the region, the Association of Southeast Asian Nations (ASEAN) holds a duty to facilitate cooperation on conflict resolution in the South China Sea in line with its aim to promote regional peace and stability. However, ASEAN's role has itself been uncertain. Previous studies have suggested that the association can play only a limited role in dealing with the South China Sea disputes. Yet the South China Sea disputes are a collection of quarrels over several distinct issues, and it remains untested whether indeed ASEAN can play only limited roles across all those issues. Looking into each component issue of the South China Sea disputes is crucial in order to exhaust potential opportunities for ASEAN-led cooperation on conflict resolution. In the end, I argue that on some issues, ASEAN may indeed play only limited roles, but on other issues, the association may be better poised to play lead roles in facilitating cooperation on conflict resolution.

This article offers an original framework for analyzing ASEAN's role in conflict resolution in the South China Sea. Overall, I acknowledge that the South China Sea disputes revolve around several distinct issues. There is no South China Sea *dispute*, in the singular, only the South China Sea *disputes*, in the plural. This article is not the first to recognize this fact, but unlike previous studies, it goes beyond identifying the issues that make up the South China Sea disputes. Following the issues approach to international relations, I suggest that each component issue of the South China Sea disputes implies a distinct approach to cooperation on conflict resolution. For ASEAN, this means that different types of conflict resolution and different modes of cooperation must be pursued depending on the issue. Ultimately, an issue-based outlook would require that ASEAN not limit itself to dealing with China to help resolve the South China Sea disputes.

This article proceeds as follows. In section II, I review the reasons why previous studies have claimed that ASEAN can play only a limited role in conflict resolution in the South China Sea. Section III introduces an original framework for analyzing cooperation on conflict resolution by issue, and section IV adapts said framework to the South China Sea disputes. In section V, I apply the framework. I examine ASEAN's approach to cooperation on conflict resolution in the South China Sea and then explore how the association may improve on its handling of the disputes. In the conclusion, I consider other potential applications of the framework.

## II. Limits to ASEAN-Led Cooperation on Conflict Resolution in the South China Sea

Previous studies have suggested that ASEAN can play only a limited role in conflict resolution in the South China Sea. They list three reasons.

First, ASEAN consists of ten countries with different standings in the South China Sea disputes: four are territorial and maritime claimant states (Brunei, Malaysia, the Philippines, and Vietnam), one is a maritime claimant state (Indonesia), and five are non-claimant

states (Cambodia, Laos, Myanmar, Singapore, and Thailand). Because some ASEAN member states are also claimant states, the association may not be a neutral third-party mediator.<sup>2</sup> Furthermore, member states' different standings also produce different interests. Thus, ASEAN will always face the challenge of harmonizing a diverse, even discordant, pool of policy preferences on the South China Sea disputes.<sup>3</sup>

Second, ASEAN member states are divided on their perceptions of the threat that China's behavior in the South China Sea poses to regional peace and stability. These divisions do not necessarily correspond to a member state's standing in the disputes. Still, a member state's threat perception of China affects its preferred approach to conflict resolution for ASEAN. On the one hand, some ASEAN member states have been troubled by China's rising coercive power and its increasing assertiveness in the South China Sea. They prefer that ASEAN play a lead role in dispute resolution. On the other hand, other ASEAN member states have downplayed the so-called China threat. They prefer that ASEAN keep a low profile to avoid antagonizing China as a partner on other issues, especially infrastructure and economic development. These internal divisions effectively disunite ASEAN into "factions," with each member state pulling the association toward their own favored kind of relationship with China.<sup>4</sup> Among ASEAN member states, Indonesia, the Philippines, Singapore, and Vietnam have been labelled as typically more active on the South China Sea disputes, while Brunei, Cambodia, Laos, Malaysia, Myanmar, and Thailand have been regarded as typically more conservative.<sup>5</sup> The factions, however, are not set: a member state may slide into a different faction over time as it calibrates its foreign policy on the South China Sea disputes.

Finally, external pressures amplify ASEAN's internal divisions on the South China Sea disputes. Most pronounced are pressures from China and the United States. On the one hand, China disagrees with ASEAN member states on the types of conflict resolution and modes of cooperation appropriate for dealing with the South China Sea disputes. China avoids talks of settling the territorial and maritime jurisdiction issues, and prefers dealing with each ASEAN claimant state bilaterally. ASEAN, meanwhile, has wanted to deal with China collectively, as a group.<sup>6</sup> On the other hand, the United States has increased its engagements in the South China Sea, giving rise to a new area of rivalry with China. In turn, intensifying China–U.S. competition complicates ASEAN's attempts at keeping a balance between the two great powers.<sup>7</sup> Some ASEAN member states have welcomed renewed U.S. engagement in the region as a counterbalance to China, but others have expressed worry that U.S. involvement in the disputes would only heighten tensions in the South China Sea.

Unfortunately, ASEAN cannot change the fact that some of its member states are also claimant states in the South China Sea. ASEAN also cannot prevent the great powers from advancing their interests in the waterway. But ASEAN could overcome internal divisions—if only member states would agree on a common policy on the South China Sea disputes. ASEAN, however, is limited by its consensus-based decision-making structure. This structure prevents ASEAN from responding proactively to contentious issues, like the South China Sea disputes, because a single negative vote by any member state—even one that is not a direct party on the issue in question—can paralyze the association.<sup>8</sup> This structural limitation went on full display in 2012. ASEAN failed to issue a joint communiqué for the first time in its history because Cambodia refused to allow the Philippines' request to mention what, in hindsight, turned out to be China's seizure of the Scarborough Shoal in the South China Sea.<sup>9</sup>

In sum, previous studies have claimed that the association's composition, internal divisions, and external pressures, together with a consensus-based decision-making structure, limit ASEAN-led cooperation on conflict resolution in the South China Sea.

### III. Issue-Based Cooperation on Conflict Resolution

#### 3.1 *The Issues Approach to International Relations*

When previous studies say that ASEAN can play only a limited role in conflict resolution in the South China Sea, they talk about the disputes as a whole. They seem to overlook the fact that the South China Sea disputes consists of several issues, each substantively distinct from the other. ASEAN may not necessarily play only limited roles across all component issues of the South China Sea disputes, and indeed, on some issues, it may even be poised to play lead roles. The issues approach attempts to overcome this oversight in the existing scholarship. As a perspective in analyzing politics, the issues approach posits that “the functioning of any type of political system can vary significantly from one issue-area to another.”<sup>10</sup> In this article, an *issue-area* or *issue* denotes “a disputed point or question, the subject of a conflict or controversy.”<sup>11</sup>

In international relations, the issues approach rests on three key assumptions.<sup>12</sup> First, states pursue different foreign policy goals depending on the issue. Realism assumes a singular, overarching goal for foreign policy: attaining military security for survival. Yet this goal may not be a state's primary concern across every issue. On some issues, a state may instead direct its foreign policy to achieve other goals. Second, states behave differently depending on the issue. Issues vary in importance to a state based on the values at stake. In general, states tend to exert more effort to prevail in issues more important to them.<sup>13</sup> Finally, states activate different foreign policy instruments depending on the issue. Realism emphasizes the primacy of military force in foreign policy. Yet the use of military force may not apply to all issues. Instead, on any given issue, a state can employ a range of instruments, from peaceful means (such as diplomacy) to the use of military force, to achieve foreign policy goals. In essence, the issues approach therefore aligns with Robert O. Keohane and Joseph S. Nye, Jr.'s theory of complex interdependence. In contrast to realism, complex interdependence recognizes that attaining military security is not always the sole end and that the use of military force is not always the best means.<sup>14</sup>

Applied to international conflict resolution, the issues approach proposes breaking down an international conflict into its distinct component issues. Identifying the distinct issues that make up a conflict is crucial. Each issue may require a different type of action for conflict resolution. Moreover, in a multiparty conflict, such as the South China Sea disputes, each issue may involve a different set of direct parties and, thus, require a different mode of cooperation. Briefly put, the issues approach acknowledges that international cooperation to deal with a conflict may need to employ different types of conflict resolution and occur in different modes depending on the issue.

The next subsections explore the two dimensions of cooperation on conflict resolution: types of conflict resolution and modes of cooperation.

### 3.2 Types of Conflict Resolution

A *conflict* or *dispute* is the converse of an issue; specifically, it refers to “an incompatibility of positions” over an issue or a set of issues.<sup>15</sup> By extension, *conflict resolution* denotes

a range of formal and informal activities undertaken by parties to a conflict, or outsiders, designed to limit and reduce the level of violence in conflict, and to achieve some understanding on the key issues in conflict, a political agreement, or a jointly acceptable decision on future interactions and distribution of resources.<sup>16</sup>

This definition implies that conflict resolution covers a variety of actions. This point is often overlooked. Indeed, most previous studies of ASEAN’s role in conflict resolution in the South China Sea skip expounding a definition of conflict resolution. The few that do define the concept narrowly, equating it to reaching a settlement.

Following Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, I distinguish between four distinct types of conflict resolution.<sup>17</sup> First, *conflict prevention* refers to measures to “contain disputes before they become violent.”<sup>18</sup> It aims to reduce, if not remove, triggers that would escalate tensions. An example is restricting the use of force between the parties through an agreement, or through deterrence or restraint. Second, *conflict management* signifies “a range of mechanisms or procedures ... that help in containing conflict situations ... or in limiting the destructive effects of ensuing conflict behavior.”<sup>19</sup> It aims to establish mechanisms to mitigate violence. In practice, it usually means appealing to existing international institutions or creating new ones to de-escalate tensions. Conflict management mechanisms are normally established to respond to an ongoing crisis, but such mechanisms may also be set up in advance, to be triggered should a crisis erupt. An example is instituting high-level channels of communication between the parties. Third, *conflict settlement* represents “a social situation where the armed conflict parties in a (voluntary) agreement resolve to peacefully live with—and/or dissolve—their basic incompatibilities and henceforth cease to use arms against one another.”<sup>20</sup> It aims to reach a conflict-ending agreement. In territorial and maritime disputes, conflict settlement entails the determination of sovereignty over the contested features and the delimitation of overlapping boundaries, typically enshrined in a treaty signed by the parties or in a decision handed by a mediator or an international tribunal. Finally, *conflict transformation* refers to “a process of engaging with or transforming the relationships, interests, [and] discourses ... [that support] the continuation of violent conflict.”<sup>21</sup> It aims to turn competition into cooperation and to build trust between the parties. Examples include undertaking joint initiatives and strengthening other areas of the parties’ relationship.

The typology here is contested. To begin with, scholars disagree on the use of “conflict resolution” as the umbrella term to describe the positive handling of conflicts. Some use the terms “conflict management,” “conflict regulation,” “conflict engagement,” and “conflict transformation.” Nonetheless, I use the term “conflict resolution” because it was the earliest umbrella term used in the field, and it still enjoys wide usage among scholars and practitioners.<sup>22</sup> More seriously, scholars debate the conceptual hierarchy implied in using an umbrella term. On the one hand, Niklas L.P. Swanström and Mikael S. Weissmann advocate integrating the concepts, stressing that “a theory that differentiates between conflict

prevention, conflict management and conflict resolution risks being counterproductive when applied to a reality in which these concepts are in fact indistinguishable.”<sup>23</sup> On the other hand, other scholars argue that conflict management, conflict resolution, and conflict transformation are philosophically distinct concepts that cannot be subsumed under an umbrella term.<sup>24</sup> Nonetheless, although the four types of conflict resolution presented above differ in approach, the desire to reduce unnecessary violence remains constant among the types. Moreover, the typology above admits the possibility of conceptual overlaps. After all, the typology aims not to impose clear-cut categories but to offer a conceptual tool for differentiating from one another the many actions that help in bringing about conflict resolution.

### 3.3 Modes of Cooperation

Conflict resolution implies cooperation—that is, states must coordinate their foreign policies toward the common goal of conflict resolution. The definition of conflict resolution presented above recognizes that a state can cooperate with another state either as a direct party to the same conflict or as a third party to an external conflict. In most previous studies of ASEAN’s role in conflict resolution in the South China Sea, the claimant states are assumed to be the only direct parties. Yet in the issues approach, a state’s standing—that is, whether it is a direct party or a third party to the conflict—is not set; instead, it varies depending on the issue. The distinction between being a direct party and being a third party matters because even though third parties can help facilitate conflict resolution, cooperation must ultimately occur between the direct parties. Indeed, even third-party mediation requires the willingness of the direct parties to participate in the proceedings.

International relations scholars commonly divide cooperation into two modes: *bilateral* (between two parties) and *multilateral* (among at least three parties). These modes differ not only in quantity but also in quality. In the bilateral mode, cooperation is selective—that is, undertaken only with a favored partner, which usually enjoys terms unique to it. Bilateral cooperative relationships often exhibit reciprocity based on expected immediate gains, ordinarily from quid pro quos.<sup>25</sup> Meanwhile, in the multilateral mode, cooperation features “generalized” principles of conduct, “indivisibility,” and “diffuse reciprocity”—that is, member states enjoy uniform rather than selective treatment, share the same costs and benefits, and reciprocate based on expected gains not only upon membership but also over the long term.<sup>26</sup>

Multilateral cooperation is often assumed to be superior to bilateral cooperation. Yet the appropriateness of either mode depends on the requirements of the specific issue in question. In particular, it depends on how many direct parties are implicated in the issue. Thus, more important than distinguishing between the bilateral and multilateral modes is identifying whether cooperation is *exclusive* or *inclusive*—that is, whether it excludes some direct parties or includes all direct parties. Bilateral cooperation is often assumed to be exclusive, but it is not necessarily so if the issue in question involves only two direct parties. If, however, the issue involves at least three direct parties, bilateral cooperation is necessarily exclusive, sealing off other direct parties from the cooperative initiative. Similarly, multilateral cooperation can be exclusive or inclusive. On the one hand, multilateral cooperation is exclusive if, on the issue in question, it involves some but not all direct parties (e.g., if

cooperation includes only three parties on an issue involving at least four states). This exclusive mode of multilateral cooperation is also called “minilateral” cooperation, where membership consists of only the most-able and most-willing states, often the great powers.<sup>27</sup> On the other hand, multilateral cooperation is inclusive if, on the issue in question, the membership comprises all direct parties. This inclusive mode of multilateral cooperation can become overly inclusive, however, if the membership involves not only all direct parties but also some third parties. Such overly inclusive multilateral cooperation can potentially slow down foreign policy coordination.<sup>28</sup>

In sum, issue-based cooperation on conflict resolution accepts that often, no single solution exists to deal with an international conflict. Instead, a conflict often consists of several distinct issues, and each component issue of a conflict requires a different type of conflict resolution and mode of cooperation. Cooperation on conflict resolution must therefore adapt to the requirements of the very issue under dispute.

## **IV. Issues in the South China Sea Disputes**

In the South China Sea disputes, several distinct issues are at stake. Some scholars have recognized this fact even though they have not grounded their analyses in the issues approach. Peter Dutton identifies three distinct issues in the South China Sea disputes: “sovereignty” (ownership of islets), “jurisdiction” (the extent of marine spaces that states may legally claim as part of their boundaries), and “control” (the extent of coastal states’ rights in their marine spaces vis-à-vis other states’ rights).<sup>29</sup> Aileen S.P. Baviera identifies two more distinct issues: military competition for sea control (particularly among the great powers) and maritime security (including piracy and armed robbery at sea, maritime terrorism, and marine environmental protection).<sup>30</sup> Combining these works, I identify three sets of issues in the South China Sea disputes: core issues, traditional security issues, and nontraditional security issues. From a legal standpoint, issues concerning territorial sovereignty, maritime boundaries, and maritime rights do sit at the root of the conflict. But these are not the only issues countries quarrel over in the South China Sea. Maritime security is also an issue in the disputes. Maritime security, however, covers several challenges best treated as separate issues. Nonetheless, these issues can generally be divided into traditional (i.e., military-related) or nontraditional (i.e., nonmilitary-related) matters. Issues concerning traditional maritime security relate to territorial defense and sea control, and maritime power projection. Meanwhile, issues concerning nontraditional maritime security relate to maritime law enforcement (including against piracy and armed robbery at sea, and maritime terrorism), safety of navigation, and maritime search and rescue; marine environmental protection, fisheries management and marine scientific research; and marine economic development, especially fisheries development and offshore oil and gas development.

### *4.1 The Core Issues*

The core issues are the root causes of the disputes. They relate to territorial and

maritime jurisdiction. There are three distinct core issues: territorial sovereignty, maritime boundaries, and maritime rights.

First, the territorial sovereignty issue concerns the ownership of disputed islets in the South China Sea. The disputed islets are the Pratas Islands in the northeast, the Paracel Islands in the northwest, Scarborough Shoal in the east, and the Spratly Islands in the south.<sup>31</sup> In the Pratas Islands, the territorial sovereignty issue concerns only China and Taiwan. In the Paracel Islands, the issue involves China, Taiwan, and Vietnam. In the Scarborough Shoal, the issue concerns China, Taiwan, and the Philippines.<sup>32</sup> And in the Spratly Islands, the issue involves China, Taiwan, Vietnam, the Philippines, Brunei, and Malaysia. China, Taiwan, and Vietnam claim the whole Spratly Islands, while the Philippines, Brunei, and Malaysia claim only varying portions of the island group.

Second, the maritime boundaries issue relates to the geographical aspect of maritime jurisdiction. It concerns the extent of marine spaces that states may legally claim in the South China Sea. On the one hand, this issue involves the same states that claim territorial sovereignty over islets in the South China Sea—that is, insofar as those islets can legally generate maritime zones.<sup>33</sup> On the other hand, the maritime boundaries issue also concerns all states that surround the South China Sea because their main landmasses generate exclusive economic zones (EEZs) and continental shelves. Indeed, there remain several outstanding overlapping claims to EEZs and continental shelves between the coastal states of the South China Sea, namely, China, Taiwan, Vietnam, the Philippines, Brunei, Malaysia, and Indonesia. While Indonesia officially maintains that it is not a claimant state in the South China Sea, it claims an EEZ and continental shelf generated from the Natuna Islands, lying southwest of the Spratly Islands. These maritime zones overlap with the EEZs and continental shelves of Malaysia and Vietnam and the maritime claims of China and Taiwan. Thus, while Indonesia is not a territorial claimant state, having staked no sovereignty claim to any disputed islet in the South China Sea, it is a maritime claimant state because of its claim to an EEZ and continental shelf in the waterway.

Finally, the maritime rights issue relates to the substantive aspect of maritime jurisdiction. It concerns the scope of the rights of the South China Sea coastal states to regulate in their maritime zones the activities of other states. These rights are enshrined in international law, particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS), but states have interpreted the relevant provisions differently. Those differing interpretations, in turn, have created friction not only among the South China Sea coastal states but also between those coastal states and the South China Sea user states—extra-regional countries with blue-water navies or other distant-water fleets that operate in the South China Sea. The issue over maritime rights is most pronounced between China and the United States on the matter of freedom of navigation and innocent passage by military vessels in the South China Sea.

Among the maritime claimant states, China and Taiwan have the most expansive maritime jurisdictional claims, both in terms of the geographical extent of their maritime claims and the substance of the rights they ascribe to those claims. They base their claims on historic rights, but the South China Sea Arbitration found that such claims to maritime jurisdiction, particularly China's "nine-dash line," exceed the geographical and substantive limits set by UNCLOS and are therefore invalid.<sup>34</sup> Despite the ruling, China and Taiwan still insist on their historic rights in the South China Sea. China, in particular, is cordoning waters

within the nine-dash line for its exclusive use, discouraging other coastal states from enjoying resources even within their own legitimate EEZs and continental shelves.

#### *4.2 Traditional and Nontraditional Security Issues*

Disputes on the core issues give rise to other issues related to the traditional and non-traditional aspects of security in the South China Sea.

From a traditional security lens, the unresolved core issues have encouraged rivalry not only among the claimant states but also among the great and middle powers. Among the claimant states, there is the issue of territorial defense and sea control. The claimant states feel that they must defend their claimed islets and marine spaces, so they are building up their militaries and fortifying their outposts in the South China Sea. Among the great and middle powers, especially those that boast blue-water navies, there is the issue of maritime power projection. The South China Sea disputes have incited insecurity among the naval powers, not least because of China's growing capability to seal the waterway off from the navies of extra-regional states. In response, the United States and its allies have been conducting naval operations and exercises in the South China Sea to project their military capabilities and affirm their operational presence in the region. This dynamic is also a manifestation of intensifying great-power rivalry between the United States, which is trying to maintain its naval superiority in the western Pacific, and China, which is fast becoming more confident and capable in pursuing its interests in the South China Sea.

From a nontraditional security lens, the unresolved core issues complicate maritime governance. The overlapping claims create ambiguities as to which state is responsible for managing specific areas in the South China Sea. In practice, the claimant states compete to demonstrate effective administration of their claimed islets and marine spaces. These jurisdictional ambiguities, amplified by the lack of cooperation among the claimant states, create a situation in which maritime crimes, such as piracy and armed robbery at sea, maritime terrorism, and trafficking in drugs, firearms, and persons, may thrive. Jurisdictional ambiguities also present a problem in preventing and responding to maritime casualties and carrying out search and rescue operations, potentially threatening safety of life at sea. In addition, the marine environment may continue to experience degradation due to the lack of sufficient cooperation to address marine pollution and marine habitat destruction and coordinate marine scientific research efforts. Food supplies may also be affected because fish are dependent on healthy marine habitats protected from illegal and unsustainable harvesting. The conflict may affect economic development too, including energy security, due to the insufficient capacity or outright inability of some claimant states to develop marine resources, especially fisheries and offshore oil and gas, in the contested areas.

#### *4.3 Implications for Cooperation on Conflict Resolution*

True to the issues approach, no single solution exists that will solve simultaneously all issues in the South China Sea disputes. Instead, each component issue of the South China Sea disputes requires a different approach to cooperation on conflict resolution. These are summarized in Table 1.

**Table 1. Issue-Based Cooperation on Conflict Resolution in the South China Sea**

Issue	Type of conflict resolution	Direct parties	Mode of cooperation
<i>Core</i>			
Territorial sovereignty	Settlement	Territorial claimant states <sup>*</sup>	Inclusive; bilateral or multilateral
Maritime boundaries	Settlement	Territorial and maritime claimant states <sup>†</sup>	Inclusive; bilateral or multilateral
Maritime rights	Settlement	Coastal states, <sup>‡</sup> user states, <sup>§</sup> and the international community	Exclusive or inclusive; bilateral or multilateral
<i>Traditional security</i>			
Territorial defense and sea control	Prevention and management	Territorial and maritime claimant states	Exclusive or inclusive; bilateral or multilateral
Maritime power projection	Prevention and management	Great and middle powers <sup>  </sup>	Exclusive or inclusive; bilateral or multilateral
<i>Nontraditional security</i>			
Maritime law enforcement, safety of navigation, and maritime search and rescue	Transformation	Coastal states, regional states, and the international community	Inclusive; multilateral
Marine environmental protection, fisheries management, and marine scientific research	Transformation	Coastal states and interested states and international organizations <sup>¶</sup>	Inclusive; multilateral
Fisheries and offshore oil and gas development	Transformation	Coastal states	Exclusive or inclusive; bilateral or multilateral

<sup>\*</sup> Brunei, China, Taiwan, Malaysia, the Philippines, and Vietnam.

<sup>†</sup> The territorial claimant states plus Indonesia.

<sup>‡</sup> The territorial and maritime claimant states.

<sup>§</sup> The great and middle powers that do not have coastal access to the South China Sea but operate blue-water navies that navigate the waterway (e.g., Australia, Japan, and the United States)

<sup>||</sup> In particular, states with blue-water navies that navigate the South China Sea, including China.

<sup>¶</sup> Pursuant to UNCLOS, Article 123.

To deal with the core issues, the direct parties must cooperate on conflict settlement. Cooperation should occur in three configurations: between the territorial claimant states; between the maritime claimant states; and between the coastal states (i.e., the territorial and maritime claimant states) and the user states. To settle the territorial sovereignty and maritime boundaries issues, inclusive modes of cooperation are needed to bring in all relevant direct parties. In areas claimed by only two claimant states, bilateral cooperation is the only way. But in areas claimed by three or more claimant states, such as the Spratly Islands, bilateral and exclusive multilateral cooperation would only complicate the situation, especially if the excluded parties would reject the settlements reached without them. In these multiparty disagreements, inclusive multilateral cooperation is ideal. Meanwhile, to settle the maritime rights issue, any mode of cooperation will help. The maritime rights issue is a matter of differing interpretations of international law. Ideally, it should be sorted out by the international community through inclusive multilateral negotiations at the UN. Nonetheless,

disagreements specific to the South China Sea may be discussed first through exclusive multilateral negotiations in a smaller forum. Such a forum may, for example, consist of only the coastal states and the user states. Success at this level can potentially be replicated at higher levels.

Cooperation on conflict settlement alone will not eliminate all issues. For traditional security issues, cooperation on conflict prevention and management is needed to avoid armed confrontation and, if clashes do occur, limit the extent of violence. On the one hand, the claimant states must cooperate among themselves to manage arms races and military competition. On the other hand, the great and middle powers, especially China and the United States, must also cooperate to avoid miscalculations in their respective military operations in the South China Sea. In both situations, either inclusive or exclusive modes of cooperation will help because any agreement to limit the use of force between any of these countries will benefit all other countries.

For nontraditional security issues, cooperation on conflict transformation is needed. These issues are best treated as regional, even international, concerns because of the transnational nature of the threats and their impacts. Thus, cooperation must include as many affected or potentially affected countries as possible, from regional states to the international community, to effectively deal with the challenges. For the issues of marine environmental protection and fisheries management, UNCLOS provides a framework for cooperation. Article 123 mandates that the coastal states of a semi-enclosed sea, such as the South China Sea, should coordinate efforts to manage fisheries, protect the marine environment, and conduct marine scientific research. This coordination can occur among the coastal states or with other interested countries and international organizations. No similar cooperative framework exists for fisheries and offshore oil and gas development except for the establishment of “provisional arrangements” in legitimately overlapping EEZs and continental shelves under Articles 74 and 83 of UNCLOS. The claimant states will therefore have to negotiate a new cooperative framework. Ideally, cooperation must include all claimant states, but exclusive joint development arrangements between two or more countries can potentially promote further practical cooperation in larger groups.

## **V. Revisiting ASEAN-Led Cooperation on Conflict Resolution in the South China Sea**

### *5.1 The ASEAN–China Code of Conduct*

Despite internal divisions on the South China Sea disputes, ASEAN has been able to agree on one common approach to cooperation on conflict resolution: negotiating a code of conduct (COC) with China.<sup>35</sup> ASEAN first raised the idea of a COC in the 1992 ASEAN Declaration on the South China Sea. A COC was meant to bring China to agree to certain rules of behavior and embrace the spirit of cooperation in the South China Sea. Since then, concluding a COC has sat at the core of ASEAN-led cooperation on conflict resolution in the South China Sea. Unfortunately, a COC has proven tough to negotiate. ASEAN member states and China arrived at a deadlock during the first round

of negotiations that started in 1999. Faced with the prospect of no agreement, the parties decided to water down the document and downgrade it from a legally binding agreement to a nonbinding political declaration. The result was the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC). The parties, however, vowed in paragraph 10 of the DOC that they would continue working together to adopt a COC in the future. ASEAN member states and China began the second round of negotiations on a COC in 2017. Thus far, they have been able to agree on a Single Draft Negotiating Text, adopted in 2018.

While a COC remains under negotiation, the DOC provides the main framework for ASEAN-led cooperation on conflict resolution in the South China Sea. The DOC touches on conflict prevention, management, and transformation, but not conflict settlement. The DOC contributes to conflict prevention in two ways. First, paragraph 5 encourages ASEAN member states and China to exercise self-restraint and build mutual trust and confidence. Second, an “early harvest measure” adopted under the DOC in 2016—the Joint Statement on the Application of the Code for Unplanned Encounters at Sea (CUES) in the South China Sea—helps prevent incidents between the parties’ navies in the waterway. The DOC contributes to conflict management by providing mechanisms for dialogue to sort out disagreements and de-escalate tensions between ASEAN member states and China. One such mechanism is the hotline communications platform among ASEAN–China senior officials for maritime emergencies in the South China Sea, adopted as another early harvest measure under the DOC in 2016. Other mechanisms include the many forums under the ASEAN–China Dialogue Relations framework, such as the Joint Working Group on the Implementation of the DOC. The DOC contributes to conflict transformation by providing a framework for practical cooperation between ASEAN member states and China. Paragraph 6 encourages the parties to collaborate on the issue-areas of marine environmental protection, marine scientific research, safety of navigation, search and rescue, and transnational crimes at sea, among others. The DOC, however, does not directly touch on conflict settlement. Nonetheless, paragraph 4 mentions that the parties will settle the core issues peacefully in accordance with international law.

ASEAN–China cooperation under the DOC represents an inclusive multilateral mode of cooperation on the issues of territorial defense and sea control, maritime law enforcement, maritime search and rescue, and marine environmental protection, among others. Yet on the issue of territorial defense and sea control, in particular, it is overly inclusive, because it involves the non-claimant ASEAN member states, which are not direct parties to the issue.

Even with the DOC, ASEAN-led cooperation on conflict resolution in the South China Sea remains insufficient for at least two reasons. First, although violent conflict has not erupted since 2002, the DOC has yet to address the issue of territorial defense and sea control. Indeed, the declaration has not prevented the parties from militarizing their outposts in the South China Sea or employing paramilitary or “gray zone” tactics to assert *de facto* control over their claimed islets and marine spaces. Slow progress on this issue may be partly attributed to the over-inclusiveness of ASEAN–China cooperation. Second, the DOC has so far brought about limited practical cooperation on nontraditional security issues. Only two early harvest measures have been pursued, touching on only two issues. The joint statement on CUES helps enhance safety of navigation, and the hotline

communications platform can help in timely maritime search and rescue. ASEAN member states and China did adopt a Declaration for a Decade of Coastal and Marine Environmental Protection in the South China Sea in 2017, but there is no action plan yet to kick off actual cooperation.

Unfortunately, there is no guarantee that a COC would be significantly better than the DOC. It remains to be seen what the final COC will look like. The Single Draft Negotiating Text simply collates the individual proposals of ASEAN member states and China. It is replete with contradictory provisions, and there are no reliable hints as to which of these provisions will prevail in the final text.<sup>36</sup>

## *5.2 Beyond the Code of Conduct: Opportunities for ASEAN*

ASEAN must explore approaches other than concluding a COC with China to facilitate cooperation on conflict resolution in the South China Sea. Rather than devise a catch-all strategy, like concluding a COC, ASEAN must devise specific strategies that adapt to the demands of each component issue of the South China Sea disputes. A COC remains worthwhile to address some issues, but for other issues, other approaches may be more appropriate.

For ASEAN to play a lead role in cooperation on conflict resolution in the South China Sea, it must first reflect on its standing in each component issue of the disputes. Previous studies have argued that ASEAN's composition precludes the association from assuming the role of a neutral third party, yet this applies only on some issues. Whether ASEAN as a whole is a direct party or a third party to the South China Sea disputes depends on the issue in question. ASEAN is both and neither.

First, on the issue of maritime rights, ASEAN is a direct party because all member states are also state parties to UNCLOS.<sup>37</sup> ASEAN may therefore play a role in conflict settlement. For example, the association may promote regional norms and practices on freedom of navigation in international forums. It may also bring together the South China Sea coastal states and the user states, which are also direct parties on this issue, to discuss disagreements about the rights of states to undertake and regulate activities at sea. ASEAN may also support, if not lead, discussions in international forums to clarify ambiguous provisions of the law of the sea with regard to the rights and obligations of coastal and user states.

Second, on the issues of maritime law enforcement, safety of navigation, and maritime search and rescue, ASEAN is a direct party because crimes at sea and maritime casualties are transnational problems that require cooperation among regional states and the international community. ASEAN may thus lead in cooperation on conflict transformation. Paragraph 6 of the DOC already provides a framework for cooperation with China on these issues, but ASEAN member states and China have yet to embark on a joint initiative. The hotline network for maritime emergencies has a potential to spill over to enhance cooperation on maritime search and rescue. Cooperation on these issues may not necessarily occur between all ASEAN member states and China. Ultimately, although cooperation on these issues must ideally occur in an inclusive mode, a joint initiative may begin in an exclusive bilateral or multilateral mode and then gradually include more countries. Thus, the participation of all ASEAN member states and China, though ideal, is not necessary for cooperation on

maritime law enforcement and maritime search and rescue in the South China Sea. ASEAN, moreover, may also cooperate with countries other than China to deal with these issues in the South China Sea.

Third, on the issues of marine environmental protection and fisheries management in the South China Sea, ASEAN could be a direct party if the claimant states would invite the non-claimant member states under Article 123 of UNCLOS to coordinate marine habitat preservation and fisheries conservation efforts in the waterway. Again, the DOC provides a framework for cooperation with China on these issues. Though the list of issue-areas for ASEAN–China cooperation in paragraph 6 is non-exhaustive, it explicitly mentions marine environmental protection and marine scientific research. Cooperation on marine scientific research is needed if ASEAN member states and China are to develop a collaborative fisheries management regime.

Fourth, on the issue of maritime power projection, ASEAN is a third party, because this issue concerns only the blue water-capable great and middle powers, especially China and the United States. ASEAN's standing on this issue, however, allows the association to potentially play the role of a neutral third-party mediator between the naval powers. ASEAN should profess that its interests on this issue are merely to prevent incidences between these powers' navies in the South China Sea and provide a mechanism for dialogue and de-escalation should tensions heighten. Short of mediation, ASEAN may also consider negotiating another COC that includes naval powers other than China. Baviera and Leszek Buszynski separately argue that as the risk of China–U.S. confrontation increases, an ASEAN–China COC becomes less relevant.<sup>38</sup> Indeed, a COC limited only to ASEAN member states and China would not address incidences between the great and middle powers, especially between China on the one hand and the United States and its allies on the other hand.

Finally, on the issues of territorial sovereignty, maritime boundaries, territorial defense and sea control, fisheries, and offshore oil and gas development, ASEAN is neither a direct party nor a third party, because these issues concern only the territorial and maritime claimant states. Still, ASEAN may play some roles.

On the issues of territorial sovereign and maritime boundaries, ASEAN may facilitate cooperation on conflict settlement by assisting the claimant member states in setting up negotiations among themselves, or possibly even offering mediation. Not all disagreements on these issues include China anyway, and some are legitimately only between ASEAN member states. These include the overlapping EEZs and continental shelves in the southern sector of the South China Sea beyond the legitimate limits of China's EEZ and continental shelf.

On the issue of territorial defense and sea control, concluding a COC remains ASEAN's best bet on conflict prevention and management. ASEAN–China cooperation in this regard, however, is overly inclusive, because this issue does not concern the non-claimant ASEAN member states. Moreover, while the current round of COC negotiations seems promising, ASEAN member states and China may again arrive at a deadlock because they are still dealing with the same sticking points that have dragged down talks during the first round of negotiations. To complement existing efforts, ASEAN must consider exclusive bilateral and multilateral cooperation on conflict prevention and management by supporting bilateral COCs and an ASEAN-only COC. Doing so can even potentially move COC discussions with China forward. There are two precedents. First, in 1995,

China and the Philippines reached an agreement on a set of principles for a COC. This eventually served as the model for ASEAN's version, which member states started to draft in 1996 only among themselves. The process became inclusive only in 1999, when ASEAN member states began consulting with China. Second, in 2012, ASEAN was already prepared to restart talks on a COC, even though China insisted on implementing other provisions of the DOC first. ASEAN again attempted to draft its own a COC, which, along with other developments, eventually triggered China to agree to commence COC discussions in 2013.<sup>39</sup>

On the issue of fisheries and offshore oil and gas development, ASEAN may lead cooperation on conflict transformation by helping member states enhance their capacities to sustainably exploit fish and ocean hydrocarbon resources. More broadly, ASEAN may also lead in promoting cooperation on marine economic development.

Some would argue that ASEAN gave up its role in conflict resolution in the South China Sea when it agreed to meet with China not as a single actor but as a group of 10 individual states, effectively making ASEAN–China cooperation an 11-party affair rather than a two-party (i.e., bilateral) arrangement. Yet the distinction may be irrelevant. The institutional weakness of the ASEAN Secretary-General or even the ASEAN Chair means that the association will almost always operate as a group of individual states rather than a coherent actor under the banner of a single representative. This applies not only to ASEAN–China cooperation. Indeed, ASEAN cooperation with an external partner is almost always an 11-party affair. More important, ASEAN may play roles in cooperation on conflict resolution in the South China Sea outside the ASEAN–China Dialogue Relations framework.

In sum, two insights emerge. First, ASEAN should not limit itself to conflict prevention, management, and transformation under the DOC or a future COC. Indeed, there are also opportunities for ASEAN to facilitate cooperation on conflict settlement, as well as opportunities to enhance cooperation on conflict prevention, management, and transformation beyond the DOC or a COC. Second, ASEAN should not limit itself to cooperation with China under the ASEAN–China Dialogue Relations framework. On the issues of maritime rights, territorial defense and sea control, maritime power projection, fisheries, and offshore oil and gas development, for example, an exclusive mode of cooperation is sufficient. China's participation, though ideal, is not necessary. China's unwillingness to participate in initiatives toward conflict resolution should therefore not be a deterrent. China may therefore be excluded on cooperation on some issues until such time that it is willing to participate in the initiative. Moreover, China is not the only other direct party on several issues, such as the maritime rights issue and nontraditional security issues.

## VI. Conclusion

This article has introduced an original framework that breaks down the South China Sea disputes by issue and identifies the type of conflict resolution and mode of cooperation implied in each issue. The framework can serve scholars and foreign policy makers alike in three ways. First, it can be used to show the range of possibilities for cooperation on conflict resolution in the South China Sea available to states and international organizations.

Second, it can be used to assess whether any given cooperative initiative in the South China Sea indeed helps move the conflict closer toward resolution. Finally, it can be used to analyze other multiparty conflicts similar to the South China Sea disputes.

Applying the framework to analyze ASEAN's role in conflict resolution in the South China Sea, I have qualified the conclusion in previous studies that the association can play only a limited role. I have argued that, instead, ASEAN may play lead roles in the South China Sea disputes depending on the specific issue in question. ASEAN-led cooperation on conflict resolution has so far concentrated on concluding a COC with China, which represents inclusive multilateral cooperation on territorial defense and sea control, and nontraditional security. Progress, however, has been slow. Exclusive cooperation among some or all ASEAN member states can complement and even potentially pave the way for eventual collaboration with the entire ASEAN–China Dialogue Relations framework. ASEAN may also use this approach to jump-start cooperation on crimes at sea and marine environmental protection under the DOC. Outside the DOC, ASEAN may consider expanding practical cooperation to cover other issues, such as fisheries management, fisheries development, and offshore oil and gas development. Finally, ASEAN may also lead international cooperation in regulating tensions from maritime power projections and resolving disagreements about maritime rights, but such cooperation should also include the great and middle powers as user states of the South China Sea.

The potential roles for ASEAN I have identified in this article can help Southeast Asian foreign policy makers explore additional initiatives for conflict resolution in the South China Sea. But it remains to be seen whether, in practice, Southeast Asian foreign policy makers can muster the political will required to push ASEAN into lead roles in South China Sea conflict resolution. Nonetheless, I have shown that, at least in theory, ASEAN may play more roles in conflict resolution. ASEAN should not be limited to cooperation under the ASEAN–China Dialogue Relations framework. If cooperation with China is not working, then ASEAN should be prepared to pursue cooperation in other modes or on other issues. If it is difficult to find a common position within ASEAN, then the association should at least not hinder member states that are willing to engage in practical cooperation. Ultimately, cooperation is needed not only between ASEAN member states and China but also among all direct parties in different modes and on different issues in order to comprehensively deal with the South China Sea disputes and hopefully bring about durable peace in the region.

### Notes

1. This article is based on a paper presented at the Fifth Ocean Dialogue in Hanoi, Vietnam, in June 2019.

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14. Robert O. Keohane and Joseph S. Nye, Jr., *Power and Interdependence*, 4th ed. (Boston: Longman, 2012), pp. 22–24.
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20. Peter Wallensteen, *Understanding Conflict Resolution: War, Peace, and the Global System* (London: SAGE, 2002), p. 50.
21. Hugh Miall, "Conflict Transformation: A Multi-Dimensional Task," in Alex Austin, Martina Fischer, and Norbert Ropers (eds.), *Transforming Ethnopolitical Conflict: The Berghof Handbook* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), p. 70, [https://doi.org/10.1007/978-3-663-05642-3\\_4](https://doi.org/10.1007/978-3-663-05642-3_4).
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23. Niklas L.P. Swanström and Mikael S. Weissmann, *Conflict, Conflict Prevention, Conflict Management and Beyond: A Conceptual Exploration* (Uppsala: Central Asia–Caucasus Institute and Silk Road Studies Program, Summer, 2005), p. 28.
24. Conflict management assumes that disputes are inherent in social life; hence, they cannot be eliminated, only managed. By contrast, conflict settlement assumes that disputes can be resolved, hinging only on the parties' willingness to negotiate an agreement or to appeal to a third party. Meanwhile, conflict transformation emphasizes that reaching a settlement is insufficient: the parties must also change their attitudes toward each other if they are to resolve their disputes sustainably. Eileen Babbitt and Fen Osler Hampson, "Conflict Resolution as a Field of Inquiry: Practice Informing Theory," *International Studies Review* (13)(1) (March 2011), pp. 46–57, <https://doi.org/10.1111/j.1468-2486.2010.00997.x>; Miall 2004.
25. David H. Capie and Paul M. Evans, *The Asia-Pacific Security Lexicon* (Singapore: Institute of Southeast Asian Studies, 2002), quoted in Aileen S.P. Baviera, "Territorial and Maritime Jurisdiction Disputes in East Asia: Comparing Bilateral and Multilateral Approaches," in William T. Tow and Brendan

Taylor (eds.), *Bilateralism, Multilateralism and Asia-Pacific Security: Contending Cooperation* (Abingdon, England: Routledge, 2013), p. 103.

26. John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," *International Organization* (46)(3) (Summer 1992), pp. 570–72, <https://doi.org/10.1017/S0020818300027843>. Some scholars contest these qualities. For instance, James A. Caporaso points out that bilateral cooperation can sometimes exhibit diffuse reciprocity, while Zartman and Saadia Touval observe that multilateral cooperation can sometimes be selective, as in military alliances and trading blocs. James A. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations," *International Organization* (46)(3) (Summer 1992), pp. 599–632, <https://doi.org/10.1017/S0020818300027843>; I. William Zartman and Saadia Touval, "Introduction: Return to Theories of Cooperation," in I. William Zartman and Saadia Touval (eds.), *International Cooperation: The Extent and Limits of Multilateralism* (Cambridge: Cambridge University Press, 2010), pp. 1–11, <https://doi.org/10.1017/CBO9780511761119.001>.

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29. Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review* (64)(4) (Autumn 2011), pp. 42–67, available at <https://digital-commons.usnwc.edu/nwc-review/vol64/iss4/6>, accessed October 22, 2021.

30. Baviera 2013.

31. China and Taiwan also claim the Macclesfield Bank, a completely submerged feature located between the Paracel Islands and the Scarborough Shoal. However, the legality of these claims to underwater features is dubious. Under international law, only land features that are above water at high tide can be subjected to territorial sovereignty.

32. In the *South China Sea Arbitration*, a United Nations arbitral tribunal ruled that nationalities of other states, including Vietnam, also have traditional fishing rights in the shoal's 12-nautical mile territorial sea. *South China Sea Arbitration* (Philippines v. China), PCA Case No. 2013–19, Award of July 12, 2016, para. 805 (Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea), available at <https://pcacases.com/web/sendAttach/2086>.

33. The tribunal in the *South China Sea Arbitration* found that the islets in the Spratly Islands can legally generate, at best, only 12-nautical mile territorial seas. Thus, the Spratly Islands cannot generate exclusive economic zones of up to 200 nautical miles or continental shelves of up to 350 nautical miles. Award of July 12, 2016, paras. 643–46.

34. *South China Sea Arbitration*, Award of July 12, 2016, paras. 277–78.

35. Besides a COC, there are other ASEAN-led mechanisms that can provide a framework for cooperation on conflict resolution in the South China Sea. These mechanisms include the ASEAN Regional Forum, which has a three-stage framework for conflict resolution, and the Treaty of Amity and Cooperation in Southeast Asia (TAC), which establishes a High Council to help settle international conflicts. These mechanisms, however, are rarely invoked. ARF remains focused on first two stages of its framework for conflict resolution. Meanwhile, the High Council of the TAC has yet to be formally established. Moreover, these mechanisms offer general guidelines, which are not specific to the South China Sea disputes.

36. A leak of the Single Draft Negotiating Text was published in Carl Thayer, "A Closer at the ASEAN–China Single Draft South China Sea Code of Conduct," *The Diplomat*, August 3, 2018, <https://thediplomat.com/2018/08/a-closer-look-at-the-asean-china-single-draft-south-china-sea-code-of-conduct/>, accessed October 22, 2021.

37. Cambodia has ratified UNCLOS under its municipal law, but it has yet to deposit an instrument of ratification with the UN Secretary-General. See Mech Dara, "National Assembly Approves UN Convention on Sea Law," *Phnom Penh Post*, December 24, 2019, <https://www.phnompenhpost.com/national/national-assembly-approves-un-convention-sea-law>, accessed October 22, 2021.

38. Aileen S.P. Baviera, "An ASEAN Perspective on the South China Sea: China–ASEAN Collision or China–U.S. Hegemonic Competition?" in Pavin Chachavalpongpun (ed.), *Entering Uncharted Waters? ASEAN and the South China Sea* (Singapore: ISEAS Publishing, 2014), pp. 88–111, <https://doi.org/10.1355/9789814380270-007>; Leszek Buszynski, "Chinese Naval Strategy, the United States, ASEAN and the South China Sea," *Security Challenges* (8)(2) (Winter 2012), pp. 19–32.

39. Leszek Buszynski, "ASEAN, the Declaration on Conduct, and the South China Sea," *Contemporary*

*Southeast Asia* (25)(3) (2003), pp. 343–62, <https://doi.org/10.1355/CS25-3A>; Carlyle A. Thayer, “ASEAN, China and the Code of Conduct in the South China Sea,” *SAIS Review of International Affairs* (33)(2) (2013), pp. 75–84, <https://doi.org/10.1353/sais.2013.0022>.

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