

South China Sea: ASEAN Mechanism on Maritime Disputes and the Rise of Indo Pacific Region

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Structured Abstract

Article Type: Research Paper

Purpose—The intensification in the South China Sea (SCS) evolved through time concentrating on assertions of sovereignty by the multiplicity of claimants, increasing of competition over maritime resources and worsening geopolitical rivalries among great powers. The Asia-Pacific and Indian Ocean regions are amongst the most dynamic in the world as well as centers of economic growth for decades. Southeast Asia lies in the center of these dynamic regions and is a very important conduit and portal to the same. The Association of Southeast Asian Nations (ASEAN) has placed the promotion of regional peace and security at the forefront of its endeavors and had taken a proactive approach in evolving a comprehensive regional security architecture by building ASEAN-centric regional security frameworks, namely ASEAN Outlook on the Indo-Pacific, which undertake cooperation in a broad range of areas, including maritime cooperation as well as the ASEAN Regional Forum and the Code of Conduct (COC). The existing and arising geopolitical challenges facing countries in the region revolve around maritime issues.

Methodology, Approach—This research employs a doctrinal approach and draws data from primary and secondary sources, including desktop research, with a particular emphasis on recent journals, documents, and official reports.

Findings—Despite the efforts made by ASEAN to balance the influence of great powers, its individual member states craft their own diplomatic relations according to their economic needs and development. Analysis is on the ASEAN intergovernmental policies and mechanisms, as well as the complexity of geopolitical interest in the South China Sea Dispute. As ASEAN Framework has very weak foundations, it is crucial for ASEAN to focus on the implementation of COC and multilateralism to strengthen its ability to shape regional

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security dynamic. ASEAN already possesses the mechanisms; all that remains is to endow it with significant implementation powers.

Practical Implications—Useful for under- and post-graduate students in writing a literature review. This paper analyses the scholarly and theoretical impact in international law and international relations.

Originality, Value—This article analyses the ASEAN mechanism in addressing the maritime dispute in the SCS arising from the shift of geopolitics in the Indo-Pacific region and is relevant to the contribution of dispute resolution to the current South China Sea conflict.

Keywords: ASEAN, dispute, geopolitics, maritime security, region, South China Sea

I. Introduction

The South China Sea conflict is a persistent or “serious issue” that has accumulated over decades, posing a security concern to the region and with no prospect of a peaceful resolution. The problem originally began when countries started claiming islands and other zones in the South China Sea as early as the 1970s, including the Spratly Islands, which are rich in natural resources and fishing grounds; no one anticipated the path it would take. Currently, the reality that pressures occasionally reach a level that could result in military tension and fatal conflict demonstrates the issue’s intricacy and the intensity of nations’ determination to protecting their national interests.¹ The disputes are a result of a series of disagreements between two, and occasionally more, states over control of islands and ocean areas.² At least six parties are directly involved: China, which claims the vast majority of territory via its infamous nine-dash line, Taiwan, and the Southeast Asian states of Brunei, the Philippines, Malaysia, and Vietnam,³ which are all also member states of Association of Southeast Asia Nations (ASEAN).⁴

ASEAN is often regarded as one of the most effective regional security organizations (RSIs). However, experts have long contested the value of ASEAN in relation to traditional security concerns. This issue has become increasingly relevant considering the regional power shift brought about primarily by China’s ascent, as well as current discussions over China’s growing aggressiveness in the East and South China Seas. ASEAN-led institutions were nothing more than “talk shops,” and thus ineffective at resolving interstate problems.⁵ Apart from the diversity of claimants, the South China Sea dispute is exacerbated by the fact that it involves China, the region’s dominant power, placing significant stakes in the conflict for the United States.⁶

The ASEAN leaders approved the ASEAN Outlook on the Indo-Pacific (AOIP) in June 2019 to provide a collective voice on the rising Indo-Pacific debate, which has been aggressively supported by the U.S., India, Japan, and Australia—the Quadrilateral Security Dialogue’s four members (Quad). The Outlook articulates ASEAN’s inclusive and cooperative “vista” on the Indo-Pacific with the hope of providing “a forum for the conflicting visions of regional order advanced by big and regional states” and preserving ASEAN’s relevance and strategic autonomy in this discourse.⁷ Since then, the Indo-Pacific maritime domain

has become increasingly contested and crowded, increasing the potential for violence over flashpoints including the South China Sea (SCS). Geopolitical tensions, as well as commercial and territory issues, have risen rapidly between China and the Quad countries, worsened by the COVID-19 pandemic attack. In the last two years, the Quad countries have advanced their Indo-Pacific plans and strengthened the Quad institutionally and operationally in response to their rising strategic worries about a robust and assertive China.⁸

This article discusses the South China Sea conflict's history and how ASEAN member states claim the disputed island. It then analyses the ASEAN legal framework and strategy, as well as regional cooperation difficulties such as dealing with the South China Sea dispute and focusing on the ASEAN legal mechanism. The analysis's findings will immensely benefit future ASEAN policy, particularly the role and the possibility of a joint ASEAN policy response in resolving the South China Sea Dispute.

1.1 ASEAN and the South China Sea

Three core competencies inspire the South China Sea dispute, including political, economic, and strategic. These are the key reasons for the Claimant States to fight for their rights in accordance with international law. The subject of contention between the parties in the South China Sea was concentrated on two large island groups (archipelagos), namely the Paracel and Spratly islands (and some other marine features). Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam are the states that claim the Spratly Islands. Taiwan and Vietnam also claim sovereignty over the Paracel Islands, which China has controlled since 1974.⁹

For numerous decades, the South China Sea has been a source of contention amongst its claimants. China's competing claims with Brunei Darussalam, Malaysia, the Philippines, and Vietnam, combined with China's strong position on sovereignty over 80%–90% of the South China Sea (maritime space and resources), have increased tensions in Southeast Asia. Due to the large number of claimants and the intricacy of the dispute, the South China Sea has been dubbed “the mother of all territorial disputes” and has the potential to devolve into major international conflicts.¹⁰

After more than 50 years, ASEAN continues to operate and expand its influence in the area and within the worldwide political system. It has contributed significantly to the reduction of interstate violence and has even managed to peacefully involve the major powers in its own regional concerns. The argument that ASEAN is only significant to its member countries when it is convenient for them derives from ASEAN's perceived failure to act decisively. Due to ASEAN's own values of neutrality and non-intervention, member countries have frequently been able to take out repressive measures against their people, contrary to what ASEAN promotes. Issues such as the Myanmar government's persistent mistreatment of minorities in Rakhine have split ASEAN members regarding their expected response.¹¹ The contemporary ASEAN system cannot be articulated in Eurocentric terms of multipolarity; rather, it must be defined in terms of multiplexity. A multiplex universe considers the influence of various players. It is not confined just by strong powers or sovereign states. Having a multiplex system acknowledges the order-making function of international institutions, non-governmental groups, multinational enterprises, and traditional networks. It no longer confirms a single hegemon's authority to dominate

the entire international political sphere. At the global and regional levels, a multiplex world fosters shared leadership and diverse goals.¹² ASEAN's current activities corroborate Acharya's thesis of a multiplex order. ASEAN has constantly incorporated other big powers into its foreign security strategy, including the United States of America, China, Japan, South Korea, India, Australia, Russia, and the European Union. Despite ASEAN's efforts to balance the influence of large powers, its individual members build their own diplomatic connections based on economic and developmental concerns. Individual states exhibit randomness in their interactions with big powers.¹³

While ASEAN Members States share some interests, protecting claimant states' sovereignty claims is not one of them: only four ASEAN members are claimants, and their claims contested with one another. To cite a few examples, Malaysia erected an oil rig in March 2020 in an area of the extended continental shelf claimed by both Malaysia and Vietnam.¹⁴ Vietnam protested in August 2020 that the Philippines had assigned official titles to several land features in the Spratlys.¹⁵ Malaysia and the Philippines clashed over their conflicting sovereignty claims over the Borneo state of Sabah from July to August 2020.¹⁶

ASEAN lacks consistency when managing SCS disputes.¹⁷ ASEAN is incapable of creating a coherent response to China's assertive actions in the SCS because China has successfully exploited ASEAN members' divergent threat-benefit calculations through a divide and rule strategy.¹⁸ It is necessary to emphasize that the South China Sea dispute is not an intra-ASEAN conflict.¹⁹ It is a conflict that involves several ASEAN maritime member states, including Malaysia, Vietnam, Brunei, and the Philippines, however the principal claimant, China, is not an ASEAN member state. It is critical to note that ASEAN member states fall into two main categories: maritime ASEAN countries, which are primarily claimants in the dispute, and land-based ASEAN members, which are not directly involved in the issue.²⁰ Notably, these ASEAN member states with land-based economies, such as Laos and Cambodia, have frequently relied heavily on China. China is the primary supplier of development assistance and foreign direct investment in both Laos and Cambodia.²¹ For example, China invested \$860 million in Cambodia in the first 11 months of 2020, a huge increase over the previous year. With such a strong reliance on China, these member nations will not allow ASEAN to jeopardize its relations with China for an issue in which they are not even involved.²² ASEAN is responsible for protecting member states' shared interests, but not their distinctive national interests. As these shared interests are the basis of ASEAN's common policy on SCS disputes, it is important to distinguish shared interests from the national interests of individual member states.²³

While there have been several criticisms and comments on ASEAN's divergence on the SCS dispute, certain circumstances indicate ASEAN's cohesion on this particular subject. Firstly, it is important to note on the Arbitral Tribunal Award 2016. The release of the Arbitral Tribunal's award on 12 July 2016 ended the arbitration case on the SCS which the Philippines had unilaterally brought against China in 2013.²⁴ The Arbitral Tribunal in the South China Sea (SCS) dispute between the Philippines and China issued a highly comprehensive judgement that, while binding only on China and the Philippines in its particular, has broader ramifications for the regional and global rules-based maritime order. This is because the award is predicated on and aggressively emphasizes the supremacy of the United Nations Convention on the Law of the Sea (UNCLOS) as the overarching legal framework controlling maritime jurisdictional claims.²⁵ The Award has had a considerable

impact for ASEAN's stance on the South China Sea issues, given the regional grouping's goal of Indo-Pacific centrality. Notably, the Chairman's Statements of the 36th and 37th ASEAN Summits, both of which took place in 2020 during Vietnam's chairmanship, reiterated the critical nature of maintaining international law, particularly UNCLOS. UNCLOS was used as the "base for evaluating maritime entitlements, sovereign rights, jurisdiction, and legitimate interests over marine zones" in the declarations. Additionally, the remarks noted that UNCLOS "establishes the legal framework within which all actions involving the oceans and seas must take place."²⁶ Additionally, on 12 December 2019, Malaysia's accession to the Commission on the Limits of the Continental Shelf (CLCS)²⁷ elicited a note verbale from the parties to the South China Sea Dispute. Almost all of the disputing parties sent their note verbale emphasizing their respective state positions on the submission.²⁸ While China maintains its claim on historical grounds,²⁹ all other ASEAN claimants' states note verbale appears to agree that UNCLOS should be the sole legal basis for any disputes, individual ASEAN member states have more courage to invoke the ruling in defense of their maritime rights and interests, and the sanctity of international law has a better chance of standing up to the exigencies of ASEAN-China power asymmetry.³⁰

The tribunal's decision will theoretically be binding solely on the tribunal's parties, which are the Philippines and China, despite the fact that China did not participate in the trial.³¹ Other claimant states will not be bound by the tribunal's decision in the disputes. All of this, however, suggests that the 2016 Tribunal Award supported the building of an ASEAN-wide consensus over how to resolve South China Sea concerns. This proves that ASEAN is a strong advocate of international law as a framework for resolving disputes.

1.2 Maritime Security Challenges in the Indo-Pacific Region-SCS

The Indo-Pacific region has a number of maritime security challenges.³² It has over 40 sea-related disputes with regional countries, involving either sovereignty over sea-based territory or sovereign rights over marine areas. Several of these conflicts, such as those in the South China Sea or over the Senkaku/Diaoyu Islands, are viewed as potential catalysts for a Sino-US conflict or perhaps a third world war.³³ Several maritime areas in the Indo-Pacific have been particularly contentious, including the East China Sea, the South China Sea, and the Indian Ocean. The South China Sea issue is inextricably linked to China's aim to extend its borders unilaterally. It is inextricably linked to economic, strategic, and political objectives. Achieving a suitable solution for maritime boundary delimitation demands consideration of political, strategic, and historical aspects.³⁴ The considerations outlined above are obstacles that contending countries must overcome in order to protect their rights in the South China Sea region.³⁵ Economically, states seek territorial sea expansion. Coastal states perceive a need to expand their territorial seas in order to regulate and reserve marine resources for the benefit of their own people.³⁶

Consequently, issues concerning the safe navigation of ships passing through the SCS Sea Lines of Communication (SLOC) are impacted, resulting in the involvement of a broader range of stakeholders.³⁷ The growing seaborne activity in the region has also created new maritime security problems.³⁸ Although there has never been actual armed conflict in such places, they are contributing to the region's growing security challenges. These territories are contested mostly due to the regional governments' divergent security requirements.

Additionally, those areas have substantial geostrategic significance, making the disputes a difficult issue for Indo-Pacific maritime security.³⁹

II. Chinese Expansion of Power and the Impact on SCS Disputes

China's approach on the South China Sea dispute is viewed as deliberately ambiguous by some.⁴⁰ Perhaps the best way to summarize China's foreign policy toward the disagreement is as follows: China's ascent is peaceful, but China will not hesitate to take whatever means required to defend itself.⁴¹ The peaceful aspect was highlighted in a speech delivered by Chinese President Xi Jinping in May 2014 to commemorate the 60th anniversary of the Chinese People's Association for Friendship with Foreign Countries, in which he declared that "China values peace and will not pursue hegemony.... China will insist on a peaceful path of development [and] there is no gene for invasion in the blood of the Chinese people." These words demonstrate that China lacks the capability to employ force against any area over which it has no claim, but it will defend itself and has no intention of negotiating with other South China Sea disputants.⁴²

Three schools of thinking exist regarding the causes of the South China Sea's tensions.⁴³ To begin, it is asserted that Beijing's return to a more assertive stance led to the tensions that have existed since 2007–8.⁴⁴ Second, China has primarily reacted to the acts of other claimants, which are deemed to be detrimental to China's own interests.⁴⁵ Thirdly, the relationship that demonstrated Southeast Asian collusion with the U.S. against China—which contributed to the underlying cause of the South China Sea's escalating tensions.⁴⁶ According to Chinese analysts, the primary cause for escalating tensions is America's "return to Asia," where the Chinese believe the Americans' principal intention is to follow a policy of "soft containment," in which they engage China diplomatically while also limiting China's expanding power.⁴⁷

The most visible manifestation of the U.S.–China relationship's downhill spiral has been the expansion of military exercises and deployments in the South China Sea. China launched a salvo of medium-range missiles across "vast distances in the South China Sea." According to Senior Col. Wu Qian, a spokesperson for the Chinese Ministry of National Defense, the area covered by these long-planned drills ranged from Qingdao in North-eastern China to the Spratly Islands, affecting the stretch between Hainan Island and the Paracel Islands. This exercise was a demonstration of Chinese capacity and a response to the U.S. Navy's supercarriers conducting maneuvers in the vicinity of China's nuclear submarine base in the Hainan Islands in the South China Sea. In a statement released following the exercises, the Pentagon accused China of "violating China's past agreements—long since abandoned—not to militarize the South China Sea." Additionally, there has been a continual influx of Chinese fishing boats and maritime militia accompanied by Chinese Coast Guard vessels in the waters next to Indonesia's Natuna islands, as well as the deployment of survey vessels in Malaysia, Brunei, Vietnam, and the Philippines' Exclusive Economic Zones (EEZs). Additionally, two new administrative districts covering the Paracel and Spratly Islands have been established. These Chinese initiatives have hampered efforts to de-escalate tensions and maintain regional stability.⁴⁸

The foundation of the ASEAN and the subsequent formation of additional regional communities has been viewed positively in terms of resolving conflicts and controlling tensions associated with the territorial issue. Regional violence can be effectively prevented through regional forums, informal dialogues, and multilateral negotiations.⁴⁹ ASEAN and China even issued a joint Declaration on the Conduct of Parties in the South China Sea in 2002. All parties to this document reaffirm their commitment to the Charter of the United Nations, the 1982 United Nations Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law that shall serve as the fundamental norms governing state-to-state relations. They also committed to fostering trust and confidence among themselves by displaying prudence in the conduct of dispute-related activities. Despite the existence of such global papers and agreements, China has constantly demonstrated an unwillingness to adhere to them. It has continued to expand its territory and strengthen its military presence in the contested zones. China has traditionally been seen as the most powerful claimant in terms of military might. Chinese soldiers have been occupying many islands in the South China Sea for decades in order to upgrade the region for military objectives.⁵⁰

The South China Sea issues focus around four critical centers of power and authority.⁵¹ On one level, the South China Sea is symbolic of Asia's shifting power balance, generating fears about the region's peace and stability. Command of the seas has historically been critical for power projection, commerce, and the development or preservation of great-power status. Analysts raise concern over China's expanding maritime strength and area denial capabilities inside the first island chain, and whether this could erode the U.S.'s strategic influence in Asia and jeopardize its Taiwan interests.⁵² According to some, the South China Sea could serve as a "flashpoint" or "crucible" for kinetic great power confrontation, owing to concerns that China's assertions will push the U.S. to defend its own maritime interests and/or the maritime rights of allies and partners.⁵³ Nonetheless, the U.S. is not a party to the South China Sea disputes. As a result, it is debatable whether it has important maritime interests and if it will risk confrontation with China to safeguard them or those of its regional allies and partners.⁵⁴ Chinese opinions generally consider the United States' Freedom of Navigation Operations (FONOPs) in the South China Sea to be illegal, and that China will take appropriate measures to protect its sovereignty and reject American "maritime hegemony."⁵⁵ The U.S.'s role in the South China Sea is predicated on freedom of navigation. Challenges to navigation freedom are considered as critical to American strategic and economic interests. The U.S. considers China's position in the South China Sea as a challenge to international law's navigational rights, notably those relating to innocent passage across coastal nations' territorial seas and foreign militaries' permitted activity in their EEZs.⁵⁶

For many years, China's leaders have viewed the U.S. as the power that poses the greatest threat to their interests and regional ambitions, resulting in uncertainty regarding America's China policy objectives and the trajectory of Sino-US relations.⁵⁷ Beijing demonstrates Washington's engagement in the South China Sea Disputes, for example, through joint military exercises with coastal governments and FONOPs, which serve as a cause of regional tensions and militarization of the area.⁵⁸

2.1 Rise of the Indo Pacific Region over the South China Sea

Simultaneously, non-regional actors—Australia and the U.S.—who would be least affected by the closing of sea lanes⁵⁹ came to place an exaggerated premium on the Indo-Pacific's freedom of navigation. Australia and Japan have similar views on military freedom of passage to the United States. Australian declaratory policy asserts that it is critical to Australian interests that the freedom of navigation protections included in the 1982 United Nations Convention on the Law of the Sea (LOSC) are protected, upheld, and respected by all States. Australia's concern for freedom of navigation is particularly acute at its northern chokepoints and archipelagic sea ways. It is in Australia's interest to support the existing international legal regime, which has been shown to be extremely effective in maintaining free and flowing international sea lanes.⁶⁰ However, Australia's position on military freedom of navigation underscores its reliance on the U.S. alliance and the deterrent capabilities it supplies in the region as an offshore balancer.⁶¹

According to Indian authorities, the South China Sea is a component of the global commons. As a result, India has a vested interest in the region's peace and stability. India is a staunch supporter of freedom of navigation and overflight, as well as unhindered lawful commerce in international waters, in conformity with applicable international law, most notably UNCLOS. India also believes that disagreements should be settled peacefully, in accordance with legal and diplomatic channels, and without the threat or use of force.⁶² India's 2015 maritime security strategy paper emphasizes the importance of naval might in controlling the Indian Ocean's SLOCs and chokepoints.⁶³ India desires cooperation with the United States, Japan, Australia, and Indonesia, all of which are considered maritime powers, in order to protect the SLOCs. India also intends to improve its naval facilities in the Andaman and Nicobar Islands, which would eventually serve as India's naval outpost for access to Southeast Asia and the Pacific. Karwar Port—India's largest naval facility—is located in the western Indian Ocean and acts as a command center for countering and denying any threats from the Arabian Sea, particularly from Pakistan.⁶⁴ As a result, India is able to defend its territory from the west while simultaneously expanding its reach to the east. India's biggest concern, on the other hand, is China's maritime development in the Indian Ocean.⁶⁵

III. Methodology

This study employs a doctrinal analysis methodology. It is primarily bibliographical and internet-based and is performed using a qualitative doctrinal legal analysis process.⁶⁶ This method is suggested to be the most appropriate since it is a problem framework that includes various stages such as contextual reading, finding primary documents, recognizing current legal problems, collecting relevant information, scrutinizing the void in the law, and reviewing all subject matter within the context. The primary goal is to acquire new information and analyze ideas in order to propose improvement or change.⁶⁷ This method was chosen for this article because it entails identifying relevant gaps within the implementation of ASEAN intergovernmental framework as well as an examination of the issue of South China Sea Dispute and how it relates to the shifting geopolitics in Indo-Pacific.

IV. ASEAN Mechanism in South China Sea Conflict

4.1 ASEAN Outlook on the Indo-Pacific (AOIP), ASEAN Regional Forum (ARF), ASEAN Political Security Community (APSC) and UNCLOS

The Indo-Pacific region stretches from the east part of Indian Ocean to the west Pacific Ocean and is connected by the Strait of Malacca. The Indo-Pacific has become the central area for maritime geopolitics, security, trade, and environment activities.⁶⁸ Due to growing geopolitical worries about a strong and assertive China, the Quad countries (the United States, India, Japan, and Australia) have advanced their Indo-Pacific plans and strengthened the Quad institutionally and operationally over the last two years. Notably, despite recent leadership changes in the United States and Japan, both the Biden and Suga administrations have made it very apparent that the Indo-Pacific is here to stay through policy statements and actions. The ASEAN Outlook on the Indo Pacific (AOIP) was supposed to provide a uniform script for AMS towards external pressure and to adopt a position on the intensified Indo-Pacific. In actuality, AMS have not yet internalized the Indo-Pacific to the same extent, and the majority continue to harbor reservations about the concept.⁶⁹

The ASEAN's embrace of the AOIP as a perspective, rather than a strategy, indicates its cautious, if not weak, response to regional security developments, and, more importantly, its member states' diverse views on the Indo-Pacific concept. Indeed, the amorphous nature of this concept obscures the exact rationale for its formation—the geopolitical struggle between the United States and China.⁷⁰ The AOIP does not address the core issues. Rather than confronting the strategic struggle (the U.S. vs. China), it wishes it away.⁷¹ Additionally, the AMS have already developed their own national policies for resolving this great power competition. Regrettably, the AOIP does not address or manage their various national perspectives and tactics.⁷²

The AOIP is not a magic wand that will instantaneously convince AMS to embrace the name “Indo-Pacific.” All AMS, with the exception of Vietnam, continued to refer to the broader region as “Asia-Pacific” in their national submissions to the ASEAN Regional Forum (ARF) Security Outlook 2020. Meanwhile, Vietnam utilized neither word—an omission that was presumably deliberate considering that “Asia-Pacific” was still included in its ASEAN Regional Forum (ARF) Security Outlook 2019 submission.⁷³

The ASEAN Regional Forum (ARF) was founded in 1994 as a forum for discussion and consultation on current regional security challenges, as well as the development of cooperative measures to promote peace and security in the Asia-Pacific area. The ARF is not a collective defense organization or a regional security management organization, but rather an entity dedicated to fostering long-term peace via mutual trust.⁷⁴ It was originally intended to domesticate China's foreign policy behavior and to persuade China to accept ASEAN's norms.⁷⁵ By increasing defense transparency and supporting peaceful and cooperative resolutions to conflicts, the policy is supposed to put an end to China's confrontational behavior against other South China Sea claimant states. Other regional countries, especially the United States and Japan, are also invited to join in order to contain and balance China's dominance.⁷⁶ China, on the other hand, joins the ARF in order to prevent exclusion from the regional organization. It also saw the ARF as a way to demonstrate its commitment

to Southeast Asia and allay concerns about Chinese regional threats.⁷⁷ Thus, the ARF is viewed as a beneficial tool for dealing with China's rise. The regional grouping seeks to "socialize" China to the point where it acts as a "responsible regional power" through a cooperative security approach.⁷⁸

Though ASEAN regional security issues are constantly contested, ASEAN has been able to establish ASEAN-led security institutions based on the concept of "cooperative security"—an inclusive institutional arrangement aimed at facilitating security dialogues, confidence building, and norm creation among members with the objective of politically taming regional great powers and shaping their behavior.⁷⁹ Nonetheless, the primary markers of a security community's success are multilateralism, the expansion of security cooperation, and the establishment of limits and membership.⁸⁰

The ASEAN Political-Security Community (APSC) is a body tasked with ensuring that the region's countries coexist peacefully with the rest of the world in a just, democratic, and harmonious environment. Additionally, this body is charged with promoting the establishment of standards that strengthen ASEAN defense and security cooperation. ASEAN is committed to establishing a politically cohesive, economically integrated, socially responsible, people-oriented, and people-centered Community that will enhance economic, social, and political cooperation among ASEAN member states and expand ASEAN's role and importance in regional and international political and defense affairs. Additionally, ASEAN is a regional organization dedicated to promoting "international peace, security, and stability." ASEAN contributed to the progressive development of regionally recognized international norms, including the prohibition of the use or threat of force, the peaceful resolution of conflicts, the priority of international law, consensus, and non-interference. ASEAN's objectives dictate that it will be expected to play a prominent role in resolving the South China Sea conflicts, which have exacerbated tensions and fostered an atmosphere of distrust in the region.⁸¹

The foundation of the ASEAN Political-Security Community, on the other hand, is widely recognized as a key achievement in fostering and keeping peace in the Southeast Asian area. However, it has been criticized for its inability to resolve the community's lengthy history of territorial issues. Critics questioned ASEAN's ability to materialize the APSC as a community based on comprehensive security. Numerous analysts argue that ASEAN has failed to achieve its vision of a "complete" security community due to the region's seemingly "never-ending" traditional and non-traditional security challenges.⁸²

Due to the fact that all ASEAN member nations are signatories to UNCLOS (note: Cambodia has not yet ratified).⁸³ ASEAN is also expected to continue to favor UNCLOS as the legal framework for resolving maritime claims or disputes. Meanwhile, despite the fact that the United States is not a party to UNCLOS, it favors the provisions of the 1982 Convention to resolve maritime claims and conflicts in the South China Sea.⁸⁴ External parties with an interest in the region, such as Japan, South Korea, and Australia, also endorse UNCLOS as the legal framework for resolving marine claims or entitlements. The Philippines demonstrated its preference for the UNCLOS legal framework by submitting a formal claim to the Permanent Court of Arbitration for maritime jurisdiction over what it refers to as the West Philippines Sea.⁸⁵

However, claimants pursuing a legal resolution face various challenge. One is that the dispute resolution procedure is lengthy, which may favor those governments seeking

to alter the situation on the ground, whether through physical ownership or reclamation works such as China's "Great Sand Wall." Another is that China is adamantly opposed to the Permanent Court of Arbitration (PCA) as a legal forum and may disregard any judgments that do not favor it as witnessed in the July 2016 announcement by the PCA. Another issue is that all disputants are economically dependent on China, ASEAN's largest trade partner and investment.⁸⁶ Most are also cognizant of the potential repercussions of pursuing legal action against China on their bilateral diplomatic relations. Thus, with ASEAN's member nations having such disparate concerns, it is improbable that ASEAN could produce consensus to pursue a legal claim against China.⁸⁷

4.2 Code of Conduct and ASEAN Solidarity in SCS Dispute

The ASEAN and Chinese foreign ministers agreed the framework for the South China Sea Code of Conduct (COC) in 2017. While the framework represents a step forward in the South China Sea conflict management process, it is deficient in details and repeats many of the principles and provisions of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), which has yet to be implemented in its entirety.⁸⁸ The text contains a new reference to incident prevention and management, as well as an apparent increased commitment to maritime security and freedom of navigation. However, the phrase "legally binding" is omitted, as are the agreement's geographical scope, enforcement, and arbitration methods. The framework will serve as the foundation for future COC negotiations. These discussions are likely to be protracted and frustrating for ASEAN members hoping for a legally enforceable, comprehensive, and effective COC. Negotiating a COC has been a lengthy and demanding procedure. The 2002 ASEAN-China's Declaration on the Conduct of Parties in the South China Sea (DOC) urged the parties to form a COC. The distinction between the DOC and the proposed COC was never made clear, despite the fact that some ASEAN members, particularly Southeast Asian claimants, envisioned a legally binding agreement that would be more comprehensive and effective than the DOC, which was a non-binding political statement.⁸⁹

ASEAN initiated discussion of a code of conduct and actively engaged China in COC talks in 2011. The Chairman's remarks at the 19th ASEAN Summit "reaffirmed the DOC's relevance" and emphasized the need to "intensify efforts" to reach an agreement on a regional code of conduct.⁹⁰ After lengthy discussions on the code, ASEAN and China finally agreed on the COC's framework in August 2017 and subsequently began negotiations on the COC.⁹¹ ASEAN Leaders welcomed this development as a pivotal point, while ASEAN Foreign Ministers expressed optimism at the adoption of a framework that would assist the work necessary to conclude an effective COC on a mutually agreeable timeline.⁹² The COC negotiations are critical, and their success is contingent on ASEAN cohesion and the pressure it can place on China to resolve the issue.⁹³

ASEAN adopting no formal position on the SCS issue shows a lack of cohesion.⁹⁴ When ASEAN Foreign Ministers' Meeting gathered virtually in late June 2020, the Philippines' president was the first to "warn" of the SCS's growing danger but failed to make assertive comments in July 2016, as for that matter, about other claimant members and ASEAN's deafening silence. However, nothing has occurred to demonstrate ASEAN solidarity.⁹⁵

The overwhelming majority of respondents in a recent study by ISEAS advocate for

a rules-based approach to a future COC: 80.8 percent agree that the COC must be consistent with international law, particularly the United Nations Convention on the Law of the Sea (UNCLOS); 53.5 percent do not anticipate the COC resolving territorial conflicts, but do anticipate it assisting in preventing and managing events in the SCS; 22.9 percent of respondents are more pessimistic, believing that “the COC will make no difference because China would never relinquish its territorial and jurisdictional claims based on the Nine-Dash Line.”⁹⁶

V. Analysis

Having recognized that ASEAN cannot resolve the SCS conflict unanimously due to specific limits and the character of claimants and non-claimants, the COC should be implemented in a manner that is unique to the way ASEAN and China are progressing. A definitive policy would be irrelevant given the rapid change in geopolitics in the SCS. Military confrontations are best avoided because the majority of the parties involved are economic partners. ASEAN gained legitimacy by multilaterally establishing regional standards and enticing large nations to participate in ASEAN-led multilateral political games. Given that contemporary world society views multilateralism as a viable form of establishing international standards, ASEAN, which consists of ten sovereign states, has established itself as a regional source of legitimacy and standards in East Asia. It would be strategically advantageous for regional great powers to influence or control ASEAN’s choices from the outside in order to legitimately balance other regional powers and ASEAN-led institutions.

ASEAN has numerous regional security mechanisms, including the ARF and the AOIP, as described above. However, the mechanism’s implementation and practical impact appear to be limited. Through multilateralism, ASEAN has developed strong ties with regional great powers; emphasizing the role of preventative diplomacy and peace will help to a successful policy. Elite contacts have enhanced the regional capacity to prevent conflicts from developing and escalating and have so served as a critical tool for peacebuilding. ASEAN have played a critical role in fostering regional trust and confidence, as well as the formation of a regional identity through East Asian community building. ASEAN lacks both the funds and organizations necessary to resolve these disagreements. ASEAN’s primary mission is hence to safeguard the peace and to foster trust. However, ASEAN might consider non-traditional security as it may provide different opportunities for ocean governance, in addition to information sharing and capacity building as well as defense diplomacy, when establishing cooperation. This may result in more calm conversations and meetings between competing parties, as there is a need to investigate less politicized venues for the purpose of establishing confidence. Other than that, it provides a chance for ASEAN to establish economic diplomacy between conflicting governments in order to halt military de-escalation in the SCS. As most of the conflicting parties are in economic ties with China, it is about time to use economic diplomacy to tone down the tense in SCS. Economic diplomacy with China can begin with all ASEAN member states (claimant or non-claimant) cooperating on or contributing to a common agreed economic cooperative project. This may involve ministerial meetings, collaborative training sessions, agreed commercial trade and activity, as well as bilateral and multilateral agreements.

COC discussions are never-ending but optimistic. Indeed, the term “code” suggests a more favorable legal option for resolving the SCS disagreement. Though it is unclear how the code will ultimately be accepted and finalized by all disputing parties, the critical issue now is to finalize and implement it as quickly as feasible. Without a doubt, there will be disagreement and subsequent amendments among conflicting parties, however it should be incorporated and adopted within the process of constructing the foundation.

The Indo-Pacific Region has grown in importance in terms of geo-economics and geo-strategic importance. China’s economic and military rise is frequently highlighted as the primary cause for the world’s increasing focus on this critical maritime zone. In this context, mostly all Indo-Pacific strategy and policy in Japan, U.S., Australia, and India all share a common goal: to contain China’s expansion. Economic connectivity and strategic competition, as well as conflicting rules, are expected to persist for the next few decades. Additionally, the Rebalance Policy⁹⁷ recognizes the region’s growing geo-strategic significance and has strengthened the approach to security and diplomatic relations with regional countries. The U.S. maintained engagement with Japan, the Republic of Korea, Australia, the Philippines, and India through cooperative naval operations and drills. As the Indo-Pacific area becomes a focal point for global economic activity, geo-politics, and security dynamics, it requires comprehensive maritime security cooperation.

VI. Conclusion

The South China Sea’s evolving geopolitics are never-ending. The South China Sea is of tremendous importance to large countries due to its reputation as a hotspot for economic resources. ASEAN member states are divided among claimants and non-claimants, making it impossible for ASEAN to act collectively and encourage unity as the claims and interests of claimants and non-claimants may be diametrically opposed. The Code of Conduct is viewed as a necessary measure to expedite implementation. While the dispute may not be resolved immediately, at the very least the parties’ behavior is being monitored. The fact that the Chinese are exerting pressure as a result of their economic controls complicates the situation significantly. ASEAN already possesses the mechanisms; all that remains is to endow it with significant implementation powers.

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