



The South China Sea Dispute: Code of Conduct Implementation as the Dispute Settlement

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Abstract

After the end of World War II, China has claimed the area in South China Sea as its territory based on its historical background, or so-called the nine-dash line. This China's unilateral accusation naturally reap many negative responses from countries in the area because it is consider as theirs. However, China who did not ratify UNCLOS 1982 as the international law stick to its own rules. Therefore, the purpose of this article is to examine the effectiveness of Code of Conduct offered by ASEAN as the dispute settlement of this border issue. In an attempt to present the results, author collected primary and secondary data from official document and credible literature which are accessible on the internet such as journal and article website. The results of this study found that dispute resolution through the Code of Conduct still encounters obstacles, therefore it is necessary to do alternative solutions such as bilateral negotiations between the disputing parties.

Keywords: *South China Sea, Code of Conduct, Dispute settlement, Maritime border*

1. Introduction

The region area Asia Pacific Ocean's condition, as a large scale of water area, is now facing conflict circumstances. The South China Sea which is the nexus of geopolitics in the area of Asia Pacific, is a hot issue which being discussed at the international level. It is because it has ignited the conflict between numerous major Asian countries and the ASEAN members. The problem that is being disputed is regarding the China's claim of maritime territories amongst countries. The dispute has affected the security environments of the Asian region, especially for ASEAN. Conflicting countries have recently demonstrated a show of military power as a response to China's act (Kusuma, Kurnia, and Agustian 2021:52).



The South China Sea dispute is a long story issue regarding territorial that China and the claimant states are still fighting over. The international organization actually already regulates the territorial water boundaries in the United Nations Convention on the Law of the Sea in its third version or so-called UNCLOS 1982. But however, China insists that she has the “official” version of the territorial boundaries in accordance her historical map, the nine-dash line. Naturally, the nine-dash line which collides with other countries’ borders, reaps many reactions.

China declares "indisputable sovereignty over islands in the South China Sea and adjacent waters" with no space restrictions. The territorial dispute in the Set Equipment Sea in China essentially refers to the territorial sea and land areas portions of the two Paracel and Spratly islands. The “nine-dash line” which shown on official Chinese maps of the region generates a third source of vagueness. The line was primarily illustrated in the 1930s. Then in 1947, the line appeared again on a map of official China’s Strategy in the South China Sea Republic of China (ROC). Since then, the famous nine-dash line has appeared on PRC maps since 1949 (Fravel 2011:294).

On the map, China depicts that the nine-dash lines would cover around 62% an area covering of the sea. In the north sea, China, Taiwan, and Vietnam fight over the Paracel Islands. China herself has inhabited the islands since 1974. In the southern part of the water area, China, Taiwan and Vietnam claim all of the approximately 200 Spratly Islands. While Malaysia, Brunei, and the Philippines, United States treaty allies, claim some of them. Vietnam holds the largest number. In the northeast, China, Taiwan and the Philippines all claim the Scarborough Shoal; China has controlled it since 2012 (Congressional Research Service 2021). The South China Sea is also the largest and most complicatedly contested body of water, with China, Vietnam, the Philippines, Malaysia, Indonesia, and Brunei all claiming ownership over overlapping regions (Junfeng n.d.). The characteristics of this conflict are attributable to each country's interests in the South China Sea region, as well as the narrative of arguments and the legal basis of the country.



The fundamental reason for the conflict, according to Timo Kivimäki's book *War or Peace in the South China Sea*, is not military security, but rather because the contested territory is a source of seafood and other significant resources. The conflict is of great importance to the people of Southeast Asia since the majority of them live near the sea, and this closeness has an economic and ecological impact on the populace. Furthermore, the book *The Security Environment in the Asia-Pacific* affirms that the geographical importance of the region for sea-lane traffic, regional and international security, and international trade brings the problem to the forefront of international debate. As a result, the conflict has become a critical global security problem since regarded by foreign parties (e.g., the European Union, the United States, Japan, and others), as it calls into question world peace and security (Amry 2015:11). In regards to the issue, this paper would like to analyse how the implementation of the Code of Conduct as dispute settlement maintains stability in the area.

2. Literature Review

2.1. South China Sea Claim Dispute Settlement Between ASEAN and China

The first research entitled "South China Sea Dispute Settlement Between ASEAN and China. This research was written by Nugroho and Hikam, then published in 2020. The research method used as a tool to examine this research is analytical descriptive and historical method. determine the role of ASEAN in resolving territorial disputes in the waters of the South China Sea (Nugroho and Hikam 2020:1–4). Looking at the historical dialectic, between China and ASEAN member countries in this case have different perspectives in interpreting and implementing UNCLOS. Therefore, this journal offers a solution so that the claimant state and China must Mutual ratification and signing of UNCLOS 1982. Then, the Code of Conduct also needs to be approved by the claimant state to prevent conflicts from developing into open conflicts. The difference between this journal and the author's research is on the topic of research carried out. The author discusses how effective the implementation is Code of Conduct as conflict resolution which is non-binding.



2.2. An Analysis of the South China Sea Dispute: Focusing on the Assessment of the Impact of Possible Solutions on the Economies of the Region

This second research is entitled *An Analysis of the South China Sea Dispute: Focusing on the Assessment of the Impact of Possible Solutions on the Economies of the Region*. This research was written by Amry in the form of a thesis, and discusses possible solutions to the South China Sea problem, in the regional economic dimension. This thesis examines the South China Sea dispute and analyzes why the dispute has not escalated, as well as the strategic importance of the South China Sea dispute in relation to international trade. This thesis will also study possible solutions and their effects on the region and the international community. I argue here that while ASEAN countries continue to make valuable efforts to find a multilateral solution to the dispute. The difference between the author's research and this thesis is in the focus of the discussion, in which the author does not focus on the economic dimension in the ASEAN region related to issues in the South China Sea.

3. Research Methodology

This journal will be using a qualitative research method to explain the implementation of Code of Conduct as conflict resolution in the South China Sea water area. The data for this article is obtained from secondary sources that are publicly accessible which includes official documents from Indonesia and China. Besides that, academic books and journals on maritime issues, South China Sea dispute, and reputable sources from open access journals, have also been consulted. For the purpose of this research, this data collected was analyzed using Atlas.ti software through coding manuals for qualitative research.

4. Result and Discussion

4.1. China's Interest in South China Sea

The South China Sea issue is inextricably linked to China's desire to extend its borders unilaterally. It is inseparably linked to economic, strategic, and political



objectives. Determining a fair solution for maritime boundary delimitation necessitates considering political, strategic, and historical issues. The considerations listed above are issues that conflicting countries must address in order to protect their rights in the South China Sea (Kusuma et al. 2021:53). As a country that led this issue to be brought up to the surface, China is pursuing numerous of interest through her claims regarding the territorial sovereignty and maritime rights in the area of South China Sea. The strategic power of the Spratlys was stated by former M. Taylor Fravel PLAN Commander Admiral Liu Huaqing. According to his observation, “whoever controls the Spratlys will reap huge economic and military benefits” (Fravel 2011:295).

This conflict rooted at the China’s so-called nine-dash line claim over the waters area, which was stated firmly by the government. The map of the nine-dash line area that China unilaterally claims covers about 90% of the 3.5 million square kilometers of waters in the South China Sea (Harahap 2021). According to China, this accusation is based on its basic historical facts, and so its sovereignty over the area brooks no denial (Embassy of the People’s Republic of China in Canada 2015). Moreover, Chinese government also claim that various Chinese administrations have maintained ongoing authority over the islands through administrative supervision, military patrol, production and economic operations, and marine disaster assistance, among other things since post Japanese aggression era. For example, following its victory in the war, China dispatched warships to reclaim the Xisha and Nansha islands (which then later according to China claimed as Philippines’), where soldiers were stationed and numerous military and civilian infrastructure were constructed, regaining de jure and de facto rule over the South China Sea Islands.

Figure 1 Map of South China Sea



Source 1 (Amry 2015)

At the economical level, China would be benefited by the access to the resources of maritime sector, especially fish and hydrocarbon, if she conquers the jurisdiction over these waters. Moreover, The South China Sea region is abundant in oil, natural gas, and fishing (Kusuma et al. 2021:54). The possibility of Chinese sources obtained around the Spratlys are around 105 billion barrels of hydrocarbon reserves. While from the South China Sea, China's obtained for a considerable portion of annual catch of fish. Furthermore, the major amount of Chinese trade flows, including 80% of her oil imports, passes through these waters area. At the military aspect, The South China Sea serves as a marine buffer for southern Chinese provinces and would be a critical theatre of operations in a battle with the United States over Taiwan (Fravel 2011:296). So, if there any effort to blockade China in wartime would also occur in these waters.

China is not only improving the capabilities of its marine weaponry, but it is also developing and reclaiming islands in the South China Sea, which raises questions about Chinese objectives. According to Ministry of Foreign Affairs of the People's Republic of China (2018), she sees the development of islands in the sea as an effort to secure sovereignty, maritime interests, and optimize the function of the islands so that it can



conduct Search and Rescue, disaster prevention, scientific research, environmental protection, navigation security, and fishery products. Because China recognizes or claims the islands as part of its territory, China regarded these developments as normal (Widian and Arimadona 2018:98). According to Li Hongmei (2018), China will never budge from its basic interests of sovereignty and territorial integrity, and will always defend them at whatever cost.

4.2. Actors Related to This Dispute

Indonesia, as one of the nations surrounding the South China Sea, claims that it is not directly participating in the dispute over South China Sea lands. Indonesia is a part of Southeast Asia, which has various potential benefits for our country's security in regionality through ASEAN membership. Because the effect of regional stability within ASEAN is endangered by conflicts in the South China Sea region, it is linked to a mismatch in ASEAN security credibility, which affects Indonesia in particular.

China's operations in the South China Sea endanger the United States' allies and friends. President Xi is in charge of an unprecedented militarization of the South China Sea, which affects Japan, Australia, South Korea, India, and Taiwan, as well as the ASEAN claimant countries of the Philippines, Malaysia, Indonesia, Vietnam, and Brunei. China claims 90 percent of the South China Sea, bordered by a U-shaped boundary, based on a line drawn by a geographer in 1936, followed by a Nationalist government map in 1947. This comprises the Paracel Islands (also claimed by Vietnam and Taiwan), the Spratly Islands (also claimed by Vietnam, the Philippines, Malaysia, Brunei, and Taiwan), Scarborough Shoal (also claimed by the Philippines and Taiwan), and the Natuna Islands (also claimed by Indonesia) (Boston Global Forum 2015:4).

Similar to the EU, political integration in ASEAN is the most arduous, if not impossible, process. Equally to how political reasons led to Brexit, the South China Sea dispute is dividing rather than unifying ASEAN. The South China Sea conflict is an inherently delicate subject that ASEAN governments cannot agree on due to competing interests. This is precisely the issue that has caused China to sever ASEAN unity from



within. This might be another explanation for China's rising assertiveness in the South China Sea – China does not want a solid and cohesive regional organization next door and has been working hard to prevent ASEAN membership. As a result, pressuring ASEAN to develop a Code of Conduct and hold bilateral negotiations with China is unhelpful. Expecting more from ASEAN can only lead to disappointment; it's like asking a businessman to undertake expert-level political analysis (Tong 2016).

Although Indonesia is not directly involved in the South China Sea issue, it has sovereignty in its seas and sovereign rights in the waters under the authority of the South China Sea region, therefore it has security interests in the region. The interests of Indonesia in areas of the South China Sea include territorial integrity, regional stability, and the economy. Interest in territorial integrity related with People's Republic of China claims restrict nine dashed lines across the South China Sea region that cannot be specified, therefore it is believed to touch Indonesian jurisdictional water, which is Exclusive Economic Zone and Indonesia continental shelf in the North Sea Natuna (Wiranto et al. 2015:2).

China made Indonesia's EEZ in the waters of the Natuna Sea, which was annexed by nine-dashed lines, as a traditional fishing ground. In fact, UNCLOS does not know the traditional fishing ground at all. That means again China is acting unilaterally and is an act against the international law (Harahap 2021). Moreover, China made nine-dashed lines unilaterally without going through the UNCLOS law of the sea convention.

The Indonesian National Interests in the South China Sea are particularly classified into two categories: vital (survival) interests and primary interests (major). This important interest is Indonesia's interest, which cannot be discussed since it affects the existence of the nation and the state. In line with the previous phrase, Minister of Politics, Law and Security of the Republic of Indonesia stated firmly that, "... no war, but no negotiation. Because if it's negotiable, it means we admit it belongs together. This (deal) is internationally final." The critical interests of sovereignty and sovereign rights in marine regions of national jurisdiction should be included. Under UNCLOS (The United Nations Convention on the Law of the Sea) in 1982, has been arranged sovereignty and



sovereign rights of Indonesia in jurisdictions RI bordering other countries, including the sovereign rights (sovereign rights) for the purpose of exploration, exploitation, management, conservation natural resources, and protection of the citizen (Indonesian citizen) that the activity around the Republic of Indonesia (Republic of Indonesia) from the sea (the aspect of national security).

Brunei Darussalam does not claim any of the islands, however it does claim a portion of the South China Seas near it as part of its continental shelf and Exclusive Economic Zone (EEZ). Brunei established an EEZ around Louisa Reef in 1984. The location of 21 Louisa Reef is approximately 120 miles northwest of the Brunei shoreline and 408 miles from Vietnam. According to J. Ashley Roach of the Center of Naval Analysis (2015:20), it is a quadrilateral reef with sides around 1.2 miles long and a lot of rocks on its surface. Similarly, Malaysia makes its case in the South China Sea using the continental shelf, a 12-mile territorial sea, an exclusive economic zone (EEZ), and an expanded continental shelf.

Malaysia has been involved in the controversy since 1979, just before the United Nations Convention on the Law of the Sea went into force. Malaysia now owns three of the islands it deems to be part of its continental shelf, although it claims ownership of the whole group. Malaysia's claims are founded on the idea of the continental shelf and have well-defined coordinates. Meanwhile, the Philippine government's principal goal is to reclaim the Scarborough Shoal and the Kalayaan island group. Reed Bank, Mischief Reef, Itu Aba, Second Thomas Shoal, and Fiery Cross Reef are among the significant islands, shoals, and reefs in the Spratly Island chain that comprise the Kalayaan group of islands (Amry 2015:21).

4.3. Code of Conduct as Conflict Management in the South China Sea

Cooperation has been utilized as a tactic for dispute resolution in the South China Sea. Some of these collaborations remain mainly unrealized on a practical level. ASEAN has shown some unity in attaining this requirement. ASEAN members agree that China and Southeast Asia must avoid from acting unilaterally in each other's domains of



influence. For example, in a barely veiled reference to China, the 1995 ASEAN foreign ministers' statement on the South China Sea called for all parties to desist from destabilizing the area and for an early resolution of the challenges generated by the events Mischief Reef (Amry 2015:40).

ASEAN made it clear to China that the Chinese takeover of Mischief Reef in Southeast Asia's maritime hub was an unacceptable breach of the region's unspoken boundary. However, collaboration remains challenging due to conflicts between China, which prefers bilateral cooperation, and other claimant nations, which prefer multilateral cooperation or resolution. Other claimants are concerned that China would reap more benefits if collaboration with China is done directly (Widian and Arimadona 2018:92).

Furthermore, ASEAN is also consistent in its support for adopting a Code of Conduct. In order to foster a peaceful environment for the resolution of sovereignty issues in the South China Sea, important coastal governments signed the "Declaration on the Conduct of Parties in the South China Sea" in 2002 (Junfeng n.d.). The signatories essentially agreed to settle their differences peacefully and to exercise self-control in the conduct of activities that would complicate or escalate disputes and jeopardize peace and stability (Chang 2020). As a political declaration, it establishes specific broad rules to preclude unilateral behavior by States during the resolution of issues, and it advocates for the eventual establishment of a code of conduct in the South China Sea. However, because a legally obligatory Code of Conduct is still lacking, the non-binding code does not operate successfully in practice.

The ASEAN strategy to resolve possible issues in the South China Sea suggests that Southeast Asian governments attempted to include a code of behavior with China that provides for multilateral agreements on sovereignty disputes, let alone multilateral cooperative development arrangements. Individual member-states may have different ideas on what such a code should contain. Because of Malaysian opposition, ASEAN, for example, refrains from adopting prohibitive restrictions against building activities on occupied features. Similarly, ASEAN does not advocate settlement mechanisms due to internal debate on the subject. Given such differences among ASEAN governments



claiming features in the South China Sea, ASEAN's standards for a Code of Conduct are conservative. They concentrate on constraints on violence, such as non-use of force and talks amongst defense officials and the application of South China Sea-related international legal standards.

Claimant nations should agree on the concepts required for equitable tension management. They must then seek, and probably obtain, support for the principles of larger governments in power with a shared purpose of guaranteeing justice and stability. This will improve their possibility of gaining a more effective CoC and offer them additional protection when this CoC still has limits (Law 2015). This is also in line with the ASEAN member countries' initial thinking that ASEAN should have "one voice" in facing China in the South China Sea. If ASEAN members do not share the same attitude, China will likely dominate the multilateral forum (Haryanto and Bainus 2017:90).

However, these non-cooperative efforts in hotly disputed areas have only fueled the fires of controversy in the South China Sea. As a countermeasure, claimants began to utilize government vessels to disrupt other parties' oil exploration efforts in disputed regions. According to a recent report, two Chinese maritime surveillance vessels cut the exploration cables of a Vietnamese oil survey ship searching for oil and gas deposits in the South China Sea, which China described as "completely normal marine enforcement and surveillance activities in China's jurisdictional area." This 'disorderly resource development' condition not only raises the likelihood of military confrontations in this area, but it also threatens the SCS's delicate environment. Pollution from oil drilling activities and other mineral extraction projects would likely spread swiftly throughout the whole marine space if coastal States do not cooperate. If this were to occur, the SCS's environment would deteriorate over time, and the SCS's life supplies would be exhausted.

ASEAN and China should work more to enhance the principles of a law-based order in the South China Sea, particularly the 1982 UN Convention on the Law of the Sea. Both China and ASEAN believe that the UN Convention on the Law of the Sea (UNCLOS) provides the foundation for establishing a legal order in the South China Sea. China



stated that it was "very crucial to safeguard the principles and purposes of the UN Convention on Biological Diversity." ASEAN demands "complete regard for generally acknowledged norms of international law, particularly the 1982 UN Convention on the Law of the Sea" (Principle 4 of ASEAN's Six Principles on the South China Sea) (Nugroho and Hikam 2020:7).

However, various discrepancies emerged during the process of interpreting, developing, and applying UNCLOS, resulting in a number of cases of misunderstanding between the disputing parties. One example is China's claim to historical rights over the South China Sea which is sheltered under the nine-dash line rule unilaterally made by China. Even though China has signed the UN Convention on the Law of the Sea, China maintains that its claim over the disputed area is still remains.

According to Junef (2020:9), ASEAN and China should implement the three actions outlined as follows to ensure peace and stability. First, ASEAN and China must build their mutual trust. To overcome and cope with the issue, both parties in dispute need to build their confidence. This is in line with the basic perception of confidence-building measure (CBM) as a conflict resolution to minimize the trust deficit among parties (Perwita 2022). Second, ASEAN and China should work more to enhance the principles of a law-based order in the South China Sea, particularly the 1982 UN Convention on the Law of the Sea. Third, China and ASEAN must cooperate promptly to develop a legally enforceable code of conduct in the South China Sea (Nugroho and Hikam 2020:7).

International law is ineffective in changing the conduct of superpowers. There is a reason why the system has long been seen as laws for lesser states only; superpowers such as China, the United States, Russia, or the United Kingdom would never be able to observe the rules if they worked against their national interests. After watching the tribunal's decision's limited influence on China, it is clear that future legal proceedings from Vietnam or any other claimant will accomplish no more practical consequence (Tong 2016).

Finally, China and the claimants are locked in a self-perpetuating circle. The more significant state will continue to act as it pleases, and the lesser states may only suffer as



much as they must. As a regional hegemon, China will continue to be aggressive, and the other claims, no matter how little, will never give up their territorial integrity. This is a chaotic asymmetric relationship since the major state (China) does not respect the autonomy of the smaller states, and the smaller nations (the other claimants) appear to be aggressors against the larger's leadership.

The discussions on a South China Sea code of conduct were designed to demonstrate to China the worth of the "ASEAN Way" and create more consensus throughout Southeast Asia. However, reality has fallen short of aspirations. China has continued to harass Malaysian and Vietnamese fishing and energy research vessels, essentially barring the Philippines' access to Scarborough Shoal, and has even begun to creep into Indonesia's Natuna Island exclusive economic zone (Chang 2020). Meanwhile, the lack of collaboration within Southeast Asia may have strengthened China's long-held tendency to deal with the other claimants individually rather than through a multilateral body. Certainly, ASEAN has not brought China any closer to its point of view. Considering the weakness of non-binding international law, therefore, a bilateral approach is needed for each country to increase its positive bargaining with China to demand it to withdraw from the claims it has made over the South China Sea.

5. Conclusion

ASEAN and China should work harder to enhance the principles of a law-based order in the South China Sea, in accordance with the legal framework established by the 1982 UN Convention on the Law of the Sea. Both China and ASEAN believe that the UN Convention on the Law of the Sea (UNCLOS) provides the foundation for establishing a legal order in the South China Sea. China stated that it was "very crucial to safeguard the principles and purposes of the UN Convention on Biological Diversity." ASEAN demands "complete regard for generally acknowledged norms of international law, particularly the 1982 UN Convention on the Law of the Sea".



However, there are numerous significant disparities in the process of interpreting, implementing, and applying UNCLOS which has resulted in a number of episodes of misunderstanding between the disputing parties. One example is China's claim to "historical rights" over the South China Sea. Even if China signs the UN Convention on the Law of the Sea, China maintains that these "historical rights" exist. Meanwhile, Article 14 of the Exclusive Economic Zone and Continental Shelf Act (26 June 1998) declares that this regulation will not impact the People's Republic of China's historical rights.

In the meantime, Code of Conduct remains the best solution for the disputing parties to obey in managing the conflict in the South China Sea in the ASEAN way. However, to overcome the obstacles that occur in the middle of its implementation, further handling is needed to maintain the stability in the region and build confidence among disputing parties. This is due to the nature of the Code of Conduct which is not legally binding, so China does not want to enforce it. And for the alternative solution, since settlement at the multilateral level seems rather ineffective, bilateral negotiations among claimant states and China need to be taken into account. This is because each country has different specific bargaining position towards China, so that the consideration offered on the negotiation table (or maybe water surface) would be different.

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