

ASEAN'S INITIATIVES IN THE SOUTH CHINA SEA DISPUTE: QUEST FOR PEACE AND STABILITY IN THE INDO-PACIFIC REGION

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Abstract

The South China Sea (SCS) has emerged as a major flashpoint in the last two decades. Some Chinese specialists have confirmed that the South China Sea (SCS) may possess approximately 130 billion barrels of oil and natural gas and also dubbed as the 'Asia's Persian Gulf.' Therefore, the dispute in the SCS is accentuated by an abundance of natural resources, and its strategic importance of the Spratly and Paracel islands has again caused conflicts in the South China Sea. Thus, the persistent competition over the maritime rights, especially claims to territorial sovereignty over islands, reefs and natural resources in the South China Sea has emerged as the 'new central theatre of conflict' in the world. Therefore, there is no peace and prosperity in the Indo-Pacific region for more than two decades. But, it is also apparent that all the members of ASEAN have a deep interest in keeping peace and prosperity in the South China Sea. Therefore, ASEAN has started involving itself in the issue since the adoption of the 1992 ASEAN Declaration on the South China Sea which was called for the peaceful resolution of the South China Sea dispute. Again in 2002, ASEAN and China had signed Joint Declaration on the Conduct of Parties (DOC) to resolve the South China Sea disputes by peaceful means. Since then, ASEAN as a forum has been trying to resolve and manage the South China Sea dispute by initialising and supporting many frameworks or mechanisms (Track I and Track II) despite many differences among the member states about the issue. Thus, to analyse ASEAN's initiatives to the SCS dispute through various mechanisms and approaches for bringing peace and

prosperity in the Indo-Pacific region are the main concerns of my article along with its weaknesses and challenges it faces.

Keywords: ASEAN, ASEAN Declaration, ASEAN Declaration on the Conduct of Parties (DOC), Code of Conduct (COC), Track I, Track II as Workshops on the South China Sea

Introduction

The South China Sea (SCS) has been regarded as a major source of tension and instability in the Indo-Pacific region. According to Kivimaki (2002), "This area is often portrayed as a theatre of military tension and dangerous conflict potential" (Kivimaki, 2002, p. 1). The dispute in the South China Sea (SCS) is complex because it involves environmental values, economic security, and political developments, and so cannot be reduced to traditional military security alone (Kivimaki, 2002, p. 1). Some acknowledged this issue as highly influenced and motivated by its strategic importance and economic value. "Coral lime, high silicate sands, gem quality coral and natural pearls, and such food delicacies as bird nests and sea slugs are some of the more prominent resources" (Samuels, 1982, p. 3). Apart from these natural resource attractions, there remains at least one other major geographical incentive to the acquisition of the islands and control of their waters. Almost all of the principal shipping and air traffic lanes pass through the South China Sea. And therefore, the occupation of islands in the South China Sea infers direct or indirect control over most transits from the Strait of Malacca to Japan, from Singapore to Hong Kong, and from Canton to Manila (Samuels, 1982, p. 4). That is why it is of immense value from the military point of view as well (De Souza, 2010, p. 22).

It is believed that the South China Sea functions as the 'throat' of the Western Pacific and Indian oceans, the mass of economic tissue where global sea routes come together. More than half of the world's annual merchant fleet tonnage passes through these choke points, and a third of all maritime traffic worldwide (Kaplan, 2014, p. 9). Almost two-thirds of South Korea's energy supplies, nearly 60 percent of Japan's and Taiwan's energy supplies, and 80 percent of China's crude oil imports come through the South China Sea (Kaplan, 2014, pp. 9-10). In addition to the centrality of economic value, the issue refers to competing for territorial and jurisdictional claims over four groups of islands, reefs, and atolls, along with the surrounding waters, lying strategically between China and Southeast Asia. This dispute which focuses specifically on Pratas Reef, Macclesfield Bank, the Paracels, and the Spratlys,

existed prior to World War II when claims were made by China and the two colonial powers like Japan and France. Although, just after the war, France had withdrawn from the region and Japan renounced its claims in the San Francisco Peace Treaty, without specifying to which country or countries they were being relinquished, therefore triggering subsequent competition among littoral states, with rival claims pursued by mainland China (PRC), Taiwan, and four Southeast Asian states (Baviera, 2005, p. 1). Thus, the failure of Japan to identify one or another inheriting authority has left the legal status of the islands almost totally unresolved. This has created a legal and political vacuum and in turn, makes a condition of all claims to the islands, and also reflects the larger contest for power in post-war Asia (Samuels, 1982, p. 69).

It is also believed that the issue is a dispute over sovereignty rights to natural resources over ocean areas, which has proven oil reserves of seven billion barrels, and an estimated 900 trillion cubic feet of natural gas. Some Chinese observers have called the South China Sea 'the second Persian Gulf' (Kaplan, 2014, p. 10). Therefore, the dispute in the South China Sea is driven and accentuated by an abundance of natural resources, particularly oil and natural gas in this area (Thearith, 2009, p. 60). The strategic importance and positions of the Spratly and Paracel islands have again caused conflicts in the South China Sea which are linked to sea-lane defence, trade, and surveillance. Also, the Spratly archipelago is a vital route for oil imports and trade of Japan, China, and Korea. Therefore, the persistent competition over the maritime rights, especially claims to territorial sovereignty over islands, reefs and natural resources in the South China Sea has emerged as the 'new central theatre of conflict' in the world (Fravel, 2012, p. 33). Brendan Taylor (2014) has said that "Southeast Asia's top diplomat, Surin Pitsuwan, has dubbed the disputes 'Asia's Palestine,' while former Australian Prime Minister and China savant Kevin Rudd refers to the South China Sea as a 'tinderbox on water' and a maritime Balkans of the 21st century" (Taylor, 2014, p. 99).

The geographical nature of the features of South China Sea constitutes and complicates the already complex jurisdictional and sovereignty claims made to the South China Sea maritime space. As a result, the actual problems of such disputes are multi-dimensional. However, the sovereignty and nationalistic concerns lie at the heart of the South China Sea dispute (Schofield, 2007, p. 3). On the other side, Bruce Allen Elleman gave an opinion that the South China Sea Islands are generally of minimal intrinsic value. But, strategically and politically, they are very important for the extensive maritime resource ownership and territorial space that they could potentially generate. Again it was so concerned with the growth of the People's Liberation Army

Navy (PLAN) and China's maritime strategies that seems determined to uphold its claims over the South China Sea even by force when necessary (Elleman, 2007, p. 4).

Therefore, the dispute in the South China Sea is driven by an abundance of natural resources, particularly oil and gas in this area as well as geopolitical considerations. Thus, the persistent competition over the maritime rights, especially claims to territorial sovereignty over islands, reefs and natural resources in the South China Sea has emerged as the 'new central theatre of conflict' in the world (Fravel, 2012, p. 33). That is why ASEAN as a regional organization has a deep interest in resolving and managing the conflicting issues in the Indo-Pacific region, most importantly the South China Sea issues. Thus, to analyse and highlight ASEAN's initiatives to the South China Sea dispute through various mechanisms and approaches are the main concerns of this article along with its weaknesses and challenges it faces.

ASEAN's Involvement and Initiatives

It is believed that ASEAN was not involved in the South China Sea dispute before the end of Cold War. There is no record of the ASEAN or of anyone else reacting in any way to one of the most crucial events in the modern history of the South China Sea, the China-South Vietnam clash in the Paracels in January 1974. Even, there is no any official record of ASEAN reaction to the bloody battle in the Spratlys, near Johnson Reef, between Chinese and Vietnamese forces in March 1988 (Severino, 2010, p. 39). But, after the end of Cold War and the sudden departures of two great powers (USSR and US) from the Southeast Asian region, many littoral countries started asserting their sovereign rights in the South China Sea. As for example, on 25 February 1992, the People's Republic of China adopted the 'Law on the Territorial Sea and the Contiguous Zone' to exercise its sovereignty over the territorial sea and its rights to exercise control over its contiguous zone, and to safeguard State security as well as its maritime rights and interests (Law on the Territorial Sea and the Contiguous Zone). But on 18 March 1995, ASEAN, for the first time, adopted a united stand by issuing a statement calling for all parties concerned to adhere to the letter and spirit of the Manila Declaration on the South China Sea (Ang, 1999, p. 16).

ASEAN gave priority to manage intramural tensions at sea since four (4) of its ten (10) members (Brunei, Malaysia, the Philippines, and Vietnam) are claimant states. However, China's capture of Mischief Reef from the Philippines in 1995 alerted ASEAN to the reality that China's growing power

and maritime ambitions would pose a far greater long-term threat to the ASEAN's unity and effectiveness in the absence of an accommodation that would satisfy all parties (Dupont, 2014, p. 51). Ever since ASEAN has started to involve in managing the South China Sea dispute despite having many differences among the member states. And unsurprisingly ASEAN chose to have a code of conduct for the South China Sea based on the principles codified in the Treaty of Amity (TAC) (Emmers, 2014, p. 63). Therefore, the ASEAN Foreign Ministers adopted the 'ASEAN Declaration on the South China Sea' in July 1992 (Severino, 2010, p. 41).

Thus, ASEAN has an enormous stake in the maintenance of peace and stability of the South China Sea, and with the increase in tensions, ASEAN has been engaging itself in managing the South China Sea dispute. So far ASEAN has adopted two very significant norm-setting documents governing the South China Sea; the ASEAN Declaration on the South China Sea in 1992 adopted in Manila by ASEAN member countries; and the Declaration on the Conduct of Parties in the South China Sea (DOC) between China and ASEAN in 2002 (Umezawa, 2012, p. 9). Again, over the past five years, ASEAN has issued more than twenty documents at various levels signifying the need to manage the dispute in the South China Sea, through various mechanisms like ASEAN-China Summit and also in ASEAN Regional Forum (ARF) meetings. Not only this, but the efforts of ASEAN have also brought about a set of guidelines for the implementation of the DOC in Bali July 2011 (Umezawa, 2012, p. 9).

In November 2012, on the sideline of the 10th Anniversary of the Declaration on the Conduct of Parties in the South China Sea (DOC), ASEAN made a joint statement with China that the DOC is a milestone document which embodies the collective commitment of ASEAN countries and China to promote peace, stability and mutual trust in the South China Sea (ASEAN-China Joint Statement, 2012). Again, at the 6th ASEAN-China Senior Official Meeting on the Implementation of the DOC and the 9th ASEAN-China Joint Working Group on the Implementation of the DOC which was held in Suzhou, China on 14-15 September 2013, the ASEAN and China held their first round of formal consultations on the Code of Conduct (COC) (ASEAN Summit, 2013). Recently, at the 10th ASEAN Defence Ministers' Meeting (ADMM) which was held on 25 May 2016, the Defence Ministers of ASEAN marked "the commitment of all parties to fully and effectively implement the Declaration on the Conduct of Parties in the South China Sea (DOC), ASEAN's Six-Point Principles on the South China Sea and the Joint Statement of the first ASEAN-China Summit on the 10th Anniversary of the DOC, and reiterating the importance of expeditiously working towards an early conclusion of the Code

of Conduct in the South China Sea (COC)” (ASEAN Defence Ministers’ Meeting, 2016).

Thus, since the 1990s, efforts to get opportunities for cooperation and to stabilize the situation have been made by regional countries in the South China Sea area. These efforts have resulted in the adoption of ASEAN Declaration on the South China Sea in 1992. This was the first notable outcome of ASEAN’s efforts to exhort for peace and restraint over the South China Sea. The Declaration is believed to be represented conflict management rather than conflict resolution, limiting friction rather than ending a dispute. Some ASEAN members such as the Philippines wanted this Declaration strong, but this was weaker than the expectations (Scott, 2012, p. 1026). Although, it encourages all claimant states to exercise restraint with the view of creating a strong environment for managing or resolving the South China Sea dispute. However, the tensions have often arisen, and claimants continued to protest each other’s moves in the South China Sea (Tran, 2011, p. 1). Therefore, ASEAN as a group though there are only four members of ASEAN has involved in the South China Sea dispute, taking its responsibility and decided to take up dispute settlement mechanisms like formal and informal for managing and resolving this dispute and also for maintaining regional peace and stability in the region.

ASEAN Declaration 1992

ASEAN, for the first time, adopted their common stance on the South China Sea dispute and signed the ASEAN Declaration on the South China Sea in 1992. The declaration was stipulated as ASEAN’s concerns over the tension between Vietnam and China after the latter licensed the Creston Energy Corporation (from the United States) to exploit oil in Vanguard Bank on Vietnam’s continental shelf and passed its Law on the Territorial Sea on 25 February 1992 pushing China’s absolute sovereignty over both the Paracels and the Spratly islands. Thus, ASEAN’s foreign ministers once recognized that ‘South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned’ and the fact that ‘any adverse developments in the South China Sea directly affect peace and stability in the region.’ This Declaration was called on the parties concerned to settle the dispute by peaceful means, exercise restraint and cooperate in applying the principles enshrined in the TAC as a basis for establishing a code of international conduct over the South China Sea. In addition, all parties concerned were invited to pledge to this Manila Declaration. This Manila Declaration emphasises ‘the necessity to resolve all sovereignty and

jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force, urging all parties concerned to exercise restraint, and commending to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea' (ASEAN Summit, 1992).

Again, the Declaration has committed the ministers to exploring the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs (Severino, 2010, p. 41). Even Vietnam, a non-ASEAN country at the time, strongly supported this Manila Declaration. Thus, the Declaration has raised hopes for the stability and peace in the region. However, the hopes were shattered when China gave its position on refusal to accept multilateral discussion of the issue and gave its view that the Paracels and Spratlys disputes did not concern ASEAN and again when the Philippines announced the discovery of a steel structure on Mischief Reef, with a Chinese flag and a parabolic antenna atop it in March 1995 (Severino, 2010, p. 42). Marvin Ott (2011) has stated that "Mischief Reef was significant, not as a military asset, but as a tangible demonstration of China's determination to project its power and presence into the South China Sea. The ultimate objective is to implement and enforce China's claim that the South China Sea is rightfully China's sovereign territory" (Ott, 2011, p. 4). This act of occupation has occurred just within a few years of the withdrawal by the United States of its armed forces from the Philippines (Collinson, & Roberts, 2013, p. 35). As a response to this Chinese action, ASEAN started focusing on diplomatic means. Therefore, on 18 March 1995, the ASEAN Foreign Ministers issued a statement saying that all parties to refrain from taking actions that destabilise the region and further threaten the peace and security of the South China Sea (ASEAN Foreign Ministers Meeting, 1995).

Subsequently, China, for the first time, agreed to bring the South China Sea issue into a multilateral dialogue at the second ASEAN Regional Forum (ARF) in Brunei in 1995 (Tuan, 2011, p. 3). Moreover, in July 1996, at the Joint Communiqué of the 29th ASEAN Ministerial Meeting (AMM), the Foreign Ministers stressed their concern over the South China Sea and also called for the peaceful resolution of the dispute and self-restraint by concerned parties through international law such as UNCLOS of 1982. Again, China approved the idea of concluding a regional 'code of conduct' in the South China Sea and further stressed the importance of freedom of navigation and aviation in the

South China Sea (ASEAN Ministerial Meeting, 1996). Thus the ASEAN's unity and solidarity over the South China Sea dispute has started since 1992. Further, the ASEAN members prepared a draft 'Code of Conduct' (COC) on the South China Sea dispute in their Summit Meeting held at Manila in November 1999, and also gave their consensus proposal to China for resolving the dispute. But unfortunately, in the initial year, China did not like this proposal and looked at the dispute at the one-on-one basis, rather than accepting itself to a multilateral arrangement where it could come under a unified barrage of criticism. Although, this binding code of conduct had been considered the primary goal, after almost five years of negotiations ASEAN and China eventually only reached a political document. On 4 November 2002 in Phnom-Penh, ASEAN and the People's Republic of China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). This DOC was signed as a step toward the adoption of a more binding COC which defines the rights and responsibility of the parties concerned to promote peace further, stability and development in the region (Tran, 2011, p. 3).

The Declaration on the Conduct of Parties in the South China Sea (DOC)

As we know that this Declaration, which was signed in 2002 after long negotiations, was the initial idea to formulate a code of conduct to prevent military confrontations over the disputed areas in the South China Sea. However, the drafting processes of this code of conduct was discussed and endorsed both in 'Track I' formal mechanisms, (such as ASEAN Summits, ASEAN Ministerial Meetings (AMM) and the ASEAN Regional Forum (ARF)) and 'Track II' meetings, which includes the Indonesian-sponsored informal Workshop on Managing Potential Conflicts in the South China Sea and the Council for the Security Cooperation in the Asia-Pacific (CSCAP) (Chin, 2003, pp. 55-56). But here comes five big differences between ASEAN and China. First, China has strongly insisted that the code should apply to the Spratly group of islands only; whereas, ASEAN wanted the code to be observed in and applied to both Spratly and Paracel groups of islands. China asserted that disputes relating to the Paracels should be resolved bilaterally, though ASEAN preferred a combination of bilateral and multilateral consultations on both groups of disputed islands. Second, this draft has included many injunctions against erecting structures on presently uninhabited islands, reefs, shoals, cays and other features in the disputed areas; but the Chinese version did not mention and supported these. Third, the Chinese version of this code has requested the parties concerned to refrain from use or threat of force or coercive measures, including seizure, detention or arrest of fishing vessels or

other civilian vessels in the disputed areas. But on the side of ASEAN version, it only proposed to ensure just and humane treatment of other nationals. Fourth, the ASEAN version asked the parties concerned to inform voluntarily other parties concerned of significant policies and measures that affect the disputed area; whereas the Chinese version does not mention this issue. And lastly, the Chinese version asked all parties involved refrain from conducting any military exercises directed against any parties concerned in the Spratlys and the adjacent waters and from conducting a closing in military reconnaissance. Again, the Chinese wanted to restrict all military patrol activities in and around the disputed areas whereas the ASEAN did not mention this (Chin, 2003, p. 57).

Even though, ever since the signing of DOC, many often believed and considered DOC as an important step towards the adoption of a code of conduct. Since then, ASEAN and China have been working together for a binding code of conduct. Subsequently, ASEAN and China have taken up another important step to ensure peace and stability in the South China Sea by setting up a 'joint working group.' On 7 December 2004, a senior officials meeting of ASEAN and China was held and adopted terms of reference of the joint working group (ASEAN-China Senior Officials Meeting, 2004a). The main objectives of ASEAN-China Joint Working Group (JWG) are: to study and recommend measures to translate the provisions of the DOC into concrete cooperative activities to enhance mutual understanding and trust; to formulate recommendations such as: guidelines and the action plan for the implementation of the DOC and the specific cooperative activities in the South China Sea, particularly in these areas like marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation, and combating transnational crime (Terms of Reference of the ASEAN-China Joint Working Group) (ASEAN-China Senior Officials Meeting, 2004b). Furthermore, this Joint Working Group has brought new guidelines for the implementation of DOC in the South China Sea which were signed by ASEAN and China in 2011 (Guidelines for the Implementation of the DOC 2011). But, the guidelines were mostly perceived as imprecise and therefore rather unsupportive with regard to the implementation of the DOC. However, on 14-15 September 2013, the officials of ASEAN and China were met in Suzhou, China to start a discussion on rules of behaviour in a code of conduct. But, the parties involved failed to even start the negotiations for the COC, as China strongly maintained and declared that the time was not yet ripe to do so (Storey, 2013, p. 2). China insisted that the Guidelines of DOC should be implemented first. China again stated that it would discuss the COC with

ASEAN at an 'appropriate timing' or when 'appropriate conditions' were met (Thayer, 2013, p. 5).

Meanwhile, despite China's strong objections, the Philippines government drafted a preliminary COC and also circulated it among the ASEAN members. Although, the negotiations within ASEAN were hindered by the non-claimant members and a continued variance of perceptions concerning the potential threat of Beijing's rising power. China, in the meantime, adopted a new position and requested a seat at ASEAN's intramural negotiations over the COC during the twentieth ASEAN Summit (Phnom Penh, 3-4 April 2012). Cambodia, as a Chair of ASEAN at that time, supported China's request but the Philippines and Vietnam had strongly objected. A later compromise was reached whereby the ASEAN members would alone draft the COC, but Cambodia would regularly update Beijing about the negotiations (Collinson & Roberts, 2013, p. 37). Thus, the drafting of COC had continued through intra-ASEAN deliberations at the Working Group, followed by a Senior Official Meeting (June 2012), which also brought the redrafting of the key principles for a COC. Then, at the 45th ASEAN Ministerial Meeting (AMM) on 9 July 2012, a new draft was submitted (Collinson & Roberts, 2013, pp. 37-38). Again, on 20 July 2012, the ASEAN Foreign Ministers issued the 'ASEAN's Six-Point Principles on the South China Sea.' However, many analysts pointed out that the six-point plan did not introduce anything new, and at best it may serve to shelve the dispute temporarily. For example, the limitations of this diplomacy were evident when the ASEAN members declined a request by the Philippines to renegotiate a unified position regarding the South China Sea at the November 2012 ASEAN Summit. Consequently, the Philippines has returned to unilateral diplomacy and sought recourse to international arbitration through the UN's International Tribunal on the Law of the Sea (ITLOS) (Collinson & Roberts, 2013, p. 38).

Furthermore, November 2012, the tenth anniversary of the signing of the DOC, was regarded as a provisional deadline for the completion of a code of conduct for the South China Sea. ASEAN uses strategy to have the issue discussed multilaterally involving the whole claimants of the islands whereas China wants to have separate meetings based on the state to state basis. However, some tentative progress was finally made in 2013. In April of that year, Beijing proposed to organize a special meeting involving the foreign ministers from the ASEAN countries and China to hasten progress on the COC. Moreover, at the 8th meeting of the Joint Working Group for Implementation of the DOC, held in Bangkok in May 2013, China and the

ASEAN countries agreed to implement the declaration and promote the 2011 Guidelines. Perhaps most significantly, Beijing and the ASEAN states agreed, in July 2013 in Brunei, to start formal consultations on a COC in September of that year. At a High-Level Forum held in Bangkok on 2 August 2013, Chinese Foreign Minister Wang Yi called for dialogue and the joint development of resources in the South China Sea. The need to prevent a further escalation of the sovereignty disputes in the South China Sea was expressed again at the Special ASEAN-China Foreign Ministers' Meeting in Beijing and the second ADMM-Plus meeting in Brunei, both held in August 2013 (Thayer, 2013, pp. 2-4). The first consultations on a COC were eventually held at the 9th ASEAN-China Joint Working Group Meeting on the Implementation of the DOC, held in Suzhou in September 2013. Chinese Premier Li Keqiang called for peace and cooperation in the South China Sea at the ASEAN-China Summit held in Brunei in October 2013 (Han Shou, *Global Times*, October 10, 2013). The signing of a legally binding code of conduct would certainly help in building trust and confidence among the claimants and in setting up a conflict management mechanism to lower the risk of conflict in the South China Sea (Emmers, 2014, pp. 65-66).

Managing the Dispute through Track I Mechanisms

The negotiations through Track I mechanisms over the South China Sea dispute are multilateral confidence-building measures which have been opposed by China and insisted other claimants be conducted bilaterally. Although, China's interest in multilateralism increases when it identifies potentially threatening changes in its regional environment, because it hopes that a reputation for self-restraint and a good neighbourly behaviour can hedge against an anti-China coalition (Hung, 2006, p. 13). That is why China is giving the willingness to conduct multilateral negotiations with ASEAN over the South China Sea dispute. Therefore, the multilateral negotiations are conducted under these Track I mechanisms like, ASEAN summits, ASEAN ministerial meeting (AMM) and the ASEAN-China Dialogue.

ASEAN Ministerial Meeting (AMM)

ASEAN Ministerial Meeting (AMM) was established in 1967 and meet annually. For the first time on the side-lines of the 25th ASEAN Ministerial Meeting and Post-Ministerial Meeting in Manila 1992, ASEAN brought out a Joint Declaration which was exclusively based on the ASEAN principle of TAC, where non-intervention remains the core basis, in spite of many differences among the claimants, and this was mainly based on regional

cohesion and multilateralism (Chakraborti & Chakraborty, 2011, p. 226). But, China's response to the Declaration was ambiguous. Foreign Minister Qian Qichen who attended the meeting once agreed that a peaceful settlement of the dispute was required and appended a separate Chinese attachment stating that negotiations for joint development may begin 'when the conditions are ripe' but it was never specified when conditions would be ripe (Buszynski, 2003, p. 350). Moreover, with the incident of 1995 Mischief Reef, all the Manila Declaration principles were violated, which got a chance to ASEAN members to have signed the Declaration and got an opportunity to prepare a draft 'Code of Conduct' (COC) on the South China Sea disputes. But, the idea of COC was first endorsed at the 29th ASEAN Ministerial Meeting (Jakarta, 21-27 July 1996) in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned (Tran, 2011, p. 3).

Then, after the negotiation of few years, on 4 November 2002 at Phnom Penh, at the 8th ASEAN Summit, ASEAN and the People's Republic of China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) which became a step toward the adoption of a more binding COC which also defines the rights and responsibility of the parties concerned to further promote peace, stability and development in the region. This was the first political document jointly issued by the People Republic of China and ASEAN. Furthermore, to consolidate the effort made by ASEAN and the People Republic of China the 'Terms of reference of the ASEAN-China Joint Working Group on the South China Sea' was adopted at a meeting of Senior Officials from ASEAN and the PRC in 2004 and in 2005 a significant development took place when the national oil companies of China, Philippines, and Vietnam agreed to undertake joint seismic surveys to determine the existence of hydrocarbon resources in the dispute areas (Floristella, 2010, p. 17). At the 45th AMM which was held on 9 July 2012, a new draft on the principles for a COC was also submitted. At the same meeting, as a result of consultation among the ASEAN Foreign Ministers, the ASEAN Foreign Ministers announced 'ASEAN's Six-Point Principles on the South China Sea' (ASEAN Foreign Ministers' Meeting, 2012).

ASEAN-China Dialogue

The Association of Southeast Asian Nations (ASEAN)-China Dialogue was created in 1994 which marked the first time in history that China consented to multilateral negotiations. Although, since the time of military clashes in the South China Sea that had happened in 1974, 1988, and in 1995, China entering

into multilateral talks with other claimant states in the ASEAN as an organisation (Hutchison 2004, p. 2). With the occupation of the Mischief Reef in 1995, the apparent development of cooperation in the area was worsened. As a result, on the 29th AMM, 20-21 July 1996, the ASEAN Foreign Ministers Joint Communiqué which stressed the idea of concluding a regional code of conduct in the South China Sea to lay the foundation for long-term stability in the area and to foster understanding among claimant countries. Then, after one year ASEAN and China signed a Joint Statement known as the 'ASEAN China cooperation towards the 21st Century' where the parties agreed to solve the dispute through friendly negotiations and consultations in accordance with the principles of international law and the 1982 Convention of the Law of the Sea.

Furthermore, in 2004, the Senior Officials from ASEAN and the PRC had adopted the 'Terms of reference of the ASEAN-China Joint Working Group on the South China Sea' (JWG) to consolidate the effort made by ASEAN and the People Republic of China (Floristella, 2010, p. 17). This ASEAN-China JWG is tasked to formulate recommendations on

- a) guidelines and action plan for the implementation of the DOC;
- b) specific cooperative activities in the South China Sea;
- c) a register of experts and eminent persons who may provide technical inputs, non-binding and professional views or policy recommendations to the ASEAN-China JWG; and
- d) the convening of workshops, as the need arises (Tran, 2011, p. 6).

At the first meeting of the ASEAN-China JWG in Manila on 4-5 August 2005, ASEAN presented a draft of Guidelines for the implementation of DOC for discussion. However, there are main differences about the point 2 of the Guidelines for the implementation of DOC. ASEAN wants to deal with China as a group and to 'consult among themselves' before meeting with China, while China prefers consultations with 'relevant parties,' not with ASEAN as a bloc (Tran, 2011, p. 6). This issue is still not been solved.

Again, at the 43rd ASEAN Foreign Ministers Meeting (AMM) in Hanoi on 19-20 July 2010, ASEAN Ministers stressed the importance of maintaining peace and stability in the South China Sea, reaffirmed the importance of the DOC, to ensure the effective implementation of the Declaration, and looked forward to the Regional Code of Conduct in the South China Sea (COC). Therefore, ASEAN Ministers also tasked ASEAN Senior Officials to work closely with the Chinese counterparts to reconvene the ASEAN-China SOM on the DOC at 'the earliest opportunity.' As a result, at the ASEAN-China Foreign

Ministers Meeting, China's Foreign Minister Yang Jiechi strongly agreed to implement the DOC, but declared that an ASEAN-China SOM meeting on DOC would be held in an 'appropriate time' (Tran, 2011, p. 15). Later, the Chinese Foreign Minister Yang Jiechi once said and insisted that the South China Sea issues should not be internationalized should not be viewed as between China on side and ASEAN on the other, and the disputes should be handled on a bilateral, not multilateral, basis (Tran, 2011, p. 16). Furthermore, at the 44th ASEAN Ministerial Meeting (AMM) and the ASEAN Post-Ministerial Conference (PMC) Plus 1 Session with China, the Meeting welcomed the progress of the implementation of the DOC and formally endorsed the Guidelines on the Implementation of the DOC as agreed upon and recommended by the ASEAN-China Senior Officials' Meeting on the DOC on 20 July 2011 in Bali, Indonesia (ASEAN Foreign Ministers' Meeting, 2011).

ASEAN Challenges or Weaknesses in Resolving or Managing the SCS Dispute

Since all ASEAN countries are not equally involved in the SCS dispute and consequently have no equal stakes. As a result, there is not one ASEAN approach to the dispute. In fact, despite having the mechanisms for negotiation, ASEAN countries pursue its policy, particularly vis-a-vis China that claims practically the whole of SCS. Some argue that the ASEAN countries are in fact divided over their approach towards China, as well as over the way to diffuse tension in the region.

Liselotte Odgaard (2003) has once stated that the South China Sea as a source of internal disagreement within ASEAN. As, with regard to a code of conduct, Malaysia has pointed out that the code could only be a guideline, not a treaty under international law. Moreover, the bilateral negotiations between China and Malaysia have fuelled speculations that Malaysia is seeking a modus vivendi with China, sidestepping ASEAN initiatives to establish a multilateral agreement. On the other side, Indonesia, a non-claimant state in the SCS, is ardently advocating the international law as the basis for dialogue and agreements on the South China Sea. Indonesia prefers a code of conduct with the status of a treaty. Further, claimant states Vietnam and the Philippines have serious concerns about China's intentions. Both the countries are not interested to negotiate bilateral settlements with China in areas of multilateral dispute since they are not confident that China will take into account their interests.

Therefore, the Philippines initially asserted that the Spratly dispute is resolved by the International Tribunal for the Law of the Sea or the International Court of Justice, although the other claimant states are not interested in accepting this method. Interestingly, the two ASEAN countries Singapore and Thailand, which are not involved in maritime disputes with China enjoy cautious, but friendly, relations with the regional power. Both the countries supported the South China Sea multilateral dialogue to secure regional peace and stability. They are in favour of a code of conduct because these multilateral rules are necessary to prevent the use of force in the disputed area. Even Myanmar, Laos, and Cambodia are not involved in the South China Sea issue, and they have no issue with China. That is why Myanmar, Laos, and Cambodia mainly have indirect interests in keeping peace in the area. Consequently, they are inclined to follow the official ASEAN policy line and rarely voice an independent opinion on the matter (Odgaard, 2003, pp. 14-18).

In fact, each member country looks at China from the point of view of their national interests whether it perceives China as a threat or as a source of economic benefit. As a result, ASEAN's position on political and strategic issue vis-a-vis China is rather weak. Secondly, China understands ASEAN countries' differences over itself and takes full advantage of it to drive a further wedge in their ranks. As the divergence between the Philippines and Malaysia over a proposed code of conduct for its members and China covering a host of issues ranging from search and rescue to joint exploration in the South China Sea. Finally, since ASEAN countries are not united in their stand on China, all of them, individually and collectively, in effect have gone out of their way to pursue a policy of accommodation of Chinese interests on the issue (Ghoshal, 2011, p. 207).

Indonesia, a non-claimant state, is very much concerned about China's advance into the South China Sea which prevails not to go for bilateral negotiations between China and Indonesia. Also, the US military presence in the region is considered a necessary evil though Indonesia is suspicious of Great Power's initiatives for cooperation. Although, since 1990, Indonesia has provided to host the annual coordination meetings of the Workshops on Managing Potential Conflicts in the South China Sea, the brainchild of Hasjim Djalal of the Indonesian Foreign Ministry and Ian Townsend-Gault of the University of British Columbia. This is an informal dialogue which is based on international law. However, Indonesia prefers to go on the basis of history for maintaining peace and stability in the South China Sea region (Odgaard, 2003, pp. 15-16). Moreover, Sino-Singaporean relations are strengthened by close

cultural and economic links and in some other issues such as press freedom, democracy, and human rights. And China's proximity to Thailand, mutual economic interests and common security concerns about Vietnam's occupation of Cambodia in 1978 have strengthened Sino-Thai relations since the establishment of diplomatic relations in 1975. Thus, Singapore's and Thailand's relations with China prompted them to sideline the seriousness of China's occupation of Mischief Reef in 1995. Even, Myanmar participates in the formal negotiations on a code of conduct on account of its ASEAN membership, though it has no interests in the South China Sea. Laos and Cambodia take a back-seat position on the issues of dialogue and a code of conduct, although they do have rights to ocean resources (Odgaard, 2003, pp. 17-19). Thus, the South China Sea becomes a source of disunity and differences among the ASEAN countries. Therefore, there is lack of one common approach of ASEAN countries to solve the SCS dispute.

Furthermore, the condition of South China Sea has become more complicated because there is no formal mechanism to resolve these problems. However, neither ASEAN nor the ARF, neither ASEAN-China Dialogue nor Workshops on the South China Sea, is able to solve these disputes. Although, a good but lone achievement till date was the signing of a Declaration on a Code of Conduct by ASEAN and China, many claimant states in the South China Sea (DOC), on 4 November 2002 during the 8th ASEAN Summit in Phnom Penh. It consists of three main parts, including fundamental principles for interstate relations and dispute management, confidence-building measures, and cooperation between the parties. Although, it has failed to settle the South China Sea dispute among claimant states.

In fact, Ramses Amer (2014, p. 2) has stated that

The intra-ASEAN dimension demonstrates that in order to formulate an ASEAN policy toward the South China Sea, the views and interests of the member states with claims in the South China Sea have to be reconciled, that is, not only the four claimants to all or parts of the Spratly archipelago-Brunei Darussalam, Malaysia, the Philippines, and Vietnam-but also Indonesia which claims maritime zones in the South China Sea. In addition, the views and interests of the five member states with no claims in the South China Sea have to be taken into consideration.

Another relevant dimension of the intra-ASEAN process relates to how the member states perceive China and its policies and actions. This was of particular relevance in the 1990s, when tensions relating to the South China Sea between Vietnam and China and between the Philippines and China, respectively, caused considerable concern in the region. At the same time, Cambodia and Thailand had good and close relations (and no border disputes) with China. Different perceptions of and relations with China within the Association complicate the process of formulating a clear-cut ASEAN policy toward China on the South China Sea. Moreover, recent developments have again displayed how bilateral tensions with China relating to the South China Sea situation- in particular between the Philippines and China-can lead to public differences between member states of ASEAN, namely, Cambodia and the Philippines in 2012, which had ramifications on ASEAN cohesion.

Therefore, ASEAN has to play a significant role and also to know how to respond during the time of tensions between its member states and China.

Conclusion

Despite having many challenges and weaknesses of ASEAN in resolving or managing the SCS dispute, ASEAN as a forum, still engages to many formal mechanisms which help in reducing tensions to a little extent and does activities such as dialogues and exchange of views, rendering of assistance, voluntary notification of military exercises and voluntary exchange of relevant information and also encourages the claimant states to explore and pursue cooperation in the areas of marine environment protection, marine scientific research, safety of navigation and communication at sea, search and rescue and prevention of crime at sea. In addition to this, ASEAN is trying to bring China into a multilateral dialogue process over the South China Sea issue. Moreover, ASEAN is a balancer of extremes by setting up norms and policies in the SCS. Again, ASEAN is a convener of the multilateral approach over the issue (Personal Interview with Li Mingjiang, 19 July 2016). On the other hand, ASEAN has been criticised over its inability to speak in one common voice over the South China Sea dispute. Some have even believed that the ASEAN capitulated to Chinese pressure over the arbitral tribunal ruling, but some see that the ASEAN has the right to engage in its balancing act vis-à-vis China. But this also shows the flexibility, neutrality, and respect of differences of ideas and perceptions over the

issue. Subsequently, this flexibility and respecting other's interests and perceptions make the ASEAN a success and as having more credibility over the issue.

Therefore, since the adoption of Declaration on the South China Sea in 1992, ASEAN has been taking a keen interest in resolving or managing the dispute and keeping peace and stability in the region. Not only this, with the well-established experiences and practices of ASEAN in consultation and consensus that has been enhanced by the regular exchanges of high-level visits and high-level formal meetings among ASEAN members and claimant states, it effectively developed into a preventive diplomacy and emphasises to develop trust and confidence among claimant states. But, still, a long way to go to resolve the SCS dispute because no country is willing to compromise on their sovereign territorial claims. Moreover, there are many differences among the claimant states over the issue. However, we can hope for some brightness because ASEAN is continuing its diplomatic endeavours to resolve or managing the differences through dialogue and confidence-building measures.

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