

DISPUTES IN THE SOUTH CHINA SEA AND THE ROLE OF CHINA AND ASEAN IN CONFLICT RESOLUTION

MUHAMMAD AIMAN NASUHA AZARI¹, SUSEELA DEVI CHANDRAN AND FARHATUL MUSTAMIRRAH MAHAMAD AZIZ

Faculty of Administrative Science and Policy Studies, Shah Alam Campus, UiTM Selangor, Malaysia.

*Corresponding author: aimnasuha@gmail.com

Submitted final draft: 25 March 2023

Accepted: 21 May 2023

<http://doi.org/10.46754/jbsd.2023.03.004>

Abstract: In recent years, the South China Sea (SCS) has become the source of tension between China and members of the Association of Southeast Asia Nations (ASEAN). SCS is a marginal sea of the Western Pacific Ocean with huge economic and strategic importance, besides an abundance of natural resources. The Sea and its islands are surrounded by many countries with overlapping claims of maritime boundaries. Besides China, other claimants include Vietnam, Malaysia, Taiwan, the Philippines, and Brunei. China's claim is based on a "9 dash line" that covers a large part of the sea, spanning from the southern part of the country to the waters off Sabah and Sarawak in Borneo. Lately, the Beijing government has become more assertive by occupying various islands in the Sea, building military installations and conducting patrols. Many high-risk incidents have occurred between Chinese patrol vessels and ships of other nations, especially the United States Navy as it tries to maintain freedom of navigation. Therefore, the purpose of this article is to examine the maritime disputes between China and ASEAN countries in SCS. It also discusses the role that China and ASEAN can play in resolving conflicts. Based on an analysis of SCS disputes and current state affairs, this article proposes that both China and ASEAN must uphold peaceful principles in resolving their differences.

Keywords: China, Association of Southeast Asia Nations (ASEAN), South China Sea (SCS), disputes, territorial claims.

Abbreviations: Association of Southeast Asia Nations (ASEAN), South China Sea (the Sea), United Nations Convention on the Law of the Sea (UNCLOS), Communist Party of China (CPC), Exclusive Economic Zone (EEZ), United Nations (UN) the United States of America (US), Treaty of Amity and Cooperation in Southeast Asia (TAC), Declaration on the Conduct of Parties in the South China Sea (DoC), Code of Conduct (CoC). Freedom of Navigation Operations" (FONOPS).

Introduction

The South China Sea (henceforth known as SCS or the Sea) has consistently become a hot topic because of the conflicts and high-risk incidents that occur between countries in the region. The Sea hosts many international shipping lanes that are vital lifelines of global trade, besides being rich with natural resources, like oil and gas and fisheries (Setiyatwan, Legowo, & Wahyudi, 2022). Therefore, control over the sea and its resources will allow a country to enjoy significant advantage in diplomacy and economic prosperity.

The continuous disputes among claimant countries, such as China and ASEAN members (Vietnam, Malaysia, the Philippines, and Brunei) clearly shows that the initiative for near-term solutions is still far away. At the same time, the rise of China has created numerous reactions (Pu & Myers, 2021). In this context, China's aggressive handling of disputes in the Sea have led to a negative reaction by the West, especially the United States, which maintains that all ships should be free to navigate the Sea without being harassed by any country. According to Prosekov (2018), the rise of Chinese President Xi Jinping

has cast aside Beijing's policy of "*staying in the shadows without attracting attention*", which was practiced by his predecessor Deng Xiaoping. As a result, Western countries have noticed the changes in China's behaviour and assumed that the country is trying to advance its interests far beyond its borders. It is an undeniable fact that all claimant countries have strongly expressed their commitment to resolve their disputes through peaceful means. However, one should realise that military might has been used in past conflicts (eg. Battle of Paracel Islands and Johnson South Reef skirmish between Vietnamese and Chinese forces in 1974 and 1988, respectively) and it is not impossible to be used again. Even though the problem is regional, there are concerns worldwide that a military conflict may have far-reaching consequences.

It is more than clear that China and ASEAN have deep concern towards a peaceful resolution. However, there are also differences in the way the claimant countries intend to resolve their disputes. China favours a bilateral approach of negotiating with each claimant separately, whereas ASEAN countries want to negotiate as a bloc as it would give them more leverage. For this reason, the prospects of resolving upcoming crises seem low in the near future. Nevertheless, a dispute may become out of control if tension is high and intentions are misunderstood, in addition to a lack of high-level communication lines among leaders of claimant countries.

This article is divided into three parts. The first part examines the dispute between China and ASEAN within the Sea. The second part explains on the role of the two entities in dealing with their disputes. Finally, the conclusion describes the importance of adhering to international law, which in this case is the United Nations Convention on the Law of the Sea (UNCLOS), to exercise restraint and prevent tensions from flaring up.

Methodology

This article is based on qualitative research using interviews and document analysis of various reports and journals. Relevant themes

were analysed and categorised to illustrate the different components and concepts. This article is designed to provide an understanding of the dispute between China and ASEAN in SCS and the role of both parties in resolving them. Other than that, the usage of qualitative methodology is to propose several conceivable recommendations that China and ASEAN could adopt with the roles needed for regional as well as international purposes. According to Merriam (1998), qualitative research offers "the greatest promise of making significant contributions to the knowledge base and practice of education," because it is "focused on discovery, insight and understanding from the perspective of those being studied".

There are 3 research methods adopted in this study:

1. *Analytical Descriptive Method*. The aim is to describe or provide explanations on recent events in the sea. It is a method that attempts to collect, organise, and interpret the data. Through this method, this article will examine the current situation of the Sea and the actions already taken by claimant countries (China and ASEAN) to decrease tension.
2. *Historical Method*. The aim of this method is to create a systematic and objective reconstruction of the past. Thus, the method involves a means of collection, evaluation, validating, and synthesising proof to produce solid conclusions. Through the usage of historical method, this article aims to identify the causes that lead to disputes in the sea.
3. *Interview Method*. The aim is to discover the main themes within the life of subjects. The major task is to comprehend the meaning of what the interviewees say. Through the usage of this method, this article aims to obtain information regarding the sea disputes from 3 experts on China's foreign policy (2 scholars and 1 former ambassador). It is very important for this article to endorse the results from the secondary data.

Results and Discussion

In the context of China and the sea, the disputes are complex and problematic. Conflicts have been arising between China and its neighbours, particularly Vietnam, since 1974. The rising tension has definitely raised strong apprehension among ASEAN members and to a certain extent, if the disputes are not resolved, it may grow into an international security concern. In this context, the root cause of SCS disputes is mainly over control of the Spratly and Paracel Islands. The archipelagos not only have a long history, but are also considered maritime territories by Malaysia, the Philippines and Vietnam. Up till now, disputes involving the areas have seen no solid resolution as China had occupied and militarised some of the islands.

China-ASEAN Disputes

The sea is a critical region for the interest of claimant countries, especially in terms of economic benefits (Li, 2017). The continuous disputes have led to a contentious relationship between China, Vietnam, and the Philippines. Basically, the territorial disputes within China's "Set Equipment Sea" speaks of the territorial sea along with two island chains (Paracel and Spratly). From this article's analysis, there are two significant aspects involving the sea and Spratly Islands, namely a strategic location and vast natural resources. In terms of strategic location, the sea is between the Indian and Pacific Oceans. This strategic position has made it a vital route for trade shipping and global communications (Yu, 2017). The Spratly Islands also have a huge amount of natural wealth, including massive oil and natural gas reserves estimated at 17.7 billion tonnes. In other words, the reserves around the tiny chain of islands are bigger than oil-producing Kuwait in the Middle East, which is around 13 billion tonnes.

According to Ningsih (2016), the strategic location and rich natural resources in the Spratly Islands have caused the area to become a source

of dispute between ASEAN and China. It can be argued that it is no longer hard to comprehend the reason why the Sea is home to the world's most confounding areas. Due to these two aspects, China tends to use its historical and geographical basis to claim its right over the sea. Under the Kuomintang government, China first tried to uphold its historical right after World War 2 by issuing an official "11 dash line" map in 1947. The Chinese Communist Party (CCP), which took power in 1949, then dropped two lines within the Gulf of Tonkin near Vietnam to produce the current "9 dash line" map. According to Chang (2020), without any hesitation, China sooner or later hopes to attain *de facto* control over the area within its "9 dash line" entitlement.

In ASEAN, Malaysia, the Philippines, Brunei, and Vietnam have active claims over the Spratly Islands as a part of their continental shelf or Exclusive Economic Zone (EEZ). These countries' claims are based on legal aspects of geographical factor. This factor is recognised under UNCLOS, which is an international maritime law established in 1982. According to Junef (2018), China's 9-dash line map has been strongly disputed by ASEAN members. For example, in 2019, Malaysian foreign minister Saifuddin Abdullah described China's 9 dash line claim as "ridiculous" (Storey, 2020). Earlier, in 2013, the Philippines under president Benigno Aquino initiated legal proceedings against China at the Permanent Court of Arbitration in The Hague, Netherlands. In 2016, the court ruled in favour of the Philippines, concluding that China had not exercised control over waters within its 9 dash line claim, therefore, it has no "legal basis" to its claims in the sea. However, the Beijing government said it did not recognise the ruling and would continue to pursue its claims.

Therefore, this continuous conflict of rights to resources in the sea may worsen the relationship between claimant countries and endanger regional stability to a certain extent. Table 1 designates the history of each country's dispute within the sea.

Table 1: Claimants in South China Sea disputes and their history

No.	Claimant Countries	Year	Demands
1	China	1883	China's claim over SCS is based on historical records of the Han dynasty that was clarified in 1887.
2	Vietnam	1930	Vietnam claims that it has already occupied the Spratly Islands in the 17th century, with an 1883 atlas showing its jurisdiction. It also says its French colonialists surveyed and claimed the main island in 1930, and they officially inherited it from the French
3	Republic of China (Taiwan)	1933	Taiwan's claim has the same basis as China. However, the demands were clarified only in 1933.
4	The Philippines	1946	In the United Nations General Assembly in 1946, the Philippine foreign minister claimed that the Spratly Islands were occupied by Japan during the Second World War and put under his country's administration.
5	Malaysia	1979	Malaysia published its official continental shelf map, which included a portion of the Spratly Islands in 1979.
6.	Brunei	1979	Brunei's claim is based on its protest against Malaysia's continental shelf map in 1979. The sultanate is claiming Louisa Reef within its continental shelf, therefore becoming part of its EEZ.

Sources: Compiled by the authors from numerous sources.

Actions Taken by China and ASEAN

Despite China restating its predilection to bilaterally resolve disputes in the Sea, it has participated in discussions organised by ASEAN since early 2000 (Storey, 2012). Under the leadership of president Hu Jintao in 2010, it has also directly engaged other claimants. In this context, the active participation of China can be seen as an optimistic indication that the country is willing to sit down and resolve disputes through peaceful means, despite its strong resistance towards the involvement of third-party mediators (Sherrill, 2014).

China and ASEAN's engagements have resulted in the Treaty of Amity and Cooperation in Southeast Asia (TAC) in 1976 and the Declaration on the Conduct of Parties in the South China Sea (DoC) in 2002 (Storey, 2017). The main intention of the DoC is to provide a mechanism to resolve tensions arising from contested waters. At the same time, it aims to reduce the possibility of military intervention

by claimants. The DoC may be regarded as an eminent achievement. However, despite the positive progress, the DoC is simply a political declaration that is unable to effectively prevent or lessen the risk of incidents in the sea.

The guidelines of DoC were only agreed to by China in 2011 (Zhang, 2015). Malaysia had supported China's request to designate the agreement as a "declaration" rather than a "code", despite objections from Vietnam and the Philippines. Vietnam and the Philippines believed that using the term "declaration" would only make the agreement a political announcement of intent with no legal-binding means. However, for Malaysia, the most important matter was for all claimant countries to reach an agreement on the main objectives of the DoC. It is clearly stated in the DoC that all claimant countries would commit to the principles of freedom of navigation and overflight in the SCS; adopt a peaceful resolution of disputes; to exercise self-restraint in conducting activities; not to occupy

uninhibited features; and lastly, to work towards achieving a code of conduct (ASEAN, 2002).

After six years of adopting the DoC, the framework for the Code of Conduct for the South China Sea (CoC) was finally agreed on between China and ASEAN in 2017. The establishment of CoC is considered as “an important milestone” by the leaders of ASEAN (ASEAN, 2017a). It is a fact that the CoC framework was generally welcomed by both China and ASEAN countries. Nevertheless, there are several weaknesses in the code. According to Storey (2017), the CoC still clearly lacks a “legally binding” clause, besides an incomplete geographical scope and means for dispute settlement. There are also questions on whether the CoC is applicable on disputes arising in the Spratly or Paracel Islands, or only certain areas within the waters. There is a noticeable absence of measures in terms of enforcement and arbitration.

Role of China and ASEAN on the South China Sea

Despite UNCLOS being the best instrument in reducing tension in the sea, unfortunately there are many dissimilarities that have become obstacles in its clarification, practice, and execution. The dissimilarities have resulted in many misunderstandings between claimant countries. As mentioned before, China is claiming ownership based solely on historical rights. This itself is an example of a dissimilarity that has become an obstacle in the interpretation of UNCLOS. In this context, China has emphasised that it will uphold its historical rights even after ratifying the UN sea treaty. This is because the historical claims by China are recognised under a regime liberated from UNCLOS (Darusman, Fauziah, & Sumarna, 2020). However, that point is difficult to argue since Article 3, Part II of the UNCLOS 1982 Statute states; “*Each state has the right to determine the breadth of the territorial sea up to a limit of not more than 12 nautical miles, measured against the baselines established under this Convention.*” In Article 4, it states; “*The outer limit of the territorial sea is on a line where each point is at a distance*

from the nearest point on the baseline, which is the breadth of the territorial sea.” According to Storey (2020), verbal notes based on UNCLOS have been submitted to the UN by Malaysia, Indonesia, Vietnam, and the Philippines to disqualify China’s 9 dash line claims and its historical right to the sea.

Basically, there are two aspects that countries can use to exercise their claim over certain territories and seas, which are namely historical and legal aspects. In the context of history, only China, Taiwan, and Vietnam are using it as their main basis of claim over SCS. China’s demand began in 1947 under the Kuomintang government of Chiang Kai-Shek. During his administration, the nationalist government produced official maps with 11 interrupted marks that included 80% to 90% of the sea. Two years later, after the CCP took control of the government, it continued to maintain the claim, but only with a 9 dash line after two lines in the Gulf of Tonkin were dropped as a token of goodwill to the Vietnamese communists. Despite this, this article found that China did not give any details on the legal aspects of its maritime boundary limitations. This is because China’s claims relating to its maritime law or jurisdiction are still vague. First, many of the land features that China claimed in the South China Sea did not qualify as islands under Article 121(3) of UNCLOS, and therefore, could not serve as the basis of claims beyond its EEZ as defined in Article 55, which states; “*The exclusive economic zone (EEZ) is an area outside and on the border with the territorial sea, which is subject to a specific legal system established in this part and in which the rights and responsibilities of the coastal state as well as the rights and freedoms of other countries apply the states are subject to the relevant provisions of this Convention Article 57.*” (Darusman, Fauziah & Sumarna, 2020).

The distance between the baseline used to determine territorial sea breadth and the EEZ of a country cannot be greater than 200 nautical miles. The five main Spratly Islands, along with Woody Island in the Paracel and Pratas Islands,

and the majority of the sea that could be claimed by China as its EEZ, are currently controlled by Taiwan. Yet, as UNCLOS mandates that disputes be resolved when EEZ claims overlapped, such claims could only serve as a maximum position. Therefore, the claims by China are not in line with UNCLOS and may be interpreted as a violation of international law (Darusman, Fauziah & Sumarna, 2020). For the past 22 years, various incidents in the Sea have been a huge obstacle and nuisance in the relationship between China and other claimant countries, as well as ASEAN as a whole. Despite continuous conflicts arising from Chinese claims, there are some expectations that one day, all conflicts will be resolved peacefully. In order to achieve this, China and ASEAN should adhere to three actions to maintain harmony and preserve stability in the region.

First, from the perspective of this article, all parties should highly reinforce the element of trust with each other. A suspicious and belligerent attitude against each other will only bring destruction when war erupts. A third party should not be involved in the disputes of the sea. Interference from the United States may make China more resistant to participate in conflict resolution, besides causing animosity and suspicion among ASEAN claimants.

Even though the US is a neutral party in the South China Sea conflict, it has actually showed intention to negotiate a settlement in accordance with international law. This is because it has significant interests in the Asia-Pacific region, including defence agreements with Australia, Indonesia, Vietnam, the Philippines, Japan, and South Korea. The primary national interest of the US is freedom of navigation, which includes unhindered transit of military vessels and planes, as well as commercial ships in the Sea.

According to Max (2017), the US completely rejects China's 9 dash line claim because Washington views it as a threat to maritime freedom. The US has used its "Freedom of Navigation Operations" (FONOPS) to contest China's claims of sovereignty over the Sea. For example, US intelligence aircraft had flown over

China's artificial islands and its navy warships had closely sailed by Chinese-occupied islands and reefs, triggering strong protest from Beijing, which complained that the US was using FONOPS as a pretext to spy on Chinese activities in its "territorial waters". China claimed that the US was attempting to stop it from becoming a major power by interfering in its activities (Max, 2017).

Therefore, the claimant countries from ASEAN have to reconsider involving foreign powers in their disputes with China since Beijing does not kindly view any third party that it considers to interfere in its sovereignty. China has also warned ASEAN not to involve the US diplomatically or militarily in resolving disputes within the Sea (Junef, 2018).

Second, both parties involved in territorial claims in the Sea should work together to adhere to the rule of law as stated in UNCLOS. A law only works if all parties respect and obey its principles accordingly. This is not easy since each claimant country has its own agenda that may go against UNCLOS. This is where cooperation and tolerance among the claimant countries should be upheld. This dispute will never find its way out if each claimant country insists on defending its own interest. Only cooperation and high tolerance can ensure an outcome that satisfies all claimant countries. This may seem idealistic, but it is not impossible.

Last but not least, both China and ASEAN must establish a Code of Conduct (CoC) that is binding in the sea. Storey (2020) stated that the CoC negotiations in the 2010s had brought hope on China's behaviour and reduced tension between claimant countries, which led to significant growth in the region thanks to good diplomacy.

Conclusion

The dispute in the sea is now a 21st century conflict involving China and most ASEAN members. However, every dispute definitely has its own solution. In this context, all parties involved should deliver their best commitment

to uphold peace and stability as stated in the 1976 TAC, 2011 DoC, and 2017 CoC. China and ASEAN should stand side-by-side in upholding the principles of UNCLOS. Being on the same page regarding UNCLOS may serve as the foundation in establishing a legal order within the sea. Even China itself has clearly stated that it is very crucial for all parties in the sea to uphold the principles and objectives of UNCLOS. From ASEAN's perspective, it can be noted that the association always strives to protect the interest of its members through peaceful means. Therefore, it can be expected to always find a peaceful solution to disputes in SCS without resorting to military means. ASEAN strongly supports and gives its full respect to international law, but there may be many dissimilarities in the interpretation and implementation of UNCLOS. For example, China claiming ownership of the sea based on its historical rights. This is one of the dissimilarities that may hinder the implementation of UNCLOS. In this context, China has strictly stated that it will uphold its historical rights even though it is a signatory of UNCLOS.

As the sea and its airspace have very high geopolitical importance, any unilateral action by claimant countries will result in far-reaching consequences. If China decides to continue denying ASEAN countries to their rights in the sea, or even limit navigation and flights in areas under its control, that may lead to wider conflict and attract international intervention, besides creating a negative impression of itself in the eyes of the world. The only way forward is for China and ASEAN countries to continuously engage each other with the objective of maintaining harmony and preserving stability.

References

- ASEAN. (2012, May 14). *Declaration of the conduct of parties in the South China Sea*. ASEAN Secretariat. https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2
- ASEAN. (2017a, November 16). *Chairman's statement of the 20th ASEAN-China Summit* (13 November). ASEAN Secretariat. <https://asean.org/storage/2017/11/FINAL-Chairmans-Statement-of-the-20th-ASEAN-China-Summit-13-Nov-2017-Manila1.pdf>
- Chang, F. (2020). *The next front: China and Indonesia in the South China Sea*. FPRI: Foreign Policy Research Institute. Retrieved from <https://policycommons.net/artifacts/1341663/the-next-front/1953784/> on 08 Apr 2022. CID: 20.500.12592/5n1h7v.
- Darusman, Y. M., Fauziah, A., & Sumarna, B. D. (2020). The study of Natuna Island dispute between Indonesia and China, Based on UNCLOS 1982. *The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)* (pp. 386-394).
- Jinchen, T. (2016). *'One belt and one road': Connecting China and the world*. "Google Scholar" via McKinsey & Company. Available online at <https://www.mckinsey.com/.../one-belt-an>.
- Junef, M. (2018). Sengketa Wilayah Maritim di Laut Tiongkok Selatan. *Jurnal Penelitian Hukum De Jure*, 18(2), 219-240.
- Khoury, E. (2017). *Recent trends in the South China Sea disputes*. Institute de Relations Internationales et Stratégiques (IRIS). <https://www.iris-france.org/wp-content/uploads/2017/02/Asia-Focus-16-South-China-Sea-Elie-Khoury-feb-2017.pdf>
- Li, J. J. (2017). *ASEAN and the South China Sea: Approaches to Resolving the Conflict*. SIT Study Abroad: International Studies and Multilateral Diplomacy. Harvard University.
- Lau, R. K. S. (2022). The rise and fall of China's 'Peaceful Rise': Implications for the US-China geopolitical competition in the Indo-Pacific. *Stosunki Międzynarodowe – International Relations 2022*, 2(8). <https://doi.org/10.12688/stomiedintrelat.17423.1>

- Max, F. (2016, July 14). The South China Sea: Explaining the dispute. *New York Times*. <https://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html>
- Merriam, S. B. (1998). *Qualitative research and case study applications in education: Revised and expanded from "Case Study Research in Education"* (pp. 350). Sansome St, San Francisco, CA 94104: Jossey-Bass Publishers.
- Ningsih, O. A. (2016). Sengketa kepemilikan Spratly di Laut China Selatan berdasarkan UNCLOS III 1982. *Jurnal Online Mahasiswa*, 3(2), <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/view/12795/0>
- Prosekov, S. (2018). Confucianism and its influence on Deng Xiaoping's reforms. *3rd International Conference on Contemporary Education, Social Sciences and Humanities (ICCESSH 2018)*. Atlantis Press.
- Pu, X., & Myers, M. (2021). Overstretching or overreaction? China's rise in Latin America and the US Response. *Journal of Current Chinese Affairs*, 51(1), 40-59. <https://doi.org/10.1177/18681026211028248>
- Storey, I. (2012). China's bilateral and multilateral diplomacy in the South China Sea. In P. M. Cronin, R. D. Kaplan, & W. Rogers (Eds.), *Cooperation from strength: The United States, China and the South China Sea* (pp. 51-66). Center for New American Security. <https://www.cnas.org/publications/reports/cooperation-from-strength-the-united-states-china-and-the-south-china-sea>
- Sherrill, C. W. (2014). *Conflict management in the South China Sea*. Asian Political and International Studies Association. <http://trop.troy.edu/csherrill/APISA2014.pdf>
- Storey, I. (2017). Accessing the ASEAN-China framework for the code of conduct for the South China Sea. *ISEAS Perspective*, 62.
- Storey, I. (2020). Malaysia and the South China Sea dispute: Policy continuity amid domestic political change. *ISEAS Perspective*, 20, 1-10. https://www.iseas.edu.sg/wp-content/uploads/2020/02/ISEAS_Perspective_2020_18.pdf
- Setiyatwan, G. D., Legowo, E., & Wahyudi, B. (2022). Opportunities for Indonesia-China cooperation in the South China Sea conflict. *International Journal of Arts and Social Science*, 5(2), 146-150. <https://www.ijassjournal.com/2022/V5I2/414659961.pdf>
- Yu, H. (2017). Motivation behind China's 'One Belt, One Road' initiatives and establishment of the Asian Infrastructure Investment Bank. *Journal of Contemporary China*, 26(105), 353-368. <https://doi.org/10.1080/10670564.2016.1245894>
- Zhang, J. (2015). China's South China Sea policy: Evolution, claims and challenges. In L. Buszynski & C. B. Roberts (Eds.), *The South China Sea maritime dispute: Political, legal, and regional perspectives* (pp. 60-82). Routledge.