

ASEAN AND THE SOUTH CHINA SEA DISPUTE
1992-2013

*Thesis submitted to Jawaharlal Nehru University in partial fulfilment
of the requirements for the award of the degree of*

DOCTOR OF PHILOSOPHY

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2017



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DECLARATION

I declare that the thesis entitled "ASEAN and the South China Sea Dispute, 1992-2013" submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

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ACKNOWLEDGEMENTS

In preparing this thesis I am indebted to many people whose encouragement and support helped me to write and complete this thesis, and it is a great pleasure for me to thank them all.

*First and foremost, I offer my deepest gratitude and heartfelt thanks to my supervisor, **Prof. G.V.C. Naidu**. Without his dedication, inspiration, sincerity, encouragement, motivation, enthusiasm, persistent voice, guidance and immense knowledge, this thesis could not have been accomplished. I owe my supervisor everything, especially the critical and constructive comments and concrete suggestions. His encouraging nature has been an inspiration throughout my thesis work. I will ever remain grateful for his help and facilitation.*

*I would like to convey my appreciation to all the faculty members and staffs of the Centre for Indo-Pacific Studies (CIPS), JNU for being supportive and encouraging me during my entire thesis work. I would like to give my sincere and warm gratitude to **Prof. Ganganath Jha**, **Prof. Man Mohini Kaul**, and **Prof. Shankari Sundararaman** for providing me immense knowledge in various aspects of Southeast Asia and Asia-Pacific Region. I owe sincere thankfulness to JNU Central library for the materials and the staff for their generosity and cooperation which made this thesis possible.*

I would like to express my gratefulness to University Grants Commission for granting me a financial assistance and I would like to express sincere thanks to Indian Council of Social Science Research (ICSSR) for providing financial assistance for my Field Trip to Singapore and Malaysia.

*I would like to express my sincere appreciation to **Prof. Tan See Seng**, **Dr. Alan Chong**, and **Dr. Li Mingjiang** of S. Rajaratnam School of International Studies (RSiS), Singapore for sharing their precious sources, knowledge and providing study materials for my research work. I also would like to thanks to **Dr. Tang Siew Mun**, **Dr. Ian Storey**, **Dr. Termsak Chalermphanupap** and **Daljit Singh** of Institute of Southeast Asian Studies (ISEAS), Singapore for sharing their precious times, sources, knowledge and providing study materials for my research work. I would like to thanks*

Dr. Hanafi Bin Hussin and Dr. Roy Anthony Rojesh of University of Malaya for their valuable times and sharing their knowledge during my field trip to Malaysia.

Special thanks to my friends, Ningombam Satyabrata, Puyam Rakesh, and Alvite Ningthoujam, who spared their valuable times in editing some of my chapters and also helping in technical problems. I also would like to thank my friends Arenla and Chongom Aron Aimol for helping and providing me the information for my field trip.

Finally, my heartfelt thanks to my parents, L. Nimai Singh and L. Dhama Devi, to my Soulmate, Ngangom Sonia, and to my family, for supporting and encouraging me throughout my study despite having many difficulties and financial crunches. I am giving so much regard to my elder brother L. Rajen and my sister-in-law L. Rina for all their guidance and supports.

DEDICATED TO MY BELOVED GRANDPARENTS



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LIST OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
SCS	South China Sea
PLAN	People's Liberation Army Navy
EEZ	Exclusive Economic Zone
UNCLOS	United Nations Convention on Law of the Sea
PCR	People's Republic of China
ROC	Republic of China
ROV	Republic of Vietnam
DOC	Declaration on the Conduct of Parties in the South China Sea
AMM	ASEAN Ministerial Meeting
ARF	ASEAN Regional Forum
CSCAP	Council for the Security Cooperation in the Asia-Pacific
TAC	Treaty of Amity and Cooperation
COC	Code of Conduct on the South China Sea
SLOC	Sea Lanes of Communication
SEA-NET	South-East Network for Education and Training
JWG	Joint Working Group
SOM	Senior Officials' Meeting
CBMs	Confidence Building Measures
PD	Preventive Diplomacy
CIDA	Canadian International Development Agency
WMD	Weapons of Mass Destruction
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CASS-India	Centre for Asian Strategic Studies-India
CICP	Cambodian Institute for Cooperation and Peace
PMC	ASEAN Post Ministerial Conference
LNG	Liquefied Natural Gas
USGS	US Geological Survey
EIA	US Energy Information Administration
SBSM	State Bureau of Surveying and Mapping
ADIZ	Air Defence Identification Zone
JDA	Joint Development Agreements
TWG	Technical Working Group
MEP	Marine Environmental Protection
TWG-LM	TWG on Legal Matters
GEM	Group Experts Meeting
ETM	Education and Training of Mariner
HDI	Hydrographic Data and Information
LEUAS	Law Enforcement and Unlawful Acts at Sea

GEM-EL	GEM on Environmental Legislation
SCSWs	South China Sea Workshops
MSR	Marine Scientific Research
CASS-India	Centre for Asian Strategic Studies-India
CICP	Cambodian Institute for Cooperation and Peace
PECC	Pacific Economic Cooperation Council
APEC	Asia-Pacific Economic Cooperation
ASEAN-ISIS	ASEAN-Institute of Strategic and International Studies
GE	Group of Experts

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Chapter 1

INTRODUCTION

The South China Sea has become an area of contestation and conflict in the Asia-Pacific region. Almost all states around the sea have maritime security interests in the South China Sea. It has been, and continues to be, the locus of a number of territorial and maritime conflicts between China, Taiwan and four members such as Brunei, Malaysia, Philippines and Vietnam, of the Association of Southeast Asian Nations (ASEAN). The complexities of claims have increased in the recent past and the dispute is becoming the most daunting challenge to stability in the Asia-Pacific. These disputes over sovereignty and maritime jurisdiction of the South China Sea remain potentially volatile and dangerous. This issue has influenced the strategic, political and economic interests of the littoral states in the South China Sea and beyond in which almost all nations have claims of territorial sovereignty over all or parts of the islands or islets or other interests. Some Chinese specialists have given estimation that the South China Sea may possess approximately 130 billion barrels of oil and natural gas and it also has been dubbed as ‘Asia’s Persian Gulf’ (Panda 2011: 212). Therefore, the disputes in the South China Sea are firstly the issues of sovereignty and territorial integrity, with each country competing for access to its resources (both living resources like fisheries and other marine flora and fauna and non-living resources such as oil, gas, and other mineral deposits), Secondly, the countries are competing for the freedom of passage and navigation as this region is home to vital sea lines of communication. Thirdly, there is also the geostrategic dimension, that is, control over the South China Sea offers strategic advantage vis-à-vis most of Southeast Asia and hence the larger East Asia. Almost all the claims are based on historical rights or on the principles in the 1982 ‘UN Convention of the Law of the Sea’ (UNCLOS). The UNCLOS gives coastal states sovereign rights within a 200-nautical mile exclusive economic zone (EEZ) or in accordance with the continental shelf principle (Weissmann 2009: 123).

Thus, the persistent competition over the maritime rights, especially claims of territorial sovereignty over islands, reefs, atolls and natural resources in the South China Sea, has emerged as the new ‘theatre of conflict’ in the Asia-Pacific (Fravel

2012: 33). Moreover, the territorial claims have acquired such importance that they have raised strong nationalist sentiments. Therefore, all the claimant states have been reluctant to compromise on the sovereignty issue. Showing willingness to make concessions on the question of sovereign issue would be costly domestically and perceived regionally as a sign of weakness (Emmers 2005: 2).

Again, the geographical and geostrategic position of the South China Sea creates a security dilemma for most powers in the Asia-Pacific region (Weissmann 2009: 122). Therefore, the South China Sea is at the heart of the Asia-Pacific economic and security dynamism. In other words, the dispute is driven by its geopolitical and strategic significance, and the abundance of natural resources, particularly oil and natural gas (Thearith 2009: 60). The dispute also emerged as a 'regional hot spot' with the possibility of armed confrontations which may perhaps make it more difficult to manage the situation.

After the end of Cold War and with the enactment of China's 'Law on the Territorial Sea' and the 'Contiguous Zones' (Territorial Waters Law adopted in 1992), China has become more assertive in its claim in the South China Sea to secure territorial rights. At the same time, there is no forum through which the South China Sea dispute could be handled except the ASEAN. The ASEAN has wanted to pursue an active role in response to developments in the South China Sea dispute (Amer and Jianwei 2012: 1). It has been engaging the most powerful claimant states in the dispute such as China. Further, the ASEAN has also adopted the 'ASEAN Declaration' in 1992 and acted as a vital negotiator and mediator. The declaration was first pushed by the Philippines for a peaceful resolution of all sovereignty and jurisdictional issues over the South China Sea. The declaration also seeks to exercise the principle of restraint contained in the ASEAN's Treaty of Amity and Cooperation (TAC) as the basic code of conduct to resolve the dispute (Severino 2010: 41). Thus, the primary aim of the declaration was to manage and resolve the disputes by not resorting to any military confrontation. However, this Declaration was not signed by China.

Ten years later in 2002, ASEAN and China signed the historic 'Joint Declaration on the Conduct of Parties (DOC)' to resolve the South China Sea disputes by peaceful means. Then, after nine years of negotiations, on July 2011, ASEAN and China agreed on a historic set of 'guidelines' for the implementation of the Declaration of

Conduct (DOC). Further, in November 2012, celebrating the 10th Anniversary of DOC, a workshop was held in Phnom Penh, Cambodia, under the theme ‘Toward Peace, Stability, Cooperation and Prosperity in the South China Sea’ and highlighted the progress and implementation of the DOC over the past ten years. The workshop also emphasised on how ASEAN and China could work together to implement the DOC for the peace and stability in the region (ASEAN-China Joint Statement 2012).

On the other hand, China strongly resisted any attempt or effort aimed at bringing it to multilateral negotiations and also developed ‘Three No Strategies’, i.e. ‘No to internationalisation of the dispute’, ‘No to multilateral negotiations’, and ‘No to conditions imposed on Chinese territorial claims’ because China perceived that a multilateral negotiation would undermine its interests in the dispute (Weissmann 2009: 126). However, soon it became obvious that the Chinese strategy of ‘Three Nos’ was becoming counterproductive. As a result, China’s strategies and approaches to the dispute underwent a gradual change. In 2002, China signed the DOC even though not enthusiastic about the multilateral negotiations. During the Filipino President Gloria Macapagal Arroyo’s visit to China in 2004, Manila and Beijing signed an agreement for joint marine seismic exploration in the South China Sea for possible undersea oil. Vietnam joined the agreement in March 2005, when the Vietnam Petroleum Corporation (Petro Vietnam), the Philippines National Oil Company (PNOC), and the China National Offshore Oil Corporation (CNOOC) finalized a tripartite agreement in Manila to jointly exploit oil and gas resources in the South China Sea. The Filipino Foreign Minister Alberto Romulo and Vietnamese Foreign Minister Nguyen DyNien praised the deal as a significant step forward to strengthen the ASEAN-China cooperation and possibly pave the way for the settlement of the South China Sea dispute.

Meanwhile, Track II diplomacy was adopted for managing or resolving the South China Sea disputes, mainly through the Informal Workshop on Managing Potential Conflicts in the South China Sea, which was the idea of Hasjim Djalal of Indonesia in the early 1990s (Chin 2003: 67). With the rise of tension among the claimant states and following the military clash between Vietnam and China over the Spratly Islands in 1988, almost all the claimant states have expressed their willingness to settle the disputes peacefully. Therefore, to settle and reduce the tensions and to discuss the dispute, Indonesia hosted a private, non-governmental workshop of academics and

officials from the ASEAN states in 1990. The mechanism was conceived as an unofficial process, without constituting any formal or informal negotiation and hosted and co-chaired by the Indonesian Foreign Ministry supported by Canadian funds called the 'Canadian International Development Agency' (CIDA). Thus in July 1991 an informal Workshop was held at Bandung, wherein the participants agreed to recommend their respective governments the following: first, using force is not allowed to settle territorial and jurisdictional disputes; second, where there are conflicting claims, the states may take up cooperation for mutual benefit, including joint development; and third, self-restraint be exercised in order not to complicate the conflicting claims (Djalal 2011: 2). Thus, the primary aim of the workshop was to establish cooperation in building confidence to undertake multilateral cooperation in the South China Sea region (Chin 2003: 67). Further, these workshops ensured the existence of channels of communication between the parties. The focus had been on extensive consultation to develop confidence and to feel comfortable with each other (Djalal 2011: 1). Therefore, the workshops acted as a step towards cooperation.

At the 18th Workshop in November 2008, held in Manado, Indonesia, the Chinese participants for the first time expressed their willingness to work together with Taiwan and came up with a joint project proposal. Then, the joint 'China-Taiwan South-East Asia Network for Education and Training' (SEA-NET) project was adopted at the 19th South China Sea Workshop held at Makassar, Indonesia, in November 2009 (Song 2010: 254). Although, the Workshop process successfully gave a pace to cooperation, several challenges remained such as the lack of willingness or support to generate and continue a discussion on non-traditional security issues such as sea-lane communications management, natural resource management and conservation and institutional mechanisms for cooperation. Despite having many difficulties and problems, there were positive outcomes too; for instance, on the 20th anniversary of the workshops held at Bandung in November 2010, the Indonesian Minister of Foreign Affairs, Marty M. Natalegawa, said, "Since 1990 there have not been any armed conflicts in South China Sea which proves that the workshop has been successful". The significance of the workshops has also been appreciated by the respective governments, as they were willing to allow, and financially support, the participation of their senior government staff. In fact, the South China Sea Workshops have been significant for preserving the fragile peace in

the 1990s. These workshops have prevented the escalation of conflict and also played an important part in the peace-building process in the South China Sea in between China and the ASEAN members (Weissmann 2009: 130).

On June 30, 2013, following the China-ASEAN Foreign Ministers' meeting held at Bandar Seri Begawan, a joint statement was released at the post-meeting press conference, indicating that they had agreed to hold 'official consultations' on a proposed Code of Conduct (COC) to overlook naval actions in the South China Sea. Again, on September 14 and 15, 2013, the 6th Senior Officials Meeting (SOM) and the 9th Joint Working Group Meeting on the Implementation of the 'Declaration on Conduct of Parties in the South China Sea' (DOC) were held in Suzhou, China. The parties also held first formal consultations on the COC under the framework of implementing the DOC (Chairman's Statement of the 23rd ASEAN Summit 2013). In these consultations, the participating parties reportedly had useful discussions to promote the COC process. The parties also agreed to follow the 'step by step' strategy to reach a consensus gradually through a 'consultation approach'. It also called for a mechanism to continue and push forward the COC process by authorising the Joint Working Group to conduct a concrete and meaningful consultation on the COC (The Sixth Senior Official Meeting and the Ninth Joint Working Group Meeting 2013).

This Code of Conduct (COC) was discussed in two multilateral mechanisms; 'Track I', (such as ASEAN summits, ASEAN ministerial meetings (AMM) and the ASEAN-China dialogue) and 'Track II' meetings, which include the Indonesian-sponsored informal Workshop on Managing Potential Conflicts in the South China Sea (hereafter called the Workshop). But, despite the diplomatic efforts of these two pronged mechanisms and major breakthroughs that happened in 2011 (guidelines for implementation of the DOC) and 2012 (ASEAN's Six Point Principles on the South China Sea), ASEAN failed to issue the joint communiqué in 2012 due to a major disagreement between Cambodia and the Philippines. Cambodia, which was holding the ASEAN Chair that year, called for a 'non-internationalisation' of the South China Sea disputes. Other 'stumbling blocks' included the desire of the countries to see maritime boundaries as 'fences in the sea' separating areas of sovereign control; growing concerns over energy security and competition for resources; divisions within ASEAN and the nationalising and militarising of the disputes. Therefore, if ASEAN maintains its unity, it may well lead to a mutual confidence-building

mechanism and could create a more favourable environment for discussions so that it can manage and perhaps solve the prolonged disputes in the South China Sea.

Review of the Literature

The review of literature on the proposed study is divided into the following four sub-themes:

South China Sea Dispute

The South China Sea is disputed because of competing claims of sovereignty by various claimant states. Owing the amount of claimants and the complexity of the claims, the South China Sea dispute is sometimes labelled as ‘the mother of all territorial disputes’ (Jensen 2011). According to Leifer (1999),

...it is possible to suggest that the islands and waters of the South China Sea constitute the last frontier in Southeast Asia to the extent that the maritime zone was not effectively incorporated within the delimited and demarcated domains of the respective colonial powers, bearing in mind the classical distinction between boundaries and frontiers. Moreover, where applicable in the case of the South China Sea, their islands were not necessarily incorporated within post-colonial transfers of sovereignty; nor were they provided for by way of specific transfer of sovereignty in the political settlement of the Japanese Peace Treaty in 1951. This neglect, benign or otherwise, is of considerable significance because the South China Sea would be represented as the maritime heart of South East Asia. Its domination by a single power could over time have far reaching strategic consequences affecting the geo-political and economic interests of both regional and extra-regional states (Leifer 1999: 1).

In the region, there are many states which have maritime security interests in the South China Sea. These states claim to have a territorial sovereignty over the islands and coral reefs. Further, they claim to have exclusive rights to maritime resources and the freedom of navigation on the high seas. Subsequently, this claims and competitions have led to the ongoing naval modernisation in the region. Therefore, this competition over any or all of these interests could affect regional peace and stability (Fravel 2012: 34). That is why the South China Sea dispute is a complex issue. It emerged as a major source of conflict and contention in the Asia-Pacific region. There are numerous reasons behind this conflict. For example, Marwyn S. Samuels rightly remarked that, “the contest over the natural resources, claims and counter-claims over various islands is a major reason for conflict in the South China

Sea. And anticipated oil reserves are the subject of much speculation and act as a principal incentive to the continuing dispute over the islands and the waters of SCS". He further argued that the natural resource has attracted claimant states to move towards the acquisition of islands and control of their waters, which are the main reasons for the cause of this dispute. The occupation of the islands leads to a direct or indirect control over most transit route from the Strait of Malacca to Japan; from Singapore to Hong Kong and from Canton to Manila. Therefore, the ability to occupy, monitor and perhaps disrupt shipping and air traffic from the bases in the islands is an important consideration. Again, the battles for the Paracels in 1974 and for the Spratlys have also been constant sources of a further aggravation of the complexity of the dispute (Samuels 1982).

The South China Sea dispute has a territorial dimension as well, which has had a long history, but re-emerged in the mid-1970s as a result of the changing balance of power in the post-Vietnam war era. In 1974, China occupied the Paracel group of Islands. On May 12, 1977, Vietnam declared its territorial waters which included the Paracel and Spratly Islands and established a two hundred mile exclusive economic zone (EEZ) (Samuels 1982). Since then, China adopted a very hard line approach towards Vietnam. On the other side, the Philippines used military force in an attempt to displace the Nationalist Chinese troops from Itu Aba (Taiping) Island, which led Beijing to adopt a 'hard' position toward the Philippines. And thereby, China asserted that its claim was 'indisputable' and sovereignty 'non-negotiable' (Hyer 1995). Thus, the complexity of the SCS dispute lies in these historical and legal questions.

The dispute is interconnected with four regional developments. The first, the attempt by the Obama administration to get the US back into Asia as a peacekeeper and alliance partner to several of China's neighbours. The second is China's growing assertiveness as a regional power. The third is China's increasing military power which is used to back up the Chinese claims. And the fourth is the unsuccessful search for an effective regional forum where disputes can be discussed and perhaps even resolved. For a decade, the different disputes concerning sovereignty over islands, reefs and sandbanks in the South China Sea were only discussed at academic seminars; but in 2009, however, the South China Sea again became a centre of attention due to various confrontations which have continued and even escalated recently (Jensen 2011).

Again, two major issues emanate from the conflicting claims. First, the claims are intra-ASEAN, i.e., overlapping jurisdiction between different sets of ASEAN countries like Brunei, Malaysia, Vietnam, Indonesia and Philippines; Second, China's claim to the entire region as indicated by its 1949 arbitrary dotted-line which most observers claim representing its outer maritime boundary conflicts with the interests of the others (Hamzah 1998). According to Hamzah (1998), the problem in the South China Sea is not the question of lack of forum for discussion and interaction but on the level of interaction. There are both Track I and Track II avenues which could gain plenty of benefits with informal discussions along with the appropriate official level of discussions to tackle the problems of sovereignty and overlapping jurisdiction in the South China Sea. But according to Snyder (1996), the level of the South China Sea dispute has increased in proportion to estimates of the area's resource development potential. Earlier, little attention was paid to issues of sovereignty in the South China Sea until 1960s and 1970s, when international oil companies began engaging in the region where all the claimant states strengthened their claims, leading to a rise in tensions and conflicts. Thus, a range of preventive diplomatic mechanisms and approaches were used to reduce tensions that could minimise the risk of future conflicts.

The re-emergence of the SCS issue is due to the claimant countries' agreement on a declaration of the conduct of parties in the SCS which was attributed to various recent developments in the region. But to minimise potential conflicts, a variety of significant efforts were undertaken by concerned parties, such as the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC-SCS) signed in 2002 after five-year-long negotiations. In July 2011, almost a decade after the adoption of the DOC-SCS and amidst the growing tension in the South China Sea, the Guidelines for the Implementation of the DOC-SCS were signed by ASEAN and China which aim to guide the implementation of possible joint cooperative activities, measures and projects in the near future (Espida 2012).

However, the dispute is rather different today where the prevailing sentiment seems to be that China is a threat to the status quo, peace and stability of the SCS region. The opportunities and threats presented by the regional context shows that the SCS disputes of 1974 and 1988 as well as those in 1995 and 1999, revealed patterns of Chinese behaviour, described as 'capitalising on opportunities' where China seeks to

exert its jurisdiction over its SCS claims (Guan 1999). Thus the overlapping territorial and maritime claims still overshadow the improved relations among the littoral states in the South China Sea (Koo 2009).

Again, the internal dynamics, such as increasing nationalisms, and dwindling petroleum reserves and fish stocks have limited diplomatic options, and forced the governments to assume a more assertive role in the South China Sea dispute. Thus, China bases its claims on discovering a historical usage, effective occupation and control, and has claimed 'sovereignty' all over the features in the Spratly Archipelago (Beckman and Davenport 2010). That is why the South China Sea disputes are more complex and difficult as ever, while there is no sign of an early resolution. The regional imbalance of power along with the calculated interests of the important claimant states and other interested parties serve as an obstacle to any early solutions to the issue. In addition, there is no willingness to go for a judicial settlement and a 'no' to a collaborative regime. The lack of willingness and inability to compromise over sovereignty has given rise to the current stalemate (Leifer 1999).

Therefore the South China Sea dispute is multidimensional where multiple states are involved. It also involves three layers: first, the ownership of islands (namely, Paracels and the Spratlys); second, the conflicts over maritime resources (both living and non-living); and third, the control over vital sea-lanes that pass through the region.

ASEAN's Position on the South China Sea Dispute

Since 1992, the ASEAN has actively played a significant role in managing and resolving the South China Sea dispute. According to Ghosal (2011), ASEAN's main objective over the dispute was to encourage China to agree and resolve the dispute peacefully and no further attempts were made to occupy any of the features in the disputed areas. All the ASEAN states are subscribing to the idea of building confidence and engagement of China to contain the dispute and manage conflicts in the region. Although, all ASEAN countries are not equally involved in the dispute, there are differences within ASEAN which have led to the absence of a common approach to the dispute. Therefore, the ASEAN approaches towards China have been diverse, with many viewing it as a 'threat' and some other perceiving it as a 'source of economic benefit' which has resulted in weakening ASEAN's position on political

and strategic issues with regard to the South China Sea dispute. To compensate this weakness, the ASEAN often used diplomacy and tried to internationalise the South China Sea dispute by bringing in external powers especially the United States and Japan in order to balance China's rising power (Ghosal 2011).

Further, Ghosal (2011) argues that the limited success of ASEAN in engaging China in various dialogues on the South China Sea issue, like the ASEAN-China dialogue, the ASEAN Post Ministerial Meeting and the ARF initiatives, is largely because of its accommodation of China's essential interests and reservations with regard to national sovereignty and non-interference in the internal affairs of other states. Therefore, the ASEAN's unity is necessary not only to determine its future, but also to enhance its ability to handle an assertive China for a peaceful management or resolution of the South China Sea dispute.

Meanwhile, all the ten members of the ASEAN have a deep interest in the South China Sea issue. ASEAN had started involving itself with the adoption of the 1992 'ASEAN Declaration' on the South China Sea which was pushed by the Philippines for the peaceful resolution of all sovereignty and jurisdictional issues related to the South China Sea (Severino 2010). That is why the ASEAN and China have been trying to practise self-restraint, avoiding any exercise to occupy more territory and also refraining from any acts that could lead to instability in the region. In addition, to yield common benefits, all the cooperating parties should call for building mutual confidence and cooperation. But at the same time for many years, the ASEAN has continued seeking for the South China Sea issue to become 'internationalised', not only in the ASEAN summits and ARF meetings, but also in other international gatherings as well. For example, even at the meetings of the Non-Aligned Movement, the ASEAN countries have raised the matter (Severino 2010).

However, the ASEAN is not anticipating to formally act as a third-part mediator in the disputes involving its member-states, unless it is asked to do so by them. Instead, the Association wants to serve as a vehicle to promote better relations among its members, by creating conditions conducive to increasing cooperation and interaction. Another role that the ASEAN could play is through the formulation and adoption of mechanisms that can be utilised by the member states to manage their disputes, and the establishment of principles for interaction among the member-states (Amer 2002).

In this scenario, the ASEAN has been quite active in arranging meetings among conflicting parties to handle and reduce tensions. It uses these strategies to discuss the issue multilaterally, involving all the claimant states, whereas China proposes to have separate meetings based on a 'state to state' basis. Despite the strategy, the ASEAN member states could not stand together to face the non-ASEAN states, particularly China (Hara 2012). And there are many reasons for the ASEAN's inability to persuade China and other claimant states to develop a binding code of conduct. First, the People's Republic of China (PRC) has always said that its sovereignty over the South China Sea is 'indisputable'. Partly due to a need to preserve their domestic political legitimacy, the Chinese leaders refuse to make any concession on the issue. Second, China has held bilateral talks with ASEAN claimants and has succeeded in dividing them by offering bilateral codes of conduct that would benefit their separate interests. This has further weakened ASEAN's ability to conduct itself as an associative body. Third, Beijing has always preferred to support a non-binding multilateral code of conduct that would also be limited to the Spratly Islands and focus on dialogue and the preservation of regional stability rather than the problem of sovereign jurisdiction (Emmers 2002). Thus, Emmers (2002) argues that the formation of an ASEAN diplomatic stand has been destabilised by China's inflexibility and its ability to control negotiation on territorial questions. This also shows the limitation of the ASEAN's influence on the South China Sea dispute.

Moreover, Guan (1999) argues that the prevailing sentiment of China over the South China Sea seems to be a threat to the status quo, peace and stability of the region. The Chinese nationalism with regard to the South China Sea is not 'aggressive' in nature but is of an 'affirmative' or 'assertive' kind. That assertiveness led to the 1995 Mischief Reef controversy which compelled the ASEAN to adopt a united position towards China. Therefore, only a united ASEAN can possibly be able to move China.

However, despite the ASEAN's various political efforts to coordinate the members for a peaceful resolution of internal and external conflicts, there are diplomatic paralyses which make it more difficult for the ASEAN to address the overlapping claims to jurisdiction in the South China Sea. In short, the latitude for the ASEAN to act effectively in response to developments in the South China Sea is limited both by intra-organisational factors and by China's policies and actions in the area (Amer 2002). Unless the ASEAN states establish a modus operandi for the resolution of

internal ASEAN disputes, it would be even more difficult to conceive the ASEAN developing a rule-based regime necessary for resolving disputes with China in the South China Sea (Odgaard 2003).

Track-II Initiatives: South China Sea Workshops

The complex and ambiguous conflicting claims in the South China Sea necessitate a variety of approaches and require ‘flexibility’ in peaceful negotiations. The Track II, i.e., unofficial, informal interactions between members of adversary groups or nations, aim to develop several strategies such as influencing public opinion and organising human and material resources in ways that could help to resolve the conflict. It is not feasible for government officials to discuss all the contentious issues at official meetings (Track I), or through the backdoor line of communications. Thus, an exchange of views plays a pivotal confidence-building role. Hence, Track I and Track II have created two-pronged security mechanisms in the post-Cold War Asia-Pacific region.

Therefore, many scholars believe that there are encouraging signs of a Track II level progress in resolving competing claims in the South China Sea. The non-official Track II diplomacy has enjoyed considerable attention as a new form of confidence-building measure. It aims to facilitate peacemaking through meetings of private individuals or organisations from the various sides of the conflict (Simon 2002). Therefore, the first approach towards a settlement of the South China Sea issue is a Track II diplomacy which was intended to influence officials in the first track. Most dispute resolution theorists have invested more hope and rely on the South China Sea workshops and in the efficacy of Track II diplomacy to bring about changes in the official positions (Buszynski and Sazlan 2007). But the participants have regarded themselves as officials, as they were in most cases appointed by their concerned governments and had adopted official positions. However, these projects are designed to allow for a full and frank discussion of issues without any restrictions imposed by formal negotiations, though the opinions about the workshop’s outcome had been heavily influenced by the unilateral actions taken by claimant states prior to the workshop. This informality of the workshop process however, can be simultaneously strengthened, issues can be frankly discussed and at times, options for resolution freely debated (McDorman 1999).

According to Fraser (2012), Track I or official diplomacy is conducted by professional diplomats, and Track II, by an unofficial or informal interaction between members of adversarial groups. The Track II processes in Asia first developed in the field of economic cooperation under the auspices of the Pacific Economic Cooperation Council. The security-related Track II processes were first spearheaded by the ASEAN Institute of Strategic and International Studies (ASEAN-ISIS) with the objective of strengthening cooperation in the field of research on strategic and international problems (Ruland 2002). Thus, the ASEAN-ISIS became the key player in the establishment of a wider Asian-Pacific network known as the 'Council for Security Cooperation in the Asia Pacific' (CSCAP) which was organised to provide a structured process for regional confidence-building and security cooperation among countries and territories in the Asia Pacific region.

The informal Workshops on Managing Potential Conflicts in the South China Sea, which began in 1990, have been seen as an attempt to ensure that the fundamental transformations of the Southeast Asian security environment which are taking place do not jeopardise regional peace and stability. The workshops have attempted to involve Southeast Asia and China in dialogue and cooperation over the South China Sea issue with the purpose of averting the danger of armed conflict and to pave the way for a constructive engagement among the parties (Odgaard 1998).

The Workshops were not intended to achieve three things; first, devising cooperative programmes, in which all participants can take part, so that the parties learnt the value of cooperation in view of their habits of confrontation in the past; second, promoting a dialogue process among the interested parties so that they could find feasible solutions to their problems, and third, developing confidence-building processes so that everyone would feel comfortable with each other (Djalal 2011). In fact, this is a Track-II diplomatic initiative for promoting cooperation in ecosystem management and cooperative security in the South China Sea. This is an approach to the identification of areas for potential cooperation among the states of the South China Sea region in marine scientific research, marine environmental protection, navigational safety and sea communications, fisheries assessment and management, non-living resource assessment and development, defence and security issues, territorial and jurisdictional issues (other than claims to ocean-space and islands) and institutional mechanisms for cooperation. In addition, opportunities were given to

participants of the workshops to exchange their views on respective national positions regarding the territorial claims in the South China Sea. However, by looking at the sensitivity of the issue, some participants believed that this should not be discussed in an informal forum and should be left to the concerned parties to discuss (Chin 2003).

At the 20th Workshop on Managing Potential Conflicts in the South China Sea which was convened in Bandung, Indonesia, on November 2-3, 2010, the senior participants from all parts of the region made significant financial commitments on the part of China, Indonesia, Chinese Taipei, and Vietnam. In other words, the Workshop Process moved well beyond the ‘talking-shop’ stage to that of project manager (Djalal and Townsend-Gault 2011). This workshop has also worked as a catalyst for cooperation within a range of different functional areas. Through its Technical Working Groups and Group of Experts Meetings, a number of projects have been adopted in areas such as ecosystem monitoring, biodiversity, sea level and tide monitoring. One fine example was that in 1998, a special study group on joint development was set up in the South China Sea, which addressed the sensitive and conflict-ridden issue of access to the natural resources. All these discussions were held within a functional framework, and the group’s task was to explore various models of joint development used around the world to find suitable applications for the South China Sea setting. In short, the role of functional cooperation here is better described as a process of confidence and trust-building between the conflicting parties (Weissmann 2009).

However, according to Scott (2012), the most effective management is the ‘short term’ one, i.e., a balancing that may generate long-term normative changes to bring about resolution, with a Track II non-governmental movement which translates into a Track I government movement. Thus, Track II diplomacy is the only feasible diplomacy that could promote cooperation, understanding and trust among the claimant states. It is in this manner through which China could engage and cooperate with the ASEAN with regard to the South China Sea dispute (Weissmann 2009).

Likewise, Djalal (2011) also suggests some conditions which are necessary for a successful effort of Track II diplomacy or informal process as

- a) All parties should realised that the outbreak of conflicts will not settle the disputes and will not be in their interests.

- b) The existence of political will to seek and solve the problems peacefully.
- c) Not galvanising public opinions so much, or legislating the claims, because they may solidify positions rather than enabling solution or compromise to take place.
- d) Transparency is very much needed in national policy and legislations.

Thus informal or Track II efforts to manage potential conflicts are as much worthwhile as the formal (Track I) and therefore should be continued and encouraged side by side by the countries concerned, in order to settle any bilateral issues.

In this manner, promoting cooperation and joint development mechanisms has been an important part of Track II diplomacy. The Track II workshops have facilitated frank and non-confrontational dialogues between the individual claimant states and created and explored alternative avenues for cooperation (Gault 2007). Gault (2007) also rightly said that in promoting the idea of cooperation, the workshops have aimed to move states from engaging in forceful exchanges to a peaceful joint development in the SCS region. This workshop process has tried to move beyond the fixation of territorial sovereignty issues and worked on getting states to take up a functional approach towards non-traditional security concerns—namely, scientific marine research, environmental and ecological research, maritime communication management, natural resource management and conservation, creation of institutional cooperation mechanisms and so on and so forth. Thus Track II workshops are perhaps the most significant and feasible step towards achieving a peaceful resolution of the conflicts in the South China Sea.

ASEAN, China and the Regional Code of Conduct (COC)

Since 1991, there has been an intense discussion in the Track II workshop series organised by Indonesia on managing potential conflicts in the South China Sea. Thereafter, the idea of a regional Code of Conduct (COC) was put forward in the ‘1992 ASEAN Declaration’ and it was officially endorsed at the 29th ASEAN Ministerial Meeting held at Jakarta, (July, 21-27 1996) considering that it could provide the foundation for a long-term stability in the area and foster understanding among the countries concerned (Thuy 2011).

The active engagement of ASEAN in the South China Sea dispute began in 1992 with the adoption of the 'ASEAN Declaration' on South China Sea. Since then, the ASEAN has endorsed a realisation of the regional Code of Conduct (COC). In late 1999, the ASEAN officials agreed on an ASEAN draft COC and subsequently, China drew up its own draft on the COC. A year later, in March 2000, ASEAN and China agreed to exchange their respective drafts in order to consolidate them into a final and mutually agreeable draft. However disagreement emerged in four major areas: first, the geographic scope; second, restrictions on construction on occupied and unoccupied features; third, military activities in waters adjacent to the Spratly islands, and fourth, whether or not the fishermen found in disputed waters could be detained and arrested. But, after two years of intense discussion and negotiations, it became quite evident that no agreement was possible (Thayer 2013). Still, there are doubts on how much such a code can be negotiated in the time to come and whether a future code of conduct COC should go far beyond a mere statement of general principles on conflict prevention. Therefore a set of detailed principles, which is exactly a means of a COC in practice, can facilitate implementation (Thang and Thang Ha 2011).

According to Thang and Thang Ha (2011), "all the claimant states are hoping for the realisation of a binding regional code of conduct. The time is ripe for the negotiation of a Code of Conduct (COC) in the South China Sea which has already been envisaged in the DOC and set as a task in the 'Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2011-2015)". Therefore, the continuation of an ASEAN-China engagement is extremely essential for the DOC to move forward. And, a further intensification on the efforts from both the ASEAN and China to ensure a full and effective implementation of the DOC and move forward is required so that eventually a final conclusion on the Regional COC can be achieved (Thayer 2011). Thus, several efforts for the realisation of a regional COC have been undertaken by the ASEAN and Chinese officials through peaceful and diplomatic means. According to Khalid (2011), the DOC in its current form is not adequate to prevent tension from spilling over into a full-blown conflict. It would be too ambitious to expect the COC to be a 'be-all, end-all' solution to the SCS disputes between ASEAN and China. It is also not expected for the COC to have a mechanism on conflict prevention. However, with the adoption of a DOC Guideline in 2011, the ASEAN officials began to consider and think on how to

implement the clauses of the 2002 DOC, and adopt a ‘consensual’ code of conduct in the South China Sea.

Meanwhile, in January 2012, the Philippines also circulated an informal draft called the ‘Philippines Draft Code of Conduct’ and later on, ASEAN’s senior officials began discussing the draft with an intention to achieve a common position before presenting it to China for discussion (Thayer 2013). In the 6th China-ASEAN Senior Officials’ Meeting and in the 9th Working Group Meeting on the Implementation of the Declaration on Conduct of Parties in the South China Sea held at Suzhou on September 14 and 15, 2013, ASEAN and China met in their first round of formal consultations on the COC and drew up a work plan on the DOC for the 2013-14 term. The meeting also approved an expert group to assist in developing the COC, and agreed to hold the next meeting in Thailand in early 2014 (Thayer 2013). Therefore mutual cooperation between ASEAN and China is a prerequisite in realising the regional code of conduct (COC) in order to solve or manage the disputes in the South China Sea.

There is abundant literature on the South China Sea dispute but the literature on ASEAN’s role in the issue is insufficient and inconsiderable. Therefore, my research is an attempt to fill this gap.

Rationale and Scope of the Study

ASEAN’s diplomatic approaches have been adopted and presented for managing and obtaining a peaceful resolution to this dispute. Track I mechanisms includes ASEAN summits, ASEAN ministerial meetings (AMM) and the ASEAN-China dialogue for building trust and confidence, whereas Track II includes the informal workshop on managing potential conflicts in the South China Sea to establish cooperation on wide initiatives in building confidence to undertake multilateral cooperation in the South China Sea region. Thus, both these mechanisms have played a significant role in managing and resolving the South China Sea dispute since the early 1990s.

However, a preliminary survey of the literature shows that in spite of several initiatives and approaches that have been taken over the years, the South China Sea dispute still remains a complex, highly contested, deep-rooted and irreconcilable one, affecting almost all the states around it. And since the last two decades, the dispute

has been a major reason for military tension among the claimant states and has often led to confrontation. Though the genesis of the dispute lies in the region's history and other legal issues, the dispute resurfaced only in the 1970s and since then, has remained as an unresolved one and been a matter of intense debate in Asia's regional affairs in particular and the international relations in general. Even though there is some literature on the dispute, most of it is from the Chinese perspective and thus perspectives of the other smaller claimant states are diluted. There is a big lacuna as far as scholarly studies are concerned on the question of ASEAN's role in managing and resolving the issue. It is obvious that there is no way this dispute can be resolved without the ASEAN playing a pivotal role. Hence, the focus of the study is on ASEAN's role.

The scope of the study is limited to the timeframe between 1992 and 2013. These two dates are significant because, in 1992, for the first time, the ASEAN Declaration on the South China Sea came out and 2013 acquires prominence because for the first time, China agreed to hold talks with the ASEAN on the Code of Conduct, which was a major development.

Research Questions

This study raises the following questions: What is the South China Sea dispute all about? Why has ASEAN taken the mantle of resolving the South China Sea dispute? What are the formal Track I diplomatic means that ASEAN is using to engage China? What are the Track II initiatives that are aiding ASEAN's efforts to resolve the issue peacefully? What are ASEAN's strengths to warrant Chinese positive responses to its initiatives? To what extent ASEAN has been successfully in keeping the dispute becoming an armed conflict?

Stating the Hypotheses

The study aims to understand the dynamics and roles of ASEAN in the South China Sea dispute. This research work tests two hypotheses. First, given the complexity of the South China dispute and China's critical stakes in Southeast Asia, ASEAN can exert pressure on China for a peaceful resolution to the issue. And second, a Track II mechanism (Workshop on Managing Potential Conflicts in the South China Sea)

is the most significant tool to find ways to ensure that conflicts do not breakout in the South China Sea dispute.

Research Methodology

This study mainly utilises qualitative and analytical approaches based on the interpretations and explanations. It analyses the genesis of the South China Sea dispute and its complexity. It also evaluates the ASEAN's role in managing or resolving the South China Sea dispute. Primary sources such as government records, policy statements, parliamentary debates, political speeches, treaties and agreements, interview reports, historical biographies, organisational policy papers, protocols and procedure of government conferences, etc., were also used. The research also extensively relies on various secondary sources such as books, articles available in various journals and newspapers on the subject matter. Electronic sources like internet, videos and speeches were also consulted. The two hypotheses are tested in the concluding chapter.

Scheme of Chapters

The study consists of four main chapters in addition to introduction and the conclusion. The introduction portrays the historical background of the South China Sea dispute. It looks into how the ASEAN has played a significant role in the SCS issue. It also analyses in detail the clear exposition on the rationale of the study.

The second chapter looks into the genesis of the South China Sea dispute. The chapter also attempts to analyse the competing claims of the South China Sea. It also looked into the various developments over the South China Sea dispute since the last two decades.

The third chapter deals with ASEAN's role in managing or resolving the South China Sea dispute. Along with this the chapter also examines whether 'Track I mechanisms' (such as the ASEAN Summit, ASEAN Ministerial Meetings, and ASEAN-China dialogue) possess adequate confidence-building measures to prevent or manage the disputes from escalating into armed conflicts. The chapter also attempts to analyse the prospects and challenges of ASEAN diplomacy in managing the disputes.

The fourth chapter looks into diplomatic efforts played by Track II mechanisms (such as Workshop on Managing Potential Conflicts in the South China Sea) and also analyses how these initiatives would help ASEAN in resolving or managing the South China Sea dispute. The importance, prospects and challenges of Track II diplomacy in managing or resolving the South China Sea dispute are also discussed.

The fifth chapter discusses in detail the long diplomatic efforts of ASEAN and China in reaching and materialising the regional Code of Conduct (COC) on the South China Sea. The chapter also examines the genesis and importance of Declaration on the Conduct of Parties (DOC) and its guidelines in adopting and implementing the binding regional Code of Conduct (COC). The concluding chapter summarises the finding of the study, thereby testing the proposed hypotheses.

Limitations of the Work

The present work has limitations in certain aspects. Most significantly, due to a lack of official documents of the claimant states over the SCS issue, the available data are sometimes not completely reliable for reaching any formidable conclusion. As a result, the author has had to rely on documents and data from various international organisations, think tanks, research institutes and non-governmental organisations.

Chapter 2

GENESIS OF THE SOUTH CHINA SEA DISPUTE

The South China Sea (SCS) has been regarded as a major source of tension and instability with a dangerous conflict potential in the Asia-Pacific region. The dispute in the SCS is complex because it involves environmental and economic issues besides security and contending sovereignty claims and so cannot be reduced to the traditional military security domain alone (Kivimaki 2002: 1). Some acknowledge this issue as highly influenced and motivated by its geostrategic 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: 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 the waters. Almost all of the principal shipping and air traffic lanes pass through the South China Sea. Therefore, a control of the islands in the South China Sea implies a 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: 4). Therefore, it is of immense value from the military point of view as well (De Souza 2010: 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 the 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: 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: 9-10).

In addition to the centrality of economic value, the issue refers to competing 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 the Pratas Reef, the Macclesfield Bank, the Paracels and the Spratlys, came into existence prior to the Second World War, when

claims were made by China and the two colonial powers, i.e., Japan and France. However, just after the war, France withdrew from the region and Japan renounced its claims as per the San Francisco Peace Treaty, without specifying to which country or countries the territories were being relinquished to. Therefore, this triggered a subsequent competition among littoral states, with rival claims being pursued by mainland China (People's Republic of China), Taiwan, and four Southeast Asian states (Baviera 2005: 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 makes for a condition of all claiming the islands, and also reflects the larger contest for power in post-war Asia (Samuels 1982: 69).

It is also believed that the issue is the 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: 10). Therefore, the dispute in the South China Sea is driven and accentuated by the abundance of natural resources, particularly the oil and natural gas in this area (Thearith 2009: 60). In addition, the strategic importance and position 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. Therefore, the persistent competition over the maritime rights, especially claims to territorial sovereignty over the islands, reefs and natural resources in the South China Sea, has emerged as the 'new central theatre of conflict' in the world (Fravel 2012: 33). Taylor (2014) has mentioned that "Southeast Asia's top diplomat, Surin Pitsuwan, has dubbed the dispute as 'Asia's Palestine,' while former Australian Prime Minister Kevin Rudd refers to the South China Sea as a 'tinderbox on water' and a maritime Balkans of the 21st century" (Taylor 2014: 99). Thus, 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.

South China Sea (SCS): Background and Importance

The South China Sea, covering an area of 1.2 million square miles or 8,75,000 square nautical miles, is a semi-enclosed region surrounded by the People's Republic of China (PRC), Taiwan (ROC), the Philippines, Malaysia, Brunei, Singapore, Indonesia and Vietnam, with Cambodia and Thailand are located along its Gulf of Thailand

extension (Schofield and Storey 2009: 7). It encompasses a portion of the Pacific Ocean stretching roughly from Singapore and the Strait of Malacca in the southwest. Its area includes more than 200 small islands, rocks and reefs with the majority located in the Paracel and Spratly Island chains (De Souza 2010: 22). However, the exact number of these features is not available since many of these features are not always above water level. But these features are grouped into four mid-ocean groups of islands, namely; the Pratas Islands, the Paracel Islands, the Spratly Islands and Macclesfield Bank (Nguyen 2005: 8). However, the tensions are centred on the Paracel and the Spratly Island groups.

The Paracel Islands

The Paracel Islands consist of two main groups: the western group or the Amphirite group and the southern group or the Crescent group, which lie some 70 kilometres apart from one another (De Souza 2010: 23). These two groups occupy an area of 15,000 square kilometres of the South China Sea with more than 30 islands, islets, cays and reefs (Nguyen 2005: 8). There is also evidence of existence of offshore oil as well as phosphate deposits (De Souza 2010: 23-24). These islands are claimed by China, Vietnam and Taiwan. In 1974, China had forcibly evicted the South Vietnamese troops from the Paracel islands. But, the Paracel islands still continue to be a source of tension between China and Vietnam (Beckman 2011: 2).

The Spratly Islands

The Spratly Islands include about 45 islands and hundreds of reefs, islets, atolls and cays. Out of these forty-five, only nine are considered to be major and the total combined land mass is only 1.9 square miles (4.9 sq. km). The highest point in the Spratly Islands is 13 feet (4 metres) above sea level; many of its features disappear temporarily under the rising tide. None of these islands can support human life; the only indigenous inhabitants are seagulls and the blue-footed booby, which includes ten species of long-winged seabirds (Ring 2012: 9). There are indications of important reserves of phosphorus estimated at 3,70,000 tonnes. Some of these islets and islands are occupied by Philippines, Malaysia, China and Vietnam (De Souza 2010: 23). Some see that the Spratly Islands are not much significant for international maritime navigation. They are dangerous for shipping, and no major international shipping lanes pass through them. However, the islands could be important in safeguarding the

international shipping lanes, and they are often described as having strategic importance (Beckman 2011: 2). Thus, these islands are a source of tension and even potential conflict. Now, these are claimed entirely by China, Taiwan and Vietnam, while some islands and other features are being claimed by Malaysia and the Philippines. However, Brunei has established a maritime zone that overlaps a southern reef, but it has not made any formal claim (Beckman 2011: 3). However, the dispute over the Spratlys has been a sensitive and complex issue among the claimant states, resulting in several military clashes and near clashes over the last three decades.

Map 1: SOUTH CHINA SEA



Source: Special Report from Australian Strategic Policy Institute, September 2013

Significance of the South China Sea

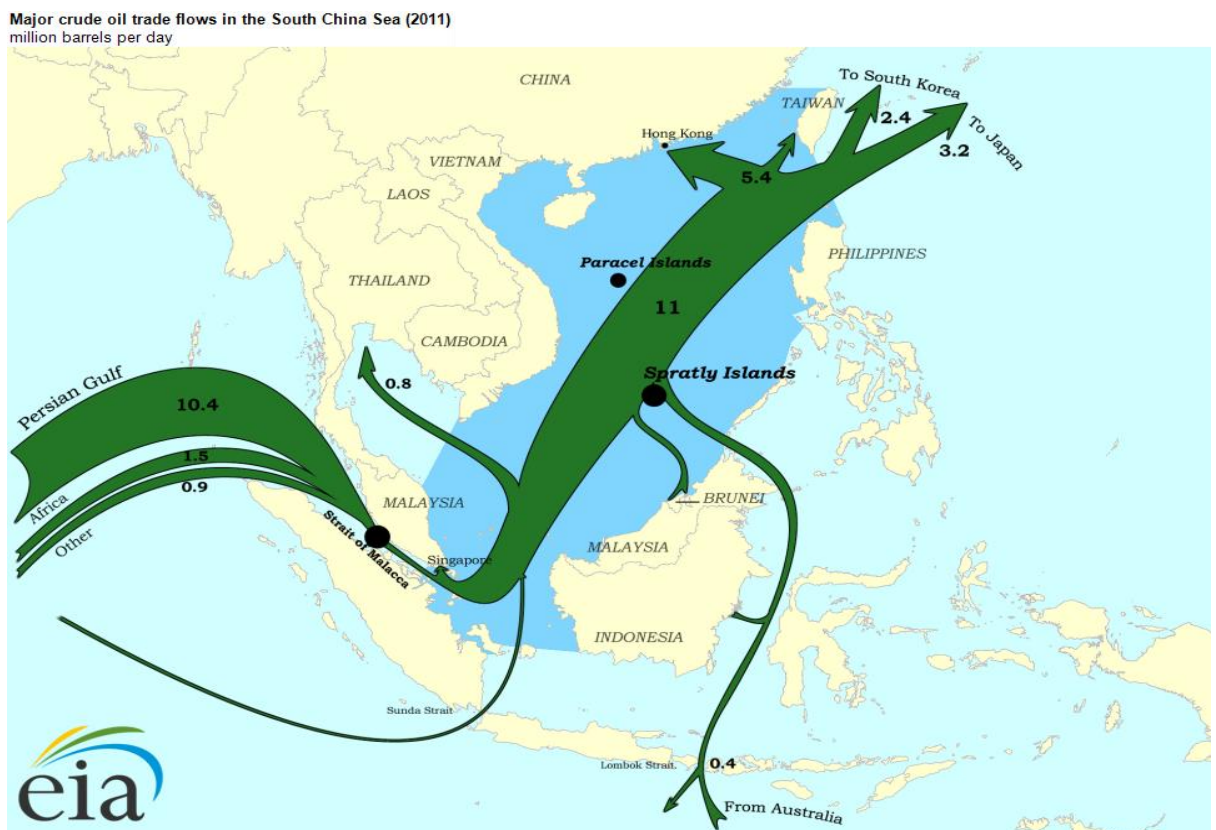
The South China Sea has the significance of a strategic passageway. It passages many sea-lanes through which oil and many commercial resources flow from the Middle East and Southeast Asia to Japan, Korea and China. It is known to be the second busiest sea lane of the world and well over half of the world's petroleum-bearing traffic passes through its waters; it is also an important connection between the East and the West. More than half of the tonnage shipped through the sea is crude oil from the Gulf, destined for East Asia (Burgess 2003: 7).

Around 90 percent of the global trade by volume is carried on by sea and the South China Sea lines of communications (SLOCs) are critical to the flow of much of this commerce. The South China Sea is one of the most important energy trade routes in the world. Almost a third of global crude oil and over half of the global liquefied natural gas (LNG) passes through the South China Sea each year. That is why the South China Sea SLOCs and chokepoints are significant to the energy security of Northeast Asia's economic powerhouses as they provide a crucial part of the route between key energy sources in the Middle East, Australia and (increasingly) Africa and the energy-hungry economies of East Asia such as the People's Republic of China (PRC) or China, Taiwan (ROC), Japan and the Republic of Korea that are all dependent on uninterrupted energy supplies, largely in the form of oil, natural gas and coal, much of which flows through the South China Sea. For instance, more than 90 percent of Japan's oil needs are imported. In 2006, China imported approximately 43 percent of its energy needs and by 2020 this dependency is predicted to rise to 60 percent or even higher. It is also believed that the freedom of navigation and the safety of shipping through the South China Sea are of profound and increasing importance to countries in both Southeast and Northeast Asia (Schofield and Storey 2009: 7-8). A large amount of crude oil arriving in the Strait of Malacca (1.4 million barrel per day) goes to terminals in Singapore and Malaysia through the South China Sea. Again, after processing, this crude oil is shipped out to Asian markets through the South China Sea as refined petroleum products, such as motor gasoline and jet fuel. However, the rest of the crude oil passes through the South China Sea to China and Japan, the two largest energy consumers in Asia. Finally, about 15 percent of crude oil moving through the South China Sea goes on to the the East China Sea, mostly to South Korea (US Energy Information Administration 2013).

Moreover, the South China Sea is also a main destination for LNG exports. For instance, about 6 trillion cubic feet (tcf) of liquefied natural gas, or more than half of global LNG trade, passed through the South China Sea in 2011. Almost half of this amount continued on to Japan, with the rest of it going to South Korea, China, Taiwan and other regional countries. About 75 percent of all LNG exports to the region come from Qatar, Malaysia, Indonesia and Australia. With the rising demand for natural gas in East Asia, the South China Sea's share of global LNG trade will likely increase in the near future.

Finally, huge quantities of coal from Australia and Indonesia pass through the South China Sea to markets around the world, especially to China, Japan and India. These coal shipments include both steam coal used for generating electricity and process heat as well as metallurgical coal that is a key ingredient in primary steel production (US Energy Information Administration 2013).

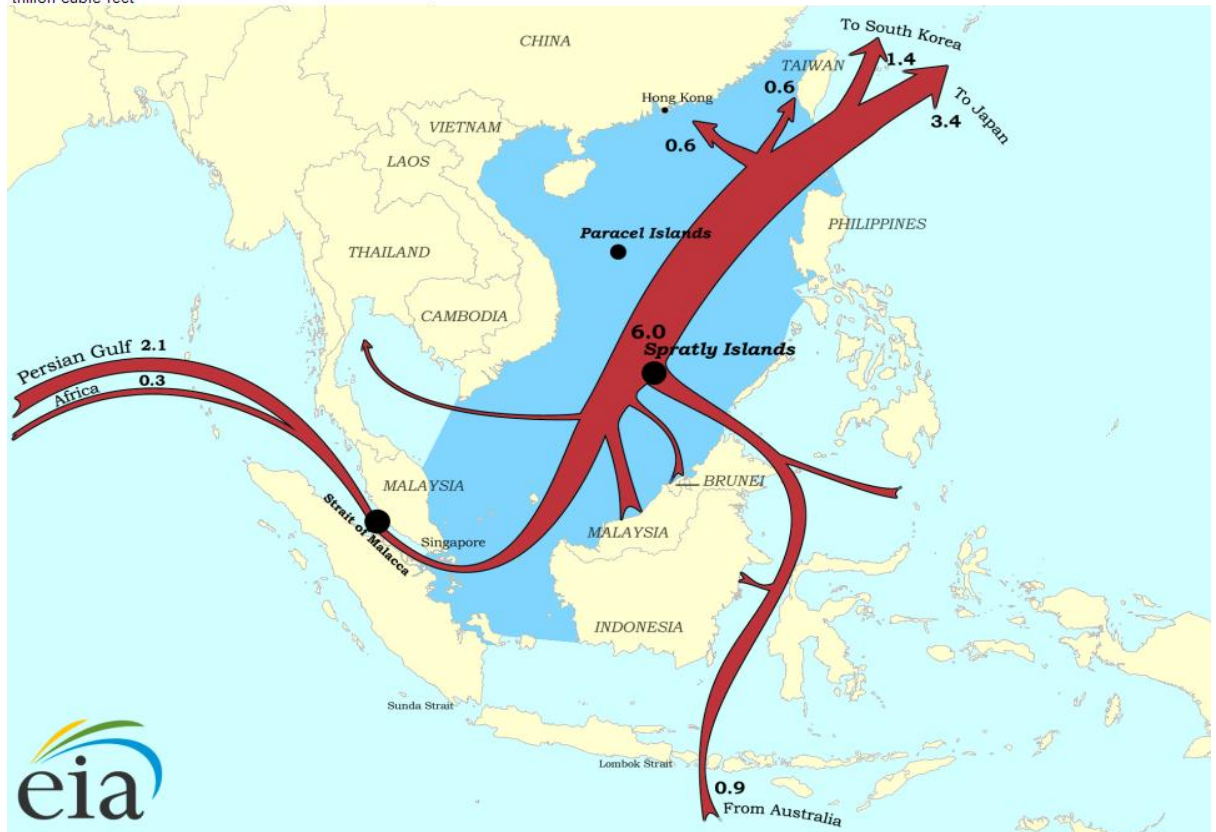
Map 2: Crude Oil Trade Flows in the South China Sea



Source: U.S. Energy Information Administration, <http://www.eia.gov/todayinenergy/detail.cfm?id=10671>.

Map 3: LNG Trade Flows in the South China Sea

Major LNG trade flows in the South China Sea (2011)
trillion cubic feet



Source: U.S. Energy Information Administration, <http://www.eia.gov/todayinenergy/detail.cfm?id=10671>.

Moreover, the US Energy Information Administration (EIA) has mentioned that in 2012, the US Geological Survey (USGS) estimated that about 12 billion barrels of oil and 160 trillion cubic feet of natural gas might exist as undiscovered resources in the South China Sea, excluding the Gulf of Thailand and other adjacent areas. But about one-fifth of these resources may be found in contested areas, particularly in the Reed Bank at the northeast end of the Spratly Islands, which is claimed by China, Taiwan and Vietnam (US Energy Information Administration 2013). Some Chinese sources rather more positively provide estimates in the higher range of 105-213 billion barrels of potential oil reserves in the South China Sea (Schofield and Storey 2009: 8). Therefore, some have observed that the South China Sea natural resources are of significance worldwide. Subsequently, in the last decade, the dispute and competition over resources in the South China Sea has been given global attention (Xue 2012: 309).

Map 4: Oil and Gas Reserves in the South China Sea



Source: Energy Information Administration, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

The South China Sea also has strategic importance. For instance, during the Second World War, the Spratly Islands were used as a submarine base by the Japanese Navy (Nguyen 2005: 10). In addition, the sea lanes of communication in the South China Sea are also being utilised for military purposes. For the United States, the freedom and safety of navigation and overflight in the South China Sea region are critical strategic interests because the South China Sea can be used as a transit point and operating area for the United States Navy and Air Force between military bases in Asia and the Indian Ocean and in Persian Gulf areas (Nguyen 2005: 11). Therefore, for all claimant states, the South China Sea cannot be ignored and thus they do not agree to give up their interests (Thuy 2011: 3). Indeed, all these facts and significance related to the South China Sea make this dispute even more complex and difficult to be settled. Thus, the South China Sea is believed to be a theatre of immense importance from a strategic and military context for the regional states as well as external powers (Khalid 2011: 126).

Origin of the Dispute

The South China Sea issue is increasingly becoming multifaceted. The contest over the complex nature of the dispute in the Sea is deeply rooted in the region's colonial history. Second, it relates to the legal regime under international law such as the United Nations Convention on the Law of the Sea (UNCLOS). Third, it is about geostrategic importance and the presence of abundant natural resources. The fourth is related to domestic politics. And, finally, it is about the rise of nationalism among some claimant states due to contested claims (Lan Anh 2015: 15). Moreover, the history of the South China Sea dispute could be better understood and studied under three eras such as pre-modern, modern and post-modern. In the modern era, it comprises of the European, post-European, Cold War and post-Cold War periods where the intensity of the South China Sea dispute was conditioned by what?, and in the post-modern era, the strategic interests of claimant states were attached to the South China Sea islands (Till 2009: 26).

According to Scott Snyder (1996),

...The question of who owns the 400-plus rocks, reefs, and islands (known as the Spratly Islands) that are scattered within an 800,000-square-kilometer area within the South China Sea was largely ignored until the 1970s. (The vast South China Sea region also includes other island chains and submerged reefs that have been the subject of disputes, including the Parcel Islands and Macclesfield Bank.) At that time, the area became a possible target for exploration by multinational oil companies. In addition, the likelihood of conflict has increased as international maritime laws have slowly been codified and institutionalized following World War II. Motivated by the desire to extend control over sea-based resources, neighbouring states in the area have increasingly come into verbal conflict and even sporadic military confrontations over sovereignty, sovereign rights, jurisdiction, and arms control efforts in the South China Sea (Snyder 1996: 3).

Further, many states, in the region and around the world, have maritime security interests in the South China Sea. These interests include claims to territorial sovereignty over islands and coral reefs, claims to exclusive rights to develop maritime resources, freedom of navigation on the high seas and the consequences of ongoing naval modernisation in the region. Thus, the key maritime security issue in the South China Sea has been the competition to claim, assert and enforce maritime rights in these waters (Fravel 2012: 34). Even though, before the 20th century, the

South China Sea was not been considered as a dangerous zone and remained uninteresting to any claimant states. But after the defeat of France in the Second World War, the South China Sea region including both the Paracel and Spratly Islands was included in the Japanese administrative system. Again, after the defeat of Japan in the Second World War, Japan gave up its claims of the two archipelagos and left the region unoccupied. Since then, the importance and significance of the South China Sea has been gradually recognized by its neighbouring states and a campaign for an effective occupation over these islands has become a main concern. Therefore, every claimant state considers the territorial issue of sovereignty as a sensitive and indisputable issue.

Colonial Era: The Beginning of the South China Sea Dispute

Before the colonisation process started in the region, the Arabs, Persians, Indians, Chinese, and the people of Southeast Asia used various sea routes in the South China Sea for trade (Lan Anh 2015: 15). Chinese ships dominated trade in the South China Sea from the 12th to the mid-15th centuries. However, before that, the state of Sri Vijaya which was linked to the Muslim merchants of Persia and Arabia, had played a dominant role. Later, the Dutch dominated the spice trade during the 17th century. Then, the British and French arrived with superior ships and notably better cannons than the local naval powers. Since then, those Europeans brought firepower, silver, gold, and opium but also the very concepts such as ‘sovereignty’ and ‘freedom of navigation’ (Tonnesson 2002: 7-8). Not only this, they divided the littoral territories of the South China Sea into their respective spheres of influence, such as Malaya, the northern Borneo colonies, and Hong Kong (the United Kingdom), Indochina (France), East Indies (the Netherlands) and the Philippines (Spain) (Lan Anh 2015: 16). In addition to this, with the coming of the colonial powers, the concept of ‘territorial sovereignty’ came to the region and the people also learned European ways such as to demarcate borders, mapping, delineating territorial waters, and planting flags or erecting stone markers on islands (Tonnesson 2001: 6). However, for the first time, in 1877, the British crown made a modern legal claim to the Paracel or Spratly Islands. Therefore, from 1891 to 1933, the Spratly Islands and Amboyna Cay were mentioned specifically in every annual edition of the British Colonial Office list, but few of them were exploited and the British hardly exercised their sovereignty over them (Tonnesson 2001: 7).

At the same time, the region witnessed the rise of Japan and its southeastwardly expansion to China, Korea, and towards some features in the South China Sea. As for example, in 1894-95, Japan destroyed the Chinese navy and established a presence in the South China Sea through the annexation of Taiwan (Formosa). Since then, Japanese companies in Taiwan started a systematic exploitation of *guano*¹ both in the Paracels and the Spratlys, but without making formal claims. But these were probably strategically motivated moves to provide for a southward naval expansion.

On the other side, these Japanese moves were at a counter-interest to France which led the French to have a new interest both in the Spratlys and the Paracels. For instance, France claimed the Spratlys and also occupied some of them in 1930-33. Later, in 1938, the French established a permanent presence in the Paracels. Then, during the Second World War, the French (in fact the Vietnamese) and the Japanese (in fact the Taiwanese) troops lived side by side both in the Paracels and the Spratlys. Only in 1945 were the French withdrawn from the Paracels (Tonnesson 2002: 9-10). Thus, the presence of these colonial powers in this area sowed the seeds for sovereignty disputes.

Post-Second World War Period

By the end of the Second World War, all the portions occupied by Japan and France in the Paracels and Spratlys ceased, but this left the fate of the archipelagos unclear. There were four main international documents such as: first, the Cairo Declaration (1943); second, the Potsdam Declaration (1945); third, the San Francisco Treaty (1951); and fourth, the Joint Communiqué between the PRC and Japan (1972) (Lan Anh 2015: 18). The Cairo Declaration was released on December 1, 1943 with a main “purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China” (Cairo Conference 1943). This Declaration excluded the Paracels and Spratlys from the ‘stolen territories to be restored to the Republic of China’ (Manchuria, Formosa and the Pescadores) (Lan Anh 2015: 19).

¹Bird dung used as fertiliser and for producing soap (Tonnesson 2001: 6).

On July 26, 1945, US President Harry Truman, British Prime Minister Winston Churchill, and President Chiang Kai-shek of the Republic of China met in Potsdam, Germany, and issued the 'Potsdam Declaration' to consider the war strategy and post-war policy. The Soviet leader Joseph Stalin also attended the Potsdam Conference but did not sign the Declaration, since the Soviet Union had not entered the war against Japan yet (Potsdam Declaration 1945). This Declaration stated that "the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine" (Potsdam Declaration 1945).

Again, in the 1951 Treaty of Peace with Japan (also known as the San Francisco Treaty), Japan renounced all rights, titles and claims to the Spratly Islands and to the Paracel Islands. However, the treaty did not clarify the status of the sovereignty of the Paracel and Spratly Islands even after the Japanese renouncement (Lan Anh 2015: 19). Moreover, the contents of the Cairo Declaration and Potsdam Declaration were transferred and reaffirmed in the Joint Communiqué between China and Japan in 1972. The Communiqué provided that "the Government of the People's Republic of China reiterates that Taiwan is an inalienable part of the territory of China. The Government of Japan fully understands and respects this stand of the Government of China, and it firmly maintains its stand under Article 8 of the Potsdam Proclamation" (Joint Communiqué 1972). Thus, the lack of clarity regarding the sovereignty of the islands in these legal documents paved the way for different and conflicting interpretations (Lan Anh 2015: 19).

Cold War Period

With the end of the Second World War, the struggle between north and south in Vietnam and the onset of the Korean War, the islands of the South China Sea began to be seen, unsurprisingly, as a potential battleground in the struggle between the Communist and Western blocs. The French certainly took the line that these islands were just another set of dominoes ready to fall to the Communist world (Till 2009: 31-32). However, during the Vietnam War, as part of the exigencies of fighting that war, the South China Sea became something of an American 'lake'. Therefore, this was not an area in which the PRC could easily advance its interests (Till 2009: 32). However, since Chiang Kai-shek's troops left in 1950, the PRC restated its own claim

and also established a permanent presence in the Woody Island of the eastern Paracels, which had only been seasonally inhabited by Hainan's fishermen. At the same time, South Vietnam also pronounced its own claim to the Spratlys and sent an expedition to erect Vietnamese markers. But, Britain, Japan and the United States (US) did not take any official position (Tonnesson 2002: 13). However, the South China Sea dispute only became a more serious issue in the early 1970s, when it was discovered that the region could contain significant deposits of oil and gas and, importantly, it was in 1972 that the Marcos Government officially incorporated Kalayaan² into Palawan island (Hong 2013: 30).

Further, on January 19, 1974, China used military force and took over the Paracels, which Vietnam had claimed as its own, and claimed it since then (Panda 2011: 216). Subsequently, in 1979, the Soviet navy was deployed in-between Hainan and the Vietnamese coast in order to deter a Chinese sea-based attack on its local ally. This gave a considerable concern to the US Navy. But after the collapse of the Soviet Union, China had better relations with United States and devoted its maritime interests across the Taiwan Straits and in the South China Sea. Moreover, during this period, many concerned parties made their interests which were apparently followed by growing tensions over the Paracel and Spratly Islands. But in-between, with regard to promote the peaceful use of the sea, the United Nations Convention on the Law of the Sea (UNCLOS) was adopted after nine years and eleven sessions of negotiations from 1973 to 1982. But, unfortunately, the dispute seems to be expanding and escalating due to the provisions of the Convention. For example, some coastal countries applied and explained provisions concerning baselines and maritime zones in favour for their country. Therefore, the dispute over the islands has expanded into maritime disputes (Lan Anh 2012: 6-7). The UNCLOS allows all the littoral states to claim an Exclusive Economic Zone of 320km, or continental shelf, and also specifies that islands can generate their own EEZs or continental shelves (Buszynski 2013: 4-5). Further, a second burst of fighting occurred in March 1988 (Till 2009: 32). Thus, this phase was given to accelerating interests and to chaotic occupation of the islands.

²Many of the features of the Spratly Islands fall within the Kalayaan Island Group, claimed by the Philippines (Beckman 2013:144).

Post-Cold War Period

With the end of the Cold War, the South China Sea dispute turned into being just a regional rather than a global issue. A series of incidents took place such as the rise of tensions between China and Vietnam during July and August 1994 and China's occupation of the Mischief Reef in February 1995 (Till 2009: 33). Further, some fears arose that Beijing intended to establish the South China Sea as a 'Chinese lake'. Again, the domination of the South China Sea 'heartland' would give the Chinese great political, economic and military sway over the coastal states in the Asia-Pacific region. However, the South China Sea issue of territorial dispute has had a long history, but its re-emergence in the mid-1970s was a symptom of the changing balance of power associated with the end of the Vietnam War (Hyer 1995: 36). Some commentators talked of a 'power vacuum' and an emerging 'arms race' between the Southeast Asian states and China to fill the vacuum left by the departing Russians and Americans (Tonnesson 2001: 19).

Almost all countries around the South China Sea have been continuously improving and modernising their military forces, especially the navy. This was led by China with an increasing military budget every year. For example, the military expenditure of China has rose to US\$ 78 billion by 2010. Again, China built a nuclear submarine base at Sanya (Hainan Island) and equipped aircraft carriers and other modern weapons. Subsequently, this made other countries to enter into an arms race in the region (Lan Anh 2012: 3-4). Since 2000, the arms imports to Indonesia, Singapore and Malaysia have gone up by 84 percent, 146 percent and 722 percent, respectively. Recently, Vietnam spent US\$ 2 billion on six state-of-the-art Kilo-class Russian submarines and US\$ 1 billion on Russian fighter jets. Not only this, Malaysia opened a submarine base on the island of Borneo, and even China is developing an underground base for twenty nuclear submarines on the Hainan Island on the other side of the South China Sea (Kaplan 2014: 19). Therefore, the South China Sea dispute has become more prominent and the tensions peaked in 1995 after China occupied the Mischief Reef in the Philippine-claimed zone and also built an octagonal structure on it, with a small pier and radar antennae (Buszynski 2013: 7). That is why, all the concerned parties pushed their interests by claiming continuous sovereignty claims, Maritime Rights and Jurisdiction, Freedom of Navigation, and even the reclamation projects, which are also taking place in the South China Sea.

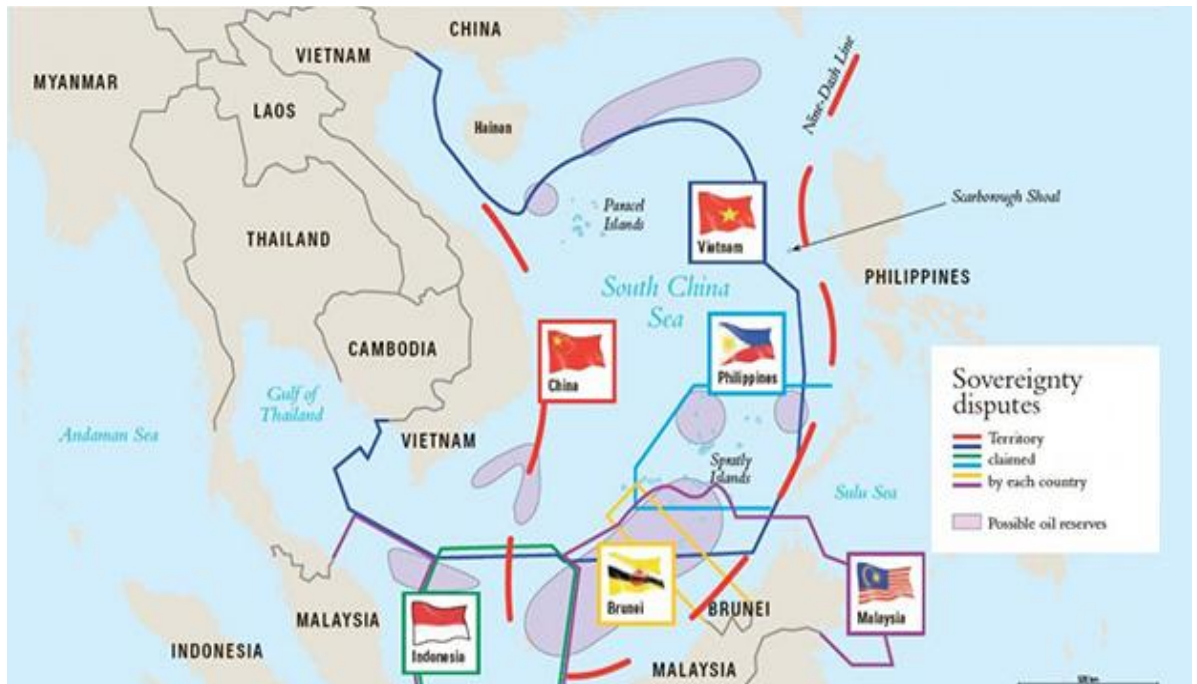
Sovereignty Claims

According to M. Taylor Fravel (2012),

...The first aspect of maritime security involves sovereignty claims to islands and other land features, such as coral reefs. In the South China Sea, there are two distinct disputes over territorial sovereignty. The first is a bilateral dispute between China and Vietnam over the sovereignty of the Parcel Islands, which China has controlled completely since 1974. The second is a multilateral dispute over the Spratly Islands, which include roughly 230 features, primarily small islands, islets and coral reefs. Vietnam, China and Taiwan all claim 'indisputable sovereignty' over all these land features (Fravel 2012: 34).

After the Second World War, China resumed its exercise of sovereignty over the South China Sea Islands—de jure and de facto (Ministry of Foreign Affairs of the People's Republic of China 2015). With the exception of Brunei, all of the states claiming sovereignty over the disputed South China Sea islands have sought to underpin their claims by occupying one or more of the insular features in question (Schofield and Storey 2009: 10). The Philippines claims 53 features, but occupies eight features; whereas Malaysia claims 12, and has occupied five; Vietnam currently occupies 27 features; China, 7; and Taiwan, 1. But the first feature was occupied in 1956 when Nationalist troops from Taiwan permanently garrisoned Taiping (Itu Aba) Island, the largest of the disputed islands. Other claimants did not begin to establish a permanent presence until the early 1970s. China began to establish a physical presence in January 1988, which resulted in a clash with Vietnam in March 1988 that killed 74 Vietnamese sailors. Then the last land features were occupied by Malaysia and Vietnam in 1998 and 1999, respectively. China has not occupied a contested feature since late 1994, when it seized the aptly named Mischief Reef (Fravel 2012: 34). Consequently, the dispute has become more complex and tense with sovereignty issues of the concerned parties.

Map 5: Sovereignty Claims by the Claimant States in the South China Sea



Source: https://www.google.co.in/search?q=nine+dash+line+map+of+south+china+sea&newwindow=1&rlz=1C1MIMX_enIN460IN460&espv=2&tbm=isch&imgil=gsf12FnryxHk5M%253A%253BDP_dvVLQnAwenM%253Bhttp%25253A%25252F%25252Fwww.cfr.org%25252Fchina%25252Fsouth-china-sea-tensions.

Maritime Rights and Jurisdiction

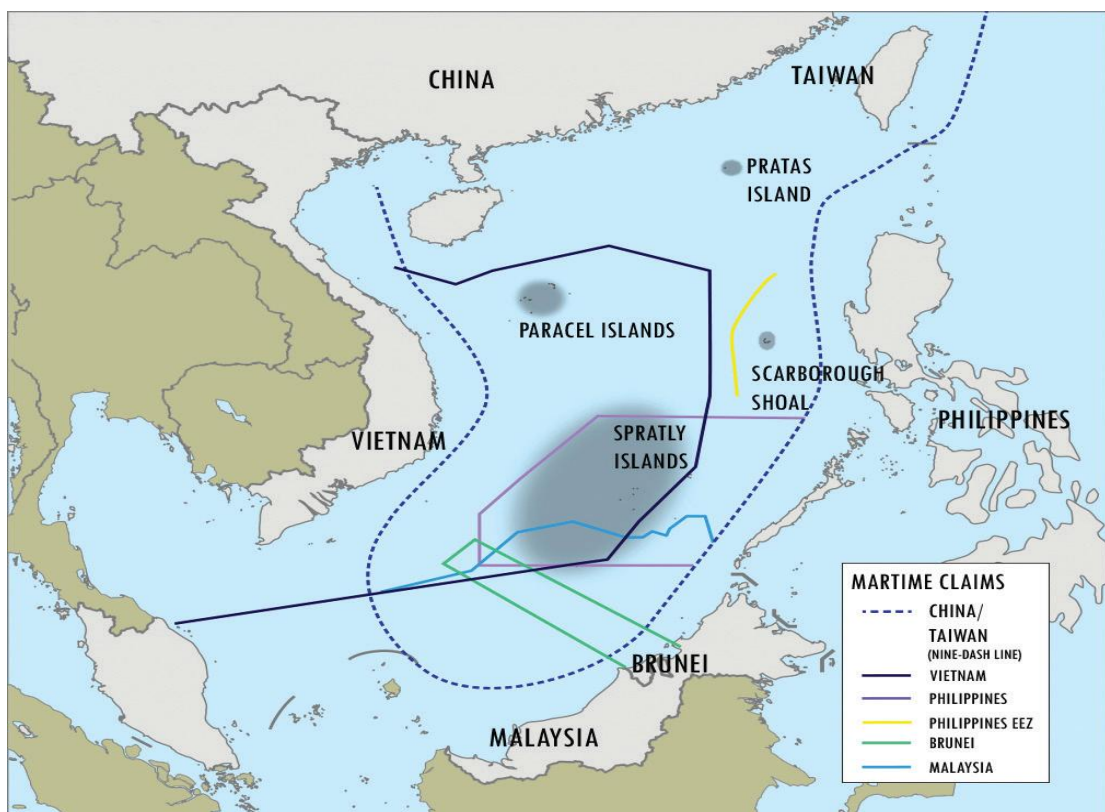
Clive Schofield and Ian Storey (2009) have asserted that,

...The fundamental legal framework governing maritime jurisdictional claims and the delimitation of maritime boundaries is provided by the 1982 United Nations Convention on the Law of the Sea (LOS), which has gained widespread acceptance by the majority of the states in the world. All of the South China Sea littoral states (with the understandable exception of non-U.N. member Taiwan) are parties to the LOS. From their baselines along the coast, that is, the points from which its maritime claims are measured, all of these states claim the full suite of zones of maritime jurisdiction provided for in accordance with the LOS, notably 12 nautical miles breadth territorial seas, Exclusive Economic Zones (EEZs) out to 200 nautical miles as well as continental shelf rights. It can be observed, however, that some of the baselines used as the starting point for measuring these maritime claims are of questionable validity and have been challenged internationally (Schofield and Storey 2009: 12).

Moreover, different states justify their claims to maritime rights in different ways. Vietnam, the Philippines, Malaysia and Brunei assert their claims from their coasts. Indonesia asserts maritime rights from the Natuna Island. China, however, bases its

maritime rights on its claims to sovereignty over disputed island groups, such as the Spratlys, in addition to the coast of the Chinese mainland. But many observers view China's Exclusive Economic Zone (EEZ) claim as expansive because it covers a larger area of maritime rights than other littoral states and as illegitimate, because part of the claim appears to be based on land features that would not qualify as islands under Article 121(3)³ of the UNCLOS (Fravel 2012: 34-35). Therefore, there are contestations and conflicts over the maritime rights and jurisdictions among the concerned parties.

Map 6: Maritime Boundary Claims in the South China Sea



Source: Jeffery Bader, Kenneth Lieberthal, and Michael Mc Devitt's article 'Keeping the South China Sea in Perspective', August 2014.

Freedom of Navigation

Foreign Ministry Spokesperson Hua Chunying of China said in a Press Conference on April, 28, 2016 that "I would like to stress once again that the Chinese side always

³Article 121 (3) of UNCLOS says that rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf; UNCLOS: http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

respects and supports genuine freedom of navigation that conforms to international law, but stands firmly against any attempt to undermine China's sovereignty and security interests under the pretext of navigation freedom" (Ministry of Foreign Affairs of the People's Republic of China 2016).

Freedom of navigation affects the interests of all seafaring states, including the United States, and not just the states that claim territorial sovereignty or maritime rights (Fravel 2012: 35). Although, the EEZ regime was crafted carefully to balance between the two legitimate interests like the protection and sustainable development of the living and non-living offshore resources and on the other the high sea navigational freedoms that enable states to freely conduct commerce and to defend their security interests. It protected the resource rights by giving the sovereign states an exclusive right to them and jurisdiction sufficient for their management, but not full sovereignty, which would have allowed coastal states to interfere with the navigational freedoms of other states as they employ naval power to pursue their security interests. That is why the high sea freedoms of navigation, overflight, and other traditionally lawful activities, including military freedoms, were specifically retained by all states in the UNCLOS jurisdictional framework of the EEZ and the continental shelf (Dutton 2011: 177).

Domestic Factors

NguyenThiLan Anh (2015) has expressed that

...In many ways, the South China Sea dispute is not one between states, but within each states itself. Within each claimant state, the election cycles and the subsequent leadership change may result in more decisive and hard-line policies towards territorial competition, such as is seen in the South China Sea. The competition between different agencies and actors in order to obtain greater power and budgets results in a degeneration of the scenario in the South China Sea. Public opinion or nationalism can act as a major barrier for any form of concession towards the South China Sea dispute (Lan Anh 2015:28).

In recent years, home grown nationalist sentiments and nationalism have swept over claimant countries. For instance, in Chinese history textbooks, they are showing the maps of the South China Sea as its territory. In addition, the 'victories' in 1974 and 1988 military conflicts over the Vietnamese have led to growing nationalist sentiments. Thus, Beijing has always tended to use nationalism to defend its foreign policies (Thombre 2013: 1). Adam Nieves Johnson (2012) once pointed out that

Beijing is using nationalist tendencies to warm its citizens up to a potential dispute with the Philippines. With the use of state-owned and private media outlets, China has painted a much different picture of the South China Sea dispute than what is really taking place. In addition to this, Beijing is telling its people that their country is not the aggressor in the South China Sea dispute, and that the Philippines is the one that is not backing down (Johnson 2012: 43-44).

Subsequently, the Vietnamese mounted anti-China demonstrations by using FaceBook and other social networking sites on four consecutive Sundays in both Hanoi and Ho Chi Minh City in 2011. Again, on June 5, an estimated 300 Vietnamese gathered in Hanoi near the Chinese Embassy, while a crowd numbering from approximately 1,000 to 'several thousands' gathered in Ho Chi Minh City. Later, on June 12, around two hundred demonstrators took to the streets of Hanoi while another three hundred marched in Ho Chi Minh City with placards reading 'Down with China,' 'The Spratlys and Paracels belong to Vietnam' and 'Stop Violating Vietnam's Territory' (Thayer 2011: 19). Further, in April 2012, the Scarborough Shoal dispute took place between China and the Philippines in which the Philippine Navy tried to arrest the crew of a Chinese fishing vessel that was in their waters. Thus, the growing nationalism in concerned countries makes these disputes even more complex.

Claimant States in the South China Sea and their Interests

It is believed that with the increase of the importance and significance of the SCS, all the claimant states have strengthened their claims and no country is ready to compromise on its sovereign rights and interests over the disputed areas. Therefore, the six main countries have strong claims over these disputed areas and its natural resources.

Brunei's Claims and Interests

In the southern part of South China Sea, Brunei claims an exclusive economic zone (EEZ) of 200 nautical miles and the natural prolongation of its continental shelf that totally overlaps with the EEZ and continental shelf of Malaysia. Brunei currently claims sovereignty over two reefs, the Louisa Reef and Rifleman Bank, both located in the southern portion of the Spratly Islands, based on the belief that these features are located on an extension of its continental shelf (Chin 2003: 24). However, Brunei

does not control any reef, but explains in terms of modern international law, i.e. the 1982 United Nations Convention on Law of the Sea (UNCLOS) to sustain its claims to the EEZ and continental shelf areas in South China Sea (Amer 2002: 27). That is why Brunei is still claiming sovereignty over these two reefs based on the fact that they are located within the continental shelf area of its claim.

China's Claims and Interests

Li Mingjiang has asserted that “China was the first country to discover and use the islands and resources in the South China Sea. It is also argued that China discovered these islands in the South China Sea during the Han Dynasty in the 2nd century BC. Therefore, the Chinese claim in the South China Sea is mainly based on historical grounds” (Mingjiang 2010: 53).

Moreover, the people from China started to fish around the Spratly Islands during the Ming Dynasty (1368-1644), and then the Spratly Islands first came under the political jurisdiction of China during the Yuan Dynasty (1271 to 1368 when the Mongolian empire conquered and ruled China) (Dolven et al. 2013: 8).

Even during the Qing dynasty, the Chinese had lodged a diplomatic protest in 1877 when British vessels reached the Spratlys; a similar protest was made in 1883 when a German vessel surveyed the area. Later, France signed a boundary agreement with China which specified that the islands situated east of the designated line belonged to China, leaving the South China Sea islands to China (Buszynski and Sazlan 2007: 144-145). However, France had claimed the possession of the South China Sea islands on July, 26 1933 and incorporated them into French Indochina which was later occupied by Japan in 1939. But after the war, when France returned, the Nationalist government in China continued to contest the French possession. Therefore, in December 1947, the Nationalist government issued a declaration reaffirming that the Paracels and Spratlys were part of the Guandong province (Buszynski and Sazlan 2007: 145).

The claim was further illustrated by a ‘nine-dashed U-shaped line or the cow tongue’ encompassing nearly all of the SCS, which resulted in a dispute with every other claimant state. This U-shaped line first officially appeared in 1947, when the Republic of China (ROC) Ministry of the Interior issued ‘The Location Map of the South China

Sea Islands'. Moreover, just after the collapse of the ROC, these claims were followed by its successor, the People's Republic of China (PRC), from 1949 (Chung 2013: 3-4). Since then, Beijing regards the U-shaped line as one of the most important pieces of evidence for China's historical claim. In fact, many Chinese scholars argued quite strongly for China's sovereign rights over the islands and other features in the South China Sea by referring to the U-shaped or nine dotted-lines. Later, on May 7, 2009, China submitted a document to the United Nations which included the map as attachment, and again stated that China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (O'Rourke 2012: 11-12).

Gradually, China has officially promoted its interests in the South China Sea to the status of a 'core national interest' (on a par with its stake in Tibet and Taiwan) and promotes it as a key factor in hardening the position on security issues. Therefore, when the issue to safeguard territorial integrity comes up, the Chinese people are as firm as a rock. They have the final say when it comes to China's territory (Ministry of Foreign Affairs of the People's Republic of China 2015). Having said that, on February 29, 2016, the Chinese Foreign Ministry Spokesperson Hong Lei stressed in a Press Conference

...The South China Sea issue is an issue between China and some ASEAN countries, rather than an issue between China and ASEAN. Thanks to the joint efforts of China and ASEAN countries, the situation in the South China Sea is stable in general. All parties are working to deepen practical cooperation on the sea while comprehensively and effectively implementing the Declaration on the Conduct of Parties in the South China Sea (DOC). Positive progress has been made on steadily moving forward the consultation on a code of conduct in the South China Sea (COC).

China is committed to resolving relevant disputes in the South China Sea with parties directly concerned through negotiations and consultations and making joint efforts with ASEAN countries to maintain peace and stability in the South China Sea. That is the solemn pledge made by China and ASEAN countries in the DOC. It is hoped that relevant countries can work with China towards the same direction, stick to negotiations and consultations to resolve relevant disputes, and work in unison to uphold peace and stability in the South China Sea so that China-ASEAN relations can grow in a sustained, sound and rapid way (Ministry of Foreign Affairs of the People's Republic of China 2016).

Map 7: China's Nine-Dash Line in the South China Sea



Source: Nguyen Hong Cuong's Thesis 'The South China Sea Disputes: ASEAN's Role in Addressing Disputes with China' (2013).

Indonesia's Claims and Interests

Indonesia has very limited territorial claims in the South China Sea. Jakarta does not claim any part of the Spratly or Paracel Islands; however, Indonesia claims an EEZ of 200 nautical miles under the provisions of the UNCLOS and the natural prolongation of the continental shelf extending into the South China Sea proper to the north of the Anambas Islands and to the north and east of the Natuna Islands (Rowan 2005: 420). To control these islands and water areas, the Indonesian archipelago is to be considered as territorial waters and the claims to the EEZ and continental shelf areas are measured from the outermost islands of the Indonesian archipelago (Amer 2002: 28). The disputed area with China, the Natuna field, is a major gas reserve in Indonesia and is being jointly developed by Exxon and Indonesia. This choice of involving an American company is strategic, since US tends to support its economic interests by military means. Therefore, to sustain its views on the Archipelagic Principle and claims to the water and continental shelf areas in the South China Sea,

Indonesia argues in terms of modern international laws, i.e. the 1982 UNCLOS (Amer 2002: 28).

Malaysia's Claims and Interests

Chin Yoon Chin (2003) has stressed that “Malaysia’s claim dates back to 1979 when that government published an official map encompassing the southern most of the Spratly Islands as part of the country’s continental shelf and EEZ. Twelve features in the southern portion of the Spratly Islands, which Malaysia claimed, are located on its continental shelf” (Chin 2003: 22). But, Malaysia’s claim to the South China Sea is limited to the boundaries of 200 miles of the EEZ and the continental shelf. It claims sovereignty over the southern part of the Spratly archipelago. Currently, Malaysia controls at least three islands and reefs in the Spratly archipelago (Jianrong 2011: 239). Not only this, but the Malaysian government has also used soil from the mainland to raise the level of the Swallow Reef, constructing a hotel, airstrip and chalet for scuba divers on the reef and there are three more reefs of Erica, Investigator, and Luconia, that are also claimed by Malaysia but are as yet unoccupied. Thus, Malaysia has consistently used and argued for the continental shelf theory, outlined in the UNCLOS and reaffirmed in Malaysia’s own Continental Shelf Act of 1966, to justify its claims in the region, but has never used violence to assert its claims in the region (Rowan 2005: 420-21).

Philippines's Claims and Interests

The sovereignty claims by the Philippines in the South China Sea are based on the discovery of the unclaimed islands of ‘Kalayaan’ (Freedomland) by an explorer, Tomas Cloma, in 1956 (Jianrong 2011: 239). Again, Manila’s claim is mostly based on four arguments; the islets are adjacent or contiguous to the main Philippine islands, this region is economically and strategically vital to the Philippines, the islets were abandoned after the Second World War, and the recent Philippine occupation of some of the islets gives its title either through ‘discovery’ or ‘prescriptive acquisition’ (Rowan 2005: 421).

After the defeat of the Japanese in Second World War, the newly independent government of the Philippines had voiced its interest and concern over the status of the islands west of Pahlawan, which had been under Japanese occupation during the

war. Then, the Secretary of Foreign Affairs and Vice President Elpidio Quirino wrote to General Douglas MacArthur demanding that the ‘New Southern Islands’ or Shinnan Gunto be given to the Philippines in September 1946. Later from 1947 to 1950, a Filipino mariner, Captain Filemon Cloma, led a group of fishing vessels venturing further west of Pahlawan and discovered a vast fishing frontier, which Filemon’s brother Tomas Cloma later claimed as ‘Freedomland’ (Chin 2003: 20).

Later, in 1971, President Marcos organized a combined contingent of the Filipino Army, Navy, constabulary and security personnel to be stationed in the area of the Spratlys. Again, in the same year at the 72nd Meeting of the United Nations Seabed Committee, Undersecretary of Foreign Affairs Jose Ingles issued a statement asserting the Philippines government’s effective occupation and control of the island group. Later on June 11, 1978, the Presidential Decree No. 1596⁴ mandated that the islands, cays, shoals and reefs be integrated into the Philippine administrative structures as the 12th municipality of Pahlawan province and renamed as the ‘Kalayaan Island Group’. Another Presidential Decree 1599⁵ was issued the same day proclaiming a 200 nautical mile EEZ for the Philippines (Chin 2003: 21). Thus, officially in 1971, Philippines claimed eight islands, partly on the basis of exploration and argued that the islands were not part of the Spratly Islands, and had not belonged to anyone and were open to being claimed (De Souza 2010: 36). Therefore, to sustain and to support its arguments and views, the Philippines claim in terms of modern international law, i.e. the 1982 UNCLOS.

However, the Philippines undertook many efforts to peacefully engage China and settle the South China Sea dispute. Albert F. del Rosario (Secretary of Foreign Affairs) (2013) had mentioned that “the rules based resolution and management of disputes in the South China Sea contains two elements: the first is the third party arbitration of maritime claims, in accordance with the universally recognized principles of international law, specifically UNCLOS; and the second is the early conclusion of a Code of Conduct (COC) on the South China Sea between ASEAN and China” (Department of Foreign Affairs, Philippines 2013).

⁴Presidential Decree No. 1596, s. 1978 declaring certain area as part of the Philippine territory and providing for their Government and Administration; <http://www.gov.ph/1978/06/11/presidential-decree-no-1596-s-1978/>.

⁵Presidential Decree No. 1599, s. 1978 establishing an exclusive economic zone and for other purposes; <http://www.gov.ph/1978/06/11/presidential-decree-no-1599-s-1978/>.

Taiwan's Claims and Interests

Taiwanese claims in the South China Sea Islands were first discovered by the ancient Chinese. For example, Ban Gu (32-92 CE), a historian and court official of the Eastern Han dynasty in the first century CE, wrote a book, *The Book of Han*. In the chapter 'Treatise on Geography' of this book, he mentioned how Emperor Wu (137-87 BCE) of the Western Han (206 BCE-9 CE) sent envoys to island countries in the southern seas, ushering in future descriptions of isles, reefs and shoals in that region by navigators, indicating that the South China Sea was the route for trade between the Eastern Han and the Roman Empire in the first century BCE.

Again, Taiwan claims that the South China Sea Islands were first named by the ancient Chinese people and their governments. They said that to assure safe navigation and identify sea routes, the islands of the South China Sea were based on their features. For instance, the Coral Islands were mentioned in the *History of Guangzhou* by Pei Yuan (372-451 CE) of the Jin dynasty; Jiuru Luozhou were mentioned in *Collection of the Most Important Military Techniques* (1044 CE) by the scholar Zeng Gongliang of the Northern Song dynasty and Changsha Shitang were mentioned in *Notes from the Land beyond the Passes* (1178 CE) by Zhou Qufei, an official of the Southern Song dynasty (Government of Republic of China (Taiwan) 2016).

Later, between 1934 and 1935, the ROC's Ministry of the Interior's Waters and Land Map Review Committee had completed the 'Comparison Table of the Names of the South China Sea Islands in Mandarin and English', and produced the 'Map of the South China Sea Islands and Maritime Features', for the first time separating the South China Sea Islands into four different groups such as; from north to south, the Tungsha Islands, Shisha Islands, Nansha Islands (now the Chungsha Islands), and Tuansha Islands (now the Nansha Islands). Again, after the end of Second World War in 1945, the ROC government recovered the South China Sea Islands from Japan, returning them to ROC territory, and confirmed their names as the Tungsha Islands, Shisha Islands, Chungsha Islands, and Nansha Islands. These names are still in use today (Government of Republic of China (Taiwan) 2016).

Not only the naming of the islands were done, these were first used by the ancient Chinese. For example, between 1930 and 1933, some French people landed on

Taiping Island, Nanwei (Spratly) Island, Nanyao (Loaita) Island, Zhongye (Thitu) Island and Beizi Reef (N.E. Cay), and they discovered that some of these islands were inhabited by the ROC's fishermen, including children, who were making a living by fishing and catching turtles, and raised chickens, vegetables and sweet potatoes. Besides, tombstones dating to the Qing dynasty still exist on Taiping Island, confirming that the ancient Chinese people lived on the islands and reefs in the South China Sea and had pursued economic activities there (Government of Republic of China (Taiwan) 2016). On December 1, 1947, the ROC's Ministry of the Interior (MOI) issued the 'Location Map of the South China Sea Islands' to serve as a basis for recovering and stationing forces on the Shisha and Nansha Islands. The map showed an 11-dash line (also known as the U-shaped line) surrounding the South China Sea Islands, the southernmost point of which is the 4° north latitude. The Tungsha Islands, Shisha Islands, Chungsha Islands and Nansha Islands are included on this map and designated as ROC territory. The MOI submitted to the Executive Yuan for reference the 'Comparison Table on the Old and New Names of the South China Sea Islands', as well as the 'Location Map of the South China Sea Islands' (Government of Republic of China (Taiwan) 2016). Then, since 1956, the government of Republic of China (ROC) (Taiwan) started sending troop expeditions to the Taiping Island (Atu Aba) and also maintained the permanent garrison there (Nguyen 1984:4). Taiwan was the first claimant state to establish a presence on the Spratly islands, on the largest island in the region, Itu Aba (Taiping Dao). Taiwan has had a continuous presence in the area for more than four decades without facing any strong resistance or objection from the claimant states. On the other hand, Taiwan's argument to claim sovereignty suffers from the same deficiencies as China, 'as the discovery of, and consistent contact with, scattered islet formations in ocean space are insufficient cause to establish legal title of sovereignty' (De Souza 2010: 38).

But, recently Taiwan has argued in terms of modern international law, i.e. the 1982 UNCLOS, to substantiate its claims to water and continental shelf areas in the South China Sea (Amer 2002: 30). But to prevent and manage the South China Sea dispute effectively, the ROC government proposed a South China Sea Peace Initiative on May 26, 2015, urging all the concerned parties to exercise self-restraint and maintain the status quo of peace and stability in the South China Sea (Government of Republic of China (Taiwan) 2016).

Vietnam's Claims and Interests

Vietnam has occupied and exercised its sovereignty over the two archipelagos for at least five centuries through many dynasties (Consulate of the Socialist Republic of Vietnam 2014). But Vietnam claims much of the Paracel and Spratly Islands through historical and geographical provisions of the law. As for example, the Vietnamese activities to possess the Paracel and Spratly Islands were first recorded in official historical accounts under the Nguyen Dynasty at the beginning of the 17th century, and later, in the Western and Chinese record books (Nguyen 2012: 174). Many ancient geography books and maps of Vietnam such as 'Toan Tap Thien Nam Tu Chi Lo Do Thu' (The Handbook of the South's Road Map), compiled in the 17th century by a man called Do Ba, clearly stated in the maps of the Quang Ngai Prefecture in the Quang Nam area that 'there was a long sandbank in the middle of the sea that is called Bai Cat Vang (Golden Sand)', and that 'during the last month of every winter, the Nguyen rulers send 18 boats there to collect goods, mainly jewellery, money, guns, and ammunition' (Historical Documents-Special Report: Vietnamnet 2011).

According to the journal published in 1634-1636, one of the Dutch ships named *Grootebroek* capsized near the Paracel Islands, north of the 17th Parallel. The surviving crew members chose to go to Vietnam instead of China, despite China being closer, because they assumed that the country exercising jurisdiction over the site of the wreckage would naturally provide rescue and be more responsive to their claims (White Paper: Republic of Vietnam, Ministry of Foreign Affairs, Saigon 1975). Later, after the control over the Vietnamese kingdom in foreign affairs by France since 1884, in the 1920s to 1930s, the latter deployed permanent troops to Hoang Sa and Truong Sa. Since then, Vietnam has exercised administrative management over these archipelagos in a continual manner without any dispute until China used force to occupy Hoang Sa and a part of Truong Sa in 1974 and 1988, respectively (Tuc 2014: 3). Thus, Vietnam has claimed both groups based on historical claims of discovery and occupation. Basically, the Vietnamese claims are based on history and the continental shelf principle (De Souza 2010: 35).

Map 8: Dai Nam Nhat Thong Toan Do (The Complete Map of the Unified Dai Nam of 1838)



Source: *Dai Nam Nhat Thong Toan Do* (The Complete Map of the Unified Dai Nam, Ministry of Foreign Affairs of the Socialist Republic of Vietnam, The Hoang Sa And Truong Sa Archipelagos Vietnamese Territories (1981) [Vietnam White Paper 1981], at 19. See also <http://biengioilanhtho.gov.vn/eng/Album>.

Table 1: Territorial /Claims basis and occupation in the South China Sea

State/ Parties	Basis	South China Sea Claims	Spratly Islands Claims	Paracel Islands Claims	Islands occupied and some key features
China	Historical	All*	The entire archipelago.	All	7 islands and reefs; several helicopter pads
Taiwan	Historical	All*	The entire	All	1 island

			archipelago.		with helicopter pads
Vietnam	Historical	All*	The entire archipelago.	All	27 islands and reefs; one with 600 meter runway
Malaysia	Legal	UNCLOS/Portions	Several islands west of Borneo, 12 islands.	No	6 islands; one with 600 meter runway
The Philippines	Legal/ Historical	Significant portions	A concentration of islands in the western part of the archipelago, 8 islands.	No	8 islands; one with a 1300 meter runway
Indonesia		UNCLOS	None	No	
Brunei	Legal	UNCLOS/Portions	Not an official claimant but claims the exclusive economic right of Louisa Reef, based on the law of the sea.	No	No occupation

*Excluding buffer zone along littoral states (calculations for buffer unknown)

Source: U.S. Energy Information Administration, Country Analysis Brief, South China Sea, (http://www.eia.doe.gov/emeu/cabs/South_China_Sea/pdf.pdf) and Moises Lopes De Souza (2010).

Thus, the main concerns of all the claimant states are centred on issues of sovereignty and economic benefits that would to be derived from the exploitation of the disputed region's real and potential natural resources. Therefore, since the early 1970s, the South China Sea has become a serious issue when China and South Vietnam had a military clash in 1974 and China occupied the Paracel Islands.

Recent Developments in the South China Sea and its Implications

During the 1980s and 1990s, all the conflicting states have found themselves in a race to strengthen their claims to sovereignty by gaining occupation of the islands that can support a physical presence or by establishing markers on the islands where physical occupation is not feasible. This race for occupation in the South China Sea has increased the likelihood of conflicts, resulting in three cases of military confrontations. The first was the confrontation between Chinese and Vietnamese over the occupation of Fiery Cross Reef (Yung Shu Jiao) in 1988, which resulted in the PRC sinking three Vietnamese vessels, killing seventy-two people. Second, in 1992, China occupied Da Lac Reef and deployed three Romeo-class conventional submarines to patrol the area, arousing alarm among the ASEAN states. Third, in March and April 1995, China occupied Mischief Reef (Meijijiao/Panganiban), a circular reef well within the exclusive economic zone (EEZ) of the Philippines (Snyder 1996: 4). However, almost all the ten members of the ASEAN have a deep interest in the peace and stability of the South China Sea. Therefore, ASEAN was started involving itself since the adoption of the 1992 ASEAN Declaration on the South China Sea. The declaration was pushed by the Philippines for a peaceful resolution of 'all sovereignty and jurisdictional issues pertaining to the South China Sea', the exercise of 'restraint', and the application of the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis of establishing a code of international conduct over the South China Sea (Severino 2010: 37-47).

But the situation in the South China Sea deteriorated in 2007 when China established the city of Sansha for administrating the Paracel and Spratly Islands, which resulted in a strong official protest from Vietnam as well as anti-China demonstrations in Hanoi

and Ho Chi Minh City. Again in 2009, China objected to the Philippines' drilling in the Reed Bank area, about 60 miles west of Palawan, which may contain 3.4 trillion cubic feet of gas and 450 million barrels of oil (Thuy 2011: 7-9). Again, the tension increased in the year 2011 when Vietnam protested that the Chinese State Bureau of Surveying and Mapping (SBSM) officially provided an online map service Map World, which continues to embed the nine-dotted line in the South China Sea. However, the first round of 'negotiation in less sensitive fields at sea' was held in Beijing with Vietnam on May 29 and 30, 2012. This negotiation has agreed with the implementation of cooperation in fields such as marine environmental protection, maritime science research, research and rescue at sea and preventing and limiting impacts of natural disasters (Amer 2014: 21-27).

Again, on September 14-15, 2013, the ASEAN and China held their first round of formal consultations on the Code of Conduct (COC) for managing and reducing the tension in the South China Sea (Chairman's Statement of the 23rd ASEAN Summit 2013). But the situation in the South China Sea is more tense when the Permanent Court of Arbitration ruled out against China's claims in the South China Sea on July 12, 2016 (*The Hindu*, 22 September 2016). Therefore, the issue is becoming more complex and more difficult to manage.

Table 2: Military clashes and Conflicts in the South China Sea in the 1970s-2010s

Date	Countries involved	Military action/Conflicts
1974	China and Vietnam	Chinese seized Paracel Islands from Vietnam
1988	China and Vietnam	Chinese and Vietnamese navies clashed at Johnson Reef in the Spratly Islands. Several Vietnamese boats were sunk and over 70 sailors killed.

1992	China and Vietnam	Vietnam accused China of drilling for oil in Vietnamese waters in the Gulf of Tonkin, and accused China of landing troops on Da Luc Reef. China seized almost 20 Vietnamese cargo ships transporting goods from Hong Kong from June - September
1994	China and Vietnam	China and Vietnam have naval confrontations within Vietnam's internationally recognized territorial waters over oil exploration blocks 133,134, and 135. China claimed the area as part of its Wan Bei-21 (WAB-21) block.
1995	China and Philippines	China occupied Philippines-claimed Mischief Reef. Philippines military evicted the Chinese and destroyed

		Chinese markers.
1995	Taiwan and Vietnam	Taiwanese artillery fired on Vietnamese supply ship.
1996	China and Philippines	Three Chinese vessels engaged in a 90-minute gun battle with a Philippines Navy gunboat near Campones Island.
1997	China and Philippines	Philippines Navy ordered a Chinese speed boat and two fishing boats to leave Scarborough Shoal. Philippines fishermen removed Chinese markers and raise their flag. China sent three warships to survey Philippine occupied Panata and Kota Islands.
1998	China and Philippines	Philippines Navy arrested Chinese fishermen off Scarborough Shoal.

1998	Philippines and Vietnam	Vietnamese soldiers fired on a Philippines fishing boat near Tennent (Pigeon) Reef.
1999	China and Philippines	In May, a Chinese fishing boat was sunk in a collision with Philippine warship. In July, another Chinese fishing boat was sunk in a collision with a Philippine warship.
1999	Philippines and Vietnam	In October, Vietnamese troops fired upon a Philippine air force plane on reconnaissance in the Spratly Islands.

2000	China and Philippines	In May, Philippine troops opened fire on Chinese fishermen, killing one and arresting seven.
2001	China and Philippines	During the first three months, the Filipino navy boarded 14 Chinese flagged boats, confiscated their catches, and ejected vessels out of the contested portions of the Spratlys.
2001	China and Philippines	In March, the Philippines sent a gunboat to Scarborough Shoal 'to ward off any attempt by China to erect structures on the rock'.

2002	Philippines and Vietnam	In August, Vietnamese troops fired warning shots at Filipino military reconnaissance planes circling over the Spratlys.
2004	Vietnam and China	Vietnam started rebuilding on the disputed island of Truong Sa Lon (Big Spratly) with the purpose of sending small groups of Vietnamese tourists. China strongly criticized Vietnam's actions and accused it of the violation of the 2002 Declaration on the Conduct of Parties in the South China Sea.
2005	Vietnam and Taiwan	On December 29, 2005, the Vietnamese foreign ministry accused Taiwan of being involved in the construction of a runway in the

		<p>biggest of all of the islands, Itu Aba. Vietnam accused Taiwan that its actions constitute ‘a severe violation of Vietnam’s sovereignty.</p>
2006	China	<p>In April 27, four Chinese fishermen were shot and killed, and another three were wounded near the Spratly Islands. The nationality of the attackers is unknown.</p>
2007	Taiwan	<p>In February 2007, Taiwan’s President Chen Shui-bian’s visit to Taiping Dao (Itu Aba) after the construction of airstrip. With protest from China, Malaysia, the Philippines and Vietnam.</p>

2009	China and Vietnam	<p>China detained more than 400 Vietnamese fishermen who had ventured into the waters around the Paracel Islands. China accused the <i>USNS Impeccable</i>, a US surveillance ship, of illegal entry and surveillance activities in Chinese waters.</p>
2011	China and Vietnam	<p>China harassed seismic survey vessels contracted by Vietnam and the Philippines. In one incident, a ship from the China Marine Surveillance (CMS) force, a maritime law-enforcement agency under the State Oceanic Administration, severed the towed sonar cable on a Vietnamese-contracted seismic survey vessel</p>

		operating roughly 100 miles from the Vietnamese coast.
2012	China and Vietnam	China National Offshore Oil Corporation invited foreign oil companies to bid on exploration blocks that overlapped with existing Vietnamese blocks within the 200-nautical-mile exclusive economic zone (EEZ) off its coast.
April 2012	Philippines and China	A Philippine naval ship was dispatched to investigate reports of illegal harvesting of endangered species by Chinese fishing boats inside Scarborough Shoal. Two CMS patrol ships arrived at the scene and blocked the entrance to the shoal, thus preventing the arrest of the fishermen.

		<p>China deployed at one point nearly 100 surveillance ships, fishing boats and utility craft in the area. The stand-off ended with the Philippine navy's withdrawal in mid-June 2012, giving China effective control of the shoal and adjacent waters. Chinese punitive actions included an import quarantine on Philippine bananas, unilateral fishing bans in the Scarborough Shoal area and the halting of Chinese tour groups to the Philippines.</p>
January 2013	China and Claimant States	<p>The Chinese government published a new map restating visually its '9-dash line' boundary, which showed China's territorial claims covering most of the</p>

		South China Sea.
May 2014	China and Vietnam	China installed drilling rigs inside Vietnam's EEZ and in another part of the Parcel Islands, a move that led to multiple collisions between Vietnamese and Chinese ships.
2014-2015	China and Philippines	China expedited land reclamation projects on Woody Island in the Paracels and Johnson Island in the Spratlys, including the building of air-strips that may allow new air defence identification zone (ADIZ) claims. The Japanese and the Philippines initiated joint military exercises in the summer of 2015.

May 2015	US and China	US Defense Secretary Ashton B. Carter called for China to halt the construction, arguing that international law did not recognize Chinese claims of sovereignty over the new territories and that US warships and military aircraft would continue to operate in the area.
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Source: Khalid, Nazery (2009), “South China Sea: Platform for Prosperity or Arena for Altercation”, pp.79; De Souza, Moises Lopes (2010), “The contradictions behind cooperation: Southeast Asia-China relations under the South China Sea Disputes”, and Lin, Kun-Chin and Gertner, Andres Villar (2015), “Maritime Security in the Asia Pacific: China and the Emerging Order in the East and South China Seas”, pp. 6.

Conclusion

Indeed, the dispute over the South China Sea, particularly the Spratly and the Parcel Islands, began to emerge in the early 1970s when it was discovered that this ocean area may contain significant oil and natural gas deposits. The South China Sea was largely ignored until the 1970s. When the international oil companies started prospecting oil in this region, six coastal states namely China (including Taiwan), the Philippines, Vietnam, Malaysia, Brunei and Indonesia suddenly claimed their sovereignty over the islands located in the SCS, particularly the Spratly and Parcel archipelagos. According to Russia’s Institute of Geology of Foreign Countries, approximately 6 billion oil barrels can be found in the Spratly islands, 70 percent of which are natural gas. Even, some Chinese specialists confirmed that the South China

Sea may possess approximately 130 billion barrels in oil and natural gas. Therefore, the conflict in the SCS was driven by abundance of natural resources, particularly oil and gas in this area (Thearith 2009: 60). According to Tan See Seng (2016), the strategic control of the South China Sea would be very important for the geopolitical consideration of countries. It is understandable why lot of countries would regard things like freedom of navigation and freedom of access to water bodies. This also generated competition and rivalry among the littoral states (Personal Interview with Prof. Tan See Seng, 7 July 2016).

Not only this, after the formulation of the UNCLOS in 1982, all the claimant states started to assert their legitimate claims based on their own interpretation of this law. This is further encouraged by governments seeking to enhance their legitimacy by making a show of protecting national sovereignty and defending the homeland. This conflicting sovereignty claim over the islands and other insular features in these areas, together with associated overlapping maritime claims, have been sources of tension for decades. For more than two decades, China, Malaysia, Taiwan, Vietnam, the Philippines, Brunei and Indonesia have been engaged in a tense standoff of muscle-flexing and stern words over who controls a South China Sea that is rich in resources and is strategically important (Johnson 2012: 1). This dispute has led to numerous incidents like armed confrontations among claimant states in the past.

Further, many states, in the region and around the world, have maritime security interests in the South China Sea. These interests include claims to territorial sovereignty over islands and coral reefs, claims to exclusive rights to develop maritime resources, freedom of navigation on the high sea and the consequences of ongoing naval modernisation in the region. Therefore, almost all the coastal countries in the region have been pursuing military modernisation programmes. The most prominent among them is China's programme for upgrading the PLA-Navy's South Sea Fleet, the development of the Ya Long Naval Base on Hainan Island and the expansion of China's paramilitary fleets; e.g., coast guards and fishery inspection patrols (Rosenberg 2013: 3). Thus, there are many reasons behind the emergence of disputes in the South China Sea. This situation still remains fragile because of overwhelming asymmetry in power and the absence of an overall agreement on the sovereign rights of the coastal states.

Chapter 3

ASEAN AND THE SOUTH CHINA SEA DISPUTE

The Association of Southeast Asian Nations (ASEAN) was launched on August 8, 1967 in Bangkok with the signing of the ASEAN Declaration (also called the Bangkok Declaration) to promote regional peace and stability through abiding respect for justice and the rule of law in relationship the among countries of the region and adherence to the principles of the United Nations Charter (ASEAN 1967). ASEAN thus purports to promote independence, sovereignty, equality, territorial integrity and settlement of disputes and differences by peaceful means (ASEAN 1967). ASEAN has been playing a significant role in managing the South China Sea dispute since the early 1990s. But, the Association first got involved in the South China Sea dispute in July 1992 when China and Vietnam (not yet a member of ASEAN) became embroiled in a dispute over oil exploration activities in a disputed area. Then, the ASEAN issued a declaration called the ‘ASEAN Declaration on the South China Sea’ that urged concerned parties to exercise restraint, renounce force and resolve the problem through peaceful means and in accordance with international law. Since the Declaration did not help much to ease mounting tensions in Sino-Vietnamese and Sino-Philippines relations, the ASEAN proposed a code of conduct that aimed at lowering tensions and promoting cooperative confidence building measures (CBMs) to be negotiated with China (Storey 2011: 4).

Since then, the ASEAN has emerged as an important mechanism for resolving or managing the complex set of territorial disputes in the South China Sea, since four of its member states are involved in the dispute. Although the remaining ASEAN members are not involved in any way with the dispute, they are concerned about the South China Sea because it is a potential flashpoint in the Asia-Pacific region. That is why, some say that there is no common ASEAN approach to the South China Sea dispute, even though all other members subscribe to the engagement of China to contain the dispute and manage conflicts in the region (Ghoshal 2011: 207). Furthermore, ASEAN’s goal is to set up a framework that would help facilitate claimant states negotiate a peaceful resolution of their competing claims (Heng 2015:

70). It is also apparent that all members of ASEAN have a deep interest in keeping peace and stability in the South China Sea.

Therefore, the 1992 ASEAN Declaration on the South China Sea was first pushed by the Philippines, which was chairing that year's ASEAN Ministerial Meeting, which called for the peaceful resolution of 'all sovereignty and jurisdictional issues pertaining to the South China Sea', the exercise of 'restraint', and the application of the principles contained in the Treaty of Amity and Cooperation (TAC) in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea (Severino 2010: 41). The aim of this declaration was to manage the dispute. It invited all claimant states to adopt this Declaration so as to establish a Code of Conduct (COC) (Heng 2015:71).

But, in 2002, ASEAN and China signed a Joint Declaration on the Conduct of Parties (DOC) to promote a peaceful, friendly and harmonious environment in the South China Sea (SCS) for the enhancement of peace, stability, economic growth and prosperity in the region (DOC 2002). However, after signing the DOC, the concerned parties have not ceased activities that complicate the situation. Tensions have occasionally arisen and claimants continue to protest each other's moves in the South China Sea. Eventually in the last few years, the situation in the South China Sea has become more intense and there have been military clashes among the claimant states. But in the meantime, the ASEAN as a regional forum is trying to resolve or manage the South China Sea dispute by initialising many frameworks or mechanisms, formal and informal, even if there are many differences among the member states about the issue. Therefore, to analyse the ASEAN's role in managing or resolving the South China Sea dispute is the main concern of this chapter. Along with this, the chapter will examine whether 'Track I mechanisms' (such as the ASEAN Summit, ASEAN Ministerial Meetings, and ASEAN-China dialogue) possesses adequate confidence building measures to prevent or manage the disputes from escalating into armed conflict. The chapter will also critically analyse the prospects and challenges of ASEAN diplomacy in managing the dispute.

ASEAN's Involvement and Interest in the South China Sea Dispute

ASEAN was not involved in the South China Sea dispute before the end of Cold War. There is no record of ASEAN or anyone else reacting in any way when China and

South Vietnam clashed in the Paracels in January 1974 when China occupied the Paracels and tried to grab the Spratly Islands as well. Even, there is no any official record of a ASEAN reaction to the bloody battle in the Spratlys, near Johnson Reef, between the Chinese and Vietnamese forces in March 1988 (Severino 2010: 39). But, the 1988 incident sent the organisation's members a message of a potential security threat in the SCS. In addition to this, in the early 1990s, the US withdrawal from its naval base in Subic and its air base, Clark, in the Philippines, left the country highly vulnerable. Therefore, the Philippines pushed the ASEAN to take strong steps to prevent possible incidents similar to that which Vietnam had endured in 1988 (Tuan 2011: 3).

Furthermore, after the sudden departure of the two superpowers (the former USSR and the US) from the Southeast Asian region, many littoral countries started asserting their sovereign rights in the South China Sea. As for example, on February 25, 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) (Guan 1999:16). That is why ASEAN has a strong interest in a long term commitment at a high level, to manage tensions in the South China Sea.

Moreover, this unilateral action of the People's Republic of China to assert its sovereignty and also to control the South China Sea gave a potential threat to the ASEAN member states, since four of its member states are involved in the South China Sea issue. Therefore, maintaining security and stability in the region is not only important for the ASEAN countries but also for the whole region. Further, all the claimants of Southeast Asia want the ASEAN to play greater role in the settlement of disputes in the SCS. The Philippines has considered diplomatic negotiations and ASEAN is at the centre of its diplomacy. However, in the last decade, Beijing has had strong influence in Southeast Asia and many countries have benefited from Chinese economic growth. For instance, in 2012, China has been able to use its political and economic leverage over Cambodia to prevent the ASEAN from taking a unified position on the South China Sea disputes or initiating multilateral discussions and actions in addressing the issue. Subsequently, for the first time, the ASEAN failed to issue a joint communiqué at the conclusion of its 45th Foreign Ministers Meeting in

July 2012 (Mendoza 2015: 2). Therefore, the ASEAN non-claimant states do not have a direct interest in the territorial disputes in the SCS and clearly do not want to alienate China, an important economic and strategic partner. That is why these countries (non-claimant states) neither take a strong position protesting China's assertiveness in the SCS nor are determined to promote the role of ASEAN (Tuan 2011: 5-6).

However, Secretary-General of ASEAN Le Luong Minh once stated that ASEAN has a key interest and significant role in preserving peace and stability in the South China Sea. The territorial and maritime jurisdiction disputes in the South China Sea, while directly concerning the claimant States, should be perceived in the larger context of peace, stability, maritime security and prosperity which are the common interest and legitimate concern of all nations. It is again believed that the South China Sea is a litmus test of the ASEAN's centrality because of its significant impact on the credibility of ASEAN-led norms and mechanisms that are at the core of the regional security architecture. Indeed, managing regional flashpoints is an important dimension of ASEAN centrality amidst the changing geostrategic landscape in the Asia-Pacific region (Luong Minh 2015: 1-2).

Therefore, the 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: 51). Ever since, the ASEAN has started to involve itself in managing the South China Sea dispute despite the member states having many differences among themselves. And unsurprisingly, the 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: 63). This TAC is regarded as an important part of the ASEAN dispute management framework that can guide both the Southeast Asian claimant States and China in maintaining peace and stability in the South China Sea. It provides three main factors for managing inter-state relations: non-interference in the internal affairs of other countries, peaceful settlement of disputes and overall

cooperation (Amer 2015: 12). Therefore, the ASEAN Foreign Ministers adopted the ‘ASEAN Declaration on the South China Sea’ in July 1992 (Severino 2010: 41).

But China, on the other hand, refused to take part due to its own attempt to frame the South China Sea as a bilateral rather than a multilateral issue. That is why China refused to sign the first ASEAN Declaration on the South China Sea (Emmers 2014: 64). However, at the 25th ASEAN Ministerial Meeting which was held on July 21-22, 1992, the Foreign Ministers stated that any unpleasant development in the South China Sea directly affects the peace and security in the region. They again emphasised that any territorial or jurisdictional dispute should be resolved by peaceful means, without resort to force. The principles in the Treaty of Amity and Cooperation (TAC) should be incorporated as the basis for establishing a code of international conduct over the South China Sea area (Joint Communiqué 25th ASEAN Ministerial Meeting 1992).

Thus, ASEAN has an enormous stake in the maintenance of peace and stability of the South China Sea and with the increase in tensions, the ASEAN has been engaging itself in managing the South China Sea dispute. So far, the 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 and the Declaration on the Conduct of Parties in the South China Sea (DOC) between China and ASEAN in 2002. In addition, the ASEAN has issued many documents at various levels signifying the need to manage the dispute in the South China Sea, through various mechanisms like the ASEAN-China Summit and also in the ASEAN Regional Forum (ARF) meetings. Not only this, but the efforts of the ASEAN have also brought about a set of guidelines for the implementation of the DOC in Bali in July 2011 (Umezawa 2012: 9).

In November 2012, on the sidelines of the 10th Anniversary of the Declaration on the Conduct of Parties in the South China Sea (DOC), the 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 September 14-15, 2013, the ASEAN and China held their first round of formal consultations on the Code of Conduct (COC) (Chairman's Statement of the 23rd ASEAN Summit 2013). Recently, at the 10th ASEAN Defence Ministers' Meeting (ADMM) which was held on May 25, 2016, the Defence Ministers of the 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 1st 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)" (Joint Declaration of the ASEAN Defence Ministers 2016).

ASEAN Role and Approaches in Managing the South China Sea Dispute

As we already know, the ASEAN was formed with the main aims of improving economic growth, social progress and cultural development as well as promoting regional peace and stability and active collaboration on matters of common interest (Bangkok Declaration 1967). The Bangkok Declaration outlined a new course of regionalism and symbolised the beginning of a process of adjustment among its members and the ASEAN conflict management process (Majumdar 2015: 73). It is mentioned a couple of dozen times. Therefore, at the regional level, a twofold process has taken place with initial Track-II (non-governmental) discussions feeding into Track-I (intergovernmental) diplomacy at the ASEAN and ASEAN-PRC level (Scott 2012: 1024). Thus, the formal i.e. intergovernmental approaches have come from ASEAN (Scott 2012:1025).

ASEAN has been active in arranging meetings and discussions among conflicting parties to handle and reduce tensions. Not only this, it uses its diplomatic efforts to discuss the issue multilaterally involving all the claimant states of the islands in the South China Sea (Hara 2012: 6). Therefore, since the early 1990s, efforts to get opportunities for cooperation and to stabilise the situation have been made by regional countries in the South China Sea region. Thus, the diplomatic efforts have been conducted by ASEAN to search for common stand for the South China Sea dispute. These efforts have resulted with 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 representing conflict management rather than conflict resolution, limiting friction rather than ending a dispute (Scott 2012: 1026). 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 the claimants continue to protest each other's moves in the South China Sea (Thuy 2010: 1). Therefore, the ASEAN as a group—though there are only four members involved in the South China Sea dispute—took up its responsibility and decided to take up dispute settlement mechanisms like formal and informal ones for managing and resolving this dispute and also for maintaining regional peace and stability in the region.

ASEAN Declaration 1992

Since early 1970s, the situation in the South China Sea has become more serious and complex. Almost all the littoral states have asserted their rights in the South China Sea. In 1971, the Philippines officially proclaimed the largest area of the Spratlys, a zone referred to as Kalayaan, and later in 1978 a presidential decree declared Kalayaan as part of its national territory. On the other side, the People's Republic of China (PRC) used force to consolidate its position in the South China Sea. In January 1974, China completed its control over the Paracel Islands from South Vietnam. Meanwhile, Malaysia extended its continental shelf in 1979 and also included some features of the Spratlys in its territory. Again, the incident of 1988 between China and Vietnam led to a renewed Chinese seizure of territory in the South China Sea (Emmers 2005: 4-5). By responding to China's growing use of force in claiming its territory in the South China Sea, and perhaps to the growing potential conflicts (Severino 2010: 41), the ASEAN, for the first time, adopted a common stance on the South China Sea dispute and signed the ASEAN Declaration on the South China Sea in 1992.

The declaration indicated ASEAN's concerns over the tension between Vietnam and China after the latter licensed the Creston Energy Corporation (from the United States) to explore oil in the Vanguard Bank on Vietnam's continental shelf and passed its Law on the Territorial Sea on February 25, 1992 pushing China's absolute

sovereignty over both the Paracels and the Spratly islands. Thus, ASEAN's foreign ministers recognised that the 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 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 Declaration 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: 41). Even Vietnam, a non-ASEAN⁶ country at the time, strongly supported the Manila Declaration. Thus, the Declaration has raised hopes for the stability and peace in the region. The ASEAN Ministers wanted to get Qian Qichen, the Chinese Foreign Minister, who was present as a guest of the ASEAN Chair at the meeting, to sign on the declaration. But, Qian Qichen rejected on the stated ground that China had not been involved in the declaration's drafting (Severino 2010: 42). The hopes of restraining use of force and stability were shattered when China occupied the Philippines-claimed Mischief Reef in 1995 (Baviera 2012: 205). Then, the Philippines announced the discovery of a steel structure with a Chinese flag and a parabolic antenna atop it on Mischief Reef (Severino 2010: 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

⁶ Vietnam joined ASEAN on July 28, 1995 (ASEAN), <http://asean.org/asean/about-asean/>.

that the South China Sea is rightfully China's sovereign territory" (Ott 2011: 4). This incident gave ASEAN a serious concern over China's actions and issued the second statement on the South China Sea to refrain from taking actions that destabilise the situation (Thayer 2013: 76). Further, this act of occupation occurred just within a few years of the withdrawal by the United States of its armed forces from the Philippines (Collinson and Roberts 2012: 35).

As a response to this Chinese action, ASEAN started focusing on diplomatic means. Therefore, on March 18, 1995, the ASEAN Foreign Ministers issued a statement:

...We, the ASEAN Foreign Ministers, express our serious concern over recent developments which affect peace and stability in the South China Sea.

We urge all concerned to remain faithful to the letter and spirit of the Manila Declaration on the South China Sea which we issued in July 1992 and which has been endorsed by other countries and the Non-Aligned Movement. The Manila Declaration urges all concerned to resolve differences in the South China Sea by peaceful means and to refrain from taking actions that destabilize the situation.

We call upon all parties to refrain from taking actions that destabilize the region and further threaten the peace and security of the South China Sea. We specifically call for the early resolution of the problems caused by recent developments in Mischief Reef.

We urge countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area.

We encourage all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea (Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, 18 March 1995: Association of Southeast Asian Nations).

Indeed, the main efforts of ASEAN were to manage or resolve the South China Sea issue in a peaceful manner through negotiations and dialogues (Hara 2012: 7). At the same time, ASEAN tries to encourage China to participate in a system of regional organisations and workshops or what Michael Leifer termed, an 'embryonic structure of good citizenship'. However, Beijing maintained its strong position that the negotiations would go into bilateral ones with other claimant states, not enter into multilateral discussions with ASEAN (Collinson and Roberts 2012: 36). China had advocated bilateral negotiations in order to take advantage of its position as a regional power and to avoid any unified ASEAN front against its interest (Thuy 2011: 43).

The 2002 Declaration on the Conduct of Parties in the South China Sea (DOC)

The Mischief Reef incident of 1995 was also brought before the first ASEAN-Chinese senior foreign officials meeting in April of the same year. 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 the UNCLOS of 1982. Again, they 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 (Joint Communiqué of the 29th ASEAN Ministerial Meeting 1996).

Further, on November 28, 1999, at the ASEAN 3rd Informal Summit, the Heads of State/Government prepared a draft regional ‘Code of Conduct’ (COC) on the South China Sea dispute (Chairman’s Press Statement on ASEAN 3rd Informal Summit 1999). This binding code of conduct had been considered the primary goal; after almost 5 years of negotiations, ASEAN and China, eventually, only reached a political document. On November 4, 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 towards the adoption of a more binding COC which defines the rights and responsibility of the parties concerned to further promote peace, stability and development in the region (Thuy 2010: 3).

This declaration has mentioned that the concerned parties should respect and give commitment for the freedom of navigation in overflight above the South China Sea as provided and underlined by the principles of international law, including UNCLOS. Again, it states that the parties should stand for and be ready to continue consultations and dialogues on relevant issues. In the final paragraph, it also states that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and they should agree to work, on the basis of consensus, towards the eventual attainment of this objective (Declaration on the Conduct of Parties in the South China Sea 2002).

Further, the declaration was believed to be the initial idea to formulate a code of conduct to prevent military confrontations over the disputed areas in the South China Sea. In addition, the DOC clearly mentioned three purposes: first, promoting

confidence-building measures; second, engaging in practical maritime cooperation; and lastly, setting the stage for discussion and conclusion of a formal and binding Code of Conduct (COC) (Li 2014: 1). However, the drafting processes of this code of conduct were 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 included 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: 55-56). But, Robert C. Beckman (2014) has highlighted that one of the most significant weaknesses of this DOC declaration is the lack of provisions for setting out any procedures or mechanisms to ensure that the concerned parties comply and respect the provisions of this declaration. Again, the declaration does not provide any mechanism to deal with differences which may arise over provisions in the declaration, especially the self-restraint provision (Beckman 2014: 30). Even the China Bureau Chief Goh Sui Noi said that the declaration has not been fully observed by the claimant states and talks on the code have been sporadic (Noi 2017).

Even though this declaration consists of major differences, it is one step ahead towards consensus building and compromise, by which the majority of the claimants have agreed to work together multilaterally. This declaration has the following underlying principles: first, peaceful resolution of the dispute in the South China Sea; second, trust and confidence building; third, respect and recognition of the provisions of UNCLOS relating to freedom of navigation and overflight and fourth, maintaining the current status quo as far as the occupation of geographical features and islands, including unoccupied ones in the South China Sea, is concerned (Barison 2010: 2). Above all, the DOC has helped in maintaining overall stability in the South China Sea. It gives a platform for all concerned parties to communicate and exchange views. It is also believed that the DOC at least has served as a moral constraint on all claimant states in the South China Sea. In addition to this, the DOC has contributed to several cases of cooperation in the South China Sea, for example, the tripartite joint seismic study among China, Vietnam, and the Philippines from 2005 to 2008 (Mingjiang 2014: 1). Therefore, ever since the signing of DOC, many often have 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 December 7, 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 2004). The main objectives of the 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 operations, and combating transnational crime (Terms of Reference of the ASEAN-China Joint Working Group 2004).

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 September 14-15, 2013, the 6th Senior Officials Meeting and the 9th Joint Working Group Meeting were held to start the full and effective implementation of the DOC and again started consultations on the Code of Conduct (COC) in the South China Sea under the framework of the DOC. However, in the consultations on the COC, the parties agreed to follow the 'step by step and to reach consensus through consultation' approach (The 6th Senior Officials Meeting and the 9th Joint Working Group Meeting on the Implementation of the DOC 2013). 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: 5).

Meanwhile, on July 20, 2012, the ASEAN Foreign Ministers issued the 'ASEAN's Six-Point Principles on the South China Sea'. They stated that

1. *The full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002);*
2. *The Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011);*
3. *The early conclusion of a Regional Code of Conduct in the South China Sea;*
4. *The full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);*
5. *The continued exercise of self-restraint and non-use of force by all parties; and*
6. *The peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).*

The ASEAN Foreign Ministers resolve to intensify ASEAN consultations in the advancement of the above principles, consistent with the Treaty of Amity and Cooperation in Southeast Asia (1976) and the ASEAN Charter (2008) (Statement of the ASEAN Foreign Ministers 2012).

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 and Roberts 2012: 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. Instead, the parties involved failed to even start the negotiations for the COC by that point. But, the 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 a state-to-state basis. However, some tentative progress was finally made in 2013. In April of that year Beijing proposed to organise

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 August 2, 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 at the second ADMM-Plus meeting in Brunei, both held in August 2013 (*Straits Times* 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). Minister Wang Yi asserted four views on the COC process in August 2013. First, it would take a long time to conclude the COC because of the complexities of the issue. Second, the process should observe maximum consensus and respect the comfort level of each claimant states. Third, other interferences should be avoided. Fourth, negotiations should proceed in a gradual manner (Mingjiang 2014: 2).

Over the past 11 years, China and ASEAN countries have been carried out a wide range of cooperation in the field of maritime search and rescue under the DOC framework. However, the 6th Senior Officials Meeting and the 9th Joint Working Group Meeting held on September 14-15, 2013 in Suzhou, Jiangsu Province, was regarded as the first official meeting on the consultation over the code of conduct in the South China Sea. In this meeting all the parties agreed to continue the full and effective implementation of the DOC, deepen pragmatic cooperation and contribute to the healthy and stable development of the China-ASEAN strategic partnership. Even China proposed cooperative initiatives including establishing maritime emergency help hotlines between China and ASEAN countries and conducting sand tabling an exercise on joint maritime search and rescue. Again, in the consultations on the COC, all the participants had a healthy discussion and also agreed to follow the 'step by step

and to reach consensus through consultation' approach. The parties decided to authorise the Joint Working Group to conduct concrete consultations on the COC and also to take steps to establish a celebrity expert group. They are again agreed to strengthen mutual communication, enhance mutual trust, build consensus, eliminate interference, and make unremitting efforts to build the South China Sea into a sea of peace, friendship and cooperation (The Sixth Senior Official Meeting and the Ninth Joint Working Group Meeting 2013).

Liu Zhenmin, Chinese Vice Foreign Minister said, "During the meeting we have reached an agreement on a principle guiding the COC consultations which is a principle of gradual approach based on consensus and consultations on the COC within the framework of implementing DOC" (James, *CCTV.com*, September 15, 2013). The parties described the next ten years as a diamond decade for China and ASEAN and also believed that both sides will grasp the opportunity to advance the partnership to a higher level (James, *CCTV.com*, September 15, 2013). Moreover, many scholars believe that with the signing of the Declaration of the Conduct of Parties, and after China signed the TAC, the potential for conflict in the South China Sea has greatly diminished.

Joint Development Idea

Many believe that the ASEAN's possible response to South China Sea dispute is to promote and initiate a 'joint development' of the South China Sea resources. Despite many differences, all claimant states agree in principle that there must be joint development in the disputed areas in the South China Sea if a peaceful management of the conflict is desired (Banlaoi 2012: 2). The joint development of resources is regarded as the earliest cooperative initiative in the South China Sea. It was first proposed in the late 1978 by Deng Xiaoping in relation to the disputed area of Diaoyu (Senkaku) Islands in the East China Sea, but first applied to the SCS during a speech given to the third plenary session of the Central Advisory Commission of the Communist Party of China (CPC) in October 1984. Later, during a meeting in April 1988 with the then Philippines President Corazon Aquino, Deng had suggested that all concerned parties could explore joint development under the premise of admitting China's sovereignty over them (Fernando 2013: 9-10). Again in July 1991, the

Chinese delegation leader Wang Yinfan participated for the first time in the second workshop of the informal Indonesian initiative ‘Managing Potential Conflicts in the South China Sea’ and also advocated the shelving of the sovereignty issue and the joint development of the Spratly Islands. Moreover, at the 25th ASEAN Ministerial Meeting in July 1992, the Chinese Foreign Minister Qian Qichen raised the issue of joint development (Fernando 2013: 10). Subsequently, at the third workshop on the SCS which was held in 1992, the Technical Working Group on Resource Assessment and Ways of Development (TWG-RA) was set up. This Technical Working Group (TWG-RA) met up in 1993 and 1999 and came to an agreement that joint development had a potential of understanding various concepts or models of development. And again, it agreed to develop four points; first, the zone where joint development will take place; second, the topics of cooperation (fisheries, minerals, gas, oil, environment, marine scientific research, marine parks, etc); third, mechanism for joint development; and fourth, the entities which are to participate in such joint development or joint cooperation activities (Fernando 2013: 11).

At the Conference on Joint Development and the South China Sea which was held in Singapore 2011, S. Jayakumar stated that

...The countries concerned could consider the option of joint development for instance, of hydrocarbon resources found in overlapping claim areas. Joint development agreements have emerged over the past fifty years as a viable means to allow oil exploration and exploitation in disputed areas while preserving the respective claims of the parties. It is also consistent with the UNCLOS concept of a ‘provisional arrangement of a practical nature’ which is without prejudice to the sovereignty disputes or the final determination of the maritime boundaries.

Six ASEAN member states (Brunei, Cambodia, Indonesia, Malaysia, Thailand, and Vietnam and three Northeast Asian countries (China, Japan and South Korea) have either officially agreed to negotiate joint development agreements or have been party to a joint development agreement. This could be due to the Asian cultural preference for consensus-building and collective cooperation.

The idea of putting aside sovereignty claims and jointly developing hydrocarbon resources in waters surrounding the Spratly Islands has been mooted since the 1980s. The late Deng Xiaoping first promoted this principle of ‘setting aside dispute and pursuing joint development’ in China’s dispute with Japan over the Diaoyu (Senkaku) Islands. When China established diplomatic relations with Southeast Asian countries in the 1970s and 1980s, Deng proposed the same approach for the Nansha (Spratly) Islands.

The fourth generation of Chinese leaders have continued talks with ASEAN leaders on the Spratly Islands and have reiterated their call for setting aside the dispute and pursuing joint development. Other claimants to the Spratly Islands such as Malaysia, Vietnam and Brunei have also entered or agreed to enter into similar joint development agreement (Embassy News and Press Releases: Embassy of the Republic of Singapore 2011).

Hasjim Djalal (2012) has expressed that one of most significant issues in the South China Sea was the question of Joint Development (JD) or Joint Cooperation (JC). He mentioned that this approach is one way in overcoming the territorial problems. Therefore, in 1996 Hasjim Djalal went around the South China Sea capitals to discuss the area for Joint Development or Joint Cooperation. He expressed that firstly, it should start with the least controversial issues and then move on with more sensitive issues such as on the protection and the preservation of marine environment, on the conduct of joint marine scientific research, on the living marine resources and on other non-living mineral resources, and on the mineral resources; secondly, the area for Joint Development and Cooperation should begin at the area outside the 200 miles EEZ from the undisputed land features or coastal areas or the legitimate baselines of the South China Sea countries. There was still a sufficiently large area in the middle of the South China Sea that is outside the 200 miles distance from the undisputed coastlines, or legitimate west lines (Djalal 2012: 1-9).

John Kemp once mentioned that sharing the natural resources like development of oil and gas is the most significant option for reducing tensions in the South China Sea (John Kemp, *The Japan Times*, September 2, 2014). Joint development is believed to be a feasible route to avoid and reduce tension and confrontation in the South China Sea. In the 1990s, the Chinese government put forward the concept of shelving differences and going for joint development to handle dispute and to maintain the peace and stability of the South China Sea. For instance, on March 14, 2005, China, Philippines and Vietnam signed a proposal known as the Agreement of Joint Marine Seismic Undertakings. Under this agreement, the concerned parties are committed to strictly adhering to the 1982 UN Convention on the Law of the Sea and the 2002 Declaration on the Conduct of Parties in the South China Sea. Again, the parties expressed their willingness to transform the South China Sea into an area of peace, stability, cooperation and development and also highlighted the principles of equality and consensus among relevant parties during the joint research process (Tripartite

Agreement for Joint Marine Seismic Undertaking: Ministry of Foreign Affairs Vietnam 2005). However, later on it was cancelled due to some political reasons (Shicun 2012: 5).

Wu Shicun (2012) has stressed some ideas to realize a joint development in the South China Sea as it would be a wise move to downplay disputes and realise mutually beneficial cooperation. It is believed that to build mutual trust and enlarge consensus through joint development is conducive to the premise of dialogue among concerned parties, and can help avoid conflict escalation and strategic misjudgement. Joint development requires all the concerned parties to put aside differences, to make compromises and to seek win-win results. Again, all the concerned parties should discuss the drafting of a feasible joint development plan, to ensure the plan's sustainability and consistency, and to choose reasonable and agreeable fields of cooperation; "We should promote cooperation and joint development in a concrete manner, and should also attend the dispute through peaceful means to build the South China Sea into a sea of friendship and cooperation" (Shicun 2012: 6).

But it is believed that most joint development agreements (JDAs) were concluded when relations among the disputants were already improving. Therefore, the question of how to improve relations within the South China Sea enough to make one or more JDAs as a realistic possibility was explored in detail at a conference hosted by the National University of Singapore's Centre for International Law in 2011. In this conference many delegates from a range of governments, international organisations, non-governmental organisations and oil and gas companies acknowledged that "sovereignty disputes are unlikely to be resolved in the immediate or near term future (either by negotiation or reference to an international court or tribunal) given the national sensitivities associated with the dispute and the potential access to resources which might come with sovereignty" (John Kemp, *The Japan Times*, September 2, 2014). That is why all the delegates believed in setting aside the sovereignty issues and focussing on joint development of natural resources as the most realistic interim solution and that this could reduce the risk of a worsening diplomatic or even military confrontation among the claimant states. Again, the delegates asserted that China, Malaysia, Vietnam and Brunei have already been able to put aside contentious and seemingly intractable maritime disputes in other areas in Asia and it should be

possible to apply the same reasoning and spirit of cooperation to resolve their claims in the South China Sea. It would be the best way to manage one of the most volatile flash points in the world, the South China Sea (John Kemp, *The Japan Times*, September 2, 2014). As for example, China and Vietnam conducted a joint mission in the Beibu Gulf on August 18, 2009 to patrol the fishing waters in the two countries' common fishery zone (Hou Lei, *China Daily*, August 21, 2009). Again, recently on November 7, 2016, China and Vietnam concluded a three-day joint patrol mission in a common fishing zone in the Beibu Gulf. Coast guards from both countries completed a series of tasks such as joint patrol, maritime search and rescue exercise, and examination of fishing boats, amid strong winds and high waves (Huaxia, *Xinhuanet*, 2016).

In addition, in October 2011, China and Vietnam reached an agreement on Basic Principles Guiding the Settlement of Maritime Issues. This Basic Principles called for China and Vietnam to undertake cooperation in less sensitive fields such as environmental protection, marine scientific research, search and rescue at sea and mitigation of damage caused by natural disasters. Later, the 2011 China-Vietnam Basic Principles were published separately in Chinese and Vietnamese, which has led to ambiguity in their translation into English. For example, Vietnam uses the expression 'cooperation for mutual development' rather than 'joint development' (Thayer 2013).

Negotiations through Track I Mechanisms

As we know that since the early 1990s, ASEAN has been seeking to peacefully manage the South China Sea issue by engaging China. But earlier, China refused to take part due to its own attempt to frame the South China Sea as a bilateral rather than a multilateral issue. However, China gradually changed its interest and position in the late 1990s by adopting ASEAN's norms and principles as well as its style of informal diplomacy to strengthen its economic and diplomatic ties with the ASEAN countries as well as to soften its image in Southeast Asia (Emmers 2014: 64). In fact, China's unwillingness to engage the issue multilaterally hurts it because the Southeast Asian countries take advantage of China's absence at forums where the issue is addressed. On the other side, the rigid position of the Chinese government also creates

expectations amongst the general population that make it hard to compromise in any way on the issue for fear of domestic disappointment and opposition (Pei 2011: 3).

Again, Beijing remains wary of ASEAN's pressure on the South China Sea dispute and the pro-US defence orientation of many ASEAN members. Therefore, Beijing is mindful that an adverse relationship with Southeast Asia could move many of its countries towards closer alignment with China's competitors, such as Japan and the US. This gives an opportunity to the ASEAN states, provided they can stay united and purposeful, to extract strategic restraint from China and develop cooperative security strategies (Acharya 2003: 2). Moreover, China's aggressive assertiveness has also pushed the US and ASEAN towards closer ties, since countries like the Philippines can't defend their resource interests by themselves (Lohman 2011: 2).

Subsequently, the ASEAN claimant states have felt a growing need to unite against China's aggression. In 2009, the unity was shown when China issued the 9-dash line formula for its claims; anxiety was raised by the member countries of ASEAN, including the oft uninvolved Indonesia, to submit a complaint to the UN Commission on the Limits of the Continental Shelf. While Vietnam and the Philippines seem to have the most stakes involved compared to other ASEAN countries, there seems to be consensus that multilateralising the dispute and involving the US is in the group's interest (Hiebert 2011: 1-2). That is why 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: 13). Therefore, the negotiations over the South China Sea issue 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 meets annually (AMM 1967). On the side-lines of the 25th ASEAN Ministerial Meeting in Manila 1992, Fidel Ramos, President of the Republic of the Philippines, in his opening address, stated that the openness and flexibility of ASEAN account for its success. Again, he emphasised that any territorial or jurisdictional dispute should be resolved by peaceful means, without resort to force. Therefore, he urged all the concerned

parties to exercise self-restraint with a view to create a positive climate for the resolution of these disputes. He again noted that the Workshops on Managing Potential Conflicts in the South China Sea had contributed to a better understanding of the issues involved. That is why the Foreign Ministers commended all the concerned parties to apply the principles incorporated in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the area (Joint Communiqué 25th ASEAN Ministerial Meeting 1992). Even, Foreign Minister Qian Qichen who attended the meeting 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 as to when the conditions would be ripe (Buszynski 2003: 350).

Then, on November 4, 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 towards 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 disputed areas (Floristella 2010: 17). Recently, at the 45th AMM held on July 9, 2012, a new draft on the principles for a COC was also submitted. At the same meeting, as a result of consultations among the ASEAN Foreign Ministers, the ASEAN Foreign Ministers announced ‘ASEAN’s Six-Point Principles on the South China Sea’ (AMM 2012).

At the 46th ASEAN Foreign Ministers’ Meeting (AMM) which was held in Bandar Seri Begawan on April 24-25, 2013, all the concerned ministers reaffirmed the importance of ASEAN’s Six-Point Principles on the South China Sea and looked forward to a continued engagement with China to carry out mutually agreed joint cooperative activities and projects in accordance with the guidelines for the

implementation of the DOC. The Ministers again stressed the need to maintain the positive momentum on dialogue and consultations following the 19th ASEAN-China Senior Officials Consultations and the 8th ASEAN-China Joint Working Group on the implementation of the DOC (Joint Communiqué 46th ASEAN Foreign Ministers' Meeting 2013).

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. This dialogue between the ASEAN and China is a positive contribution to dispute management in the South China Sea (Amer 2015). Earlier, the ASEAN-China dialogue relates to both political and economic dimensions but gradually both ASEAN and China agreed to include the developments in the South China Sea into the agenda of the dialogue process. Interestingly, this dialogue process brings together the ASEAN member states with claims to parts or the whole of the Spratly archipelago alongside China (Amer and Jianwei 2012). This was initially characterised by the search for mutually agreeable mechanisms to manage the situation in the South China Sea. Subsequently, both ASEAN and China agreed to set up the ASEAN-China Working Group on the Regional Code of Conduct on the South China Sea, and the issue was also addressed at various levels of the ASEAN-China Dialogue. Eventually, this paved the way for the signing of the DOC in November 2002 (Amer and Jianwei 2012).

ASEAN-China Joint Working Group (JWG)

With the adoption of the first political document jointly issued by the ASEAN and China on the South China Sea issue, the ASEAN-China Senior Officials' Meeting on December 7, 2004, on the implementation of the DOC, decided to set up the ASEAN-China Joint Working Group (ASEAN-China JWG). The main objective of the ASEAN-China Joint Working Group is to study and recommend measures to translate the provisions of the DOC into concrete cooperative activities for enhancing mutual trust and understanding. In addition to this, the ASEAN-China Joint Working Group is to recommend policy and direction and also to identify the types of activities of the concerned parties in order not to complicate or escalate disputes (Terms of Reference

of the ASEAN-China Joint Working Group on the Implementation on the Conduct of Parties in the South China Sea 2004).

Again, the ASEAN-China JWG is tasked to formulate recommendations on

- a) guidelines and the action plan for the implementation of the DOC;
- b) specific cooperative activities in the South China Sea, particularly in the following areas:
 - marine environmental protection;
 - marine scientific research;
 - safety of navigation and communication at sea;
 - search and rescue operation; and
 - combating transnational crime.
- 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 (Terms of Reference of the ASEAN-China Joint Working Group on the Implementation on the Conduct of Parties in the South China Sea 2004).

Therefore, at the first meeting of the ASEAN-China JWG which was held in Manila on August 4-5, 2005, ASEAN presented a draft of guidelines for the implementation of DOC for discussion. However, there are main differences about 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 (Thuy 2010: 6).

However, at the 9th ASEAN-China Joint Working Group Meeting on the Implementation of the DOC, which was held in Suzhou in September 2013, the COC was officially consulted for the first time between ASEAN and China. Again, in October 2013, Chinese Premier Li Keqiang called for peace and cooperation in the South China Sea at the ASEAN-China Summit held in Brunei. Finally, officials from ASEAN and China met again, in March 2014, to discuss the South China Sea issue and consult on a COC (Emmers 2014: 65). Again, at the 10th ASEAN-China Joint Working Group which was held on March 18, 2014 in Singapore, the meeting

reviewed the Work Plan on the implementation of the DOC for 2013-2014 and also welcomed new cooperation initiatives to promote the full and effective implementation of the DOC such as conducting seminars or establishment of a hotline communications channel, exploring the possibility of conducting search and rescue exercises, organising a workshop on the conservation of marine environment and holding a photo exhibition under the theme 'Maritime Cooperation' in view of promoting the ASEAN-China Cultural Exchange Year in 2014. In addition, the JWG Meeting expressed support for the 7th SOM on DOC to be convened back-to-back with the 20th ASEAN-China Senior Officials' Consultation (ACSOC) on April 21-23, 2014, in Thailand, with a view to further enhance positive developments and provide policy guidelines for the work of the JWG in the implementation of the DOC (Press Releases: Ministry of Foreign Affairs of the Kingdom of Thailand 2014).

Escalation of Tensions in the South China Sea

Despite all these formal negotiations through ASEAN, the diplomatic voice has weakened considerably. Since 2007, China's approach to the South China Sea dispute has seen a considerable change. For instance, in July 2007, Chinese paramilitary vessels forced Vietnamese fishing vessels away from the Spratly islands and sank three of them. Even, a British-American-Vietnam oil consortium was also forced by Beijing to abandon its gas field development off southern Vietnam. Subsequently, Malaysia along with Vietnam had provided a joint submission regarding the southern parts of the sub-region to the United Nation's Commission on the Limits of the Continental Shelf in 2009. This initiative has angered China, which resulted its own submission that included a new nine-dash map claiming sovereignty over almost the entire South China Sea region (Collinson and Roberts 2012: 36).

China's Assertive Stance

During the time from 2007 to 2010, all claimants, especially China, more actively asserted their claims and, at times, took actions to uphold or defend those claims. Between 2006 and 2008, China tried to obstruct foreign oil exploration companies (including several American companies). Again, in 2008 and 2009, China detained hundreds of Vietnamese fishermen operating near Paracel Islands. Furthermore, China has imposed a seasonal fishing ban in the northern part of the South China Sea (from 16 May to 1 August 2011) and detained dozens of Vietnamese fishing boats

(Storey 2011: 2). China has also increased the number of patrols by Chinese maritime law enforcement agencies in contested waters (Fravel 2014: 4).

Ian Storey (2011) has stressed that China has moved from being assertive in 2010 to being aggressive in 2011. He pointed out some important incidents which exemplify China's evolving strategy. First, China has been using its vessels belonging to the civilian maritime agency China Marine Surveillance (CMS), as well as Chinese fishing trawlers, to deter energy companies from undertaking exploration work in the South China Sea, even in areas within their legitimate 200 nautical miles Exclusive Economic Zones (EEZ). For example, on March 3, 2011, two CMS vessels harassed the Philippine-chartered MV *Veritas Voyager* near Reed Bank (west of Palawan Island) forcing it to withdraw. Again, on May 26, 2011 CMS vessels deliberately cut the cables of the Petro Vietnam vessel *Binh Minh 02* which was operating within Vietnam's EEZ. Moreover, China has called on other countries to stop exploration activities within the nine-dash line territory.

Furthermore, the PLANavy and CMS vessels reportedly fired warning shots at Filipino fishing boats near Jackson atoll on 25 February and at Vietnamese trawlers on June 1, 2011, respectively to enforce Chinese fishery jurisdiction further south. Again, on May 21 and 25, 2011 General Liang with his Filipino counterpart Voltaire Gazmin agreed to avoid unilateral action which could cause alarm. However, Chinese ships unloaded construction materials at Amy Douglas Reef in the Philippines' EEZ and also planted markers on Reed Bank and Boxall Reef. Thus, all these incidents reflect violations of the DOC, till date (Storey 2011: 2-3). In fact, China did not want to give ASEAN any significant role in settling the SCS issues. China has a strong and consistent stance that the SCS issue is not an issue between China and ASEAN (Scott 2012: 1027).

Moreover, under the leadership of Chinese President Xi Jinping, China's assertive nature has been bolstered in the South China Sea. Xi has conveyed the message to China's Asian neighbours that China remains committed to peaceful development but will not compromise on its sovereignty claims and will respond firmly to the countries that challenge its claims. It is believed that China's policy in the South China Sea has become more centralised, coordinated and proactive under President Xi Jinping. For

instance, in May 2014, HYSY-981⁷ was deployed in the presence of a large flotilla of civilian maritime patrol vessels, warships and fishing trawlers to act as a protective cordon around HYSY-981 (Storey and Lin 2016: 8-9).

However, some progress was made in 2013. In the same year, Beijing made a proposal to organise a special meeting involving the foreign ministers from the ASEAN countries and China to accelerate progress on the COC. Moreover, in May 2013, at the 8th meeting of the Joint Working Group for Implementation of the DOC which was held in Bangkok, China and the ASEAN countries agreed to implement the declaration and promote the 2011 Guidelines. Further, in July at Brunei, Beijing and the ASEAN states agreed to start formal consultations on a COC in September of the same year. Again, at a High-Level Forum which was held in Bangkok on August 2, 2013, Chinese Foreign Minister Wang Yi called for dialogue and the joint development of resources in the South China Sea.

However, many Chinese often argue that the primary reason for the increase in tensions is Washington's pivot to Asia. They have mentioned three main factors which has caused the increase of tensions: first, many claimants have intensified efforts to exploit maritime resources in the South China Sea, especially hydrocarbon resources. Second, the US's strategic shift to East Asia, and also its making attempts to exploit the SCS dispute to maintain its predominance in the region, and also to internationalise the dispute. Third, the rising political, economic and military power of China has prompted other regional countries to encourage the US to increase its presence in Asia so as to balance China (Mingjiang 2016: 49). Meanwhile, on July 12, 2016, the Permanent Court of Arbitration ruled out against China's claims in the South China Sea which might give either a decision to more assertive or coercive actions, or to give a strategy in favour of more accommodating approach (Glaser: 2016).

ASEAN and China's Response to the South China Sea Tribunal Ruling

After the Foreign Ministers' Meeting in Laos on July 24, 2016, the ASEAN issued a joint communiqué that addresses the landmark South China Sea tribunal ruling (Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting, 24 July 2016).

⁷HYSY 981 is a Chinese company's drilling rig,
http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1163264.shtml.

However, it is believed that it failed to even meet the minimum threshold of what could reasonably be expected. Even the issuing of the joint statement was delayed due to a strong objection from Cambodia to the inclusion of the South China Sea (Parameswaran 2016: 2). The Department of Foreign Affairs of Philippines has released the information note on the significance of the ASEAN Joint Communiqué of 2016 on August 1, 2016. While there is no direct mention of the Tribunal Award in the Communiqué, the significance of this milestone decision is reflected in Paragraph 2:

...We reaffirm our shared commitment to maintaining and promoting peace, security and stability in the region, as well as to the peaceful resolution of disputes, including full respect for legal and diplomatic processes, without resorting to the threat or use of force, in accordance with the universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS)’ (Department of Foreign Affairs, Philippines, 1 August 2016).

In this paragraph, full respect for legal and diplomatic processes is an important decision by ASEAN because it enshrines the said principles as a core value of the ASEAN community building efforts. This community includes the efforts to peacefully resolve disputes in the South China Sea (Department of Foreign Affairs, Philippines, August 1, 2016).

On the other hand, on July 12, 2016, Chinese Foreign Minister Wang Yi gave a remark on the Arbitral Tribunal Award that it is an attempt to undermine China’s territorial sovereignty and maritime rights and interests in the South China Sea. In addition, the Chinese Foreign Ministry has issued a statement, affirming China’s staunch position of non-acceptance and non-recognition of the award (Ministry of Foreign Affairs of the People’s Republic of China: Yi 2016) and also pointed out that the award is null and void and has no binding force (Ministry of Foreign Affairs of the People’s Republic of China: Weimin 2016). Again, on July 13, 2016, the State Council Information Office issued the white paper titled ‘China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea’. The paper mentions that Nanhai Zhudao⁸ are China’s inherent territory and China has always been resolute in upholding its

⁸NanhaiZhudao - the South China Sea Islands,
http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1380003.shtml.

territorial sovereignty and maritime rights and interests in the South China Sea. Further, it mentions that it is the Philippines' invasion and illegal occupation that caused disputes with China and the Philippines' territorial claim on some islands and reefs of Nansha Qundao has no basis (Ministry of Foreign Affairs of the People's Republic of China: Weimin 2016).

Bonnie S. Glaser (2016) has asserted, "Beijing's policy response to the ruling is not yet clear, however. After dismissing the ruling as 'null and void', Xi Jinping might review China's approach to the South China Sea disputes. The result could be either a decision to double down on its assertive and coercive actions, or to revise its South China Sea strategy in favour of a more accommodating approach" (Glaser 2016). According to Ian Storey (2016), there are three possible scenarios of China's response to the verdict in the coming months: best, bad and worst. In the best scenario, China might adopt a more flexible and accommodating approach to its neighbours. But in the bad scenario, China might continue to insist on its territorial and jurisdictional claims, increase its naval and coast guard presence and accelerate the military build-up on its artificial islands. As for example, within a few days of the ruling, China announced naval exercises off the Hainan Island, along with the denial of Filipino fishermen to access Scarborough Shoal. Again in the worst scenario, China increased its military presence in the Spratly Islands and also declared an Air Defence Identification Zone (ADIZ). Not only this, China moves aggressively against the Philippines in an attempt to deter the other claimants from future legal challenges (Storey 2016: 4-5). However, Chinese Foreign Minister Wang Yi has stressed that "China is a contributor to global order and regional peace. China will stay committed to peaceful settlement of disputes with parties directly concerned through negotiation and consultation and in accordance with international law" (Ministry of Foreign Affairs of the People's Republic of China: Yi 2016).

ASEAN Challenges in Resolving or Managing the SCS Dispute

ASEAN has been taking a leading role in sponsoring wider regional cooperation through platforms such as the ASEAN Ministerial Meetings (AMM) and the ASEAN-China Dialogue. However, ASEAN has three significant limitations in dealing with the South China Sea issue; first, lack of cohesion among its members; second, slow decision-making mechanism and third, limitations on the implementation of its code

of conduct (Rustandi 2016: 12). The first one is related to the disunity among ASEAN members over the South China Sea dispute. For the first time, the ASEAN failed to produce a Joint Communiqué in 2012, under the chair of Cambodia. This exemplifies Cambodia's pro-China position on the issue (Baviera 2012: 1). In this regard, Aileen S.P. Baviera argues that "for the last 45 years ASEAN has issued a joint communiqué at the end of each of its meetings. There has always been bilateral friction between member states, but friction is normally smoothed over in meetings. Member states generally agree that ASEAN is more than the sum of its parts, and the joint statement at the end of each meeting reaffirms that the organisation is more important than any single member" (Baviera 2012: 1).

The second weakness is ASEAN's way of making decisions. ASEAN's failure to issue the joint communiqué in 2012 was the organisation's inability to reach a consensus on key issues. But a consensus should not be seen in an absolute context, in which all members should share the same concerns and are willing to sacrifice some or all of their interests to unify the organisation's view; rather, members should not necessarily have to sacrifice their interests as long as the organisation's needs are satisfied without damaging the interests of its members (Rustandi 2016: 12-13). Tang Siew Mun says that the communiqué is consistent with ASEAN's role in managing the South China Sea disputes, and not resolving them. Again, he further says that the tribunal is not an ASEAN initiative and ASEAN does not take a view on the merit of (claims to) the South China Sea. In fact, that a joint communiqué was issued is in itself an achievement of the ASEAN (Yee 2016: 2). Again, the third limitation is on the implementation of the Treaty of Amity and Cooperation as a code of conduct. This treaty's inability to resolve issues in the South China Sea has resulted in China's perception that the South China Sea dispute is not a matter between China and ASEAN but a matter which China intends to discuss bilaterally with the individual disputants (Rustandi 2016: 13).

In fact, there was no ASEAN consensus over the arbitral tribunal ruling on the South China Sea. The ASEAN members could not issue a joint statement in response to the ruling. Laos, the ASEAN chairman of 2016, has not made any public statement of its own about the ruling. Instead of mentioning the ruling, Indonesia made a statement that it 'calls on all parties to exercise self restraint and to refrain from any actions that could escalate tensions, as well as to protect the Southeast Asian region particularly

from any military activity that could pose a threat to peace and stability'. Thailand made no reference to the ruling. But Myanmar released a statement that "We are now studying the impact of the Award and its possible repercussions within our region and beyond" (Chalermphanupap 2016: 1-2).

Moreover, it is difficult to resolve the sovereignty issues of the South China Sea through bilateral negotiations, because the power asymmetries between China and ASEAN countries will favour China. In addition, with the rise of nationalist sentiments over the sovereignty of the islands, the concerned governments find it more difficult to make concessions or reach compromises (Storey and Lin 2016: 12). More importantly, the condition of the South China Sea has become more complicated because there is no formal mechanism to resolve these problems. However, neither the ASEAN nor the ARF, or the ASEAN-China Dialogue or the Workshops on the South China Sea, are 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, the Southeast Asian claimant states in the South China Sea (DOC), on November 4, 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. Moreover, the ASEAN Regional Forum (ARF) still remains at the first stage of confidence building measures. This mode of confidence building is exercised in both formal and informal contacts of participants in the annual ARF Ministerial Meeting and the ARF Senior Official Meetings. But because of the extremely large number and broad subjects of their agenda, the meetings are very insufficient and lack focus, depth, and concrete outcomes (Pham 2010: 430).

Again, the weak response of ASEAN to the rising dispute in the South China Sea can be attributed to several factors. First, countries in the region share a commonly held attitude that prefers to keep the environment peaceful and stable to allow continued economic development, especially in dealing with China as a rising power. Therefore, despite having disputes or tension with China, most of the countries in the region want to have a good relationship with China. Thus, the economic relations have transitioned from a zero-sum game to a win-win cooperative situation. As for example, in 2008, the trade volume between China and ASEAN grew increasingly.

Since the China-ASEAN FTA took effect in January 2010, bilateral trade between China and the individual countries in Southeast Asia has increased. Second, the Chinese navy has undergone significant modernisation. But, no single ASEAN country can compete with the Chinese naval strength; this allows China to dominate the disputed areas (Pham 2010: 431).

In fact, Ramses Amer (2014) 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 (Amer 2014: 2).

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, the ASEAN as a forum, engages many formal or informal mechanisms which help in reducing tensions to a little extent and carries out 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. ASEAN concerns over the SCS dispute are: first, to maintain peace and stability by setting norms, policies and also by playing a deterrent role in the region and second, to resolve the issue through peaceful means, consultations, negotiations and dialogues. 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 own 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 makes 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 keen interest on resolving and 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 or informal meetings among ASEAN members and claimant states, it has effectively developed preventive diplomacy and emphasises developing trust and confidence among claimant states. But, it still has long way to go to resolve the SCS dispute because no country is willing to compromise on its 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 still continuing its diplomatic endeavours to resolve or manage the differences through dialogue and confidence building measures.

Chapter 4

TRACK-II DIPLOMACY IN THE SOUTH CHINA SEA DISPUTE

The Track II diplomacy has been fundamental in managing the South China Sea (SCS) dispute for over more than two decades. It is believed to be the first approach towards a peaceful settlement of South China Sea issue which was intended to influence officials in the first track (Buszynski and Sazlan 2007: 152). It is again believed that the most successful and significant Track II forum to manage the potential disputes in the South China Sea is known as the ‘Workshops on Managing Potential Conflicts in the South China Sea’ (WMPCSCS) (Snyder et al. 2001: 12). This informal workshop which includes members of government and military, as well as academics from both claimant and non-claimant countries, all acting in their private capacities, was first initiated in Indonesia in February 1990, and there have been annual meetings since then. The main purpose of this ‘Workshop Process’ is to identify and develop proposals for cooperation over a wide area of maritime concerns shared by all jurisdictions of the region (Djalal and Townsend-Gault 2011: 25).

This initiative aims to encourage confidence among claimant states in order to reduce tensions arising from sovereignty and jurisdictional disputes over the Spratly and Paracel islands (Joyner 2000: 93). Moreover, Indonesia took the initiative to try to manage the potential conflicts in the area and to promote actual cooperation among the claimant states. However, Indonesia is not a claimant state to any islands or rocks in the Spratly group. Although, if the dashed lines of 1947 shown in the Chinese or Taiwanese maps are taken into consideration, then the Chinese or Taiwanese claims could also encroach upon Indonesia’s EEZ and continental shelf as defined in the 1982 United Nations Law of the Sea Convention (UNCLOS) (Djalal 2009: 178).
Hasjim Djalal mentions

...With regard to the South China Sea, it was essential to seek ways and means of preventing potential conflicts from erupting into armed conflagration. I thought that a sense of ‘community’ in the South China Sea area should be developed. There was the basis of cooperation in UNCLOS, especially in the EEZ regime (Articles 61-67) and the ‘Enclosed or Semi Enclosed Seas’ concepts as stipulated in Article 123. I felt that regardless of the territorial disputes, we should try to find ways to manage potential conflict

and to find an area or areas in which everyone could agree to cooperate, no matter how small or how insignificant they might seem. We should be guided by the idea that, despite potential conflict, there was always an opportunity for cooperation. At that time, I had three basic objectives:

- to manage the potential conflicts by seeking an area in which everyone could cooperate;
- to develop confidence-building measures or processes so that the various claimants would be comfortable with one another, thus providing a conducive atmosphere for the solution of their territorial or jurisdictional disputes; and
- to exchange views through dialogue on the issues involved in order to increase mutual understanding (Djalal 2009: 178-79).

This dialogue process is governed by consensus and participants make recommendations to their respective authorities based on the discussions at the workshop. It is believed to be the only regular dialogue process on the South China Sea that includes representatives from both the People's Republic of China (PRC) and Taiwan. However, the Workshop has consistently avoided offers by institutions in Taiwan to host meetings as part of the process. Again, there have been many suggestions that the Indonesia Workshop process be made an official dialogue process, but formalisation would probably result in Taiwan's non-participation in the Workshops (Snyder et al. 2001: 12). Thus, the initiatives or workshop process have served as catalysts for cooperation within a range of different functional areas (Weissmann 2009: 129) and also could serve for building confidence and trust among the claimant states. The efforts made to proceed with technical cooperation in scientific research, environment, resources, safety of navigation and legal matters have been ultimately constrained by concerns that these cooperative projects might also involve questions of sovereignty (Snyder et al. 2001: 12).

Hasjim Djalal and Ian Townsend-Gault argue that all the senior participants at the 20th Workshop which was held on November 2-3, 2010, tried to get cooperation and renew their commitment to the Workshop process for peaceful development. Again, they have given four main agendas of the Process to develop; first, Regional Cooperation in the Field of Marine Science and Information Network in the South China Sea including Database Information Exchange and Network Monitoring (China); second, Study of Tides and Sea-Level Change and Coastal Environment in the South China Sea Affected by Potential Climate Change (Indonesia); third, Search and Rescue and Illegal Acts at Sea Including Piracy and Armed Robbery (Malaysia)

and fourth, the South-East Network for Education and Training (SEA-NET) (China and Chinese Taipei) Proposed Training Course on Coastal Management, Assessment and Monitoring (Philippines) (Djalal and Townsend-Gault 2011: 25-26).

Track II Diplomacy

Track II is generally referred to as unofficial activities involving academics, think tank researchers, journalists and former officials, as well as officials participating in their private capacities (Taylor et al. 2006: 5). Peter Jones (2008) expressed that “The term Track Two Diplomacy’ was coined in 1981 by Joseph Montville, an American Foreign Service Officer. Montville used the term to denote unofficial conflict resolution dialogues. He was keen to persuade his diplomatic colleagues that such dialogues should be better understood by diplomatic ‘professionals.’ He defined Track Two as: unofficial, informal interaction between members of adversarial groups or nations with the goals of developing strategies, influencing public opinion, and organising human and material resources in ways that might help resolve the conflict” (Jones 2008: 1).

According to Joseph V. Montville (2006), “In an article I co-authored for *Foreign Policy* magazine in 1981, track two diplomacy was rather simply defined as

... unofficial, non-structured interaction. It is always open-minded, often altruistic...strategically optimistic, based on best case analysis. Its underlying assumption is that actual or potential conflict can be resolved or eased by appealing to common human capabilities to respond to good will and reasonableness (Montville 2006: 16).

It is originally referred to negotiations between private citizens on topics usually reserved for official negotiations. However, the concept encompasses processes such as problem solving workshops, dialogues, cultural and scientific exchanges, travelling artists and sports teams (Weissmann 2009: 71). Nowadays, the Track II, or non-official, diplomacy has enjoyed considerable attention as a new form of confidence-building measure. It aims to aid peacemaking through private individuals’ meetings or organisations from the various sides of the conflict (Simon 2002: 168). That is why Track II diplomacy refers to any form of unofficial or informal interaction and negotiation between academics, businesspeople, religious persons, citizens and others (Non-governmental organisation, NGO) groups (Weissmann 2009: 71).

Mikael Weissmann (2009) has opined that

...One of the underlying ideas behind track two diplomacy is that peace also needs to be build from below and not only top down. Another key feature is that track two diplomacy allows influential second-level leaders and civil society actors to interact more freely and, at the same time, be in a influential position vis-à-vis their leaders (the track one level) and their own communities. Such unofficial and informal contacts between the parties can potentially de-escalate a conflict before any official negotiations can reach the same results, or work as a parallel forum where the parties can explore options without taking an official stand. They can also work in close collaboration with track one, and provide a support structure or function as an innovation or test lab for new ideas, which arguably is harder within the first track (Weissmann 2009: 71-72).

Track II Diplomacy in the Asia-Pacific Region

It is exactly not known when Track II diplomacy began. But in the Asia-Pacific region, an international Non-Governmental Organisation (NGO) known as the Institute of Pacific Relations (IPR) was a pioneering channel of unofficial diplomatic dialogue from 1928 to 1961. However, the present form of Track II diplomacy first arose in the mid-1960s as a process which was convened to resolve a dispute between Malaysia, Singapore and Indonesia by Professor John Burton, a former Australian diplomat, and his colleagues at the University College in London (Jones 2008: 2). Then, Track II diplomacy proliferated and has now become a trend with increasing interests both within and outside the region, to develop a more secure and stable neighbourhood, and to work for continued economic prosperity. According to Mikael Weissmann (2014), Track II diplomacy fits very well in the region because the norms of informality, consensus building, consultation, face-saving and conflict avoidance have become a response to the conflict situation in the region. China's shift from being a reluctant (non) participant, to becoming one of the key driving forces in the Track II dialogues in the region was the main reason for proliferation of Track II diplomacy in the region (Weissmann 2014: 6-7). However, the Track II process in the region was first developed in the field of economic cooperation under the name of the Pacific Economic Cooperation Council (PECC). This was founded in 1980, and flourished into an international network of scholars, officials, and business representatives and which is also widely acclaimed as the precursor of the Asia-Pacific Economic Cooperation (APEC) (Ruland 2002: 86). Desmond Ball once argued that

...the beginning of the 1990s, as the Cold War ended, there was a burgeoning of non-governmental activities and institutional linkages concerning security cooperation in the Asia-Pacific region, in which government officials were greatly involved but in their private or non-official capacities, and which was soon generally referred to as the 'second-track' or 'Track 2' process. By 1993-1994, these second-track meetings exceeded one per week. Some of these were small workshops, sometimes involving less than two dozen participants, and designed to address specific issues (such as security of the sea-lanes through the region, or territorial disputes in the South China Sea). The largest and most inclusive was (and still is) the annual Asia-Pacific Roundtable, organized by the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS), which involves about 300 participants from more than two dozen countries (Ball 2010:9).

In the year 1991, four institutions, namely the ASEAN-ISIS, the Pacific Forum in Honolulu, the Seoul Forum for International Affairs and the Japan Institute of International Affairs (JIIA) in Tokyo, along with representatives of other research institutes from the region, began a two-year project on Security Cooperation in the Asia Pacific (SCAP) (Ball 2010: 9). Since then, ASEAN-ISIS became an important player in the establishment of a broader Asian-Pacific network known as the Council for Security Cooperation in the Asia Pacific (CSCAP) which was established in 1993 for the purpose of providing a structured process for regional confidence building and security cooperation among countries and territories in the Asia Pacific region (Ruland 2002: 86).

Council for Security Cooperation in the Asia Pacific (CSCAP)

The concept of a Council for Security Cooperation in the Asia Pacific (CSCAP) was conceived after a series of conferences on Security Cooperation in the Asia Pacific such as: the first one in Honolulu (October 29-30, 1991), the second one in Bali (April 17-19, 1992), and the third one in Seoul (November 1-3, 1992) (Kuala Lumpur Statement 1993). Then, on June 8, 1993, the CSCAP was formally established. The Council for Security Cooperation in the Asia Pacific (CSCAP) was set up with a view for providing a more structured regional process of a non-governmental nature to contribute to the efforts towards regional confidence building and enhancing regional security through dialogues, consultation and cooperation (CSCAP 1993).

The primary objective of the CSCAP is to provide an informal mechanism for scholars, officials and others in their personal capacities to discuss political and security issues and challenges facing the region. It also provides policy

recommendations to various inter-governmental bodies, convenes regional and international meetings and establishes linkages with institutions and organisations in other parts of the world to exchange information, insights and experiences in the area of regional political security cooperation. All the activities of CSCAP are guided by a Steering Committee and co-chaired by a member from an ASEAN Member Committee and also from a non-ASEAN Member Committee. Currently, Tan Sri Rastam Mohd Isa is the Co-Chair from CSCAP-Malaysia and Ambassador Yoshiji Nogami from CSCAP-Japan as the Non-ASEAN Co-Chair (CSCAP 2017).

Now, it has 21 full members of the Council (Australia, Brunei, Cambodia, Canada, China, Europe, India, Indonesia, Japan, Malaysia, Mongolia, New Zealand, North Korea, Papua New Guinea, the Philippines, Russia, Singapore, South Korea, Thailand, the United States, and Vietnam) and one associate member (Pacific Islands Forum Secretariat) (CSCAP 2017).

It has been of foremost importance for regional trust and confidence building, preventive diplomacy and cooperation on non-traditional security issues. CSCAP has two formalized channels to influence ARF: meetings between the CSCAP Steering Committee and the ARF Senior Official Meetings and links between the CSCAP working groups and the ARF inter-sessional meetings. As CSCAP has working groups for a range of issues, it can consequently influence ARF on a wide array of topics. In other words, CSCAP has not only been a facilitator of elite socialisation, it has also contributed to semi-official engagement on a range of issue areas. That said, over time, the CSCAP has lost some of its importance, as many of its roles have become institutionalised within the ASEAN Plus Three (APT) process. However, given CSCAP's place as a forerunner, this is arguably a positive contribution to peace and a significant example of a Track-II process contributing to the development and safeguarding of peace (Weissmann 2010: 50-51). However, CSCAP delegations are frequently quite diverse and since CSCAP meetings are based on national delegations, there is no guarantee of continuity. Member attendance depends on funding, availability and interest in the subject matter under discussion. Beyond a common commitment to promoting multilateral security dialogue and a preference for peaceful resolution of disputes, there are more differences than similarities among the participants.

Though the CSCAP Working Groups are more functional and long range in nature, they have reported annually to CSCAP in Kuala Lumpur. They comprise; firstly, confidence and security-building measures (CSBMs), which are defined to include nuclear safety; secondly, comprehensive security, which covers economic issues; thirdly, maritime security, in recognition of the fact that the Asia-Pacific encompasses significant sea space; fourthly, in the North Pacific security dialogue, the only WG not co-chaired by an ASEAN member; and fifthly, transnational crime, CSCAP's newest endeavour (Simon 2010: 174-175). Recently at the 2nd Meeting of the CSCAP Study Group on Marine Security which was held on February 18-19, 2014, CSCAP China expressed that the South China Sea remains the focus of maritime concerns. But, China will continue its commitment to a peaceful development and resolution of the disputes; it will continue to strengthen its capabilities and not give up its rights (Co-Chair's Report: 2nd Meeting of the CSCAP, Indonesia 2014: 2).

Several recommendations were made by CSCAP China in this meeting. First, territorial disputes should be addressed through peaceful and diplomatic means, especially friendly negotiations on the basis of respect for historical facts and international law. Second, a new system of interstate relations should be cultivated, based on the principles of non-confrontation, mutual respect and win-win cooperation, with medium and small countries also playing a key role. But the focus should be on confidence building measures (CBMs), trust building and crisis mechanisms. Third, the Cold War mentality should be abandoned, and bilateral alliances need to adapt to the current situation and contribute to regional peace and development. Fourth, communication and dialogue should be encouraged at all levels, including at operational and working levels, and between the new Chinese Coast Guard and the US Coast Guard (Co-Chair's Report: 2nd Meeting of the CSCAP, Indonesia 2014: 2). Apart from these Track II dialogues, there are series of informal Workshops organised by the Indonesian government and the Canadian International Development Agency (CIDA) which discussed a broader areas of maritime issues, but clearly eluded the controversial issues like political and jurisdictional ones (Ruland 2002: 90). This Workshop on Managing Potential Conflicts in the South China Sea has become a leading Track II mechanism in managing the South China Sea dispute since the early 1990s.

South China Sea Workshop (WMPCSCS)

Since the early 1990s, the SCS has become the most critical flashpoint, and there was no established forum through which the conflict could be well handled (Weissmann 2009: 127). And following the military clash between Vietnam and the People's Republic of China (PRC) in 1988 over the Spratly archipelagos, a meeting took place from a recognised need to reduce tensions, and the emergence of the cooperative multilateral resource development regime idea. By considering this meeting, in 1990, a non-governmental workshop of academics and officials from the members of ASEAN to discuss the management of potential South China Sea conflicts was held, initiated and hosted by Indonesia. Thus, the South China Sea multilateral workshop mechanism was conceived as an unofficial process, not constituting formal or informal negotiation. This was hosted and co-chaired by the Indonesian Foreign Ministry, supported by Canadian funds. This was attended by academics and officials, participating in their personnel capacities, from the six ASEAN states, Vietnam, the PRC, Taiwan-China and Laos (McDorman 1993: 274-75). This initiative is a continuing dialogue process that aims to manage potential conflicts by exploring areas of cooperation among the littoral States in the South China Sea (SCS) region (Song 2010: 253-254). In initial stages, the initiative was coordinated by the Centre for Southeast Asian Studies (CSEAS), Jakarta, Indonesia with the support of the South China Sea Informal Working Group (SCS-IWG) at the University of British Columbia (UBC), Vancouver, Canada. This was funded by the Canadian International Development Agency (CIDA) till 2001 (Fernando 2013: 15).

Hasjim Djalal (2001) remarked,

...When I took the initiative to launch the workshop process on Managing Potential Conflicts in the South China Sea in 1998, endorsed by the Indonesian Minister of Foreign Affairs and financially supported by Canada, Indonesia and I had no ulterior motive except to promote peace, stability and cooperation in the South China Sea. We saw this as important for the development of the region as a whole, including Indonesia. I was therefore motivated by the conviction that everyone in the region should be guided by the principle that the promotion of regional peace, stability and cooperation in the South China Sea is part of the national interest of the respective countries, and that cooperation is preferable and better than confrontation. My perception was largely shared by the countries in the region. Therefore, the first lesson that can be learned regarding Northeast Asia is the need to find someone with similar perceptions, preferably someone from the region whose country is not directly involved in the territorial or sovereignty disputes. It may be difficult to find this personality in Northeast Asia. Nevertheless, it would be ideal if

Northeast Asian countries could agree to have one or two of their prominent personalities take the initiative and for the initiative to be supported by disinterested countries, such as Canada or Norway, Sweden or Finland. This initiative should be assisted by other leading personalities from neighbouring countries within the context of promoting wider regional peace, stability and cooperation (Djalal 2001: 89).

The act of managing potential conflicts were motivated by the conviction that cooperation was better than confrontation and it was also believed that talking about cooperation was better than preparing for a fight. It was again hoping that talking would develop understanding and linkages among the various participants and would reduce animosity and warlike policies and actions (Djalal 2001: 98). Through this informal process all the participants would like to take many advantages like greater freedom to discuss ideas and in an atmosphere of greater community. In doing so, it was about getting a chance to promote good opportunities for consensus by restraining many adversarial situations (Joyner 1998: 93-94). Thus, the main aim of the workshops was to informally manage potential conflicts in the South China Sea through the promotion of cooperation within the context of promoting confidence building measures (CBMs) and preventive diplomacy (Weissmann 2010: 42). Therefore, three main objectives and modalities were developed according to the willingness and readiness of the participants:

1. to promote dialogue and mutual understanding between the parties through the exchange of views and ideas;
2. to encourage the parties concerned to seek solutions to their disputes by creating a conducive atmosphere as much as possible; and
3. to develop concrete cooperation on technical matters on which everyone would and could agree to cooperate, no matter how small the matters were or how insignificant they might appear (Djalal 2001: 98).

That is why, this informal nature of the workshop was widely welcomed and appreciated by the participants and considered as the most suitable and valuable way for solving and managing the South China Sea conflict at that time (Shaohua 2006: 67). Importantly, this initiative is the only regional dialogue mechanism where scholars and government officials from Taiwan, China, and the member states of ASEAN meet regularly and exchange views on a variety of South China Sea (SCS) issues even though it is in their personal capacity (Song 2010: 254). Earlier, at this workshop, China always had excuses to oppose proposals initiated by Taiwan. Since 2003, Taiwan proposed initiatives every year, and none was approved due to

opposition from China until 2009. But through this Track II mechanism, Taiwan has had its sovereignty claims over the South China Sea region heard by others and gotten to know other claimants' plans and policies (Hsiu-chuan, *Taipei Times*, August 07, 2011). In addition, a series of Technical Working Group (TWG) meetings, Group of Experts (GE) meetings, and other cooperative meetings have been held since 1993 (Song 2010: 254).

Ian Townsend-Gault (2009) said,

...I think it can be argued that the Workshop Process (as it came to be called) made and continues to make a valuable contribution not only to the maintenance of regional peace and security: apart from encounters with illegal fishers and pirates, there have not been any naval clashes in the South China Sea for more than a decade and a half. But it also managed to focus the attention of the more informed and careful commentators on a much wider range of South China Sea issues than had been considered widely before. The experts on fisheries had of course been concerned about the fishery; marine environmentalists about the continuing degradation of the ocean and the lack of oil spill response capacity; and there were well-known problems with search and rescue. But I believe that the Workshop Process was one of the ways in which these issues became more broadly appreciated, and hence gained in stature and importance as opposed to endless preoccupations with oil reserves, the presence of which in commercial quantities has yet to be determined in large parts of that ocean (Townsend-Gault 2009: 189).

In 1990, the first workshop was held at Bali, Indonesia and attended only by participants of ASEAN. It was agreed that the ASEAN participants should do something to manage the potential conflicts in the South China Sea (Djalal 2001: 99). After a lengthy discussion, six possible areas were initiated and conducted: first, territorial and sovereignty issues; second, political and security issues; third, marine scientific research and environmental protection; fourth, safety of navigation; fifth, resource management; and sixth, institutional mechanisms for cooperation (Fernando 2013: 15). Again, the involvement of non-ASEAN participants was agreed upon and also there was an opinion that efforts to formulate cooperation efforts would not achieve much if territorial and sovereignty issues were not first solved (Djalal 2001: 99).

Some basic principles had been formulated in the South China Sea Workshop since the beginning for peaceful management of the potential conflicts. At the second Workshop in Bandung in July 1991, the recommendations had been made to the relevant governments for various declarations or Code of Conduct (COC) in the South China Sea (SCS), such as; first, there is no prejudice to territorial and jurisdictional

claims, to explore areas of cooperation in the South China Sea; second, the areas of cooperation which may include the promotion of safety of navigation and communications, to coordinate search and rescue, to combat piracy and armed robbery, to promote the rational utilization of living resources, to protect and preserve marine environment, to conduct marine scientific research, and to eliminate illicit traffic in drugs in the South China Sea; third, the existing relevant states in the areas of conflicting territorial claims may have the possibility of undertaking cooperation for mutual benefit including exchanges of information and joint development; fourth, any dispute which is considered to be territorial and jurisdictional in the South China Sea region should be resolved by peaceful means through dialogue and negotiation; fifth, no force should be used to settle territorial and jurisdictional disputes; and sixth, not to complicate the situation, all the concerned parties in the dispute are required to exercise self-restraint (Djalal 2011: 1-2).

At the third Workshop which was held in Yogyakarta, Indonesia, in 1992, the formulating cooperative projects were worked out in more precise terms by specific Technical Working Groups (TWGs) and Groups of Experts Meetings (GEMs). Later, this meeting had decided to establish two TWGs, one on Resource Assessment and ways of Development (TWG-RA), and the other on Marine Scientific Research (TWG-MSR) (Fernando 2013: 16). Again, all the participants in the meeting agreed to the principle that ‘joint development’ should be used as a part of a peaceful means for resolving the dispute among states in the South China Sea (Joyner 1998: 94). During this hour of intense discussion, some participants were interested to formalise the workshop process, others objected to this idea, particularly China, because of its refusal to participate in an official process that also included Taiwan. It was believed that ideas could flow more easily and freely in an informal process, whereas in an official one the participants would be constrained by the policies of their respective governments. Since then, the workshop process was prepared in the following manner; GEMs would report to their parent TWG, which would in turn report to the annual workshop, which would adopt proposals for cooperation and recommend them to their respective governments (Fernando 2013: 16-17).

In August 1993, the fourth Workshop was held in Surabaya, Indonesia. The two TWGs, TWG-MSR and TWG-RA, were also established to deal with specific issues. But, the Chinese delegates paid much attention to exploring possible fields for

cooperation (Shaohua 2006: 75). However, the idea of initiating negotiations for a joint development programme was rejected by China. That is why more CBMs are needed to be initiated before any formal negotiations (Joyner 1998: 95). Although, in this discussion, the participants agreed to establish two more Technical Working Groups: TWG on Marine Environmental Protection (TWG-MEP) and TWG on Legal Matters (TWG-LM). Even China showed great interest in hosting the working group on environmental issues. The issues of protecting the safety of navigation, shipping and communications were also considered and touched during the meeting (Shaohua 2006: 75).

In this meeting, the involvement of non-South China Sea countries and organisations was discussed and it was also agreed to participate on a case-by-case basis to implement specific agreed programmes of cooperation (Djalal 2001: 100). But some participants were not in favour of involving the non-South China Sea countries and organisations because they were against internationalising the dialogue. However, they were making much effort for the workshop process where it was directed at scientific and technical matters, rather than territorial and jurisdictional issues. Their thinking was that territorial and jurisdictional disputes should be debated and discussed directly between the countries concerned (Fernando 2013: 17). This meeting, however, saw the last of the political and security talks on territorial and sovereignty issues. For several times, China demanded the exclusion of political and territorial issues because it claimed that the South China Sea indisputably belonged to it. But, on the other side, since the beginning of the workshop, all the concerned participants had been given the same and equal rights for expressing their claims of territory in the South China Sea region without entering into a discussion. Although, there had been made a slow and little progress. Therefore, the agenda of political and security talks seemed to have come to the end (Shaohua 2006: 75-76).

At the fifth Workshop which was convened in Bukittinggi, Indonesia, in 1994, the issue of ‘non-expansion of existing military presence’ was addressed (Joyner 1998: 95). In this meeting, some specific projects which had been formulated by the TWGs, especially a programme for cooperation on the study and conservation of biodiversity in the South China Sea were approved. The workshop agreed to authorize Hasjim Djalal to seek support and funding for the project proposal on biodiversity; to convene a meeting of the TWG-MSR to finalise proposals on sea-level and tide monitoring,

and on a database, information exchange, and networking; and to convene the first meeting of the TWG-LM in Thailand (Djalal 2009: 181). The workshop further expressed that any discussion on sovereignty and jurisdictional issues was considered as a waste of time and should be eliminated from the workshop agenda. Consequently, since the fifth meeting, the discussions on political and security issues in the South China Sea have been terminated (Shaohua 2006: 76).

In October 1995, the sixth Workshop was held in Balikpapan, Indonesia. The two project proposals drawn up by the TWG-MSR, namely 'study on tides and sea level change' and regional cooperation in the field of marine science data and information network in the South China Sea, were approved. All the participants agreed to send these project proposals to their respective governments for their consideration and support in their implementation. But to solicit support from various sources, Hasjim Djalal was asked (Djalal 2009: 181). There was another project on biodiversity studies which was also approved and recommended to the concerned governments (Fernando 2013: 18). In addition, five TWGs were established; first, TWG on Marine Scientific Research; second, TWG on Marine Environmental Protection; third, TWG on Safety of Navigation, Shipping and Communication; fourth, TWG on Resources Assessment, and fifth, TWG on Legal Matters (Djalal 2001: 100).

The seventh Workshop held in Batam in 1996, further discussed the problems of implementing the proposed projects that had been agreed upon in the previous workshops. There were some difficulties in implementation, because of both financial and political issues (Djalal 2009: 181). However, almost all the countries of the South China Sea region were willing to implement the agreed programmes by providing expertise, facilities and financial aid, but China had an opinion that the implementation should be left solely to national governments because of the sensitive nature of the sovereignty disputes (Fernando 2013: 18). That is why the implementation of the proposed projects was postponed. However, despite the suspension of project implementation, more TWGs meetings were scheduled to convene during the workshop. In this meeting, all the participants agreed to start the second TWG-LM and also considered to establish the Group Experts Meetings (GEMs). The GEMs cover the areas of marine environmental protection (GEM-MEP), education and training of mariners (GEM-ETM), and hydrographic data and information exchange (GEM-HDI) (Shaohua 2006: 79).

In 1997, the eighth Workshop was held in Pacet Puncak, Indonesia. In this meeting, the progress made by the numerous TWGs and GEMs in the previous years was summarised and later the review was followed by the proposals of more TWGs and GEMs. Again, on the third TWG meetings, both the SNSC and LM were put on agenda. More GEMs were also agreed to be convened on HDI, MSR, and MEP (Shaohua 2006: 79). Further, at this meeting, all the participants had a consensus to jointly implement the agreed projects or programmes for cooperation. At the same time, Hasjim Djalal was asked to approach various international, regional, and national agencies, governmental or non-governmental, to support the implementation of the agreed programmes or projects (Djalal 2009:181).

At the ninth Workshop which was held in Ancol, Jakarta, in 1998, the discussion on implementing the agreed projects was continued. The Code of Conduct for the South China Sea was also discussed. For the safety of navigation, the participants decided to recommend to their respective governments to consider the ratification of the Rome Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, of the International Convention on Civil Liability for Oil Pollution Damage, 1992, of the International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage, 1992, and of the International Convention on Oil Spill Pollution and Preparedness, Response and Co-operation, 1990 (Djalal 2009:181-82). Furthermore, the workshop had decided to convene more GEMs on law enforcement and unlawful acts at sea (GEM-LEUAS) and environmental legislation (GEM-EL). The other TWGs, GEMs and SGs continued with their consecutive meetings (Shaohua 2006: 79-80).

At the tenth Workshop which was held in Bogor, Indonesia, in 1999, the atmosphere of cooperation had improved, though some difficulties remained. Again, the workshop discussed and endorsed the recommendations of various meetings of the TWGs and GEMs. Many issues like the formulation of the Code of Conduct for the South China Sea, issues of implementation and many other activities, continued to be the subject of discussion (Djalal 2009: 182). Meanwhile, the participants had decided to carry out the biodiversity expedition in and around the undisputed Anambas Islands belonging to Indonesia (Fernando 2013: 19).

The eleventh Workshop which was supposed to be held in 2000, took place in Ceng Kareng, Indonesia in 2001 because of the Canadian International Development Agency (CIDA)'s decision to withdraw funding (Shaohua 2006: 80). With regard to this crisis, all the participants acknowledged the need for preserving the workshop process and also decided to hold a Special Meeting to deal with the funding issue. This Special Meeting held in Jakarta later decided to continue with the workshop process in an informal, unofficial and Track II way, with an aim towards building confidence and cooperation while avoiding controversial, political and divisive issues (Djalal 2009: 182). Later, this meeting decided to ask for voluntary donations from participating countries, non-governmental organisations, foundations or private companies from the South China Sea (SCS) region, as well as voluntary contributions from similar institutions outside the South China Sea (SCS) region under the stipulation that no political conditions were attached. Further, it also decided to propose the establishment of a special fund which would be administered by the CSEAS. Meanwhile, the expedition on biodiversity in and around the Anambas Islands was also carried out from March 11-22, 2002 (Fernando 2013: 20).

The twelfth Workshop which held in Jakarta in October 2002, decided to continue efforts to manage the potential conflict in the South China Sea and to implement the agreed projects by their own means and with voluntary support from various sources. The participants also decided on and agreed to establish a special fund for this purpose (Djalal 2009: 182). The thirteenth Workshop was held in Medan in September 2003. In this meeting, they discussed the preparation for the Palawan Biodiversity Expedition as a continuation of the Anambas Expedition. It was also suggested to continue discussion on the database information exchange and networking (coordinated by China), the sea level and tide monitoring project (coordinated by Indonesia) and the training programme for marine ecosystem monitoring (coordinated by the Philippines). Furthermore, it was agreed to revise the projects and programmes in the light of comments by participants. The Workshop again discussed the development of the special fund (Djalal 2009: 183).

At the fourteenth Workshop which was held in Batam, Indonesia in 2004, the already planned projects were reviewed—first, marine science data and information networking; second, biodiversity studies; third, study of tides and sea level change; fourth, training programme for marine ecosystem monitoring; fifth, training

programme for seafarers; sixth, fisheries' stocks assessments; seventh, hydrographic survey; eight, search and rescue and illegal acts at sea including piracy and armed robbery at sea (Djalal 2009: 183). The workshop had given approval to the revised project proposal and also asked China to take measures for implementing the project. In the meantime, the Philippines informed the workshop that it wanted to upgrade the Palawan Biodiversity Expedition to the official level, which resulted in that particular activity moving out of the purview of the workshop process. Moreover, the workshop requested Indonesia to proceed with the sea level rise project, and Malaysia to start working on the search and rescue project. Further, due to Chinese objections, the Taiwanese proposal for a South East Asian Ocean Network for Education was not adopted (Fernando 2013: 20-21).

The fifteenth Workshop was held in Anyer, Banten, in November 2005. In this workshop, all the participants discussed and endorsed the result of the TWG meeting on the database information exchange and networking project which was held in Tianjin, China, on October 11-12, 2005. The workshop further discussed and endorsed the result of the TWG meeting on the study of study of tides and sea level change and their impact on coastal environment in the South China Sea, held in Anyar, Banten, Indonesia, on November 22-23, 2005, and also agreed to its implementation. All participants approved the importance of the Workshop Process as a confidence-building measure and a preventive diplomacy mechanism which is still relevant to the current situation. In addition, after the implementation of the biodiversity project in Anambas (and later in Palawan), China, Chinese Taipei, the Philippines and Vietnam accepted to consider the possibility of conducting biodiversity expeditions that will include the northeast and northwest area of the South China Sea in order to complete the picture of biodiversity in the entire South China Sea (Djalal 2009: 183-84).

At the sixteenth Workshop which was held in Bali, Indonesia, in 2006, the participants discussed regional cooperation in the field of marine science and information, and China agreed to organise a technical training course on constructing a website and sub-website with data on the South China Sea area. At the same time, Indonesia continued its preparation for cooperation on the study of sea level change and the coastal environment in the South China Sea affected by potential climate change (Djalal 2009: 184).

The seventeenth Workshop was held in Yogyakarta, Indonesia in November 2007. In this meeting, all the participants again acknowledged the importance of the informal and unofficial nature of the workshop and the ‘consensus’ rules of procedure. Further, they discussed the sea level change project, received a progress report on the South China Sea Database Project, and also considered a Chinese proposal for a South China Sea marine science education, training and exchange programme (Djalal 2009: 184).

At the eighteenth Workshop which was held in Manado, Indonesia, in 2008, for the first time, the Taiwanese and Chinese participants expressed a willingness to work together and come up with a joint South China Sea project proposal (Song 2010: 254). The workshop discussed a Working Group Meeting on the Study of Tides and Sea Level Change and their impact on coastal environment in the South China Sea. Furthermore, the participants agreed for regional cooperation in the Field of Marine Science and Information Network in the South China Sea including Database Information Exchange and Networking Project (Song 2010: 259).

The nineteenth Workshop was held in Makasar, Indonesia, on November 13-14, 2009 and at this Workshop the China-Taiwan South-East Asia Network for Education and Training (SEA-NET) joint project was adopted (Song 2010: 254). Again, in this workshop, a Certificate of Appreciation was presented to Prof. Dr Hasjim Djalal for his outstanding service, dedication and efforts in spearheading the Indonesian initiative in multilateral preventive diplomacy to manage the South China Sea conflicts. Despite the remaining jurisdictional issues, the workshop has further continued to serve its purpose in managing the South China Sea conflicts. Furthermore, a presentation was given by Prof. Ian Townsend-Gault on ‘Twenty Years of the Workshop on Managing Potential Conflicts in the South China Sea: an Extra-Regional Perspective’. This presentation discussed the record of the Workshops in innovating many valuable and necessary ideas for cooperation and the important role of the Workshop process in maintaining regional peace and security as well as in advancing international cooperation in the interest of the oceans, their resources and the marine environment. The Workshop further expressed its appreciation for the participants and their authorities who have contributed to the Fund and encouraged other participants to contribute to the Fund.

The workshop appreciated the ‘Report on Marine Database Information Exchange and Networking Project in the South China Sea’. The Workshop further appreciated China’s plan to maintain and improve the database; to develop data and information processing methods and products; to provide service to the users in the South China Sea region; and to assist the participants in setting up a marine database sub website which would be linked to the main website. This workshop again mentioned that the progress report on ‘Report on the Study of Tides and Sea Level Change and their Impact on Coastal Environment in the South China Sea Affected by Potential Climate Change’ had been discussed at the Sixth Working Group Meeting on the Study of Tides and Sea Level Change and their Impact on Coastal Environment in the South China Sea Affected by Potential Climate Change in Bandung on November 1, 2010. The workshop later discussed and decided to have a list of participants with contact details to facilitate communication among the participants (Statement of the 20th Workshop).

At the twenty-second Workshop which was held in Bandung on November 23-24, 2012, Hasjim Djalal suggested to continue the biodiversity expedition project. And again, the workshop expected the project proposal to be submitted to the twenty-third workshop for consideration, particularly in the northeastern part (around the Pratas Island), the northwestern part (around the Paracel Island), or the central part (around the Spratly Islands and Taiping Island/Itu Aba) of the SCS. However, at the twenty-third Workshop which was held in Jogjakarta on November 1-2, 2013, no specific proposal was made on the continuation of the joint marine biodiversity study (A Summary Report, College of Marine Science 2014: 3). At the 24th Workshop which was held on October 14-15, 2014 in Bali, Indonesia, all the concerned parties reiterated to work towards full implementation of the DOC and the early conclusion of the Code of Conduct (COC) (Maritime Institute of Malaysia 2014).

The Head of the Foreign Ministry’s Policy Analysis and Development Agency Siswo Pramono mentioned that the 26th Workshop on Managing Potential Conflicts in the South China Sea had proven to be a grand success because many new and ongoing cooperation initiatives had been confirmed. Some of the main confirmed projects are a study on climate change in the South China Sea and its impact on littoral states and the continuation of the Southeast Asia Network for Education and Training (SEANET) project. Not only this, a proposal was also agreed to develop an

information hub as a means to monitor all projects (past and present) (Salim 2016). Therefore, many believe that through this forum almost all the concerned parties have been building friendship and understanding.

Thus, the Workshops on Managing Potential Conflicts in the South China Sea (WMPCSCS), has been seen as an attempt to make sure that the initiative had no hidden motive except to promote peace, stability, and cooperation in the South China Sea. The workshops have attempted to involve ASEAN and China in a cooperative and in a dialogue process in the South China Sea with the aim of diverting the potential armed conflict and paving the way for constructive engagement among the concerned parties. This workshop has helped the participants to reach a better understanding of each other's positions as they opened up for both information exchange and formal as well as informal communication among the participants. Consequently, this understanding decreased the risk for miscalculations, which is important to prevent an unnecessary and unintentional conflict escalation. Furthermore, the workshops have given a chance to ensure the existence of a medium of communication between the concerned parties, which also raised the ability to defuse tensions and prevent conflict escalation. Thus, the workshops have become a successful mechanism for policy innovation and pre-negotiation and serving as a stage for official negotiations (Weissmann 2012: 4-5). The South China Sea Workshops have created a meeting platform in which the concerned officials from the conflicting parties have been able to meet, thereby creating and also allowing for the building and development of relationships and trust among officials. The workshops were also significant in making and creating personal networks among the participants. During the 1990s, this network building was important because there were limited linkages between China and the ASEAN. In short, the South China Sea Workshops (SCSWs) thereby not only contributed to the prevention of conflict escalation, but constitute an important part of the peace building process in the South China Sea (Weissmann 2012: 5).

Table 3: SCS Workshop Meetings, 1990-2016

Year	Meetings	Venue
1990	1 st SCS Workshop	Bali, Indonesia

1991	2 nd SCS Workshop	Bandung, Indonesia
1992	3 rd SCS Workshop	Yogyakarta, Indonesia
1993	4 th SCS Workshop	Surabaya, Indonesia
1994	5 th SCS Workshop	Bukittinggi, Indonesia
1995	6 th SCS Workshop	Balikpapan, Indonesia
1996	7 th SCS Workshop	Batam, Indonesia
1997	8 th SCS Workshop	Puncak, Indonesia
1998	9 th SCS Workshop	Jakarta, Indonesia
1999	10 th SCS Workshop	Bogor, West Java
2001	11 th SCS Workshop	Jakarta, Indonesia
2002	12 th SCS Workshop	Jakarta, Indonesia
2003	13 th SCS Workshop	Medan, Indonesia
2004	14 th SCS Workshop	Batam, Indonesia
2005	15 th SCS Workshop	Anyer, Banten, Indonesia
2006	16 th SCS Workshop	Bali Indonesia
2007	17 th SCS Workshop	Yogyakarta, Indonesia
2008	18 th SCS Workshop	Manado, Indonesia
2009	19 th SCS Workshop	Makasar, Indonesia
2010	20 th SCS Workshop	Bandung, Indonesia
2011	21 st SCS Workshop	Solo, Indonesia
2012	22 nd SCS Workshop	Bandung, Indonesia
2013	23 rd SCS Workshop	Jogjakarta, Indonesia
2014	24 th SCS Workshop	Bali, Indonesia
2015	25 th SCS Workshop	Jakarta, Indonesia

2016	26 th SCS Workshop	Bandung, Indonesia
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Source: Taken from Yann-Huei Song’s article ‘The South China Sea Workshop Process and Taiwan’s Participation’ and ‘A Summary Report of the 2014 MAOGRG Workshop on Marine Biodiversity Study in the North-eastern Part of the South China Sea: Possibility for A Joint Project under the Indonesia-led Workshop Framework’.

Table 4: List of Project Meetings

<p>Marine Scientific Research</p> <ul style="list-style-type: none"> ➤ TWG 1- Manila, Philippines, 1993 ➤ TWG 2- Surabaya, Indonesia, 1993 ➤ TWG 3-Singapore, 1994 ➤ TWG 4- Hanoi, Vietnam, 1995 ➤ TWG 5- Cebu, Philippines, 1996 ➤ TWG- Biodiversity proposal, Cebu, Philippines, 1996 ➤ TWG 6/ GEM- Manila, Philippines, 1998
<p>Marine Environmental Protection</p> <ul style="list-style-type: none"> ➤ TWG 1- Hangzhou, China, 1994 ➤ GEM- Phnom Penh, Cambodia, 1997 ➤ TWG 2- Hainan, China, 1997 ➤ GEM- Monitoring proposal, Manila, Philippines, 1998
<p>Safety of Navigation, Transportation and Communication</p> <ul style="list-style-type: none"> ➤ TWG 1-Jakarta, Indonesia, 1995 ➤ TWG 2- Bandar Seri Bagawan, Brunei Darussalam, 1996 ➤ GEM- Training of Mariners, Singapore, 1997 ➤ GEM 1- Exchange of Hydrographic Data and Information, Kuching, Malaysia, 1997 ➤ GEM- Exchange of Hydrographic Data and Information, Singapore, 1998 ➤ TWG 3- Singapore, 1998 ➤ GEM- Search and Rescue and Illegal Acts at Sea, Kota Kinabalu, Malaysia, June 1999 ➤ GEM 2- Exchange of Hydrographic Data and Information, Singapore,

October 1998
<p>TWG on Resource Assessment and Ways and Means of Development</p> <ul style="list-style-type: none"> ➤ TWG 1- Jakarta, Indonesia, 1993 ➤ GEM 1- Zones of Cooperation, Vientiane, Laos, 1998 ➤ GEM- Non-mineral Hydrocarbon Assessment, Jakarta, Indonesia, 1998 ➤ GEM 2- Zones of Cooperation, Bali, Indonesia, June 1999
<p>Legal Matters (all held in Thailand)</p> <ul style="list-style-type: none"> ➤ TWG 1- Phuket, 1995 ➤ TWG 2- Chiang Mai, 1997 ➤ TWG 3- Pattaya, 1998 ➤ TWG 4- Hua Hin, 1999

Source: Taken from Ian Townsend-Gault's chapter 'The contribution of the South China Sea Workshops: The importance of a functional approach' (2009), pp- 190-206.

ASEAN, China and South China Sea Workshop Process

The workshop process was conceived as the only multilateral mechanism to manage the South China Sea dispute with an unofficial process and participation in their capacities, from the six ASEAN countries, Vietnam, the PRC, Taiwan-China and Laos (McDorman 1993: 274-75). It is an attempt to manage potential conflicts in the South China Sea through second track diplomacy but some agreements became formal intergovernmental positions. For instance, the principles of cooperation agreed by the South China Sea Workshop in 1991 became in 1992 the formal ASEAN Declaration on the South China Sea (Djalal 2001: 89).

However, China did not participate in the first workshop process which was held in Bali. But things changed after China's crackdown on pro-democracy demonstrators at Tiananmen in 1989. This action of China's crackdown on pro-democracy demonstrators brought strong international condemnation and also gave a bad image to the world. That is why China needed international support, and therefore decided to take part in the South China Sea workshops. The question of sovereignty was excluded from the discussion agenda (Mak 2000: 110). Since then, by recognising the informal nature of the meeting and ASEAN's leading role in the workshop, China started to change its attitude towards the multilateral mechanism and became an active

participant. The purpose of participating in the South China Sea workshop was believed to publicise its regional order for contributing to its build-up of hegemonic stability (Shaohua 2006: 67). M.A. Shaohua (2006) has stated, “China’s preferred order in the region was for it to be respected as the nominal owner of South China Sea territories, to promote a stable and prosperous region for creating a good peripheral environment for China’s national development, and to jointly explore the South China Sea resources with the other disputants for mutual economic benefits” (Shaohua 2006: 67-68).

For the first time at the second workshop which was held at Bandung in July 1991, China participated under the leadership of Wang Yinfan, the then Director of the Asian Department of the Ministry of Foreign Affairs. This participation did not mean to compromise the ‘indisputable’ sovereignty claims in the South China Sea. Again, Wang Yinfan made a statement that China had been calling to shelve the sovereignty issue in the favour of ‘joint development’ of the Spratlys and also presented specific proposals to the workshop for cooperation in the protection of marine living resources, control of maritime pollution, search and rescue operations, scientific research, anti-piracy, exchange of maritime information, studies on typhoons and changes of sea level and safety of navigation. Further, Chinese participants were called for cooperation in the spirit of UNCLOS, and adherence to the provisions of international law. However, Wang again said that China was against the involvement of UN or a third party in the resolution of the South China Sea (SCS) disputes. Later, the Chinese participants agreed to invite their own experts to submit proposals for cooperation in the following areas: first, a joint expedition to investigate natural phenomena in the SCS; second, a joint study on the meteorological conditions in the SCS; and third, a joint study on the promotion of safety of navigation in the South China Sea (SCS) (Fernando 2013: 15-16).

The second workshop was able to bring together China, Vietnam, Laos and Chinese Taipei. The joint statement of the workshop was a precursor to a much more formal ASEAN Declaration on the South China Sea in Manila in 1992, which gave significant guiding principles for managing the potential South China Sea conflicts (Djalal 2009: 180). In this second meeting, the discussion on the need to establish a secretariat and to formalise the workshop was brought. However, China strongly objected and prevented Taiwan from entering into any kind of formal organisation.

Therefore, the idea of formalisation was ignored. Again, at the third workshop which was held in 1992, the issue of formalisation was raised. But China refused and opposed this idea and also responded by saying that there was no necessity for the workshop to evolve into a formal framework. Even, some of the ASEAN diplomats accused Indonesia for upsetting China by formalising the workshop. Consequently, the process of formalisation was slowing down (Shaohua 2006: 87).

Meanwhile, China presented two papers; first, proposing development of interregional cooperation to ensure safety of maritime traffic, and second, dealing with regional cooperation in reducing maritime disasters (Fernando 2013: 16-17). Furthermore, China was against the involvement of non-SCS countries and organisations because of its fear of ‘internationalising’ the dialogue. However, the Chinese participants were more interested in the cooperative efforts of the workshop process which were directed at scientific and technical matters rather than at territorial and jurisdictional issues. They made a clear position that the territorial and jurisdictional disputes should be discussed directly between the concerned states. Again, for TWG-MSR, China agreed to formulate proposals for cooperation on databases, information exchange and networking. Later, in connection with the TWG-MEP, China consented to host its first meeting. The Chinese considered these technical cooperative projects as important contributions by the workshop process towards confidence building in the South China Sea region (Fernando 2013: 17).

At the fifth workshop in 1994, the idea of an ASEAN code of conduct for the South China Sea was discussed with the topic of non-expansion of military presence. But this proposal was opposed by many participants, including China. China further strongly refused to make this workshop into a more formal process (Mak 2000: 111). Again, with regard to the involvement of the non-South China Sea countries at this juncture, the Chinese delegations were against this. At the same time, with the presence of Taiwan, the Chinese were hesitant to discuss political and security issues, and reiterated their stance that the workshop process should focus on technical, scientific and non-political issues. Even, some Chinese delegations also expressed doubts about Taiwan hosting some of the TWG meetings, in particular the first meeting of the TWG-SNSC (Fernando 2013: 18).

In 1996, at the annual workshop and at the second meeting of the TWG on Legal Matters in 1997, the issue of developing a code of conduct or a treaty of amity and cooperation among the participants was discussed (The Second Meeting of the Technical Working Group on Legal Matters in the South China Sea, 1997), although China had cleared its position that such issues were not suitable for discussion under the auspices of the workshops. However, at the third TWG on Legal Matters which was convened in 1998, it was concluded that an informal code would contribute to peace, co-operation and stability in the South China Sea (Odgaard 1998: 17). But again in 2004, China did not have any interest in Chinese Taipei's proposed training project such as 'South East Asian Ocean Network for Education' (SEAONE) to promote ocean science research. China further noted that Chinese Taipei could initiate this training programme as its own by inviting all other participants to make use of it (Djalal 2009: 183).

However, during the fifteenth workshop which was held in Anyer, Banten, in November 2005, all the participants including China and Chinese Taipei were encouraged to consider the possibility of conducting biodiversity expeditions that will include the northeast and northwest area of the South China Sea in order to complete the picture of biodiversity in the South China Sea as a whole. But later, along with the sixteenth workshop which was held in Bali in November 2006, China undertook to organise a technical training course on constructing a website and sub-website with data on the South China Sea area. Again in 2007 at the seventeenth workshop, China made a proposal for a South China Sea marine science education, training and exchange programme (Djalal 2009: 183-184).

In November 2008, at the eighteenth South China Sea Workshop held at Manado, Indonesia, for the first time the Chinese and the Taiwanese participants expressed a willingness to work together during the Workshop's inter-sessional period and come up with a joint proposal before the nineteenth South China Sea Workshop. Both the participants (Chinese and Taiwanese) were willing to cooperate through this Workshop process. Subsequently, the China-Taiwan South-East Asia Network for Education and Training (SEA-NET) project proposal was adopted at the nineteenth South China Sea Workshop in November 2009. The project, consisting of training and of visiting scientist programmes on marine sciences, ocean and coastal management, were to last for 2 years and be implemented by Taiwan in 2010 and by China in 2011.

All of the participants at the nineteenth South China Sea Workshop ‘agreed to endorse and support the project and considered it a milestone in the Workshop process’ (Song 2010: 263).

Achievements of Track II Diplomacy: SCS Workshop Process (WMPCSCS)

Solving the territorial and maritime jurisdictional disputes in the South China Sea has never been the main objective of the South China Sea Workshops, but rather to create a sense of community among the people and communities around the South China Sea region and also to encourage countries to solve one of the problems they have by themselves. Moreover, the South China Sea Workshop is rather to transform the threat of mutually destructive confrontation in the South China Sea into the reality of mutually beneficial cooperation among the countries of the region (Song 2010: 257-259). Ted L. McDorman (1993) has mentioned that at a minimum, the informal workshop process would act as a coolant when unilateral action raises tensions (McDorman 1993: 281-82). The workshop process did help the participants to reach a better understanding of each other’s positions by exchanging information as part of formal as well as informal communication among the participants. Consequently, this understanding reduced the risk for miscalculations, which is significant in preventing unnecessary and unintentional conflict escalation. Not only this, the workshops ensured the existence of channels of communication between the concerned parties, which also raised the ability to defuse tensions and prevent conflict escalation. That is why, the workshop process has become a successful forum for policy innovation and pre-negotiation, serving as a possible starting point for official negotiations. Almost all the features of official negotiations, statements and even joint declarations had previously been discussed in the informal workshops. With the advantages of being both track two and informal, the South China Sea workshop process did not have the same restrictions as official negotiations (Weissmann 2014: 4-5). Further, Mikael Weissmann (2014) has stated,

...For the SCS dispute, the SCSWs played an essential role during the critical 1990s period, by promoting cooperation and confidence building among the parties. The workshops were also important for increasing the understanding between the parties at a time when there were otherwise limited interaction. The SCS workshops did, together with the increasingly thick web of track two frameworks in the rest of East Asia, work as a frame for conflict prevention and peace building in the SCS. The workshops can, in this respect, be

understood as pre-negotiations and a forum for policy innovation for future track one negotiations and/or agreements. Through the workshops, continued inter-party dialogues could be assured and, thereby, the hopes for an eventual peaceful resolution could be kept alive (Weissmann 2014: 9).

Moreover, the workshop process has given a real platform for cooperation and has set aside controversial issues such as sovereignty. However, efforts were made to proceed with technical cooperation in scientific research, environment, resources, safety of navigation, and even legal matters. As for an initial consensus to proceed with, the joint cooperation in biodiversity (in cooperation with the UN Environmental Program and with financial support from the US Department of State) and hydrographic data sharing (with financial support from the government of Singapore) was developed. But despite gaining consensus through dialogue and discussions about technical cooperation, the consensus breaks down when it appears that actual cooperation efforts might internationalise the South China Sea issue (Snyder et al. 2001: 12).

Ian Townsend-Gault (2009) has stated that

...I think it can be argued that the Workshop Process (as it came to be called) made and continues to make a valuable contribution not only to the maintenance of regional peace and security: apart from encounters with illegal fishers and pirates, there have not been any naval clashes in the South China Sea for more than a decade and a half. But it also managed to focus the attention of the more informed and careful commentators on a much wider range of South China Sea issues than had been considered widely before. The experts on fisheries had of course been concerned about the fishery; marine environmentalists about the continuing degradation of the ocean and the lack of oil spill response capacity; and there were well-known problems with search and rescue. But I believe that the Workshop Process was one of the ways in which these issues became more broadly appreciated, and hence gained in stature and importance as opposed to endless preoccupations with oil reserves, the presence of which in commercial quantities has yet to be determined in large parts of that ocean (Townsend-Gault 2009:189).

The workshops have also worked as catalysts for cooperation within a range of different functional areas. As for example, through its Technical Working Groups and Group of Experts Meetings, a number of projects have been established in areas such as ecosystem monitoring, biodiversity, sea level and tide monitoring. Many functional frameworks have been established. For instance, a special study group on joint development in the South China Sea was set up in 1998, which addressed the sensitive and conflict ridden issue of access to natural resources. Taken together, these projects have had positive peace building as processes of confidence and trust

building between the conflicting parties. Therefore, the workshop process has become a driving force for peaceful developments in the South China Sea as a forum for pre-negotiation and policy innovation (Weissmann 2014: 5).

This workshop processes have created a meeting place in which the relevant officials from the concerned parties have been able to meet in an informal setting, thereby allowing the building of relationships and mutual trust among the officials. The workshop process was also significant for the development of personal networks among the participants. This network building was so important because there were limited linkages between China and the ASEAN during the 1990s. The workshops have also smoothed relations among the concerned parties through technical cooperation at a time when the conflict was tense and the official lines of communications between China and the other parties were limited. It is also believed that the Workshop process thereby not only contributed to the prevention of conflict escalation, but constituted an important part of the peace building process in the South China Sea (Weissmann 2014: 5). Further, Ian Townsend-Gault (2009) mentions that by 2000, there were some significantly achieved agreements for cooperative initiatives such as first, biodiversity protection; second, sea-level rise monitoring; third, marine scientific research information and data exchange; fourth, marine environmental monitoring; fifth, standardising education and training standards for mariners; sixth, a regional protocol on the exchange of hydrographic data and information; seventh, a joint hydrographic survey of parts of the South China Sea; eighth, zones of marine cooperation including different models of joint offshore petroleum development; ninth, harmonization of marine environmental laws and politics; tenth, fisheries stock assessment; eleventh, exchanging information on non-living non-hydrocarbon resources; twelfth, issues arising from the semi-enclosed status of the South China Sea as per Article 123 of the Law of the Sea Convention; and thirteenth, regulations to promote the protection and preservation of marine habitat (Townsend-Gault 2009: 196).

Till now there have been five Technical Working Groups (TWG) such as, first, the TWG on Marine Scientific Research (MSR); second, the TWG on Resources Assessment; third, the TWG on Protection of Marine Environment; fourth, the TWG on Legal Matters; and last, the TWG on Safety of Navigation, Shipping and Communication (Djalal 2000: 14). Since 1993 and before 2001, 17 TWG, 11 GE, and

2 Study Group meetings on marine scientific research, marine environmental protection, safety of navigation, resource assessments and means of development, legal matters, and zones of cooperation have been held under the aegis of the South China Sea Workshop (Song 2010: 257).

Even after the Canadian Government decided not to continue its financial support of the workshop process in 2001, a series of South China Sea Workshops and Working Group meetings have been convened. For instance, the Anambas Expedition was carried out around the undisputed Indonesian Islands of Anambas in the South China Sea in March 2002, with 29 participating experts and researchers from Malaysia, the Philippines, China, Taiwan, Thailand, Vietnam, Singapore and Indonesia. This Expedition was the first of its kind, organised voluntarily by the participating authorities in the South China Sea Workshop process and aimed to identify the biodiversity of resources in the South China Sea. It was carried out because the joint expedition would promote cooperation in the area, regardless of disputes that may exist in or regarding the specific area of the South China Sea. In addition to this cooperative project on biodiversity, two other projects have been agreed to by the participating concerned authorities in the South China Sea Workshop process such as a project on the study of sea-level rise and the exchange of marine data (Song 2010: 257).

Thus, regarding the South China Sea dispute, the workshop process has been important for safeguarding the fragile peace, keeping a channel for dialogue open, working as a catalyst for cooperation, contributing to the prevention of conflict escalation and also constituting a significant part of peace-building process in the South China Sea and between China and the ASEAN members (Weissmann 2010: 45-46). Furthermore, the Track II process has a close relation with Track I and interstate discussion. One good example is the work done by the Technical Working Group on Legal Matters that was taken up by the government officials in the region in an attempt to formulate a regional code of conduct. Both the Track processes have been credited with bringing about greater understanding between not just the concerned states, but also the participating experts and officials. States allowing their senior officials to attend in their private capacities suggests that the initiative is being taken seriously by the concerned states (Chin 2003: 78). Chin Yoon Chin (2003) stated that “I would argue that the Track II forums are more successful in confidence building

than the Track I forums, where Taiwan is excluded. The competing claims involved six claimants; therefore, it is only logical that all the claimants should be involved in the discussion for the dispute to be amicably resolved” (Chin 2003: 78-79).

As compared to official diplomacy, Track II diplomacy has some advantages; first, most participants mainly come from the academic community who have special knowledge and analytical tools that are more crucial to understand and provide possible solutions towards the issues. This diplomacy provides venues for thinking the unthinkable. Second, scholars can talk to each other frankly, while still maintaining objectivity (The Habibie Center ASEAN Briefs 2015: 6). Unlike official diplomacy, Track II diplomacy has flexibility in discussion and consultation.

Challenges and Prospects of Track II Diplomacy: SCS Workshop Process

Despite many achievements and much progress, the South China Sea workshop process has not been without challenges and difficulties. The drawback to this workshop process is the fact that problems are swept under the carpet rather than solved, and subsequently the results are produced very slowly. The workshops also bear the mark of Chinese requirements for informality, the exclusion of discussions of sovereignty issues, and the confinement of external entities to advisory roles. These restrictions on the workshop process have been criticized for exempting the states from binding commitments. The primary result of the annual workshops has been the initiation of a practice of consultation within the relatively noncontroversial technical-scientific field. However, the decision making authority is confined to the formal level of government. Hence, the recommendations approved at the annual workshops cannot be put into effect unless approved by the respective governments. The primary contribution made by the formal level of government has been an increasing awareness that the maintenance of regional peace and stability is imperative and that the workshop process makes an important contribution to that end (Odgaard1998: 6-7).

At the end of the day, China has become a major problem in implementing any policies and programmes carried out by the Workshops. China has proven unwilling to submit the necessary information. It constantly suspects that technical initiatives are politically motivated. Furthermore, with respect to policy making, all the participants have no authority to make decisions. Consequently, the results of the

workshop would remain just that—the results of the workshops—unless the level of government is involved (Odgaard 1998: 13-14).

Therefore, China has played a significant role in the discussion of the South China Sea issues. It is also believed that China has moved away from being reluctant and sceptical to becoming an ardent supporter of the Workshop process. Even China's neighbours in the South China Sea region have responded positively and it seems that closer relations and cooperation between China and its neighbours in the Southeast Asia are possible in the future (Djalal 2009: 188).

Furthermore, Hasjim Djalal (2011) has suggested some points after earning 20 years of experience in managing the SCSW Process: first, the conflicting parties to the issue must realise that the outbreak of the conflicts, especially armed conflict, will not settle the dispute and will not be beneficial to either parties, rather it will bring more damage or loss to the parties. In fact, all the concerned parties should learn a lesson. Second, bringing out the political will to settle the dispute peacefully. The concerned parties should realise that the solution of the disputes would be more in their interest than in their continued prolongation; third, all the conflicting parties should not legislate any territorial claims and should not involve as much public opinion as possible, especially in the area where the claims are clearly disputed because it hardens the position of all sides, making it more difficult to seek solutions or compromises or even temporary solutions like 'joint developments'; fourth, there is the strong need to increase 'transparency' in national policy, legislation, and documentation, and more frequent meetings, formal or informal, among the legal officers of the various regional countries in order to exchange their documentation and information as well as their legislative planning. Successful efforts often begin by informal efforts, either through track-two process or through informal track-one process. After those efforts indicate some possible success, a more formal 'track one' approach can be attempted. In relation to the SCS, it is not easy to understand and solicit explanation, i.e., what are actually being claimed (the sea itself or the features, or the rights of the features to claimed maritime areas) and what are the precise limits of those claims and their legal basis for those claims; and last, by all concerned parties, Preventive Diplomacy should be undertaken, i.e. by those who have interests in the solution of the problems, either regionally or internationally. Solutions that take into account only national as well as regional interests but ignore the interests of the

states outside the region would not be an effective long-term solution. This is of course should not be interpreted as internationalising the issues (Djalal 2011: 3-4).

Conclusion

With regard to the South China Sea dispute, Track II diplomacy in the form of Workshops on Managing Potential Conflicts in the South China Sea (WMPCSCS) has been a catalyst for peaceful developments in and around the South China Sea region. This Track II process is designed to locate areas of functional cooperation that could lead to confidence-building measures leading to a Track I political atmosphere in which officials could tackle dispute resolution. It has been important and significant for pre-negotiation and policy innovation. Not only this, it has created a platform in which all the relevant and concerned officials from the conflicting parties have been able to meet in an informal process. Moreover, for building peaceful cooperation and trust among concerned officials, the workshops and their working groups have been playing a significant role for more than two decades. They were also important for the development of personal networks among the participants.

The Workshop process is believed to be the only forum in which all six claimant states to the South China Sea have regularly participated. Further, it is regarded as the longest running dialogue mechanism to manage the potential conflicts in the South China Sea region.

Hasjim Djalal (2009) has made a statement that

...It has indeed been a long road towards peace and cooperation in the South China Sea but it has all been worthwhile. In this context, it is hoped that Indonesia, together with all its partners in the South China Sea Workshop, will continue to exercise wisdom and leadership to promote peace, stability and cooperation in the South China Sea and South East Asia in general, for their own respective good and common interests. There are also good prospects for the model of the South China Sea Workshops to be used to deal with similar problems, including in the East China Sea and the Sea of Japan (East Sea) (Djalal 2009: 188).

The workshops also smoothed relations through technical cooperation at a time when conflict was tense and the official lines of communications between China and the other parties were limited. In addition, this Track II diplomatic actions and procedures contribute to the reduction of the China's threat perception in the South China Sea. This is because the workshops have been the only feasible organisational

instrument by which China sought to be engaged in the development of cooperative mechanisms of reconciliation and coordination with other claimant states. Still, there have been no spill-over effects on other issue areas. However, the importance and significance of the workshops has also been acknowledged by the concerned governments, as they were willing to allow, and financially support, the participation of the senior government staff. For almost ten (10) years this workshop process was supported by the CIDA through the University of British Columbia in Vancouver. Now the workshop process continues on its own, supported by all the participants. This shows the spirit of cooperation in managing the South China Sea dispute. In short, bringing together all the claimant states and non-claimants states from the region through these workshops is more of an accomplishment. These workshops have prevented the conflict from escalating and, as such, constitute an important part of the peace-building process in the South China Sea and between China and the ASEAN members over the last two decades.

Chapter 5

ASEAN, CHINA AND THE CODE OF CONDUCT IN THE SOUTH CHINA SEA

ASEAN has been actively involved in attempting to make the South China Sea region a peaceful and secure place without resorting to any force or military clashes since the adoption of Declaration on the South China Sea in 1992. But the situation in the South China Sea has become more serious and tense when many littoral states started asserting sovereign rights in the South China Sea. In addition, a series of incidents took place such as the rise of tension between China and Vietnam in 1994 and China's control of the Mischief Reef in 1995. This Mischief Reef incident marked a turning point as the ASEAN foreign ministers expressed their serious concern and urged the concerned states to refrain from taking actions that de-stabilise the situation. Then, the negotiation started between ASEAN and China to regulate conduct in the South China Sea, and therefore, in July 1996, the ASEAN foreign ministers, according to the joint communiqué of their annual meeting, endorsed the idea of concluding a regional code of conduct in the South China Sea as something that would lay the foundation for long term stability in the area and foster understanding among claimant countries (Severino 2010: 44).

Further, the Code of Conduct was prepared by the Philippines and Vietnam which was later adopted and sent to China in 1999. This Code was mainly based on ASEAN documents such as the five principles of peaceful coexistence, the Treaty of Amity and Cooperation, the Declaration on the South China Sea of 1992, the ASEAN-China Joint Statement of December, 16 1997, the Joint Statement Between the Philippines and the People's Republic of China (PRC) on the South China Sea and Other Areas of Cooperation of August 1995, the code of conduct agreed upon between Vietnam and the Philippines in November 1995, and the Hanoi Plan of Action at the 6th ASEAN Summit 1998 (Hong Thao and Amer 2009: 337). Again, there were three important meetings that were held, concerning the formulation of a regional Code of Conduct in the South China Sea; first, on 14 March in Hua Hin, Thailand; second, in Hua Hin, on 15 March; and on May 26, 2000 in Kuala Lumpur, Malaysia, respectively. The first meeting was on the ASEAN Task Force on the Regional Code of Conduct on the

South China Sea, the second was an informal consultation between ASEAN and China on the regional code and the third was the first meeting of the Working Group of the ASEAN-China Senior Officials' Consultations on the Regional Code of Conduct. Subsequently, these three meetings gave way for ASEAN to establish an international code of conduct in the South China Sea (Song 2000: 449).

However, it took almost five years to agree to a draft ASEAN COC (Thayer 2013: 76). Then, the document was signed in Phnom Penh in the form of 'Declaration on the Conduct of Parties in the South China Sea' (DOC) in November 2002, but it was just reduced to a political declaration from the originally envisioned legally binding Code of Conduct (COC). ASEAN has been expressing the view that the Declaration on the Conduct of Parties in the South China Sea is a step towards the conclusion of a Code of Conduct (COC). Again, it has repeatedly called for the observing and implementation of the commitments from all the claimant states in the Declaration, particularly the need for self-restraint, freedom of navigation and the confidence-building and cooperative measures specified in it. Therefore, ASEAN and China have set up a senior official meeting and a working group to oversee and promote the implementation of the Declaration (Severino 2010: 45). Although, this was initially rejected by China, but at the 8th ASEAN Summit in Phnom Penh, Cambodia, ASEAN and China adopted the Declaration on the Conduct of Parties in the South China Sea (8th ASEAN Summit 2002) which is considered as the first political document relating to the South China Sea concluded between ASEAN and China and also it is seen as a necessary step in establishing and agreeing on a Code of Conduct in the South China Sea.

According to joint communiqué of the ASEAN Ministerial Meeting of July 2011,

...Building upon the momentum of the 20th Anniversary of the Establishment of ASEAN-China Dialogue Relations in 2011 and the 10th Anniversary of the signing of the DOC in 2012, we initiated discussion in ASEAN on a regional Code of Conduct in the South China Sea (COC) and also look forward to intensive discussion in ASEAN on a regional Code of Conduct in South China Sea (COC). In this regard, we tasked the ASEAN SOM to work on the development of the COC and submit a progress report to the 19th ASEAN Summit (Severino 2011: 4).

On June 29-30, 2013 at the 46th ASEAN Foreign Ministers' Meeting, all the ministers agreed to look forward to a continued engagement with China for a full and effective

implementation of the DOC and to start formal consultations on the Code of Conduct (COC) with an aim to reach an early conclusion of a Code of Conduct in the South China Sea (Joint Communiqué 46th ASEAN Foreign Ministers' Meeting 2013). Later at the same year on the sidelines of the 6th ASEAN-China Senior Official Meeting in Suzhou, China, the first round of official consultation on the Code of Conduct was held between ASEAN and China (Chairman's Statement of the 23rd ASEAN Summit 2013). Again, on May 10, 2014, at the ASEAN Foreign Ministers' Statement, all the concerned parties were called upon to undertake full and effective implementation of the DOC and also emphasised the need for expeditiously working towards an early conclusion of the Code of Conduct in the South China Sea (ASEAN Foreign Ministers' Meeting 2014). Therefore, the main concern of this chapter is to analyse ASEAN's role and China (PRC)'s stand in making the Code of Conduct (COC) in the South China Sea and to understand the challenges. Also, this chapter will see the future prospects for Code of Conduct on the South China Sea issue.

Development and Nature of the Code of Conduct in the South China Sea (COC)

A code of conduct is a set of rules of behaviour formulated as a gentleman's agreement, a social norm, or a rule of law sanctioned by enforcement authorities. It can be unilateral, bilateral, or multilateral in nature (Kittichaisaree 2001: 131). In August 1995, delegations from China and the Philippines met in Manila for consultations on the South China Sea and moreover, the two sides agreed to abide by eight principles for a Code of Conduct in the disputed area. Again, in November 1995, the Philippines and Vietnam also agreed to a bilateral Code of Conduct in the South China Sea (Song 2000: 450). Subsequently, in late 1999, ASEAN agreed on a COC draft. By that time, China had unilaterally adopted its own COC drafts. Therefore, in March 2000, both ASEAN and China agreed to exchange their respective drafts and to consolidate them into a final agreed text. However, there were four major areas of disagreement that emerged; first, the geographic scope; second, restriction on occupied and unoccupied features; third, military activities in waters adjacent to the Spratly islands; and fourth, whether or not the fishermen found in disputed waters could be detained and arrested. But as a compromise, in November 2002, ASEAN and China signed a non-binding political statement known as the Declaration on the Conduct of Parties in the South China Sea (DOC) (Thayer 2013: 3).

In fact, the situation in the South China Sea warranted an urgent need for a regional code of conduct. The claimant states in the South China Sea have taken numerous actions that have complicated the tense situation like using military force, occupying and fortifying rocks, creating structures and markers, creating scientific research stations of sorts, setting up markers, incorporating rocks into nearby provinces, publicising maps showing their respective claims and releasing historical documents to back up their claims, allowing tourists and journalists to visit the rocks, granting concessions to oil companies, arresting fishermen, and creating a tourist resort complete with hotel and airstrip (Hong Thao 2001: 107). Thus, the situation became so complicated and tense that it created a sudden need for a specific mechanism to restrain any military actions and also to build trust and confidence among the claimant states as well as to promote peace and stability in the South China Sea.

Map 9: China's Paracel Islands Runway Expansion Project



Source: Asian Defence News, October 2014, <http://asian-defence-news.blogspot.in/2014/12/china-paracel-islands-runway-expansion.html>.

Therefore, all the concerned parties reaffirmed that the adoption of a code of conduct in the South China Sea would promote peace and stability in the region and agreed to work on the basis of consensus (Thayer 2013: 3). At the 19th ASEAN-China Senior Officials' Consultations held on April 1-2, 2013, the ASEAN-China senior officials

agreed to uphold commitments on the implementation of the DOC and to work towards the adoption of the Code of Conduct in the South China Sea (COC) on the basis of consensus. Further, they reaffirmed that both the DOC and COC are documents aimed at promoting peace, stability and mutual trust as well as ensuring the peaceful resolution of disputes in the South China Sea (19th ASEAN-China Senior Officials' Consultations 2013).

Map 10: Territorial monument of the Republic of Vietnam (South Vietnam) on Southwest Cay, Spratly Islands, defining the cay as part of Vietnamese territory



Source: en.wikipedia.org/.

Negotiations of the Code of Conduct (COC)

In July 1992, the ASEAN foreign ministers signed the ASEAN Declaration on the South China Sea in Manila which was the ASEAN's first common position on the South China Sea, but this Manila Declaration did not deal with the problem of sovereign jurisdiction; it was, instead, an attempt to promulgate an informal code of conduct based on self-restraint, the non-use of force and the peaceful resolution of disputes. It was mainly based on the norms and principles initially introduced in the ASEAN Treaty of Amity and Cooperation (TAC) of 1976. Thus, the informal code of conduct for the South China Sea was based therefore on the notions of conflict management and avoidance rather than conflict resolution (Emmers 2005: 10). On the other side, China, by limiting itself to bilateral negotiations with other claimant states complicated ASEAN's attempt to develop a code of conduct for the South China Sea. Even though, in August 1995, at the second ASEAN Regional Forum (ARF) annual meeting held in Brunei, the Philippines proposed to adopt a multilateral Code of Conduct for the South China Sea to help reduce uncertainty and suspicion among the claimant states in the Spratlys or the South China Sea areas (Song 2000: 451). Thus, this idea of concluding a regional Code of Conduct for the South China Sea was endorsed by the foreign ministers who attended the 29th ASEAN Ministerial Meeting in July 1996 to lay the foundation for long term stability and to foster understanding among claimant states (ASEAN Ministerial Meeting 1996).

Then, at the informal ASEAN Summit of November 1999, the Philippines, supported by Vietnam, proposed a new version of a Code of Conduct. This was an attempt to peacefully manage the South China Sea question by preventing a deterioration of the situation and aimed to avert the additional occupation by the claimant states of disputed and still uninhabited features. This initiative was more specific and lucid than the 1992 Manila Declaration. However, this proposal was rejected by both China and Malaysia. But, the Chairman's press statement at the informal summit declared that the heads of state and government had noted the report of the Ministers that ASEAN now has a draft regional Code of Conduct, and further consultations will be made on the draft with a view of advancing the process on the adoption of the code (Emmers 2005: 10-11). Then, at the 35th ASEAN Ministerial Meeting (AMM) in Brunei in July 2002, Malaysia proposed a non-binding document to regulate the conduct on the South China Sea which was also unclear as to whether this agreement

would be referred to as a Code of Conduct or as a declaration. Moreover, most of the member states refused to support the Malaysian proposal, with Vietnam and the Philippines insisting on the adoption of a binding document on the South China Sea (Emmers 2005: 11). But the foreign ministers in a joint communiqué of the 35th ASEAN Ministerial Meeting held on July 30, 2002, reaffirmed the adoption of the Code of Conduct in the South China Sea and also agreed to work closely with China towards a Declaration on the Conduct of Parties in the South China Sea (DOC) (ASEAN Ministerial Meeting 2002).

Implementation of DOC for the Realisation of Code of Conduct (COC)

Ever since the adoption of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002, ASEAN and China have been declaring to pursue joint actions and measures to implement the DOC in an effective way. Those actions and measures include: to convene regular ASEAN-China Senior Officials' Meeting (SOM) on the realisation of the COC; to provide guidance for and review the implementation of the DOC and to establish a working group to both draw up the guidelines for the implementation of the DOC and to provide recommendations to the ASEAN-China SOM on policy and implementation issues. Therefore, on December 7, 2004, the first ASEAN-China SOM was held on the implementation of the DOC in Kuala Lumpur in which all participants decided to set up a joint working group (JWG) to study and recommend confidence-building activities. This ASEAN-China JWG is tasked to formulate recommendations on: a guidelines and action plan for the implementation of the DOC; specific cooperative activities in the South China Sea; 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 the convening of workshops, as the need arises. As a result, at the first meeting of the ASEAN-China JWG in Manila on August 4-5, 2005, ASEAN presented a draft of the guidelines for the implementation of DOC for discussion (Thuy 2006: 6). However, the ASEAN-China JWG has so far not been much effective. But, still, the ASEAN-China JWG has been discussing the issue. In fact, some analysts believed that China is not pushing for the implementation of DOC and the early realisation of COC because from 2002 to 2009 the external powers were not actively involved in the South China Sea issue. But from 2009, external powers, especially the United States, began proposing how to manage the maritime dispute

(Dacanay, *Gulf News*, March 21, 2017). Even in 2010, at the meeting on Asian Security, the former Secretary of State Hillary Clinton had declared that a peaceful resolution of territorial disputes over the South China Sea is in the 'national interest' of the United States (Pomfret, *The Washington Post*, July 23, 2010). Thus, the involvement of external powers over the issue made China rethink its position over the South China Sea issue.

Then, on April 16, 2010, the ASEAN-China JWG met in Hanoi for two days to discuss concrete measures for the coordination and effective realisation of the DOC. According to one press report, although the meeting discussed new ways to promote the effectiveness of the DOC, no progress was announced (Thayer 2010: 29). In July 2010, ASEAN Secretary General Surin Pitsuwan revealed that negotiations on a regional Code of Conduct were still under discussion and the ministers were hoping that the code could be concluded by the end of the year. And again, he continued that this Code of Conduct would build on the DOC. Then, after three months, when specifically asked as to what his expectations were about an early agreement to promote the technical discussions on a Code of Conduct, Surin replied, "I hope that we can promote discussions, exchanges and I believe that ASEAN and China would prove to the international community that we can achieve that code and we can deal with differences. And it would be the constructive and a peaceful Code of Conduct" (Thayer 2010: 29-30).

Nguyen Hong Thao has argued in a conference that due to the strategic and economic importance of the South China Sea to most Asian countries, both claimant and non-claimant states would have an interest in seeking the peaceful settlement of disputes and in promoting region-wide cooperation. Therefore, he highlighted the importance of implementing the Declaration on the Conduct of Parties in the South China Sea (DOC). The DOC was gradually being recognised as a guideline for behaviour and state-to-state relations over the South China Sea issues. Again, he informed that the objective in implementing the DOC is twofold; first, to formulate trust and confidence among the claimants, and second, to lead to the establishment of a Regional Code of Conduct in the South China Sea. But, the only problem he found was that there was no uniformity and most would still prioritise according to their own interests. In the concluding part, Nguyen opined that the implementation of the DOC has had its fair share of advantages and challenges. Therefore, ASEAN member countries must unify

their position on the implementation of the DOC and be proactive in engaging China to do so as well. In order to transform the South China Sea into a sea of peace, all parties concerned must practise self-restraint and follow the provisions and guidelines provided in the DOC (Hong Thao 2007: 9).

On July 6, 2011, ASEAN and China agreed on set of guidelines for cooperation on the disputed areas in the South China Sea. This agreement is a guideline for the implementation of the DOC and is aimed to guide the implementation of possible joint cooperative activities, measures and projects, for finalising the Code of Conduct and also resolving the SCS disputes. Pham Quang Vinh of Vietnam once hailed the process as significant and as a good start for both parties to work together to continue dialogue and cooperation, with their view to further promote peace, stability and confidence in the region. Liu Zhen Min, assistant to China's Foreign Minister, said that they would submit the documents to their respective foreign ministers for final endorsement on the next day and also again said that this is an important milestone document in the cooperation among China and ASEAN countries. ASEAN and China have managed to produce the guidelines for the implementation of the DOC (Khalik and Nurhayati: 2011).

Guidelines for the Implementation of the DOC

This is reaffirming that the DOC is a milestone document signed between the ASEAN Member States and China, embodying their collective commitment to promoting peace, stability and mutual trust and to ensuring the peaceful resolution of disputes in the South China Sea.

1. The implementation of the DOC should be carried out in a step-by-step approach in line with the provisions of the DOC.
2. The parties to the DOC will continue to promote dialogue and consultations in accordance with the spirit of the DOC.
3. The implementation of activities or projects as provided for in the DOC should be clearly identified.
4. The participation in the activities or projects should be carried out on a voluntary basis.
5. Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures.
6. The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of a Code of Conduct (COC).

7. In the implementation of the agreed projects under the DOC, the services of the experts and eminent persons, if necessary, will be sought to provide specific input on the projects concerned.
8. Progress of the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN-China Ministerial Meeting (PMC) (Guidelines for the Implementation of the DOC 2011).

However, according to M. Taylor Fravel, these guidelines specify only confidence-building measures, including workshops on environmental protection, navigational safety and search and rescue operations, and transnational crime that limit their utility in three ways. First, they were designed to implement the 2002 DOC, which itself was intended only as a first step toward a binding Code of Conduct for activity in the South China Sea. Second, the 2002 DOC (and any resulting Code of Conduct) does not address the conflicting claims to territorial sovereignty or maritime rights. It is intended only to manage tensions, not to resolve the underlying conflicts of interest. And third, these guidelines are unimpressive even in the context of implementing the DOC because they only involve a limited set of activities (Fravel 2012: 44). Although, this agreement has got a diplomatic breakthrough that all the concerned countries have demonstrated their commitment in limiting the escalation of tensions. In fact, since the adoption of DOC in 2002, that no country has inhabited previously uninhabited features, is a success of the DOC (Duong 2015: 1).

ASEAN-China Consultations on the Code of Conduct (COC)

ASEAN has provided and made many frameworks, formal or informal, for restraining the conflict situation and for providing a binding Code of Conduct on the South China Sea. The ASEAN countries have invested many diplomatic efforts in restricting the use of force or to avoid violence among the claimant states. Therefore, the negotiation started between China and ASEAN (Hsiu 2011: 5). Subsequently, the drafting processes of the Code of Conduct on the South China Sea were explicitly discussed and endorsed both in ‘Track I’ mechanisms, (such as ASEAN summits, ASEAN ministerial meetings (AMM) and the ASEAN-China Dialogue) 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). Then, in August 1999, Manila presented a draft code on behalf of ASEAN, and on the other side China drafted its own version of the code in October 1999. China rejected the code drafted by the Philippines which was proposed during the informal summit between China and ASEAN held in Manila

on November 28, 1999 (Chin 2003: 55-56). However, at the 10th Workshop in Bogor, Indonesia, on December 5-8, 1999, all participants expressed support for a further effort to develop a Code of Conduct and agreed to continue exchanging views in the Workshop. Thereafter, two major revisions were made to the version drafted by the Philippines in August 1999. First, the definitions of the disputed areas were adjusted to include specifically the Spratlys and the Paracel Islands in the South China Sea which was mainly to accommodate Hanoi because of its disputes with China in the Paracels, and secondly, the revision deleted the exploration and exploitation of resources, which had been a sensitive issue between or among the claimants, particularly the Philippines and Vietnam (Chin 2003: 56).

Further, at the ASEAN-China Informal Consultation on the South China Sea Code of Conduct which was held in Cha-Am, Thailand on March 14-15, 2000, both the ASEAN and China agreed to study the possibility of joint projects in the areas, such as marine environmental protection, marine scientific research, safety of navigation and communication, search and rescue cooperation and the fight against transnational crimes. Not only this, they also agreed to use universally recognised principles of international law, including the 1982 UNCLOS, as the foundation governing their relationships. Subsequently, the ASEAN-China formal consultations on the South China Sea Code of Conduct were held in Malaysia on May 26, 2000, on August 24-25, 2000 in China, on October 11, 2000 in Vietnam, and in Brunei in July 2002 to finalise the major differences in both the proposed draft codes. But no clear consensus was met; the adoption of DOC, however, was a big step towards the finalisation of the Code of Conduct on the South China Sea and a step ahead to bring about consensus building and compromise. And the majority of the claimants agreed to work together multilaterally.

Under this declaration, all the signatories agreed to build trust and confidence, respect freedom of navigation, resolve territorial and jurisdictional disputes by peaceful means, and exercise self-restraint in the conduct of activities that would complicate or escalate disputes and refrain from occupying uninhabited features. And finally, the declaration (DOC) suggested and mentioned that signatories may explore cooperation in select areas like marine environment protection, marine scientific research, safety of navigation and communication at sea, search and rescue, and combating transnational crime (trafficking in illicit drugs, piracy and armed robbery at sea and

illegal traffic in arms) (Thayer 2010: 28-29). However, the two principles from the 2000 ASEAN draft were excluded from this final Declaration. First, the 2002 Declaration makes no mention of the Spratly or Paracel Islands—only a general reference to the South China Sea. But the 2000 ASEAN's draft specifically mentions both the Spratly and the Paracel Islands; on the other side, the Chinese draft mentions only the Spratly (Nansha) Islands. Therefore, China wanted the DOC confined only to the Spratlys. As a result, the geographical scope of the Declaration was omitted. Secondly, the ASEAN's calls for all parties to refrain from the action of inhabiting or erecting structures in presently uninhabited islands, reefs, shoals, cays and other features that had been forwarded by the Philippines, was strongly supported by Vietnam but rejected by China. Thus, the final Declaration excluded the words erecting structures and committed the states only to refrain from inhabiting the presently uninhabited islands, reefs, shoals, cays, and other features (Hung 2006: 36-37).

Moreover, the two details of China's draft were also omitted from the final Declaration. Firstly, China's draft had a clause calling upon parties to refrain from conducting any military exercises directed against other countries in the Spratly Islands and their adjacent waters, and from carrying out any dangerous and close-in military actions. Military patrol activities in the area were to be restricted. But ASEAN refused to accede to such severe restrictions on its member states' military. Then, there resulted a compromising point in the final Declaration that parties should be notifying on a voluntary basis the other Parties concerned of any impending joint or combined military exercise. And secondly, even though China's draft maintains its long-standing policy of negotiating resolutions through bilateral means, the final Declaration does not restrict dispute resolution to bilateral means and also is making room for both bilateralism and multilateralism (Hung 2006: 37).

Tonnesson points out that the declaration does not establish a legally binding Code of Conduct, and is simply a political statement. This declaration is not able to prevent territorial clashes or other possible sources of conflict such as the arrest of fishermen by foreign navies and the expansion of military structures on already occupied reefs. However, attempts made to formulate a binding Code of Conduct for the South China Sea will continue to face major obstacles. In that respect, the 2002 Declaration may be regarded as an abdication on the part of ASEAN regarding its original objective of

attaining a detailed and binding Code of Conduct. Though the political declaration is meant to be part of a work in progress, it is legitimate to question whether the ASEAN members and China will ever agree on a binding Code of Conduct for the South China Sea (Emmers 2005: 13-14). Then, in August 2005, ASEAN brought out draft Guidelines to implement the DOC but China objected and showed its long-held position that the relevant parties should resolve sovereignty and jurisdictional disputes bilaterally. This took another six years of intermittent discussions and twenty-one successive drafts were exchanged before the final agreement was reached (Thayer 2013: 1). Thus, in July 2011, the guidelines to implement the DOC were adopted after its insistence on prior consultation and also a new point was added to them specifying that activities and projects carried out under the DOC should be reported to the ASEAN-China Ministerial Meeting (Guidelines for the Implementation of the DOC 2011).

Further, the Philippines government drafted a preliminary COC and also circulated it among the ASEAN members. China, in the meantime, adopted a new position and requested a seat at ASEAN's intra-mural negotiations over the COC during the twentieth ASEAN Summit (Phnom Penh April 3-4, 2012). Cambodia, as a Chair of the ASEAN at that time, supported China's request but the Philippines and Vietnam strongly objected. Later, compromise was reached whereby the ASEAN members would alone draft the COC, but Cambodia would regularly update Beijing about the negotiations (Collinson and Roberts 2012: 37).

Thus, the drafting of COC 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 July 9, 2012, a new draft was submitted (Collinson and Roberts 2012: 37-38). But China took the position that the implementation of the DOC Guidelines should be given priority over the Code of Conduct. China expressed that it would discuss the Code of Conduct with ASEAN at an appropriate timing or when the appropriate conditions were met (Thayer 2013: 1-2). This remarkable accomplishment of the ASEAN was suddenly marred by the display of disunity—at the ASEAN Ministerial Meeting Retreat held on July 9, 2012, Cambodia's Foreign Minister Hor Nam Hong, as the ASEAN Chair, objected to issue joint statement. This

was the first in ASEAN's forty-five year history that ASEAN could not issue a joint statement (Thayer 2013: 2).

Unlike 2012, China has faced a more unified and determined ASEAN. Most importantly, Cambodia ceased its obstruction of ASEAN efforts to forge a unified position. At the same time, the Philippines, Vietnam, Malaysia, Singapore and Indonesia are strengthening their strategic relationships with the United States. Over the past two years, the US has taken keen interest over the South China Sea issue (Wesley 2012: 2). Therefore, China has responded accordingly (Thayer 2013: 80). Brunei, as the ASEAN Chair in 2013, played a significant role in building consensus. Subsequently, the ASEAN reached unanimous agreement on the Six-Point Principles on the South China Sea. Thailand, as ASEAN's country coordinator for relations with China, has been active in facilitating progress on COC discussions. In addition, Indonesian Foreign Minister Natalegawa also took a diplomatic effort in gaining a unanimous ASEAN agreement on the Six-Point Principles on the South China Sea and again produced a zero-draft COC. Further, Singapore, Malaysia, Vietnam and the Philippines all strongly support ASEAN's diplomatic efforts (Thayer 2013: 5). Meanwhile, on January 22, 2013, the Philippines lodged a formal legal claim with the UN to establish an arbitral tribunal under the UNCLOS. But China has rejected and refused to take part in the tribunal's proceedings. However, China appears to rethink its approach to Southeast Asia and is trying to upgrade its relations with the ASEAN. On April 2, 2013, at the 19th ASEAN-China Senior Officials' Consultation, Chinese officials announced their willingness to commence discussions with ASEAN on the Code of Conduct (Thayer 2013: 2-3).

Subsequently, in late April and early May 2013, Wang Yi as the Foreign Minister of China has visited Thailand, Indonesia, Singapore, and Brunei to discuss the South China Sea issue. Further, Yi visited Malaysia, Laos, and Vietnam and also attended the High-Level Forum on the 10th Anniversary of China-ASEAN Strategic Partnership which was held in Bangkok on August 2, 2013 (Thayer 2013: 4). Later, on August 5, 2013, at a press conference he stated that China and ASEAN had only agreed to hold consultations on moving forward the process on the Code of Conduct in the South China Sea under the framework of implementing the Declaration on the Conduct of Parties in the South China Sea. Wang Yi further said:

...First, some countries are talking about quick fix, like reaching consensus on COC within one day. It is an attitude neither realistic nor serious...

Second, consensus through negotiations ...Wills of individual country or of a few countries should not be imposed on other countries, as an old Chinese saying, nothing forcibly done is going to be agreeable.

Third, elimination of interference, China and ASEAN countries tried several times to discuss on COC before, but got stuck due to some interference...

Fourth, step by step approach. The formulation of COC is stipulated in DOC. COC is not to replace DOC, much less to ignore DOC and go its own way. The top priority now is to implement DOC, especially promoting maritime cooperation. In this process, we should formulate the road map for COC through consultations, and push it forward in a step-by-step approach (Ministry of Foreign Affairs of the People's Republic of China 2013).

Furthermore, on September 14-15, 2013, the ASEAN and China held their first round of formal consultations on the Code of Conduct (COC) (Chairman's Statement of the 23rd ASEAN Summit 2013). Finally, officials from ASEAN and China met again, in March 2014, to discuss the South China Sea issue and consult on a COC (*Economist* 2014). 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. It is however that Taiwan as a claimant party has not been included in the diplomatic process. It is also not yet clear whether China is serious about negotiating a binding code of conduct or is simply buying time to delay the discussions (Emmers 2014: 65-66). Again, recently on March 8, 2017, Yi said that a first draft of a Code of Conduct in the South China Sea has been completed. Again, he mentioned that both China and the ASEAN countries were satisfied with this (Siu 2017). Huang Jing, an expert on the region at National University of Singapore's Lee Kuan Yew School of Public Policy, said that for China, this Code of Conduct is a means to achieving its goal of keeping the US and its allies from intervening in the matter in the name of freedom of navigation or maintaining regional stability (Bodeen 2017: 1).

Difference between ASEAN's and China's Versions of the Code

ASEAN and China agreed to exchange their respective drafts code of conduct and to consolidate them into a final agreed text in March 2000 (Thayer 2013: 3). There are many common or dissimilar principles that can be found in the draft code of conduct prepared by each side. ASEAN brought out a seven point code, while China put forth

a document containing twelve points (South China Sea Dialogues 2017: 3). Both ASEAN and China express their support for peaceful settlement of the territorial disputes, without resort to the use of force. They again agreed to exercise self-restraint in the conduct of activities in the disputed area, so as not to complicate or magnify the disputes. Without any prejudice to existing claims of sovereignty or jurisdiction, the two sides agree to study the possibility of undertaking cooperative projects in the areas, such as marine environmental protection, marine scientific research, safety of navigation and communication, search and rescue cooperation and combating transnational crime. They also agreed to use the universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea, as the basic norms governing their relations. Both sides also agreed to continue their dialogues on the relevant issues through the existing mechanisms (Song 2000: 455). However, there were significant differences. China's draft consists of general principles, while the ASEAN draft is more specific. One of the major differences is the scope of geographic coverage. China wants the code confined to the Spratly Islands, while ASEAN has insisted on the inclusion of the Paracels. Again, the status of Scarborough Shoal was unclear. ASEAN insisted on a halt to future settlement and construction. Point 2 of the ASEAN draft code stated that the parties refrain from the action of inhabiting or erecting structures in presently uninhabited islands, reefs, shoals, cays and other features in the disputed areas. But China had concerns about any military exercises directed against other countries in or near the Spratlys, and dangerous and close-in military reconnaissance. China pushed to attain assurance that its fishermen would be able to fish in disputed areas of South China Sea. Beijing also proposed that the claimants refrain from use or threat of force, or taking coercive measures against fishing boats or other civilian vessels engaged in normal operation in the disputed areas, or against nationals of other countries thereon. China defined coercive measures as including seizure, detention and arrest (South China Sea Dialogues 2017: 3).

China has asserted that disputes relating to the Spratly Islands should be resolved by the sovereign states directly concerned through bilateral negotiations. However, ASEAN preferred has both bilateral and multilateral consultations. The ASEAN side asked all the concerned parties to inform voluntarily other parties concerned of significant policies and measures that affect the disputed area. The Chinese version

contains no such wording. In addition, the Chinese side has demanded that military patrol activities in the disputed area should be restricted. But the ASEAN version of the draft code contains no such demands (Song 2000: 455). However, the draft of the ASEAN's proposed elements of a regional Code of Conduct in the South China Sea between the ASEAN member countries and the People's Republic of China, has not been officially released and remains an internal ASEAN document (Thayer 2012: 3).

Challenges and Prospects for Code of Conduct (COC)

The signing of the DOC was hailed as a breakthrough and one step ahead in finalising the Code of Conduct on the South China Sea (COC) and a step towards resolving the South China Sea dispute. However, the DOC has failed to resolve territorial issues at the heart of the South China Sea disputes. Above all, despite a political declaration, the DOC has no legal binding and legal enforceable obligations on the concerned parties which still gives room for asserting their own sovereign right without knowing and respecting any international law like the UNCLOS III. Although, some countries did exert a certain self-restraint after the 2002 DOC, there still have been some clashes over fishing activities, resource exploration rights and some other non-military conflicts in this region. For example, there have been recent incidents like cable cutting, the Reed Bank incident in 2011 and many more (Hsiu 2011: 6). Even in the first five months of 2011, three major incidents took place. First, on 25 February, three Filipino fishing boats were accosted by a People's Liberation Army Navy (PLAN) missile frigate which ordered the Filipino fishing boat to leave the area under threat of gunfire. The second incident took place on 2 March when two Chinese patrol boats ordered the MV *Veritas Voyager*, a survey ship operating in the Reed Bank area off Palawan, to leave. Subsequently, the MV *Veritas Voyager* suspended operations and left the area. The third incident took place on 24 May when Filipino fishermen witnessed a China Maritime Surveillance vessel and PLAN ships unloading steel posts, building materials and a buoy near the Iroquois Reef, Amy Douglas Bank, one hundred nautical miles off Palawan (Thayer 2011: 79). A 10,000 foot runway was constructed on the Fiery Cross Reef. In addition, early warning radar stations, military barracks, helipads, and lookout towers have been installed on several features in the South China Sea (Glaser 2015: 2).

Nguyen Dang Thang and Nguyen Thi Thang Ha explained that the Declaration (DOC) contains some further inherent fundamental flaws. First, it is self-contradictory that the DOC is a confidence-building instrument and all the activities pursued to build trust and confidence, either unilaterally or jointly, are optional rather than mandatory. Secondly, the duty to refrain from activities that may further complicate the disputes (the so-called the duty of self-restraint) remains vague because the concept of complicated activities itself is accompanied by only one single example without any further guidance. Not surprisingly, the parties will have different interpretations of this nebulous concept, reiterating their positions during the past COC or DOC negotiations. This is unfortunate because the duty of self-restraint is one of the key obligations in the DOC. In fact, as will be shown, if the parties had elucidated the duty of self-restraint in light of international law, incidents relating to petroleum exploration activities might not have occurred. Thirdly, the absence of a mechanism to verify incidents at sea seems to be a neglected issue when ASEAN and China negotiated the COC or DOC. While DOC operates in the same way as binding instruments, that is, its implementation relies on good faith, a mechanism to ensure its implementation seems desirable. Thus the recent disagreements between parties over factual aspects of an incident are characteristic of this shortcoming. On top of these, Nguyen Dang Thang and Nguyen Thi Thang Ha have mentioned that the whole notion of concluding a COC or DOC to regulate only activities relating to the disputed areas in the SCS is conceptually flawed (Thang and Thi Thang Ha 2011: 238). James Chow (2011) once pointed out that according to Nguyen Thi Lan Anh,

...the DOC with no legally binding effect is not instrumental in resolving the SCS disputes. But this Declaration was an encouraging achievement of the parties to the SCS dispute towards peace and stability for the region. However, unfortunately, the Declaration has failed to prevent the new round of tensions and new claims. And this gives rise to the necessity of developing a binding COC. In addition to a mandatory effect, the future of COC also needs to correct other weaknesses of the DOC. Among them are the indefinite scopes of application, the broad spectrum provisions on cooperation and confidence building, the lack of dispute settlement measures, and the ineffective conflict management measures (Chow 2011: 1).

In addition, the level of trust, or mistrust, of China with some ASEAN members creates an obvious difference among the participants' perceptions and expectations of a Code of Conduct in the South China Sea. The ASEAN's Six Point Principles contain the same principles stated in the DOC, and also emphasise a quick process for

the realisation of a COC, but China on the other hand gives its four-point approach and emphasises that a COC can only be reached via a consensus through negotiations. It means that China is prepared to conduct careful and meaningful discussions as long as it takes. Again, China has accused the Philippines of internationalising the issue, especially when the Philippines filed an arbitration case in the international tribunal under the provisions of the UNCLOS in January 2013, where China declined to participate. This brings about another significant dimension of the negotiations, that is, the lack of agreement among ASEAN members and which gives a slow process of consensus building and making for a unified stand on the COC. For example, only the Philippines and Vietnam are eager to push through the establishment of a regional Code of Conduct. Some states are not ready to compromise their relations with China, while others are easily courted by China's offer of joint development, such as Malaysia and Thailand, with the China National Offshore Oil Corporation on a joint resource exploration, somewhere off the coast of Thailand. Even, Cambodia and Myanmar are also not as eager in pushing for a COC and shake relations with China, which has large investments in their countries (Navallo 2013: 2-3).

However, the recent development shows that all the signatories are still willing to keep the DOC on the road and also in the right direction for the realisation of the Code of Conduct. Therefore, in order to direct the implementation of cooperation measures, projects and principles within the framework of the DOC, China and the ASEAN countries have started consultations on developing guidelines for the implementation of the DOC in recent years. On July 20, 2011, China and ASEAN countries held the Senior Officials' Meeting for the Implementation of the Declaration on Conduct of Parties in the South China Sea in Bali, and Indonesia and also agreed on the text of the guidelines to implement the DOC and reached a series of important consensus on the future work, paving the way to advance the implementation process and push for pragmatic cooperation in the South China Sea. Thus, to implement the DOC, China and the ASEAN countries have pledged that they would carry out a series of cooperative projects pending the final settlement of the boundary dispute (Hsiu 2011: 7). Moreover, it is not just about implementing the guidelines of the 2002 DOC; more important is a Code of Conduct that is specifically dedicated to the prevention of armed conflict in the disputed areas. The realisation of this Code of Conduct would depend on the resolution of some important issues such as, first,

ASEAN's resolve to reconcile common interests in the South China Sea especially among claimant states; and secondly, China's willingness to include disputed territories in the COC, at the very least. And China's willingness to talk about a COC is in itself a step forward for ASEAN (Navallo 2013: 4).

But, Mark J. Valencia has argued that key elements concerning the Code of Conduct have yet to be decided. He says that the Code of Conduct (COC) must include an agreement as to

- a) where, to whom, and to what the Code applies,
- b) how it addresses non-state actors and Taiwan (which is a South China Sea claimant), and
- c) the scope of the Code, should it cover all of the South China Sea and any actor therein, or just the disputed areas (Valencia 2011: 1).

However, by looking comprehensively, Valencia has suggested that the COC should govern all activities, including resource exploration and exploitation, marine scientific research, and military activities. The Code should reaffirm the parties' commitment to the purposes and principles of the UN, the 1982 Law of the Sea, China's five principles of peaceful co-existence, as well as their shared responsibility to interact on the basis of equality and mutual respect. It should also reaffirm the freedom of navigation and overflight consonant with international law and the concerned parties should also recommit to exercising self-restraint in the conduct of activities that might complicate or escalate disputes, including refraining from occupying presently uninhabited features. Again, the parties should also agree to negotiate provisional arrangements of a practical nature to manage and share the resources and activities in disputed areas. The parties should agree to notify each other of any pending activities including military exercises in waters of interest to other parties (i.e. areas claimed by others). Therefore, it is necessary for a specific clause addressing the question of arrest and detention of fishing vessels and crews of the fellow claimants. Thus, as part of the COC, the parties might even agree to negotiate voluntary guidelines regarding military activities in foreign EEZ, particularly active and intrusive intelligence gathering (Valencia 2011: 1-2). He again says that there are two provisions that are probably critical to its effectiveness. First, it is an agreement to be bound by the code

and to develop a mechanism to explore the alleged violations thereof. It should have the robustness of a treaty, even if it is not called as one. The second is to encourage outside parties to adhere and accede to the COC (Valencia 2011: 2).

Furthermore, Nguyen Dang Thang and Nguyen Thi Thang Ha gave an argument that there are three common themes of the South China Sea that the Code of Conduct should address and look at carefully. First, the freedom of navigation should not be underestimated because every user of the SCS has an interest in maintaining the SLOCs in the SCS. Even the DOC and its signatories reaffirm that the freedom of navigation in and overflight above the SCS is respected, but the connotations of such freedom are not free from uncertainty. Therefore, the Code of Conduct should go further than the DOC by putting flesh to the bones of the freedom of navigation and overflight. Secondly, the two fundamental principles of international law to properly manage the SCS disputes are more important and relevant, that is, the states settle their international disputes by peaceful means, and states refrain from the use or threat of force. Therefore, the COC should reaffirm these principles and also need to go further with regard to the implementation by providing for an appropriate compliance mechanism. And lastly, the sustainable use of the SCS is more relevant to the coastal states because the economic interests come out prominently and it is reasonable that the utilisation of the SCS must be sustainable. Thus, these three common themes should form the thread running through the COC, which again in turn informs its subject matter, scope of application and substantive contents (Thang and Thi Thang Ha 2011: 240).

Both Nguyen Dang Thang and Nguyen Thi Thang Ha give their views and suggest that the COC is not different from the existing DOC; both are confidence-building and conflict-preventing instruments. But the DOC aims to regulate activities relating to, in one or the other, the disputed islands. Furthermore, it is believed that the COC should be as comprehensible as possible, especially with regard to prohibitive and permissible activities in the disputed areas and also should be a stringent mechanism to ensure compliance and settle disputes relating to the interpretation and application of the COC.

Scope of Application

With regard to regulate activities, it is possible that the geographical coverage of the COC will be the whole SCS. On the other hand, having the COC applying to the whole South China Sea does not mean it is no longer necessary to define the contested waters relating to the disputed offshore islands and the legitimate and undisputed maritime zones of the states bordering the SCS. Quite to the contrary, such an exercise is necessary because the implementation of rights and obligations of states under the law of the sea predicates upon the well defined boundaries of their national maritime jurisdictional zones. But this is perhaps the only solution acceptable to China which already states that these islands can have an EEZ and CS of their own. On the other hand, if the freedom of navigation in the SCS is respected, then such an agreement should not be impugned.

Substantive Contents

The COC should go far beyond a mere statement of general principles on conflict prevention. More importantly, it needs to take into account the geopolitical context of the SCS. A set of detailed principles, which is what exactly a code of conduct means in practice, will facilitate implementation. And for that the instrument should also envisage some kind of monitoring or compliance mechanism. In this part, they offer some thoughts on three issues like unilateral activities in the SCS, cooperative activities and compliance procedure.

- Permissible and Prohibitive activities

Both Nguyen Dang Thang and Nguyen Thi Thang Ha again suggested that it is necessary to list, as long as possible, the prohibitive activities in the disputed areas; thus the COC should also set out a benchmark against which states may establish whether a particular act complicates the situation or not. Again, they mentioned that the permissibility of certain activities in disputed areas a priori gives rise to the need for a common understanding as to the law enforcement scheme in the disputed waters in particular and the whole SCS in general.

- Cooperative activities

By looking provisions on prohibitive and permissible activities in the disputed areas that can be considered as conflict preventing measures, provisions on cooperative activities can be considered as confidence building ones. It is also suggested that the COC should continue to emphasise the need for cooperation as does the DOC. Furthermore, parties to the COC should also take account of the special characters of the SCS and their corresponding obligations under the LOS Convention.

- Compliance procedure

The development of a COC for the SCS, regardless of how elaborate it is, will be of little significance unless accompanied by appropriate means for ensuring its compliance. It is true that one of the major flaws of the DOC is the absence of a mechanism to settle or help parties settle disputes arising from the implementation of that instrument. Therefore, it is necessary to add more compliance institutions for the settlement of disputes established within the COC itself; parties to the COC should also consider the possibility of having recourse to existing dispute settlement mechanisms which have competence to deal with law of the sea issues. Finally, it is believed that the COC should be best negotiated by ASEAN and China. It is however not difficult to predict that China might not be enthusiastic about concluding another SCS instrument, let alone the COC, with more stringent provisions, than the DOC. Thus, the prospect for ASEAN and China to sign the COC is grim. But, it is also suggested that ASEAN be receptive to the idea of its member states signing a COC among themselves (Thang and Thi Thang Ha 2011: 240-247).

Further, after concluding the signing of the guidelines for the implementation of DOC, diplomatic efforts have moved in two directions. The first track involved negotiations between China and the ASEAN member states on practical measures to implement the intent of the DOC. The second track has involved discussions among the ASEAN members themselves on a draft Code of Conduct. Again, the other track moved to produce a draft COC before the July meeting in 2012. In this track, the concerned parties assumed that circumstances would be conducive enough to have an agreed COC. Alongside, many experts are also preparing drafts for consideration. Meanwhile, one unofficial draft has been circulated by the Philippines which tries to define, clarify and segregate the disputed land features in the Spratly, in accordance with international law, specially UNCLOS III. At the same time, a good draft for

COC was presented by Mark J. Valencia in a conference in Cambodia in March 2012. His paper entitled ‘A Code of Conduct for the South China Sea: Politics, Principles and Possible Provisions’, contains 12 Articles besides the preamble. Some important aspects have been taken from the DOC and it also mentions the need for having a temporary solution pending the final resolution of the issue. It also mentions that the concerned parties would use the South China Sea for peaceful purposes only and that they should ensure the freedom of navigation in and overflight outside the internal, territorial and archipelagic waters in accordance with the UNCLOS. Again, it also mentions the need to jointly develop the disputed areas (Pradhan 2012: 7). Moreover, in his paper, Mark J. Valencia gives and discusses some important principles for the COC).

Principles for the Code of Conduct (COC) in the South China Sea (SCS)

Mark J. Valencia (2012) has suggested some important principles for the Code of Conduct (COC) which were derived from the DOC, the Guidelines for the implementation of DOC, the 1982 UN Convention on the Law of the Sea and other international agreements. This was drafted on February 15, 2012.

i. Be Forward Looking (Towards an Interim and Durable Solution)

Because of lack of enforcement mechanism and numerous incidents despite having agreements to exercise self-restraint, the negotiations on COC and the implementation of Guidelines of DOC are self-contradictory. Therefore, Valencia has pointed out that the COC should be forward-looking and hope for real commitment to work towards a political solution that is both interim and durable.

ii. Build Trust and Confidence

Building confidence and trust are very much required in the South China Sea (SCS) conflict because it will reduce the fear of attack or fear of a rival claimant state obtaining an unfair advantage in a conflict situation.

iii. Formal, Enforceable and Binding

The COC should be formal with official authorisation; following or being in accord with accepted forms, conventions, or regulations; be enforceable to compel

observance of; and be binding for creating a legal obligation, presumably with sanctions for breaking the agreement.

iv. Non-Prejudicial to Claims and Right

Baselines should be added to the list of claims and rights that will not be prejudiced by some unfortunate activities or actions because some have claimed baselines in the region that are much controversial.

v. Purposes and Principles of the Charter of the United Nations

The COC should maintain the purposes and principles of the charter of the United Nations because it is necessary to maintain peace and stability, to develop friendly relations, to achieve international cooperation, to refrain from the threat or use of force and to get the same benefits and rights.

vi. Universally Recognised Principles of International Law

It is believed that there are different interpretations of many international laws. Therefore, it is very much necessary to spell out the principle laws the COC is referring to and to incorporate at least in the COC preamble reference to the Charter of the United Nations and to the 1982 UN Convention on the Law of the Sea.

vii. Self-Restraint

The Code should be manifested as a pledge of no further occupations of uninhabited features, no further construction on already occupied features, no vitriolic public accusations and criticisms, and no threat or use of force, military exercises, hydrocarbon exploration or drilling, marine scientific research, fishing or enforcement of national regulations in disputed areas.

viii. Protection of the Marine Environment

The marine environment is necessary to protect because it is the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and the oceans and the airspace above those waters, as well as the seabed.

ix. Freedom of Navigation

For external maritime powers like United States and Japan, freedom of navigation is really important. For the commercial vessels there is not much problem. Traditionally the freedom of the high seas also included the use of the high seas for military manoeuvres or exercises, including the use of weapons. Subsequently, this freedom has been incorporated in the 1982 UNCLOS, and it has been generally believed, particularly by maritime powers, that this applies also to the EEZ. However, several states, including Bangladesh, Brazil, Cape Verde, Pakistan, Malaysia and Uruguay, declared that such military activities are not permitted in their EEZs without their consent. This principle can be interpreted broadly or narrowly. As for example, states are obligated by the UN Charter and the 1982 UNCLOS not to threaten or use force against the security (i.e., the territorial integrity or political independence) of other states. However, it is not clear when, where and how the deployment of certain systems might prejudice the defence or security of the coastal State. Some maritime powers deploy various kinds of devices, installations and structures for military purposes in the sea including in the EEZs of other countries. As for example, sonar monitoring or surveillance systems like acoustic array systems placed on the continental shelf, and navigational aids for submarines and warships.

x. Protect Human Rights

Human rights are inalienable fundamental rights to which a person is inherently entitled to because she or he is a human being. Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone) and exist as natural rights or as legal rights, in both national and international law. Therefore, the doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental institutions has been a cornerstone of public policy around the world. Even though, violations of human rights occur when actions by state (or non-state) actors abuse, ignore, or deny basic human rights (including civil, political, cultural, social, and economic rights). Furthermore, violations of human rights can occur when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. Therefore, protecting human rights under the supervision of international law is very much needed.

xi. Cooperation

It is the process by which all the working groups work together to achieve their goal. However, even if all the working groups would benefit from this cooperation, individual self-interest may not favour this cooperation. Although, there are four main conditions that are necessary for a cooperative behaviour to develop: an overlap in goals; a chance of future encounters with the same country; memory of past encounters with that country; and a positive value associated with future outcomes.

xii. Due Regard (for the interests of other claimants and interested states)

The act should not impede the exercise of rights by other States or infringe upon the interests of other states; the means and methods of the act should not affect or impede the exercise of rights by other states or undermine the legal regime of the sea area; and the actual act should not make the rights of other states ineffective, irrelevant or invalid. This is derived from UNCLOS Article 58(1) 'Rights and Duties of other States in the exclusive economic zone' which refers to Article 87(1) Freedom of the High Seas. Article 58(3) provides that in exercising their rights and performing their duties in the EEZ, 'States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State' in accordance with the Convention provisions and other rules of international law in so far as they are not incompatible with Part V (on the EEZ) (Valencia 2012: 6-33).

Further, Valencia concludes his paper by saying that if such a code can be agreed to by ASEAN and China, it will certainly bode well for the sea, the region, and all concerned, and may serve as a model for other disputed seas like the East China Sea. But first there must be an agreement on the principles that will inspire and be manifested in the Code (Valencia 2012: 6-33).

Recently on March 8, 2017, Chinese Foreign Minister Wang Yi said that a first draft of the Sino-ASEAN Code of Conduct for the disputed South China Sea has been completed. But both ASEAN and China were needed to decide on the final version, which was likely to cover a binding crisis management mechanism, prevention of the installation of offensive weapons and freedom of navigation. Even a senior maritime security researcher at the Chinese Academy of Social Sciences (CASS) has said that a code of conduct would call for all related parties to stop militarising islands in the

South China Sea. Furthermore, Wu Shicun, head of the government affiliated National Institute for South China Sea Studies, once expressed that the Code would require all countries to stop installing offensive weapons. Again, Lin Yongxin, a senior researcher at the same institute, said “If the draft satisfies both China and ASEAN, it would prevent other countries from meddling, and China and ASEAN will cooperate within the new framework” (Huang 2017). Furthermore, on June 6, 2017, Carlyle Alan Thayer produced a framework of a Code of Conduct in the South China Sea. In this framework, he mentioned three objectives such as: first, to establish a rules-based framework to promote maritime cooperation in the South China Sea; second, to promote mutual trust, cooperation and confidence, and to create a favourable environment for the peaceful settlement of the dispute; and third, to ensure maritime security and safety and freedom of navigation and overflight. In addition, Thayer gave four principles to be included in the Code of Conduct framework. First, it is not an instrument to settle territorial disputes or maritime delimitation issues; second, it has to give commitment to the purposes and principles of the Charter of the United Nations, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Treaty of Amity and Cooperation in the Southeast Asia (TAC), the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law; third, full commitment and effective implementation of DOC; and lastly, giving respect for each other’s independence, sovereignty and territorial integrity in accordance with international law, and the principle of non-interference in the internal affairs of other states (Thayer 2017: 1).

Conclusion

Despite taking up or adopting many agreements or frameworks, the Code of Conduct on the South China Sea (COC) is still yet to be materialised. Since the adoption of ASEAN Declaration on the South China Sea in 1992, and the Declaration on the Conduct of Parties in 2002, ASEAN and China have been trying to agree and adopt COC to manage and resolve the South China Sea disputes. However, there is still a big trust deficit between the ASEAN and China. China despite having signed the Guidelines for the implementation of DOC, continues to make efforts to ensure that the issue is not taken up jointly by ASEAN. As for example, recently in 2012, the Chinese President visited Cambodia just before the ASEAN Summit and it was an attempt to ensure that the South China Sea issue would not be taken up in the meeting

and subsequently, it was not included in the agenda. Even though the representatives from Philippines and Vietnam raised the South China Sea issue and the need for a binding COC, there was a big disagreement on the South China Sea according to the Philippines Foreign Secretary Albert del Rosario. While some members including Philippines and Vietnam desired that ASEAN should finalise the draft before sharing it with China, Cambodia wanted China to be involved right from the beginning (Pradhan 2012: 2).

But, at the international seminar entitled ‘ASEAN and 10th Anniversary of DOC’, which was held on March 22, 2012 in Phnom Penh and jointly hosted by the Centre for Asian Strategic Studies-India (CASS-India), New Delhi, India and the Cambodian Institute for Cooperation and Peace (CICP) on Cambodia, Arata B. Mahapatra, Director of CASS-India said, “The conference can throw in new ideas and evaluate various options to resolve the most complicated maritime dispute of our time and, at the same time, the SCS dispute may prove to be a strong challenge to ASEAN diplomacy, as to how it can effectively convert the DOC into a full-fledged COC”. Even, Indonesia’s President Yudhoyono once gave a view that the South China Sea is an area for cooperation with the potential to benefit all concerned parties, rather than just an area of conflict. However, for the sake of long-term peace and stability in the South China Sea, it is important for all parties to have a legally-binding COC (Anthoni 2012: 1-2).

Besides having many flaws and challenges in implementing all those agreements and declarations, an agreement on Code and the adoption of Guidelines for the implementation of DOC, and also the proposal of the draft for COC by the concerned parties, scholars like Mark J. Valencia have made an unofficial draft, which would give a strong concern about peace, security and progress in the region. All these developments and arrangements which are strongly moved forward by the ASEAN, China, concerned parties and outside powers, show that the yet-to-be COC has good and right prospects in resolving or managing the South China Sea disputes. On September 19, 2013 at Phnom Penh, the ASEAN Secretary-General H.E. Le Luong Minh mentioned that “the future COC should be a comprehensive and legally binding instrument. While the COC is not intended to resolve territorial and jurisdictional disputes among the parties concerned, it must be a set of rules and norms to govern the conduct and behaviour in the South China Sea with a view to preventing and

resolving incidents, and helping create a favourable environment for a comprehensive and durable settlement of disputes in the South China Sea” (Special Remarks by ASEAN Secretary-General 2013). In fact, it is urgently needed to adopt a binding Code of Conduct (COC) to check and restrain China’s assertive nature in the South China Sea areas. On other hand, for China, the Code of Conduct is needed to check external power interference on the SCS issue and also to restrict the internationalisation of the South China Sea dispute. Taking a hard position all the time in this issue means giving the issue to the world. Therefore, China is now ready to sign Code of Conduct, but the exact time and date are not known. However, the COC cannot be adopted and materialised until and unless the wide trust deficit between ASEAN and China remains.

Chapter 6

CONCLUSION

The South China Sea (SCS) has become a source of tension and instability in the Asia-Pacific region for more than two decades. The complexities in the South China Sea have increased since 1970s. However, the complex nature in the South China Sea dispute is deeply rooted in the colonial history of the region. In fact, the history of South China Sea dispute is studied in three important phases or eras; first, pre-modern i.e. pre-colonial era; second, modern i.e. colonial, Cold War, post-Cold War era; and third, post-modern i.e. the era where all the claimant states have asserted their strategic interests in the South China Sea. Although, before the 20th century, no country was interested in the South China Sea and this area was not considered as a dangerous zone. But the defeat of Japan in the Second World War led the South China Sea to remain unoccupied. Subsequently, the significance and importance of the South China Sea has been gradually recognised by littoral states and a campaign for an effective control and occupation over these islands has become a main concern.

Further, this campaign of assertion and control over the area again accentuated when it was discovered in the early 1970s that this area may contain significant oil and natural gas deposits. Since then, many littoral states have started asserting their claims in the South China Sea. The issue became more serious when the Marcos Government in 1972 officially incorporated Kalayaan into Palawan Island. Then, in 1974, China used military force against the South Vietnamese in the Paracels. Since then, the Paracels came under the control of People's Republic of China (PRC). Meanwhile, with regard to promoting a peaceful use of the sea, the United Nations Conventions on the Law of the Sea (UNCLOS) was adopted in 1982. However, the dispute seemed to be escalating because the UNCLOS allows all the littoral states to claim an Exclusive Economic Zone (EEZ) of 320km, or continental shelf, and also specifies that islands can generate their own EEZs or continental shelves. This brought overlapping claims among the littoral states and led to more complex issues in the South China Sea.

Thereafter, an incident of 1988 between the Chinese and Vietnamese over the Spratlys, gave a signal to the ASEAN members of a potential security threat in the

South China Sea. Consequently, the ASEAN members for the first time adopted their common stance on the South China Sea dispute by signing the ASEAN Declaration on the South China Sea in 1992. Since then, the ASEAN has been engaging the South China Sea issue vis-à-vis China. However, since February 25, 1992, China is pushing has been pushing for absolute sovereignty over the Paracels and the Spratlys by enacting a law known as 'Law on the Territorial Sea'. This again has led to a series of incidents over the ocean areas and its islands. One significant incident which gave ASEAN a serious concern over China's actions was the control of Mischief Reef in 1995. Since then, ASEAN started engaging China through diplomatic means over the South China Sea issue.

This race for occupation and control over the South China Sea has increased the likelihood of conflicts. In addition, with the rising levels of nationalism over the ownership of the disputed islands, atolls, and reefs all the claimant states have strident assertions of sovereignty over maritime resources. This growing competition over the South China Sea has led to numerous incidents and also the potential to have serious conflicts in the near future if not properly managed. Therefore, the ASEAN has been trying to engage China vis-à-vis the South China Sea dispute. But, China is adamant to talk about the South China Sea issue in a multilateral platform. Beijing regards the U-shaped line in the South China Sea as one of its most important historical claims. Therefore, China has regarded this issue to be solved through bilateral talks among the concerned states. However, this rigidity of China became counterproductive. That is why China's position has changed accordingly.

ASEAN is trying to bring China into a multilateral dialogue process over the South China Sea issue. This came into reality when ASEAN and China signed a Declaration on the Conduct of Parties (DOC) in 2002. This was the first time that China agreed to sign a political document with ASEAN over the South China Sea issue. Again, it is believed that the declaration is the initial step to formulate a Code of Conduct (COC) to prevent and restrain the use military force over the disputed areas in the South China Sea. To regulate and implement DOC, ASEAN and China have taken up a significant step by setting up a Joint Working Group in 2004.

In fact, this diplomatic voice has weakened considerably. In 2007, China again used paramilitary force against Vietnamese fishing vessels to stay away from the Spratly

islands and sank three of them. A British-American-Vietnam oil consortium was also forced by Beijing to abandon its gas field development off southern Vietnam. Subsequently, Malaysia along with Vietnam provided a joint submission regarding the southern parts of the sub-region to the United Nations that angered China, which resulted in its own submission that included a new nine-dash map claiming sovereignty over almost the entire South China Sea region. Again, China imposed a seasonal fishing ban in the northern part of the South China Sea (from May 16 to August 1, 2011) and detained dozens of Vietnamese fishing boats.

This assertive nature of China led other claimant states to be unified and gave a signal to other external powers especially the US to get involved in the issue in the name of Freedom of Navigation. In 2010, the US showed an interest in the South China Sea by saying that a peaceful resolution of territorial disputes over the South China Sea is in the 'national interest' of the United States. The United States has a national interest in freedom of navigation, and open access to Asia's maritime commons. The US's entering into the issue is against Chinese interests. This gives an opportunity to the ASEAN states to have closer ties with the US. In 2013, the Philippines unilaterally filed a petition against China over the South China Sea in the UN Permanent Court of Arbitration. All these counter-developments led China to rethink its approaches towards the South China Sea. Gradually, China's approach has shifted more towards multilateralism from bilateralism.

Subsequently, on September 14-15, 2013 in Suzhou, Jiangsu Province, China, the first official meeting for the consultations on the Code of Conduct in the South China Sea was held. This meeting agreed to continue the full and effective implementation of the DOC, deepen pragmatic cooperation and contribute to the healthy and stable development of China-ASEAN strategic partnership. China proposed cooperative initiatives including establishing maritime emergency help hotlines between China and ASEAN countries and conducting sand table exercise on joint maritime search and rescue. In the consultations on the COC, all the participants had a healthy discussion and also agreed to follow the 'step by step and to reach consensus through consultation' approach. Furthermore, very recently on March 8, 2017, Chinese Foreign Minister Wang Yi said that a first draft of a Code of Conduct in the South China Sea has been completed. He mentioned that both China and ASEAN countries were satisfied with the draft of COC. Huang Jing, an expert on the region at the

National University of Singapore's Lee Kuan Yew School of Public Policy said that for China, this Code of Conduct is a means to achieving its goal of keeping the US and its allies from intervening in the matter in the name of freedom of navigation or maintaining regional stability. Now, China is ready to sign the Code of Conduct for managing or resolving the South China Sea dispute. This diplomatic breakthrough, to a large extent, was facilitated by ASEAN's pressure for a peaceful resolution of the South China Sea issue. This was possible only when ASEAN and China established a common ground to overcome their differences. Therefore, the hypothesis-*Given the complexity of the South China dispute and China's critical stakes in Southeast Asia, ASEAN can exert pressure on China for a peaceful resolution of the issue*-is validated.

The significance of Track II diplomacy has been visible in the South China Sea dispute for more than two decades. It is known to be the first approach towards a peaceful settlement of the South China Sea issue. It was only when the situation in the South China Sea deteriorated following the military clash between China and Vietnam in 1988 over the Spratlys that a process of Track II diplomacy started. The increasing tensions over the South China Sea and the assertive nature of the littoral states-led Track II process strengthened and proliferated in the Asia-Pacific region to develop a more secure, stable and peaceful region.

Earlier, the Track II process in the region was first developed in the field of economic cooperation under the name of the Pacific Economic Cooperation Council (PECC). This was founded in 1980, and flourished into an international network of scholars, officials and business representatives, which is also widely acclaimed as the precursor of the Asia-Pacific Economic Cooperation (APEC). Then, ASEAN-Institute of Strategic and International Studies (ASEAN-ISIS) became a prominent player in the establishment of a broader Asian-Pacific network known as the Council for Security Cooperation in the Asia Pacific (CSCAP) which was established in 1993 for the purpose of providing a structured process for regional confidence building and security cooperation among countries and territories in the Asia Pacific region.

This Council for Security Cooperation in the Asia Pacific (CSCAP) provides an informal mechanism for scholars, officials, and others in their personal capacities to discuss political and security issues and challenges facing the region. In addition, CSCAP has working groups for a range of issues; it can consequently influence ARF

on a wide array of topics. In other words, CSCAP has not only been a facilitator of elite socialisation, it has also contributed to semi-official engagement on a range of issue areas. On February 18-19, 2014, at the 2nd Meeting of the CSCAP Study Group on Marine Security, CSCAP China expressed that the South China Sea remains the focus of maritime concerns. But China will continue its commitment to peaceful development and resolution of the disputes.

Apart from this Track II process, the leading and most successful Track II mechanism in managing the South China Sea dispute is the 'Workshop on Managing Potential Conflicts in the South China Sea' since the early 1990s. This informal workshop which include members of government and military, as well as academics from both claimant and non-claimant countries, all acting in their private capacities, was first initiated in Indonesia in February 1990, and there have been annual meetings since then. The main purpose of this 'Workshop Process' is to identify and develop proposals for cooperation over a wide area of maritime concerns shared by all jurisdictions of the region. This was initiated by Indonesia and funded by the Canadian International Development Agency (CIDA) till 2001. Through this informal process all the participants took many advantages like greater freedom to discuss ideas and an atmosphere of greater community. In doing so, there was a chance to promote good opportunities for consensus by restraining many adversarial and conflicting situations.

Further, the Track II process gives the most suitable and valuable way for solving and managing the South China Sea conflict. After China's crackdown on pro-democracy demonstrators at Tiananmen in 1989 which brought strong international condemnation and also gave a bad image to the world, China needed international support, and therefore decided to take part in the South China Sea workshops. More importantly, this initiative is the only regional dialogue mechanism where scholars and government officials from Taiwan, China, and the member states of ASEAN meet regularly and exchange views on a variety of South China Sea (SCS) issues. In this Track II mechanism, there are a series of Technical Working Group (TWG) meetings, Group of Experts (GE) meetings, and other cooperative meetings that have been held. On November 13-14, 2009, at the 19th Workshop, the China-Taiwan South-East Asia Network for Education and Training (SEA-NET) joint project was adopted. This project, consisting of training and visiting scientist programmes on marine sciences,

ocean and coastal management, was to last for 2 years and implemented by Taiwan in 2010 and by China in 2011. All of the participants at the nineteenth South China Sea Workshop 'agreed to endorse and support the project and considered it a milestone in the Workshop process. Again, at the 24th Workshop which was held on October 14-15, 2014 in Bali, Indonesia, all the concerned parties reiterated to work towards a full implementation of the DOC and the early conclusion of the Code of Conduct (COC).

All these developments through the Track II process elevated the spirit of cooperation and mutual understanding between the ASEAN and China over the South China Sea issue. This spirit of cooperation and mutual understanding has diverted the potential armed conflicts in the South China Sea. Further, through this Track II process all participants have reached at a better understanding of each other's positions as they opened up for both information exchange, and formal as well as informal communication. Consequently, this understanding decreased the risk for miscalculations, and prevented unnecessary and unintentional conflict escalation. Thus, the workshops have become a successful mechanism for policy innovation and pre-negotiation, and also serve as a stage for official negotiations. This is a meeting platform in which the concerned officials from the conflicting parties have been able to meet, thereby creating and also allowing for the building and development of relationships and trust among the officials. Therefore, the workshop is significant in making and creating personal networks among the participants. In short, the South China Sea Workshops (SCSWs) thereby not only contributed to the prevention of conflict escalation, but also constitute an important part of the peace-building process in the South China Sea.

Furthermore, by ensuring the existence of channels of communication between the concerned parties, this Track II process has defused tensions and prevented an escalation of conflict. Almost all the features of official negotiations, statements and even joint declaration had previously been discussed in this South China Sea Workshops. The advantages of being both track two and informal, the South China Sea Workshops did not have the same restrictions as official negotiations. Track II diplomacy has some advantages such as most participants mainly come from the academic community, who have special knowledge and analytical tools that are more crucial to understand and provide possible solutions towards the issues. This diplomacy provides venues for thinking the unthinkable. Again, scholars can talk to

each other frankly, while still maintaining objectivity. Unlike official diplomacy, Track II diplomacy has flexibility in discussion and consultation. The Workshop process is the only forum in which all six claimant states to the South China Sea have regularly participated. Further, it is regarded as the longest running dialogue mechanism to manage the potential conflicts in the South China Sea region.

In addition, this Track II diplomatic breakthrough has contributed to the reduction of the Chinese threat perception in the South China Sea. This is because the workshops have been the only feasible organisational instrument by which China sought to get engaged in the development of cooperative mechanisms of reconciliation and coordination with other claimant states. The importance and significance of the workshops has also been acknowledged by the concerned governments, as they were willing to allow, and financially support, the participation of senior government staff. For almost ten years, this workshop process was supported by CIDA through the University of British Columbia in Vancouver. Now the workshop process functions on its own, supported by all the participants. This shows the spirit of cooperation in managing the South China Sea dispute. In short, bringing together all the claimant states and non-claimant states from the region through these workshops is more of an accomplishment. As a result, the hypothesis that *Track II mechanism (Workshop on Managing Potential Conflicts in the South China Sea) is the most significant tool to find ways to ensure that conflicts do not breakout in the South China Sea dispute* has been proved.

In the absence of ASEAN's diplomatic approach and Track II process, the South China Sea dispute could have been in a different scenario. Attempts were made by ASEAN as a group to manage and prevent conflicts from escalating in the South China Sea. But these diplomatic approaches were often weakened and shattered by unilateral actions of the concerned parties. However, the tireless diplomatic approaches of ASEAN and Track II process especially the South China Sea Workshops were the pivotal driver for managing and having a peaceful resolution of the South China Sea issue.

Engaging China vis-à-vis the South China Sea dispute was used as diplomatic tool for managing a peaceful resolution of the issue. Therefore, the ASEAN should continue its diplomatic endeavours with China to resolve or manage the differences through

dialogue and confidence-building measures. In addition, the spirit of Track II diplomacy should be encouraged because it is the most feasible and flexible framework for China and other claimant states to discuss the South China Sea dispute.

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APPENDIX A: ASEAN Declaration on the South China Sea, 1992

ASEAN Declaration on the South China Sea (1992) Manila, Philippines, 22 July 1992

WE, the foreign Ministers of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIROUS of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea Directly affect peace and stability in the region.

HEREBY EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;

URGE all parties concerned to exercise restraint with view to creating a positive climate for the eventual resolution of all disputes;

RESOLVE, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility 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;

COMMEND all parties concerned 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;

INVITE all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.

Source: <http://www.asean.org/5233.htm>.

DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability

including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
- b. ensuring just and humane treatment of all persons who are either in danger or in distress;
- c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
- d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

- a. marine environmental protection;
- b. marine scientific research;
- c. safety of navigation and communication at sea;
- d. search and rescue operation; and
- e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;

9. The Parties encourage other countries to respect the principles contained in this Declaration;

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.

Source: <http://www.aseansec.org/13163.htm>.

APPENDIX C: Statement of ASEAN's Six-Point Principles on the South China Sea, 2012

STATEMENT OF THE ASEAN FOREIGN MINISTERS

(Phnom Penh, Cambodia, 20 July 2012)

As a result of consultations among the ASEAN Foreign Ministers, the ASEAN Foreign Ministers issue the following:

“ASEAN's Six-Point Principles on the South China Sea

ASEAN Foreign Ministers reiterate and reaffirm the commitment of ASEAN Member States to:

- 1. the full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002);*
- 2. the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011);*
- 3. the early conclusion of a Regional Code of Conduct in the South China Sea;*
- 4. the full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);*
- 5. the continued exercise of self-restraint and non-use of force by all parties; and*
- 6. the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).*

The ASEAN Foreign Ministers resolve to intensify ASEAN consultations in the advancement of the above principles, consistent with the Treaty of Amity and Cooperation in Southeast Asia (1976) and the ASEAN Charter (2008).”

Source: <http://www.asean.org/>

APPENDIX D: Guidelines for the Implementation of DOC, 2011

Guidelines for the Implementation of the DOC

Reaffirming that the DOC is a milestone document signed between the ASEAN Member States and China, embodying their collective commitment to promoting peace, stability and mutual trust and to ensuring the peaceful resolution of disputes in the South China Sea;

Recognizing also that the full and effective implementation of the DOC will contribute to the deepening of the ASEAN-China Strategic Partnership for Peace and Prosperity;

These Guidelines are to guide the implementation of possible joint cooperative activities, measures and projects as provided for in the DOC.

1. The implementation of the DOC should be carried out in a step-by-step approach in line with the provisions of the DOC.
2. The Parties to the DOC will continue to promote dialogue and consultations in accordance with the spirit of the DOC.
3. The implementation of activities or projects as provided for in the DOC should be clearly identified.
4. The participation in the activities or projects should be carried out on a voluntary basis.
5. Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures.
6. The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of a Code of Conduct.
7. In the implementation of the agreed projects under the DOC, the services of the Experts and Eminent Persons, if deemed necessary, will be sought to provide specific inputs on the projects concerned.
8. Progress of the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN-China Ministerial Meeting (PMC).

Source: <http://www.asean.org/archive/documents/20185-DOC.pdf>