



# THE ROLE OF ASEAN AS AN INTERNATIONAL ORGANIZATION IN RESOLVING THE DISPUTES IN THE SOUTH OF CHINA SEA

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**Abstract:** *As an international organization, the Association of Southeast Asian Nations (ASEAN) must be responsible for maintaining and maintaining peace and security in Southeast Asia. One exciting development regarding regional security in Southeast Asia today is the issue of the South China Sea dispute. By law, the Philippines has brought the dispute to the Permanent Court of Arbitration (PCA). The verdict from the PCA said that China's claims regarding the nine-dash lines were indisputable and had no legal basis. However, China rejects the ruling and remains aggressive in the South China Sea, potentially creating regional instability. This article aims to look at the role of ASEAN in resolving a dispute that occurs in the South China Sea. This article argues that in dispute in the South China Sea, ASEAN plays a role as an intermediary for countries joined in ASEAN with China in diplomatic dialogue and resolves and ensures the implementation of the Code of Conduct in the South China Sea so that disputes do not extend to military conflict so peace and security in the southern China sea region can be achieved.*

**Keywords:** *ASEAN, International Organization, South China Sea Dispute*

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## I. INTRODUCTION

Ideally, a coastal state in claiming its maritime territory under United Nations Convention on the Law of the Sea (UNCLOS) is a maximum of 12 nautical miles for territorial sea claims, 24 nautical miles for contiguous zone, 200 nautical miles for exclusive economic zone, and 200-350 nautical miles for continental shelf. If a coastal state is far from another coastal state, then there is a possibility that all claims to the maritime area can be made without disturbing the rights of other states. However, in reality, a coastal state that is close to another state is certainly not possible to make these claims without disturbing the claims of its neighbors. In the case of overlapping claims, these states are required to delimit maritime boundaries. Delimitation of maritime boundaries between countries is the determination of boundaries or powers between one country and another at sea.<sup>1</sup>

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<sup>1</sup> I Made Andi Arsana, *Batas Maritim Antarnegara Sebuah Tinjauan Teknis dan Yuridis*, (Yogyakarta: Gadjah Mada University Press, 2007), p. 9

Determination of maritime boundaries is very important to ensure clarity and certainty of jurisdiction. The importance of maritime claims relates to issues of security, access and management of resources at sea, as well as clarity between the rights and obligations of the coastal state concerned.<sup>2</sup> Unclear maritime boundaries can lead to struggles or disputes over access to resources in the ocean region. This happened in the South China Sea region (SCS), where there were six countries whose maritime claims overlapped, namely China, Taiwan, Vietnam, the Philippines, Brunei, and Malaysia. The overlap was exacerbated when China claimed the SCS by using the term nine-dash line (9DL), which initially had no clear definition or concept regarding this 9DL. Based on this claim, China controlled the majority of SCS, including the Pratas Islands, Macclesfield Bank, the Spratly Islands, and Paracel, which China obtained from Japan after World War II. This claim was maintained when the Communist Party came to power in China in 1949. However, in 1953, the Chinese government removed the Tonkin Bay region from the eleven-dash line map made by Kuomintang. The Communist government simplified the map by converting it to 9DL which is now used as a historical basis for claiming almost all of the 3 million square kilometer waters.<sup>3</sup>

One of the SCS claiming states which is against the Chinese claim legally is the Philippines. Philippines brought the dispute at SCS to the Permanent Court of Arbitration (PCA) on January 22, 2013. During the dispute resolution process at the PCA, it was finally known how the concept of the 9DL was that:<sup>4</sup>

*"The "nine-dash line" . . . is called by China the dotted line. I want to stress that China's sovereignty and relevant rights in the South China Sea were formed throughout the long course of history and have been maintained by the Chinese Government consistently".*

The process of resolving the SCS dispute in the PCA between the Philippines and China, three essential points of the lawsuit filed by the Philippines, namely:<sup>5</sup>

- (1) declares that the Parties' respective rights and obligations in regard to the waters, seabed and maritime features of the South China Sea are governed by UNCLOS, and that China's claims based on its "nine dash line" are inconsistent with the Convention and therefore invalid
- (2) determines whether, under Article 121 of UNCLOS, certain of the maritime features claimed by both China and the Philippines are islands, low tide elevations or submerged banks, and whether they are capable of generating entitlement to maritime zones greater than 12 M;
- (3) enables the Philippines to exercise and enjoy the rights within and beyond its exclusive economic zone and continental shelf that are established in the Convention.

From the three basic lawsuits mentioned above, on July 12, 2016 PCA issued a dispute related dispute between the Philippines and China in the South China Sea, which is :

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<sup>2</sup> Victor Prescott dan Clive Schofield, *The Maritime Political Boundaries of the World Second Edition*, (Leiden: Martinus Nijhoff Publisher, 2005), p. 216

<sup>3</sup> Laut Tiongkok Selatan, Perairan Menggiurkan Sumber Sengketa 6 Negara, <http://international.kompas.com/read/2016/07/13/17401251/laut.china.selatan.perairan.menggiurkan.sumber.sengketa.6.negara>, accessed on 4 October 2021.

<sup>4</sup> The South China Sea Arbitration Award Paragraf 200

<sup>5</sup> The South China Sea Arbitration Award Paragraf 28.

- a. China has no history rights in the LCS dance and under the 1982 Sea Law Convention nine dash line concept is declared to have no legal basis  
*“the Tribunal concludes that, as between the Philippines and China, China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein”.*<sup>6</sup>
- b. There is nothing in the Spratly Islands that gives China the exclusive Economic Zone right  
*“The Tribunal also concludes that none of the high-tide features in the Spratly Islands are capable of sustaining human habitation or an economic life of their own within the meaning of those terms in Article 121(3) of the Convention. All of the high-tide features in the Spratly Islands are therefore legally rocks for purposes of Article 121(3) and do not generate entitlements to an exclusive economic zone or continental shelf. There is, accordingly, no possible entitlement by China to any maritime zone in the area of either Mischief Reef or Second Thomas Shoal”.*<sup>7</sup>
- c. China has interfered with Filipino traditional rights to catch fish, especially in Scarborough Shoal  
*“the Tribunal finds that China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented Filipino fishermen from engaging in traditional fishing at Scarborough Shoal. The Tribunal records that this decision is entirely without prejudice to the question of sovereignty over Scarborough Shoal”.*<sup>8</sup>
- d. China's oil exploration near Reed Bank violates the sovereignty of the Philippines  
*“the Tribunal finds that China has, through the operation of its marine surveillance vessels with respect to M/V Veritas Voyager on 1 to 2 March 2011 breached Article 77 of the Convention with respect to the Philippines’ sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank”.*<sup>9</sup>
- e. China destroys the ecosystems in the Spartly Island with overfishing and artificial islands creating  
*“the Tribunal finds that China has, through its toleration and protection of, and failure to prevent Chinese fishing vessels engaging in harmful harvesting activities of endangered species at Scarborough*

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<sup>6</sup> The South China Sea Arbitration Award Paragraph 278.

<sup>7</sup> The South China Sea Arbitration Award Paragraph 646.

<sup>8</sup> The South China Sea Arbitration Award Paragraph 814.

<sup>9</sup> The South China Sea Arbitration Award Paragraph 716.

*Shoal, Second Thomas Shoal and other features in the Spratly Islands, breached Articles 192 and 194(5) of the Convention*".<sup>10</sup>

- f. China's actions have aggravated the conflict with Philippines  
"the Tribunal finds that China has in the course of these proceedings aggravated and extended the disputes between the Parties through its dredging, artificial island-building, and construction activities. In particular, while these proceedings were ongoing:
- 1) China has aggravated the Parties' dispute concerning their respective rights and entitlements in the area of Mischief Reef by building a large artificial island on a low-tide elevation located in the exclusive economic zone of the Philippines.
  - 2) China has aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef by inflicting permanent, irreparable harm to the coral reef habitat of that feature.
  - 3) China has extended the Parties' dispute concerning the protection and preservation of the marine environment by commencing large-scale island-building and construction works at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef.
  - 4) China has aggravated the Parties' dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones by permanently destroying evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef".<sup>11</sup>

Of the three primary lawsuit material above, on July 12, 2016, the PCA issued a decision related to the dispute between the Philippines and China on the SCS, one of which clarified issues that had been considered ambiguous in the vortex of the SCS conflict that:<sup>12</sup>

*"The Tribunal concludes that, as between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein".*

In essence, the PCA clarifying Chinese claims on SCS using 9DL is contrary to the UNCLOS. One day after the PCA issued the verdict, the Chinese said that they did not accept and would not recognize the decision of the PCA. The Chinese Ministry of Foreign Affairs said that the decision had no binding power so that China would not

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<sup>10</sup> The South China Sea Arbitration Award Paragraph 992.

<sup>11</sup> The South China Sea Arbitration Award Paragraph 1181.

<sup>12</sup> The South China Sea Arbitration Award Paragraf 278.

accept or recognize the decision. The statements issued by China regarding the PCA decision are:<sup>13</sup>

*“The ruling is null and void with no binding force. It will in no way affect China's territorial sovereignty and maritime rights and interests in the South China Sea. We oppose and refuse to accept any proposal or action based on the ruling. China will continue to safeguard territorial sovereignty and maritime rights and interests, maintain peace and stability in the South China Sea, and endeavour to peacefully resolve relevant disputes in the South China Sea with parties directly concerned through negotiation and consultation on the basis of respecting historical facts and in accordance with international law”*

China's rejection of the PCA verdict is not just words. It was proven that at least in 2018 (2 years after the PCA verdict was issued), China was still carrying out aggressive activities on the SCS, such as increasing its military activities in the Paracel Islands and the Spratly Islands by installing military devices to scramble radio messages in the region.<sup>14</sup> Besides, in March 2018, dozens of Chinese Navy ships carried out exercises involving large-powered aircraft carriers off the coast of Hainan on SCS, there were at least 40 Chinese ships and submarines flanking the Liaoning aircraft carrier in the exercise.<sup>15</sup> China's aggressive actions certainly have a domino effect, including the actions of the United States (US) conducting patrols on the SCS by sending the aircraft carrier, Theodore Roosevelt<sup>16</sup>; Japan conducts war training by activating its first marine unit since World War II, the Amphibious Rapid Deployment Brigade to deter Chinese ambitions as they expand their dominance in the SCS.<sup>17</sup>

The reluctance of China to comply with the verdict of the PCA and continue aggressiveness in the SCS region, makes the domino effect can disrupt stability in the SCS region. As a regional organization, of course, the Association of Southeast Asian Nations (ASEAN) is responsible for sustaining and maintaining the stability of regional security in Southeast Asia. Several ASEAN member countries feel the impact of instability in the SCS region, including the Philippines, Vietnam, Malaysia, Thailand, and even Indonesia. Therefore, this paper intends to see the role of ASEAN in resolving disputes in the SCS region.

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<sup>13</sup> Foreign Ministry Spokesperson Lu Kang's Remarks on Statement by Spokesperson of US State Department on South China Sea Arbitration Ruling, [http://www.fmprc.gov.cn/nanhai/eng/fyrbt\\_1/t1380409.htm](http://www.fmprc.gov.cn/nanhai/eng/fyrbt_1/t1380409.htm), accessed on 19 November 2021.

<sup>14</sup> China Tingkatkan Aktivitas Militer di Laut China Selatan, <https://www.voaindonesia.com/a/china-tingkatkan-aktivitas-militer-di-laut-china-selatan/4340113.html>, accessed on 12 April 2021.

<sup>15</sup> Unjuk Kekuatan, Puluhan Kapal Perang Tiongkok Berlayar di Laut China Selatan, <https://news.okezone.com/read/2018/03/28/18/1879253/unjuk-kekuatan-puluhan-kapal-perang-tiongkok-berlayar-di-laut-china-selatan>, accessed on 12 April 2021.

<sup>16</sup> China Latihan Besar di LCS, AS Tak Mau Kalah, <https://www.cnnindonesia.com/internasional/20180411160006-113-290079/china-latihan-besar-di-lcs-as-tak-mau-kalah>, accessed on 12 April 2021.

<sup>17</sup> Tak Gentar dengan Sikap Agresif Tiongkok di Laut China Selatan, Jepang Aktifkan Lagi Unit Marinirnya, <http://www.tribunnews.com/internasional/2018/04/09/tak-gentar-dengan-sikap-agresif-tiongkok-di-laut-china-selatan-jepang-aktifkan-lagi-unit-marinirnya>, accessed on 12 April 2021.

This article uses a type of normative legal research and statute approach. Normative juridical is a research conducted by examining library materials or secondary data as the basic material to be investigated by conducting the search on the rules and the literature related to the issues.<sup>18</sup> This research is descriptive analytical. The analytical descriptive means to describe as it is to then analyse the data according to the relevant rules.<sup>19</sup> Sources of legal materials that the author use are primary legal materials derived from treaty and scientific journal about international law of the sea. Secondary legal materials which become supporting materials such as books used which are compiled with literature study techniques and analyzed and presented with descriptive techniques.

## II. DISCUSSION

### A. Geographical Location and Economic Potential of the South China Sea

Geographically, SCS has a strategic meaning both in terms of shipping traffic and have an area bordering to Malaysia, Singapore, Thailand, and Vietnam. SCS is also known as the second busiest sea freight shipping route in the world. Every year, more than half of the world's ship traffic goes through the Malacca Strait, Sunda Strait and Lombok Strait to China, Japan, Taiwan, and South Korea.<sup>20</sup> There are numerous islands, islets, rocks, reefs, and banks which are scattered in the SCS. However, no exact number of these features is available since many of these features are not always above sea level. Between 1946 and 1947, the SCS contains 127 inhabited islets, shoals, corals reefs, banks, cays and rocks. Other research states that there are more than 200 islets, rocks and reefs in this area. Nevertheless, it is generally agreed that most of these features are not suitable for human habitation but they are of vital economic, strategic, political and legal importance. These features are grouped into four mid-ocean groups of islands, namely: the Pratas Islands, the Paracel Islands; the Spratly Islands, and Macclesfield Bank.<sup>21</sup>

Many states are currently competing in controlling the sea because sea lanes are currently a significant factor in global trade. It was noted that the economic potential generated from trade that utilizes sea lanes is about 5.3 trillion US dollars. Therefore many countries today are developing their military strength so that they can increase their influence in a watershed.<sup>22</sup> Therefore it is inevitable that the oceans will become an essential venue for international political, economic, and military struggles and essential goals in the struggle for the interests of each nation. Specifically in SCS, because the SCS problem concerns the issue of territorial claims. Then the

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<sup>18</sup>Soerjono Soekanto and Sri Mamuji, *Normative Law Research A Brief Review*, Jakarta: Raja Grafindo Pustaka, 2006, p. 13.

<sup>19</sup> *Ibid*, p. 50.

<sup>20</sup> Muhammad Rafi Darajati, Huala Adolf, dan Idris, "Putusan Sengketa Laut China Selatan Serta Implikasi Hukumnya Terhadap Negara Disekitar Kawasan Tersebut", *Jurnal Hukum & Pembangunan*, Vol. 48 No. 1 (2018), p. 34.

<sup>21</sup>Dong Manh Ngunyen, "Settlement Of Disputes Under The 1982 United Nations Convention On The Law Of The Sea: The Case Of The South China Sea Dispute", *University of Queensland Law Journal*, Vol. 25 No. 1, (2006), p. 149.

<sup>22</sup> Ryan Mitchell, "An International Commission Of Inquiry For The South China Sea?: Defining The Law Of Sovereignty To Determine The Chance For Peace", *49 Vand. J. Transnat'l L.* 749, (May 2016), p. 8.

defeat in defending this area will cause domestic problems, so it is deemed necessary by claimant states to defend it by the interpretations and views of each for the sovereignty of the state.<sup>23</sup>

If mapped, the conflicts that occur in SCS are closely related to the political, economic, and defense interests of claimant states. Politically, controlling most or all of SCS will provide high political bargaining power for those who control it. This will also have economic implications because SCS is rich in oil and gas content, which, if exploited, will provide significant economic benefits. SCS is one of the most fishing areas in the world and is considered by Chinese and Vietnamese fishermen as a traditional fishing zone. The total catch of tuna and shrimp in the SCS region is one of the largest in the world. The University of British Columbia's Fisheries Center noted that the estimated catches of fish in SCS had increased from 4.7 million tons in 1994 to 5.6 million tons in 2003. Other sources state that each year the yellowfin tuna catch reaches 50 million dollars. Other types of fish found in these waters include mackerel, sardines, red snappers, anchovies, and round scads.<sup>24</sup>

The overall wealth of natural resources in SCS provides a compelling reason why states such as China and even the United States often carry out policies that can disrupt peace and security in the region. SCS has a wealth of them, there are 213 billion barrels of oil reserves (10 times more than the United States oil reserves), and there is natural gas which is the same amount as natural gas reserves owned by Qatar. Estimates of the oil content in the SCS region are quite diverse. China is very active in claiming the SCS region because it once issued an estimated oil content in the SCS region of 213 billion barrels, while the United States estimates the oil content in the SCS as much as 28 billion barrels. Like petroleum, the natural gas content in the SCS region is also diverse with extraordinary numbers.<sup>25</sup> Full control over most of the SCS area is a way for a state to strengthen its position so that it becomes a vast country due to access to the exploitation of oil, gas, fisheries, and other resources. This is possible because at least the country can claim around 40,000 km<sup>2</sup> of its EEZ territory so that the country has the right to exploit the natural resources in it.<sup>26</sup> While from the aspect of defense, control of part or all of the SCS region will provide a strategic advantage because the SCS is a link between the Straits of Malacca and the East Asian region.<sup>27</sup>

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<sup>23</sup> Ahmad Almaududy Amry, "Laut Tiongkok Selatan: Problematika dan Prospek Penyelesaian Masalah", *Jurnal Opinio Juris*, Vol. 16, (May - September 2014), p. 92.

<sup>24</sup> Charles Liu, "Chinese Sovereignty and Joint Development: A Pragmatic Solution to the Spratly Islands Disputes", *Loyola of Los Angeles International and Comparative Law Journal*, (September 1996), p. 2

<sup>25</sup> S.M. Noor, *Sengketa Laut Cina & Kepulauan Kuril*, Makassar: Pustaka Pena Press, 2015, p. 200.

<sup>26</sup> Andy Yee, "Maritime Territorial Disputes in East Asia: A Comparative Analysis of the South China Sea and the East China Sea", *Journal of Current Chinese Affairs*, 40, 2, (2011), p. 172.

<sup>27</sup> E. Estu Prabowo, "Kebijakan Dan Strategi Pertahanan Indonesia (Studi Kasus Konflik Di Laut Cina Selatan)", *Jurnal Ketahanan Nasional*, Nomor XIX (3), (December 2013), p. 119.

## B. Peaceful Settlement of Disputes

A dispute is a natural thing in every good relationship from the scope of individuals to between states, especially concerning a strategic region such as SCS. Disputes that arise a lot at the level of international relations are about territorial disputes. This can be understood because the territorial issue is related to the highest form of sovereignty, which is possessed by every sovereign country. As stated by Masako Ikegami that "Territorial disputes as a normative issue derive from the basic understanding that territory is a basic source of identity both for state and for the people who live there".<sup>28</sup> If a dispute has occurred, then international law plays a significant role in its resolution. The role of international law in international dispute resolution is to provide a way for the parties to the dispute to resolve their dispute according to international law. In theory, international law recognizes two ways of the resolution, namely the way of peaceful settlement and war. What is meant by international disputes is a situation when two countries have conflicting views regarding whether or not the obligations contained in the agreement are carried out.<sup>29</sup>

This paper will be focus on the peaceful resolution of international disputes. The obligation of states to resolve disputes peacefully is seen in Article 2 paragraph (3) of the UN Charter which reads: "*All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered*".<sup>30</sup> Obligations listed in this article are not seen as passive obligations. This obligation is fulfilled if the country concerned refrains from using violence or threats of violence. This article requires countries to actively and in good faith resolve their disputes peacefully in such a way that international peace, security and justice are not threatened.<sup>31</sup> Further arrangements regarding the obligation to resolve international disputes peacefully can be seen in Article 33 paragraph (1) of the UN Charter which reads:

*"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice"*.

The critical thing to note is that when a dispute has occurred, the parties must commit to resolving the dispute peacefully. The end of World War II, which later gave birth to the UN contained in its charter several mechanisms that could be used in dispute resolution. The UN desires to avoid the use of violence in resolving disputes. However, the UN Charter itself still provides space to use the act of using armed force. However, these actions are minimal and require complicated procedures. The choice of using violence, in the end, is not a popular choice at this time, because the adverse consequences do not only occur to the parties to the dispute.

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<sup>28</sup> Davina Oktivana, "Sengketa Kepemilikan Pulau Dokdo/Takeshima dalam Perspektif Hukum Internasional", dalam Idris (ed), *Peran Hukum Dalam Pembangunan Di Indonesia Kenyataan, Harapan, dan Tantangan*, Bandung: Remaja Rosdakarya, 2013, p. 388.

<sup>29</sup> Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, Jakarta: Sinar Grafika 2014, p. 3.

<sup>30</sup> Article 2 para (3) Charter Of The United Nations.

<sup>31</sup> Huala Adolf, *op.cit.*, p. 13.



### C. The role of ASEAN in the South China Sea dispute

The dispute on SCS is not only between China and the Philippines. The PCA verdict has also clarified the maritime features in SCS. Therefore, the peaceful settlement of disputes in the bilateral sphere between ASEAN countries that claim territories in the SCS will also be very influential in efforts to resolve the dynamics occurring in the SCS, especially with China. The role of ASEAN in the dynamics of the SCS means that there must be a unity of views and the need for a shared understanding internally to accommodate the different interests of the various countries that are members of ASEAN. While on an external level, especially from states such as the United States, Japan, and India, they must support politically and legally the role of ASEAN in solving this problem. As a regional organization, ASEAN is also responsible for sustaining and maintaining the stability of regional security in Southeast Asia. Therefore, ASEAN's position is apparent, namely aspiring peace to occur in the SCS region and to request countries with interest in the SCS region, especially ASEAN member countries, to respect international law.

ASEAN's attention to the issue of regional security stability has existed since the formulation of the ASEAN Political-Security Community (APSC), one of the essential pillars, which includes ASEAN's internal and external cooperation. APSC is intended to create ASEAN as a stable, harmonious region and also be a motor for peace both in the region and in the world. This can be seen in the ASEAN Political-Security Community Blueprint 2025, which is one of the points that regulate the Maintain the South China Sea as a sea of peace, prosperity, and cooperation. Within these points, there are 14 steps so that the goal of maintaining peace in SCS can be achieved. The steps are as follows:<sup>32</sup>

1. *Continue ASEAN current practice of close consultation among ASEAN Member States on matters pertaining to the South China Sea, including the Declaration on the Conduct of Parties in the South China Sea (DOC) and the Code of Conduct in the South China Sea (COC);*
2. *Intensify dialogue and consultation between ASEAN and China on matters pertaining to the South China Sea;*
3. *Ensure the full and effective implementation of the DOC, including the effective monitoring and assessment of its implementation;*
4. *Intensify negotiation between ASEAN and China for the early adoption of the COC and ensure its full and effective implementation;*
5. *Resolve territorial and jurisdictional disputes among parties concerned 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 recognised principles of international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS);*
6. *Exercise self-restraint by all parties 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;*

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<sup>32</sup> ASEAN Political-Security Community Blueprint 2025.

7. *Undertake possible joint cooperative activities, measures and projects as provided for in the DOC based on consensus among parties concerned, and which will lead to eventual realisation of the COC;*
8. *Explore or undertake cooperative activities among parties concerned on marine environmental protection;*
9. *Explore or undertake cooperative activities among parties concerned on marine scientific research and other agreed activities;*
10. *Ensure freedom of navigation in and overflight above the South China Sea in accordance with universally recognised principles of international law, including the 1982 UNCLOS;*
11. *Promote and enhance trust and confidence between ASEAN and China, including through the effective implementation of the agreed early harvest measures;*
12. *Combat transnational crimes, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms;*
13. *Pursue further confidence building and preventive diplomacy measures in the South China Sea, including developing SOP to prevent incidents such as unplanned encounters at sea; and*
14. *Promote sharing of best practices and lessons learnt regarding maritime dispute settlement and maritime cooperation.*

From the 14 steps above, APSC emphasizes on ensuring the implementation of the DOC by conducting intensive dialogue between the countries that are members of ASEAN and China. In the short term, the approach to be taken by ASEAN to deal with the problems in the SCS is to ease tensions and rebuild the confidence of countries with interest in SCS through diplomatic dialogue. DOC is a declaration signed in 2002, which contains 10 points of commitment from ASEAN member countries to comply with the principles of international law, respect freedom of navigation on SCS, resolve disputes peacefully, and refrain from actions that can increase the escalation of the conflict. DOC serves as a guideline for ASEAN member countries and China in maintaining peace and stability in disputed areas with a spirit of cooperation and mutual trust.

One tangible form of ASEAN's role as a forum in the latest developments is to hold a meeting of the ASEAN - China Joint Working Group on the Declaration on the Conduct of Parties in the South China Sea (JWG on DOC) in Bali on 27-28 February 2017. The meeting, which was attended by representatives from all ASEAN member states and China, has significant meaning because it is the first meeting in 2017 where JWG on DOC by its mandate to discuss DOC implementation and preparation of the COC framework.

The presence of China in the JWG on DOC, which from the beginning only wished to conduct a dispute resolution on SCS bilaterally opened up opportunities for ASEAN member countries, especially those interested in SCS, to continue to hold multilateral negotiations. This makes it easy for ASEAN countries to unite in formulating a concrete instrument that is mutually acceptable. However, ASEAN must internally

unite its views on this matter before facing China. It must be realized that the problems in SCS can have implications for security stability in Southeast Asia, which incidentally is the responsibility of ASEAN as a regional organization. Big problems in SCS mean more significant problems for ASEAN countries. Supposedly, the resolution of the SCS dispute is in the common interest of ASEAN countries.

The urgency of changing DOC towards COC is tremendous if ASEAN states want to resolve the SCS dispute peacefully. The preparation of a COC is crucial as well as strategic because the code of ethics will contain rules about how claimant countries act on SCS. Seeing the complexity of SCS disputes, peaceful resolution of SCS disputes still requires a long time, the existence of COC is essential for efforts to maintain the stability of regional security. The importance of this COC can be seen in the ASEAN Political-Security Community Blueprint 2025, explained that peace and stability in SCS would be achieved through full implementation of the DOC and continuous efforts to formulate and adopt a COC. Besides, the code of conduct will be more binding and will be able to encourage all parties to refrain from actions that can complicate matters in resolving SCS disputes. Without a clear COC, small incidents can provoke disputing countries to get involved in military actions.

ASEAN's role in making COC in the short term aims to minimize incidents that could lead to dangerous military actions. In the long term, COC can be an initial effort for more serious bilateral talks between ASEAN countries in dispute with China. The existence of a PCA verdict related to the SCS dispute can be used as a new opportunity for ASEAN to take actions that can build the confidence of the countries with interest in SCS in the context of dispute resolution. Countries around the South China Sea region should be able to consistently support the importance of law enforcement and peaceful means, not violence, in the quest for maritime dispute resolution. Due to the final and binding nature of the verdict, the intergovernmental community may encourage the Philippines and China to comply with the PCA decision.

A state either is in dispute or has no obligation to obey international law. Fostering state compliance with international law, there are two alternatives given by Chayes. First through an enforcement mechanism that implements many sanctions such as economic sanctions, sanctions membership up to unilateral sanctions. Against this first mechanism, Chayes concluded that the implementation of this mechanism was ineffective, costly, could lead to legitimacy problems and many failed. The second alternative Chayes offers is a management model, where compliance is not spurred by a variety of violence or sanctions but through a cooperative model of obedience, through the process of interaction in justification, discourse and persuasion. Sovereignty can no longer be interpreted freely from external intervention, but becomes a freedom to carry out international relations as an international society. Thus this new sovereignty consists not only of territorial control or government autonomy but also the recognition of status as a member of the community of nations. Obedience to internal law is no longer solely for fear of sanctions but rather on the fear of

diminishing status through the loss of reputation as a member of the community of good nations.<sup>33</sup>

Relations between ASEAN and China will suffer losses if tensions continue to occur between them. This is because China is ASEAN's biggest trading partner. It was noted that in 2015 the results of China's trade with ASEAN member countries reached 345 million US dollars.<sup>34</sup> Both parties will experience a high risk if the SCS becomes a battleground for the military, considering that this area is used as trade traffic of countries around the region. Economic relations between countries can no longer be seen as separate and distinct from competition regarding maritime claims. SCS disputes can affect the outcome of the trade cooperation if they continue to experience a deadlock in dispute resolution. This interdependence in the economic sector shows that countries with interest in SCS must be able to refrain from confronting one another militarily for SCS. This dependency can be a means of building trust that ASEAN member countries can use to continue the process of resolving SCS disputes. This fact should also make China see ASEAN as part of dispute resolution on the SCS rather than as an obstacle.

### III. CONCLUSION

It is inevitable that the role of ASEAN is one of the solutions for the resolution of SCS dispute, it is caused by many ASEAN member countries with an interest in the SCS dispute and the stability of the security of the Southeast Asian region are also the responsibility of ASEAN. The way that ASEAN can do now is as a facilitator and mediator by creating a COC which in the short term aims to minimize incidents that can lead to dangerous military actions. In the long term, this COC can be an initial effort for more serious bilateral talks between ASEAN countries in dispute with China.

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<sup>33</sup> Sefriani, "International Society's Obedience to International Law in Perspective of Philosophy Law ", *Jurnal Hukum* No. 3 p. 18 (Juli 2011), p. 417.

<sup>34</sup> ASEAN, *ASEAN Community in Figures (ACIF) 2016*, Jakarta: The ASEAN Secretariat, 2016, p. 16.

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