

From Declarations to Negotiations: ASEAN's Role in Managing the South China Sea Dispute

Vo Xuan **Vinh***

Institute for Southeast Asian Studies, Vietnam Academy of Social Sciences

Nguyen Tuan **Binh****

University of Education, Hue University

Tran Xuan **Hiep*****

University of Science and Education – The University of Da Nang

Abstract

In 2023 and 2024, tensions in the South China Sea (SCS) escalated among some claimant states, especially between the People's Republic of China and the Philippines over the Shoals of Scarborough, Second Thomas, and Sabina. Having been a stakeholder in the disputes for decades, the Association of Southeast Asian Nations (ASEAN) released the *Foreign Ministers' Statement on Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia* in December 2023, a timely response to the developments. ASEAN's participation in the South China Sea disputes has been reflected in several ways but mostly through diplomatic documents and communications. The article examines the regional bloc's participation in the maritime disputes through its statements/declarations on the SCS, and chairman's statements from ASEAN summits and summits with dialogue partners and the United Nations. ASEAN member states' efforts in engaging with China in negotiations on concluding a Code of Conduct in the SCS and the challenges faced by ASEAN in dealing the disputes will also be clarified. Although ASEAN's participation in the SCS disputes have been mostly reflected in its Chairman's Statements, it can be recognized as continuous collective efforts of a regional mechanism in dealing with a common but critical challenge in the Indo-Pacific region.

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

1. Introduction

The disputes in the South China Sea (SCS) have been ongoing for decades but have become more heated and complicated since China used force to attack Vietnamese forces in the Spratly Islands in 1988, and China signed a contract with a US company to explore oil and gas located on Vietnam's continental shelf and Exclusive Economic Zone (EEZ) in May 1992. In 2009, China formally claimed sovereignty over about 80 percent of the SCS (Mastro, 2021) when it submitted the nine-dash line map to the United Nations (UN). Tensions escalated when the Scarborough Shoal incident occurred between China and the Philippines in 2012, leading to the latter's filing of the case with the Permanent Court of Arbitration (PCA), which was established under the Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Although the PCA Ruling on 12 July 2016 states that 'China's claims to sovereign rights jurisdiction, and to "historic rights", with respect to the maritime areas of the South China Sea encompassed by the so-called "nine-dash line" are contrary to the Convention' (Permanent Court of Arbitration, 2016), tensions in the disputed waters have not cooled down. In recent years, there have been tensions between the Philippines and China over the Scarborough Shoal, the Second Thomas Shoal, and Sabina Shoal. Various efforts have been undertaken to cool tensions and mitigate disputes among the claimant states, including those by ASEAN. ASEAN serves as the most important forum for raising and discussing the issues across its platforms and mechanisms. Four out of six claimants in the SCS are ASEAN member states; thus, despite differing views, ASEAN has collectively undertaken actions to prevent disputes and conflicts in one of the busiest trade routes in the world.

The 1967 Bangkok Declaration, which established ASEAN, does not explicitly mention working together to resolve security challenges. However, the changes in the security environment in the Southeast Asian region have forced ASEAN to pay attention to security challenges, including non-traditional security such as human security since the late 1980s. The collapse of the Soviet Union in 1991 and the US withdrawal of bases in Southeast Asia in the early 1990s created a 'power vacuum' situation in the region. In 1988, China used force to invade a number of features under Vietnam's control in the Spratlys. Subsequently, in 1992, the China National Offshore Oil Corporation (CNOOC) and Crestone Energy entered a cooperation contract for the joint exploration of oil block located in Vietnam's continental shelf and EEZ. Those events left ASEAN countries with a sense of insecurity. From pursuing 'regional solidarity

and cooperation under all circumstances, especially whenever pressures and tensions of any kind, arising from within the region or from without, challenge the capacity, resourcefulness, and goodwill of the ASEAN nations' (ASEAN, 2012c) as stated in the Manila Declaration in December 1987, ASEAN shifted 'towards a higher plane of political and economic cooperation to secure regional peace and prosperity' (ASEAN, 1992) in the Singapore Declaration of 1992. In this context, ASEAN as a bloc started to engage in the SCS disputes with the issuance of a declaration on the SCS in July 1992.

Because AMS were mindful to be 'bound by geography, common objectives and shared destiny' (ASEAN, 2008: 1), they have a protracted process of involvement in the SCS dispute. ASEAN - act as 'the primary driving force' of the region (ARF, 1995) at the second ASEAN Regional Forum (ARF) held in August 1995, 'a forum for open dialogue and consultation on regional political and security issues, to discuss and reconcile the differing views between ARF participants in order to reduce the risk to security' (ARF, 1995). Then, at the fourth ASEAN Summit held in Bangkok in December 1995, ASEAN itself states that it 'shall seek an early, peaceful resolution of the South China Sea dispute and shall continue to explore ways and means to prevent conflict and enhance cooperation in the South China Sea' (ASEAN, 1995). ASEAN's involvement in the SCS dispute was institutionalised by the 2008 ASEAN Charter, 'the legal and institutional framework for ASEAN' (ASEAN, 2008: 3). The Charter states that ASEAN 'shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation' (ASEAN, 2008: 23). As an intergovernmental organization (ASEAN, 2008: 8), ASEAN's decision-making works based on consultation and consensus as the basic principle (ASEAN, 2008: 22). ASEAN Summit is 'the supreme policy-making body of ASEAN' (ASEAN, 2008: 10). In addition, some ASEAN statements/declarations have been released by the ASEAN Foreign Ministers Meetings whose role is to, as written in ASEAN Charter, 'undertake other tasks provided for in (the) Charter or such other functions as may be assigned by the ASEAN Summit' (ASEAN, 2008: 12).

The article examines ASEAN's role in the SCS dispute by (1) analyzing the statements/declarations, Chairman's statements, joint statements with dialogue partners, and (2) discussing the COC negotiations with China. After the 1988 incident, ASEAN was concerned about instability and insecurity in the SCS, and before the 1992 ASEAN Declaration on the South China Sea was released, ASEAN organized workshops on the SCS held in Bali in 1990 and Bandung in 1991 (ASEAN, 1992). However, the inclusion of SCS disputes in the

1995 ASEAN Chairman's statement and the subsequent chairman's statement has rendered such workshops unnecessary.

2. ASEAN Statements/Declarations on the South China Sea

When the tension in the SCS arose in the late 1980s, ASEAN as a bloc officially participated in efforts of preventing maritime conflicts in the region. 'Perhaps responding to the growing assertiveness of China's territorial claims in the South China Sea, and certainly to the growing potential for conflict' (Severino, 2010: 41), especially after Chinese used force to attack on Vietnamese forces in the Spratlys in 1988, and China's conclusion a contract with US-based Crestone Energy to explore for oil and gas in a block that included Vanguard Bank, on Vietnam's continental shelf and EEZ, and 600 miles from China's Hainan island, in May 1992, the ASEAN foreign ministers adopted the ASEAN Declaration on the South China Sea in July 1992. The Declaration emphasizes 'the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force', at the same time urges 'all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes.' In particular, in the Declaration, the Foreign Ministers of the AMS at that time commended that they applied 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, (Centre for International Law). By releasing the 1992 ASEAN Declaration on the South China Sea, ASEAN officially engaged in the SCS dispute as a regional organization. After Chinese occupation by force of Mischief Reef which was then under the Philippine control (Tran, 2020) in February 1995, the Statement of the Recent Developments in the South China Sea was released by the ASEAN Foreign Ministers in March 1992. In the statement, ASEAN Foreign Ministers express their 'serious concern over recent developments which affect peace and stability in the South China Sea'. They '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.' The Mischief incident was directly named in the statement: 'We specifically call for the early resolution of the problems caused by recent developments in Mischief Reef.' As a grouping, ASEAN also exerted pressure on China in response to the latter's use of force and non-transparent actions in the South China Sea.

'At the first meeting of ASEAN and Chinese senior foreign-ministry officials, which happened to have been scheduled to take place in Hangzhou in April 1995, the ASEAN delegations pressed China on South China Sea issues, including the significance of the nine bars on Chinese maps, which dangerously skirt the gas-rich Natuna group of islands of non-claimant Indonesia, as well as on China's presence on Mischief Reef' (Severino, 2010: 43).

Despite the Philippines' ongoing lawsuit against China with the PCA, China conducted 'rapid and large-scale land reclamation works in seven features in the Spratlys' (Japan Ministry of Defense, 2021) since the end of 2013. China also increased activities infiltrating into the EEZs and continental shelves of some other claimants in the SCS, including those of Vietnam. From May to July 2014, Beijing deployed the Haiyang Shiyou 981 oil rig sitting about 70 miles inside the EEZ that extends 200 miles from the Vietnamese shore (Taylor, 2014). In response to the Chinese activities, the Foreign Ministers of ASEAN countries while attending a meeting in Nay Pyi Taw, Myanmar on 10 May 2014 released ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea in which, the ministers 'expressed their serious concerns over the on-going developments in the South China Sea, which have increased tensions in the area'. They 'urged all parties concerned, in accordance with the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS)'. They also 'called on all parties to the Declaration on the Conduct of Parties in the South China Sea (DOC) to undertake full and effective implementation of the DOC in order to create an environment of mutual trust and confidence' and 'emphasized the need for expeditiously working towards an early conclusion of the Code of Conduct in the South China Sea (COC)' (ASEAN, 2014a).

Recently, amid Chinese and the Philippine tension over the Scarborough Shoal, and Second Thomas Shoal in the SCS, ASEAN Foreign Ministers released a Statement on Maintaining and Promoting Stability in the Maritime Sphere in Southeast Asia on 30 December 2023. In the statement, the Foreign Ministers expressed their 'concern the recent developments in the South China Sea that may undermine peace, security, and stability in the region', 'reaffirmed the need to avoid actions that may further complicate the situation and pursue peaceful resolution of disputes in accordance with the universally recognized principles of international law, including the 1982 UNCLOS'. They were committed to working towards the early conclusion of an effective and substantive COC that is in accordance with international law, including the

1982 UNCLOS. In the statement, the Ministers reaffirmed their unity, solidarity, and shared commitment to maintaining and further strengthening stability in the maritime sphere (ASEAN, 2023a).

ASEAN as a grouping first became involved in SCS dispute in July 1992 (Thayer, 2017) with the 1992 ASEAN Declaration on the South China Sea and other statements which have timely responded to the developments on the ground. The moves reflect ASEAN's concern over China's actions in the SCS. In their statements, ASEAN countries have also proposed parties concerned about exercising restraint, proposing resolutions of disputes, and requesting parties concerned to undertake full and effective implementation of the DOC, and establishing a code of international conduct over the SCS (the 1992 Declaration) or working towards an early conclusion of the COC (ASEAN, 2014a; ASEAN, 2023a).

3. The South China Sea Dispute in ASEAN Chairman's Statement

ASEAN Summit, as stated in the 2008 Charter, is 'the supreme policy-making body of ASEAN' (ASEAN, 2008: 10). ASEAN Chairmanship prioritizes the issues of its rotation-chair's agenda (Farhana, 2022). Chairman's statements released at the end of the summits reflect AMS' shared views over domestic, regional, and international issues, among others. Along with releasing specific statements/declarations, ASEAN has included the SCS dispute in its chairman's statements at summits. As mentioned above, the SCS issue was first mentioned by ASEAN through the workshops held in Bali in 1990, and Bandung in 1991, respectively. However, in the Bangkok Summit Declaration of 1995, ASEAN officially began to include the content of the dispute in its chairman's statement. The Bangkok Summit Declaration of 1995 writes:

'ASEAN shall seek an early, peaceful resolution of the South China Sea dispute and shall continue to explore ways and means to prevent conflict and enhance cooperation in the South China Sea consistent with the provisions of the TAC and the ASEAN Declaration on the South China Sea of 1992 as well as international law including the United Nations Convention on the Law of the Sea' (ASEAN, 1995).

Then, in the press release of the ASEAN's informal summit in 1996, ASEAN continued to reiterate the content of the SCS dispute as it did in the previous year. However, the SCS dispute did not appear in the Press Statement of the

2nd ASEAN Informal Meeting of Heads of State/Government of the Member States of ASEAN held in Kuala Lumpur, Malaysia in December 1997 (ASEAN, 2012d).

In 1998, when Vietnam assumed the rotating Chairmanship of ASEAN, the content of the SCS dispute was re-included in the chairman's statements of the summit. In the Hanoi Declaration of 1998, the collocation of dispute settlement mechanisms was changed in comparison with the previous ones. Instead of being placed last as in the Bangkok Declaration of 1995 and the Press Statement of the First Informal Summit in 1996, the international law, including the 1982 UNCLOS is put first and the spirit of the 1992 ASEAN Declaration on the South China Sea comes second (ASEAN, 2012b). From 2002 when the DOC was signed between ASEAN and China to the 12th ASEAN Summit held in the Philippines in January 2007, the ASEAN chairman's statements only revolved around the implementation of the DOC, no legal mechanisms for resolving the dispute were stated.

After being absent from the statements of the 13th, 14th, and 15th ASEAN Summits respectively, the SCS was re-introduced in the 16th ASEAN Chairman's Statement chaired by Vietnam in April 2010 when the statement mentions about the enhancement of utilizing ASEAN's existing tools and mechanisms such as, the DOC (ASEAN, 2010), among others. In an especially important development, the Chairman's Statement of the 17th ASEAN Summit held the same year in Vietnam offers a 10-line paragraph mentioning about the SCS. In the statement of the summit, ASEAN leaders reaffirmed the importance of the DOC, which embodies the collective commitment to promoting peace and stability in this area through dialogue and cooperation and peaceful resolution of disputes in accordance with universally agreed principles of international law including the 1982 UNCLOS and other relevant international maritime laws. The leaders also stressed the need to intensify efforts to ensure the effective implementation of the DOC and move toward the conclusion of a regional COC (ERIA, 2010). Since then, the ASEAN Chairman's statements mentioning the SCS dispute all have reaffirmed the need to pursue peaceful resolution of disputes in accordance with the universally recognized principles of international law, including the 1982 UNCLOS. Also, from this summit onwards, the implementation of the DOC and working towards a COC continued to be included in ASEAN's chairman statements, with the exception of the 21st summit commenced in Cambodia (ASEAN, 2012a) in November 2012, the incident occurred after ASEAN failed to

issue a joint communiqué for the first time at the ASEAN Foreign Ministers' Meeting held July of the same year due to disagreements over the SCS issue.

China's reclamation and militarization of features in the Spratlys since the end of 2013, and especially Chinese Haiyang Shiyou 981 oil rig deep and total placement in the continental shelf and EEZ of 200 nautical miles from the Vietnamese coast, a new content was added in the SCS paragraph(s) of the chairman's statements of ASEAN summits thereafter, namely freedom of navigation and overflight. Freedom of navigation and overflight over the SCS was first mentioned in ASEAN Foreign Ministers' Statement on the Current Developments in the South China Sea released on 10 May 2014 at AMS Ministers Meeting held in Nay Pyi Taw, Myanmar. In the statement, the Foreign Ministers 'reaffirmed the importance of maintaining peace and stability, maritime security, freedom of navigation in and over-flight above the South China Sea' (ASEAN, 2014a). Just one day later, AMS issued the Chairman' Statement of the 24th ASEAN Summit, in which leaders state that they 'reaffirmed the importance of maintaining peace and stability, maritime security, freedom of navigation in and over-flight above the South China Sea' (ASEAN, 2014f). Since then, this content has been included in all Chairman Statements of ASEAN Summits if the statements mention the SCS dispute.

Similarly, since the 24th ASEAN Summit, ASEAN's Chairman Statement has just begun to contain content expressing the concerns of the ASEAN leader's situation or on-going developments in the SCS. In the Chairman's Statement of the 24th ASEAN Summit, AMS leaders 'expressed serious concerns over the on-going developments in the South China Sea' (ASEAN, 2014f). At the 26th ASEAN Summit held in 2015; the issue of land reclamation was also first included in the Chairman's Statement. In the statement, some leaders of ASEAN shared their serious concerns on the land reclamation being undertaken in the SCS, which has eroded trust and confidence and may undermine peace, security, and stability in the SCS (ASEAN, 2015a). Since China's militarization of some features in the Spratlys was publicised by Asia Maritime Transparency Initiative (AMTI) in 2014 (Asia Maritime Transparency Initiative), AMS began to share their concerns on the increased presence of military assets and the possibility of further militarization of outposts in the SCS (ASEAN, 2015b). From the 28th and 29th ASEAN's Summits held in Vientiane, Lao PDR in 2016, ASEAN countries started emphasizing the importance of non-militarization and self-restraint in the conduct of all activities in the SCS (ASEAN, 2016c). Land reclamation and the importance of non-militarization and self-restraint continue to be reaffirmed in ASEAN's next chairman statements.

Thus, in the contents included in the chairman's statements of its summits, ASEAN has closely updated developments on the ground of the SCS dispute to present the grouping's viewpoint, from bringing international law to priority position in resolving the dispute to fully and effectively implementing the DOC, building a COC, expressing concerns over land reclamations and militarization actions, and promoting the importance of non-militarization in the SCS.

4. ASEAN's Role in the COC Negotiations with China

ASEAN involvement in the SCS dispute could also be seen from its efforts as a group in negotiating with China to conclude a COC. China, for its part, has had a "dual track" approach on the SCS issue. One track, China and ASEAN have worked together on the DOC and a prospective COC. The other track, it has involved the directly concerned parties working bilaterally to address their differences and finding a way forward on the SCS issue (Fook, 2024). The first codes of conduct in the SCS were adopted bilaterally between the Philippines and China, and the Philippines and Vietnam in 1995, and the proposal for a regional Code of Conduct was then endorsed at the 29th ASEAN Ministerial Meeting in Jakarta, Indonesia in the same year (Beckman and Vu, 2022: 348-349). In March 1999, under the chair of the Philippines, ASEAN assigned the Philippines and Vietnam to draft ASEAN's COC. The draft was presented to China during the 6th ARF Meeting in July 1999 (Le, 2019: 2). ASEAN and China concluded the first round of consultation on the Regional Code of Conduct in the South China Sea in Hua Hin, southern Thailand in March 2000. In the consultation, both sides 'exchanged their respective COC drafts in March 2000 and agreed to draw up a consolidated text (Thayer, 2018) and reaffirmed their desire to have the COC as a set of general guidelines for managing the disputes in the SCS (ASEAN, 2000). However, AMS and China 'could not reach agreement on four major issues: the geographic scope (inclusion of the Paracels), restrictions on construction on occupied and unoccupied features, military activities in waters adjacent to the Spratly islands, and whether or not fishermen found in disputed waters could be detained and arrested' (Thayer, 2018).

Therefore, 'pending the peaceful settlement of territorial and jurisdictional disputes' (ASEAN, 2002), ASEAN and China signed the DOC at the ASEAN Summit held in Phnom Penh, Cambodia in November 2002. In the declaration, the parties reaffirm their respect for and commitment to the

freedom of navigation in and over-flight above the SCS, 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 in accordance with universally recognized principles of international law, including the 1982 UNCLOS (ASEAN, 2002). By signing the DOC, China for the first time accepted a multilateral agreement on the SCS dispute (Buszynski, 2003: 343). It took two years of discussions before AMS and China reached an agreement on the terms of reference establishing the ASEAN-China Joint Working Group to Implement the DOC (JWG-DOC) (Thayer, 2018).

In the end of 2005, the conclusion of a COC was officially set out when ASEAN and China in the Chairman's Statement of the ninth ASEAN-China Summit agreed to 'look forward to the eventual conclusion of a regional code of conduct in the South China Sea' (ASEAN, 2005). However, while China 'vigorously resisted a binding COC with the ASEAN as it insisted that such an agreement should be reached through consensus with the AMS' (De Castro, 2020: 340), ASEAN could not adopt a common policy on the South China Sea dispute due to the regional organization was divided into two factions, the claimant and the non-claimant states (Thayer, 2014). As a result, until April 2013, ASEAN and China agreed to work toward the adoption of the COC based on consensus (ASEAN, 2013a). In September 2013, ASEAN and China commenced formal consultations on the COC at the 6th Senior Officials' Meeting on the Implementation of the DOC (SOM-DOC) and the 9th JWG-DOC in Suzhou, China (ASEAN, 2013b). In October of the same year, AMS and China agreed to continue to maintain the momentum of the regular official consultations and work towards the adoption of the COC as provided for by the DOC (ASEAN, 2013b).

Thanks to the efforts, mostly by the AMS, ASEAN and China at the 17th ASEAN-China Summit held in November 2014 in Myanmar voiced to support the adoption of the first list of commonalities on COC consultation as early harvest measures to promote and enhance trust and confidence in the region (ASEAN, 2014b). The 10th Senior Official Meeting on DOC held in Chengdu, China in October 2015, discussed and formulated two preliminary leaving documents, namely, the list of crucial and complex issues and the list of elements for the outline of a COC, and confirmed that the Second List of Commonalities of the COC consultation, the Term of Reference of the Eminent Persons Group (EPEG) and the aforementioned documents would be the main outcomes of the 2015's COC Consultation (Mission of the People's Republic of China to ASEAN, 2015).

In August 2017, the Foreign Ministers of AMS and China adopted the Framework of the COC, and at the 20th ASEAN-China Summit held in Singapore in November 2017, AMS and China announced a new step that they would officially commence substantive negotiations on the text of the COC (ASEAN, 2017c). In another step, AMS, and China at the 15th SOM-DOC in Changsha, China, on 27 June 2018 agreed on a Single Draft COC Negotiating Text (SDNT) (ASEAN, 2018e). At the 21st ASEAN-China Summit held in Singapore in November 2018, they noted that they looked forward to the completion of the first reading of the SDNT by 2019 (ASEAN, 2018a). As planned, ASEAN and China completed the first reading of the SDNT and commenced the second reading process of SDNT at the ASEAN Post Ministerial Conference (PMC) 10+1 Session with China on 31 July 2019 in Bangkok. They also expressed the aspiration to conclude the COC within a three-year timeline or earlier, as proposed by China (ASEAN, 2019b).

Despite the evolving COVID-19 pandemic, the second reading of SDNT was undertaken. In addition, AMS and China reached a new consensus on the legal framework of the COC when, in the Chairman's Statement of the 23rd ASEAN-China Summit which was chaired virtually on 12 November 2020 by Vietnam, they were 'encouraged by the progress of the substantive negotiations towards the early conclusion of an effective and substantive Code of COC in line with international law, including the 1982 UNCLOS' (ASEAN, 2020b). In another step, AMS, and China in 2021 reached a provisional agreement on the Preamble section and the progress of negotiations on the Objectives section under the General Provisions of the SDNT (ASEAN, 2021). In early 2023, a proposal to develop guidelines for accelerating the early conclusion of an effective and substantive COC was introduced (ASEAN, 2023e).

After efforts made, the second reading of the SDNT was completed at the 39th JWG-DOC which was convened in May 2023 in Ha Long, Vietnam. At the 39th JWG-DOC, the Guidelines for Accelerating the Early Conclusion of an Effective and Substantive COC was also finalised. The Guidelines was then endorsed ad referendum by the SOM-DOC and adopted by the PMC+1 Session with China in July 2023 (ASEAN, 2023b: 16). The 21st SOM-DOC held in Beijing on 26 October 2023 announced the official launch of the third reading of the text of the COC, and agreed to implement the guidelines for accelerating the conclusion of the COC as adopted by the ASEAN-China Foreign Ministers' Meeting in early 2023 (Ministry of Foreign Affairs of the People's Republic of China, 2023).

In sum, after more than 20 years since AMS and China concluded the first round of consultation on the COC in March 2000 in Hua Hin, Thailand and more than three years since the first reading of the SDNT was completed at the ASEAN PMC 10+1 Session with China on 31 July 2019 in Bangkok, the COC has not been concluded but ASEAN as a grouping has been making efforts to work closely with China to finalize the code.

5. The SCS Dispute in the Chairman's Statements on ASEAN-Dialogue Partners' Summits, and of ASEAN-UN Summits

To maintain its centrality, ASEAN in its Charter issued in 2008 states that, the purpose No.15 of ASEAN is to maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners (ASEAN, 2008). In other words, enhancing relations and cooperation with its external partners, especially dialogue partners significantly contribute to maintain and cement ASEAN's centrality. As a result, ASEAN and a number of its dialogue partners have shared their views on the SCS dispute in bilateral statements of their summits.

With China, right in the Joint Statement of the Meeting of Heads of State/Government of the AMS and the President of the People's Republic of China in Kuala Lumpur in December 1997, AMS and China agreed.

'... to resolve their differences or disputes through peaceful means, without resorting to the threat or use of force, the parties concerned agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law, including the 1982 UN Convention on the Law of the Sea' (ASEAN, 1997).

To date, besides China, AMS have regularly engaged with China in efforts to implement the DOC, moving towards concluding a COC to promote and enhance trust and confidence, and maintain peace and stability in the SCS. Moreover, the U.S. is the country outside the region that has the strongest involvement in the SCS dispute. One of the first documents showing ASEAN efforts to 'engage' the US in the dispute is the Joint Statement of the 4th ASEAN-U.S. Leaders' Meeting held in 2012. In the statement, ASEAN and the U.S. recognized the importance of the DOC and welcomed its implementation and looked forward to the early conclusion of a Regional COC (The White House, 2012). Since then, the SCS dispute appears in all summit's statements

between ASEAN and the US. When the SCS heated up due to Chinese placement of the oil rig in Vietnam's EEZ and continental shelf in 2014, the Chairman's statement of the second ASEAN-US Summit (November 2014) expressed their concerns over the situation in the SCS (ASEAN, 2014d).

In the context of Chinese land reclamation and militarization in the SCS, AMS and the US in their Joint Statement on the Strategic Partnership (2015) reaffirmed the importance of maintaining peace and stability, ensuring maritime security and safety, and freedom of navigation including in and over-flight above the SCS and the commitments to ensuring the resolution of disputes by peaceful means in accordance with universally recognized principles of international law, including the UNCLOS, and supported ASEAN-China on-going efforts to fully and effectively implement the DOC in its entirety, and to work toward the expeditious conclusion of an effective COC (ASEAN, 2015c). Importantly, the US was among the first ASEAN's dialogue partners that supported the legal framework that the COC belongs to since in the Chairman's Statement of the 6th ASEAN-China Summit held in Singapore in November 2018, AMS and the U.S. noted negotiations towards the early conclusion of an effective COC consistent with international law, including the 1982 UNCLOS (ASEAN, 2018c).

Japan is also an ASEAN's dialogue partner having active involvement in the SCS dispute, at least from bilateral statements between them. In the Chairman's Statement of the 16th ASEAN-Japan Summit held in Brunei Darussalam in October 2013, AMS and Japan just underscored the importance of maritime security, freedom of navigation, unimpeded commerce, and to ensure the resolution of disputes by peaceful means in accordance with universally recognized principles of international law, including the UNCLOS in Asia-Pacific region (ASEAN, 2013c). In the statement, the SCS was not directly named. It was at the 17th ASEAN-Japan summit held in Nay Pyi Taw, Myanmar in November 2014, AMS and Japan began to share common view on the SCS, including the importance of peaceful resolution of disputes and issues in accordance with universally recognized principles of international law, including UNCLOS, full and effective implementation of DOC, and called for continued substantive consultations for the early conclusion of the COC (ASEAN, 2014c). The Chairman's Statement of the 19th ASEAN-Japan Summit held in Laos in 2016 mentioned about 'the importance of non-militarization' (ASEAN, 2016b) in the SCS. The 'freedom of navigation in and over-flight above the South China Sea' was mentioned for the first time in the same summit (ASEAN, 2016b). Similar to the US, at the ASEAN-Japan Summit held in

Singapore in November 2018, AMS and Japan also noted negotiations towards the early conclusion of an effective COC consistent with international law, including the 1982 UNCLOS (ASEAN, 2018b).

In the case of India, the first bilateral document between ASEAN and India at summit level mentioning the SCS dispute is Chairman's Statement of the 14th ASEAN-India Summit held in September 2016 in Vientiane, Lao PDR. In the statement, AMS and India emphasized the importance of maintaining peace, security and stability, unimpeded commerce, freedom of navigation in and over-flight above the SCS, underscored the importance for the states concerned to resolve disputes through peaceful means in accordance with international law, including the 1982 UNCLOS. In the statement, India and AMS urged all parties to show utmost respect for the 1982 UNCLOS, which establishes the international legal order of seas and oceans (ASEAN, 2016a).

Importantly, India was the first ASEAN dialogue partner that urged AMS and China to conclude a COC consistent with the 1982 UNCLOS. In the Chairman's Statement of the 15th ASEAN-India Summit held in November 2017 in the Philippines, ASEAN and India urged the parties to conclude a substantive and effective COC consistent with universally recognised principles of international law and the 1982 UNCLOS. In the same statement, India and ASEAN also reaffirmed the importance of maintaining and promoting peace, security, stability, maritime safety and security, rules-based order and freedom of navigation in and over-flight above, and reaffirmed the need to enhance mutual trust and confidence, emphasized the importance of non-militarization and self-restraint in the conduct of all activities by claimants and all other states in the SCS (ASEAN, 2017a).

Regarding Australia, it was at the ASEAN-Australia Leaders' meeting celebrating the 40th Anniversary of ASEAN-Australia Dialogue Relations in 2014, this country and AMS were for the first time committed to promoting maritime cooperation, including freedom of navigation and overflight, marine environmental protection, unimpeded commerce, non-use of force or threat of use of force, and the peaceful resolution of disputes in accordance with universally recognized principles of international law, including the 1982 UNCLOS, and through the appropriate ASEAN mechanisms (ASEAN, 2014g). However, it was at the first ASEAN-Australia Summit held in Vientiane in Laos in 2016, the SCS dispute was explicitly mentioned for the first time. In the chairman's statement of the summit, AMS and Australia underlined the importance of maintaining peace, security and stability, freedom of navigation in and over-flight above the SCS underscored the importance for

the states concerned to resolve disputes through peaceful means in accordance with international law, including the 1982 UNCLOS, and emphasized the importance of non-militarization (ASEAN, 2016d). Similar to the U.S. and Japan, Australia and AMS in the ASEAN-Australia Informal Breakfast Summit held in Singapore in November 2018 for the first time mentioned about the conclusion of an effective COC consistent with international law, including the 1982 UNCLOS (ASEAN, 2018d).

Among ASEAN's first dialogue partners in Asia-Pacific, South Korea is the latest country to mention the SCS dispute in a bilateral summit statement. At the 17th ASEAN-South Korea Summit held in Manila, Philippines in January 2017, AMS and South Korea 'reiterate the importance of maintaining peace and security in the region, including freedom of navigation in and over-flight above the South China Sea' (ASEAN, 2017b). The conclusion of an effective COC consistent with international law, including the 1982 UNCLOS was first mentioned by ASEAN and ROK in the 21st ASEAN-South Korea Summit virtually chaired by Vietnam in October 2020 (ASEAN, 2020a). Emphasizing the importance of non-militarization in the SCS was stated for the first time between the two in the 24th ASEAN-South Korea Summit held in Jakarta in September 2023 (ASEAN, 2023d).

In the statements, including those between ASEAN and China, key issues in the SCS dispute such as the freedom of navigation in and over-flight in the SCS, resolving disputes through peaceful means in accordance with international law, including the 1982 UNCLOS, full and effective implementation of the DOC, and the early conclusion of an effective and substantive COC are mentioned. Adding the contents about the SCS dispute in ASEAN and its dialogue partners' bilateral statement further confirm ASEAN's participation as an organization of its members, and importantly, ASEAN's dialogue partners can raise their shared voices - the collective voices - with AMS about the dispute in regional forums. Engaging the UN, the largest international organization, in the SCS dispute is a major step in ASEAN's efforts to internationalize the dispute. It seems that after the activities of land reclamation and militarization of the SCS conducted by China since the end of 2013 was publicized, the UN has paid more attention to the dispute. At the 6th ASEAN-UN Summit held in Nay Pyi Taw in 2014, although ASEAN and UN did not explicitly mention about the SCS, they acknowledged the importance of implementing universally recognized principles of international law, including the 1982 UNCLOS (ASEAN, 2014e). However, at the ninth ASEAN-UN Summit held in the Philippines in November 2017, two sides dedicated a paragraph of

the chairman's statement to mention about the SCS. In the statement, they urged the parties to continue working towards the full and effective implementation of the DOC in its entirety and the early conclusion of an effective and substantive COC (ASEAN, 2017d). Contents such as the conclusion of an effective and substantive COC consistent with international law, including the 1982 UNCLOS, respecting the rights and interests of third parties, and the importance of upholding international law, including the 1982 UNCLOS are reflected in the Chairman's Statement of the 11th ASEAN-United Nations Summit held in Jakarta in September 2023 (ASEAN, 2023c).

6. Challenges

ASEAN has made efforts to get involved in the SCS dispute over the past three decades, but clearly, the organization has faced many challenges. There are efforts that have not achieved the desired results. Regarding efforts to issue statements reflecting the developments on the ground in the SCS, AMS withdrew a strongly-worded statement that expressed the region's deep concerns over tension in the SCS in a meeting in the Chinese city of Kunming between foreign ministers from ASEAN and China less than a month before the PCA ruling (Latiff, 2016). In July 2016, at the ASEAN Foreign Ministers' Conference held in Vientiane, Laos in July 2016, Cambodia also voiced that it would block any mention of the PCA ruling in the AMM statement (Mogato, Martina, and Blanchard, 2016). Before that, in 2012, ASEAN could not release AMM joint communiqué due to disagreement of some AMS over adding the Scarborough Shoal incident between the Philippines and China (Bower, 2012) in the statement.

There are summits where ASEAN did not include the SCS dispute in its chairman's statements. In fact, after ASEAN and China signed the DOC in 2002, measures to handle disputes in the SCS were not mentioned in many ASEAN's chairman statements of the summits. Even in the three ASEAN's summits held in 2007, 2008 and 2009 respectively, the SCS dispute is not stated in the chairman's statements.

In addition, in the context of China's increasing influence on ASEAN, some ASEAN's statements have begun to show division among its member states when they mentioned the SCS dispute. After the release of the Statement of ASEAN Foreign Ministers on the Current Development in the SCS in Myanmar in 2014, ASEAN's collective spirit was affected, at least through the bloc's documents. Although still expressing the association's general views, the

solidarity of ASEAN was challenged since phrases such as 'some leaders' and 'some ministers' appear when referring to the SCS issue in a number of ASEAN documents. Chairman's Statement of the 27th ASEAN Summit (Kuala Lumpur, 21 November 2015) states that: 'We shared the concerns expressed by some Leaders on the increased presence of military assets and the possibility of further militarization of outposts in the South China Sea' (ASEAN, 2015b). In the ASEAN summit commenced in Indonesia in September 2023, the Chairman's Statement reads:

'We discussed the situation in the South China Sea, during which concerns were expressed by some ASEAN Member States on the land reclamations, activities, serious incidents in the area, including actions that put the safety of all persons at risk, damage to the marine environment, which have eroded trust and confidence, increased tensions, and may undermine peace, security, and stability in the region' (ASEAN, 2023f).

Regarding the COC negotiations between ASEAN and China, the process began in the late 1990s but after many rounds of reading, the parties have only reached agreement on one of major differences: building a COC in accordance with the 1982 UNCLOS while other differences such as the scope of COC, the possibility of participation of countries outside the region in the SCS, among others, have not been reached. In addition to China's unwillingness to build a legally binding COC, non-claimant countries themselves are not keen on strongly demanding China to do so. Perhaps because of the consensus principle that ASEAN and China reached before (as mentioned above) and equally important is the consensus principle of ASEAN as stipulated in the Charter, if an ASEAN member country as non-claimant considers economic benefits with China, it is highly likely that they will avoid putting pressure on China in building a COC.

Regarding the Chairman's Statements of ASEAN-Dialogue Partners' Summits, however, depending on which country is the ASEAN chair, one sensitive issue namely militarization of the SCS is included in or excluded out of the statements. For examples, when Cambodia and Laos chaired ASEAN in 2022 and 2024 respectively, ASEAN-China Chairman's Statements do not state about the importance of non-militarization (ASEAN, 2022a; ASEAN, 2024) as the statements released in 2020 (Vietnam's Chairmanship) and 2023 (Indonesia's Chairmanship) did respectively (ASEAN, 2020b; ASEAN, 2023g). Likely, when mentioning the serious concerns on the land reclamations, militarization,

activities, and serious incidents in the SCS, the 26th ASEAN-Japan Chairman's Statement released in Cambodia in 2022 emphasized that the concerns were expressed by some AMS (ASEAN, 2022b) only. However, the 27th ASEAN-Japan Chairman's Statement released in Indonesia in 2023 states that 'We emphasized the importance of non-militarization' (ASEAN, 2023h). In another example, the Chairman's Statement of the 10th ASEAN-UN Summit held in Thailand in 2019 did not mention the dispute (ASEAN, 2019a).

There are reasons of the challenges, but perhaps the biggest one is that China has not changed its claim, which accounts for more than 80 per cent of the SCS in the orbit of the nine-dash line map which was rejected by the PCA's ruling in 2016 (Permanent Court of Arbitration, 2016: 117). The next reason is that, among AMS, besides four claimants namely Brunei Darussalam, Malaysia, Philippines, and Vietnam, there are non-claimants including Cambodia, Lao PDR, Myanmar, Singapore, and Thailand. Indonesia's Natuna EEZ overlaps China's nine dash line in the SCS. Closed economic relations of some non-claimants with China reduce ASEAN's unity in engaging with China on the SCS dispute. Indeed, China was Laos' second largest trading partner (accounting for 26.68% of the latter's total trade in 2022) (Lao Statistics Bureau, 2023: 68-69), and the latter's largest investor (Lao Investment Promotion Department, 2022). China is the largest trading partner, accounting for 21.16% of Cambodia's total merchandise trade value in 2021 (World Integrated Trade Solution, 2021). China was the largest trading partner and a top source of investment in Thailand in 2022 (Yang, 2023).

7. Conclusion

From speaking up to protect the rights, safety and sovereignty of member countries in the 1992 Declaration and the 1995 Statement on the SCS, ASEAN was assigned to be the primary driving force in August 1995 at the second ARF, and then ASEAN itself was committed to seeking an early, peaceful resolution of the dispute and the continuity of exploring ways and means to prevent conflict and enhance cooperation in the SCS at the fourth ASEAN Summit in December 1995. The legal framework for ASEAN was institutionalized by the 2008 ASEAN Charter since the Charter states to maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation. Making use of the assigned and committed role in dealing with disputes in the region, ASEAN has a protracted process of involvement in the SCS dispute. ASEAN has released

specific declarations and statements on the SCS dispute. It has also been engaged in the disputes adding the SCS dispute content in its summit chairman's statements, its bilateral chairman's statements with dialogue partners, and the UN. Through the statements, principles and measures such as peace, security, stability, safety, and freedom of navigation in and over-flight above the South China Sea, the need to pursue peaceful resolution of disputes in accordance with the 1982 UNCLOS, and the early conclusion of an effective and substantive COC that is in accordance with international law, including the 1982 UNCLOS, among others. ASEAN has also been active as a grouping in engaging China in efforts to conclude a COC. However, the situation of claimants and non-claimants in the SCS dispute, and most of AMS closed economic relations with China are major challenges for AMS in their involvement in the SCS dispute.

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Notes

* **Vo Xuan Vinh**, Ph.D. (Associate Professor), is the Deputy Director General of Institute for Southeast Asian Studies, Vietnam Academy of Social Sciences, Vietnam. His research interests include history, security, politics and international relations in Southeast Asia, the South China Sea dispute, and India's Look East/Act East Policy, and the politics of Thailand and Myanmar. <Email: voxvinh@gmail.com>

** **Nguyen Tuan Binh**, Ph.D., is a lecturer at the Faculty of History, University of Education, Hue University, Vietnam. His research areas include history of international relations, history of the world, history of Southeast Asia, history and foreign policy of India, Myanmar, China, India - Myanmar - China triangle relations. <Email: nguyentuanbinh@hueuni.edu.vn>

*** **Tran Xuan Hiep**, Ph.D. (Associate Professor), is a lecturer at the Faculty of History, University of Science and Education, The University of Da Nang, Vietnam. General political and international relations issues, the Southeast Asian and Indo-Pacific regions, and Vietnam's international integration are among his main research interests. <Email: txhiep@ued.udn.vn>

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