

The Role of ASEAN in the South China Sea Disputes

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After the Cold War came to an end, the South China Sea (SCS) gradually rose in importance in terms of international security. Several countries have claimed islands, rocks, and adjacent waters there, and these claims are fiercely disputed even today. The SCS is one of the most important sea lines of communication (SLOCs) in the world, strategically positioned in terms of military and trade flow, and replete with marine natural resources, estimates of which are likely to increase exponentially once the studies regarding oil and gas resources in the region are complete and full extraction operations are underway. Four of the primary claimants (Vietnam, Malaysia, the Philippines, and Brunei) are members of the Association of Southeast Asian Nations (ASEAN). Of the two remaining claimants – the People's Republic of China (PRC) and the Republic of China (ROC) on Taiwan – Beijing has been the most dangerous to ASEAN members, having been responsible for a series of incidents since 1974. Hence, China's counterclaims against the ASEAN states, and its behaviour in prosecuting said counter-claims, will be the focus of this chapter, as the specifics of the ROC claims are discussed in separate chapter of this volume.

This chapter aims to analyse the position of ASEAN toward the SCS maritime disputes. In the first section, we present a brief history of the process known as the ASEAN Way, and the importance of the United Nations Convention on the Law of the Sea (UNCLOS), and how this is connected to the SCS disputes. In the second section, we show how ASEAN has reacted to the disputes, either collectively or individually as member-states, as well as how ASEAN members' policies on the disputes influence the association's decision-making process. In this section we aim to answer this specific question: What are the positions of ASEAN members, individually and as a whole, regarding the SCS disputes? In the third part we attempt to explain ASEAN's behaviour regarding the SCS issue aiming to answer these questions: Why has ASEAN failed to reach a common position, and how will the ASEAN Way affect the association's future development, in security terms?

The ASEAN Way and the South China Sea Disputes

Using the Bandung Conference of 1955 as inspiration, many Southeast Asian countries began attempting to establish supranational groups for regional solidarity. The Philippines proposed an anti-communist group, and this would be followed by many similar propositions from Manila. Most of these early attempts had an ethnic or religious component, which ended up narrowing the membership and not advancing the regionalisation project as quickly as expected. However, all these movements showed an interest in moving the region toward some sort of integration process (Ba 2009).

In 1961, despite a number of conflicts and rivalries deriving from a post-colonial sense of nationalism, the Association of Southeast Asia (ASA) was created, consisting of Thailand, the Philippines, and Malaya. In 1963, in the same spirit of seeking cooperation and solidarity among the Malay race, the Greater Malayan Confederation, or Maphilindo, was created, consisting of the Philippines, Indonesia, and Malaya (now Malaysia). Neither effort stood the test of time, however. Maphilindo failed to accommodate the rivalry between two of its members, and the ASA was weakened due to the lack of official relations between two of its three members. Once again, rival nationalisms would stand in the way of a Southeast Asian regional association (Ba 2009).

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In 1967, an agreement between groups devoted to transnationalism and to forming an alternative type of regionalism enabled the creation of ASEAN. This was aided by the emergence of new ways of thinking about concepts such as nationalism and regionalism (Ba 2009).[1] At the time, regionalism and nationalism were largely mutually exclusive, at least in the eyes of many Southeast Asian leaders. Ideas of self-determination, national interest, and an ethic of non-interventionism – so strong in the immediate post-colonial era – were becoming allied to ideas such as unity, solidarity, and regional cohesion. This meant there was a search to end the conflicts between nations in the region, and led to the conditions necessary for a coalition of Southeast Asian States to arise (Ba 2009).

Because of those conditions, ASEAN was founded under the following principles: non-interference; quiet diplomacy; no use of force; and decision-making through consensus – in other words, the ASEAN Way (Hazmi 2009). These principles have allowed the association, united through a regional proposal, to have a loose enough framework to accommodate countries with old rivalries so as not to threaten their continued sovereignty (Haacke 2002).

Today, the same ASEAN Way that was fundamental to the association's creation and establishment is responsible for hampering any emphatic action from the group in the face of maritime territorial claims against its members in the SCS. Those claims are directed connected to UNCLOS, created 15 years after ASEAN's foundation and impacting at least half of its members.

UNCLOS and the ASEAN Way

In 1982, the United Nations Convention on the Law of the Sea resulted in an agreement on the matter of nations' responsibilities and rights on the world's waterways. The competing claims in the SCS region began in earnest after World War II, but it received a new boost after the launch of UNCLOS and the promulgation of its rules governing the definition of territorial seas, exclusive economic zones (EEZ), and continental shelves, which would enable countries to expand their coastal territory and open new possibilities for the exploration of natural resources and maritime patrols (Beckman 2014).

UNCLOS established parameters for the exploration of resources, freedom of navigation, territorial rights, and dispute settlement. The treaty addresses issues including coastal states' sovereignty rights over sea territory and airspace,[2] and provides a conflict resolution mechanism in cases of disputes based on overlapping claims. It entered into force in 1994, by which time the Philippines (1984) and Vietnam (1994) had already ratified the treaty. Few years later, Malaysia and Brunei (1996) ratified it. Other ASEAN members have also ratified the treaty, including Indonesia (1986), Singapore (1994), Myanmar (1996), Laos (1998) and Thailand (2011). Cambodia signed the treaty in 1983 but never ratified it. China, which is not a member of ASEAN but which has extensive relations with members of the bloc and has intense maritime and territorial disputes with them in the SCS, ratified the treaty in 1996.

But UNCLOS is not the only mechanism through which to address ASEAN members' claims in the SCS. In 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) that applies the same principles as the 1967 ASEAN Charter to territorial disputes and uses UNCLOS as a basis for dealing with claims and disputes between ASEAN members and China. The DOC is a non-binding document, however, and does not have a dispute resolution mechanism, leaving its signatories to resolve their disagreements on a voluntary basis without taking the disputes to international institutions. The DOC was unable to gather a common position among ASEAN countries on China's claims against ASEAN members' territory, due largely to those members having different interests in the matter (Severino 2014).

Thus, without being able to move toward the desired Code of Conduct (COC), which has been under negotiation since 1999, and which would be binding and include dispute resolution mechanisms, the DOC remains an ineffective instrument. China is the main obstacle to the adoption of a COC, since any such code would restrict Beijing's claims (Thayer 2012). Given the level of tensions in the last few years, principally between the Philippines and China, as well as between Vietnam and China, a new attempt was made in 2017 to reach a basic agreement on the nature and scope of a new COC. In August of that year, the foreign ministers of ASEAN and their Chinese counterpart endorsed a framework for an updated version of a Code of Conduct for the South China Sea largely based on the 2002 DOC.

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Despite the fact that it specifically addressed conflict prevention and the assurance of freedom of navigation, the draft of the document still indicates that it, like its predecessor, would not be legally binding (Storey 2017).

The various disputes and claims in the SCS involve ASEAN members and actors that have direct relations with ASEAN. Therefore, such disputes and claims need to be analysed on an individual basis, but also on how they influence ASEAN's decision-making, carried out through consensus.

ASEAN Members' Individual Strategies

The main claims in the SCS, defined as a semi-enclosed body of water, involve the Paracel and Spratly Islands. While the Paracel archipelago has been controlled by the PRC since 1974 and is claimed by Vietnam and the ROC, the Spratly Islands possess the greatest number of overlapping claims in the region, with China and the ROC making claims against islands held by Vietnam, the Philippines, Malaysia, and Brunei (Emmers 2003). A broad overview of those claims is provided in Table 1.

ASEAN members have different individual positions on the SCS issue. Only some members of the bloc are claimants, and among these there remain some border disputes, even if China is not included. Meanwhile, the Chinese economic and political influence affects every ASEAN country, though this effect is not homogeneous. Some members, especially non-claimants, put more emphasis on the bilateral relationship with China, and are less interested in negotiating with Beijing as a bloc. This effectively prohibits the ASEAN members from unifying their influence in a joint effort to solve territorial disputes collectively.

China's Position and Claims in the South China Sea

China is the most active claimant in the SCS and has the most territorial demands. The PRC government claims the SCS almost entirely, according to the nine-dash line map that Beijing submitted to the United Nations in 2009 when the Philippines, Vietnam, and Malaysia presented technical information in order to make submissions asking for permission to extend their continental shelf. The PRC government relies on a historical argument to justify its claims over the islands and what the PRC sees as adjacent waters (Beckman 2014).

China's demands exceed the legal claims established by UNCLOS, even though that treaty was ratified by Beijing. The PRC claims are based in a map named 'Map of Chinese Islands in the South China Sea,' originally issued in 1947 and therefore pre-dating the existence of the PRC and based on supposed historical rights dating back to the quasi-legendary Xia dynasty (c. 2070-1600 BC) – the very first dynasty to emerge in ancient China (Baumert and Melchior 2014). The PRC claim based on this ancient inheritance is for the entire area enclosed by the lines to be considered Chinese territorial waters. This runs counter to the 12 nautical miles conferred by UNCLOS rules on overlapping EEZ claims, territorial seas, and areas adjacent to several other countries in the region. It is worth noting that China is not the only actor in the SCS that is a signatory to UNCLOS and whose claims exceed what that document establishes as legal.

ASEAN Members Claims in the South China Sea

Vietnam

The South China Sea is Vietnam's lifeline. The country has fought several conflicts with neighbouring China over the years over the issue of sovereignty in the SCS. Like the PRC, Vietnam's claims include the Spratly and Paracel Islands.

Sino-Vietnamese relations have historically been tense. Although land border disputes between the two have been settled (Fravel 2008), the same cannot be said about their maritime disputes. The most contentious issue may be that of the Paracel Islands, which were controlled by Hanoi until China seized them during the Battle of the Paracel Islands. Today, many of the Vietnamese claims overlap those of Malaysia and the Philippines. Vietnam joined ASEAN almost 20 years after its beginning and its influence as a major player in the institution took a long time to

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solidify.

What differentiates the Vietnamese and Chinese claims, beyond the total area, which in the case of Vietnam is slightly smaller, is that unlike China, which demands every area as its own territorial sea, Vietnam claims it as an EEZ (Elmore 2013). In the case of Vietnam, as with China, the region claimed by that country is bigger than what would be allowed by UNCLOS.

Considering the threat posed by China, Vietnam has not truly trusted ASEAN as an effective tool for dealing with the SCS disputes. In fact, in the case of the Spratly Islands, Vietnam leaned toward the internationalization of the issue, seeking help from several organizations and asking for the participation of other countries (including the United States, Japan, and India) in an effort to establish a wide arc, based on the UNCLOS perspective, which if successful would result in the dilution of Chinese power (Collinson and Roberts 2013). Also, Vietnam tried to take the issue to international arbitration in 2013, but this effort was blocked by China. At the same time, Vietnam has been enhancing its military position and strengthening its Navy and Coast Guard (Vuving 2014).

The Philippines

The Philippines does not claim the entire SCS, as do China, and to an extent Vietnam, but Manila also extrapolates upon what UNCLOS stipulates as its legal claims. The Philippines makes territorial demands of EEZs that represent an effort to expand its fishing industry, as claims are concentrated mainly in the abundant fishing zone area to the west of the country.

The Philippines launched territorial demands over some of the Spratly Islands, which puts it in conflict with China and Vietnam. The presence of Philippine fishing vessels in areas also claimed by China has been the catalyst for much of the confrontation between the two countries (Elmore 2013).

The Philippines was the first ASEAN member to be directly affected by China's military expansion in the SCS, and Manila appealed to the organization to help deal with the issue in 1995.[3] The Mischief Reef Incident of 1995, in which China built an installation on the Philippine-owned Mischief Reef, resulted in a remark included in the 1995 ASEAN Foreign Ministers' Meeting (AMM) Joint Communiqué condemning the unilateral Chinese action. Since then, the Philippines has employed many strategies to navigate the SCS border disputes (Severino 2014); one of them is pressing ASEAN to establish a Code of Conduct. As described above, this has only gone as far as a weaker Declaration of Conduct, which is non-binding.

Another strategy is looking for outside support to reaffirm the use of UNCLOS as the basic tool to achieve a solution. In 2014, taking a page from Vietnam's playbook of the previous year, Manila filed complaints in the Permanent Court of Arbitration at The Hague against Chinese assertiveness in the region. Despite a 2016 award that ruled in favour of the Philippines' position, China has so far refused to abide by the tribunal's ruling. Moreover, since the election of the China-friendly politician Rodrigo Duterte as president, the government of the Philippines has declined to press its rights as conferred by The Hague, and has largely adopted policies that are favourable to closer ties with China. This has reduced conflict on the disputed areas and led to Chinese promises of joint resource exploitation by both nations. Duterte's stance on the issue remains at odds with much of the electorate, as well as the country's political elite.

Malaysia

Malaysia's claims in the SCS involve the waters surrounding the eastern border of Peninsular Malaysia and East Malaysia (Sabah and Sarawak, on the island of Borneo) (Mahadzir 2014). Kuala Lumpur has avoided levelling too much public criticism at China, due in part to the influential ethnic Chinese group in that country (in 2020, 22.6% of Malaysia's population was classified as Chinese, with 69.6% Bumiputera, or ethnic Malay), as well as China's outsized influence on the Malaysian economy (Kaplan 2014; Hirschmann 2021). Although Kuala Lumpur has always sought a unified ASEAN position on the SCS border disputes, it has not shirked its responsibility to continue modernizing its military force while strengthening its military and economic ties with the United States (Mahadzir 2014).

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Malaysia also makes EEZ claims over parts of the Spratly Islands, which unlike the Philippines, Vietnam, and China, are consistent the rules set down by UNCLOS. However, Malaysia claims that the islands of the Spratly archipelago that are within its EEZ should be considered Malaysian territory, which deviates somewhat from a strict reading of UNCLOS, as those islands are not inhabited and therefore are not covered.

Brunei

Like Malaysia, Brunei is careful not to criticize China in public, although the nine-dash line comes uncomfortably close to that country's shores. Therefore, its EEZ would be severely diminished if Chinese claims were considered valid. Inside ASEAN, Brunei has supported a unified position on the issue, but stresses much more the economic benefits of maintaining a relationship with China rather than focusing on the occasional incidents of Chinese belligerence against its neighbours in the SCS.

The only disputed feature for Brunei is Louisa Reef, although there is a difference of opinion on whether it constitutes an island or a rock (Roach 2014). Brunei recognizes that the whole SCS issue should be solved using a multilateral approach (Storey 2005). Some interpretations claim that Brunei, in 2018, abandoned its maritime claims in the SCS in exchange for Chinese funding (Hart 2018). However, there are researchers that still claim that while Brunei maintains a low profile on the Louisa atoll issue, it has not necessarily given up those bases (Tiezzi 2018). Due to the geographical proximity, there are overlapping claims between Brunei's EEZ with the EEZ of Indonesia, Malaysia, and the Philippines (Elmore 2013).

ASEAN Members Without Claims in the SCS

Indonesia

Indonesia is the biggest country in ASEAN, both by population and by GDP. Therefore, it should be expected that it would undertake a leadership role in steering the organization. That potential guidance suffered a setback with the 1997 Asian financial crisis and the fall of the Suharto government after three decades in power. Since then, Indonesia has tried to play a tertiary role in the many of the main issues in ASEAN, and the SCS disputes are no exception.

Even before the 1997 crisis or the 1995 Mischief Reef Incident, Indonesia had already tried to defuse the security challenges involving the SCS. Not an official claimant to any part of the disputed areas – although China's nine-dash line overlaps the Indonesian Natuna gas fields – Jakarta is more concerned with maritime security and freedom of navigation. In trade terms, China has invited Indonesia to be an essential part of the so-called Maritime Silk Road (Tiezzi 2014).

Indonesia does not have disputes with China in the SCS, and its demands are within the stipulations prescribed under UNCLOS as legal, and are solely for economic purposes. Indonesia's EEZ is very close to those of Brunei, Vietnam, Malaysia, and the Philippines, however (Elmore 2013). On the other hand, it is important to highlight that tensions with Beijing have been rising due to constant incursions into the area by Chinese vessels caught fishing illegally in the waters off the Natuna Islands. According to Jakarta, these islands are located within the country's 200-nautical-mile EEZ. However, this area overlaps with the southernmost dash in China's nine-dash line. So far, Indonesia has adamantly refused to recognize that the area is in dispute. At the same time, it has disclosed videos showing the sinking of Chinese fishing boats and beefed up its maritime forces to keep Chinese fishermen out of the area (Chew 2021).

Singapore

Although Singapore is a small city-state, it represents a potent diplomatic and military force among ASEAN members due to its high GDP per capita (Kaplan 2014). In the SCS disputes, Singapore adopts a conciliatory tone – a position that is helped by the fact that it is not directly affected by the disputes. Singapore has close military ties with the United States, however, and defends maritime security and freedom of navigation in the area.

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Thailand

Due to Bangkok's strong economic ties with China and the fact that it has no claims in the SCS, Thailand usually adopts a soft approach toward SCS issues, and refrains from blaming China.

Laos and Myanmar

Like Thailand, both Laos and Myanmar enjoy major economic ties with China. Moreover, they share borders with that country. Since they are not party to any disputes in the SCS, they therefore usually defer to Chinese pressure and assist in deflecting attempts by other ASEAN members to introduce harsh remarks against Beijing in the association's reports and communiqués.

Cambodia

Not located in the SCS, Cambodia strongly supports China due to economic ties and as a tool to minimize Hanoi's influence, Phnom Penh's main geopolitical rival. In practice, Cambodia has been the main supporter of Chinese discourse within ASEAN, especially when the discussion turns to the DOC and COC. Cambodia supports China's desire for a more flexible document to govern the approach to disputes and overlapping claims in the SCS (Thayer 2012).

Bilateral relations between Beijing and Phnom Penh are not new, and there is cooperation between the two countries in the political, economic, cultural, and military realms. This approach has recently been called the comprehensive strategic partnership of cooperation between the People's Republic of China and the Kingdom of Cambodia (Siphat 2015).

For China, Cambodia is a central ally in Southeast Asia. For Cambodia, China is the main source of foreign assistance as well as foreign capital. In addition, the Chinese have become managers and investors in Cambodian state-owned enterprises and bilateral economic interactions have increased, which may explain Cambodia's support for China in matters related to the disputes in the SCS, including in the ASEAN decision-making process (Siphat 2015).

Countries' Influence in ASEAN's Decision Making

ASEAN's decision-making is done by consensus at annual meetings such as the aforementioned AMM. The association's loose structure, which is an essential component of its success and indeed its very genesis, derives from the ASEAN Way, and while it can be seen as an asset, it is as a weakness.

The member states of ASEAN usually focus strongly on their individual priorities, and with few exceptions are not really reaping the benefits (or the costs) of being part of a supranational organization. To analyse the association's decision-making process, seven important ASEAN meetings that dealt with difficult decisions regarding the SCS disputes will be examined.

The 1992 25th AMM, Manila

Issued in the Philippine capital, the Manila Declaration (ASEAN 1992), while vague, called for a peaceful resolution of any territorial disputes in the SCS and for cooperation in many areas, along with a Code of Conduct to be further developed. The conference took place against the backdrop of rapid Chinese militarisation, its assertive behaviour around the Spratly Islands, and Beijing's passage on 25 February 1992 of the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, which essentially laid claim to the entire SCS. Indonesia and the Philippines (as host and chair of the meeting, respectively) wanted to deal directly with the issue, but Malaysia and Brunei resisted the issuance of a more assertive statement that might have raised Beijing's ire. Since there were only six members in attendance at that conference, and the consensus of opinion was that Chinese opposition to the meeting could derail it, the watered-down declaration that was issued after the meeting, while calling for restraint and

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joint exploration, completely omitted any mention of the issue of sovereignty (Emmers 2003; Garofano 2002).

The 1995 28th AMM, Bandar Seri Begawan

After the political weakness exhibited at the Manila AMM, things slowly began to improve. Three years later, member countries of ASEAN exhibited the capacity to work together, especially with Vietnam newly installed as the seventh ASEAN member after having suffered at the hands of Chinese aggression in the Mischief Reef incident described above. This time, the incident was not ignored, but made it into the text of the Joint Communiqué (ASEAN 1995), though the representatives from Hanoi had to exert significant pressure to accomplish this (Emmers 2003, 138–139). The other members in attendance claimed the incident was irrelevant; their governments having been placated by Chinese promises that it was a one-time thing, and would not happen again.

The 2002 35th AMM, Bandar Seri Begawan

While the quest for a Code of Conduct has been underway since the 1992 Manila Declaration, and the idea consistently received praise in successive AMM Joint Communiqués, building up expectations that it would serve as the ideal final step toward solving the SCS disputes once and for all, it has yet to be achieved. An important step in this direction – some might say a compromise – was made the following decade, however. In 2002, at the 35th AMM hosted by Brunei, the idea of non-binding DOC was adopted, after being proposed by Malaysian Foreign Minister Syed Hamid Albar.

The idea was designed to break the political deadlock between ASEAN member states, which each had concerns and stipulations on what they wanted to see in a COC. Vietnam, for example, wanted the code to encompass the entire South China Sea, whereas Malaysia wanted to restrict its scope to the Spratly Islands. No agreement could be reached on the issues of new occupation and military exercises, either. Moreover, while the Philippines pushed hard to validate a COC, Malaysia was against it on the grounds that it would likely freeze any new construction on the disputed features – a practice that Malaysia was engaged in. The non-binding declaration not only represented a compromise, in the time-tested manner of the ASEAN Way, but China's acceptance of the DOC hinted that Beijing might be softening its stance against multilateral negotiations (having long employed the divide-and-conquer approach of insisting on bilateral negotiations) and could be enticed to work together with ASEAN (Mahadzir 2014; Emmers 2003; Thuy 2009).

The 2010 43rd AMM, Hanoi

Vietnam tried to use its position as chair of the meeting to internationalize the SCS question, with the aid of the United States, which declared that it was one of its diplomatic priorities and that it could play the role of mediator (Collinson and Roberts 2013). China, of course, was upset at the notion. As for the implementation of the 2002 DOC, Vietnam resumed the work of the ASEAN-China Joint Working Group, but only after China (through Cambodia) made sure that any activity or project would be duly reported to the ASEAN-China Ministerial Meeting (Collinson and Roberts 2013).

The 2012 45th AMM, Phnom Penh

The 45th AMM marked the first time that ASEAN failed to reach a consensus and did not issue a Joint Communiqué. The drafters of the document insisted on including a paragraph elaborating upon the SCS disputes. Cambodia, which was both host and chair of the meeting, vetoed the move, blaming the Philippines and Vietnam for the failure to reach a consensus. During the meeting, the Filipino representative spoke of the Chinese expansion and aggression since the 1990s, and how Beijing's actions were disrespecting the DOC and the principles of UNCLOS. The Vietnamese representative described his worries about the Chinese imposition of the nine-dash line and mentioned violations of Vietnamese sovereignty and jurisdiction over its territorial waters, EEZ, and continental shelf (Thayer 2012). Both Vietnam and the Philippines asked the meeting chair to include in the final Joint Communiqué mention of the Chinese aggressions in these two cases, but Cambodia refused. In addition to Cambodia, Thailand, Brunei, Laos and Myanmar were also against mentioning the SCS aggressions, since it could jeopardize peaceful relations

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between ASEAN and China, and hence imperil regional stability. On the other hand, the Philippines, Vietnam, Singapore, Indonesia, and Malaysia insisted that a paragraph be included in the Joint Communiqué remarking on the incidents.[4] With that split decision, and amid acrimonious debate, no Joint Communiqué was issued that year.

The 2014 47th AMM, Nay Pyi Taw

At the meeting in Myanmar, Indonesia supported Manila's requests for a freeze on activities that would escalate tensions in the SCS, the completion of COC, and the use of international arbitration to settle disputes (Tiezzi 2014). The Joint Communiqué was detailed over the issue and expressed serious concerns about the situation. Nevertheless, the ASEAN position was much less assertive than what the Philippines and Vietnam had hoped for, as both countries had been embroiled in incidents involving Chinese incursions into what they considered to be their waters.

In Vietnam's case, China had deployed its Hai Yang Shi You 981 oil platform to waters near the disputed Paracel Islands in South China Sea, and while Vietnamese vessels attempted to prevent the platform from assuming a fixed position, Chinese ships began ramming into them and firing water cannon. The incident came to be known as the Hai Yang Shi You 981 standoff, and led to anti-Chinese protests in Vietnam that escalated into riots. Meanwhile, tensions between the Philippines and China had been escalating as well, after the arrest by Philippine law enforcement of 11 Chinese poachers for harvesting endangering turtles, even as China had been using its Salami slicing tactics to drive Philippine fishermen away from disputed areas (The Guardian 2014).

The 2020 53th, AMM, Vietnam – Video Conference

The Joint Communiqué, despite the escalation of the COVID-19 pandemic, was very similar to the 2019 Joint Communiqué and indicated that the search was still on for a full implementation of the DOC. It emphasized the importance of cooperative relations between China and ASEAN and the efforts made to continue the second reading of the Single Project of the COC Negotiating Text, which started the previous year. However, there were moments of tension as activities in the SCS were raised at the meeting, which displeased certain states and raised tensions.

External ASEAN Member's Influence in ASEAN's Decision-Making Process

Until 1984, the five original members of ASEAN shared a number of characteristics, one of which was staunch anti-communism, which led to a deep distrust of the PRC's expansionism. This pattern continued with Brunei, a former British protectorate, but after the Cold War, such a stance became less important, at least in ideological terms. Nevertheless, the fear of uncontrolled Chinese expansionism subsisted and was taken seriously by the ASEAN's hard-core original members.

This changed with the admission of Vietnam, Laos, Myanmar, and Cambodia – all of which are either communist, authoritarian, or some mixture thereof – into the group, blending the core's relatively waning mistrust of Beijing with the newcomers' deep economic and political dependence on China. Even hard-core members, such as Thailand, gradually softened their position toward the PRC, as they enjoyed soaring trade and investment with China and were not SCS claimants.

It is worth mentioning that ASEAN's geographical concentration was diminished somewhat after the entrance of Laos, Myanmar, and Cambodia, which do not have a shoreline on the SCS, while all of the other seven members (with the exception of Thailand) have at least some manner of maritime border there. It is not random chance that Laos, Myanmar, Cambodia, and Thailand tend to vote more often for a compromise with China.

ASEAN's Behaviour in the South China Sea: The Lack of an Assertive Position

ASEAN has been successful in bringing peace to a troubled region since its inception in 1967. The ASEAN Way transformed Southeast Asia into a *de facto* security community, where it is almost inconceivable for any member-nation to wage war against another. Preventive diplomacy and cooperative security are the name of the game in

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ASEAN. However, when it comes to the SCS disputes, involving ASEAN members and China, the regional body has yet to craft an optimal response' (Heydarian 2015).

ASEAN and its own unique take on regionalism cannot be fully explained by classic regional integration theories such as neofunctionalism (Haas 1958) or regime theory, (Kasner 1982) or through newer approaches such as institutional bargaining (Aggarwal and Koo 2008; Aggarwal and Dupont 2005). Nevertheless, those theories can give us interesting insights into the reasons behind ASEAN's lack of assertiveness on the issue of the SCS disputes.

It was the activities of various interest groups pushing integration, as presented by Ba (2009) that were instrumental in ASEAN's creation in the first place. At the regional level, these interest groups' activities were mostly connected to trade and economic issues. The role of governments is much more important than the role of supranational institutions; mainly because of the dynamics of the ASEAN Way. As for the region's political parties, they did not carry any weight when it came to the establishment of ASEAN's brand of regionalism. All of these elements are central to classic neofunctionalist theory to explain the success of regional integration inside and outside Europe (Ruggie et al. 2005).

The creation of supranational institutions and organizations inside of a bloc is a central characteristic of neofunctionalist theory. ASEAN does not possess supranational institutions because supranationalism requires that the supranational organization have enforcement power over its members, which is absent in ASEAN.

The mechanism of loyalty transfer presented by Haas (1958) as the last step in neofunctionalist theory is the furthest ASEAN goes, and the reason for this is very well exemplified in the SCS disputes. Even with the economic integration that ASEAN has experienced, there will not be loyalty transfer from the national to the supranational level. First, this is because in ASEAN there is no supranational organization in the strict sense of the term. Second, ASEAN members have old but latent rivalries that would act against any such identification. The third reason is that member-states are not ready to give up any part of their sovereignty to the supranational level.

In the case of the SCS disputes that ASEAN members have with China, ASEAN behaviour and actions are weak. This is not only because of the ASEAN Way, but also because of the individualist positions of the association's members and their fear of giving over any sovereignty to the kind of strong regional institutions, led by ASEAN, that could represent their interests in such negotiations.

Analysing ASEAN's position through the lens of regime theory (Krasner 1982), we can assume that principles, norms, rules and decision-making procedures within an institution help actors' expectations converge in a given issue-area. In the case of the SCS disputes, it can be said that, after more than 20 years trying to craft a common, assertive position to solve the problem, ASEAN has achieved little. The disputes still stand, even among some of its own members. This is worsened by the intractability of the Chinese stance.

In this sense, ASEAN exhibits discernible principles: striving for the stability of the region, usually through the non-use of violence. But the ASEAN Way, with its loose approach to most of the matters concerning members' individual positioning vis-à-vis the organization, is a rarefied set of norms, which offers little in terms of obligations and in terms of rights, especially as regards security issues. That is, any specific problem menacing one or some of the members is not necessarily seen by the others as a problem for the whole organization.

Such a loose set of norms results in a lack of rules, and therefore hampers the organization's ability to elaborate prescriptions for action. In fact, the most common decision taken by ASEAN in dealing with SCS disputes has been to exhort all the claimants to calm down, abide by the DOC, and await the coming of the COC. With this porous institutional architecture, the decision-making process does not seem well-enough equipped to cope with problems like the SCS disputes.

Unlike what regime theory would suggest, these decision-making procedures achieve a limited collective choice in ASEAN, since it is so heavily influenced by each member's individual interests. In this manner, it stands in the way of the formation of a real regime, according to the theory. With this dynamic, it is no surprise that those ASEAN

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members that are claimants in the SCS disputes have started looking for other alternatives, outside the association itself.

Interpreting ASEAN and its position regarding the SCS disputes through the institutional bargaining approach is interesting. Institutional bargaining tries to measure the degree of integration in different processes and institutions, and can be applied to understanding different situations that a group as ASEAN has to face. This is why there is weight given to factors such as number of participants, strength, and institutional delegation – factors that can be objectively measured (Aggarwal and Koo 2008; Aggarwal and Dupont 2005).

In terms of participants, ASEAN has doubled in size since its inception – from the original five members to ten. Although in theory, this should lead to a more robust institution, in the case of ASEAN it has wrought a worsening of the decision-making process. After all, ASEAN employs a consensus-based procedure to reach decisions. Therefore, building a consensus with ten members is more difficult than it is with five.

Therefore, by this factor alone, the greater number of participants would make it more difficult to reach consensus. But the presence of members that are influenced by China, due to its economic and political power, only worsens the prospects for swift and assertive decision-making, especially in issue areas where a security problem might arise that would affect China or its interests. So, in terms of the number of participants, the enlargement only brought greater inefficiency and an inability to achieve a more assertive solution, at least regarding the SCS disputes.

From the perspective of strength, which includes the degree to which agreements are binding, the ASEAN Way surely harms – or at least does not help – the interests of ASEAN members when dealing with the SCS disputes. Individual interests are put ahead of collective ones and any enforcement is hardly conceivable. This feature demonstrates that if the ASEAN Way was the innovation needed to heal a rivalry-stricken developing region in the 1960s, it has since become a clear obstacle to tackling security issues derived from foreign pressure.

As to the issues described by Aggarwal and Dupont (2005), institutional delegation is minimal, which promotes almost no autonomy of institutional organs. That lack of autonomy, and investing too much decision-making power in the ASEAN Ministerial Meetings and Summits, only highlights the importance of the latter. As we have seen, however, the SCS issue has been systematically swept under the rug due to the characteristics of the process already described.

Conclusion

ASEAN has been successful in diluting security rivalries between members and avoiding new conflicts among them. But the deepening of the integration process came in the economic area. In other areas, like cultural relationships, anti-piracy measures, and disaster management, there has been only tepid development. In political terms, the process has somehow stalled, especially in terms of achieving common guidelines to deal with critical problems derived from external pressure. In those cases, it seems that it is not the organization's cohesion or consensus which is important to most countries, but rather their individual interests.

ASEAN can be described as an inward-looking institution, in political terms, looking to ease internal tensions. Therefore, it is not surprising that it faces many problems when trying to deal with external confrontations. As Heydarian points out, 'when it comes to the SCS disputes, involving ASEAN members and China, the regional body has yet to craft an optimal response [...] ASEAN isn't equipped with the legal mandate and bureaucratic capacity to enforce compliance with regionally accepted principles and rules' (2015, 2).

The ASEAN Way was instrumental in creating ASEAN from scratch by putting together regional concepts and national issues to reach a stable political environment in Southeast Asia. But this characteristic is an obstacle to enforcing common views about external pressures.

Moreover, ASEAN has not been successful in solving the border disputes among its members, and even less successful in dealing with the border disputes between those members and China. Full implementation of the DOC,

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which would ideally lead to a COC, seems infeasible in the short term.

Finally, we can answer the three questions presented at the beginning of this chapter, and which are central to understanding ASEAN's dilemma. The position of ASEAN's ten members regarding the disputes in the SCS are quite different, and vary slightly according to their geographical position (how close they are to the SCS), their territorial or economic claims in the region (balancing defence and economic concerns) and the type of relationship they have with China. This wide variation in conditions also directly impacts the association's position on how to address the conflicts in the SCS. This posture is linked to the ASEAN Way which, due to its very nature, leads to a reinforcement of individual interests over collective or supranational ones.

As for the last two questions, it is worth mentioning that the many different positions on the disputes and the loose structure of the association that prevents ASEAN from taking a more assertive stance on issues related to the SCS. In this sense, the ASEAN Way will very likely continue to weaken the association in terms of security and defence, despite its strength in establishing economic and socio-political ties in the region, thus forcing its members to seek other mechanisms, outside of the institution, to deal with such matters.

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[1] ASEAN was founded by the Bangkok Declaration in 1967. Its member countries are Malaysia, Philippines, Indonesia, Thailand and Singapore (1967), Brunei (1984), Vietnam (1995), Myanmar and Laos (1997), and Cambodia (1999).

[2] Territorial sea: 12 nautical miles (nm) from the land; contiguous zone: 12nm from the end of a territorial sea; EEZ: up to 200nm from the land; continental shelf: up to 350nm from the end of a territorial sea. UNCLOS does not recognize claims based on historical arguments when it comes to territorial seas or EEZs.

[3] Although the Paracel Islands were seized from Vietnam in the 1970s, that country only became part of ASEAN in 1995.

[4] This vote tally was achieved after reading Thayer's (2012) transcripts of the Meeting and interpreting each Minister's position. Nevertheless, it should be stressed that, according to Thayer, 'each of these documents was provided to the author by sources that must remain confidential' (2012).

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