

## THE ROAD TO PEACE IN SOUTH CHINA SEA: THE ROLE OF INDONESIA THROUGH ASEAN

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The disputes occur after the UN Convention on the Law of the Sea decides the *rights* and responsibilities of nations to undersea resources in adjacent waters; it pushes some nations throughout the world to expand their control over the *seas or even to claim*. In the South China Sea, the Paracel Islands and the Spratly Islands are in dispute that involves China, Taiwan, and several ASEAN member countries such as Brunei, Malaysia, the Philippines, and Vietnam. South China Sea is one of the most important waterways in the world with abundant oil, natural gas reserves, fisheries and marine resources, so it has strategic value whether it facilitates economic or security activities throughout Asia. However, the disputes have threatened other country's citizen activities near the disputed territory.

This paper aims at analyzing how Indonesia through ASEAN responds to the South China Sea as the territorial dispute. Since 1992, ASEAN Declaration on the South China Sea called on all nations to settle disputes peacefully and support regional cooperation as a diplomatic solution without any sovereignty settlement issues. Some parties argue that *ASEAN'S* approach of *diplomatic* engagement is not solution in this complex situation. While many countries try to use ASEAN to protect their interests in the South China Sea, Indonesia plays some roles in the South China Sea disputes like the facilitator of mediations, mediator and the leading role in establishing legally binding Code of Conduct (CoC) as a possible solution through ASEAN.

**Keywords:** ASEAN; Indonesia; South China Sea.)

### I. INTRODUCTION

#### A. Background

As the ASEAN member country and one of the most influential countries in the Southeast Asian region, it is necessary for Indonesia to take role in the South China Sea dispute settlement which China, Taiwan and some ASEAN member

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countries are in dispute. Despite Indonesia has interests in the maintenance of its sovereign territory around the South China Sea, it remains search solutions and always becomes the initiator of regional peace promotion. These efforts make Indonesia to do direct contact or through the regional organization in the Southeast Asian region, i.e. ASEAN to do negotiation to the nations.

ASEAN member countries view China's military maneuver will have negative consequences while there are efforts to encourage conducive situation in the disputed territory. From the political viewpoint, China will put the ASEAN member countries in difficult position when they have to encounter the conflicting interests of the great power countries in the South China Sea like China, Japan and the United States. As the ASEAN founding member country, Indonesia has long been recognized in the region and has central role for the survival of the organization. Indonesia has strong commitment to give contribution so as to ensure the implementation of various agreements that ASEAN and East Asia Summit have achieved for prosperity, peace, and security in the region.

This research specifically describes the position and role of Indonesia and ASEAN in the South China Sea disputes. Each regional organization and the nations in the regional naturally want peaceful conditions and far from any tension despite in fact there are always problems for the different interests of each nation. When observing the political constellation of the South China Sea, ASEAN sees the need for conflict resolution efforts through peaceful or diplomatic solution [1].

All ASEAN member countries understand that the South China Sea issue is a touchstone to settle and a dispute in the ASEAN region to be managed after the Declaration of Conduct or the Code of Conduct is approved. Indonesia's position is clear, it has commitment to encourage the establishment of the Code of Conduct (CoC) in the South China Sea as a possible solution for preventing war.

## **B. Geopolitics and Geostrategy of the South China Sea**

Geographically, there are ten coastal countries around the South China Sea, i.e. China, Taiwan, Cambodia, Thailand, Malaysia, Singapore, Indonesia, Brunei, and the Philippines. The bodies of water that are part of the South China Sea include Siam Bays or called Gulf of Thailand, the inlet of the South China Sea bordering Vietnam, Cambodia, Thailand, and Malaysia and the Gulf of Tonkin bordering Vietnam and China [2]. Moreover, the South China Sea has great political, economic and strategic value. According to data from the foreign ministry and mineral resources of the People's Republic of *China* (PRC) power, it is estimated that oil and natural gas reserves surrounding the Spratly region amount to 17.7 billion tons and it is greater than in Kuwait totaling only 13 billion tons.

South China Sea region has very important navigation pathway, i.e. the Sea Lines of Communication (SLOC) and Sea Lines of Trade (SLOT). It is vital for the international trade and energy supply and it is main capital to help boost regional

and global economic growth. South China Sea is one of the biggest fishery in the world and China is the world's largest exporter of fish and seafood products in the world.

In 1968, scientists discovered oil reserves in the South China Sea. It dramatically increases the value of the South China Sea. Potential oil reserves in the Spratly and Paracel Islands are estimated 105 billion barrels and total reserves in the South China Sea are as much as 213 billion barrels. Despite the oil reserves evidence is not very strong it is optimism that China has great interests in this region. More than half of the world's supertanker traffic passes through the route of the Strait of Malacca, Sunda and Lombok. The number of supertankers that passes through the Strait of Malacca and the southwestern part of the South China Sea is more than three times of the traffic that passes through the Suez Canal and more than five times of Panama Canal.

From geostrategic viewpoint, the South China Sea region has some significance for military strategy particularly the maneuvering of nuclear submarines and the deterrence function. It means that the Chinese presence in the region does not only want to establish its Zona Economic Exclusive (ZEE) but also wants to control the ocean's power so as to reach its further projection around the Pacific Ocean and Indian Ocean. Currently, the main mission of China military or the People's Liberation Army (PLA) is: 1) controlling the inlet for the vessels to Taiwan; 2) being able to make operations in the Western Pacific for the deterrence function to China's enemies; 3) protecting China's sea lines of communication; and 4) cutting enemy communication lines [3].

Sea-based nuclear deterrence capability is a priority of China's military strategy priority. China is expected to have a second-strike capability after it introduces the JL-2 SLBM missile with the range of 8,000 miles [4]. China barrier capabilities particularly silent nuclear submarines can prevent enemy submarine operations. Small islands in the South China Sea can be the base for intelligence, surveillance and reconnaissance.

### **C. Complexity of Historical Conflict in the South China Sea**

China's territorial disputes in the South China Sea consist of two main issues, i.e. territorial sovereignty and maritime sovereignty. The territorial sovereignty talks about the land ownership in this region while the maritime sovereignty relates to the determination of the maximum extent permitted by the United Nations Convention on Law of the Sea (UNCLOS III) of 1982. From the territorial sovereignty, there are some disputes in the South China Sea such as Macclesfield Bank, Scarborough Shoal, and the Pratas islands also known as the Dongsha Islands. However, the main territorial disputes in the South China Sea is the seizure of the Spratlys and Paracels. Moreover, from maritime sovereignty, UNCLOS stipulates that the territorial sea sovereignty is 12 miles from the seaside and the Zone

Economic Exclusive (ZEE) is as far as 200 miles. This is important because a country that has sovereignty over the islands also has right to natural resources including oil and gas.

Chinese government's claims to the South China Sea among others refer to historical reasons. According to the Chinese government's documents it shows that the people of China discovered the islands in the South China Sea over 2,000 years ago during the Qin Dynasty and Han Dynasty. From 960 to 1368, the people of China expanded their activities to Zhongsha and Nansha islands. These continued until 1911 to cover all the islands in the South China Sea.

In October 1947 for the first time the Kuomintang government described the "eleven dash line" as the basis for the territorial claims. After the Chinese Communist Party's control of mainland China and establishment of the People's Republic of China in 1949, the line was changed to the nine-dash line. China argued that Vietnam, Malaysia and the Philippines were not even fully aware of the existence of the islands in South China Sea before the Qing dynasty's era (1644-1911) and moreover, there was no evidence of their ancestors active in the region. China also claimed the right because it was the only country that was continuously doing development in the South China Sea [5].

Another country that involves in the South China Sea disputes is Taiwan. Although Taiwan has no clear law arguments, the Taiwanese government takes over the Aba Island, the largest island in the Spratlys Islands. Moreover, Vietnam's claim bases on its history when French colonialism occupied IndoChina in the 1930s. After the independence, Vietnam claims Spratly Islands located offshore of Khanh Hoa province as part of its territory. Vietnam occupies the majority of Parachel Islands and Spratly Islands.

Moreover, the Philippines claims Spratlys on the basis of continental shelf exploration and history. In 1971 the Philippines formally declared eight islands in the Spratly Islands as part of Palawan Province, total land area of the islands is about 790,000 square meters. Malaysia also does not left behind when it claims Spratlys Islands based on the continental shelf principles and three islands are claimed as part of its territory [6]. Although Brunei does not claim the islands, it only claims the South China Sea nearby the country as part of its continental shelf and Zone Economic Exclusive (ZEE) in 1984 [7].

In the beginning, Indonesia has no effect to the disputes, but in the end China states its claim to Natuna Islands. According to the international law, the waters can meet the requirements of the historical waters if the following requirements are met: Firstly, concerning the waters and its surroundings, a nation has to truly apply sovereignty in the long run, continuity and peace. Secondly, a nation accepts some recognition from other countries particularly its neighboring countries concerning its interest in the waters and its surroundings in transparency or silence plus no refusal from any nations.

It is definitely difficult for China to meet the first requirement. It is because all the official documents printed prior to 1909 state that the southernmost tip of China is Nihai district in the island of Hainan. Moreover, China's map from the East India Company in the 17th century declares that China's farthest regions began on Hainan Island at latitude 180. The Chinese people also just stamped their feet in the Paracel islands in 1909 when the islands were under the Vietnamese rule and the islands had been inhabited. Moreover, China arrived in the Spratlys in 1932. Therefore, the unilateral establishment of such Chinese territorial waters does not only have no legal basis and historical background but also it has violated the UNCLOS Convention (UNCLOS) signed in 1982.

## **II. RESULT AND DISCUSSION**

### **A. China and ASEAN**

For some countries in Southeast Asia, China is their largest donor, investor and trading partner country. Vietnam, for example, gets electricity supply from the northern region of China. Vietnam's garment exports rise as well due to Chinese government's supports. Moreover, the related authorities have done some attempts to avoid direct conflict and confrontation. However, the bilateral efforts are not effective for no significant results. So, it needs multilateral action accommodated by the regional organization. The ASEAN roles in the South China Sea disputes promote conflict management process with the goals of tension reduction and trust building.

China makes unilateral claims over the Paracel Islands and Spratly Islands in the South China Sea. Other countries claim both islands. Vietnam, Taiwan, Brunei, Malaysia and the Philippines claim the Spratlys. Moreover, Taiwan and Vietnam also claim the Paracel islands. Four of the six claimant countries (The Philippines, Malaysia, Brunei and Vietnam) are the ASEAN member countries; one country influence the non-claimant country but the ASEAN members country as well, i.e. Indonesia.

In 1992 ASEAN Declaration on the South China Sea emphasizes the necessity to resolve all sovereignty and jurisdictional issues by peaceful means, without resort to force. This declaration urges all parties to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes. It also asks all parties to explore the possibility of cooperation in the SCS relating to the safety of maritime navigation and communication, protection against pollution of maritime environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs and urges all parties to apply the principles contained in the ASEAN Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the SCS [8].

In 2002, ASEAN-China established the Declaration on the Conduct of Parties in the South China Sea (often referred to as the 2002 DoC) [9]:

1. Parties reaffirm their respect to the freedom of navigation in and overflight above the SCS, as provided for by the universally recognized principles of international law and the UNCLOS.
2. Parties resolve to address their territorial and jurisdictional disputes by peaceful means, in accordance with the universally recognized principles of international law, including the 1982 UNCLOS.
3. Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes including refraining from action of inhabiting on the uninhabited islands, reefs, etc and to handle their differences in a constructive manner

The ASEAN-China Plan of Action is also established to implement the 8 Oct 2003 Joint Declaration on ASEAN-China strategic partnership for peace and prosperity (excerpts related to the SCS issues), it convenes regular ASEAN-China Senior Officials Meeting (SOM) on the realization of the DoC to provide guidance for and review the implementation of the DoC. ASEAN and China establish a working group to draw up the guidelines for the implementation of the DoC and Promote joint cooperation and dialogue in areas such as marine scientific research, protection of the marine environment, safety of navigation and communication at sea, search and rescue operation, humane treatment of all persons in danger or distress, fight against transnational crimes as well as cooperation among military officials. Finally, they affirms the vision of the DoC state parties to work, on the basis of consensus, on the eventual adoption of a code of conduct in the South China Sea.

On July 19, 2011, there was Joint Communique of the 14<sup>th</sup> ASEAN Foreign Ministers Meeting (excerpts relating to the SCS issues) in Bali, it stresses the importance of maintaining peace and stability in the SCS, the continued exercise of self-restraint by all parties concerned, and the promotion of CBMs in the area and importance of continued constructive dialogue between the ASEAN and China. All parties should respect the freedom of navigation in and overflight above the SCS. When intensive discussion in the ASEAN on a regional code of conduct (CoC) is required; it tasks the ASEAN SOM to work on the development of a COC and submit a progress report to the 19<sup>th</sup> ASEAN Summit that will meet this Nov 2011 organized by Indonesia. With the increasing interest shown by the US on the SCS issue, its peaceful resolution in the immediate future is not likely to happen [10].

China opposes the internationalization of the disputes and the involvement of non-claimant countries like the USA. China is unlikely to give up its announced preferred position that of addressing the SCS issues through bilateral negotiations.

This stance will prevent the immediate resolution of the SCS issues since the ASEAN prefers a multilateral approach. The ASEAN is likely to press for the adoption of a regional code of conduct to address the issue a stance not expressly supported by China but endorsed by the US [11].

Durability is a key strategic regional ASEAN in resolving complicated problems that occur in the South China Sea. ASEAN should utilize this condition in order to urge China to stop its military maneuvers so as not to cause turmoil for the country in the vicinity. In addition, ASEAN members countries can continue to encourage and emphasize that intensive dialogue should continue to run until the arrogance of big countries like China and the United States can be derived.

### **B. Efforts of Conflict Resolution in South China Sea Disputes**

Legal solution and diplomatic efforts in the ASEAN frame work is the most appropriate at this time for the completion of the South China Sea disputes because the spirit of cooperation and to reiterate the principle of aid, however it still must find a peaceful solution to binding all parties concerned. Actually, South China Sea disputes are purely a legal issue and the appropriate solution is based on legal approach.

However, the settlement of disputes in this way clearly requires a strong commitment to the importance of settling the disputes by the dispute parties. This effort is difficult because China is indeed part of the UN Security Council with veto power, so somehow the resolution that the UN issues will be canceled if it is not in accordance with the interests of China, the reform of the UN Security Council should be reviewed [12].

In diplomatic, despite this is a short-term effort but this touches the root cause of the dispute. When Indonesia led ASEAN in 2011, all countries have accepted the ASEAN agreement and have had the same voice concerning the South China Sea disputes. However, when Cambodia led ASEAN in 2012 there have been some differences of opinion and principles due to Cambodia's favorable attitude to China in the South China Sea disputes.

As a regional organization, ASEAN keeps trying diplomatic efforts. Firstly, it tries to change the status of the DoC to the CoC, and it is able to bind all parties in the disputes. Secondly, it relates to the internal function of ASEAN itself, such as ADMM (ASEAN Maritime Defense Ministry) and ARF (ASEAN Regional Forum). Thirdly, we also consider the involvement of external parties but with the strong influence, such as the USA, Japan and India. These countries will be counterweight to China.

Another possible solution relates to military option. Despite it is considered less favorable, but it is undeniable because it is the last step when political and diplomatic efforts cannot settle the disputes. In present, Vietnam keeps improving its defenses. It buys weaponrys from Israel, the Czech Republic and Canada and

Russia, such as six Kilo-class submarines. Meanwhile, the Philippines Navy gets two frigates from the USA. These are the USCGC Hamilton class, two anti-submarine helicopters, three fast boats for coast patrol and eight amphibious assault vehicles until 2017. Therefore, modernization of each defense forces is option. It is strategic focal point in each country as a way to safeguard each interests in the waters.

### **C. Indonesia and the South China Sea**

In relation to geography, Indonesia can be neutral with respect to the South China Sea disputes. As the ASEAN member country, Indonesia plays important role in maintaining the stability of the region. The ASEAN member countries and China have agreed to settle any disputes relating to the territorial sea, the borderline or the outermost islands. As the Southeast Asian country, Indonesia does not directly have any dispute in the South China Sea. However, Southeast Asia is the strategic region for Indonesia and potential regionalist may occur among the ASEAN member countries. Therefore, when the ASEAN regional stability get threat from the South China Sea disputes, for Indonesia it may have possible devastation to the region.

However, despite Indonesia does not include the dispute parties, it remains have interests for the stability and peace of the waters as close as the strategic areas in the North. Tension and disputes in the East China Sea and the South China Sea can interfere Indonesia's economic and political interests, like air traffic control and the shipments of export products. If the disputes are not settled immediately, these will become escalation and make chaos. Therefore, despite Indonesia is not an actor who is directly involved in the disputes, it has been potentially a key actor with the constructive role of settling the South China Sea disputes peacefully.

Indonesia recognizes that any instability in the region potentially shakes the internal unity of ASEAN. Particularly when the four ASEAN member countries are involved in the territorial disputes in the South China Sea and definitely each country tries to defend each interests, the existence of ASEAN as the regional organization in Southeast Asia will be questioned. Therefore, Indonesia's initiatives to take active and reactive role the disputes should get support because Indonesia is neutral in the disputes.

Indonesia is able to comprehend the complexity of the disputes because Indonesia's territory is very close to the South China Sea. Indonesia's diplomatic initiatives is well known as the first preventive diplomacy. The mechanism gives the best solution to the disputes. The dispute countries consider that any military confrontation has negative impact to each country. As a country that has the diplomatic initiatives in the settlement of the South China Sea disputes, Indonesia's participation is admitted in the international level as the intensive consolidation to find any best solution. Therefore, it has political significancy for the countries in the territory surrounding the waters and the international society as well.



ASEAN member countries understand that the South China Sea disputes are litmus test about how ASEAN settle any disputes in the Southeast Asian region following the Declaration of Conduct while the Code of Conduct is the next framework. Indonesia's position is clear and consistent; it encourages the establishment of Code of Conduct (CoC) for the South China Sea disputes. It is initiative because there is momentum in this matter<sup>1</sup>. Intervention will be carried out indirectly or tacitly when in bilateral and regional meetings, the dispute countries have chance to participate. ASEAN looks more solid in the dispute settlement and it has commitment to moving forward for the establishment of the CoC in the South China Sea disputes with China.

ASEAN waits China's readiness to discuss the CoC and to agree that the dispute parties have to restraint and does not engage in any activities that may damage the trust and confidence building in the South China Sea disputes. As long as ASEAN member countries have agreed to go forward with the CoC elements in the ASEAN level, Indonesia has initiated the the draft. In this matter, ASEAN must involve China in order to take the ownership of China and take the top of the process.

However, after observing the situation in field, Indonesian Foreign Minister Marty Natalegawa does not agree the negotiation process of CoC. It is binding and it will regulate how the dispute countries in the region should behave. In the field or in the South China Sea the situation is totally incompatible to the diplomatic channel. Therefore, we have to make sure the in the field reality in line with the diplomatic efforts.

Indonesia is well aware of the fact that the settlement of the South China Sea disputes has significant impact to national security and therefore, as part of ASEAN framework Indonesia participates proactively to find best solution in the disputes. Proactive measures are shown in real time, Indonesia has an initiator of the DoC 2002 in Cambodia. Since then, Indonesia always wants to accelerate the DoC to CoC. For Indonesia, the political and diplomatic efforts in the settlement of the South China Sea disputes through the ASEAN framework is the best solution as long as there is common ground of views and principles to keep the peace solution.

#### **D. Future Projection of the South China Sea**

Any friction among countries in the South China Sea disputes should not be underestimated. The Philippines has reported the disputes to the International Tribunal for the Law of the Sea United Nations to terminate China's ships to enter Ita ZEE. The condition is worse when China makes provocation with the establishment of the Air Security Identification (Akito/Air Defense Identification Zone) which takes effect on January 1,2014 [13]. China demands that every aircraft flies in the DIZ flight plan, it should make report which mentions the country of origin and maintains air communication. If it violates the regulation, China threatens to take the emergency defensive measure. China also condemns the tight security

of the Philippines and Japan in the region to prepare Army base that will be built in 2016, in the Senkaku.

China and ASEAN agree that the UNCLOS becomes the basis for the establishment of rule of law in the South China Sea. China expresses that it is “very important to maintain the principles and objectives of the UNCLOS.” On the contrary, ASEAN calls for “full respect for the principles of international law recognized by the public, including the UNCLOS 1982.” There are many differences and these become transparency in relation to the interpretation, application and implementation of the UNCLOS. These make some misunderstand-ing among the dispute parties. For example, it relates to China’s claim on “historical right” in the South China Sea. China insists it to be applicable despite China has signed the UNCLOS. Meanwhile, ASEAN believes that the historical right should be fully considered and discussed in the negotiation of the UNCLOS in 1982. Therefore, the claim is no longer valid with the convention.

Cooperation is important way to minimize any risks of such incidents in accordance with the long term interests of ASEAN, China, and other users of the South China Sea. UNCLOS is the most important basis of the rule of law in the South China Sea. UNCLOS has become the basis for the DoC and it will be the basis for the preparation of the CoC. Therefore, it is important and necessary for ASEAN and China to promote understanding of the UNCLOS reciprocal basis and to narrow the gap with the interpretation of the Convention. It will achieve harmonization in the implementation and execution. The first step to achieving this goal is to streamline the claims of the proposed maritime ASEAN and China in accordance with the contents of the UNCLOS.

Many ASEAN members countries believe that China’s proactive role to organize the CoC will benefit China because it shows that ASEAN and China can work together to solve their disputes. This will be the most powerful guarantee to prevent foreign intervention in the South China Sea disputes as China expects it. In the process of preparing the CoC, ASEAN and China have always given the weak points of the DoC and CoC which will ensure that it will not be prepared to find the same disputes.

Firstly, the CoC should be more detail. It will avoid, as much as possible, any doubt found frequently in the DoC. Secondly, the CoC should provide clear mechanism for ensuring compliance of the dispute parties in the implementation of the CoC. For example, it should provide any institutionalized mechanism for review. Thirdly, the CoC must provide mechanism to settle disputes in the interpretation and application of the CoC itself. Recently, the CoC should not only include comprehensive rules and principles but also clear indication of the procedure. It will help the dispute parties stuck in a dispute to find way in order to avoid the dispute explosion.

### III. CONCLUSION

China and ASEAN as a whole or China and each dispute country can be terminated. The disputes come from the outdated debate about bilateralism, China's option and multilateralism. The last option, ASEAN nations prefer. Moreover, most of sovereignty and jurisdictional issues cannot be only solved through bilateral negotiation. In fact most of the disputes concerning Spratlys Island and other islands in the South China Sea involve more than two parties. However, concerning the Paracel Islands it seems more conducive through bilateral negotiation.

Indonesia is ready to work towards an Asia—Pasific or Indo-Pasific wide treaty of friendship and cooperation. It requires the commitment of nations to build confidence, to solve disputes by peaceful means and to promote common security. Hence, the disputes in the South China Sea will not be resolved anytime soon, if at all. The goal should be to prevent the disputes to be armed conflict, and this could be the overarching aim of any code of conduct. The document should, at the very least, declares that national interests might be pursued, but not at the expense of other countries.

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