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ASEAN Legal Mechanism in Geopolitical Conflict of the South China Sea

By Saidatul Nadia Abd Aziz & Salawati Mat Basir

Taylor's University

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I. INTRODUCTION

ASEAN and South China Sea conflict has its own history and has dramatically intensified. Since the founding of the Association of Southeast Asian Nations (ASEAN) in 1967, ASEAN has consistently chosen to maintain peace and sovereignty among its member states without external interference.¹ Amid the conflict in the South China Sea, which is crucial to the flow of global maritime trade as it provides the vital maritime link between the Indian and Pacific oceans², ASEAN is in a difficult position to maintain its autonomy of purpose and avoid being swept up in the current of China-US competition, which could potentially divide it³.

Author a: Associate Professor Dr Saidatul Nadia Abd Aziz, School of Law and Governance, Faculty of Business and Law, Taylor's University. e-mail: Nadia.AbdAziz@taylors.edu.my

Author a: Professor Dr Salawati Mat Basir Faculty of law, National University of Malaysia, e-mail: salawati@ukm.edu.my

¹ Winston, R. A., & Sachdeva, I. *Raging waters in the South China sea. What the battle for supremacy means For Southeast Asia*. Lizard Publishing, 2020). p

² Schofield, C. *Competing maritime claims and enduring disputes in the South China sea*. In Z. Keyuan (Ed.), Routledge handbook of the South China sea (Routledge, 2021). (pp. 104–122).

³ Buszynski, L .Introduction: The development of the South China Sea dispute. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a Regional Maritime Dispute to Geo- Strategic Competition* (pp. 1–8). (Routledge, 2020).

The Indo-Pacific has historically been the world's most prosperous area. A massive war there would devastate the world economy.⁴

Concerns have been expressed about ASEAN's capacity to reach an agreement among its member states considering their divergent positions and interests in this conflict.⁵

Neither the growing great power rivalry between the United States and China nor the actions of ASEAN's own members are within the organization's sphere of influence⁶. The members of ASEAN are split between those who have territorial claims in the South China Sea (the Philippines, Brunei, Malaysia, Vietnam, and Indonesia) and those who do not (Cambodia, Laos, Myanmar, and Thailand), with Singapore playing the role of mediator and most of the ASEAN member states (AMS) are heavily exposed to China's influence over land.⁷ In 2012, Cambodia, who was chairman of the ASEAN Summit, failed to release a communiqué for the first time in the organization's history, highlighting the diversion of ASEAN, notably about the South China Sea. This demonstrated Cambodia's reliance on China and its willingness to function as a proxy for China, which ultimately prevented ASEAN from uniting against China in the South China Sea⁸.

This dispute in the SCS threatens not just the interests of the AMS but also the peace and stability of the region⁹. ASEAN recognized that if the territorial dispute was not effectively addressed, the region will be

⁴ Haddick, R. J. *Fire on the water, second edition: China, America, and the Future of the Pacific*. (Naval Institute Press, 2022).

⁵ Hor, S. (2022). *ASEAN policy towards the South China Sea: A neoclassical realism and two-level games analysis* [Master's thesis, Linnaeus University]. <http://urn.kb.se/resolve?urn=urn:nbn:se:lnu-diva-113923>.

⁶ Beeson, M. "Decentered? ASEAN's struggle to accommodate great power competition". *Global Studies Quarterly*, 2(1) (2022)., ksab044. <https://doi.org/10.1093/isagsq/ksab044>.

⁷ Tonnesson, S. Four aspects of the crisis in the South China Sea. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a Regional Maritime Dispute to Geo- Strategic Competition* (pp. 9–23). (Routledge, 2021).

⁸ Corr, A. Introduction. In A. Corr (Ed.). *Great powers, grand strategies: The new game in the South China Sea* (pp. 1–40). (Naval Institute Press, 2018).

⁹ S. Hor, (2022). *ASEAN policy towards the South China Sea: A neoclassical realism and two-level games analysis* [Master's thesis, Linnaeus University]. <http://urn.kb.se/resolve?urn=urn:nbn:se:lnu-diva-113923>.



unstable for all AMS¹⁰. The benefits of the Exclusive Economic Zone (EEZ) of 200 nautical miles from the territory baselines not only provide sovereignty, but also access to the scarce resources deep down such as oil, gas, and fishing resources¹¹. These are the geopolitical and economic benefits. Additionally, the EEZ provides strategic locations for regional power projections.¹² This clarifies the geopolitical tension, as the underlying issue is US-China relations. ASEAN as an organization should be able to make recommendations and resolutions regarding the SCS issue, but if the greater contest persists, it may become irrelevant. Maintaining unity is essential for ASEAN, but unless ASEAN demonstrates autonomy, its unity will be tenuous.¹³

The available mechanisms in ASEAN are notable. As an example, the ASEAN Regional Forum (ARF) had contributed to the region's security matters. The author argue that to manage the present geopolitical shift in the South China Sea, ASEAN must be open about its strengths and shortcomings. The issues faced by ASEAN now necessitate the development of a consistent, coordinated, and mutually supportive response. Though it was believed that cohesion and unity were unattainable due to the national interests and varied positions of AMS about the conflict, the current dynamics of regional dominance are more severe and challenging, and the complexity of time will compel ASEAN to operate in a central role. This article is to discuss: (i) the geopolitical conflict between major powers in Indo Pacific and the South China Sea (ii) ASEAN's existing mechanisms and policies in addressing the South China Sea Conflict; (iii) ASEAN's cohesion and centrality in the South China Sea conflict; and (iv) ASEAN's way forward to stand as a regional power in the South China Sea.

II. GEOPOLITICAL CONFLICT IN INDO PACIFIC AND THE SOUTH CHINA SEA

The concept of geopolitics has its roots in the decades between 1880 and 1910. As the title suggests, Captain Alfred Thayer Mahan's *The Influence of Sea*

¹⁰ Son, N. H. ASEAN, China, and the code of conduct. In L. Buszynski & D. T. Hai (Eds.), *The South China sea: From a regional maritime dispute to geo- strategic competition* (pp. 24–42). (Routledge, 2020).

¹¹ Beckman, R. ASEAN and the South China Sea dispute. In P. Chachavalpongpun (Ed.), *Entering uncharted waters: ASEAN and the South China Sea* (pp. 15–35). (Institute of Southeast Asian Studies, 2014).

¹² Yee, A. Maritime territorial disputes in East Asia: A comparative analysis of the South China Sea and the East China Sea. *Journal of Current Chinese Affairs*, 40(2), (2011). 165–193. <https://doi.org/10.1177/186810261104000207>.

¹³ Buszynski, L. Introduction: The development of the South China Sea dispute. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a Regional Maritime Dispute to Geo- Strategic Competition* (pp. 1–8). (Routledge, 2020).

Power on History 1660-1783 (1890) argued that the source of Britain's rise to world power in the early modern world (and, by extension, the potential key to dominance of America as a rising world power in the 20th century) was control of the seas¹⁴. Maritime power is the capacity to employ maritime capabilities on and from the sea to affect the behaviour of policy executives and military commanders, as well as the path of international relations. Maritime diplomacy is the use of maritime power to promote, convince, discourage, or compel. Therefore, the nation holding the prestige of command in the South China Sea has frequently influenced the course of history in the Indo-Pacific¹⁵. What is a "great power"? A great power is a state that is able and recognized as able to exert influence around the world¹⁶. When one or two great commercial powers have been dominant or have achieved parity of power, the emphasis in practise has been placed on the freedom of navigation and the immunity of shipping from local control; in such instances, the seas have been viewed as strategic rather than economic areas of competition.¹⁷ (Connell, 1982).

It is important who controls the Indo-Pacific. First, let us acknowledge the interests of both big powers here, the United States and China, and the necessity of the security competition. This article will then elaborate on why it matters who is in power and how ASEAN responded to the Indo pacific idea.

In 2010, geostrategic competition between great powers intensified in numerous ways, especially after China bolstered its regional footprint via the Belt and Road Initiatives (BRI). That was when the US and its allies sought to offset China's regional influence by inventing a new geographical notion of the "Indo-Pacific"¹⁸. The Indo-Pacific Strategy (IPS) is a relatively new maritime-related strategy being created and implemented by four pillar nations: the United States, Japan, Australia, and India. It was first officially stated by U.S. President Donald Trump during his Asia trip in November 2017¹⁹.

¹⁴ Granieri, R. J. What is geopolitics and why does it matter? *Orbis*, 59(4), (2015). 491–504. <https://doi.org/10.1016/j.orbis.2015.08.003>.

¹⁵ Jenner, C. J. Struggles for prestige and power, 960-2020. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 468–485). (Routledge, 2021).

¹⁶ Gosselman, B. Can the United States share power in the Asia-Pacific? In J. Wallis & A. Carr (Eds.), *Asia Pacific Security: An introduction* (pp. 23–40). (Georgetown University Press, 2016).

¹⁷ O' Connell, D. P. *The international law of the Sea: Volume 1*. (Oxford University Press, 1982).

¹⁸ Yoshimatsu, H. ASEAN and great power rivalry in regionalism: From East Asia to the Indo-Pacific. *Journal of Current Southeast Asian Affairs*. (2022). <https://doi.org/10.1177/18681034221139297>.

¹⁹ Shicun, W., & Colombage, J. *Indo-Pacific strategy and China's response*. Institute for South China Sea Studies. (2019). <https://chinas-icas.org/wp-content/uploads/2020/11/Indo-Pacific-Strategy-and-Chinas-Response-Report-FINAL.pdf>

Changes in Xi Jinping's behaviour and objectives demonstrate that his assertiveness and nationalistic behaviour altered the game. China is cognisant of the "power dilemma" and that international relations are never static; hence, it has made substantial military advancements.²⁰ While China believes that rapid military modernization and the acquisition of maritime "breathing space" in the western pacific is the best way to defend China's expanding interests and hedge against uncertainties, the United States and Indo-Pacific, which claim to have a strong interest in defending the rules-based international system, suggest that China's claims in the East and South China Sea are an attempt to rewrite international law and norms. The Chinese are attempting to resolve territorial issues by material strength and intimidation. If China continues to undermine the security framework in the Indo-Pacific, the United States' dependability will be questioned.²¹ In official publications, the Indo-Pacific is described as a geopolitical and geo economic space essential to the defence of U. S. worldwide interests. Nevertheless, its geographical boundaries are not completely delineated²². Consequently, the stage is set for a security rivalry between both of these major powers.

The Sino-American rivalry for power and status has multiple dimensions. Principal among these are perceptions of military threat, trade policy tensions, political-ideological factors, and opposing concepts of regional order²³. On one hand, the United States is still viewed as the stabilising power, but on the other, there are issues as to whether American hegemonic fall has made the Indo-Pacific more unstable and institutionally weaker.²⁴ The world's rising powers, particularly China, have begun to alter the structure of the global order with their "neighbourhood diplomacy" with the goal of turning China's neighborhood areas into a "community of common destiny"²⁵, while the historical winners of the initial development of capitalism and modernity, primarily North American and Western European

nations, have struggled to achieve the high economic growth rates that lead to hegemony²⁶.

So why does it matter who controls the Indo Pacific? The United States has been extremely consistent. As the dominant power in the region since 1945, the United States has had a significant role in defining the Indo-Pacific system. Over the past century, the United States has sought to prevent any rival force from dominating the region, which would make it harder for the US to pursue specific political and economic goals in the region²⁷. Nevertheless, the regional dynamics of the Indo-Pacific remain in flux. The hegemony of the United States is eroding as China's naval force grows in strength. China may be able to halt the U.S. navy's advancement to its shores during a maritime crisis, given its anti-access capabilities in the modern world.²⁸. The already complex South China Sea issue has been further complicated by US-China geopolitical rivalry²⁹.

The sovereignty dispute over the Spratly islands in the South China Sea and the maritime boundary dispute over the surrounding seas are the most complicated territorial disputes in the region³⁰. Historically, these islands and features were of minimal practical significance to regional states and colonial powers in the region. This changed in the late 1960s and early 1970s for a variety of reasons, including the "cold war" climate in the South China Sea, which led to military scenarios involving the South China Sea islets, intra-regional rivalry, and rising state nationalism³¹.

China's nine-dash line of 1947, a U-shaped line used to map out major areas over which China claims ownership and complete sovereignty, forms the basis of its publicly nebulous "historic rights" claim in the South China Sea. However, China has been unable to precisely delineate the location of its claim³². China's claims of historic rights over most of the contentious waterway were rejected in a 2016 Hague ruling that was

²⁰ Forsyth, I. Old game plan, new game: China's grand strategy in the South China Sea, In A. Corr (Ed.), *Great powers, grand strategies: The new game in the South China Sea* (pp.74–105). (Naval Institute Press, 2018).

²¹ Haddick, R. *Fire on the water, second edition: China, America, and the Future of the Pacific*, p.

²² Heiduk, F., & Wacker, G. *From Asia-Pacific to Indo-Pacific: Significance, implementation and challenges*. Stiftung Wissenschaft und Politik German Institute for International and Security Affairs,2020.

²³ Lippert, B., & Perthes, V. Strategic rivalry between United States and China: Causes, trajectories, and implications for Europe. *SWP Research Paper*, (2020). 4. <https://doi.org/10.18449/2020RP04>.

²⁴ Peou, S. *Peace and security in Indo-Pacific Asia: IR perspectives in context*. (Routledge, 2022).

²⁵ Shengguang. Re-considering the Definition and Concept of 'Peripheral Diplomacy'. [World Affairs], (2017). pp 73.

²⁶ Regilme, S. S. F., & Parisot, J. *Debating American hegemony: lobal cooperation and conflict*, In S. S. Regilme, & J. Parisot (Eds.), *American hegemony and the rise of emerging powers: Cooperation or conflict* (pp. 3–18). (Routledge, 2017).

²⁷ McDougall, D. *Asia Pacific in world politics*. (Lynne Rienner Publishers,2016).

²⁸ Amin, H., & Rafique, A. The maritime rise of China in Indo-Pacific and Indo-US counter balancing approach. *Journal of Political Science and International Relations*, 4(1) (2021). 18–23. <https://doi.org/10.11648/j.jpsir.20210401.13>.

²⁹ Son, N. H. ASEAN, China, and the code of conduct. In L. Buszynski & D. T. Hai (Eds.), *The South China sea: From a regional maritime dispute to geo- strategic competition* (pp. 24–42). (Routledge,2020).

³⁰ Manicom, J. Maritime security: Will Asia's next war occur at sea? In J. Wallis & A. Carr (Eds.), *Asia Pacific security: An introduction* (pp. 147–162). Georgetown University Press,2016).

³¹ McDorman, T. L. The territorial sovereignty disputes in the south China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 91–103). (Routledge, 2021).

³² Winston, Raging waters in the South China sea. What the battle for supremacy means For Southeast Asia.



unanimously upheld and made clear that China had no basis under the UN Convention on the Law of the Sea (UNCLOS)³³. Despite this, China has continued to disregard the award and ruling to the present day. China has been making investments and trying to rise as a maritime power. The man-made islands increased China's visibility and ability to project its air and maritime power throughout the South China Sea.³⁴ Based on military observations, the Chinese have been strengthening their South China Sea coast guards ever since.³⁵ The tensions in the South China Sea involve the military actions of SCS claimant states and external powers led by the United States³⁶.

The United States, on the other hand, has steadfastly upheld the Freedom of Navigation (FONOP) concept through navigational transits and overflights, as well as the associated respect for the rule of law. Australia, Japan, the United Kingdom, and France, among others, soon followed.³⁷ The United States appears to adhere to the concepts of "pivot" and "rebalance" during President Obama administration to shift their military forces to the Asia-Pacific region and enhance their position. Rising military activity by both great powers in the East and South China Sea have created a geopolitical and geostrategic battlefield³⁸.

To maintain its status as a great power, the United States must adopt a more balanced approach. Due to their frequent practice as the lone great power, at least before the emergence of China, this is not a straightforward process. On one hand, the United States can confront China's military strength; but, due to China's military force's growth and perseverance, a confrontation may escalate into a war. On the other hand, the United States can exercise military de-escalation and focus on institution building in the region, which will be less possible due to Asia's unresolved world war history. The United States should support ASEAN efforts to promote a regional vision based on inclusiveness, prosperity, and ASEAN centrality³⁹. Aside from that, the United States can and probably should

embrace equality with other nations, especially the medium and small powers in the Indo-Pacific, to avoid great power confrontation⁴⁰. Obviously, different philosophies and objectives would likely create another conflict from this.

The current geostrategic landscape has influenced ASEAN, which had served as the key player in building multilateral architectures to discuss regional issues and challenges⁴¹. Unsettled, this geopolitics conflict will directly give effect to ASEAN as a region, as both great powers are meddling in ASEAN matters as well. So how does ASEAN respond to the Indo Pacific idea depends on how ASEAN decides to face the great power. At this point of time, ASEAN had made many initiatives to deal with security issues in the region including security mechanisms that involved these great powers. Individual member states aim to hedge, balance, and bandwagon in a variety of ways in reaction to China's emergence and the increase of great power rivalry in the area, resulting in a variety of ASEAN responses⁴². Regional policy analysts share similar concerns that the U.S. Indo-Pacific strategy is not only anti-China, but also contemptuous of ASEAN, despite the Trump administration's repeated assertions of support for ASEAN Centrality. These issues have been heightened by the return of the Quad, which has sparked questions regarding ASEAN's position. The fundamental sentiment, however, as represented in the preceding economic discussion, is that "China is here", it is already Southeast Asia's most important economic partner, and this position is anticipated to grow over time.⁴³

However, according to survey by ISEAS in its report *The State of Southeast Asia: 2021 Survey Report*, the idea of an Indo-Pacific region seems to have reached a turning point. According to the survey, in order for ASEAN to remain relevant, 40.3% of Southeast Asians believe that it "has to express its ASEAN Outlook on the Indo-Pacific (AOIP) more effectively." The second group, or 20.2% of respondents, believes that the Indo-Pacific strategy is "simply a tool for many countries to shape geo-politics." The strategy "should not be defined by one country, nor should it be utilised to contain a

³³ Borton, J. *Islands and rocks in the South China Sea: Post-hague ruling*. Xlibris. (2017).

³⁴ Son, N. H. ASEAN, China, and the code of conduct. In L. Buszynski & D. T. Hai (Eds.), *The South China sea: From a regional maritime dispute to geo-strategic competition* (pp. 24–42). (Routledge, 2020)

³⁵ Omar, H. Focus group discussion on military perspectives on the South China Sea conflict. 3 Oct 2022, Everly hotel, Putrajaya.

³⁶ George, M. Maritime security and demilitarisation of the South China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 65–88). (Routledge, 2021).

³⁷ Raymond, M., & Welch, D. A. What's really going on in the South China Sea? *Journal of Current Southeast Asian Affairs*, 41(2) (2022), 214–239. <https://doi.org/10.1177/18681034221086291>.

³⁸ Son, N. H. (2020). ASEAN, China, and the code of conduct pp. 24–42.

³⁹ Stromseth, J. *Don't make us choose. Southeast Asia in the throes of US-China rivalry*. (Brookings, 2019). <https://www.brookings.edu/research/dont-make-us-choose-southeast-asia-in-the-throes-of-us-china-rivalry/>.

⁴⁰ White, H. *The China choice: Why America should share power*. (Black Inc, 2012).

⁴¹ Yoshimatsu, H. ASEAN and great power rivalry in regionalism: From East Asia to the Indo-Pacific. *Journal of Current Southeast Asian Affairs*, (2022). <https://doi.org/10.1177/18681034221139297>.

⁴² Kausikan, B. *Consensus, centrality and relevance: ASEAN and the South China Sea*. The Straits Times. (2016). <https://www.straits-times.com/opinion/consensus-centrality-and-relevance-asean-and-the-south-china-sea>.

⁴³ Thu, H. L. *Southeast Asians hope for neutrality, prepare for a choice*. Australian Strategic Policy Institute. <https://www.aspi.org.au/opinion/southeast-asians-hope-neutrality-prepare-choice>; Singh, D.. Southeast Asia's uneasy position in America's Indo-Pacific strategy. *Perspective*, 76(2018).

certain country," according to the third section (16.7%)."⁴⁴

In addition, a recent 2022 ISEAS survey study stated that ASEAN's opinions and options in the region's developing power struggle, particularly the escalating rivalry between China and the United States, were "non-choice" oriented. To resist pressure from the two main powers, ASEAN member states continue to favor the option of strengthening ASEAN's resiliency and unity (46.1%). The notion of an engaged ASEAN appears to be more favored than its customary position of remaining neutral in the dispute between China and the US (26.6%). The preference for ASEAN to look for "third parties" to improve its strategic options has also increased slightly (16.2%), with Vietnam's increase being the largest⁴⁵.

III. ASEAN'S EXISTING MECHANISMS AND POLICIES IN ADDRESSING THE SOUTH CHINA SEA CONFLICT

As a regional organization, ASEAN strives to maintain its identity and autonomy as the US-China rivalry over the South China Sea intensifies, but it can no longer suppress its disagreement and disintegration over this issue⁴⁶. Acceptably, ASEAN has responded to the concept of the Indo-Pacific and its centrality⁴⁷ (Beeson, 2022), but more effort is required to keep up with the constant changes and challenges in the region. ASEAN, which has been engaged in the development of an inclusive regional architecture for decades, must consistently demonstrate its collective leadership in forging and shaping the vision for closer cooperation in the Indo-Pacific and maintaining its position in the evolving regional architecture in Southeast Asia and its surrounding areas. ASEAN must also continue to act as an honest broker in the context of competing strategic interests.⁴⁸

ASEAN is a regional organization that reaches consensus-based decisions.⁴⁹ On certain issues, all ASEAN member states share a common interest, but on others, their interests differ. The South China Sea is among the problems where member interests disagree. Vietnam and the Philippines have continuously demanded support for their claims in the South China Sea, while Cambodia and Laos have openly allied with China, dividing ASEAN⁵⁰. While the South China Sea conflict directly concerned four of its members (Brunei, Malaysia, Philippines, and Vietnam), other countries such as Indonesia's Natuna Island, which bordered the South China Sea, had claims that overlapped with China's nine-dash line map. Thailand, on the other hand, has commercial interests in the commercial shipping route between the Gulf of Thailand and the South China Sea, so does Singapore, which is concerned about the major shipping routes between the Indian Ocean and East Asia via the Straits of Malacca and Singapore before entering the South China Sea.⁵¹

The major question is whether ASEAN can effectively manage its internal divisions. Based on consensus decision making in the South China Sea issue are the numerous failed attempts to even address the issue in ASEAN meetings, such as the ASEAN Ministerial meeting in 2012 in Phnom Penh, where a deadlock of wording regarding the South China Sea resulted in the first non-completion of a Joint Communiqué⁵². In addition, the 2016 Arbitration award was favorable to the Philippines, however the ASEAN Foreign Ministers were unable to agree on a single language for their annual remarks on the South China Sea as mentioned by Marty Natalegawa,

"ASEAN has regrettably thus far been incapable or unwilling to collectively and explicitly make reference to the award [...] the silence of ASEAN on the PCA Award is deafening. [...] For an organization that has incessantly emphasized the primacy of the rule of law and efficacy of diplomacy, this is a position that is difficult to countenance".⁵³

⁴⁴ Seah, S., Ha, H. T., Martinus, M., & Thao, P. T. P. *The state of Southeast Asia: 2021 survey report*. ASEAN Studies Center & ISEAS-Yusof Ishak Institute. <https://www.iseas.edu.sg/wp-content/uploads/2021/01/The-State-of-SEA-2021-v2.pdf>

⁴⁵ Seah, S., Lin, J., Sithanonxay, Suvannaphaky, Martinus, M., Thao, P. T. P., Seth, F. N., & Ha, H. T. *The state of Southeast Asia: 2022 survey report*. ASEAN Studies Center & ISEAS-Yusof Ishak Institute. https://www.iseas.edu.sg/wp-content/uploads/2022/02/The-State-of-SEA-2022_FA_Digital_FINAL.pdf

⁴⁶ Buszynski, L. ASEAN, grand strategy, and the South China Sea: Between China and the United States. In C. Anders (Ed.), *Great powers, grand strategies: The new game in the South China Sea* (pp. 122–146). (Naval Institute Press, 2018).

⁴⁷ Beeson, M. Decentered? ASEAN's struggle to accommodate great power competition. *Global Studies Quarterly*, 2(1) (2022), ksab044. <https://doi.org/10.1093/agsq/ksab044>.

⁴⁸ ASEAN. *ASEAN outlook on the Indo-Pacific*. ASEAN, (2019). <https://asean.org/speechandstatement/asean-outlook-on-the-indo-pacific/>.

⁴⁹ Leelianou, S. *Does ASEAN consensus decision making remain relevant?* [Master's thesis, College of Business, Government and Law, Flinders University, 2021.] https://flex.flinders.edu.au/file/1b0b82bd-e5bf-4b49-9680-3e2524cbb0a6/1/Leelianou2021_Master_Copy.pdf

⁵⁰ Buszynski, L. ASEAN, grand strategy, and the South China Sea: Between China and the United States. In C. Anders (Ed.), *Great powers, grand strategies: The new game in the South China Sea* (pp. 122–146). (Naval Institute Press, 2018).

⁵¹ Beckman, R., & Dang, V. H. ASEAN and the South China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 336–356). (Routledge, 2021).

⁵² Tonnesson, S. Four aspects of the crisis in the South China Sea. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a Regional Maritime Dispute to Geo- Strategic Competition* (pp. 9–23). (Routledge, 2021).

⁵³ Natalegawa, M. *Does ASEAN Matter? A View from Within*. Institute for Southeast Asian Studies, 2018.

Since the 1990s, ASEAN has strived to play a proactive role in response to South China Sea developments. It was demonstrated by statements regarding regional developments, dialogue with China, and the ASEAN Regional Forum (ARF), which was first convened in 1994.⁵⁴ ARF's mission is to foster constructive dialogues and consultations on political and security issues of common interest and concern, and to make significant contributions to confidence-building and preventive diplomacy in the Asia-Pacific region⁵⁵. The ARF is viewed as a beneficial tool for dealing with China's rise. The regional grouping seeks to "socialize" China to the point where it acts as a "responsible regional power" through a cooperative security approach. In August 2022, at the 29th ARF meeting held in Phnom Penh, the ministers discussed the South China Sea Conflict. In particular, the necessity of maintaining and supporting peace, security, stability, safety, and freedom of navigation in and above the South China Sea was underlined, and the advantages of the South China Sea being a sea of peace, stability, and prosperity were acknowledged. The complete and effective implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) was also emphasised. The progress of substantive negotiations towards the early conclusion of an effective and substantive Code of Conduct in the South China Sea (COC) consistent with international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS). However, the meeting emphasised the need to preserve an atmosphere conducive to COC negotiations, and thus supported steps that could lessen tensions and reduce the possibility of accidents, misunderstandings, and miscalculations⁵⁶.

The Meeting emphasised the significance of implementing confidence-building and preventive measures to increase, among other things, trust and confidence between the parties, and reaffirmed the significance of upholding international law, including the 1982 UNCLOS. The Meeting discussed the situation in the South China Sea and took note of the concerns voiced by some countries regarding land reclamations and activities, as well as serious incidents in the region, which have eroded trust and confidence, heightened tensions, and may threaten peace, security, and stability in the region. The Meeting reaffirmed the need to enhance mutual trust and confidence, exercise self-restraint in the conduct of activities and avoid actions that would exacerbate the situation, and pursue

⁵⁴ Amer, R. *The South China Sea: Challenge for ASEAN*. Institute for Security & Development Policy. (2014). <https://www.files.ethz.ch/isn/185082/2014-amer-the-south-china-sea-challenge-for-asean.pdf>

⁵⁵ ASEAN. *ASEAN Regional Forum*. ARF. (2022a). <https://aseanregionalforum.asean.org/about-arf/>

⁵⁶ Ibid

peaceful resolution of disputes in accordance with universally recognised principles of international law, including the UNCLOS of 1982. The Meeting emphasised the significance of non-militarization and self-restraint in the conduct of all activities by claimants and all other states, including those listed in the DOC, which could further complicate the situation and escalate tensions in the South China Sea⁵⁷.

ASEAN has been able to establish ASEAN-led security institutions based on the concept of "cooperative security" — an inclusive institutional arrangement designed to facilitate security dialogues, confidence building, and norm creation among members with the goal of politically taming regional great powers and influencing their behaviour⁵⁸. In addition, ASEAN established its own ASEAN community, which consists of three pillars, one of which focuses on political and security cooperation-ASEAN Political and Security Community⁵⁹, with the goal of elevating ASEAN's political and security cooperation so that people in the region can live in peace with one another and with the rest of the world in a just, democratic, and harmonious environment⁶⁰. On the other hand, the establishment of the ASEAN Political-Security Community is widely recognised as a significant achievement in fostering and maintaining peace in Southeast Asia. However, it has been criticised for its inability to resolve the extensive history of territorial disputes within the community. Critics questioned ASEAN's capacity to materialise the APSC as a complete security-based community. Numerous analysts assert that ASEAN has failed to realise its vision of a "comprehensive" security community as a result of the region's "endless" traditional and non-traditional security challenges⁶¹.

In addition, ASEAN also has a platform called ASEAN Defense Ministers Meeting Plus (ADMM-Plus) for ASEAN and its dialogue partners to strengthen security and defense cooperation for peace, stability, and development in the region⁶². In the recent 9th ADMM Plus meeting held on November 23, 2022 in

⁵⁷ Ibid

⁵⁸ Aziz, S. N. A., & Basir, S. M. South China Sea: ASEAN mechanism on maritime disputes and the rise of Indo Pacific region. *Journal of Territorial and Maritime Studies*, 9(2) (2022). 65–82. <https://www.jstor.org/stable/48684189>.

⁵⁹ Karim, M. A. Should the ASEAN regional forum (ARF) revisit its core areas. *AEI Insights: An International Journal of Asia-Europe Relations*, 2(1) (2016). 100–119.

⁶⁰ Beckman, R., & Dang, V. H. ASEAN and the South China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 336–356). (Routledge,2021).

⁶¹ Huda, M. I. M., Muhammad, S. F. A. S., & Kamaruddin, N. Security community, ASEAN and its member states: Mutually reinforcing or a relationship of convenience? *Malaysian Journal of History, Politics & Strategic Studies*, 47(1) (2020), 78–97.

⁶² ASEAN. "About the ASEAN defence ministers' meeting plus". ADMM. (2017). <https://admm.asean.org/index.php/about-admm/about-admm-plus.html>.

Siem Reap, Kingdom of Cambodia, there was no specific mention of the South China Sea, but there are terms that indicate that security concerns in the South China Sea are being observed. For example, the meeting emphasized strengthening collective efforts and practical cooperation to reduce the impact of current and emerging traditional and nontraditional threats, including maritime security challenges. In addition, the summit reiterated respect for international law, notably UNCLOS 1982. Moreover, maintaining confidence between members by applying the Code for Unplanned Encounters at Sea is crucial (CUES)⁶³. At the 16th ASEAN-China Summit in 2016, the leaders of both countries adopted a Joint Statement on the application of the CUES in the South China Sea and the guidelines for hotline communications between senior officials of the Ministers of Foreign Affairs of ASEAN member states and China in response to maritime emergencies in the implementation of the DOC⁶⁴. In 2018, the CUES were employed in maritime exercises and were regarded as the initial step in advancing practical measures for establishing trust and marine safety in the South China Sea⁶⁵.

The 9th ADMM-Plus meeting also discussed the ASEAN Outlook on the Indo-Pacific (AOIP), where it was highlighted that the AOIP is meant to complement the ASEAN Community-building process and is not designed to create new mechanisms or replace current ones⁶⁶. The AOIP is not a magic wand that will immediately persuade AMS to adopt the name "Indo-Pacific."⁶⁷ The AOIP is a response to the United States' "Free and Open Indo-Pacific" (FOIP) strategy, the rising competitiveness between the United States and China, and the establishment of multiple Indo-Pacific initiatives⁶⁸. While many Asia-Pacific states began to demonstrate

⁶³ ASEAN. "Joint declaration by the ADMM-Plus defence ministers on defence cooperation to strengthen solidarity for a harmonised security." ADMM-Plus. (2022b). <https://s3.documentcloud.org/documents/23318686/joint-declaration-of-the-9th-admm-plus-jd-23-november-2022-siem-reap-cambodia-adopted-1.pdf>

⁶⁴ ASEAN. "10th ASEAN-China summit chairman's statement." ASEAN. (2016). <https://asean.org/wp-content/uploads/2016/09/Final-Chairmans-Statement-of-the-ASEAN-China-25th-Anniversary-Commemo....pdf>

⁶⁵ Koh CSL, "ASEAN-China Maritime Exercise CUES greater SCS stability", East Asia Forum, August 18, 2018 <https://www.eastasiaforum.org/2018/08/18/asean-china-maritime-exercise-cues-greater-scs-stability> (Accessed on 20 December 2022).

⁶⁶ ASEAN. "Joint declaration by the ADMM-Plus defence ministers on defence cooperation to strengthen solidarity for a harmonised security." ADMM-Plus. (2022b). <https://s3.documentcloud.org/documents/23318686/joint-declaration-of-the-9th-admm-plus-jd-23-november-2022-siem-reap-cambodia-adopted-1.pdf>

⁶⁷ Aziz, S. N. A., & Basir, S. M. South China Sea: ASEAN mechanism on maritime disputes and the rise of Indo Pacific region. *Journal of Territorial and Maritime Studies*, 9(2), (2022). 65–82. <https://www.jstor.org/stable/48684189>.

⁶⁸ Beckman, R., & Dang, V. H. ASEAN and the South China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (2021). (pp. 336–356). Routledge.

a greater interest in the Indo-Pacific, ASEAN maintained a cautious position on the notion and did not support the FOIP by merely saying in its 2018 Joint Communique that it "recognises" the FOIP. ASEAN agreed to explore opportunities for cooperation with the Indo-Pacific Initiative (headed by the United States and Japan), the Belt and Road Initiative (led by China), and the Expanded Partnership for Quality Infrastructure (Japan led). In other words, this demonstrates that ASEAN avoids taking sides between major powers and engages in impartial involvement⁶⁹.

ASEAN has consistently included a discussion of the South China Sea conflict at every ASEAN summit, as evidenced by the fact that the most recent ASEAN summit, held in October 2022, featured a discussion of the South China Sea conflict. In addition to the ongoing human rights situation in Myanmar, the subject of the South China Sea was regularly discussed at ASEAN meetings and summits. In light of this, it is necessary for ASEAN to take aggressive measures to ensure that the South China Sea issue is not merely a topic of discussion at every meeting or ASEAN summit⁷⁰. The issue of land reclamations, activities that increased tensions, and the importance of non-militarization and self-restraint in the conduct of activities and pursuit of peaceful resolution in accordance with international law, including UNCLOS 1982, were discussed at the ASEAN summit attended by the heads of state or government of ASEAN member states while acknowledging the Declaration of Conduct and progress of Code of Conduct⁷¹.

The first Code of Conduct on the South China Sea were adopted bilaterally between the Philippines and China and the Philippines and Vietnam in 1995⁷². The code established the parties' commitment to peacefully resolve territorial issues in conformity with international law, including UNCLOS. Then, during the 29th ASEAN Ministerial Meeting in the same year, a regional Code of Conduct was proposed, with the two prior COCs serving as a referral, and the document was presented at the 6th ARF meeting in 1999. China was initially hesitant but later interested in proposing its own

⁶⁹ Yoshimatsu, H. ASEAN and great power rivalry in regionalism: From East Asia to the Indo-Pacific. *Journal of Current Southeast Asian Affairs*. (2022).. <https://doi.org/10.1177/18681034221139297>.

⁷⁰ Aziz, S. N. A. "ASEAN should opt for economic diplomacy". News Straits Times. (2022). <https://www.nst.com.my/opinion/columnists/2022/11/848475/asean-should-opt-economic-diplomacy>.

⁷¹ ASEAN. *Joint statement on the 20th anniversary of the declaration on the conduct of parties in the South China Sea*. (ASEAN. 2022c). <https://asean.org/wp-content/uploads/2022/11/FINAL-Joint-Statement-on-the-20th-Anniversary-of-DOC-1.pdf>

⁷² Thao, H. Vietnam and the code of conduct for the South China Sea. *Ocean Development & International Law*, 32(2) (2001).. 105–130. <https://doi.org/10.1080/00908320151100244>.

version of COC. Throughout the years of discussions, there were numerous irreconcilable differences.⁷³

Thus, in 2002, at the 35th ASEAN Ministerial Meeting (AMM), ASEAN member states signed a non-binding document titled the Declaration on the Conduct of Parties in the South China Sea (DOC)⁷⁴. The purpose of this DOC was to foster confidence while ASEAN pursues the COC. Then, in 2012, ASEAN and China signed the document "ASEAN Proposed Elements of a Regional Code of Conduct in the South China Sea (COC)," which was followed by a declaration. China's reluctance to enforce the COC remains a challenge⁷⁵ despite an agreement reached in 2013 between China and a more unified and determined ASEAN, with Brunei as the ASEAN chair⁷⁶.

The code was designed to bind China to the status quo, but the difficulty was that the status quo was continuously changing as China took control of additional features in the South China Sea. Though the COC was not meant as a conflict resolution mechanism nor a treaty under international law⁷⁷, ASEAN had no other acceptable means of dealing with China that was acceptable by all AMS⁷⁸. ASEAN prefers multilateral cooperation⁷⁹ to prevent bullying, but China seeks asymmetric bilateral negotiations to resolve conflicts⁸⁰. However, ASEAN loses its credibility if it agrees to bilateral negotiations with China. Multilateral foundations are needed for ASEAN centrality⁸¹. The delay in implementing the COC is making the situation tough for ASEAN, particularly in the aftermath of Covid-19, when most ASEAN governments are experiencing economic difficulties; China has a significant advantage⁸². Therefore, ASEAN cohesion and centrality are crucial.

⁷³ Beckman, R., & Dang, V. H. ASEAN and the South China Sea. In Z. Keyuan (Ed.), *Routledge handbook of the South China Sea* (pp. 336–356). Routledge, (2021).

⁷⁴ Panda, A. *China, ASEAN come to agreement on a framework South China Sea code of conduct.* (2017). The Diplomat. <https://thediplomat.com/2017/05/china-asean-come-to-agreement-on-a-framework-south-china-sea-code-of-conduct/>.

⁷⁵ Winston, R. A., Raging waters in the South China sea.

⁷⁶ ASEAN. *Chairman's statement of the 23rd ASEAN summit: 'Our people, Our future together'*. Bandar Seri Begawan. (2013). https://asean.org/wp-content/uploads/images/archive/23rdASEAN_S-summit/chairmans%20statement%20-%202023rd%20asean%20summit%20-%20text%20-%20final.pdf

⁷⁷ Thayer, C. A. ASEAN, China, and the code of conduct. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a regional maritime dispute to geo-strategic competition.* (Routledge, 2020).

⁷⁸ Buszynski, L. ASEAN, grand strategy, (pp. 122–146).

⁷⁹ ASEAN. *ASEAN leaders' declaration on upholding multilateralism.* Brunei Darussalam. (2021). <https://asean.org/wp-content/uploads/2021/10/3.-FINAL-ASEAN-Leaders-Declaration-on-Upholding-Multilateralism.pdf>

⁸⁰ Wardhana, R. S. South China Sea conflict and security cooperation in ASEAN waters. *Indonesian Journal of Peace and Security Studies*, 3(1) (2021), 23–33. <https://doi.org/10.29303/ijpss.v3i1.56>.

⁸¹ Li, J. J. ASEAN and the South China Sea: Approaches to resolving the conflict. *Independent Study Project (ISP) Collection*. 2752. (2017).

⁸² Winston, R. A., Raging waters in the South China sea.

ASEAN has demonstrated the ability to manage the issue in the South China Sea. The majority, if not all, of the mechanisms discussed have referenced the conflict in the South China Sea and regularly urged ASEAN and other parties directly or indirectly involved in the issue to maintain peace and avoid military conflicts. Despite the clear impossibility of resolving the South China Sea conflict soon, ASEAN is at least keeping the issue on its regional agenda. Even though ASEAN is attempting to address the issue, its legitimacy remains in question. The struggle between the big powers, particularly China, and the delay in implementing the most important control mechanism in the South China Sea, the COC, have rendered ASEAN irrelevant in conflict resolution. The fact that China has personal relationships with each ASEAN member state and can break the consensus of ASEAN member states in the COC escalates the situation.

The author contend that ASEAN has both strengths and limitations in this regard. As the article explained from the very beginning, this South China Sea matter involved great powers that is meddling in ASEAN making it fairly difficult for ASEAN to build up and stand strong on its consensus decision making. However, the mechanisms that had been addressed here demonstrate that ASEAN has already made substantial efforts, and that numerous meetings and dialogues have assisted ASEAN in enduring and containing the conflict between great powers. ASEAN just need to develop a coherent, continuing and collective response in this regard.

IV. ASEAN'S COHESION AND CENTRALITY IN THE SOUTH CHINA SEA CONFLICT

The concept of ASEAN centrality encompasses several interconnected factors. ASEAN must stay at the center of Asia (or Asia-Pacific) regional organizations, including the ASEAN Plus Three (APT), the ASEAN Regional Forum (ARF), and the East Asian Summit (EAS). ASEAN serves as the institutional "platform" upon which the Asia-Pacific and East Asian regional organizations are founded. Without ASEAN, it would have been impossible to establish these broader regional organizations⁸³. As previously mentioned, ASEAN is founded on consensus decision-making, which proactively sought to keep ASEAN member states united and prevent intragroup conflict⁸⁴. Consensus also indicates that ASEAN can play a leading role in regional

⁸³ Acharya, A. "The myth of ASEAN centrality". *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 39(2) (2017), 273–279.

⁸⁴ Emmerson, D. K. "ASEAN between China and America: Is it time to try horsing the cow?" *TRaNS: Trans-Regional and National Studies of Southeast Asia*, 5(1) (2017), 1–23. <https://doi.org/10.1017/trn.2016.31>.

agreements⁸⁵, which seem to be requirements for 'ASEAN Centrality' in the broader Asia-Pacific Region⁸⁶ and may strengthen the organization's diplomatic power on the international arena.⁸⁷

To sustain the region's stability, uphold the concept of consensus and centrality, and prevent it from being destabilized by the competition of major powers, ASEAN must maintain its autonomy, particularly in the complicated geostrategic environment. Given the diversity within ASEAN, the organization has frequently been accused of failing to reach consensus on crucial issues⁸⁸. However, if not accommodating the diversity of members, ASEAN would not be an impactful and inclusive regional organization⁸⁹. Though being criticized, ASEAN has used socialization and persuasion to engage with all great powers. Acharya mentions boldly, *"what might be Asia's security order today had there been no ASEAN? At the very least, there would be a lot less opportunity for dialogue and diplomatic interactions among the major powers with an interest in Asia, and the prospects for a preemptive US containment of China would have been greater."*⁹⁰. In the Asia-Pacific, ASEAN has been imperative in fostering positive development and serving as a model for responsible international behavior.⁹¹

Despite this, it is not accurate to say that achieving centrality for ASEAN does not come with any difficulties or that ASEAN has effectively accomplished this goal. On the one hand, the fact that immensely influential states are willing to embrace the concept of ASEAN centrality may appear like a vindication of ASEAN's continuing importance. On the other side, however, others may believe that the concept is essentially a myth.⁹² The "ASEAN Way" of consensus-seeking, voluntarism, and face-saving is partly to blame for the issue; no state is required to do anything they do not want to, and the ASEAN Secretariat has no authority to force them to⁹³. The ASEAN Way incorporates and adapts global principles to Southeast Asia's regional setting⁹⁴. As a result, decision-making in the ASEAN-led forum is less effective because member states can exercise their veto power over policies that do not affect them or are inimical to their interests. As the ASEAN Chair in 2012, Cambodia, for instance, strengthened its economic connections with China to thwart the joint communiqué denouncing China's aggressive actions in the South China Sea⁹⁵. ASEAN adopting no formal position on the SCS issue shows a lack of cohesion.⁹⁶ When ASEAN Foreign Ministers' Meeting gathered virtually in late June 2020, the Philippines' president was the first to "warn" of the SCS's growing danger but failed to make assertive comments in July 2016, as for that matter, about other claimant members and ASEAN's deafening silence. However, nothing has occurred to demonstrate ASEAN solidarity⁹⁷.

⁸⁵ Kim, M. H. "Why does a small power lead? ASEAN leadership in Asia-Pacific regionalism." *Pacific Focus: Inha Journal of International Studies*, 27(1) (2012)., 111–134. <https://doi.org/10.1111/j.1976-5118.2012.01078.x>

⁸⁶ Natalegawa, R. M. "The expansion of ASEAN and the changing dynamics of Southeast Asia". *Contemporary Southeast Asia*, 39(2) (2017)., 232–238.

⁸⁷ Von Feigenblatt, O. F. "Avoidance and consensus building in the association of Southeast Asian States (ASEAN): The path towards a new 'ASEAN Way'." *Entelequia: Revista Interdisciplinar*, 13(1), (2011). 121–138.

⁸⁸ Stubbs, R. "Debating ASEAN: A response to commentaries on 'ASEAN sceptics versus ASEAN proponents'". *Pacific Review*, 33(3–4) (2020)., 604–607. <https://doi.org/10.1080/09512748.2020.1720270>.

⁸⁹ Natalegawa, R. M. "The expansion of ASEAN and the changing dynamics of Southeast Asia." *Contemporary Southeast Asia*, 39(2) (2017)., 232–238.

⁹⁰ Acharya, A. The myth of ASEAN centrality. *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 39(2), (2017). 273–279; Leelianou, S. *Does ASEAN consensus decision making remain relevant?* (2021). [Master's thesis, College of Business, Government and Law, Flinders University] https://flex.flinders.edu.au/file/1b0b82bd-e5bf-4b49-9680-3e2524ccb0a6/1/Leelianou2021_MasterCopy.pdf

⁹¹ Jayakumar, S. *Opening statement by His Excellency, professor S Jayakumar minister for foreign affairs and minister for law of the republic of Singapore at the 30th ASEAN ministerial meeting 24 July 1997, Kuala Lumpur* (Document No: 1997072507). Ministry of Information, Communication and the Arts. <https://www.nas.gov.sg/archivesonline/speeches/record-details/75735070-115d-11e3-83d5-0050568939ad>; Li, J. J. *ASEAN and the South China Sea: Approaches to resolving the conflict. Independent Study Project (ISP) Collection*. 2017. 2752.

⁹² Acharya, A. The myth of ASEAN centrality. *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 39(2) (2017). 273–279;

⁹³ Emmers, R., & Tan, S. S. "The ASEAN regional forum and preventive diplomacy: Built to fail?" *Asian Security*, 7(1), (2011). 44–60. <https://doi.org/10.1080/14799855.2011.548211>; Beeson, M. Decentered? "ASEAN's struggle to accommodate great power competition." *Global Studies Quarterly*, 2(1), (2022). ksab044. <https://doi.org/10.1093/gsq/ksab044>

⁹⁴ Acharya, A. *The making of Southeast Asia: International relations of a region*. (Cornell University Press,2012).

⁹⁵ Acharya, A. The myth of ASEAN centrality. *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 39(2) (2017)., 273–279 ; Sukma, R. The accidental driver: ASEAN in the ASEAN regional forum. In J. Haacke & N. Morada (Eds.), *Cooperative security in the Asia Pacific: The ASEAN regional forum* (pp. 111–123). (Routledge, 2009).; Leelianou, S. *Does ASEAN consensus decision making remain relevant?*, (2021). [Master's thesis, College of Business, Government and Law, Flinders University] https://flex.flinders.edu.au/file/1b0b82bd-e5bf-4b49-9680-3e2524ccb0a6/1/Leelianou2021_MasterCopy.pdf

⁹⁶ Mustaza, S. N., & Saidin, I. "ASEAN, China and the South China Sea territorial disputes: Analysis of conflict management strategies." *Intellectual Discourse*, 28(2) (2020)., 577–598.

⁹⁷ Beng, P. K. *ASEAN is failing on the South China Sea issue: As China continues its militarization of the vital seaway, most Southeast Asian nations remain mired in their own problems.* (2020). The Diplomat. <https://thediplomat.com/2020/10/asean-is-failing-on-the-south-china-sea-issue/>.



However, even though not all ASEAN member states are claimants to the South China Sea, it is evident that ASEAN as a regional body made significant efforts to control the issue. The DOC and COC are evidence that it is a work in progress and that no major powers directly threaten the South China Sea peace in ASEAN. ASEAN centrality in the South China Sea is demonstrated by its ability to engage China in the region's discourse. Amid the conflict, the discussions and meetings appear to place the South China Sea issue at the top of the priority list, with peace always being the top priority. Nonetheless, this does not imply that ASEAN should not be prepared for future events that could lead to greater conflict. ASEAN lacks dispute resolution mechanisms. This is because the cornerstone of ASEAN is "friendship," whereas in this era, it should be "peace and diplomacy," and ASEAN must confront the dispute and not allow it to pass without a resolution. To ensure this, each ASEAN member state's political will must be enhanced. The moment has come for ASEAN to be bold in its management of the South China Sea Conflict. Regardless of what critics assert, the concept of ASEAN cohesion and centrality should be refined.

To strengthen the coherence and centrality of ASEAN, the role of the ASEAN chairmanship must be emphasized and brought into greater focus each year. As stated in Article 32 of the ASEAN Charter, "*The Member State holding the Chairmanship of ASEAN shall actively promote and enhance the interests and well-being of ASEAN, including efforts to build an ASEAN Community through policy initiatives, coordination, consensus and cooperation; ensure the centrality of ASEAN; ensure an effective and timely response to urgent issues or crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns; represent ASEAN in strengthening and promoting closer relations with external partners; and carry out such other tasks and functions as may be mandated*"⁹⁸. This demonstrates that each AMS has the responsibility to improve ASEAN annually. After the outset of each annual summit, it is made apparent on which concerns the chairman state would concentrate; however, at the conclusion of each chairmanship, there is no review to determine that the issue raised was made possible by that particular AMS that year. As long as ASEAN initiatives remained informal and non-binding, leadership was deemed unnecessary. However, given the current geopolitical climate, it may be essential to have a strong degree of leadership⁹⁹.

⁹⁸ ASEAN. ASEAN Charter. ASEAN. (2007). <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

⁹⁹ Espena, J. B. B., & Gill, D. M.. *Indonesia and Vietnam: The quest for ASEAN leadership*. Geopolitical monitor. (2020). <https://www.geopoliticalmonitor.com/indonesia-and-vietnam-the-quest-for-asean-leadership/>.

How the ASEAN chairman manages their leadership is evident. In the year 2022, for instance, Cambodia takes the lead and from the very beginning, when supposedly the stretch of Cambodian leadership in Chairmanship should be the focus¹⁰⁰, there are commentators who assert that the expectations for Cambodia's chairmanship are low, and that a failed or stagnant Cambodian chairmanship will accelerate ASEAN's decline and this includes Cambodia's decision to stand with China out of self-interest and relationship concerns, delaying the adoption of COC during their chairmanship in 2022¹⁰¹.

The primary issue here is the structure; there are no clear guidelines for how chairmanship should be carried out. ASEAN, as we all know, has an ASEAN Secretariat, but it has no bearing on what the chairman should or should not do during their tenure as chairman. Under the current approach, the chairman has the discretion to determine whether they would lead unilaterally or through consensus. Nevertheless, consensus is frequently upheld unilaterally, and unilateral actions are rarely criticised for fear of disturbing the consensus, as is the case right now. This may have been feasible when ASEAN's primary objective was to make money, but not now, when severe geopolitical issues are at stake¹⁰².

Indonesia will be the next ASEAN chairmanship in 2023. The chairmanship will adopt the theme ASEAN Matters: Epicentrum of Growth. Under its leadership, Indonesia wants to strengthen the institutional capacity and efficacy of ASEAN to ensure the region's accelerated growth, inclusiveness, and economic sustainability¹⁰³. Moreover, President Widodo stressed that Indonesia would continue to handle challenges in accordance with the ASEAN Way and the ASEAN Charter's cooperation principles. Indonesia's management of the G20 in 2022 has created the impression that it is more than qualified to lead ASEAN in 2023. Nonetheless, Indonesia must stress diplomacy and mutual respect to prevent the Taiwan Strait and

¹⁰⁰Hutt, D. *Will domestic politics upend Cambodia's ASEAN chairmanship? The deteriorating rights situation in Cambodia will be a major distraction from ASEAN's agenda*. (2021). The Diplomat. <https://thediplomat.com/2021/11/will-domestic-politics-upend-cambodias-asean-chairmanship/>.

¹⁰¹Dunst, C. *What to expect of Cambodia as ASEAN chair*. CSIS: Center for Strategic & International Studies. (2021). <https://www.csis.org/analysis/what-expect-cambodia-asean-chair>.

¹⁰²Hutt, D. *Has the ASEAN chair become too powerful? Cambodian Prime Minister Hun Sen's visit to Myanmar has highlighted deep flaws in the bloc's modus operandi*. (2022). The Diplomat. <https://thediplomat.com/2022/01/has-the-asean-chair-become-too-powerful/>.

¹⁰³Kurmala, A. *Making ASEAN the epicentrum of growth*. (2022). Antara. <https://en.antaranews.com/news/262265/making-asean-the-epicentrum-of-growth>.

South China Sea from becoming a theatre of conflict and source of regional instability¹⁰⁴.

For ASEAN to become a relevant regional organisation, bold reforms are required. Though the ASEAN way has always been adopted by any chairmanship, we believe that Indonesia and the next incoming ASEAN chairman should consider upgrading the ASEAN way to make it relevant to contemporary trends and requirements. ASEAN should choose a course of action that can be legally weighted to some extent. Simply relying on consensus will have no effect on ASEAN, and the South China Sea issue will be treated as simply another annual item on the agenda for all ASEAN member states chairmanship period annually.

V. ASEAN'S WAY FORWARD TO STAND AS A REGIONAL POWER IN THE SOUTH CHINA SEA

The conflict in the South China Sea is inevitable for ASEAN. Being in the middle of a conflict and facing intense competition from major powers has left ASEAN with hardly any alternative but to address the matter and not remain silent to prevent further catastrophe. The fact that ASEAN has mechanisms to deal with the issue is an excellent beginning, but additional measures and actions are required.

a) To Improve the COC Implementation

Despite China's best efforts to delay the adoption of the Code. Here, ASEAN must be clear about the most important issue that has delayed the implementation of the COC and given China the upper hand to further delay the deal. Conflicts inside AMS are causing divisions within the organization¹⁰⁵. This undermines ASEAN cohesion because each AMS has resisted delegating sovereignty to the ASEAN decision-making body¹⁰⁶. Without COC, China can continue to operate irresponsibly in the conflict zone, and ASEAN will lack the strength to confront China's military and paramilitary forces. A senator from the Philippines proposed implementing a claimant-only COC¹⁰⁷. As pertinent as this may sound, it will just bring this issue back to square one, scattered claims between the

¹⁰⁴Hutagalung, S. "Indonesia takes 2023 Asean chair." (2022). Bangkok Post. <https://www.bangkokpost.com/opinion/opinion/2450387/indonesia-takes-2023-asean-chair>.

¹⁰⁵Winston, R. A. Raging waters in the South China sea.

¹⁰⁶Tong, L. *The ASEAN crisis, part 2: Why can't ASEAN agree on the South China Sea.* (2016). The Diplomat. <https://thediplomat.com/2016/12/the-asean-crisis-part-2-why-cant-asean-agree-on-the-south-chinasea/#:~:text=Because%20of%20historical%20inter%2Dstate,a%20United%20position%20toward%20China>.

¹⁰⁷Staff, R. F. A. "Philippine senator calls for a 'claimants only' code of conduct on South China Sea". (2022). Radio Free Asia. <https://www.rfa.org/english/news/china/philippine-senator-schinas-sea-09142022042826.html>

parties, and ASEAN will not be able to keep up with the major powers as a regional power.

It is impossible to assure that COC is implemented indefinitely. In this matter, it is essential to incorporate both the ASEAN way and multilateralism. First, the concerns inside ASEAN must be settled. In order to establish a common policy, it is necessary to reconcile the divergent relationships and perceptions of China with the opinions and interests of all AMS.¹⁰⁸ Second, the legal position of the COC must be clarified, as it is neither intended nor referred to as a treaty under international law. This could pose a significant difficulty in the future, as there will be disputes over the code's legitimacy. Therefore, Vietnam once recommended a legally based clause to include "having consented to be governed by the existing Code of Conduct" and "be subject to ratification in accordance with the various internal procedures of the signatory states." The ASEAN Secretary General "must register" the COC in accordance with Article 102 of the United Nations Charter¹⁰⁹ which states that " Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it".

b) *Clarify the Roles of the Asean Chair, the Asean Charter, the Asean Secretariat, and the Asean Secretary General.*

In light of the challenging geopolitical dynamics of East Asia, leadership within ASEAN is regarded as a difficult hurdle¹¹⁰. The organisation of ASEAN must be made more transparent than ever before. In accordance with the geopolitical landscape, the roles of the ASEAN Chair, ASEAN Charter, ASEAN Secretariat and ASEAN Secretary General must be restructured so as to be relevant to contemporary trends and requirements. The best option appears to be to give the ASEAN Secretariat more authority, transforming it into something similar the European Commission, which does perform executive duties¹¹¹

¹⁰⁸Amer, R. The dispute management approach of the association of Southeast Asian Nations (ASEAN): What relevance for the South China Sea situation? In S. Wu. & Z. Keyuan (Eds.), *Non-traditional security issues and the South China Sea: Shaping a new framework for cooperation* (pp. 47–74). (Routledge, 2014).

¹⁰⁹Thayer, C. A. ASEAN, China, and the code of conduct. In L. Buszynski & D. T. Hai (Eds.), *The South China Sea from a regional maritime dispute to geo-strategic competition.* (Routledge, 2020).

¹¹⁰Espena, J. B. B., & Gill, D. M. "Indonesia and Vietnam: The quest for ASEAN leadership".(2020) Geopolitical monitor. <https://www.geopoliticalmonitor.com/indonesia-and-vietnam-the-quest-for-asean-leadership/>.

¹¹¹Hutt, D. "Has the ASEAN chair become too powerful? Cambodian Prime Minister Hun Sen's visit to Myanmar has highlighted deep flaws in the bloc's modus operandi." The Diplomat. <https://thediplomat.com/2022/01/has-the-asean-chair-become-too-powerful/>.



The concept of an ASEAN Charter devoid of an executive power renders it a weak document since it fails to transform ASEAN into a supranational organisation with a majority voting system¹¹². However the concept of emulating the European Union was rejected by the majority of ASEAN member states¹¹³, the concept of "ASEAN Minus X" was subsequently enshrined in the ASEAN Charter, though it was limited to economic issues with the approval of all AMS. Looking at the current needs, this should be extended to the application of other pressing regional issues such as the South China Sea¹¹⁴. As a result of their non-claimant stance in the South China Sea issue, not all AMS desire a change in the charter, thus this must be carried out with great caution and with the support of political will and the resolve to change from all AMS.

Additionally, the ASEAN Secretary General plays a significant role in ASEAN leadership. Perhaps it is time to revise the method by which the Secretary General is elected and ensure that all AMS have the opportunity to vote on who should be the Secretary General for the specified period. This will dispel the notion that only the ASEAN Chair has the authority to elect the next Secretary General. Relevant would be a majority vote within AMS, and the nominated Secretary General must work closely with the ASEAN chair to ensure that regional matters are addressed effectively. Obviously, a clear set of Terms of Reference is required to distinguish between the roles of these two entities and to guarantee that no powers overlap. Strengthening the authority of the ASEAN secretary-general, who is currently Indonesian, Jim Lock Hoi, will enable Indonesia to play an extraordinary role as ASEAN chair. Given that both the chair and secretary general will be from Indonesia in the coming year, this will allow for improved coordination and administration in addressing the most pressing regional issues.¹¹⁵

The next ASEAN Chair must ensure that the South China Sea dispute, which has been on the agenda of ASEAN Summits for years, at least demonstrates relevant progress. The implementation of COC, which was intended to be finalized by 2022, is making little progress under Cambodia's ASEAN chairmanship, perhaps due to the relationship that

Cambodia has with China. Hence, Indonesia must ensure that the South China Sea concerns are not merely "a work in progress," at least not during their chairmanship in 2023.

c) Opt for Economic Diplomacy

ASEAN has been instrumental in establishing regional trust and confidence, as well as the establishment of a regional identity through East Asian community building. ASEAN lacks the required funding and organisations to address these disputes. Therefore, the major objective of ASEAN is to maintain peace and promote trust. In addition to information sharing, capacity building, and defence diplomacy, ASEAN may also consider non-traditional security when creating cooperation, as it may offer alternative chances for maritime governance.

As there is a need to examine less politicised settings for the goal of creating trust, this may result in more tranquil dialogues and encounters between competing parties. Aside from that, it presents an opportunity for ASEAN to establish economic diplomacy between warring states in order to prevent the SCS military violent confrontation. As the majority of parties to the dispute have economic relations with China, it is essential to use economic diplomacy to reduce tensions in the South China Sea. All ASEAN member states can initiate economic diplomacy with China by cooperating or contributing to a shared economic cooperative project. This can include ministerial meetings, joint training sessions, commercial trade and activity agreements, as well as bilateral and international agreements¹¹⁶.

VI. CONCLUSION

The geopolitical tensions in the South China Sea show no signs of abating. Daily, the conflict becomes more complicated. As a regional body that must confront this intricate geopolitical spectacle, ASEAN is in a precarious situation. ASEAN's collective and individual reactions and responses have evolved throughout time. Due to the fact that not all ASEAN member nations are claimants in the South China Sea conflict, it is sometimes impossible to reach a unified reaction and conclusion on any topic pertaining to the dispute. Despite its resolve to confront the world's greatest power as one and to defend the notion of ASEAN Centrality and cohesion, ASEAN is unable to exert influence over numerous events and powers. Internal disagreements within AMS, as well as personal relationships and history between specific AMS and the big powers, have contributed to several circumstances and unfavourable views that impede ASEAN's ability to act unanimously. However, this does not mean that ASEAN's management of the geopolitical crisis in the

¹¹²Desker, B. "Is the ASEAN charter necessary?" *RSIS Commentaries*. (2008). <https://www.rsis.edu.sg/wp-content/uploads/2014/07/COO8077.pdf>

¹¹³Levitier, L. "The ASEAN charter: ASEAN failure or member failure?" *New York University Journal of International Law and Politics*, 43(2011), 159–210.

¹¹⁴Leelianou, S. *Does ASEAN consensus decision making remain relevant?* [Master's thesis, College of Business, Government and Law, Flinders University] (2021). https://flex.flinders.edu.au/file/1b0b82bd-e5bf-4b49-9680-3e2524cbb0a6/1/Leelianou2021_MasterCopy.pdf

¹¹⁵Hutagalung, S. "Indonesia takes 2023 Asean chair". (2022). Bangkok Post. <https://www.bangkokpost.com/opinion/opinion/2450387/indonesia-takes-2023-asean-chair>.

¹¹⁶Aziz, S. N. A., South China Sea: ASEAN mechanism 65–82.

South China Sea was a complete failure. The numerous ASEAN mechanisms, dialogues, and summits that had been made possible by ASEAN by inviting big countries to participate and address the issue are accomplishments that can be considered a milestone in ASEAN's success as a regional organisation, but it does not end there. The complication of the situation is exacerbated by the delayed implementation of COC and ASEAN consensus decision making, which contributes to numerous unresolved matters in the region. Regarding South China Sea, ASEAN still has much work to do. ASEAN should dismantle the South China Sea concerns into components and establish an ASEAN common vision and policy on each of these components, which ASEAN has already done, and formulate a common policy on some elements of the issue through the Indo-Pacific Outlook¹¹⁷ ASEAN will continue to apply the ASEAN approach, and promote ASEAN centrality and cohesion, but in order to contribute to constructive resolutions, ASEAN needs to be more agile. ASEAN Centrality and cohesion will remain a concept if ASEAN chooses to continue developing in the same manner as they have for the past fifty years.

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