

Spratly Disputes and Suggested Methods to Overcome the Conflict

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ABSTRACT

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The Spratly Islands Dispute in the South China Sea has been the most contested maritime area in recent years. This writing intends to understand the disputes happening around the South China Sea which specify on Spratly Island which is in hot area and being claimed by many countries surrounded the island. Hence, ASEAN as the supranational institution that involves with the countries within South East Asia responsible to unite and overcome the conflict within the area to avoid any subsequent that could worsen in future. As a representation institution among the South East Asia, ASEAN multilateral has suggested initiative such as pushing for the Code of Conduct among the claimant countries. The writing also studied about on ASEAN countries claim on the Spratly Islands in the South China Sea enhanced our understanding on how to pursue national interest through the law of the sea and conflict resolution. I choose this type of methodology which is Qualitative and Quantitative method. For data collection, in-depth interviews and desktop research were carried out. Quantitative method usually uses numbers or numerical data to explain a phenomenon. It involves seeking ways to validate hypothesis and pre-plan with variables on how to explain occurrences. However, the writing uses qualitative method. The multilateral regional organization like ASEAN has played substantial role in managing and solving the Spratly Islands dispute in the SCS. This writing will analyse the role of ASEAN and the involvement of ASEAN countries in various talks and agreements on in the Spratly Islands dispute.

Contribution/Originality: The paper's primary contribution is finding that current research on South China Sea could lead to future changing of Spratly Islands.

1. Introduction

According to Li (2016), the South China Sea (SCS) has emerged in recent years as one of the world's diplomatic hotspots. The area surrounded by the growing economies of

Southeast Asia, is home to some of the most important trade routes in the world. Over half of the tonnage of the world's merchant fleet travels annually via the traits of Malacca, Sunda, and Lombok. Moreover, the area contains substantial oil and natural gas reserves. The islands and seabed of the sea have taken on a high degree of strategic significance. Portions of the South China Sea (SCS) have all been claimed by Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam. To reinforce their claims, many of these states have occupied islands, reef atolls and sandbanks in the area. Over the past few years, China has behaved aggressively and has strengthened its efforts to create artificial islands and to militarize its presence in the SCS. The increasing risk of armed clashes in the South China Sea (SCS) is a matter of serious concern which threatens the region's security and stability.

The multilateral regional organization like ASEAN has played substantial role in managing and solving the Spratly Islands dispute in the South China Sea. Formed on 8 August 1967 with the five founding members of Indonesia, Malaysia, Singapore, the Philippines and Thailand, ASEAN, excluding Timor-Leste, has steadily expanded its reach to cover all of South East Asia. After independence from colonial rule under United Kingdom in 1984, Brunei thus became sixth member of ASEAN. The South China Sea (SCS) dispute concerns not only four ASEAN member states, but several non-regional states or organizations as well.

The position of ASEAN as the regime's incubator for the South China Sea (SCS) was to protect and support the regimes or governments of young states in Southeast Asia (Oishi, 2016a). Grow on this awareness of the basic life of ASEAN. The standard AWCM (ASEAN Way of Conflict Management) discusses how these mechanisms work in the handling of conflicts, using a variety of techniques of management. Only with perception the traditional ASEAN Way has ceased to work well in the regional context of the post-Cold War period, regional management efforts must address additional difficulties.

The mediation regime is viewed as a concept that could better capture what is happening in ASEAN's post-Cold War crisis management activities, which are more commonly applied in a haphazard way.

ASEAN incubator's key function is to prevent governments from competing and to encourage them to focus on internal problems in order to reinforce the coherence of the state and its own unity. This position was further developed in the history of this regional body, eventually establishing AWCM (Oishi, 2016a).

2. Literature Review

2.1. ASEAN in Solving the Spratly Islands Dispute

In this writing, for the study on ASEAN country's claim to the Spratly Islands in the SCS, the primary motive is to protect its maritime territory, which is its national interest. However, the fundamental concepts used in this study are Law of the Sea and Conflict Resolution. These concepts will be applied in building the arguments and how each of them related to each other. Multilateral diplomacy are important aspects used by ASEAN countries in solving the Spratly Islands dispute.

2.2. National Interest and the Maritime Area

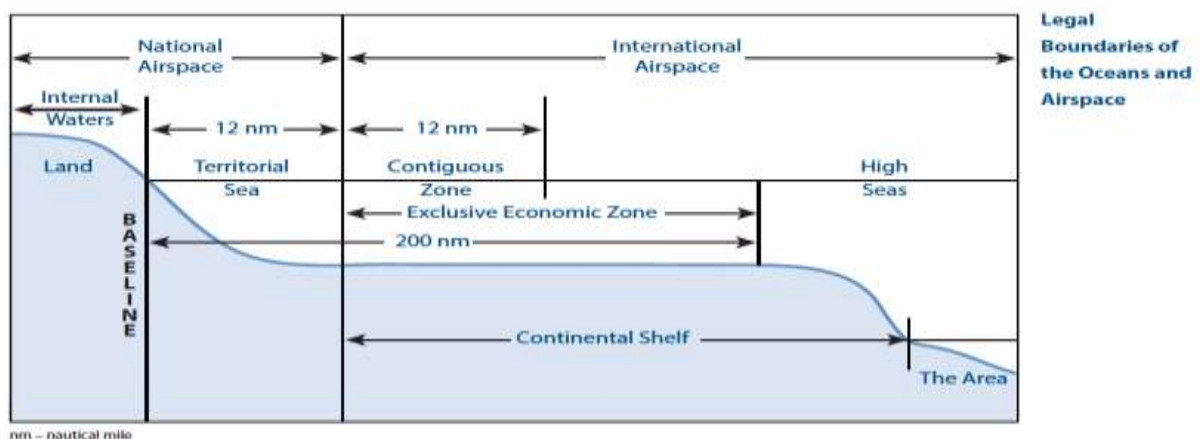
National interest concepts have always been central to the theories of international relations. According to Morgenthau, the idea of national interest is generally resembling the constitution of the US in two aspects such as the general warfare and the due process clauses. Moreover, national interest is a state's goal and ambition in terms of economic, security and social. The concept of national is important in international relations where the pursuit of national interest is the foundation of the realist school.

Therefore, every state attempts to pursue their national interest, especially in terms of economy. Thus, the concept of national interest is pertinent for international relations in explaining the competing of power among the state in the international system. The first step must be to decide what is critically needed. The interest or goal become the focus for implementation, where the state allocated resources and use the instrument of power. As an object of political debate, the concept of national interest serves the purpose, justify or denounce policy (Jacobson, 2008). The definition of the concept of national interest according to Coicaud and Wheeler (2008: 3) is "it refers to the self-interest of nations, how states envision their defence and projection of power beyond their boundaries. In this regard, traditionally, national interest has been divided into those interests that states consider core or vital, such as security and those that relate to the promotion of more secondary interests."

2.3. Law of the Sea

Since the Second World War, regulations have developed for the use of the sea. Sea is divided into several maritime zones namely, Territorial Sea (TS), Contiguous Zone (CZ), Exclusive Economic Zone (EEZ) and Continental Shelf (CS) (Figure 1).

Figure 1: Maritime Zones



Law of the sea involves the matters of state sovereignty and pride, state jurisdiction and state rights over waters, seabed, subsoil and the airspace of the sea. This is shown that Law of the Sea (LOS) plays an important role in as the guideline for determining a fair decision. In other words, LOS "... does not seek to resolve the territorial dispute. Rather it is meant to provide a standard against which any cooperative agreement" (Xavier, 1999: 287). Moreover, LOS is the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment and the management of marine natural resources.

The United Nations Convention on the Law of the Sea (UNCLOS) was convened in 1956 and held in Geneva Switzerland, resulting to four treaties which concluded in 1958 (Brierly, 1963). The first treaty was named the Convention on the Territorial Sea and Contiguous Zone which come into force in September 1964. The second treaty was the Convention on the Continental Shelf which come in force in September 1964. The third treaty was the Convention on the High Sea which come into force in September 1962, and finally the fourth treaty was the Convention on the Fishing and Conservation of Living resources of the High Seas which came into force in March 1966.

Brierly (1963) also said that in 1960 an UNCLOS 11 was also convened and concluded in the same year in order to clarify some issues about the territorial waters that was still unresolved under UNCLOS 1. However, neither UNCLOS 1 and UNCLOS 11 was a success in resolving these matters.

The Convention was concluded in 1982 which replaced the four 1958 treaties and came into force in 1994, covered some significant issues such as setting limits, navigation, archipelagic status and transit regimes, EEZ, continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research and settlement of disputes (Bean, 2015). According to Xuechan (2016), the United Nations Convention on the Law of the Sea (UNCLOS 111) is a treaty rectified and signed by many countries in 1982 and it contains 320 Articles and 9 Annexes. Based on UNCLOS, if a state has territorial sovereignty over an island or a mainland, it can claim a Territorial Sea of no more than 12 Nautical Mile (nm), and Exclusive Economic Zone (EEZ) of no more than 200 nm, and normally Continental Shelf of no more than 200 nm (Xuechan, 2016).

Regarding UNCLOS, all claimant countries from Southeast Asia are signatures and have rectified it. In the Spratly Islands dispute, ASEAN member countries justified their claims mostly based on UNCLOS through the Continental Shelf and EEZ (Keyuan, 2005). These countries claimed Continental Shelf and EEZ from the mainland or archipelago. Meanwhile, China relied it claimed on Continental Shelf and EEZ from the Hainan islands. However, the EEZ from Hainan islands cannot justify its claim to the whole of SCS.

2.4. Conflict Resolution and Diplomacy

According to Ramsbotham (2011), a group of pioneers from different disciplines saw the value of studying conflict as a general phenomenon, with similar properties whether it occurs in international relations, domestic politics, industrial relations communities, or families or between individuals. The field developed its own subdivisions, with distinct groups studying international crises, internal wars, social conflicts, and approaches ranging from negotiation and mediation to experimental games. With relations between superpower improving the ideological and military competition that had fuelled many regional conflicts was fading away (Ramsbotham, 2011).

The existence of many conflicts around the world has put on the shoulder of state to come out with techniques for resolving the conflicts. Thus, the growth and implementation of strategies peacefully in order to settle conflicts compared to the use of arms and violent methods widely known as 'conflict resolution' (Sikander, 2011). Conflict resolution is an appropriate method to achieve the best solution for the conflict in the Spratly Islands. There are two important elements in the conflict resolution which are the issues of the conflict itself and the relations because of the relations among actor.

Diplomacy is a process of how a state conduct communication with another state or other states by official means through appointed and recognised representatives. Diplomacy is one tool to settle international conflict and influencing conflict resolution. To some extent it is an art of persuading states to solve bilateral or multilateral conflicts through peaceful means. In the Spratly Islands dispute, in order to have a positive resolution to the conflict, it is pertinent to ensure that all claimant states have the common middle ground to compromise during the bilateral or multilateral diplomacy. Code of Conduct (CoC) introduced by ASEAN in managing a peaceful solution for the Spratly Islands dispute.

3. Methodology

Methods of data collection for this research are through interviews and secondary data to get complete and in-depth information. The method is fully used to grasp any information regarding the dispute.

4. Finding & Discussion

4.1. ASEAN Way of Conflict Management (AWCM)

According to [Oishi \(2018\)](#), we may see the AWCM as a mechanism for achieving peace within the Southeast Asian organization, stemming from the crucial life of the ASEAN regime incubator. The essence of bringing regional stability lies in the fact that the ASEAN member states do not project a threat or a destabilizing force on each other, except in the presence of conflicts between themselves, especially territorial ones, or within themselves domestically. This goal is achieved by preventing or halting interstate disputes while avoiding the internationalization of intrastate conflicts. The first target was reached by the ASEAN member states' restrained conflict. According to [Caballero \(2005\)](#), as stated in the previous segment, these states understood too well that their own fragility did not allow them to wage war with each other. Self-restraint also concentrated on the core principles, norms and beliefs that exist in South East Asia, such as dialogue (*musyawarah*), consensus (*mufakat*) and economic, political and cultural commitment 'agreement to disagree' and respected relationships forged within ASEAN. According to [Bercovitch and Oishi \(2010\)](#), the second goal was to ensure the complete non-interference of the Member States with each other's domestic relations. Rebel forces within a country, for example, could not expect assistance from other ASEAN states, nor should the suppression of ethnic minorities, at least officially, provoke protests from other states. It made it infinitely easier to manage this form of conflict until it meant that intra-state conflicts did not cross national borders. Per state can afford to use a wide range of measures to deal with intra-state abuse, from hard to soft, without having to worry about regional consequences.

According to [\(Oishi, 2018\)](#), it is possible to define two basic features of the AWCM, Second, it was distinguished by a strongly state-centric policy. High independence was practiced by the national government, sufficiently removed from the media, in the handling of the conflict. Governments agreed within themselves in an interstate war that they would not pursue violence outside those boundaries. This was accompanied by strict supervision by the authority by the national media. As a consequence, by provocative news reports or comments, it restrained the media from inflaming popular feelings. In intra-state conflicts, the central government has long considered itself the only legitimate player in the country's political system, regulating a number of conflict

management strategies, from extreme military offensives and political crackdowns to soft measures such as mitigating poverty through socio-economic policy and rural development. The ASEAN Way has demonstrated a surprising contrast with conflict management in other nations, such as Africa, the Middle East and South Asia. According to [Ramsbotham \(2011\)](#), areas where experience has led to conventional theories of conflict management, where intervention is the norm in the internal affairs of neighboring states or 'split' or 'collapsed' states.

Second, according to [Ruland \(2011\)](#), traditions, standards, principles and laws have played a central role in the AWCM. It is not an actor-centered system, but one in which, unrepresented in codes or records, certain features have existed in and separately from South East Asia. This is connected to what ASEAN is and how it works to resolve conflicts. This regional bloc could be represented, on a more regular basis, by its Chairperson, the position played by one of its member states and rotated annually between them, or by its Secretary-General. However, the former, under the responsibility of the Head of Government or of the Minister concerned, was not in a position to assume full-time responsibility for the role, whereas the latter, despite having full-time duties and responsibilities, was not in a position to exert prominent executive power because of the position of the office subordinate to the ASEAN Summit and other ministerial meetings. To this end, it is important to consider the AWCM, in terms of observable patterns in conflict management, based on practices, beliefs, ideals and laws that are prevalent in South East Asia and expressed in the conduct of actors such

China's new, "One Belt One Road" (OBOR) mantra may overwhelm SCS territorial disputes with its huge economic appeal to regional countries. According to [Oishi, 2018](#), on 2016 the aim of the OBOR is to create what could be called the, "21st century tributary system" that emanates from the, "Middle Kingdom" and penetrates regions, including Southeast Asia, with a vast transport and communication infrastructure. As a consequence, in the evolving regional fact, South China Sea (SCS) conflicts need to be settled. Regarding this matter, the South China Sea (SCS) littoral states of Southeast Asia face a daunting challenge in achieving the best possible outcomes from ongoing disputes.

4.2. Methods by ASEAN

In order to cope with the SCS dispute, ASEAN implements the mediation regime based on the existing foreign regime concept. The term extended to the broader dispute management framework, named the hybrid system, slips between the two optimal poles following discussion of its functions: the mediation regime system and the coalition system. Thus, in a larger hybrid environment, the true mediation regime works.

Building on the general notion of an international government, this segment presents the idea of a 'mediation regime' before contrasting it to the alliance and setting forth a basic two-way transfer model between an alliance structure and a mediation system.

4.3. International Regime

Krasner defines an international regime as a set of values, norms, laws and decision-making mechanisms around which actors' expectations align in a problem area ([Oishi, 2016b](#)). As they mean in this definition, according to [Keohane \(1988\)](#), actors, whether state or non-state, are always essential components of an international regime. The general role is to improve the predictability of the behaviour of the actors engaged in it

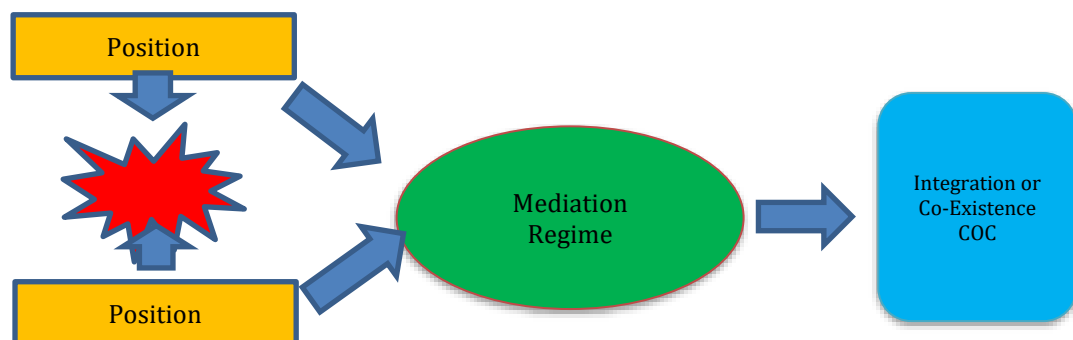
and to minimize "transaction costs," which can be done by the convergence of "actor expectations."

According to a constructivist interpretation, the foreign regime possesses administrative and constitutive features (Oishi, 2016b). The legislative mechanism moves the players in the regime to behave themselves according to "certain principles, norms, and rules" (Hasenclever, 1997) by fixing the sense of actions, helping to establish a shared social world. A regime may then enable actors to develop 'principled and reciprocal understandings of desirable modes of social action' (Kratochwil & Ruggie 1986) among themselves in a regional or international context. Its constitutive role indicates that the regime may also allow stakeholders to achieve a common understanding of topics that may be problematic or suffer from differences amongst stakeholders about their definition (Hasenclever, 1997). Its general roles are predictability and reduction of transaction costs resulting from the integration of "actor expectations".

4.4. Mediation Regime

Through the expenditure, as described above, in an international system with additional dispute management and mediation functions, the definition of a mediation regime may be developed. Its fundamental purpose is to resolve the conflicting roles of actors who integrate/co-exist, as seen in (Figure 2).

Figure 2: The Basic Function of a Mediation Regime



Source: Oishi (2018)

When applying the theory of the mediation regime to case studies, this assumption is not taken into account. Participants rarely choose to form a mediation regime in some cases of dispute to settle or deal with the conflict in which they are involved. This is because the control of the parties is always questioned, and because of this mutual recognition of the parties, there is no fundamental assumption as to the state of the conflict in the case of a foreign government and the relationship of the parties within it.

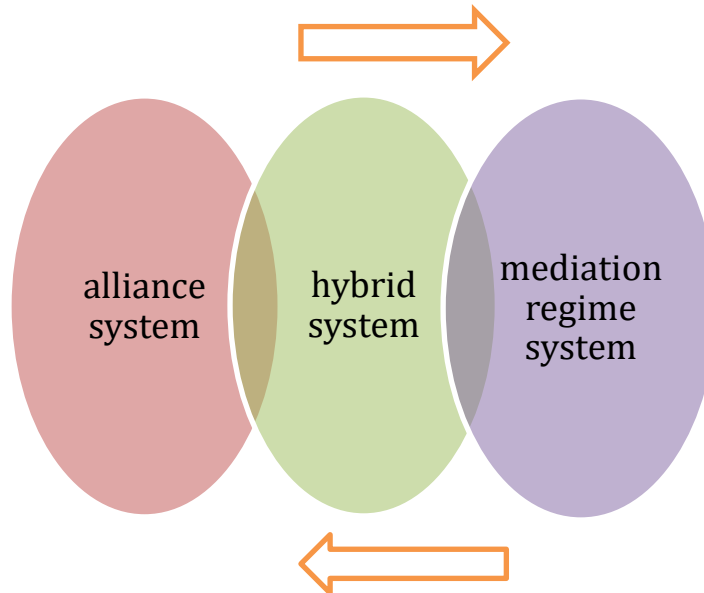
Three more unique ones are included in the basic feature. Second, in order to minimize the risk of physical conflicts between them, the mediation regime governs or monitors the actions of the opposing parties. Processes such as institutional linkage and institutional equilibrium will serve this function (He, 2008).

4.5. Mediation Regime and Alliance

While the mediation regime attempts to resolve disputes by integration or co-existence, in order to monitor their actions through deterrence, powers work to separate

dissenting parties into competing groups. These powers should be interpreted in terms of alliances, in comparison to the mediation regime. This paper lays forth a basic model of the coalition structure, the mediation regime system and the composite system, as seen in [Figure 3](#), to capture these problems.

Figure 3: The Alliance System, Mediation Regime System and Hybrid System



Source: [Oishi \(2018\)](#)

It is considered that the three structures to be part of the protection complex in which security interactions take place between actors ([Oishi, 2018](#)). The model presumes that either the coalition system or the mediation regime framework operated in advance at least. One structure will switch to another system, and the transfer form is referred to as a hybrid system since components of both systems are involved in it.

4.6. The South China Sea (SCS) Mediation Regime and Hybrid System

If we look at what is happening in the South China Sea (SCS) from the mediation regime's lens, its three functions are regulatory, absorptive and transformative, which can be seen to function in specific ways. The above-mentioned arrangement of the alliance system, the mediation regime and the hybrid system may indicate that, with its Freedom of Navigation, the US intends to bring China's conduct in the South China Sea (SCS) into the alliance system. There is a chance that a coalition arrangement could break the mediation system by splitting the coastal states of the South China Sea (SCS) ([Oishi, 2016b](#)). A more likely scenario, however, is that the mediation mechanism will gradually absorb the elements of the alliance structure by socializing the actions of the US in the South China Sea (SCS) and by contributing to the general movement of the US to withdraw from the Southeast Asia region. For this reason, the South China Sea (SCS) is likely to cope with tensions within the South China Sea (SCS) settlement system, which is more and more likely to imitate the Chinese-led tax framework of the 21st century. As a consequence, a key challenge for Southeast Asian rivals would be how to achieve the full outcomes of South China Sea (SCS) dispute management in the mediation regime.

4.7. Applying the Concepts of the Mediation Regime and the Hybrid System to South China Sea (SCS) Conflict Management

The theoretical framework mentioned above should characterize any significant improvements in the South China Sea (SCS) dispute management by the claimant states and international parties. In addition to the Treaty of Amity and Cooperation in South-East Asia (TAC), which has been ratified by all the claimant states and obliges them to settle any disputes between them on a negotiated basis (Bercovitch & Oishi, 2010). A multitude of arrangements, correspondence and joint declarations have been declared by the parties concerned as a consequence of several meetings and discussions. After the 1988 naval conflict between China and Vietnam, the enhanced economic interdependence between China and Brunei as well as other South-East Asian countries and the relative calm in the South China Sea (SCS) suggest that there is already a mediation regime in place to control the behavior of contested states in the SCS (Bercovitch & Oishi, 2010).

The bulk of countries that claim the Spratly Islands come from ASEAN members (Oishi, 2016b). In addition to being a mediator for South East Asian countries, ASEAN also remains impartial to everything that occurs between countries and promotes good ties and diplomacy among countries. ASEAN may even have or conceive of a different way for South East Asian states to fix issues, so ASEAN knows the Asian way better than other foreign organizations.

4.8. The Code of Conduct (CoC)

The ASEAN Resolution on the Actions of the Parties to the South China Sea (SCS) ratified by the Governments of ASEAN members and the Government of China on 4 November 2002 was successful in addressing the problems (Rustandi, 2016). This historic deal has been influential in many respects. The agreements further underscored that the implementation of the South China Sea (SCS), Code of Conduct (CoC) would help to preserve peace and regional harmony and agreed to work on a consensus-based basis with a view to achieving this aim in the future. Considering the attention of those interested in the negotiation of the Code of Ethics and the recent increase in Chinese participation in the South China Sea (SCS), a concrete code of behaviour remains elusive. In view of the pervasive discontent shared by many ASEAN members, Malaysia issued to the press a draft negotiated ASEAN declaration that was crucial to China's instability, noting in the section that ASEAN countries should not neglect what is happening in the South China Sea (SCS) as an integral part of ASEAN-China cooperation. They discussed critical questions about recent and evolving developments that have weakened confidence and trust, heightened conflicts, and could have the capacity to exploit order, prosperity, and sustainability. They stressed the importance of non-militarization and the prohibition of all South China Sea (SCS) activities, including land reclamation, which could intensify tensions. Tensions in the South China Sea (SCS) have also had an economic effect on the countries in the region. Although the U.S. government and U.S. companies are the world's biggest creditors, China provides the most aid and has a history of providing lucrative soft loan packages in exchange for political and economic concessions. China's increasing trading power in the region gives it the economic leverage it used to enforce its claims in the South China Sea (SCS).

For the claimants and the international community at large, tensions in the South China Sea (SCS) face an incontrovertible obstacle. Tensions put regional cooperation efforts at

risk and pitted Southeast Asian states against each other. The escalating militarization of the South China Sea (SCS) is undermining the stability and security of the region. If tensions intensify and the risk for trade instability increases, the economic effects of the conflicts, now felt at regional level, will increase worldwide. All claimants were primarily blamed for failing to settle disputes. With the exception of Brunei, any claimant has formed a military presence in the disputed territory, covering at least one maritime portion. Clearly, by almost any measure, China is the primary contributor to the region's turmoil and can be considered largely responsible for the continued worsening of the conflict. Building military airstrips, hangars and radar stations on these artificial islands has prompted other claims to lift their own defenses in retaliation, weakening regional trust and confidence (Li, 2016). Of all the South China Sea applicants, China's maritime claims are the most detailed, deliberately vague, and have not been drawn up under the UNCLOS, as the nine-dash line implies, on the basis of tenuous historical motives. The outcome of the agreement would not be a final resolution under UNCLOS alone.

5. Conclusion

This writing has discussed the role played by ASEAN as a multilateral regional organization in managing and solving the Spratly Islands dispute in the SCS. The principles of the mediation mechanism and the hybrid method as a theoretical prism is used to capture the current and future forms of conflict management throughout the South China Sea (SCS) with a geographical touch from East Asia. The principle including its mediation system leads to something like recasting the South China Sea hegemony claim of China in order to stabilize and sustain the status quo of the South China Sea. Therefore, the reframing of the incompatibility of the declaration of sovereignty appears to be a fruitful approach to address the most basic foundation of the South China Sea conflict (SCS). Arbitration attempts to ascertain jurisdiction over the maritime characteristics at issue are likely to lead in the future to a scramble for maritime territories. The process of conflict resolution could then significantly increase tensions and further complicate regional cooperation. Therefore, the reframing of the incompatibility of the declaration of sovereignty appears to be a fruitful approach to address the most basic foundation of the South China Sea conflict (SCS).

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