

The Role of ASEAN in the East Sea Conflict Prevention

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Abstract: The primary ambition and objective of ASEAN ever since its establishment have been to create a peaceful and stable South East Asia to help member countries maintain their independence and sovereignty, and achieve sustainable development. This has been well illustrated in most official documents of the ASEAN, particularly in the ASEAN Charter enacted since December 2008. Moreover, conflict prevention, resolution and management have been one of the main contents and elements of the ASEAN Political – Security Community (APSC), one of the three main pillars of the ASEAN Community (AC) that the bloc has committed for realization in 2015. Therefore, taking part in conflict resolution in the East Sea lies within the scope of work, responsibilities and interests of the association. Within the scope of this article, we will address three key topics as follows: 1) *Why ASEAN is taking part in conflict resolution in the East Sea*; 2) *How is ASEAN participating in the issue: achievements and limitations*; and 3) *What should ASEAN do to exercise its role as a center, a driving force for resolving the rapidly escalating conflicts in the region*.

Key words: ASEAN, role, East Sea, conflict prevention.

1. The interests of ASEAN in participating in the East Sea conflict resolution

Out of the six countries and seven parties with territorial and jurisdictional claims in the East Sea, five ASEAN member states, including Vietnam, the Philippines, Malaysia, Brunei and Indonesia, are involved in direct territorial claims in these waters. From early 2014, Indonesia officially declared that it was in territorial disputes with China in the East Sea. On 12 March 2014, Indonesian authorities made a statement that China's Nine-Dashed Line was violating Indonesia's sovereignty in Riau province, including Natuna Islands. The remaining countries such as Singapore, Thailand and Cambodia are also located on the coastal areas of the East Sea, sharing huge economic and strategic interests, especially in terms of free trade and national security.

This applies to even Myanmar, a country not situated on the East Sea, but the East Sea is the most convenient maritime route for this country to develop trade relations with other countries in the Pacific region. When the East-West Economic Corridor of the Greater Mekong Sub-region becomes more open, the interest of Myanmar will be multiplied. Land-locked countries, like Laos - only 70km from the East Sea by air over Vietnam's territory will also benefit significantly from the strategic advantages of the East Sea.

As a result, the escalating conflicts in the East Sea not only endanger the national interests of the ASEAN countries with sovereignty in this sea area but they also

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jeopardize the cooperation and development environment of ASEAN, especially the relationships of ASEAN and its member states with external partners, first of all, with China. The South East Asian countries, particularly those with sovereignty claims, have no other choice but to spend more on national security. This will affect not only investment and economic development but will also prompt concerns over national security as arms races intensify.

Another equally important fact is ASEAN's continuous effort in establishing its own community, including the APSC in 2015. The main contents and means for establishing the APSC such as "Shaping and sharing of norms" and cooperating, searching and establishing institutions for "Conflict prevention" within ASEAN and between ASEAN and external parties have been explicitly indicated in the APSC Action Plan of 2004 and in the APSC Comprehensive Plan of 2009. Therefore, engaging in conflict resolution and establishing mechanisms to build trust and prevent conflicts in the East Sea is both the responsibility and right of ASEAN. The absence of unity and consensus on a common standpoint, and the moderate reactions of ASEAN and a few member states in implementing the already-concluded regional and global-level agreements related to the East Sea, such as the *Declaration on the Conduct of Parties in the East Sea* (DOC), United Nations Convention on the Law on the Sea (UNCLOS) as well as delays in negotiating and concluding a Code of Conduct in the East Sea (COC) have remained a huge obstacle for the establishment of the APSC.

Furthermore, participating in conflict

resolution in the East Sea will also help ASEAN maintain and strengthen its role as the center, the driving force for promoting, connecting and establishing multilateral cooperation frameworks in the Asia-Pacific, particularly the role of ASEAN in the ASEAN Regional Forum (ARF), the East Asia Summit (EAS) and the ASEAN Defense Ministers' Meeting-Plus (ADMM+). This will strengthen ASEAN and its member states' resistance against the pressure from the increasing geopolitical competition of larger countries, first of all, between the United States and China. Simultaneously, this will also help elevate the attractiveness and effectiveness of ASEAN and its member states in expanding cooperation with external parties, boosting ASEAN's position to new heights, making it a fundamental element in establishing a peaceful environment and a multilateral cooperation mechanism in Asia-Pacific.

Thus, ASEAN's participation in preventing and reconciling conflicts in the East Sea can help "kill two birds with one stone": First of all, it plays a crucial role in the process of establishing APSC, and secondly, it helps ASEAN and its member states to avoid becoming the spotlight of the geopolitical race between the world's superpowers while still maintaining its position as the focal point of a new regional structure in the making. Moreover, ASEAN's involvement also helps the big countries, particularly the US and China, de-escalate their strategic competition in this area, and instead foster interest-sharing cooperation between them (Trần Khánh, 2012). This will, in turn, help strengthen the cooperation environment and regional security, in which the national

sovereignty of each ASEAN member states will be respected and where these will not fall into the whirlwind of the struggle for power. Thus, it can be said that ASEAN's involvement is both the responsibility and strategic interests of this organization. It also represents a test for the realization of APSC as well as for the big countries' race for winning geopolitical control over this region, and above all, it is the race between the US and China.

2. ASEAN's participation in conflict prevention in the East Sea

Sovereignty claims in the East Sea has started from the Second World War and escalated rapidly during the Cold War. However, ASEAN's involvement in these disputes was negligible during that time, the main reason being that conflicts in the East Sea back then was not a key concern or direct threat to the security of ASEAN and its member states. The presence of the US Navy in the region at that time was significantly powerful and acted as a security shield for ASEAN as a whole. Meanwhile, the top priority of the United States and ASEAN back then was to repress the influence of communist in the region. This explains why ASEAN and its first five member states (the Philippines, Malaysia, Indonesia, Singapore and Thailand) had no reactions against China's use of armed forces in its invasion of Vietnam's Paracel Islands in 1974 and a part of the Spratly Islands in 1988. Nevertheless, this series of actions did alert ASEAN, especially the Philippines which lies within proximity to the Spratly Islands. From 1971, the Philippines started to send its troops to occupy some reefs within these islands.

Together with the Chinese Navy's first appearance on the Spratly Islands in the late 1980s, the United States' withdrawal of Naval Base Subic Bay and Clark Air Base in the early 1990s sparked concerns in ASEAN, particularly the Philippines. It was because of this series of events that forced ASEAN to issue the "ASEAN Declaration on the East Sea" in 1992 (Manila Declaration, 1992). This marked the first time that ASEAN released an official document on the East Sea in which it was clearly stated that "*any adverse developments in the East Sea will directly affect peace and stability in the region*" and emphasized "*the necessity to resolve all sovereignty and jurisdictional issues pertaining to the East Sea by peaceful means, without resort to force*" (Trần Khánh, 2012)

By the year 1995, after China had occupied a number of reefs pertaining to the Mischief Reef, ASEAN continuously issued statements or joint communiqués on this issue. The *Joint Communiqué of ASEAN Foreign Ministers in March 1995* stressed: "*We call on all sides to exercise restraint in the conduct of activities that would cause regional instability and threats to peace and security in the East Sea,*" and at the same time ASEAN "*especially calls for an early solution to issues caused by recent developments in Mischief Reef*" (ASEAN, 1995). These contents were also included in the *Joint Communiqué of the 28th ASEAN Foreign Ministers' Meeting* held in Brunei in July 1995 and particularly in the *Joint Declaration of the 5th ASEAN Summit* held in Bangkok in December 1995. The Declaration of the 1995 ASEAN Summit held in Bangkok in December 1995 also

emphasized that ASEAN should seek an early, peaceful resolution of the East Sea dispute and shall continue to explore ways and means to prevent conflict and enhance cooperation in the East Sea (ASEAN, 1995)

US Congress made a statement in March 1995 affirming freedom of navigation in the East Sea is a national interest of the United States (US Department of State, 1995). Together with the United States' candid attitude towards the Mischief Reef incident, ASEAN's solidarity and joint efforts in 1995 brought about encouraging results. The 29th ASEAN Foreign Ministers' Meeting organized in Jakarta in July 1996 agreed on the idea of the development and ratification of the *Code of Conduct in the East Sea (COC)*. This initiative was reiterated in the 1998 Hanoi Plan of Action. Article 30 in the 1998 Hanoi Declaration clearly provides that ASEAN shall promote efforts to settle disputes in the East Sea by peaceful means in accordance with international law (ASEAN, 1998). However, the drafting of this document could only start in 1999 when China agreed to join this process with its own draft. After nearly 4 years of negotiation between ASEAN and China, ASEAN failed to achieve its initial goal of having a Code of Conduct. Instead, a *Declaration on the Conduct of Parties in the East Sea (DOC)* was adopted in November 2002 in Phnom Penh with general 7-point political commitments that lack any implementation guidelines. Nevertheless, the Declaration affirmed the commitments of the concerned parties in resolving disputes through peaceful means by mapping out trust and confidence-building measures and cooperation activities. The DOC has 7

points, the most important one being the commitment of all parties to respect the 1982 UN Convention on the Law of the Sea, to resolve their territorial and jurisdictional disputes by peaceful means, to refrain from activities that would complicate or escalate disputes (ASEAN, 2002).

In practice, the Declaration on the Conduct of Parties in the East Sea is a political commitment and not legal binding, thus, it had little effect in preventing the escalating conflicts in the East Sea. From 2004, China has unilaterally imposed fishing bans in waters within the jurisdiction of various South East Asian countries as well as conducted military exercises in the East Sea. Particularly, on 3 July 2007, China's State Council approved the establishment of prefecture-level city Sansha which includes the Spratly Islands, Paracel Islands and Macclesfield Bank. Faced with the increasing heat in these waters, the 2008 ASEAN Foreign Ministers' Meeting held in Singapore put forward a Joint Communiqué which underscored "*the need to intensify efforts to move forward the implementation of the Declaration, including the early finalization of the Guidelines on the Implementation of the DOC*" (ASEAN, 2008). This issue was re-iterated at the ASEAN Foreign Ministers' Meeting held in Hanoi two years later (ASEAN, 2010). In 2011, when the East Sea situation intensified, ASEAN members joined efforts with China to pass the "*Guidelines for the implementation of the Declaration on the Conduct of Parties in the East Sea*". Although the content of the 8-point declaration continued to be kept at a general level and differed little from the 2002 DOC, it has helped to "defuse"

temporarily the escalating tensions in the East Sea and to maintain ASEAN intra-bloc unity that was at that time under challenge. The Guidelines on the Implementation of the DOC consists of 8 provisions, namely: 1) The implementation of the DOC should be carried out in a step-by-step approach in line with the provisions of the DOC; 2) The Parties to the DOC will continue to promote dialogue and consultations in accordance with the spirit of the DOC; 3) The implementation of activities or projects as provided for in the DOC should be clearly identified; 4) The participation in the activities or projects should be carried out on a voluntary basis; 5) Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures; 6) The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of a Code of Conduct; 7) In the implementation of the agreed projects under the DOC, the services of the Experts and Eminent Persons, if deemed necessary, will be sought to provide specific inputs on the projects concerned; 8) Progress of the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN-China Ministerial Meeting.

From November 2011, ASEAN started discussions on the basic elements of the COC without the participation of China, even though China wanted to join the discussions since the beginning. To accelerate the Code of Conduct development process, at the end of June 2012, ASEAN completed “*ASEAN’s Proposed Elements of a Regional Code of Conduct*”. Despite certain disagreements,

ASEAN leaders present at the 20th ASEAN Summit held in Cambodia in early April 2012 agreed on the need to finalize the draft COC before starting discussions and negotiations with China. After 7 consultations, especially after SOM ASEAN meeting held in Hanoi from 24-26 June, 2012, ASEAN finalized “ASEAN’s Proposed Elements of a Regional Code of Conduct”. The key issues addressed in the paper include:

- Required respect for international laws, the UN Charter, the 1982 UN Convention for the Law of the Sea, Treaty of Amity and Cooperation in South East Asia, DOC Declaration;

- Determined the objective of COC to create legal-based frameworks that can help change the behavior of all parties in the East Sea by the above principles;

- Provided on the obligations and conduct of the parties in the East Sea. First of all, these have to aim for maritime peace, stability, security, safety and freedom, fostering trust-building and preventing disputes from escalating, and address the disputes in a peaceful manner and on the basis of international laws and UNCLOS.

- Provided for a mechanism that can ensure COC implementation, including the establishment of a mechanism to monitor and ensure strict COC implementation, formulate mechanisms for sanctioning COC violations and ensure dispute resolution in peaceful means, on the basis of international laws and UNCLOS, TAC.

The proposal was later on submitted to the 45th ASEAN Foreign Ministers’ Meeting organized in Phnom Penh. On 9 September 2012, ASEAN Foreign Ministers agreed on the key elements of the Code of Conduct.

Afterwards, however, ASEAN failed to issue a Joint Communiqué on the East Sea issue. One week after the 45th ASEAN Foreign Ministers' Meeting, with 36 hours of shuttle diplomatic efforts led by Indonesian Foreign Minister Marty Natalegawa, ASEAN issued "*The Declaration on the Six-Point Principles on the East Sea*" which included Point 3 addressing "early conclusion of the Code of Conduct in the East Sea". On behalf of ASEAN, Cambodian Foreign Minister Hor Namhong made the official statement regarding the six points in Phnom Penh on 20 July 2012 (meaning one week after the 45th AMM ended). The six points were: 1) Full implementation of the Declaration on the Conduct of Parties in the East sea (2002); 2) Full implementation of the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the East sea (2011); 3) Early conclusion of a Regional Code of Conduct in the East sea; 4) Full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS); 5) Continued exercise of self-restraint and non-use of force by all parties; and 6) Peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea. With respect to its content, this declaration was no advancement but actually a setback from ASEAN's previous documents on the East Sea.

In 2012, China sent hundreds of vessels accompanied by navy forces to invade the Philippines' waters and besiege Scarborough Shoal. Regarding little change achieved in settling the dispute over the Scarborough

Shoal through diplomatic channels, on 22 January 2013, the Philippines decided to seek legal actions instead, by filing an official complaint against China to the Arbitral Tribunal of the United Nations. (Lê Thị Thanh Hương, 2013). China not only rejected the Philippines' request and denied taking part in the proceedings, but also put pressure on ASEAN countries to persuade the Philippines to drop the legal proceedings in exchange for restarting negotiations on the Code of Conduct. China's lobbying efforts within ASEAN and the pressure it put on the Philippines on the economic and diplomatic arena were, however, ineffective. Nevertheless, the legal actions ignited by the Philippines has also forced China to readjust its strategy and agree on restarting COC talks. China, however, only agreed to hold consultation meetings (and not negotiations) on COC facilitation (Thayer, 2013). In April 2013, ASEAN and China agreed to establish an Eminent Persons Group (EPG) which would help the governments involved in discussing issues pertaining to DOC, COC. The first official COC consultation round between ASEAN and China was held in September 2013 in Suzhou, China. The outcome of this meeting was an agreement on a working plan for DOC (not COC) for 2013-2014 and approval for the set up of a Working Group to facilitate the COC establishment process, with agreement to have a joint meeting in Thailand in 2014. Thus, there is yet no specific timeline for an official negotiation on COC between ASEAN and China and obstacles and challenges remain ahead. It seems as if China is not interested in an official negotiation on COC. This is, in fact,

the main reason why COC can hardly be realized in the foreseeable future, endangering peace and stability in the East Sea.

It should be emphasized that Indonesia has taken the lead role as an independent reconciler in facilitating negotiations for COC. The president of Indonesia Joko Widodo at his meeting with the Japanese Foreign Minister in August 2014 reaffirmed that Indonesia would be more than willing to act as reconciliator to the East Sea disputes. However, since early 2014 when this country officially rejected China's Nine-Dashed Line claims which included an extended sea area surrounding Natuna Islands, and Indonesia's declaration affirming its disputes with China in the East Sea, the East Sea's state of affairs in general, and prospects of COC negotiation in particular have become highly unpredictable. On the one hand, Indonesia's actions might force China to make new concessions and agree to join negotiation talks with ASEAN, but on the other hand, it may have reinforced China's sovereignty claims in the East Sea, including the establishment of Air Defense Identification Zone (ADIZ) as China has already done in the East China Sea.

Together with developing the DOC and working towards the COC, ASEAN and its member states have also used dialogues and bilateral, multilateral cooperation to promote the process of "institutionalization" of these mechanisms. First of all, ASEAN has taken advantage of the ASEAN Regional Forum to promote preventive diplomacy, including that over the East Sea issue. Ever since the 17th ASEAN Regional Forum in 2010, participating countries, particularly ASEAN members with territorial claims and the

United States, have openly discussed the sensitive disputes taking place in the East Sea so as to search for peaceful measures to settle these troubled waters. In the Joint Declarations of the ASEAN Regional Forums in recent years, member countries have continuously stressed the need to full implementation of the DOC, the 1982 United Nations Convention on the Law of the Sea and to work toward the formulation and ratification of the COC.

In other forums such as the East Asia Summit and the ASEAN Defense Ministers' Meeting-Plus, etc., ASEAN countries have discussed the East Sea situation and have won increasing support for the "internationalization" approach, for peaceful resolution of disputes and freedom of navigation in these waters. While the 16th ARF in 2009 had less than half of the participants supporting the "internationalization" and navigation freedom in the East Sea, at the 17th and 18th ARF, the supporters gained absolute majority. At the 19th ARF in 2012, up to 25 over 28 participating countries addressed the East Sea conflict in their speeches.

China's illegal installation of its oil rigs in Vietnam's waters on 2nd of May 2014 has triggered a significant step forward in the strategic mindset and actions of ASEAN with respect to conflict prevention in the East Sea. Shortly after that, on 10 May 2014, at the 24th ASEAN Summit in Nay Pyi Taw, the "*ASEAN Foreign Ministers' Statement on the Current Developments in the East Sea*" was issued, "*expressing their serious concerns over the on-going developments in the East Sea... and urged all parties concerned to exercise self-restraint and avoid actions which could*

undermine peace and stability in the area; and to resolve disputes by peaceful means without resorting to threat or use of force” (ASEAN, 2014a). Later on, at the 47th ASEAN Ministers’ Meeting held in Myanmar in August, ASEAN released a *“Joint Communiqué of the 47th ASEAN Ministers’ Meeting”*, once again addressing the East Sea situation but this time highlighting new and specific details, with the language relatively much firmer than that seen in previous joint communiqués. The declaration noted *“We remained seriously concerned over recent developments which had increased tensions in the East Sea and reaffirmed the importance of maintaining peace, stability, maritime security as well as freedom of navigation in and over-flight above the East Sea”*; urged all parties *“to settle disputes through peaceful means, without resorting to the threat or use of force, including friendly dialogue, consultations and negotiations, in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea”*; and noted *“We agreed to intensify consultations with China on measures and mechanisms to ensure and further enhance the full and effective implementation of the DOC in its entirety, particularly Articles 4 and 5 as well as substantive negotiations for the early conclusion of the Code of Conduct in the East Sea”* (ASEAN, 2014b). Although this Joint Communiqué did not point out China as the main culprit in stirring up new tension in the East Sea, it implied that China’s recent actions have *“undermined peace, stability, and security in the East Sea”*. Furthermore, through this statement, ASEAN wanted to send out the message

that it wanted to conduct *“actual negotiations”* with China.

It took 22 years (since 1992) for ASEAN to release a new joint declaration on the East Sea like the one in May 2014 and a Joint Communiqué of the 47th ASEAN Ministers’ Meeting addressing firmly, in detail and expressing *“serious concerns”* over the new developments in the East Sea involving China’s illegal installation of Haiyang 981 oil rig in Vietnam’s special economic zone and continental shelf. Nevertheless, the content of these declarations were, by any means, a breakthrough from other declarations that ASEAN had made previously.

In short, prompted by concerns over national and regional security as a result of the firm sovereignty claims of the countries, particularly of China, in the East Sea, ever since the early 1990s, ASEAN countries have made joint efforts in establishing measures that can help reconcile differences and prevent the escalating conflicts in these waters. In practice, mechanisms such as the *ASEAN Declaration on the East Sea in 1992*, the *DOC in 2002* and the *Guidelines for the implementation of the Declaration on the Conduct of Parties in the East Sea in 2011*, the *ASEAN’s Proposed Elements of a Regional Code of Conduct in 2011*, *ASEAN Foreign Ministers’ Statement on the Current Developments in the East Sea* and *Joint Communiqué of the 47th ASEAN Ministers’ Meeting in 2014* as well as other efforts of ASEAN in other multilateral security forums such as the ARF, EAS, ADMM, Shangri-La Dialogue, Expanded ASEAN Maritime Forum, etc. have and will continue to help establish trust, promote peaceful cooperation, and create the

political and legal basis for the enactment of a Code of Conduct in the East Sea in the future. Nevertheless, actual implementation of the existing DOC and prospects for the realization of a COC are now facing new challenges due to the absence of political responsibility and strategic shortsightedness of some ASEAN member states as opposed to China's firm principles.

3. Conclusion: ASEAN should fulfill its responsibility and engage more proactively in preventing the escalating conflicts in the East Sea

Although the DOC and its Guidelines have both emphasized strict compliance with the 1982 United Nations Convention on the Law of the Sea and called for the parties involved to preserve the status quo and refrain from activities that would complicate or escalate disputes, and foster negotiations towards a COC, in practice, such political commitments have been seriously ignored. Apart from DOC and DOC Guidelines, ASEAN countries are also signatories to many legal documents related to cooperation in the East Sea with countries involved. For instance, Vietnam has signed the Vietnam – Cambodia Agreement on Historic Waters (1982), Vietnam – Malaysia Agreement on Joint exploitation on the East Sea (1992); Agreement on Maritime Delimitation with Thailand (1997); Agreement on Maritime Delimitation and the Fisheries Agreement in the Gulf of Tonkin with China (2000); Agreement on the Delimitation of the Continental Shelf Boundary with Indonesia (2003). Apart from these, Vietnam together with claimants in the East Sea including China, Malaysia, Brunei, Indonesia, Thailand and Cambodia are currently under negotiation

for a maritime delimitation agreement such as the Vietnam - China Agreement on Maritime Delimitation on the Gulf of Tonkin; Vietnam – Malaysia Delimitation of Special Economic Zone and Continental Shelf; Vietnam – Indonesia Delimitation of Special Economic Zone; Vietnam – Cambodia Maritime Delimitation; Vietnam – Thailand – Malaysia Delimitation of Overlapping Continental Shelf; Vietnam – Brunei Delimitation of Overlapping Continental Shelf. Furthermore, Vietnam is also pursuing negotiations for the protection of flight information region (FIR); establishing Vietnam Mission Control Centre (VNMCC); search and rescue areas as provided in SAR-79 Convention, etc. However, the security and peaceful cooperation in the East Sea are undergoing complex developments with no uniform and feasible solutions yet identified to de-escalate the situation. The main reason being the conflict between sovereignty claims of many countries, their geopolitical ambitions as well as the absence of political responsibility of some ASEAN member states.

The 45th ASEAN Ministers' Meeting failure to issue a joint statement, China's continuous delay in starting COC negotiations as well as the insufficiently powerful reactions of ASEAN on China's illegal installation of the oil rigs in the East Sea throughout May-July 2014 have collectively presented big challenges for DOC implementation (particularly of Article 5 on preservation of the existing conditions and not complicate further the East Sea situation) and have also signaled about an unpredictable future of an actual COC. A divided ASEAN and the "divide and rule" policy of external forces when pursuing their geopolitical objectives

and ambitions, as well as the different interests of the parties in the East Sea may weaken ASEAN's centrality in conflict prevention in the East Sea. This will not only diminish ASEAN's role in the regional security structure in-the-making, but will also have a negative impact on the process of establishing APSC as well as on maintaining peace, stability in South East Asia. Therefore, now more than ever, ASEAN needs to exercise its determination, strong will and political responsibility and work on a Code of Conduct in the East Sea which shall include stringent, specific and legally-binding provisions. To achieve that, ASEAN should exert efforts in the following areas:

- *First of all, in perception and principle*, ASEAN should consider its participation in dispute resolution in the East Sea as a big political responsibility and strategic interests of the Association. In other words, the intertwined fate of member countries and confirmation of ASEAN's values and stance as a community in the new context depend greatly on ASEAN's effective establishment of mechanisms that can prevent and manage the escalating conflicts in the East Sea. This represents a critical test for the existence and development of the association in the years to come, which must not be ignored by ASEAN and its member states.

- *In action*, ASEAN should seek for ways to conclude an actual Code of Conduct in the East Sea. In order to do this, ASEAN and its member states, particularly those with sovereignty claims, should make new efforts:

- Firstly*, together with demanding China to start serious negotiations on COC, ASEAN members with sovereignty and

jurisdictional claims in the East Sea should review their border lines to see whether these are in conformity with international laws or not, especially with the 1982 United Nations Convention on the Law on the Sea, after which they should sit together and search for similarities as well as agree on a common principle and mobilize other ASEAN members to work towards a COC.

- Secondly*, faced with China's reluctance against direct negotiations on COC, ASEAN countries should start drafting a Code of Conduct by themselves. In the case where China consistently avoids COC negotiation, ASEAN members can approve and release their own COC. This is crucial not only for establishing a common principle of ASEAN, but also for sending out a strong message, urging China to adjust its perception and strategic actions for a COC.

- Thirdly*, ASEAN countries should be proactive in proposing new initiatives such as the one initiated by the Philippines in 2011 on "*ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation in the East Sea*" or "*Commission on cooperation for peace and security in the East Sea*" similar to the "*Mekong River Commission*" that countries within the Mekong Sub-region have adhered to since 1995 (Đặng Xuân Thanh, 2012). ASEAN member states and external parties with an interest in the East Sea do not necessarily have to join the East Sea Commission since establishment. Apart from that, ASEAN should also establish a common coast guard for ASEAN members with sovereignty claims in the East Sea, followed by the "ASEAN Coast Guard", and finally the "ASEAN-China Coast Guard" co-founded with China in the East Sea (Trần Khánh, 2013). Furthermore, ASEAN

members should also push for a “*South East Asia Maritime Treaty*” as suggested by Prof. Carlyle A. Thayer. According to Thayer, this treaty will tie all ASEAN member states in maritime security issues. Countries with sovereignty claims, including Vietnam, will have more autonomy and be less dependent on ASEAN’s unified principle. Simultaneously, the signatory parties will have the chance to adjust their base lines in accordance with international laws. The South East Asian Maritime Treaty would also serve as an effective instrument and measure in bringing ASEAN countries closer in security cooperation in all sea areas of South East Asia, and hence, will help address the current division between the countries with or without disputes in the East Sea, especially in negotiations with China on a COC. Lastly, the birth of this Treaty will also represent a valuable opportunity to expand cooperation with external parties in security matters, and thus, contribute significantly to the creation of a new security structure that has the ability to preserve peace and stability in South East Asia. It is suggested that all parties signatory to the South East Asia Maritime Treaty should commit to demilitarize the islands and reefs under occupation, including no employment of specific weapons such as land-based anti-ship missiles (Thayer, 2013).

Fourthly, ASEAN should develop and pass a legally-binding document which *requests the annual rotating Chair-country of ASEAN to include the East Sea issue in the official agenda of cooperation mechanisms such as the ASEAN Summit, AMM, ADMM, ADMM+, ARF, EAS* to foster the implementation of DOC and

expedite the COC establishment process. Furthermore, ASEAN should also found a “*South East Asia Sub-institute for Maritime Conflict Reconciliation*” under the “*ASEAN Institute for Peace and Reconciliation*” that ASEAN has established since 2012. Apart from that, the association should also enhance communication on maritime issues and facilitate the activities of civil societies in protecting freedom, maritime, aviation and environment protection in the region. ASEAN countries with sovereignty claims in the East Sea, including Vietnam, should also step up their legal battles.

To ensure continuity and focus, ASEAN should establish “contact points” to help coordinate on and facilitate the COC process. ASEAN can appoint Indonesia and Singapore to handle this position.

Fifthly, ASEAN should use different channels and resources, especially the AFR, EAS, ADMM+, Shangri-la Dialogue, Expanded ASEAN Maritime Forum, etc. to urge relevant parties to join the negotiation table and seek for solutions that can help maintain peace in the East Sea. In addition, ASEAN should encourage the involvement of the international community, especially of the United States, Japan, India, Australia, South Korea as well as other countries in Europe, etc. in security and development cooperation in the East Sea, with priorities granted to large corporations of the countries above interested in exploitative businesses in the East Sea.

To sum up, dispute prevention and management in the East Sea lie within the geo-political scope of work, the responsibility and rights of ASEAN. ASEAN has made restless efforts in “institutionalizing” the East Sea issues. However, the bloc is now

facing new challenges in negotiating and concluding a Code of Conduct in the East Sea, one the main causes being the internal split within ASEAN. Now, more than ever, ASEAN should revisit itself and formulate new strategies and suitable political actions that can advance the COC development process. Only this way can ASEAN move forward. This is a new test for ASEAN's effectiveness and miracle on the road to a regional community in 2015 as well as to become a Center for conflict resolution and prevention of geo-political disasters in South East Asia.

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