

"It is Hard not to Choose a Side" -

**ASEAN's *Third Way* and the Reasons for the Limited Success of
the *Code of Conduct for the South China Sea*.**

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Wenzao Ursuline University of Languages, 2022

ABSTRACT

ASEAN, the regional organization, is facing the problem of tensions between China and the U.S. If ASEAN has no mutual consciousness to see themselves as one identity and act as one organization, ASEAN members will no longer have equal status in the region. It would be difficult for ASEAN to cope if it were to be dominated by great powers, so they looked for a "third way," which was based on regional consensus and cooperation, aspects of a foreign policy approach to international affairs they called the *ASEAN Way*, also referred to as the *Third Way*. Southeast Asian leaders have expressed a desire to avoid taking sides in tensions between China and the United States over the 2010s. It's true that a "third way" holds a lot of appeal, but it has not been very effective as a tool of diplomacy, especially when those powers use their leverage over individual ASEAN countries to undermine consensus-building.

This research used qualitative methodology for analyzing events and data, on the South China Sea Dispute, focusing on the time between 2002 to 2022 to know what binds ASEAN countries together, how ASEAN countries have collaborated since the *Declaration on the Conduct of Parties in the South China Sea*, and what conditions may impact the development of ASEAN's third way.

In conclusion, signing the *Code of Conduct* with China has not been successful. ASEAN member states have no unanimous attitude toward South China Sea disputes. ASEAN member countries must face up to the influence of external powers individually.

Keywords: ASEAN, ASEAN Identity, ASEAN Way, South China Sea, China, Regional Organization, Code of Conduct

「很難不選邊站」－
東協第三種方式及《南海行為準則》尚未成功之因素

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文藻外語大學 2022

摘要

東南亞國家協會(The Association of Southeast Asian Nations, ASEAN)簡稱「東協」，是正面臨美、中關係壓力的區域組織。假使東協無法視他們自身為一體和一個區域組織，東協的會員國將很難應對由大國主導的局面。於是他們尋求一種建立在區域共識及合作的另一個方法，在國際在外交政策上稱之為「東協模式 ASEAN Way」，也稱作「第三種方式 Third Way」。早在 2010 年代，東南亞國家的領導人就迫切地表達不希望在美、中的緊張下選邊站，於是，第三種方式無疑成了最好的解藥。然而，Third Way 作為一種外交工具並不有效，尤其是當這些大國家利用他們自己對東協各國家的影響力瓦解共識時。

此研究採用質化方法分析「南海紛爭」的事件及數據，特別關注於 2002 至 2022 年之間，以了解什麼原因將東協集結在一起、東協如何自簽訂《南海各方行為宣言》後合作、什麼樣的因素影響東協第三種方式的發展。

研究總結，與中國簽署的《南海行為準則》並沒有成功。東協成員國對南海紛爭並沒有一致的態度，在未來成員國必須各自正視外部強權的影響。

關鍵字：東協、東協身份、東協方式、南海、中國、區域組織、南海行為準則

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Table of Abbreviations

ASEAN	Association of Southeast Asia Nations
SEA	Southeast Asia
EU	European Union
SCS	South China Sea
DOC	Declaration on the Conduct of Parties in the South China Sea
COC	Code of Conduct in the South China Sea
PCA	Permanent Court of Arbitration
APSC	ASEAN Political-Security Community
AEC	ASEAN Economy Community
ASCC	ASEAN Socio-Cultural Community
UNCLOS	United Nations Convention on the Law of the Sea
TAC	Treaty of Amity and Cooperation

1. INTRODUCTION

Background

Under the influence of the Cold War, the Southeast Asian countries decided to cooperate to find shelter under the bipolar political system and thus established the Association of Southeast Asian Nations (ASEAN) in Bangkok in August 1967.¹ Both the founding and subsequent members should abide by the basic principles of cooperation, amity, and non-interference. The increase in the number of ASEAN member states not only strengthens the trust of the organization's members but also infuses the ASEAN identity into the SEA countries with the organization's awareness. The ASEAN will become the first Asian regional organization after the EU, and it will unite to develop together.

However, the ASEAN seems to be divided on the South China Sea (SCS) dispute. The SCS is situated in a good location and has rich marine resources and is a precious shipping route for everyone. But territorial disputes and the demarcation of economic waters between China, Taiwan, and some ASEAN countries are beginning to emerge, no one wants to ruin the relationship with their good neighbors. Therefore, in 2002, the *Declaration on the Conduct of Parties in the South China Sea* (DOC) was signed in Phnom Penh, hoping to resolve regional conflicts in the SCS peacefully and to ensure navigation and flight rights, as well as to protect the rights of regional countries in the SCS.

Until now, the SCS dispute has not yet been solved. In 2010, the Chinese Foreign Minister said at the ASEAN Forum in Singapore that China is a big country

¹ Halvorson, Dan. 2019. "The Cold War and Non-Communist Solidarity in East Asia." JSTOR. ANU Press. 2019. <https://www.jstor.org/stable/j.ctvt6rjzk.8>.

in front of ASEAN countries. The implication is that I have money and weapons, so shouldn't you compromise any of my actions in the area? It sounds particularly harsh in ASEAN countries. In terms of geographical location, ASEAN is like half-circling the SCS. Why should I listen to you? ASEAN does not intend to accept it in a low voice. They hope to gain equal rights in the SCS through regional cooperation and consensus.

ASEAN understands why it has to respond to the SCS because it is subject to centuries of colonial rule, and it is not beneficial to ASEAN whether to lean on or alienate external powers, and they hope to deepen regional cooperation by turning SEA into a "zone of peace, freedom, and neutrality."

As SEA has enjoyed secure maritime routes and strong Western markets since its economic boom in 1991, expanding ASEAN's regional jurisdiction is not a priority. In recent years, SEA countries have become increasingly concerned about their sovereignty and have advocated for a set of equal and fair rules of conduct in the SCS. The claimants of interest include Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. From the standpoint of ASEAN, the main purpose of signing the DOC is to regulate China's behavior and to increase its influence in the SCS, but this seems to not work for China.

China's land reclamation in the SCS is indeed disturbing. Although China denies that it is causing regional tensions, it is clear to the discerning eye that China intends to put its name on the islands to increase the scope of its power in the sea.²

² Luce, Dan De. 2015. "China Pursuing Huge South China Sea Land Reclamation: US." News.yahoo.com. May 9, 2015. <https://news.yahoo.com/china-massive-land-reclamation-disputed-waters-us-official-183921777.html>.

This has forced Malaysia, the Philippines, Singapore, and Vietnam to express their concerns about the SCS at regional forums, especially when the Chinese Foreign Minister made such offensive remarks. The ASEAN side has also shown that they care about the SCS issue, and the Philippines and Vietnam have held regular bilateral forums in subsequent years to counteract China's actions in the SCS. The Philippines and Vietnam, as claimants in the SCS, have done a good job of rallying the voices of the ASEAN member states to reflect China's actions in the SCS in a small way.³ However, the former president of the Philippines, Rodrigo Duterte, suddenly slowed down his attitude toward the SCS and even became more cordial when he learned that the Permanent Court of Arbitration (PCA) had ruled in favor of the Philippines against China's stated position on the nine-dashed line in the SCS. This has left Vietnam to face pressure from China alone.⁴

The Philippines' attitude towards Vietnam has shocked ASEAN. Not only the Philippines, but even Malaysia has changed its cooperation with ASEAN and turned to China due to the issue of 1MDB corruption.⁵

It is originally thought that China's influence was limited to maritime claimants, but no one realizes that China's influence in ASEAN continent countries is also not able to be underestimated. Cambodia and Laos, for example, have received huge investments under China's Belt and Road policy, silently planting the seeds of

³ Pitlo, Lucio Blanco, and Amruta Karambelkar. 2013. "Philippines and Vietnam in the South China Sea." *The Diplomat*.com. October 21, 2013. <https://thediplomat.com/2013/10/philippines-and-vietnam-in-the-south-china-sea-2/>.

⁴ Hendler, Bruno. 2018. "Duterte's Pivot to China, and Prospects for Settling the South China Sea Disputes." *Contexto Internacional* 40 (2): 319–37. <https://doi.org/10.1590/s0102-8529.2018400200005>.

⁵ Chandran, Nyshka. 2016. "Malaysia's Najib Razak in China, as 1MDB Scandal, South China Sea Dispute Loom over Talks." *CNBC*. October 30, 2016. <https://www.cnbc.com/2016/10/30/malaysias-najib-razak-in-china-as-1mdb-scandal-south-china-sea-dispute-loom-over-talks.html>.

friendship.⁶ Unfortunately, internal affairs in other countries have been brought to the forefront of public opinion, Thailand's military coup in 2014⁷ and Myanmar's persecution of the country's Rohingya minority⁸, as well as its own military coup in 2021.⁹ Western countries are certainly openly condemning it, causing them to gradually shift their diplomatic focus to China.

Seeing that the balance of pros and cons of ASEAN countries is tilted one by one from ASEAN to China, the prospect of the organization seems to be getting weaker and weaker, and ASEAN identity is becoming precarious.¹⁰

Indonesia declared its position in the South China Sea in a public manner and righteously rejected China's claims over a disputed part of the SCS as "having no legal basis" protesting to Beijing over the presence of a Chinese coast guard vessel in its territorial waters, and publicly stated that Indonesia has a military presence in the disputed waters.¹¹ Such an approach is indeed rare for Indonesia, but as China is one of Indonesia's major exporters, the public statements on the SCS seem to have no effect on Indonesia's foreign policy decisions, but it is certain that Indonesia is starting to shift its diplomatic direction from the ASEAN to elsewhere.

⁶ Reuters. 2016. "China Says Brunei, Cambodia, Laos Agree Sea Dispute Must Not Hurt Ties." Reuters, April 24, 2016, sec. Emerging Markets. <https://www.reuters.com/article/us-southchinasea-china-asean-idUSKCN0XL04N>.

⁷ ———. 2020. "Timeline: Thailand's Turbulent Politics since 2014 Military Coup." Reuters, August 6, 2020. <https://www.reuters.com/article/us-thailand-politics-timeline-idUSKCN2520CB>.

⁸ BBC. 2020. "Myanmar Rohingya: What You Need to Know about the Crisis." BBC News, January 23, 2020. <https://www.bbc.com/news/world-asia-41566561>.

⁹ McKenna, A. 2022. "2021 Myanmar Coup D'état." Encyclopedia Britannica. July 24, 2022. <https://www.britannica.com/event/2021-Myanmar-coup-d-etat>.

¹⁰ Acharya, Amitav. 2017. "The Evolution and Limitations of ASEAN Identity." *Building ASEAN Community* 4 (186): 25.

¹¹ Chaudhury, Dipanjan Roy. 2020. "Indonesia Stands Firm against Chinese Claims in South China Sea Region." *The Economic Times*, January 6, 2020. <https://economictimes.indiatimes.com/news/defence/indonesia-stands-firm-against-chinese-claims-in-south-china-sea-region/articleshow/73122584.cms>.

ASEAN remains the engine of regional cooperation, and in April 2020, Malaysia criticized the U.S. response to China's harassment of Malaysian energy exploration vessels. Malaysia maintains a wary stance towards any outside power and has made it clear that superficial help will not work in the SCS. The leader of Malaysia said U.S. actions would exacerbate conflicts and make it impossible for them to control China's actions in the SCS.¹² The Malaysian leader's unique view is consistent with common sense; yet, in retrospect, it proves that rejecting the United States does not mean that it has a pivotal position vis-à-vis China.

Most of the ASEAN had misjudged in the 1990s that they had the means to suppress a rising China without the help of any outside power. But the clues may have surfaced when China slowly plundered the Philippines' claimed Mischief Reef, an aggressive act that should have been a warning to regional security long ago. After the cold war, peace and tranquility have been restored and SEA countries do not want to step into the power struggle again, they are looking for the third way. It would not favor any external power, and it will bring all of them into ASEAN consensus dialogues. The fact is that it is much more difficult to persuade China to follow the spirit of those dialogues than to convince any other great power.

China has been very cooperative in participating in the ASEAN dialogue, but it does not mean that China is willing and intends to reach an agreement with ASEAN, because it is not necessary and it is not relevant to the interests China wants to achieve. In the beginning, China would make a show of being equally concerned about the SCS, but now it is openly expressing in the international arena why it has to

¹² 郭艾薇. 2021. “剛換首相的馬來西亞該如何應對美中博弈？不想選邊站要有的三個思考方向.” The News Lens 關鍵評論網. October 19, 2021. <https://www.thenewslens.com/article/157826>.

abide by the I-don't-care guidelines. The ASEAN was naive enough to think that Beijing would want to protect the rights of the countries in the region. 20 years have passed since the signing of the *Declaration on the Conduct of Parties in the South China Sea* (DOC) in 2002, and the COC has not yet been legally binding. What's more, we have seen China continue to expand its maritime sphere of influence in the SCS and consolidate its position in the region.¹³

The different foreign policy decisions used by SEA countries in dealing with China do not seem to have made any particular difference, and Vietnam may be the country that continues to maintain its position in this dispute, with neither gains nor losses. The diplomatic stance of Malaysia and Indonesia to resist or appease China does not help, but only downplays the fact that China has invaded their territories. Instead of relying on a weak regional organization, it is more useful to rely on oneself, leading to the change of attitude of Indonesia and Malaysia towards ASEAN. The Philippines is even more incomprehensible in its foreign policy decision, after vigorously opposing China's nine-dash line statement, it is suddenly trying to alienate the United States and get closer to China. This is like a child's quarrel, after the quarrel, telling adults that everything is false as if it did not happen. It may not have occurred to the Philippines that such an act would not only lose its sovereignty in the South China Sea but would even encourage China to invade its exclusive economic zone.

¹³ Burgess, Stephen. 2020. "Confronting China's Maritime Expansion in the South China Sea: A Collective Action Problem > Air University (AU) > Journal of Indo-Pacific Affairs Article Display." www.airuniversity.af.edu. August 31, 2020. <https://www.airuniversity.af.edu/JIPA/Display/Article/2331176/confronting-chinas-maritime-expansion-in-the-south-china-sea-a-collective-actio/>.

SEA countries had hoped that they could shape their relations with external powers, but they did not know that it was the external powers that were slowly shaping the relations of ASEAN member countries.

Research Purpose

The purpose of this research is to analyze the process of ASEAN from signing the *Declaration on the Conduct of Parties in the South China Sea* to the unfinished *Code of Conduct in the South China Sea*. What factors affect the process of the Code? How does the centrality of ASEAN be formed? How is ASEAN influenced by China and the United States? What problems should ASEAN face in the future?

Research Hypothesis

ASEAN member states are not united. Although ASEAN's economy is booming with ASEAN's cooperation, when faced with non-economic affairs, ASEAN has all kinds of excuses to set it aside. Instead of China and the United States, only ASEAN itself can affect its position in the South China Sea. The lack of a unanimous regional consensus within the ASEAN on the SCS is why the SCS dispute has not yet taken shape as a solution.

Research Questions

How do ASEAN countries bind together?

How do ASEAN countries collaborate since the *Declaration on the Conduct of Parties in the South China Sea*?

What are the conditions that may impact the development of ASEAN's Third Way?

Research Methodology

The researcher used official documents, news, and publications as sources for data collection and gathered the information to answer the research question. It applied the qualitative methodology to analyze the content and narrative of the research.

Contribution

Most of the international studies are concerned about the expansion of the powers of China and the United States in the SCS and worry that the ASEAN countries will seek to establish a community among the external powers. This research will analyze the ASEAN countries as the protagonists, and use the ASEAN countries to negotiate with China in the DOC to COC to further clarify ASEAN's process of implementing the third way.

Limits

Relevant newspaper articles, journals, publications, and the website of ASEAN are limited since the information is from open sources. Besides, the researcher only read English and Chinese, so she was not able to access benefit in keeping the information from other languages.

Delimits

To look for certain events and data, the researcher used an instance, South China Sea Dispute, and narrowed it down to the time between 2002 to 2022. The researcher will not seek additional information that is not related to the subject.

2. LITERATURE REVIEW

2.1 Origin of ASEAN

From our era, we might believe that ASEAN is an economic-oriented regional organization that drives economic development through economic cooperation. However, looking back on history, we will find that the ASEAN was not based on economic cooperation from the very beginning.

ASEAN originated in a turbulent era, that is, a regional organization established during the Cold War in the 1960s.¹⁴ At that time, the whole of Asia was a riot of communist aggression. The five founding countries of the ASEAN, namely Singapore, Malaysia, Thailand, Indonesia, and the Philippines, signed the "ASEAN Declaration" in 1967. The purpose is to unite to resist the expansion of communism in SEA countries, under the turmoil then, the communist aggression spread from Vietnam and Laos to Cambodia.¹⁵ The founding nation can only crudely build a wall of trust. Fortunately, in the Cold War, the democratic world led by the United States declared victory, and the founding country naturally became the victorious country. With the foundation of the ASEAN consensus and the mind of guarding against communism, the leaders of the ASEAN agreed that it is necessary to continue to drive the development and cooperation of the ASEAN (Kishore and Sng 2017, 299).

In addition, the origin of ASEAN includes geopolitical advantages. In the 1970s, when the two major ideologies of the Soviet Union and the United States met with Southeast Asia, the geographical location and political orientation of Southeast Asia were given to China and the United States great value. During that time, it was at the stage of Sino-Soviet enmity. China and the United States used Vietnam's invasion of Cambodia to tell the Soviet Union that it was impossible to succeed. Thanks to the diplomatic support of China and the United States, ASEAN's international status was greatly improved.

¹⁴ Moon, C. (2022, October 7). ASEAN. Encyclopedia Britannica.
<https://www.britannica.com/topic/ASEAN>

¹⁵ Office of the Historian. 2019. "Milestones: 1953–1960 - Office of the Historian." State.gov. 2019.
<https://history.state.gov/milestones/1953-1960/seato>.

In the 1980s and 1990s, ASEAN began to enter into economic development. Benefiting from the benefits of global trade, ASEAN began to integrate into the economic ecology of East Asia and achieved rapid economic growth. Unexpectedly, under a benign environment, strong leaders, and economic conditions of development, the founding countries of ASEAN have gradually prospered.

The economic benefits of ASEAN have given ASEAN regional development advantages, and it has gradually improved from economic cooperation to cooperation at the political level. The integration of positions, such as these large-scale initiatives: APEC, ARF, ASEM, ASEAN+3, ASEAN+6, RCEP, etc. In 2015, the ASEAN Community proved that ASEAN is gradually integrating, until today, creating the current ASEAN.

2.2 ASEAN's Way

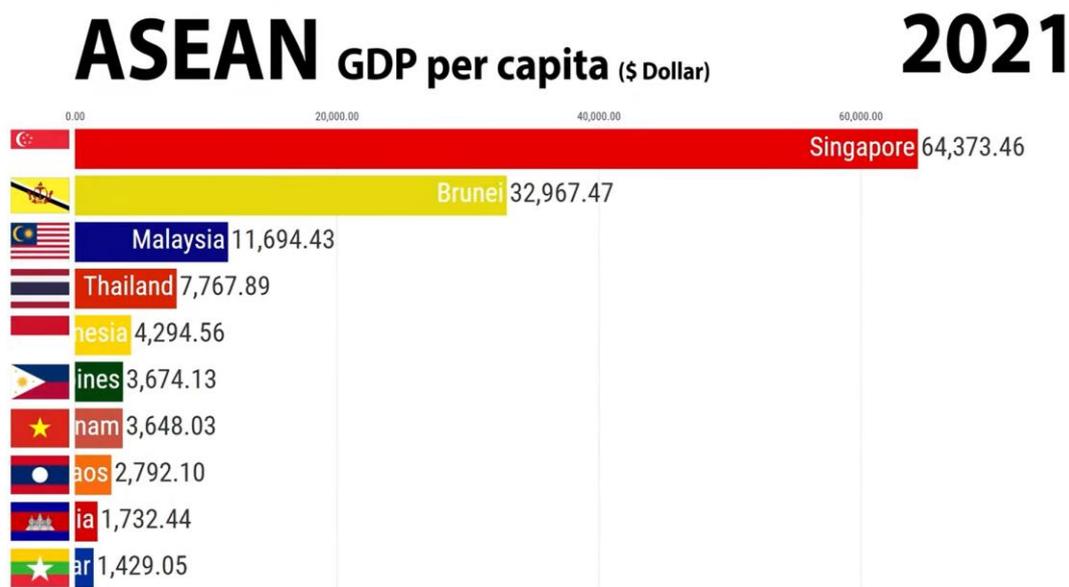
With the changes in the international situation, ASEAN is no longer like it used to be on the international stage with external powers choosing sides. They have the strength of trade and economy, and cooperation between member states has become more frequent. However, with the development of ASEAN countries, there have been many positive and negative comments on the ASEAN Way. The first thing the ASEAN has to face is the issue of ASEAN's unity. How to maintain the integrity of the ASEAN is very important. The ASEAN has successively included 10 countries in Southeast Asia, with a population of more than 600 million.¹⁶

In addition, the economic strength of the 10 ASEAN countries is also very disparate. Singapore, which was one of the four Asian tigers, has a per capita GDP of \$64,373.46 (2021), and Myanmar, is the country with the most disparity in GDP

¹⁶ Hamanaka, Shintaro. 2010. "ADB Working Paper Series on Regional Economic Integration." Asian Development Bank.

\$1,429.05 (2021) (Figure 1). Katsumata (2003) said that many ASEAN countries are still weak since their main concerns are domestic issues, and how to maintain their domestic stability is the main political agenda.

Fig. 1 ASEAN GDP 2021



Source: International Monetary Fund

The leaders of ASEAN are aware of the differences within ASEAN member countries. To bridge the gap within the organization, the most important thing is to have a sense of community. ASEAN Way is a diplomatic form of ASEAN. Rüländ (2000) argues that “ASEAN’s collective identity is crystallized in the revered principle of nonintervention”.

Using one identity to make decisions that are beneficial to everyone without interfering in the internal affairs of the member states is not a slogan, but a direction gradually found in the development of the ASEAN, which was already recorded in the ASEAN Declaration.

"CONSIDERING that the countries of South-East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples." (ASEAN Declaration)

It has already been mentioned that the ASEAN will not interfere in the domestic affairs of the member states. However, with the increase in trade interactions and frequent exchange of official visits, ASEAN countries have gradually strengthened their consensus on ASEAN. Busse (1999) thought that the "ASEAN way" is the method employed by the organization in dealing with conflict situations. But only resolving conflicts is not useless, Goh (2003) said the ASEAN way has played a significant role in resolving the conflict in Cambodia because there has not been any armed conflict.

However, there are still challenges when facing the integration process. As the ASEAN Way is currently only a decision-making and diplomatic consensus, no unit or institution can solve the problem when it encounters conflicts or disputes. Visone (2017) said only dialogue without sufficient civil society organizations cannot build regional identity, and ASEAN Way will only be subject to imbalances between governments.

Therefore, the decision-making diplomacy model of the ASEAN Way can alleviate regional conflicts and not force the implementation of policies based on non-interference in internal affairs. However, to truly establish the ASEAN Identity,

we cannot only hold dialogue and hold forums but more substantive actions are required

2.3 South China Sea Dispute

The SCS dispute covers territorial sovereignty, military bases, and natural resources. The SCS, a landward sea between East Asia and Southeast Asia, is surrounded by mainland China, Taiwan, the Philippine Islands, the Malay Archipelago, and the South China Peninsula, and is part of the Western Pacific Ocean. The SCS covers an area of 3.5 million square kilometers and contains over 200 uninhabited islands and reefs, which are collectively known as the SCS Islands.¹⁷ In addition to being a major shipping route, the SCS is also rich in oil and natural gas.

For decades, the claimants have been competing who control those islands, reefs, shoals, and surrounding water. China's claim to almost all of the SCS is indicated by the 'nine-dash line'. (Figure 2) China said history supports its claim since no one disputed its sovereignty over the territory before 1930.

¹⁷ LaFond, E. C.. "South China Sea." Encyclopedia Britannica, September 14, 2022. <https://www.britannica.com/place/South-China-Sea>.

Fig. 2 The Range of Nine-Dash Line



Source: Asia Maritime Transparency Initiative

Yet, Brunei, Malaysia, Taiwan, the Philippines, and Vietnam say parts of SCS belong to them. (Figure 3)

Fig. 3 Countries with Claims in the South China Sea



Source: Data via the Asia Maritime Transparency Initiative; Design by Aliza Grant, Forbes Staff

- Malaysia and Brunei say that under the United Nations Convention on the Law of the Sea (UNCLOS), the SCS falls within the economic waters of the two countries and therefore has sovereignty. The area claimed by Brunei does not include the disputed islands, but Malaysia claims part of the Spratly Islands.¹⁸
- Taiwan claims that, in terms of history, geography, and international law, the Nansha Islands, Xisha Islands, Zhongsha Islands, Dongsha Islands, and

¹⁸ Roach, J. A. (2014). Malaysia and Brunei: an analysis of their claims in the South China Sea. Virginia, VA: CNA Corporation.

their surrounding waters are the inherent territory and waters of the Republic of China, and their sovereignty belongs to Taiwan.¹⁹

- Both the Philippines and China claim sovereignty over Huangyan Island. Based on its geographical proximity and the fact that the Nansha Islands should be part of the island group to which the Philippines belongs.²⁰
- Vietnam strongly rejects China's appeal to history, saying Beijing never claimed the islands before the 1940s. It said that after the 17th century, Vietnam actively managed Xisha and Nansha, and there are documents to prove it.²¹
- There are no disputes over islands with Indonesia, but the continental shelf economic zone extends into China's nine-dash line in the SCS, including its natural gas fields. Indonesia claims that the exclusive economic zone surrounding the Natuna Islands partially overlaps with the nine-dash line, and claims that the sovereignty of the Natuna Islands belongs to Indonesia.

¹⁹ 上報. 2021. “台灣在南海爭議扮演什麼角色？要堅持中華民國「固有領土」嗎？ -- 上報 / 國際.” [www.upmedia.mg](https://www.upmedia.mg/news_info.php?Type=3&SerialNo=128806). 2021. https://www.upmedia.mg/news_info.php?Type=3&SerialNo=128806.

²⁰ Wu, Shicun. 2012. “The Huangyan Island Standoff: A Review of the Claims and the Prospects for the Future.” *China-US Focus*. 2012. <https://www.chinausfocus.com/peace-security/the-huangyan-island-standoff-a-review-of-the-claims-and-the-prospects-for-the-future>.

²¹ Linh, Pham. 2020. “Vietnam Rejects China’s ‘Historical Evidence’ Argument in the South China Sea.” *Hanoitimes.vn*. 2020. <https://hanoitimes.vn/vietnam-rejects-chinas-historical-evidence-argument-in-the-south-china-sea-313275.html>.

- The area overlapping with China's maritime rights and interests was renamed the "North Natuna Sea" on July 14, 2017.²²

Interest conflicts have caused tension over the years. Various countries have used methods to occupy islands and reefs in the SCS and use land and military bases to assert their sovereignty: China, Malaysia, the Philippines, and Vietnam. China is more aggressive in its territorial occupation than any other country. In particular, it reclaimed land in the Paracel Islands and Spratly Islands to build ports, military facilities, and simple airports. China has claimed more than 3-thousand acres in the Nansha or Spratly islands.²³ Besides, SCS even became the battlefield of military wrestling. The United States is an ally of some SEA countries. It saw China's actions in the SCS and called China a bully. Out of China's behavior in the SCS, the United States through military exercises with allies, the Philippines, to compete with China, jointly military exercises, freedom navigation exercises. China has pointed out that the United States is the one causing regional tensions.²⁴

²² Ani. 2022. "China's Tensions with Indonesia May Spike over Natuna Islands Issue." [Www.business-standard.com](https://www.business-standard.com/article/international/china-s-tensions-with-indonesia-may-spike-over-natuna-islands-issue-122082400311_1.html). August 24, 2022.
https://www.business-standard.com/article/international/china-s-tensions-with-indonesia-may-spike-over-natuna-islands-issue-122082400311_1.html.

²³ The Guardian. 2016. "China Has Reclaimed 3,200 Acres in the South China Sea, Says Pentagon." [The Guardian](https://www.theguardian.com/world/2016/may/13/pentagon-report-china-reclaimed-3200-acres-south-china-sea). May 13, 2016.
<https://www.theguardian.com/world/2016/may/13/pentagon-report-china-reclaimed-3200-acres-south-china-sea>.

²⁴ Gomez, Jim. 2022. "China Accuses US of 'Navigation Bullying' in South China Sea." [AP NEWS](https://apnews.com/article/russia-ukraine-china-asia-beijing-philippines-2ad93bc67233e987f8ef6d0f32fb2f60). July 29, 2022.
<https://apnews.com/article/russia-ukraine-china-asia-beijing-philippines-2ad93bc67233e987f8ef6d0f32fb2f60>.

2.4 ASEAN's Third Way in South China Sea Dispute

Combining the above-mentioned literature reviews explains the current situation of the SCS issue in ASEAN. Since the claimant countries in the SCS are not all members of ASEAN, the claimants used ASEAN to enlarge their power. To deal with the issues in the SCS, ASEAN wanted to create an ASEAN-China *Code of Conduct*, which was their goal to find a "Third Way" based on regional consensus and cooperation. It will force member states to work together, regardless of whether they are involved in the issue.

To avoid escalation into a military conflict, ASEAN's Third Way adopts more rules-based cooperative solutions. In the case of SCS disputes, several factors were identified as affecting cooperation patterns between ASEAN member states. Domestic political and economic factors and the military situation between China and the United States are indeed true that the changing balance of power in the world exposed the ASEAN's third way vulnerability. Limaye (2015) criticized "if one has big ambitions (a community) for ASEAN, then unity on the SCS is a logical ultimate goal, but the least of ASEAN's problems; if one has minimal goals for ASEAN (a shared voice and cooperation) then unity on the sea does not much matter but does detract in a more visible way".

Hernandez (2016) said during resolving disputes, it is observed that an informal and bilateral approach (like what China adopts) is more effective than the Western way of bilateral and formal talks. Several circumstances happened in ASEAN over the years that could have been taken advantage of by China by using different manners of aggressiveness, such as the 1997 Asian Financial Crises and during those

times when ASEAN states could not agree on some issues like human rights, but China chose not to take advantage of them.

China used ASEAN's stability as an advantage to assert its power and influence but remained diplomatic by insisting on bilateral yet informal negotiations for resolving disputes. Swanstrom (2001) believes that it is the 'China Way' and not the 'ASEAN Way' that is taking place, because of the instability of ASEAN, China dictates the game by using economic and military aggression when ASEAN refuses to follow the guidance of China.

3. METHODOLOGY

In this research project, the researcher applied qualitative methodology in the research. using official documents, news, and publications as sources for data collection. Gather the information and use content analysis and narrative analysis to answer the research questions. First, using literature to clarify ASEAN, the South China Sea disputes, and the relationship between China and the United States and ASEAN countries, reading the official documents to see what ASEAN's mutual vision is. Besides, looking for news and websites to know how ASEAN collaborates. Lastly, to see what conditions may impact ASEAN implementation third way.

4. DATA ANALYSIS

4.1 The Motivation to Establish ASEAN

After WWII, countries in Southeast Asia began to decolonize. Due to the political instability of decolonization, conflicts and wars are inevitable. “In Southeast Asia, the most significant decompression effect was the collapse of the Indochina Security Complex that had ordered inter-state relations in the region. Several developments converged to dismantle the complex.” (Ganesan 1999). Besides, the polar system of the East and West during the Cold War brought great changes to Southeast Asia, while most Southeast Asian countries are still in a state of struggle for independence or internal and external instability.

Under such an international system, Southeast Asian countries have always been in a passive situation, and they have to face the problem of choosing sides.²⁵ The first way, American-dominated western democracy. The U.S. strategy was to prevent the expansion of communism in Europe, Northeast Asia, and Southeast Asia during the Cold War. The second way, Soviet-led communism. The Soviet Union's allied countries in Southeast Asia at that time included Laos, Vietnam, and Cambodia.

The U.S. attempted to confine communism, led by the Soviet Union, to the countries surrounding the Soviet Union and not to prominently spread to other regions of the world. The Korean War and the Vietnam War in Asia, with over 500,000 troops, showed the strong intention of the U.S. not to allow communism to escape from the wall. Whether it is the prospect of an army confrontation in Europe, the subsequent development of a balance of terror that is guaranteed to be destroyed by nuclear weapons, or even the 38-degree armistice line on the Korean peninsula, the goal of mutual isolation and prohibition. The spread of communism has been prevented with the active participation of the United States.

However, the countries in Southeast Asia suffered from a tragic period of confrontation with the Communists alone after the withdrawal of U.S. troops from the Vietnam war. Thailand, Malaysia, and Singapore, the closest countries to Vietnam,

²⁵ RFA. 2022. “ASEAN States Unlikely to Choose Sides between US and China, Say Officials and Experts.” Radio Free Asia, 2022.
<https://www.rfa.org/english/news/china/asean-usa-06122022074314.html>.

Laos, and Cambodia, and Indonesia and the Philippines, far away in the south, were not immune to communist erosion. The original five member states, which formed the Association of Southeast Asian Nations (ASEAN), were all victims at that time.

The damage caused by communism has already had an irreversible impact on SEA countries. They supposed that they would be able to protect themselves by relying on Western democracy, but the United States does not treat SEA countries equally. “US officials spoke of the USA as ‘leader of the free world’ and its efforts to get regional states behind it demonstrated a performative claim to diplomatic leadership in Southeast Asia and to the function of ‘holding the line’ against communist advance in Indochina. However, US officials saw Southeast Asian states as weak and vulnerable and did not treat these states as equals, meaning the US claim to diplomatic leadership often merged into a claim to ‘stewardship’, a function prevalent in Southeast Asia during the colonial era.” (Yates 2016)

Therefore, here comes the Third Way, ASEAN-led SEA. The integration of SEA countries and the consistency of ASEAN becomes the voice of SEA nations. SEA is composed of several countries and regions south of China, east of India, west of New Guinea, and north of Australia. Therefore, countries in the Southeast Asian region have the Identity of SEA. SEA’s identity is the basis of the identity of ASEAN as a regional organization. Different from the regional division of SEA, ASEAN identity is built socially and politically by interactions between its governments and societies. On a legal basis, Article 1 in the ASEAN charter, “To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region”

ASEAN identity, to the extent that it is a constructed but meaningful idea, is likewise vulnerable to challenge and shift as a result of evolving regional and global political, geopolitical, and economic current flow.

Without relying on Western democracy and without being influenced by communism, ASEAN has been revising its cooperation and deepening the links between countries. Since this sort of regional identity should not be seen as a completed effort or a permanent phenomenon, it will stand the test of time for SEA to

complete the region-building and acquire the kind of regional identity. However, it is a developing area, owing largely to a concerted and self-conscious effort at regional identity creation, particularly since the formation of ASEAN in 1967.

Since its establishment in 1967, officials have been visiting each other and holding forums to promote interactions between countries, and the integration of ASEAN has become increasingly stable. In 2015, ASEAN published The ASEAN Community, including ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC), as the most crucial areas deemed necessary for the progress and evolution of ASEAN and its peoples. Achieving common community development has given ASEAN a great driving force. Furthermore, ASEAN is now the third-largest market and the fifth-largest economy in the world. Such a move seems to be expressing to the world that ASEAN, as the Third way, no longer needs to confront any external forces. ASEAN has gotten rid of the post-war tension and has moved towards stable national development, achieving success in regional consensus with its ASEAN identity. Thus, the interaction between ASEAN member states keeps building a sturdier identity as a regional organization.

Many key characteristics of Southeast Asia's international relations can be explained by the relative success and limitations of this endeavor, rather than the tangible forces and circumstances confronting the region, such as evolving patterns of great power rivalry. In other words, rather than being presented as a given, regional identity is viewed as a developing phenomenon, something that the region's nations and societies aspire to and fight for. (Acharya 2017)

However, problems arose when ASEAN faced disputes in the South China Sea.

4.2 What Exactly Binds Them Together

4.2.1 Fair and Equal Dialogue

Firstly, the purpose of ASEAN's binding together was to prevent the continued expansion of communism in SEA. Today, Southeast Asia has the foundation for political and economic development. On the issue of the SCS, the purpose is to find equal opportunities for cooperation and dialogue. Whether formal or informal dialogue is a way for ASEAN to build mutual trust. In particular, the SCS dispute involves the sovereignty disputes of many countries, so the SCS issue is based on the two major international norms of international law and the Law of the Sea (UNCLOS) to fulfill a duty of obligation. And the founding states of the Treaty of Amity and Cooperation (TAC) are the same as the original five ASEAN countries.

In addition to the ten ASEAN countries, the successive signatories also include countries in the Asia-Pacific region and the European Union to promote peace in SEA. In addition, there are public forums and seminars, and the ASEAN Summit is held regularly. Some scholars say that it is distracting and insubstantial to hold such meetings regularly, but the sense of identity of ASEAN will grow with each meeting. With such consciousness, ASEAN will know the positions and needs of its member countries internally and make use of the increasingly united organization to discuss with neighboring countries externally and establish a position in the international community that cannot be ignored.

4.2.2 The Awe of Chinese Power

Secondly, international norms give ASEAN equal status, but there is no guarantee of peace in the SCS based on law. As discussed in the aforementioned literature, China is a very powerful country in the SCS. Its rapid growth and

aggressive maritime military operations and artificial island-building made ASEAN fearful of China's unknown actions in the future. ASEAN had to tighten its nerves, neither provocative nor silent. Furthermore, China's economy is an awfully critical factor, which makes ASEAN have to be vigilant. Only some ASEAN countries are involved in the SCS, but China's economy occupies a significant economic position in each member country.

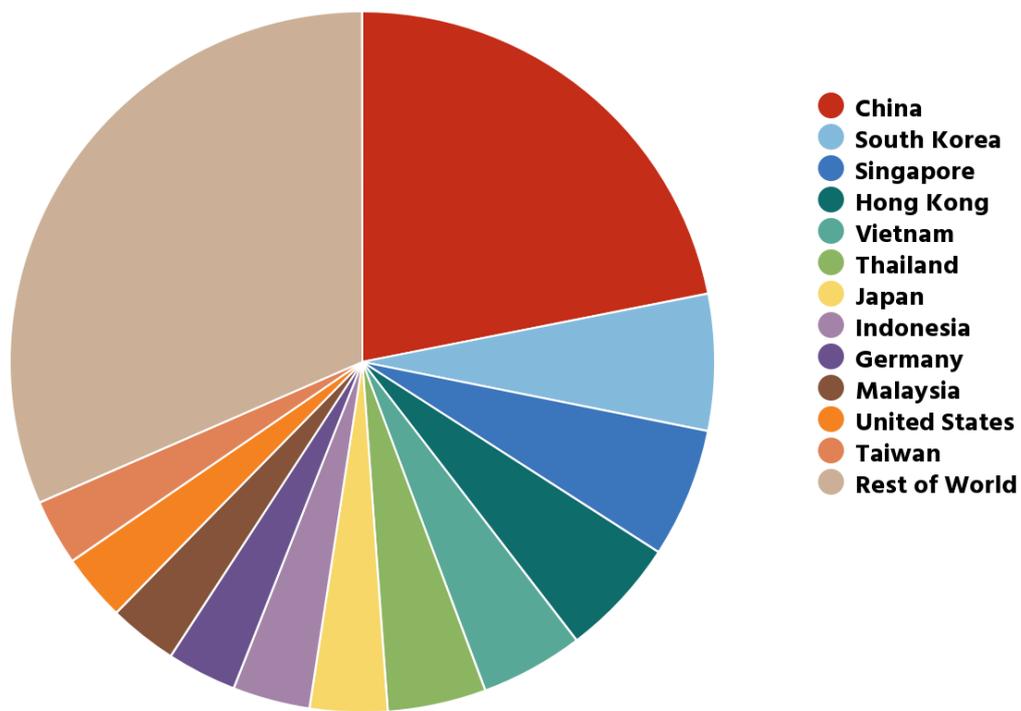
Therefore, as long as China is not willing to continue negotiations on the Sea dispute, it will use its economic conditions to provoke the ASEAN member states' views on the SCS and then shelve or move toward China's interests. Because of this, ASEAN is more aware of its dependence on China. There is no benefit to keeping shelving the SCS issue, since the longer term issue hasn't been solved, the more ways to not let you get those territories back. Thus, member states use their ASEAN status to set the rules of the SCS with a unified voice.

4.2.3 Safeguard Common Interests

Apart from the territory and natural resources, SCS plays an important role in global maritime trade and supply chain networks. The South China Sea issue is not only a concern for Asia, but also the world's trade on this ocean. According to ChinaPower. (Figure 4), in 2016, the largest trade volume in the South China Sea was China followed by South Korea, Singapore, Hong Kong, and Vietnam. However, although Asian countries account for the majority of trade in the South China Sea, Germany, ranked eighth, accounted for 3.2% of the South China Sea trade volume, and the U.S. accounted for 3.09%.

Fig. 4 Percent Share of South China Sea Trade

Percent Share of South China Sea Trade (2016)

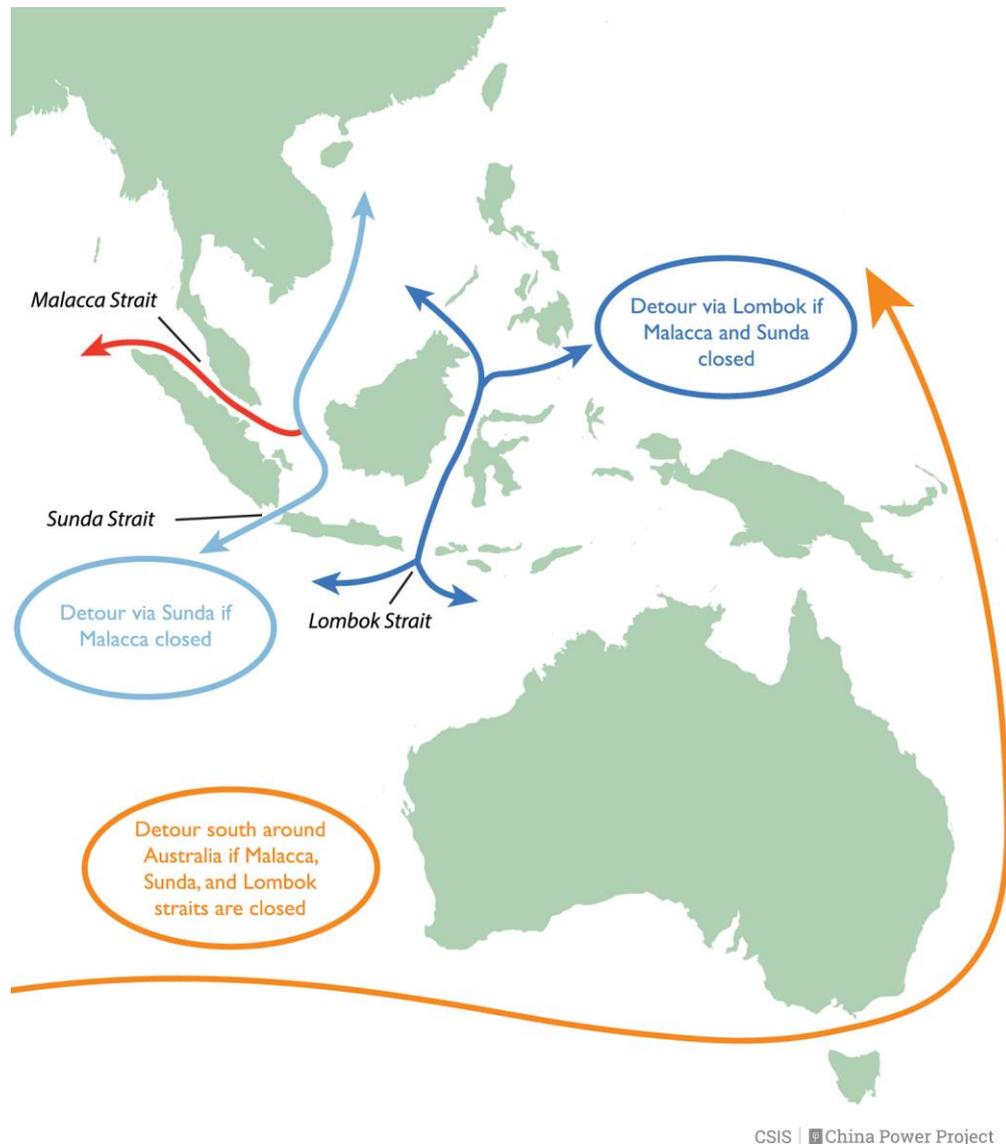


CSIS China Power Project | Source: ChinaPower

Source: ChinaPower - CSIS China Project

Meanwhile, the South China Sea contains some of the world's most important shipping lanes, the Strait of Malacca and the South China Sea are the main roads to and from the Pacific and Indian Oceans. (Figure 5)

Fig. 5 The Main Roads to and from the Pacific and Indian



Source: ChinaPower - CSIS China Project

This is not only the common interest of ASEAN but also the common interest of all countries in the world. Singapore's President Lee Hsien Loong said at the U.S.-Trustees Summit in particular that the key to protecting the global commons is to ensure freedom of navigation for all in the South China Sea. The ASEAN is seeking to convince external powers that the South China Sea is one of the most

important factors, but only the ASEAN itself can balance the disputes in the South China Sea. Therefore, it is the obligation and responsibility of ASEAN to unite member countries on the South China Sea issue, and to protect the common interests of the South China Sea to benefit themselves as well as others, so that ASEAN can bind together.

4.3 The purpose of *Code of Conduct* (COC)

As early as 2000-2002, the ASEAN started to discuss how to establish norms to maintain order in the SCS. The reason is that ASEAN attempted to limit China's armed behavior in the SCS through the COC.

China won the Xisha Islands and six islands and reefs in the Nansha Islands only after the 1974 Xisha Naval Battle and the 1988 Chigua Reef Battle. The six reefs are Chigua Reef, Fiery Cross Reef, Huayang Reef, Dongmen Reef, Subi Reef and Gaven Reef. After the Mischief Reef incident in 1995 China forced the Philippines to retreat and occupied the reef.

As a result, in the 1990s, ASEAN had already expressed its desire to sign the *Code of Conduct in the South China Sea* (COC) with Beijing, in an attempt to limit China's armed behavior in the SCS through the COC.

In July 1992, ASEAN issued a statement on the SCS issue for the first time, expressing that based on the Treaty of Amity and Cooperation in Southeast Asia (TAC), its goal is to establish the COC. However, since the reformation and opening up, China has gradually increased its economic and military power and does not want to be restrained by international norms.²⁶ Therefore, the progress of negotiating the Guidelines with ASEAN countries has not started; in 2000, ASEAN and China reached a preliminary draft of the "Guidelines", but after two years, only the *Declaration on the Conduct of Parties in the South China Sea* (DOC) was signed in Phnom Penh, Cambodia in November 2002.

²⁶ Pal, Deep. 2021. "China's Influence in South Asia: Vulnerabilities and Resilience in Four Countries." Carnegie Endowment for International Peace. October 13, 2021. <https://carnegieendowment.org/2021/10/13/china-s-influence-in-south-asia-vulnerabilities-and-resilience-in-four-countries-pub-85552>.

4.4 COC has not yet Reached the Goal

In the spirit of consensus, ASEAN has long championed a COC for the SCS to govern the behavior of all its claimants, including Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, Vietnam, and most recently Indonesia. ASEAN regarded the signing of the *Code of Conduct* in 2002 as an important step toward a lasting solution, but it proved less consequential than ASEAN had envisioned.

If the SCS is an important issue, why are there only five ASEAN states on the claimant's list? This means not all ASEAN nations view SCS disputes as regional problems. What are the reasons that ASEAN countries have no consensus on the SCS dispute?

4.5 ASEAN's Contradiction of Collective Interests and National Interests in SCS

4.5.1 Negotiation Bargaining Chips with China: Bringing the SCS issue from the claimants to ASEAN

There is a weak identity in front of interests. The SCS issue is only the appeal of some specific countries, but it does not mean that all ASEAN countries should agree to the progress of this issue. Cambodia, which chairs ASEAN meetings in 2012, pledged more than \$500 million from China.²⁷ That year is also the tenth anniversary of signing the DOC. However, China told Cambodia that it's too fast to talk about COC, because it may threaten regional stability. Cambodia shared China's belief that the issue should not be "internationalized", and rejected a Philippine proposal within ASEAN in November to define contested areas and allow joint development. The two leaders agreed to target a doubling in bilateral trade to \$5 billion by 2017, according to Cambodia's top government spokesman Khieu Kanharith. To be honest, it's hard to say no to such a great deal. As can be imagined, Cambodia neither agreed nor opposed the SCS, but directly stated that there was "no consensus" on the issue. The reason is nothing more than that if you take Chinese money, you should do something for your partner.

The reason why the claimant countries have always wanted to bring this issue into the ASEAN is to use the power of the organization to block China's influence in the SCS and to negotiate with China in small gatherings. November 2012 marks the 10th anniversary of the signing of the SCS Guidelines. Albert del Rosario, former foreign minister in the Philippines, mentioned "We will combine the country

²⁷ Reuters. 2012a. "Hu Wants Cambodia Help on China Sea Dispute, Pledges Aid." Reuters, March 31, 2012, sec. Emerging Markets.
<https://www.reuters.com/article/us-cambodia-china-idUSBRE82U04Y20120331>.

with the closest view (Vietnam) and work quietly with this country on a bilateral basis to solve the problem, and then go to the third (Malaysia) to ask if they want to cooperate, and it worked, and then the three of us went to the fourth (Brunei)." then directly told Cambodia that the credit for this initiative can be given to you as the Chair. The launch of this initiative has a sense of unity against the lion.

However, they still underestimate China's influence in the South China Sea and the ASEAN countries. China is aware that she is a pivotal presence in ASEAN. China simply ignored it rather than being bound by the Code when it no longer served Beijing's purposes. China understood that ASEAN's rising economic reliance on it, as well as ASEAN's dedication to slow-moving consensus, would stymie efforts to restrain it. According to the ASEAN Economy Community, China has retained its position as ASEAN's largest trading partner since 2009. Trade between ASEAN and China has more than doubled since 2010, from USD 235.5 billion to USD 507.9 billion in 2019 (18% of ASEAN's total), and almost quadrupled since the entry into force of the ASEAN-China Trade in Goods Agreement in 2005. ASEAN's exports to China grew at an average annual rate of 10.4% from 2010 to 2019 as compared to 12.5% for ASEAN's imports from China during the same period. ASEAN's trade deficit with China increased from USD 10.4 billion in 2010 to USD 102.9 billion in 2019. Based on preliminary ASEAN data, FDI flows from China to ASEAN reached USD 9.1 billion in 2019, accounting for 5.7% of total FDI flows to the region. which placed China as the fourth largest source of FDI among ASEAN's Dialogue Partners. According to statistics from the Chinese side, despite the COVID-19 pandemic, the trade volume between ASEAN and China during the first half of 2020 increased by 2.2% against the downtrend where ASEAN leaps to become

China's largest trading partner for the first time, making ASEAN and China each other's top trading partner.

Cambodia, Laos, Myanmar, and Thailand are not claimants in the SCS, nor do they realize that they are directly affected by the disputes in the SCS. In particular, the four countries have close economic, political, and security ties with China to varying degrees.

4.5.2 Leaders Hide Their Mind

Another problem is that no one leads the ASEAN in the SCS dispute. This is paradoxical that if it is said that the non-claimant countries do not intend to participate in its disputes, it is reasonable to say that it is only necessary to express agreement or no opinion, but the various contradictions made by Vietnam, Malaysia, Indonesia, and the Philippines as claimant countries make people doubt "Do you want to solve the problem?"

In the beginning, ASEAN thought that China would open its mind and respect the behavior of other countries in SCS as long as ASEAN spent time with China and maintained a consensus. Yet, no one expected the result that China's actions had grown more brazen by the late 2000s, prompting Malaysia, the Philippines, and Singapore to join Vietnam in airing their concerns at the ASEAN regional forum where Yang made his off-putting remark.

Vietnam and the Philippines are gradually taking countermeasures in SCS. Vietnam itself formulated the "2020 Maritime Strategic Plan" in 2007, proposing the

development of the marine economy and other goals and plans. Of course, the SCS, which is rich in resources, is the main goal; Huangyan Island and some islands and reefs of the Nansha Islands in the Zhongsha Islands were placed under the Philippine territory; on April 25, Vietnam officially appointed the chairman of the "Huangsha Island People's Committee" in the Xisha Islands²⁸; in May, Vietnam and Malaysia jointly The United Nations Commission on the Limits of the Continental Shelf submitted the case for the claim on the outer limits of the continental shelf.²⁹ In addition, the competition among the Philippines, Vietnam, and China for energy exploration in the disputed waters of the SCS is also an important reason for escalating tensions in the SCS.³⁰ Given the increasing actions of China in SCS, a consensus was reached at the ASEAN Summit in October 2010, hoping to formulate a normative COC.

As a result, in 2016, Philippine President Rodrigo Duterte, who just took office, said after the PCA Arbitration case, "Anyway, if the disputes in the SCS cannot be resolved for a while, it is better to put it on hold and discuss a big business first." Vietnam didn't know how to react for a while. We must know that Vietnam and the Philippines have always been the most powerful countries on the SCS issue in ASEAN, similar to ASEAN's position in the SCS. The original best comrade in arms suddenly told you that you want to make money first, and you have to argue with the strong guy alone.

²⁸ Van de Ven, J. (2015). Without an end in sight: Competition between the People's Republic of China and the Soviet Union during the Vietnam War and its implications for the wider relationship. *Asiadémica: revista universitaria de estudios sobre Asia Oriental*, (05), 50-59.

²⁹ "Continental Shelf - Joint Submission to the Commission by Malaysia and Viet Nam." 2011. www.un.org. 2011.

https://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm.

³⁰ Cruz, Erik dela. 2014. "Philippines Offers Oil, Gas Exploration Area in Waters Disputed with China." Reuters, May 9, 2014, sec. Oil & Gas Exploration & Production. <https://www.reuters.com/article/philippines-energy-southchinasea-idUSL3N0NV2BQ20140509>.

Regardless of whether Vietnam has the power to claim against China and the ASEAN, the non-claimer countries that had no interest in the SCS issue will not make a statement just because the Philippines set aside the SCS issue. Vietnam must take the lead in confronting this.

To make matters worse, China has consolidated Cambodia's relationship with Laos through the Belt and Road Initiative. The Belt and Road Initiative has invested in many construction projects in developing countries in SEA, and it has also given China greater influence in the ASEAN. After Cambodia participated in the "Belt and Road" initiative, Cambodia was more inclined to compromise with China than to support China's position on the issue of conflict in the SCS, stopped military exercises with the U.S, and started large-scale military exercises with China.³¹ After participating in the "Belt and Road" initiative, Laos gradually moved away from its friendly country, Vietnam, and became closer to China. It also moved from "multilateral negotiation" to China's "bilateral negotiation" on the SCS.³²

4.5.3 Respective Internal Affairs

Furthermore, ASEAN is not only facing issues in the South China Sea. The leaders of each country mainly focus on the internal affairs of their own countries. It is not that the ASEAN did not have a period of prosperity, but when the ASEAN was growing up, strong leaders were leading the regional cooperation, such as the former leader of Singapore Lee Kuan Yew, the former leader of Malaysia Mahathir, and the

³¹ Parameswaran, Prashanth. 2017. "Why Did Cambodia Just Cut US Military Drills?" TheDiplomat.com. 2017.

<https://thediplomat.com/2017/01/why-did-cambodia-just-cut-us-military-drills/>.

³² 黃宗鼎. 2016. "南海仲裁後，中國東協如何過招？" 獨立評論, 2016.

former leader of Indonesia Suharto. Fifty years later, ASEAN leaders have focused on their domestic affairs.

Malaysia 1MDB Scandal in 2009³³, Thai coup d'état in 2014³⁴, Myanmar Rohingya Genocide³⁵ and Philippine drug war³⁶ in 2016, have aroused widespread international public opinion, especially in Western countries. Under such turbulent internal affairs, countries have no interest in regional development at all, how can they reach the goal of ASEAN integration? Prime Minister Lee Hsien Loong said, "Of course, domestic affairs are important and must be paid attention to, but if all energies are devoted to it, the space for ASEAN cooperation will be compressed. Cooperation in the fields of investment, trade, technology, or human resources cannot be carried out within ASEAN. In that case, ASEAN will become illusory and unable to implement its real cooperation content." So far, the development of ASEAN is obvious to all, but once ASEAN member countries are disturbed by geopolitical conflicts and domestic affairs, ASEAN will be exposed to the risk of being seriously weakened and divided.

³³ Ellis-Petersen, Hannah. 2018. "1MDB Scandal Explained: A Tale of Malaysia's Missing Billions." *The Guardian*. The Guardian. October 26, 2018. <https://www.theguardian.com/world/2018/oct/25/1mdb-scandal-explained-a-tale-of-malysias-missing-billions>.

³⁴ Lim, Kevin. 2015. "2014 年泰國反政府示威事件、泰國軍事政變整理." 公民行動影音紀錄資料庫. January 25, 2015. <https://www.civilmedia.tw/archives/26678>.

³⁵ "Myanmar – Genocide of the Rohingya «World without Genocide - Making It Our Legacy." 2019. *Worldwithoutgenocide.org*. 2019. <http://worldwithoutgenocide.org/genocides-and-conflicts/myanmar>.

³⁶ Lozada, David. 2021. "How Duterte's 'War on Drugs' Is Being Significantly Opposed within the Philippines." *Melbourne Asia Review*. July 12, 2021. <https://melbourneasiareview.edu.au/how-dutertes-war-on-drugs-is-being-significantly-opposed-within-the-philippines/>.

4.6 The Neglect of Common Interests

Even the faltering cooperation was thought to be important for SEA. However, after the West accused them of handling internal affairs, China's influence in the ASEAN countries has grown, tilting towards China. Given that consensus within ASEAN often requires the unanimous consent of its members, the organization's prospects for firm opposition to China appear to be getting dimmer. Relying on yourself instead of others is similar to ASEAN. Therefore, Indonesia has also begun to speak for itself in a rare way across the ASEAN, and deal with the SCS issue with China alone.

Jakarta has taken a more independent stance as Beijing violates Indonesia's maritime claims in the SCS. On May 26, 2020, Indonesia pointed out that the "nine-dash line" issued by Beijing "lacks international legal basis" and contradicts the United Nations Convention on the Law of the Sea.³⁷ Such a public statement is rare. In addition to warning China publicly, Indonesia has stepped up its military presence in disputed waters. In August 2021, China protested against the predominantly land-based Garuda Shield military exercises, which took place during the standoff. The exercises, involving 4,500 troops from the United States and Indonesia, have been a regular event since 2009.³⁸ According to Muhammad Farhan, an Indonesian lawmaker on parliament's national security committee said "In their formal letter, the Chinese government was expressing their concern about the security stability in the area."

³⁷ News, Taiwan. 2020. "Indonesia Rejects Beijing's South China Sea Claims | Taiwan News | 2020-05-29 16:12:00." Taiwan News. May 29, 2020. <https://www.taiwannews.com.tw/en/news/3941389>.

³⁸ Allard, Tom, Kate Lamb, and Agustinus Beo Da Costa. 2021. "EXCLUSIVE China Protested Indonesian Drilling, Military Exercises." Reuters, December 1, 2021, sec. Asia Pacific. <https://www.reuters.com/world/asia-pacific/exclusive-china-protested-indonesian-drilling-military-exercises-2021-12-01/>.

4.7 If not all ASEAN cares, why do they keep negotiating?

China will not stop its ambitions in the SCS. As the most powerful power in the South China Sea, China is not only in control of the global economy but is also increasing its military strength. Furthermore, as mentioned earlier, China knows that the problem with the ASEAN is that it only wants to do business and does not want to solve the problem, so it is trying to separate each other with private conversations, but the bad news for China is that someone is slapping China in the face with a proper pipeline. The Philippines argued before an international court in 2014 that China's nine-dash line is completely unreasonable and that China's increasing territorial encroachment in the South China Sea greatly threatens the security of the South China Sea.³⁹

Fortunately, in 2016, the International Court of Justice gave the Philippines justice by formally rejecting China's statement on the nine-dash line. China is not dare to say that the nine-dash line in the South China Sea belongs to them, it has to deceive itself by not attending, not responding, and not commenting to avoid its absurd encroachment in the South China Sea.⁴⁰ Victory from the international court gives strength not only to the Philippines but also to all South China Sea claimants in support of sovereignty and economic waters. The arbitration case provides a clear definition of what is legal or illegal for countries to do in the South China Sea. Perhaps at first China's assertiveness will make people doubt themselves, but the formal arbitration case gives the ASEAN a brighter direction.

³⁹ Sterling, Toby. 2015. "South China Sea Dispute between China, Philippines Heads to Court." Reuters, July 7, 2015, sec. Top News.

<https://www.reuters.com/article/cnews-us-southchinasea-arbitration-idCAKCN0PH1KH20150707>.

⁴⁰ "南海仲裁案：中國外交部重申不接受仲裁。" 2016. BBC News 中文. June 30, 2016.

https://www.bbc.com/zhongwen/trad/china/2016/06/160629_south_china_sea_case_china_reax.

4.8 What do China and the U.S do?

Former Indonesian Commerce Minister Mari Elka Pangestu described it as “two elephants fighting, and we don't want to be trampled to death.” The ASEAN member states themselves face their problems, while the two major powers, China and the United States, also covet the South China Sea as a treasure trove. China has never wanted its member states to rally to talk about the South China Sea. Although the ASEAN has its internal politics affecting the cohesion of the ASEAN, it is undeniable that the member states are building bridges of cooperation in another way, which is why China is trying to dismantle their cohesion one by one by using all means, economic inducements, and territorial expansion. Therefore, ASEAN is just not useful, and the policy of the ASEAN does not affect its position in the South China Sea at all.

The U.S. does not regard ASEAN as an equal regional organization, and the U.S. keeps calling for ASEAN integration and the ASEAN community in the international arena because the U.S. wants to use the geopolitical status of ASEAN to suppress the continued expansion of the power of other countries. Facing Southeast Asia, Southeast Asia has always been a pawn of their interests, and with the overlapping power of China and the U.S, ASEAN cannot remain silent, but at the same time, it must truly understand who is the enemy and who is the friend.

4.9 Factors affecting the identity of the ASEAN and the dilemma to be faced

To begin with, the impact of the international situation. ASEAN The impact of ASEAN, China, and the U.S. arms race, China's involvement in Southeast Asia and the South China Sea sovereignty dispute on ASEAN's internal foreign policy; and how the external powers (China and the U.S.) view ASEAN and the South China Sea.

In addition, the domestic political environment of SEA countries will greatly affect the common decision of the ASEAN, so this issue is also a key point worth exploring in the future.

Furthermore, whether the decision makers are one in the ASEAN: the influence of leaders on foreign policy, the Cambodian and Filipino leaders, in particular, have demonstrated a pro-China policy, but such affectionate performance may face the welcome of other member states. The Malaysian leader's opposition to the U.S. provocations against China was indeed a diplomatic decision made by a leader, but as fate would have it, Malaysia did not bet on the right thing.

5. CONCLUSION

"It is hard not to choose a side" I believe this is the main issue for all small countries. ASEAN became the motivation for me to do this project, since I as a Taiwanese, rarely heard about the news from Southeast Asia countries. Because I didn't have enough knowledge, I learned from newspapers, magazines, and textbooks that Southeast Asian countries have been slowly growing on the international stage since the establishment of the Association of Southeast Asian Nations. The five founding countries of ASEAN were only established to seek international asylum. Since 1967, they have grown tremendously, both in terms of economic growth and policy cooperation. However, all organizations find loopholes or issues that need to be patched as they grow, and ASEAN is no exception.

The loopholes in ASEAN's decision-making process have long been criticized by many scholars, and ASEAN Way uses a consensus-based decision-making method. Advocates see the ASEAN Way as an unprecedented advance because it brings greater centripetal force and data-visible economic growth. But I am skeptical about this decision-making method. If member states in regional organizations do without substantive policies and norms to resolve them, wouldn't there be a risk of shelving issues?

Therefore, I used the ASEAN-China *Declaration on the Conduct of Parties in the South China Sea* to prove my research hypothesis. Although ASEAN has achieved economic success, as long as it is a non-economic issue, ASEAN will not face it directly but will adopt a strategy of delaying. ASEAN may think that the issues left aside will automatically disappear, but external powers are not kind to ASEAN

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countries. The South China Sea is a place where many trades import and export and is rich in natural resources. To maintain the initiative in the South China Sea, the claimant countries in the South China Sea use many methods to prove that the islands and reefs in the South China Sea belong to whom and claim that they are sailing within a legal range. Overlapping conflicts of interest in the South China Sea have increased tensions between the ASEAN and China, and a few nations have moved out of the United States to try to put out the fire. As the saying goes: "The lesser of two evils", but no matter how to avoid conflict, only Southeast Asia, not the United States and China, will be hurt. As the host of the South China Sea, only by consolidating its position and voice can ASEAN be united in the region. Indeed, Brunei, Malaysia, the Philippines, and Vietnam, which are also members of ASEAN, want to assemble ASEAN to express the South China Sea with a common norm. This is also a step of ASEAN's Third Way.

However, China, the biggest claimant country in the South China Sea, is aware of its advantages in ASEAN and its disadvantages. ASEAN's diplomacy is flexible, and almost all policies that benefit itself can be implemented as long as it does not interfere with internal affairs. But at the same time, it is too flexible, so there is no clear line to indicate whether the ASEAN accepts or does not accept it. China takes advantage of this point and just needs to try to get one of the member states to express that I do not agree with the South China Sea issue. ASEAN will fall into a stalemate, and China's goal will be achieved, "There is absolutely a problem, but if you don't solve it, the problem is no longer a problem."

CONCLUSION

To understand what caused the stagnation of the *Code of Conduct* in the process of signing it between ASEAN and China, I will go back to the basic research question, how do ASEAN countries bind together? The case was established to resist the expansion of communist forces. Although the power of the Communist Party was finally disintegrated, the damage caused to SEA countries is irreversible. After resisting communism, they originally wanted to move closer to the Western countries, but the Western countries did not care about SEA at all. The only one who can save SEA is themselves. How to build volatile Southeast Asia from scratch starting small. The ASEAN Charter of 1967 is the foundation of ASEAN. Then ASEAN became a more and more organized structure, common policy and consciousness, from Southeast Asia to ASEAN to ASEAN Identity.

Under the issue of the South China Sea disputes, the reason for ASEAN binding together is to build mutual trust. Member states need to communicate and interact to understand their demands. Although it is a summit without substance, the ASEAN identity is also established invisibly. Second, China's influence can no longer be ignored. China's artificial islands in the South China Sea and its strong declaration of the nine-dash line have made the ASEAN and China a little distant. At the same time, ASEAN knows that the SCS occupies an extremely important navigation route and international trade for SEA countries, so the interests of the SCS equal to the SEA countries need to be safeguarded together.

Thus, the SCS must have game rules that everyone is willing to abide by. The "*Code of Conduct in the South China Sea*" initiated by the ASEAN was decided after many fragmentary disputes. Yet, since China was unwilling to sign it at that time,

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ASEAN did not want to leave it alone either. There is a "*Declaration on the Conduct of Parties in the South China Sea*" that is not legally bound. There are many reasons that COC still cannot be signed after 20 years.

In addition, there is no powerful leader to deal with the South China Sea issue. The Philippines and Vietnam, which had the highest expectations, would take the initiative in defending territorial sovereignty, and even stick to the South China Sea sovereignty issue together. Nevertheless, the former Philippine leader believed that he had the influence to negotiate with other countries after the Arbitration case, so he bluntly gave up Vietnam and went to do business with China. Vietnam, becoming the scapegoat, had to face China alone and the negative impact of non-claimant SEA countries. Another thing that affects ASEAN is the internal affairs of the member states. The success of regional organizations is precise because regional problems are solved together for common development. ASEAN's non-interference in internal affairs itself conflicts with organizational development. Public criticism caused by the human rights turmoil has made member states concentrate on developing this regional organization.

In the end, the COC has not yet been signed, as the common interest of the ASEAN failed. The most concerning part is that China is growing at a visible rate. The more ASEAN relies on China, the more distant the COC will be. There is still a chance, after all, there was already a case about behavior in SCS, and it only needs to prove once again that China's claim that the nine-dash line in the SCS is unreasonable will have the opportunity to redirect the signing of the COC.

CONCLUSION

When neither China nor the United States regards ASEAN as an influential regional organization, ASEAN cannot avoid becoming a victim of external powers. Therefore, the researcher would like to suggest things that ASEAN needs to pay attention to in the future. (1) Be sure to face up to the problem of external power, no side is safe. (2) The order adjustment of internal affairs and organizations. Internal affairs are important but the organization is more important. Otherwise, regional organizations will not have their role. (3) Leaders must make decisions that are beneficial to regional organizations, and will not be led as a fool.

In conclusion, the researcher would like to use the military exercises held in the Taiwan Strait in August 2022 to present their views on the ASEAN. For the United States, Taiwan is only a pawn of U.S. interests, and Taiwan will always be the most sensitive nerve of China, but in fact, both the United States and China do not want to start a conflict, and both China and the United States are well aware of each other's strengths. It is believed that the ASEAN is making this incident a headline warning, because Taiwan is the epitome of ASEAN in the South China Sea, once the ASEAN is only one of the Chinese and American interests, even if the regional peace in the South China Sea is only the minimum demand when something serious happens, the battlefield will always be their own home, and only they will be injured. External powers will not be sympathetic, only to strengthen the value of regional organizations, and a strong sense of a common and complete operating system to ensure that the ASEAN in the face of external powers has sufficient confidence and negotiating conditions, which is exactly the situation that needs to be faced in the future ASEAN.

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