

**《Research Note》****After the South China Sea Arbitration:  
Opportunities and Obstacles for ASEAN to Enhance its Dispute  
Settlement Mechanisms**

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**1. Introduction**

The South China Sea continues to be one of the busiest international sea-lanes in modern times, being the global chokepoint connecting Northeast Asia and the rest of the continent. Scattered with islands, reefs, and shoals in two main groupings, these insular features have insignificant economic values on their own. Yet, they quickly became points of contention for states with strategic interests in maintaining sovereignty claims over the maritime area. Brunei, China, Malaysia, the Philippines and Vietnam are the five states with major territorial claims in the area.<sup>(1)</sup> Other states with no direct claims in the South China Sea disputes have voiced their concerns over the ongoing tension. Indonesia – a close neighbor to the contending claimants – has been urging for a resolution to the disputes, while continuing to maintain its neutrality to the situation. The US has been particularly vocal recently, demanding that freedom of navigation through the South China Sea remains intact, as codified in the United Nations Convention on the Law of the Sea (UNCLOS).<sup>(2)</sup>

Latest developments of the situation make it evident that claimant states are still a long way from achieving a peaceful resolution. Of the five states, all of them except for Brunei has occupied and fortified their presence on certain features. China has even gone one step further by reclaiming land from submerged features in the Spratly Islands and building artificial islands. Concerned states time and time again called for China to abide by its obligations under international law, and cooperate in good faith with regional institutions to reach an equitable solution. The Association of Southeast Asian Nations (ASEAN), conspicuously, has been playing the major role to mediate the desired peaceful settlement for the South China Sea, while facing criticisms for its ineffective performance.

This paper focuses on the recent development in the South China Sea disputes and ASEAN's corresponding policy and strategy. By examining the legal mechanisms of relevant law, the paper assesses the limitations and obstacles for ASEAN's current strategy in mediating a regional dispute. The paper proceeds to reveal how ASEAN has responded to new situations, and concludes with some suggestions on how it may

strengthen the Association's approach to better mediate the final settlement for the South China Sea disputes.

## **2. The evolution of the South China Sea disputes and ASEAN's strategy**

Under the 1982 UNCLOS, coastal states party to the Convention are provided with specific compulsory dispute settlement mechanisms in case of overlapping claims. Those procedures are explicitly considered as secondary importance by part XV of the Convention. Section 1 of Part XV declares that coastal states were obliged to settle any dispute concerning the interpretation or application of UNCLOS by peaceful means, and connected to the same obligation under Article 33(1) of the UN Charter.<sup>(3)</sup> In case of a dispute concerning the provisions of UNCLOS, the first step for involved states is swift exchange of views to confirm the possibility for settlement by negotiation or other peaceful means.<sup>(4)</sup> The "peaceful means" are of states' own choosing, and such process would be applicable to dispute between states and non-state entities as well. They might refer to previously established agreements or ad-hoc ones following the dispute.

Applying the general provisions to the South China Sea disputes, it is possible to draw several observations for the case. First, four out of five states involved in the disputes are ASEAN members, making the organization a logical choice to act as the mediator. Secondly, there are two instruments to which claimants in the South China Sea disputes are signatory members: the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC), and the 2002 Declaration on the Conducts of Parties in the South China Sea (DOC). Although not an ASEAN member, China had also given its signature between 2002-2003.<sup>(5)</sup> Thirdly, the DOC was considered as the first true attempt by ASEAN to establish a voluntary agreement to settle maritime disputes in the region. However, signatory parties were quickly disappointed by the ineffectiveness of the DOC to facilitate a peaceful conclusion to the disputes.

Historically speaking, ASEAN began its involvement in the issues around the 1990s. On 25 February 1992, China enacted its "Law on the Territorial Sea and Contiguous Zone," part of its specified Chinese territorial land to include: "...the mainland and its offshore islands, Taiwan and the various affiliated islands including... Dongsha (Pratas) Islands, Xisha (Paracel) Islands, Nansha (Spratly) Islands..."<sup>(6)</sup> The domestic bill further implied China's willingness to use naval forces in the enforcement of its sovereignty over declared maritime zones generated from these territories. Recognizing the potential of a deteriorating security situation for the region, ASEAN promptly created a positive atmosphere for pacific settlement by adopting the 1992 ASEAN Declaration on the South China Sea. In the declaration, ASEAN expressed concern over the rising tension

between China and Vietnam over the oil exploitation in the claimed continental shelf of Vietnam. By reiterating the core ASEAN principles, it insisted all parties to exercise self-restraint, and to open up to negotiation for a code of conduct in disputed zones.<sup>(7)</sup> The declaration was considered more of an internal diplomacy move rather than a legally binding agreement. China was not enthusiastic about an agreement on territorial issues, and swiftly reminded ASEAN that it preferred bilateral discussion with involved parties, while considering both island groups outside ASEAN's jurisdiction.<sup>(8)</sup>

From this point, ASEAN began shifting its interest towards the realization of a code of conduct in the South China Sea. The discussion about a legal binding code of conduct enjoyed a fast-track movement in the annual meetings, finally endorsed by major ASEAN members at the 29<sup>th</sup> ASEAN Ministerial Meeting in 1996.<sup>(9)</sup> Yet, it was not until 2002 that ASEAN and China finally established the DOC, which was only a non-binding political statement. Regional leaders hailed the DOC as a strong foundation for building partnership on maritime security and territorial issue between ASEAN and China.<sup>(10)</sup> Outside observers and scholars, in contrast, showed more cautious opinions in questioning the effectiveness of the DOC.

Ian Storey considered the DOC as a “dead letter” document, and the result was a combination of several shortcomings.<sup>(11)</sup> The ambiguity of the geographic scope in the South China Sea was the first reason. Without mentioning the exact applicable maritime zones, the DOC opened itself up to different interpretations. How ASEAN – as a collective group – views the disputes would be different from the view of a single coastal state. China did not see the disputes as being limited to the two archipelagos, but rather the maritime zones covering most of the South China Sea, as illustrated by its nine-dash line map.<sup>(12)</sup> This expanded the disputes to include the Exclusive Economic Zones (EEZs) and continental shelves of neighboring states in Southeast Asia. The second problem of the DOC was the lack of provisions to constrain rogue behaviors that might complicate or escalate the disputes. Signatory members of the DOC could simply arbitrarily invoke interpretations best suited for their actions in disputed areas. Confidence building and cooperation was lost in the course, and involved parties continued to conduct military exercises, occupying new features or constructing new fortifications to strengthen their foothold. The last problem to consider is the lack of enforcement mechanisms. By saying “all parties undertake to respect the provisions of the Declaration and take actions consistent therewith,” the weight of legal enforcement was completely removed from the document. Subsequently, claimants would find it unrewarding to uphold the provisions of the DOC, and continued to act unilaterally.<sup>(13)</sup>

In contrast, optimistic observers such as Carlyle Thayer stated that the concept of the DOC was stillborn because it has not been implemented. The DOC was a weak document, but it was able to touch on all relevant principles laid out for the establishment of a code of conduct: the prohibition against the use of force, peaceful settlement of regional disputes, exercise of self-restraint, and promotion of trust and cooperation. There was also the adoption of the implementation guideline in 2011.<sup>(14)</sup> In any case, it is clear that a code of conduct is still needed to overcome the stagnant Declaration and its shortcomings. Faced with mounting criticisms of its lackluster performance, ASEAN was forced to try for another discussion to establish the code in 2013.<sup>(15)</sup> For the next two years, the progress was painstakingly slow due to China's reluctance to conclude on more specific points. It was suspected that China is, on purpose, stalling for time until the construction and reclamation projects finish.

### **3. Remedies beyond ASEAN's consultation and the return to bilateral negotiations**

Seeing an inevitable slow progress under the DOC, several ASEAN claimants have been coming to the conclusion that they must seek different options. Malaysia and Vietnam were first to test their new strategy in 2009, by submitting their joint extended continental shelf limits beyond 200 nautical miles (nm) to the Commission on the Establishment of the Continental Shelf (CLCS). Their submissions seemed to send a message that they consider the disputed islands as having no importance in the delimitation of the continental shelf and seabed. Or in a different interpretation, it could simply mean both Malaysia and Vietnam want to demonstrate their continental shelves extend rightfully into the area regardless of who is in control over the islands. The submissions to the CLCS were met with strong protest from China, and total silence from ASEAN. Citing the existence of maritime disputes in the two submissions, it withheld the consent for the Commission to consider the case.<sup>(16)</sup> Without prior consent from all parties, the CLCS has to defer the case until a later date. Thus, the attempt to separate the delimitation of the continental shelf from the disputed islands seemed to end in a temporary deadlock.<sup>(17)</sup>

In 2013, the Philippines initiated its own attempt by filing for arbitration against China at the Permanent Court of Arbitration (PCA). The decision might be interpreted as a result of repeated frustrations and embarrassments as "over the past 17 years of such exchanges of views, all possibilities of a negotiated settlement have been explored and exhausted."<sup>(18)</sup> At first, the arbitration received little support from ASEAN and its members. As the arbitration proceeding began to gather momentum, there were changing signals from ASEAN. In December 2014, Vietnam sent a communiqué to the

Tribunal, citing its support for the Philippines and request to be updated on the proceeding. Other claimants followed suit to request observer status at the Tribunal. Furthermore, the March 2015 statement by ASEAN Secretary General Le Luong Minh, then ASEAN Secretary General, expressed the view that the nine-dash line map is not binding on any claimant and ASEAN supports the Philippines' efforts in the arbitration to procure peaceful settlement in its own territorial dispute with China.<sup>(19)</sup> China promptly rejected the arbitration. It was a shock to China's confidence that it had excluded all possibility of third party intervention under UNCLOS provisions.<sup>(20)</sup> The Chinese government refused to participate in the proceeding as the defendant, and stated its own positions regarding the Tribunal's lack of jurisdiction.

Despite China's protest, in October 2015, the Tribunal concluded that it is competent to proceed in hearing the case from the Philippines, and China's non-appearance did not deprive the Tribunal's jurisdiction.<sup>(21)</sup> Half of the fifteen claims presented by the Philippines were admitted for judgment, while consideration for remaining claims were reserved towards the awarding phase. The date for the final Award of Judgment was set for June 2016, then delayed until 12 July 2016. Again, the Award of Judgment in July was not favorable to China in any way. In essence, the judgment touched upon three main topics. First, the Tribunal concluded that neither low-tide elevations nor high-tide features in the Spratly Islands would be capable of sustaining human habitation or economic life of their own in accordance with Article 121(1) of UNCLOS. Thus, there would be no generated entitlements to EEZ or continental shelf by any occupied feature. Secondly, the Tribunal declared that China's claims to historic rights, sovereign rights, and other jurisdiction associated with the nine-dash line map are contrary to UNCLOS and without any legal basis. It went further to indicate that UNCLOS provisions superseded any historic rights, sovereign rights and such claims that exceeded the limits imposed therein. Finally, through examination of activities conducted by China in the concerned areas, the Tribunal found that it had breached several obligations of the Convention as well as general international law to "abstain from any measure... which might aggravate or extend the dispute during such time as the dispute resolution proceeding were ongoing."<sup>(22)</sup>

The judgment was a sound defeat to China's rhetoric in the South China Sea disputes. Yet it would be too hasty to consider this as a victory for the Philippines or ASEAN claimants. The judgment would not spell the end to the disputed maritime zones in the South China Sea. Without an enforcement body, the implementation of any award by international courts would be difficult. While ASEAN claimants and external parties would support more legal efforts, China might simply ignore any unfavorable

decisions.<sup>(23)</sup> On one side, the ruling dispersed any ambiguous claims associated with the nine-dash line map, as well as whether historic waters and rights take precedence over the Convention. But on the other side, all claimant states with occupied insular features are denied of entitlements to EEZs and continental shelves generated through them. In addition, the Philippines, Vietnam and Malaysia may have breached several obligations with their activities in the Spratly Islands. Thus, while China is now facing international embarrassment for losing the arbitration case, there would be little reason for the rest of the claimants to openly celebrate. Even more interestingly, it is remarkable how quickly China has returned to the bilateral negotiation table with the main claimants.

China revealed its next strategic step by inviting the new Vietnamese Prime Minister for a state level visit. Nguyen Xuan Phuc has been in office since April 2016, with different views from his predecessor Nguyen Tan Dung, who was critical towards Chinese unilateral actions. The event could be seen as an attempt to rebuild trust and ties with Vietnam. During his visit, Phuc reiterated Vietnam's position in resolving the dispute through peaceful means in line with international law, while both Premier Li Keqiang and President Xi Jinping insisting to solve the issue through bilateral negotiations.<sup>(24)</sup> Though mutual trust and ties were partially restored, China and Vietnam's approaches to resolve the disputes remained drastically different. Similarly, invitation has been extended to the new Filipino President Rodrigo Duterte. Initially, the Filipino government planned for Duterte to make a visit to Japan and then to China in a symbolic move to strengthen ties with the US. Amidst Duterte's series of anti-US remarks, the president's office announced that a visit to China is set for 18-21 October 2016, while the trip to Japan is delayed until 25 October.<sup>(25)</sup> Chinese news sources welcomed the early visit, praising the decision as bringing about a new and positive era in the relationship of the two countries. At home, however, Duterte's bold decision was not well received by officials and the population.

Prior to the trip, Associate Justice Antonio Carpio warned Duterte over the possibility of a Chinese request to concede the rights in the South China Sea before signing any agreement during his visit. Carpio threatened to impeach Duterte in case he decided to give up sovereignty over the shoal, as this would be a permanent loss under international law.<sup>(26)</sup> Duterte was forced to guarantee that there would be no bargaining over territorial rights. He also promised to take up the arbitration court's judgment with Chinese leaders, but there would be "no hard impositions."<sup>(27)</sup> After the visit, both states released a joint statement, but there was no mention of the arbitral ruling or the sovereignty over the Scarborough Shoal. Instead, the Philippines and China reaffirmed

to uphold the DOC, and “work substantively toward the early conclusion of a code of conduct in the South China Sea based on consensus.”<sup>(28)</sup> Thus, the finger seems to point towards ASEAN once more.

#### **4. Redefining ASEAN’s capacity in the settlement of the disputes**

While receiving widespread doubt over its unsuccessful attempt with the DOC, ASEAN is still relevant in pursuing a final resolution for the region. The Association has long been aware that China is reluctant to negotiate on multilateral basis on matters related to the South China Sea. The disastrous result at the 45<sup>th</sup> ASEAN Ministers Meeting (AMM), with Cambodia – the chair of ASEAN in 2012 – refusing to produce a joint statement on the development of South China Sea disputes hinted at China’s influence within the organization.<sup>(29)</sup> There is a large drift between ASEAN members who has no dispute with China and those involved in the disputes. Cambodia, Laos, Myanmar have been relying on Chinese economic ties, thus they do not wish to antagonize their regional trade partner. Singapore and Indonesia stand on more neutral ground, but unlikely to go further than keeping the stability of the region.<sup>(30)</sup> Thus, it has become increasingly difficult for ASEAN members involved in the disputes to lobby for a unified statement on the South China Sea. Yet, it would take more than an unsuccessful political statement to tarnish the reputation of ASEAN, whose continuous efforts has prevent any serious conflict in the region for more than four decades. In the 2012 Preah Vihear Temple dispute between Thailand and Cambodia, ASEAN was even recognized by the UN Security Council as having legal competence deriving from its ASEAN Charter. A subsequent judgment by the International Court of Justice (ICJ) also requested Cambodia and Thailand to delimit the border surrounding the temple under ASEAN’s supervision. From the Security Council and ICJ’s opinions, it seemed that ASEAN has been increasingly recognized as a competent international organization.

Even with the rising recognition from the international community, ASEAN cannot avoid the fact that its tradition of consultation and consensus is showing some negative effects. While consensus based decisions tend to display a sign of unity within, the 45<sup>th</sup> AMM has showed that trying to assemble consensus could be harmful to the unity of the organization as well. Bearing such problems in mind, there are three recommendations that may help to strengthen ASEAN for the future. First, it is urgent for ASEAN to redefine the process of how it arrives at a decision. ASEAN will need to implement a guideline to resolve disunity between its members should any of their positional stances contradict with the provisions stated in TAC. Currently, there is no

rule to manage the decision-making process within ASEAN. The objective of this recommendation is to clear out possible biased or different interpretations. Since ASEAN was able to amend TAC with additional provisions concerning the role of the High Council, it could do the same to introduce a new decision making process through modifying the concept of consensus. The new concept should be a balance between achieving consensus/unanimity and a majority-rule voting system. The guideline will need to specify the topics and occasions when unanimous decisions are required, such as a situation that has direct impact on a member or the organization. The rest of the occasions when no such direct impact is presented may implement the voting system to reach a decision. Implementing the guideline will project a greater degree of ASEAN organizational unity to international community, as well as easing the discussion of future statement/decision on the South China Sea matters.

The second suggestion is to empower the High Council, which was mandated by the 1976 TAC to adjudicate any dispute settlements involving ASEAN member states. The 2001 Amendment to the Treaty was passed to introduce new rules of procedures for the High Council, setting up its legal competence to settle disputes. ASEAN, however, did not grant the High Council complete independence from its decision-making practice. Rule 19 of Part VIII to the Treaty specifically stated that all decisions of the High Council “shall be taken by consensus at a duty-convened meeting.”<sup>(31)</sup> Consequentially, the legal effect and enforcement of any decision would be seriously limited due to the habitual conformity of the Association, hampering the desirability of member states to initiate the dispute settlement procedure. As China has excluded all international tribunals from judging the disputes, the High Council – a regional legal entity – would be more fitting to play the mediator role. By offering good offices, inquiry or reconciliation, the High Council would fill in the legal void of current multilateral negotiations. Some might argue that the Council was not meant to involve with territorial or maritime disputes. It is true that there was no clause mentioning other types of disputes aside from political and security ones. But the lack of specification does not bar the High Council from being sought to supervise legal issues like the South China Sea. In case ASEAN decides to implement the guideline for unanimous decision-making process as discussed above, Rule 19 of Part VIII would be promptly amended in order to grant the High Council more independence. Should ASEAN decide to solely amend TAC’s provisional rules, they would have to consider granting some forms of special status to the High Council. Such an attempt would be much more complicated to complete, in which case ASEAN might even face opposition from within the organization.

The final recommendation is to prioritize the establishment of the code of conduct in



the South China Sea. As previously mentioned, the arbitration judgment did not recognize the 2002 DOC as a legal agreement, but rather a political statement between ASEAN and China. The Court, however, made an interesting statement in calling it a necessary document to facilitate the eventual establishment of a code of conduct in disputed areas. If a true code of conduct were to be agreed upon by ASEAN claimants and China, it would have to address all the shortcomings found in the DOC: limitation on scope of application, types of prohibited activities, prescriptive cooperation schemes and enforcement mechanisms. On general principles, the new code might retain those contained within the DOC. With the arbitration court's denial of island status for insular features in the Spratly Islands, the geographical scope would have to extend beyond the territorial disputes, possibly concerning more with the rights over the water columns and continental shelves in the area. From the judgment, ASEAN can draw a clear list of activities considered obstructing the settlement effort to include: occupying, constructing or modifying existing features, harassing and obstructing foreign vessels near disputed areas, and conducting unilateral military exercises near disputed areas. To add more consequential effect to the enforcement, the code needs to clarify that it will be enforcing the rules laid out by the UN Charter and relevant treaties that all parties have ratified so far. As active members of the UN, UNCLOS and TAC, parties to the disputes will be bound by obligation to unanimously approve on this matter, with deviant or biased positions entailing severe sanctions from the international community. With such strong mechanisms, it would be more likely for ASEAN to finally be able to transform from managing the disputes to providing a peaceful and equitable resolution for involved parties in the South China Sea.

## **5. Conclusion**

After several decades of dispute management, ASEAN is now facing a new crisis: with member states have differing views on the South China Sea disputes. The failure to issue a joint communiqué mentioning the maritime disputes at the 45<sup>th</sup> AMM was an alarming indication, whereas non-claimant members refused to sign any proceedings being critical of China. Frustrated over the slow process with little result, several ASEAN members have taken the matter directly to international tribunals. The latest case was the Philippines' initiation of arbitral proceeding against China in 2013. While the Philippines' decision made no criticism of ASEAN, and indeed was well within the provision of the ASEAN Charter and TAC, it may be considered a test of ASEAN's commitment to its own principles, and its resolve to pursue a peaceful settlement of regional disputes.

On one hand, one cannot ignore the fact that the Philippines' action was caused by a certain level of distrust between ASEAN claimant and non-claimant states. The contention arose from the uncertainty of whether the organization could provide a satisfactory resolution to the issues while keeping in line with its members' national interests. On the other hand, from the beginning and until the announcement of the judgment of the arbitration in July 2016, ASEAN has succeeded in keeping true to its principles, calling on involved parties to apply international law in order to peacefully settle the disputes instead of resorting to the use of force. The outcome of the arbitration, however, is one that surpassed the prediction of involved parties and observers. The Tribunal embarrassed China in pronouncing its activities as unlawful and breaching obligations under UNCLOS. But there is no celebration for the Philippines, or observers like Malaysia and Vietnam, for their occupied features – along with Chinese ones in the Spratly Islands – were denied of any beneficial maritime entitlement. Hanging on to their fortified “rocks,” involved parties must reconsider their next step, and returning to the negotiation table is a practical choice.

In the meantime, the latest legal developments on the ground present a timely opportunity for ASEAN to vigorously review its current strategy so as to tackle the shortcomings of its existing dispute resolution mechanisms. This paper explored and explained how ASEAN has been gradually gaining its competence. Based on TAC, it is possible for ASEAN to formulate new policies that would assist the peaceful settlement of the South China Sea disputes. To that end, there are three recommendations that the Association should implement in the near future. The first is to establish a guideline for ASEAN decision-making process, moving away from the restricted consultation and consensus model. The second recommendation, closely connected to the first, is to empower the ASEAN High Council with independent juridical powers, and advocate for its usage in the settlement of the South China Sea disputes. Last but not least, ASEAN must make serious effort in establishing a legal binding code of conduct for involved parties in disputed waters, which is overdue enough that it has been straining the internal relationship of ASEAN members. With the implementation of these recommendations, ASEAN would be able to firmly state its position when facilitating the settlement while maintaining the neutrality of a competent international organization. With a firm grasp of unity and future-oriented purpose, ASEAN would be able to retain its influential position and contribute to the security and stability of the region.

## 《Notes》

- (1) This paper only takes into consideration claimants with sovereign state status. While Taiwan is not mentioned in the discussion, it still has control over the largest feature in the Spratly Islands.
- (2) UNCLOS, Article 87 (1).
- (3) UNCLOS, Article 279.
- (4) UNCLOS, Article 283 (1).
- (5) Non-member states obtaining the dialogue partner status with ASEAN are invited to ratify TAC. China signed the Treaty on 8 October 2003 during the annual summit in Bali, Indonesia.
- (6) People's Republic of China, *Law on the Territorial Sea and Contiguous Zone of 25 February 1992* (United Nations: New York, 1992).
- (7) ASEAN, *ASEAN Declaration on the South China Sea* (Philippines: Manila, 1992).
- (8) Truong Thuy Tran, "Recent Developments in the South China Sea: Implication for Regional Security and Cooperation," *Center for Strategic and International Studies: Southeast Asia Program*, 2011, p. 2.
- (9) Lan Anh T. Nguyen, "Content and roadmap for a binding Code of Conduct in the South China Sea," *Vietnam Law and Legal Forum*, vol. 21, no. 241, 2014, p. 15.
- (10) Philippines, *Press release no. 246-02* (Department of Foreign Affairs: Manila, 2002).
- (11) Ian Storey, "Implementing CBMS in the 2002 DOC: A roadmap to managing the South China Sea Dispute," *2<sup>nd</sup> Interna Workshop on South China Sea*, 2010.
- (12) *Supra* note 9, at 16.
- (13) *Supra* note 8, at 7.
- (14) ASEAN, *Guideline for the Implementation of the DOC* (Indonesia: Bali, 2011).
- (15) Carlyle A. Thayer, "New Commitment to a Code of Conduct in the South China Sea?" *The National Bureau of Asian Research*, 2010, <http://nbr.org/research/activity.aspx?id=360> (access 2016/09/29)
- (16) China sent two separate communiqués to Secretary General of UN in protest: Note Verbale CML/17/2009 reaction to Malaysia and Note Verbale CML/18/2009 reaction to Vietnam.
- (17) Thanh Dat Vo, "UNCLOS Article 76 and the South China Sea Disputes: Implication for the Establishment of Continental Shelf beyond 200 Nautical Miles in respect to the Parcel and Spratly Islands," *Journal of the Graduate School of Asia-Pacific Studies*, no. 30, 2015, p. 79.
- (18) Philippines, Notification and Statement of Claim (Department of Foreign Affairs: Manila, 2013), p. 11.
- (19) Phuong Nguyen, "ASEAN's Chief Comments on South China Sea Raises Concern for Beijing," *Dutch Welle*, 2015, <http://www.dw.com/en/asean-chiefs-comments-on-south-china-sea-raise-concerns-for-beijing/a-18309549> (access 2016/09/30)
- (20) In 2006, China deposited a reservation to UNCLOS, declaring it would not accept against any third party procedure with respect to all category listed under Article 29(1), including those related to territorial and maritime issues.
- (21) The Permanent Court of Arbitration, *Award on Jurisdiction and Admissibility: The Philippines/China*, <https://www.pcacases.com/web/sendAttach/1506> (access 2016/09/29)
- (22) The Permanent Court of Arbitration, *The South China Sea Arbitration: Award of 12 July, 2016*,

p. 477, <http://www.pccases.com/pccdocs/PH-CN%20-%202020160712%20-%20Award.pdf> (access 2016/09/29)

- (23) August Rustandi, *The South China Sea Dispute: Opportunities for ASEAN to enhance its policies in order to achieve resolution* (Australian Defence College: Canberra, 2016), p. 10.
- (24) Loc X. Doan, “Vietnam PM’s China visit significant,” *Asia Times*, 2016, <http://www.atimes.com/article/vietnamese-pms-china-visit-significant-2/> (access 2016/09/17)
- (25) Michaela Del Callar, “PHL pushes back Duterte’s visit to Japan in favor of China – sources,” *GMA News Online*, 2016, <http://www.gmanetwork.com/news/story/584225/news/nation/phl-pushes-back-duterte-s-visit-to-japan-in-favor-of-china-sources> (access 2016/10/08)
- (26) Patricia L. Viray, “Carpio: Impeachment possible if Duterte gives up Scarborough,” *The Philippine Star*, 2016, <http://www.philstar.com/headlines/2016/10/14/1633564/carpio-impeachment-possible-if-duterte-gives-scarborough> (access 2016/10/15)
- (27) Fiona Nicolas, “Duterte on China visit: West Philippine Sea will be on the table,” *CNN Philippines*, 2016, <http://cnnphilippines.com/news/2016/10/16/rody-duterte-china-visit-west-ph-sea.html> (access 2016/10/17)
- (28) Alexis Romero, “Philippines, China won’t use force in the South China Sea,” *The Philippine Star*, 2016, <http://www.philstar.com/headlines/2016/10/22/1636108/philippines-china-wont-use-force-sea-dispute> (access 2016/10/22)
- (29) Carlyle A. Thayer, “ASEAN’s Code of Conduct in the South China Sea: A litmus test for community building?” *The Asia-Pacific Journal: Japan Focus*, vol. 10, no. 4, 2012, p. 6.
- (30) Sanae Suzuki, “ASEAN Political-Security Community: The relationship between intra-regional cooperation and external cooperation,” *Journal of World Affairs*, vol. 63, no. 4, 2015, p. 22.
- (31) ASEAN, *Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia* (Vietnam: Hanoi, 2001), p. 6.

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