

## The ASEAN Way: Leading or Hindering the South China Sea Resolution?

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### Abstract

The South China Sea (SCS) remains a geopolitical cauldron, brewing with overlapping territorial claims, contested resources, and strategic rivalries. This paper critically examines the role of the Association of Southeast Asian Nations (ASEAN) and its guiding principle, the 'ASEAN Way,' in managing and resolving the conflict. Anchored in consensus, consultation, and non-interference, this approach has long been praised for preserving regional stability; however, it is increasingly criticised for hindering decisive action against external pressures, particularly China's assertive behavior. Through historical analysis, case studies, and an evaluation of the *2016 Philippines v. China* arbitral award under UNCLOS, the paper explores whether ASEAN's diplomatic framework functions as an effective mechanism or an impediment to resolution. Findings suggest that while the ASEAN Way fosters inclusivity and minimises interstate conflict, it ultimately constrains ASEAN's capacity to present a unified front, leaving member states to pursue divergent strategies. Consequently, ASEAN's role in the SCS dispute is limited: neither a clear driver of resolution nor a direct obstacle, but rather a diplomatic framework insufficiently robust to address the complex interplay of sovereign interests, geopolitical tensions, and international law.

**Keywords:** ASEAN Way, South China Sea dispute, UNCLOS, China's nine-dash line, International arbitration, Geopolitical conflict, Regional security

### I. Introduction

The South China Sea (hereinafter SCS) spans approximately 3.5 million square kilometers and is bordered by Brunei, China, Indonesia, Malaysia, the Philippines, and Vietnam.<sup>1</sup> It is home to numerous islands, islets, shoals, and reefs, the most significant being the Paracel Islands (Xisha), Pratas Islands (Dongsha), Macclesfield Bank (Zhongsha), and the Spratly Islands (Nansha).<sup>2</sup> Historically, the SCS has been a crucial fishing ground and navigational route, rich in oil and gas reserves, a key global trade hub, and a vital source of energy and

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<sup>1</sup> Eugene C LaFond, 'South China Sea' (*Britannica*, last updated 15 March 2025)  
<<https://www.britannica.com/place/South-China-Sea>> accessed 17 March 2025.

<sup>2</sup> Hugo, 'South China Sea Islands' (*Peace Palace Library*, n.d.)  
<<https://peacepalacelibrary.nl/south-china-sea-islands>> accessed 17 March 2025.

fisheries for littoral states.<sup>3</sup> However, in recent decades, tensions have escalated due to competing territorial claims and geopolitical maneuvering.<sup>4</sup>

Two key developments have disrupted the region's stability. First, in the early 1970s, several coastal states physically occupied parts of the Spratly Islands, leading to overlapping claims and increased militarisation.<sup>5</sup> Second, under *Article 76(8) of the UN Convention on the Law of the Sea* (hereinafter UNCLOS),<sup>6</sup> coastal states — including Malaysia and Vietnam — submitted claims for extended continental shelves beyond 200 nautical miles (hereinafter nms), triggering diplomatic exchanges that shifted focus to China's Nine-Dash Line, a loosely defined boundary China uses to assert its claims over the SCS.

Today, the SCS has become a major flashpoint between China and some Association of Southeast Asian Nations (hereinafter ASEAN) members (Malaysia, Vietnam, the Philippines, and Brunei), further complicated by the involvement of external powers such as the United States. With its rich natural resources and strategic importance, the SCS is no longer just a regional issue but a global concern. China, in particular, has intensified its presence by building military installations and conducting aggressive patrols, leading to high-risk encounters with foreign vessels.<sup>7</sup>

As a Malaysian, whose own country is both a claimant and an ASEAN member, I am compelled to examine ASEAN's role in this dispute. Can the ASEAN Way, enshrined in *Article 20 of the ASEAN Charter*<sup>8</sup> as a principle of consultation and consensus, serve as an effective mechanism for resolution, or will it prove to be an obstacle?

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<sup>3</sup> Gleice Miranda and Valentina Maljak, 'The Role of United Nations Convention on the Laws of the Sea in the South China Sea Disputes' (*E-International Relations*, 23 June 2022) <<https://www.e-ir.info/pdf/98097>> accessed 20 March 2025.

<sup>4</sup> Bing Bing Jia and Zhiguo Gao, 'The Nine-Dash Line in the South China Sea: History, Status, and Implications' [2013] 107 AJIL 98 <<https://www.jstor.org/stable/10.5305/amerjintelaw.107.1.0098?seq=1>> accessed 17 March 2025.

<sup>5</sup> Simon Leplâtre, 'Beijing continues to militarise South China Sea islands' *Le Monde* (Paris, 24 August 2023) <[https://www.lemonde.fr/en/international/article/2023/08/24/beijing-continues-to-militarize-south-china-sea-islands\\_6105761\\_4.html](https://www.lemonde.fr/en/international/article/2023/08/24/beijing-continues-to-militarize-south-china-sea-islands_6105761_4.html)> accessed 17 March 2025.

<sup>6</sup> UN Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3

<sup>7</sup> FORUM Staff, 'China's patrols, aggression fail to intimidate South China Sea claimant nations' *Indo-Pacific Defense Forum* (24 March 2025) <<https://ipdefenseforum.com/2025/03/chinas-patrols-aggression-fail-to-intimidate-south-china-sea-claimant-nations/>> accessed 17 March 2025.

<sup>8</sup> Charter of the Association of Southeast Asian Nations (adopted at the 13th ASEAN Summit in Singapore in 2008, entered into force 2009) <<https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>> accessed 17 March 2025.

This paper evaluates ASEAN's institutional response to the SCS dispute, focusing on the effectiveness of the ASEAN Way in facilitating resolution. It also examines the territorial and maritime claims of key stakeholders, and the legal framework established under UNCLOS and the 2016 Permanent Court of Arbitration (PCA) ruling, to assess whether ASEAN can play a meaningful role in resolving this complex regional conflict.

Ultimately, this paper argues that ASEAN's role in resolving the SCS dispute **will be limited**. Given that ASEAN lacks a unified foreign policy and that its members prioritise national interests over collective action, reaching regional consensus remains unlikely, leaving the ASEAN Way with little room to operate effectively.

## II. Background

### 2.1 The birth of ASEAN

In the years leading up to ASEAN's formation, Southeast Asia was marked by deep ideological divides driven by Cold War tensions, with the rise of communism, particularly in Vietnam and Indonesia, fueling fears of regional instability.<sup>9</sup> At the same time, Konfrontasi (1963–1966) between Indonesia and Malaysia, along with territorial disputes, heightened mutual suspicion among Southeast Asian nations.

The region also grappled with political and economic disparities, ranging from monarchies to emerging democracies, and from resource-rich nations to developing economies. Ethnic, cultural, and linguistic diversity, combined with vast differences in geographical size and strategic interests, further complicated the prospect of regional unity.

In the post-colonial era, nationalism and regionalism were often seen as conflicting ideals, with strong sentiments of self-determination, national interest, and non-interventionism shaping Southeast Asian politics. However, amid communist insurgencies and ideological divides, growing instability underscored the need for a unified regional front.

*“The fragmented economies of Southeast Asia with each country pursuing its limited objectives and dissipating its meager resources in the overlapping or even conflicting endeavors of sister states, carry the seeds of weakness in their incapacity for growth and their self-perpetuating dependence on the advanced, industrial nations.”<sup>10</sup>*

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<sup>9</sup> Ryo Sahashi, 'Opposition and Cooperation: The Asia Pacific After the Cold War', in Ryo Sahashi, Yushiro Matsuda and Waka Aoyama (eds), *Asia Rising: A Handbook of History and International Relations in East, South and Southeast Asia* (Springer 2024) 269-270  
<[https://www.researchgate.net/publication/383655276\\_Opposition\\_and\\_Cooperation\\_The\\_Asia\\_Pacific\\_After\\_the\\_Cold\\_War](https://www.researchgate.net/publication/383655276_Opposition_and_Cooperation_The_Asia_Pacific_After_the_Cold_War)> accessed 17 March 2025.

<sup>10</sup> Ponciano Intal, Jr. and Lurong Chen (eds), *ASEAN and Member States: Transformation and Integration* (ERIA 2017) <[https://www.eria.org/ASEAN\\_50\\_Vol\\_3\\_Complete\\_Book.pdf](https://www.eria.org/ASEAN_50_Vol_3_Complete_Book.pdf)> accessed 17 March 2025.

These were the words of Narciso R. Ramos, Foreign Minister of the Philippines, when on 8 August 1967, he and four fellow foreign ministers signed the foundational document for ASEAN.

Thus, ASEAN was established in 1967 through the *Bangkok Declaration*, with Indonesia, Malaysia, Singapore, Thailand, and the Philippines as its founding members. The declaration underscored ASEAN's commitment to unity, solidarity, and regional cohesion, particularly in economic and political spheres. It described ASEAN's first aim as to "strengthen the foundation" for a "community of South-East Asian nations", emphasizing regional cooperation while pledging to "preserve" the "national identities" of its diverse member states.<sup>11</sup>

ASEAN's decision-making process has been influenced by the Indonesian Village Method, rooted in the principles of *musyawarah* and *muafakat* — deliberation and consensus. This approach encourages flexibility, with participants avoiding rigid positions and deferring disagreements while prioritizing areas of agreement.

This principle was formally enshrined in *Article 20 of the ASEAN Charter 2008* (hereinafter 2008 Charter), commonly known as the ASEAN Way, and provides that:

- (1) As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.
- (2) Where consensus cannot be achieved, the ASEAN Summit<sup>12</sup> may decide how a specific decision can be made.<sup>13</sup>

While the 2008 Charter presents a singular definition, the ASEAN Way has been interpreted differently by states and scholars alike. This is significant, as it forms the core decision-making process of ASEAN, yet lacks a universally consistent understanding among its members.

## **2.2 ASEAN Member States' Interpretations of the ASEAN Way**

ASEAN member states (hereinafter AMS), such as Myanmar, Laos, and Cambodia, joined ASEAN only in 1997/1999. As later entrants, they interpreted the ASEAN Way primarily as a principle of non-interference. This norm requires ASEAN to refrain from criticising member governments' actions toward their citizens and from using the domestic political

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<sup>11</sup> The ASEAN Declaration (Bangkok Declaration) (signed 8 August 1967)

<<https://agreement.asean.org/media/download/20140117154159.pdf>> accessed 17 March 2025.

<sup>12</sup> ASEAN Charter (n 8) Chapter IV 'Organs', Art 7(1) states that the ASEAN Summit 'shall comprise of Heads of State or Government of Member States', while Art 7(2)(a)–(b) establishes it as 'the supreme policy-making body of ASEAN' responsible for providing policy guidance and making key decisions.

<sup>13</sup> Ibid Art 20(1) and (2).

systems or governing styles of states as criteria for membership.<sup>14</sup> Singapore's former Foreign Minister, Shunmugam Jayakumar, asserted in 1997 that ASEAN's principle of non-interference in domestic affairs had been "*the key factor as to why no military conflict had broken out between any two member states since 1967.*"<sup>15</sup>

Since 1997, however, countries outside the region have criticized the non-interference doctrine for ASEAN's ineffectiveness in addressing regional issues.<sup>16</sup> Calls for its revision or abandonment have emerged within and beyond the association. Despite these pressures, ASEAN has maintained non-interference as a core diplomatic principle and a foundational element of its governance, as reaffirmed in the *2008 Charter*, even though a high-level advisory group of ASEAN's elder statesmen recommended adjustments.<sup>17</sup>

Meanwhile, the older founding members Singapore, Malaysia, Indonesia, Thailand, and the Philippines, who established ASEAN in 1967, equated the ASEAN Way with cooperation and coordination. These differing interpretations may hinder efforts to reach standard solutions, as member states do not share a uniform understanding of the decision-making process. As a result, determining the appropriate approach in a given situation becomes challenging. These diverging perspectives also complicate efforts to formulate a coordinated response to regional crises, such as the SCS dispute, which this paper will explore further.

### 2.3 Scholars' Interpretations of the ASEAN Way

Masalamani and Peterson argued that the ASEAN Way is an informal, personal decision-making style that emphasises compromise, consensus, and consultation.<sup>18</sup> Reflecting traditional Southeast Asian customs of *musyawarah* and *muafakat*, it embodies 'quiet diplomacy' by prioritizing non-confrontational problem-solving through closed-door

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<sup>14</sup> Tram-Anh Nguyen, 'Norm or Necessity? The Non-Interference Principle in ASEAN' (2017) 9(1) PUJ <[https://journals.library.cornell.edu/tmpfiles/CIAR\\_9\\_1\\_2.pdf](https://journals.library.cornell.edu/tmpfiles/CIAR_9_1_2.pdf)> accessed 18 March 2025.

<sup>15</sup> Shanmugam Jayakumar, 'Opening Statement by H.E. Professor S. Jayakumar, Minister for Foreign Affairs of Singapore' (ASEAN, 24 July 1997) <<https://asean.org/opening-statement-by-h-e-professor-s-jayakumar-minister-for-foreign-affairs-of-singapore>> accessed 18 March 2025.

<sup>16</sup> Muhammad Fuad bn Othman and Zaheruddin Othman, 'The Principle of Non-Interference in ASEAN: Can Malaysia Spearhead the Effort towards a More Interventionist ASEAN' (Political Managements and Policies in Malaysia Conference, Kedah, July 2010) <<https://core.ac.uk/download/pdf/12118557.pdf>> accessed 18 March 2025.

<sup>17</sup> Mieke Molthof, *ASEAN and the Principle of Non-Interference* (1st edn, E-International Relations 2012) <<https://www.e-ir.info/pdf/17552>> accessed 18 March 2025.

<sup>18</sup> Logan Masilamani and Jimmy Peterson, 'The "ASEAN Way": The Structural Underpinnings of Constructive Engagement' (2014) FPJ 1, 5-9 <<https://www.foreignpolicyjournal.com/wp-content/uploads/2014/10/141015-Masilamani-Peterson-ASEAN.pdf>> accessed 18 March 2025.

discussions, thereby avoiding public embarrassment that might otherwise provoke defensiveness.<sup>19</sup>

They also highlighted a key limitation of the ASEAN Way: it works best within an Asian cultural context that values "saving face" and maintaining positive impressions.<sup>20</sup> Moreover, because it requires a unanimous consensus, the ASEAN Way often only meets the lowest common denominator, making it ineffective for high-profile political issues.<sup>21</sup> For example, any effort to reform Myanmar's military-dominated environment would violate the non-interference principle central to the ASEAN Way.<sup>22</sup>

However, Gillian Goh offers a contrasting view, arguing that the ASEAN Way is a strength in global conflict management.<sup>23</sup> She points to ASEAN's handling of the Cambodian crisis, contrasting it with the Organisation of American States' (hereinafter OAS) approach in Haiti, as evidence that its non-confrontational, consensus-based method encourages consultation and compromise. In her view, this demonstrates the ASEAN Way's potential as an effective tool for diplomacy and conflict resolution.<sup>24</sup>

Meanwhile, because the OAS has an enforcement mechanism, it can act more directly and aggressively, deploying military forces even at high economic and human costs. Goh notes that if ASEAN were not constrained by the ASEAN Way and had its enforcement capability, it could better uphold its values, gain international approval, and strengthen the position of frontline states like Thailand.<sup>25</sup> While the ASEAN Way minimises the risk of rapid escalation, its consensus-based, time-consuming process may leave critical issues unresolved for extended periods. Can this be considered an effective crisis management approach?

Shaun Narine emphasizes that ASEAN functions more as a tool for its member states to pursue their narrow self-interests rather than as a foundation for a shared regional

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<sup>19</sup> Hiro Katsumata, 'Reconstruction of Diplomatic Norms in Southeast Asia: The Case for Strict Adherence to the "ASEAN Way"' (2003) 25(1) *Contemporary Southeast Asia* 104, 104-118  
<<https://www.jstor.org/stable/25798630>> accessed 18 March 2025.

<sup>20</sup> Othman (n 16) 5.

<sup>21</sup> Ibid 7.

<sup>22</sup> Observer Research Foundation, *Occasional Paper* (Issue No. 453, November 2024)

<<https://www.orfonline.org/public/uploads/posts/pdf/20241112155731.pdf>> accessed 18 March 2025.

<sup>23</sup> Gillian Goh, 'The "ASEAN Way": Non-Intervention and ASEAN's Role in Conflict Management' (2003) 3(1) *SJEAA* 113

<[https://www.academia.edu/3988485/113Gillian\\_Goh\\_Stanford\\_Journal\\_of\\_East\\_Asian\\_Affairs\\_GreaterEast\\_Asia\\_The\\_ASEAN\\_Way\\_Non\\_Intervention\\_and\\_ASEAN\\_s\\_Role\\_in\\_Conflict\\_Managementin\\_conflicts\\_in\\_Haiti\\_and\\_Nicaragua\\_and\\_between](https://www.academia.edu/3988485/113Gillian_Goh_Stanford_Journal_of_East_Asian_Affairs_GreaterEast_Asia_The_ASEAN_Way_Non_Intervention_and_ASEAN_s_Role_in_Conflict_Managementin_conflicts_in_Haiti_and_Nicaragua_and_between)> accessed 18 March 2025.

<sup>24</sup> Ibid 115.

<sup>25</sup> Ibid 116.

identity.<sup>26</sup> This is largely due to the principle of non-intervention and the prioritization of state sovereignty, which hinders deeper integration by encouraging members to favor national interests over collective goals. Thus, Narine views the ASEAN Way as a limitation to achieving an integrated regional identity. To a certain extent, I agree, as ASEAN conventions, such as the Convention on Nature and Natural Resources,<sup>27</sup> often use language like “member states shall endeavor to,”<sup>28</sup> suggesting that while agreements may outline general goals, they lack enforceability. This phrase reinforces the principle of non-intervention, underscoring that state sovereignty takes precedence over regional obligations, ultimately limiting ASEAN’s effectiveness in fostering deeper integration.

#### 2.4 The ASEAN Way in Practice: Strengths, Limitations, and the South China Sea Dispute

While the 2008 Charter has ostensibly strengthened institutional cohesion granting the organization legal personality (*Article 3*) and formalizing the ‘pillar system’ to address political-security, economic, and socio-cultural dimensions (*Article 9*), these structural reforms have not translated into more decisive action. The organisation remains hamstrung by its rigid adherence to consultation and consensus, as mandated by *Article 20*. This commitment, while emblematic of the ASEAN Way, continues to paralyse timely and effective responses to regional crises.

The 2008 Charter’s emphasis on durable peace, mutual prosperity, and non-aggression, outlined in Chapter I Purposes and Chapter II Principles (*Article 1(1)(3)*, *Article 1(1)*, *Article 2(2)(c)*, and *Article 2(2)(k)*), projects a normative ideal. However, in practice, these aspirations have failed to counterbalance ASEAN’s chronic indecisiveness. Critics such as Leticia Simões have rightly condemned the bloc’s “lack of an assertive position.”<sup>29</sup> This critique is not theoretical; ASEAN’s paralysis is visible in its inability to respond coherently to China’s increasingly aggressive activities in the SCS. Despite repeated provocations,<sup>30</sup> harassment of vessels, construction of artificial islands in 2023, water cannon assaults, and

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<sup>26</sup> Shaun Narine, *Explaining ASEAN: Regionalism in Southeast Asia* (Lynne Rienner Publishers 2002) 1–8 <<https://www.degruyter.com/document/doi/10.1515/9781626373440-004/html?lang=en>> accessed 18 March 2025.

<sup>27</sup> ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 (adopted on 9 July 1985).

<sup>28</sup> *Ibid*, an example can be Article 6(2)(a), ‘They (AMS) shall, in particular, endeavour to control clearance of vegetation; endeavour to prevent bush and forest fires; prevent overgrazing by, inter alia, limiting grazing activities to periods and intensities that will not prevent regeneration of the vegetation.’

<sup>29</sup> Leticia Simões, *The Role of ASEAN in the South China Sea Disputes* (1st edn, E-International Relations 2022) 8 <<https://www.e-ir.info/pdf/98115>> accessed 18 March 2025.

<sup>30</sup> Keith Johnson, ‘China’s South Sea Aggression Is Backfiring’ *Foreign Policy* (Washington, 06 June 2024) <<https://foreignpolicy.com/2024/06/06/south-china-sea-philippines-fishing-vessels-maritime-conflict-shoal/>> accessed 19 March 2025.

an overwhelming Chinese maritime presence,<sup>31</sup> ASEAN has not only failed to forge a unified front but has yet to put forward a credible and enforceable position. The futility of diplomatic platitudes is aptly captured by Prashanth Parameswaran: “*Words at diplomatic meetings cannot be divorced from actions on the water.*”<sup>32</sup>

What emerges, then, is a pattern of ineffectiveness that cannot be dismissed as circumstantial. ASEAN’s consensus-based model, often praised for inclusivity, in practice produces outcomes aligned with the lowest common denominator: at best symbolic, at worst inert. The organization’s normative commitments to peace and stability, while admirable, are insufficient in the face of geopolitical assertiveness. Critics argue that ASEAN’s so-called “soft approach” does not merely limit its capacity — it erodes its credibility.

To be clear, the blame cannot rest solely on the ASEAN Way. The complexities of the SCS dispute, rooted in China’s expansive historical claims, divergent positions among AMS, and contested interpretations under UNCLOS, render any diplomatic mechanism challenging. Nonetheless, the persistent failure to adapt ASEAN’s decision-making ethos to evolving regional threats raises serious questions about the continued viability of *musyawarah* and *muafakat* in addressing high-stakes conflicts. This paper will argue that while the ASEAN Way is not the sole cause of stagnation, it is a significant impediment; unless recalibrated, it will continue to obstruct meaningful regional responses.

### III. Claims to the SCS

Ludwig Erhard once said, “*A compromise is the art of dividing a cake in such a way that everyone believes he has the bigger piece.*”<sup>33</sup> Applied to the SCS dispute, this metaphor underscores the difficulty of satisfying multiple, often conflicting, territorial claims. Each claimant insists it deserves a larger share of the region’s resources and strategic advantages, or that its rivals’ demands are excessive or unfounded. This raises a fundamental question: on what basis do these states justify their claims to a greater portion of the ‘cake’? Unpacking these historical, geopolitical, and legal justifications is essential for understanding the complex dynamics that make resolving the SCS dispute such a formidable challenge.

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<sup>31</sup> Chetra Chap, ‘ASEAN Remains Divided Over China’s Assertiveness in South China Sea’ *Voice of America English News* (Washington, 12 September 2023) <<https://www.voanews.com/a/asean-remains-divided-over-china-s-assertiveness-in-south-china-sea/7264923.html>> accessed 18 March 2025.

<sup>32</sup> Devianti Faridz, ‘Experts: Nonaggression Pact on Sea Feud Likely to Test Beijing’s Commitment to International Law’ *Voice of America English News* (Washington, 17 July 2023) <<https://www.voanews.com/a/experts-nonaggression-pact-on-sea-feud-likely-to-test-beijing-s-commitment-to-international-law/7185221.html>> accessed 19 March 2025.

<sup>33</sup> Ludwig Erhard, *Prosperity Through Competition* (1st edn, Frederick A Praeger Inc., 1954) 13.



### 3.1 Tracking China's Historical Narrative

#### 3.1.1 Pre-1935

Numerous historical records and literary texts indicate that Chinese fishermen and sailors have been aware of the SCS for centuries.<sup>34</sup> Ancient sources such as *Shi Jing* (475–221 BC) reference maritime activity, and Chinese dynasties received tributes from southern seafarers before the 3rd century AD.<sup>35</sup> By the *Song dynasty* (960–1279), official records began documenting Chinese names for various islands, and local gazetteers from Hainan reinforced knowledge of the region.<sup>36</sup> Proponents of China's claim often interpret these references as evidence of long-standing sovereignty. However, such assertions lack proof of continuous, effective state authority — an essential standard in international law.

China's maritime expansion continued during the *Ming dynasty*, particularly through *Zheng He's famous expeditions* (1405–1433),<sup>37</sup> is frequently cited to bolster historical claims. Yet these voyages were primarily diplomatic showcases, not administrative acts establishing control. While the *Silk Road on the Sea* thrived from the *Qin-Han period* (221 BC–220 AD) until the late *Ming dynasty*, it was geared towards trade rather than exercising sovereign power over maritime features.<sup>38</sup>

Boundary lines enclosing parts of the SCS began appearing sporadically on maps drawn by private cartographers, but it was not until the 20th century that the Chinese state undertook formal territorial delineation.<sup>39</sup> The 1935 gazette and atlas published by the *Commission on the Examination of Land and Water Maps*, listing 132 maritime features, marked the first official effort to define China's claims.<sup>40</sup> This discontinuity casts doubt on whether earlier historical references ever amounted to a legal or political assertion of sovereignty.

#### 3.1.2 1936-1956: From an eleven-dash line to a nine-dash line

<sup>34</sup> Zou Keyuan, 'South China Sea Studies in China: Achievements, Constraints and Prospects' (2007) 11 SYBIL 85 <<http://www.commonlii.org/sg/journals/SGYrBkIntLaw/2007/6.pdf>> accessed 21 March 2025.

<sup>35</sup> Shen Jianming, 'China's Sovereignty over the South China Sea Islands: A Historical Perspective' (2002) 1(1) Chinese JIL 94, 102-105 <<https://academic.oup.com/chinesejil/article/1/1/94/362104>> accessed 21 March 2025.

<sup>36</sup> Ibid 98.

<sup>37</sup> J. K. Holloway and Bruce Swanson, 'Eighth Voyage of the Dragon: A History of China's Quest for Seapower' (1982) 35 Naval War College Review 107 <<https://digital-commons.usnwc.edu/nwc-review/vol35/iss5/19>> accessed 21 March 2025.

<sup>38</sup> Franck Billé, Sanjyot Mehendale and James Lankton, 'The Maritime Silk Road: An Introduction' in Franck Billé, Sanjyot Mehendale and James W Lankton (eds), *The Maritime Silk Road: Global Connectivities, Regional Nodes, Localities* (Amsterdam University Press 2022) 11–24 <<https://doi.org/10.2307/j.ctv2x00w7b.4>> accessed 21 March 2025.

<sup>39</sup> Holloway and Swanson (n 37), 117.

<sup>40</sup> Ibid 108.

Following World War II, China sought to reassert its sovereignty over the SCS islands. Under the *Cairo Declaration (1943)* and the *Potsdam Proclamation (1945)*, Japan was required to relinquish control of all occupied territories, including the Paracel and Spratly Islands.<sup>41</sup> In 1946, China formally reclaimed these islands, reinforcing its territorial claims. By 1947, China's Ministry of the Interior circulated an official map depicting an **eleven-dash line** surrounding the SCS, labeled "*Position of the South China Sea Islands*".<sup>42</sup> This was intended to reaffirm Chinese sovereignty over the island groups and establish a clear postwar territorial boundary.<sup>43</sup>

In 1953, China revised its claim by removing two dashes from the Gulf of Tonkin, reducing the eleven-dash line to the now-standard **nine-dash line**. While no formal agreement was made, this move likely reflected strengthening ties between China and the newly independent North Vietnam, as both shared communist leadership and strategic interests.<sup>44</sup> The maritime border in the Gulf of Tonkin was later formalized by a treaty in 2000 between China and Vietnam.<sup>45</sup> However, the fact that no formal explanation or legal basis accompanied this revision underscores the flexibility of China's claim; such political fluidity undermines the argument that China's claim rests on fixed historical rights.

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<sup>41</sup> Department of State (ed), *The Axis in Defeat: A Collection of Documents on American Policy Toward Germany and Japan* (Department of State Publication 2423, US Government Printing Office 1946) <<https://www.ibiblio.org/hyperwar/Dip/AxisInDefeat/index.html>> accessed 21 March 2025. The Cairo Declaration called for Japan to be stripped of all islands seized since 1914 and for territories like Manchuria, Formosa, and the Pescadores to be returned to China. The Potsdam Proclamation (Point 8) reaffirmed these terms, limiting Japan's sovereignty to Honshu, Hokkaido, Kyushu, Shikoku, and any minor islands designated by the Allies.

<sup>42</sup> Wei Pu, 'How The Eleven-Dash Line Became A Nine-Dash Line, And Other Stories' *Radio Free Asia* (Washington, 16 July 2015) <<https://www.rfa.org/english/commentaries/line-07162015121333.html>> accessed 21 March 2025.

<sup>43</sup> Daniel J Dzurek, *The Spratly Islands Dispute: Who's on First?* (Maritime Briefing, Vol 2, No 1, International Boundaries Research Unit, University of Durham 1996) 67 <[https://www.durham.ac.uk/media/durham-university/research-/research-centres/ibru-centre-for-borders-research/maps-and-databases/publications-database/Maritime-Briefings-\(Vol.-2-no.-1\).pdf](https://www.durham.ac.uk/media/durham-university/research-/research-centres/ibru-centre-for-borders-research/maps-and-databases/publications-database/Maritime-Briefings-(Vol.-2-no.-1).pdf)> accessed 21 March 2025.

<sup>44</sup> Bill Hayton, 'China's Claim on the South China Sea: How Many Dashes Make a Line?' (*FULCRUM Analysis on Southeast Asia*, 6 September 2023) <<https://fulcrum.sg/chinas-claim-on-the-south-china-sea-how-many-dashes-make-a-line/>> accessed 22 March 2025.

<sup>45</sup> Agreement between the People's Republic of China and the Socialist Republic of Vietnam on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves of the Two Countries in the Beibu Gulf/Bac Bo Gulf (adopted 25 December 2000); The treaty specifies the maritime border—specifically, the boundary of the territorial seas—in Article III. This article states that the delimitation line from point 1 to point 9 in Article II shall serve as the boundary of the territorial seas of the two countries in the Beibu Gulf (Gulf of Tonkin).

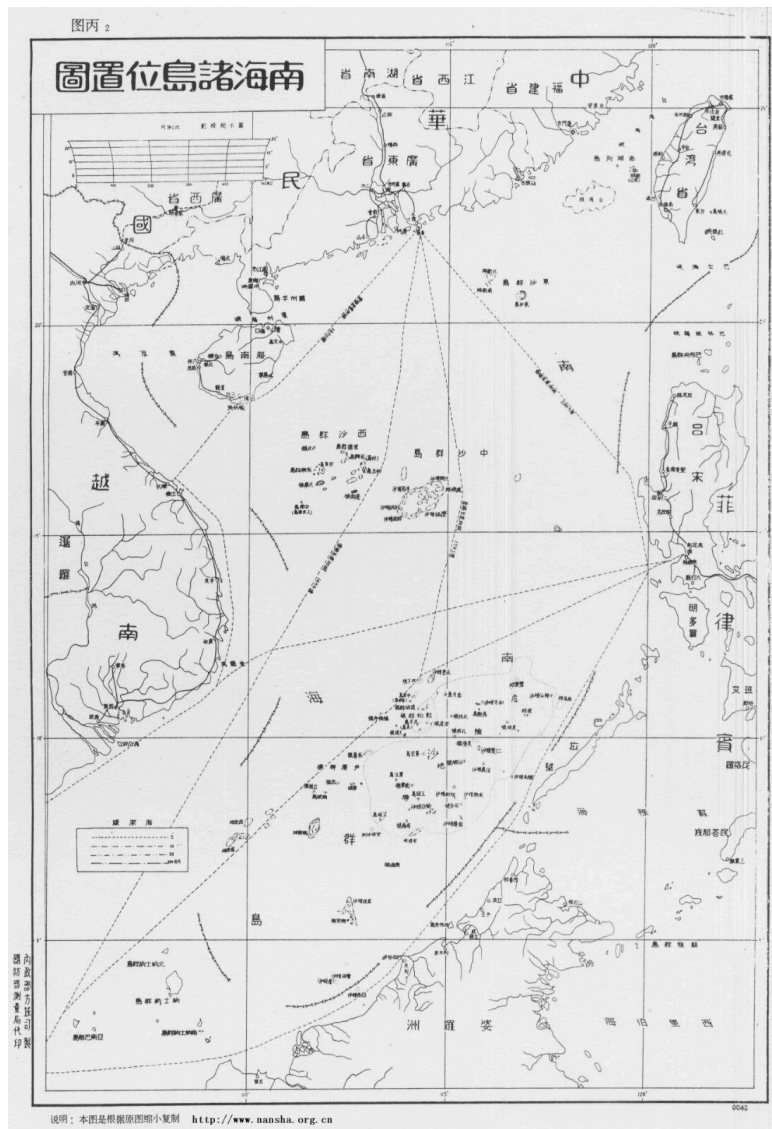


Figure 1: Eleven-dash line map from 1947<sup>46</sup>

<sup>46</sup> 'Why it's crucial to understand what the nine-dash line means' (Rigoberto Tiglao, 17 March 2023) <<https://rigobertotiglao.com/2023/03/17/why-its-crucial-to-understand-what-the-nine-dash-line-means/>> accessed 25 August 2025.



Figure 2: Nine-dash line map from 1947<sup>47</sup>

Although the nine-dash line remains a fixture on Chinese maps and serves as a potent symbol of sovereignty, its legal validity is highly contested. Historical presence, even if well-documented, does not automatically translate into lawful sovereign title, especially in light of UNCLOS requirements for effective and peaceful administration.

### 3.2 AMS Claims to the SCS

#### 3.2.1 Vietnam, The Philippines, Malaysia, and Brunei

Vietnam's claims include the Spratly and Paracel Islands, and relations between Vietnam and China have long been strained, as seen in conflicts like the *1974 Battle of the Paracel Islands*. Although warming ties in the 1950s driven by shared communist affiliations provided only a temporary easing of tensions, the core issue of sovereignty in the SCS persisted. Reflecting its skepticism about ASEAN's ability to effectively manage SCS disputes, Vietnam has often sought to internationalise the issue, appealing to the United States, Japan, and India in line with UNCLOS principles to counter Chinese assertiveness.<sup>48</sup>

<sup>47</sup> Priscilla Tacujan, 'Chinese Lawfare in the South China Sea: A Threat to Global Interdependence and Regional Stability' 2022 10 Journal of Political Risk.

<sup>48</sup> Simões (n 29) 4.

In 2013, Vietnam's effort to pursue international arbitration was thwarted by China.<sup>49</sup> Tensions remain high today, as illustrated by Vietnam's strong reaction to a 2023 Barbie movie that briefly featured a map resembling China's nine-dash line, despite Warner Bros. denying any political intent.<sup>50</sup>

The Philippines focuses its territorial claims on its western fishing zones and has urged ASEAN to adopt a binding Code of Conduct, though only a non-binding declaration has been produced.<sup>51</sup> Following the *1995 Mischief Reef Incident* and a *1955 ASEAN Foreign Ministers' Meeting Joint Communiqué* condemning unilateral Chinese actions, the Philippines, inspired by Vietnam's approach, filed complaints with the Permanent Court of Arbitration at The Hague against Chinese assertiveness. Despite a favorable 2016 ruling, China has refused to comply.<sup>52</sup> While President Duterte did not enforce the ruling to maintain closer ties with China, this stance has shifted with Ferdinand Marcos Jr., elected in 2022, who now adopts a more assertive position in the SCS.<sup>53</sup>

Malaysia and Brunei currently assert territorial claims over waters adjacent to Peninsular Malaysia and East Malaysia (Sabah and Sarawak), while Brunei finds China's nine-dash line uncomfortably close to its shores. Both nations, however, refrain from publicly criticising China to maintain good relations despite occasional instances of Chinese belligerence. For instance, Malaysian Prime Minister Anwar Ibrahim — during speeches in Canberra (March 2024), Beijing (November 2024), and at the World Economic Forum (January 2025) — has

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<sup>49</sup> Richard Javad Heydarian, 'Vietnam's Legal Warfare Against China: Prospects and Challenges' *Asia Maritime Transparency Initiative* (Washington, 21 November 2019) <<https://amti.csis.org/vietnams-legal-warfare-against-china-prospects-and-challenges/>> accessed 22 March 2025.

<sup>50</sup> Paul Eckert, 'Map that triggered Vietnam 'Barbie' ban was 'child-like' drawing, Warner Bros says' *Benar News* (Washington, 07 July 2023) <<https://www.benarnews.org/english/news/philippine/barbie-update-07072023155924.html>> accessed 22 March 2025.

<sup>51</sup> Nestor Corrales, 'Philippines woos ASEAN to craft code on South China Sea' *The Nation* (Bangkok, 20 November 2023) <<https://www.nationthailand.com/world/asean/40033055>> accessed 24 March 2025.

<sup>52</sup> Aisya Muyassara Wisnugroho, 'International Law and the challenges in implementing UNCLOS: South China Sea Arbitration' *Modern Diplomacy* (Plovdiv, 17 July 2024) <[https://moderndiplomacy.eu/2024/07/17/international-law-and-the-challenges-in-implementing-unclos-south-china-sea-arbitration/#\\_edn38](https://moderndiplomacy.eu/2024/07/17/international-law-and-the-challenges-in-implementing-unclos-south-china-sea-arbitration/#_edn38)> accessed 24 March 2025.

<sup>53</sup> Chad De Guzman, 'We Have to Do More': Marcos Urges Fiercer Response, While Showing Restraint, Toward Chinese Aggression in South China Sea' *TIME* (New York, 27 June 2024) <<https://time.com/6992894/marcos-philippines-south-china-sea-response-restraint/>> accessed 24 March 2025; 'As tensions escalate in the South China Sea, Philippine President Ferdinand "Bongbong" Marcos Jr. said his country must "do more" in responding to China's "illegal action" in the hotly contested waterway, following a confrontation last week that led to one Filipino navy serviceman losing a thumb'; Chad De Guzman, 'Like They Are Pirates': Philippines Slams Latest Chinese Confrontation in South China Sea' *TIME* (New York, 19 June 2024) <<https://time.com/6989913/philippines-south-china-sea-armed-attack-finger-injury/>> accessed 24 March 2025.

consistently underscored that fostering strong ties with China is Malaysia's priority.<sup>54</sup> Senior fellow Ian Storey of the ISEAS-Yusof Ishak Institute in Singapore notes that this stance does not indicate Malaysia is abandoning its territorial claims.<sup>55</sup> Similarly, researchers suggest that although Brunei maintains a low profile on disputes, it has not relinquished its territorial bases around Louisa Reef.<sup>56</sup>

### 3.2.2 Indonesia, Singapore, Thailand, Laos, Myanmar, and Cambodia

Thailand, Laos, Myanmar, and Cambodia, despite lacking direct stakes in the SCS disputes and benefiting from strong economic ties with China, consistently avoid criticizing Beijing in ASEAN reports and communiqués, as scholars have observed.<sup>57</sup> Their silence reflects not neutrality, but strategic deference. Indonesia, while officially stating it has no territorial dispute with China, has confronted repeated incursions by Chinese fishing vessels in the Natuna Islands' Exclusive Economic Zone (EEZ). Jakarta asserts sovereign rights under the 200 nm EEZ framework, while China, invoking its nine-dash line, continues to challenge this position—generating diplomatic friction and public outcry within Indonesia.

Singapore, though not directly involved in territorial claims, plays a balancing act. Its close military ties with the United States and firm stance on upholding maritime security and freedom of navigation reflect a normative commitment that occasionally puts it at odds with ASEAN's reluctance to confront China.<sup>58</sup> These diverging interests among member states, ranging from silent accommodation to cautious resistance, highlight ASEAN's inability to speak with one voice on the SCS issue.

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<sup>54</sup> Maria Siow, 'Malaysia's Anwar urges Asean not to 'single out' Beijing over South China Sea tensions at Davos' *South China Morning Post* (Hong Kong, 29 January 2025) <<https://www.scmp.com/week-asia/politics/article/3296633/malaysias-anwar-urges-asean-not-single-out-beijing-over-south-china-sea-tensions-davos>> accessed 24 March 2025; RFA and Benar News staff, 'How ASEAN nations shape South China Sea policies around China' *Benar News* (Washington, 21 February 2025) <<https://www.benarnews.org/english/news/indonesian/south-china-sea-asean-02212025082321.html>> accessed 24 March 2025.

<sup>55</sup> Ian Storey, 'Malaysia and the South China Sea dispute: A sea change under Prime Minister Anwar?' (*Think China*, 05 September 2024) <[https://www.thinkchina.sg/politics/malaysia-and-south-china-sea-dispute-sea-change-under-prime-minister-anwar?utm\\_source=linkedin&utm\\_medium=social-organic](https://www.thinkchina.sg/politics/malaysia-and-south-china-sea-dispute-sea-change-under-prime-minister-anwar?utm_source=linkedin&utm_medium=social-organic)> accessed 24 March 2025.

<sup>56</sup> Shannon Tiezzi, 'China Wood Indonesia's New President' (*The Diplomat*, 05 November 2014) <<https://thediplomat.com/2014/11/china-woos-indonesias-new-president/>> accessed 24 March 2025.

<sup>57</sup> Simões (n 29) 5-6; Siphat Touch, 'Patterns and Impacts of Chinese Assistance in Cambodia' in Yos Santosombat (ed), *Impact of China's Rise on the Mekong Region* (Palgrave Macmillan 2015) 195.

<sup>58</sup> "The US dismisses the nine-dash line as a threat to maritime freedom, while China argues that US intelligence flights and naval maneuvers near its artificial islands are designed to curb its rise as a major power." Max Fisher, 'The South China Sea: Explaining the Dispute' *New York Times* (New York, 14 July 2016) <<https://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html>> accessed 24 March 2025.

This fragmented landscape underscores the difficulty of formulating a cohesive ASEAN response. The diplomatic impasse is not merely a product of differing national interests but a reflection of the deeper strategic calculus each state makes in navigating relations with both China and the U.S. Compounding this difficulty is China's invocation of historical rights via the nine-dash line, which, while politically powerful, faces serious legal scrutiny. The following section turns to the 2016 PCA arbitration ruling to interrogate the credibility of these historical claims under international law.

#### IV. Beyond ASEAN: UNCLOS & Arbitration

While this paper evaluates the efficacy of the ASEAN Way in galvanising a resolution to the SCS dispute, it is also crucial to consider the broader context, the *2016 Philippines v China* arbitration case, which reveals the complexity facing ASEAN.

*UNCLOS* provides a comprehensive framework for maritime governance, consolidating earlier conventions and dividing the seas into five zones: Internal Waters, Territorial Sea, Contiguous Zone, EEZ, and the High Seas.<sup>59</sup> However, as *Professor Robert Beckman* clarifies in an interview with Andrea Ho, “*territorial sovereignty disputes are governed by rules of customary international law on the acquisition and loss of territory, not by the UNCLOS.*”<sup>60</sup> This bifurcation presents a major complication in the SCS, where claims involve both sovereignty over features and maritime entitlements. ASEAN's institutional structure is ill-equipped to address this legal overlap, further hampering unified action.

##### 4.1 Case study

###### 4.1.1 Philippines v China.<sup>61</sup>

On January 22, 2013, the Philippines initiated arbitration against China under *Section 2 of Part XV and Annex VII of UNCLOS*, dispute mechanisms further clarified by *Articles 287(1) and 287(3)*. With neither side declaring a preferred forum, both were deemed to have accepted arbitration under *Annex VII, Article 9*. On July 12, 2016, the arbitral tribunal

<sup>59</sup> “UNCLOS development traces back to efforts by the 1949 International Law Commission and culminated in the 1958 Geneva Conference and 1960 UN General Assembly, which initially produced four separate conventions on issues such as territorial waters, continental shelves, and high seas fisheries.” Qamar Abad, Ghulam Murtiza and Ghulam Mujtaba, ‘Law of the Sea: An Introduction’ (2018) 2(1) Pakistan Social Sciences Review 272 <<https://pssr.org.pk/issues/v2/1/law-of-the-sea-an-introduction.pdf>> accessed 25 March 2025.

<sup>60</sup> Andrew Ho, Interview with Professor Robert Beckman, Adjunct Senior Fellow, Maritime Security Programme, Institute for Defence and Strategic Studies of Nanyang Technological University's S. Rajaratnam School of International Studies (06 May 2021) <<https://gjia.georgetown.edu/2021/05/06/professor-robert-beckman-on-the-role-of-unclos-in-maritime-disputes/#:~:text=RB%3A%20UNCLOS%20is%20a%20universally,who%20owns%20particular%20land%20territory.>> accessed 26 March 2025.

<sup>61</sup> *In re South China Sea Arbitration (Philippines v China)* PCA Case No 2013-19 XXXIII Reports of Intl Arbitral Awards 153 <[https://legal.un.org/riaa/cases/vol\\_XXXIII/153-617.pdf](https://legal.un.org/riaa/cases/vol_XXXIII/153-617.pdf)> accessed 25 March 2025.

rendered a unanimous award in favor of the Philippines on maritime entitlements in the SCS.

Key findings included that China's nine-dash line has no legal basis, as *Articles 56 and 57* of UNCLOS determine EEZs and continental shelves by *distance*, not *historical claims*. The tribunal held that to assert historic rights, China would need to show a consistent effort to exclude others from resource exploitation, which it failed to do. The claim was thus reduced to a unilateral assertion, lacking the crucial element of *acquiescence* by other states. On the contrary, persistent objections, counterclaims, and contrary state practice have consistently undermined any presumption of acquiescence.

Moreover, the tribunal clarified that low-tide elevations (e.g. Mischief Reef, Subi Reef) cannot generate maritime zones. Rocks like Scarborough Shoal and Johnson Reef, under *Article 121(3)*, are entitled only to a 12-nautical-mile territorial sea. No feature in the Spratly Islands met the criteria of an "island" under *Article 121(2)*, disqualifying them from generating EEZs or continental shelves. These rulings dismantled much of the legal scaffolding underpinning China's maritime posture.

Yet the tribunal's findings, legally binding under *Article 11 of Annex VII*, were met with outright defiance. China declared the ruling "null and void" and refused to recognise it. Although UNCLOS offers a binding dispute settlement mechanism, its effectiveness hinges entirely on state compliance. *Article 12* allows for clarification but offers no coercive power. China's refusal to comply thus exposes a critical flaw: **UNCLOS lacks enforcement capacity**, leaving legal victories symbolically powerful but practically inert.

#### 4.1.2 Implications

Perhaps the most alarming, but ultimately unsurprising, outcome of the Philippines v China ruling is China's outright dismissal of the award without facing any meaningful consequences on the international stage. This response severely undermines the credibility of the PCA and reinforces the perception that the international legal system is structurally skewed in favor of powerful states, particularly those holding veto powers in the UN Security Council, such as the United States, Russia, France, China, and the United Kingdom. The failure of the ruling to alter China's behaviour, even today, illustrates the unsettling reality that compliance with international law can be treated as optional. This detrimentally weakens the viability of international maritime law as a reliable mechanism for governing the lawful use of the seas.

In the aftermath of the ruling, it is more critical than ever for the United States, ASEAN, and other like-minded states to publicly affirm the award and reiterate the foundational role of international law in maintaining peace and stability in maritime domains. A key test will be whether ASEAN, despite its internal divisions, can present a unified stance in support of the ruling. As established, unity within ASEAN is difficult to achieve, thereby weakening collective resistance to China's actions in the SCS. So far, China appears unfazed



by any reputational costs incurred by defying the ruling, highlighting the limits of legal condemnation in the absence of diplomatic or economic consequences.

## V. Evaluation

In answering whether the ASEAN Way leads or hinders the resolution of the SCS crisis, this paper contends that it neither propels nor obstructs resolution. Instead, it renders ASEAN largely ineffectual on the global stage.

Firstly, the ASEAN split over geopolitical challenges is not unique to the SCS experience, with a major instance of internal division being the response to Myanmar's military regime. In February 2021, when Myanmar's military ousted *Aung San Suu Kyi* and her government, ASEAN members were deeply divided. Founding members such as Indonesia, Singapore, Malaysia, and the Philippines called for restraint and dialogue, while others, notably Thailand and newer AMS, regarded the coup as an internal matter.<sup>62</sup> The bloc's consensus-based approach and non-interference principle have prevented a unified stance, as shown by the failure to effectively enforce the *2021 Five-Point Consensus*.<sup>63</sup> Additionally, varying strategies such as appointing special envoys versus practicing quiet diplomacy, differences in political systems, and economic development further contribute to ASEAN's disunity, undermining its capacity to confront the crisis cohesively.

This split is worsened by the ASEAN Way's reliance on consensus driven by individual interests. With membership doubling from five to ten, reaching a unified stance is even more challenging amid a high-profile security crisis that demands swift, assertive action. Diverse economic and political ties with China compel members to prioritize their interests over collective ones, making full implementation of the DOC and eventual COC unfeasible in the short term;<sup>64</sup> equally, China must accept ASEAN as a constructive partner in managing SCS tensions.<sup>65</sup>

Furthermore, leadership factors among ASEAN member states can outweigh the influence of the ASEAN Way in determining the resolution of the SCS dispute. This is evident in the Philippines, where the shift from the Duterte administration, which prioritized improving bilateral relations, to the more assertive President Ferdinand Marcos Jr., who has warned

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<sup>62</sup> Adinda Khaerani Epstein, 'ASEAN still torn over security challenges' (*GIS*, 02 October 2024) <<https://www.gisreportsonline.com/r/asean-issues/>> accessed 26 March 2025.

<sup>63</sup> Sai Latt, 'Rethinking ASEAN's Five Point Consensus' (*Frontier MYANMAR*, 27 February 2025) <<https://www.frontiermyanmar.net/en/rethinking-aseans-five-point-consensus/>> accessed 26 March 2025.

<sup>64</sup> Declaration on the Conduct of Parties in the South China Sea (*adopted* 4 November 2002 in Phnom Penh, the Kingdom of Cambodia) <<https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/>> accessed 26 March 2025.

<sup>65</sup> Dr Tang Siew Mun, 'What is at Stake for ASEAN?' (2016) ASEAN Focus Issue 5/2016 16 (July, Special Issue on the South China Sea Arbitration: Response and Implications).

China against escalating tensions over sovereignty, illustrates how national leadership can play a decisive role. Ultimately, leadership decisions have a greater impact on SCS resolution than the consensus-based approach of the ASEAN Way.<sup>66</sup>

Despite the *ASEAN Charter* providing for dispute settlement mechanisms (*Article 25*), several disputes among AMS have instead been resolved at the ICJ. These include the Preah Vihear case (*Cambodia v Thailand, 1962*),<sup>67</sup> Pulau Litigan and Pulau Sipadan (*Indonesia v Malaysia, 2002*),<sup>68</sup> and Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge (*Malaysia v Singapore, 2008*).<sup>69</sup> While this might be attributed to ASEAN's lack of a dedicated court and robust internal legal framework, it more fundamentally reflects a lack of confidence among member states in ASEAN's capacity to manage conflicts. The ASEAN Way, grounded in loose norms rather than binding rules, obstructs the organization's ability to enforce decisive measures. In practice, ASEAN's approach to the SCS disputes has been limited to urging restraint, adherence to the DOC, and anticipation of the COC. This soft approach explains, at least in part, why critics continue to call for a more assertive stance, though it is not the sole factor hindering ASEAN's effectiveness in addressing the crisis.

Despite ongoing provocations and stand-offs, it is believed that all parties share an interest in achieving a peaceful resolution.<sup>70</sup> Muhammad Aiman Nasuha Azari et al. note that "[T]his dispute will never find its way out if each claimant country insists on defending its interests. Only cooperation and high tolerance can ensure an outcome that satisfies all claimant countries."<sup>71</sup>

While this paper evaluates the ASEAN Way and its shortcomings in addressing the SCS dispute, the key to a solution ultimately lies in compromise, as previously noted via Ludwig Erhard's cake metaphor, even though every party currently seems determined to secure the 'larger piece' they believe they deserve.

<sup>66</sup> Tessa Wong, 'Philippine president warns China against 'acts of war' *BBC* (Singapore, 01 June 2024) <<https://www.bbc.com/news/articles/c7223knz3ezo>> accessed 26 March 2025.

<sup>67</sup> *Temple of Preah Vihear (Cambodia/Thailand)* [1962] ICJ Rep 6, 52, 63 <<https://www.icj-cij.org/case/45>> accessed 26 March 2025.

<sup>68</sup> *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia/Malaysia)* [2002] ICJ Rep 625 <<https://www.icj-cij.org/case/102>> accessed 26 March 2025.

<sup>69</sup> *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* [2008] ICJ Rep 12 <<https://www.icj-cij.org/case/130>> accessed 26 March 2025.

<sup>70</sup> Mara Cepeda, 'Asean states may differ in approach to South China Sea spat, but all are seeking peace' *The Straits Times* (Singapore, 16 April 2024). <<https://www.straitstimes.com/asia/se-asia/south-china-sea-claimants-should-settle-dispute-peacefully-vivi-an>> accessed 26 March 2025.

<sup>71</sup> Muhammad Aiman Nasuha Asari et al, 'Disputes in the South China Sea and the Role of China and ASEAN in Conflict Resolution' (2023) 11 *Journal of Business and Social Development* 38 <<https://jbsd.umt.edu.my/wp-content/uploads/2024/04/4.-DISPUTES-IN-THE-SOUTH-CHINA-SEA-AND-THE-ROLE-OF-CHINA-AND-ASEAN-IN-CONFLICT-RESOLUTION.pdf>> accessed 26 March 2025.

## **6. Conclusion**

While the ASEAN Way, based on consultation, consensus, and non-interference, is central to ASEAN's identity, it has resulted in a lack of assertiveness and coordinated action in the SCS dispute. This essay has shown that although the ASEAN Way renders ASEAN less effective on the global stage, it is not solely responsible for the impasse. Competing maritime and territorial claims, divergent interests among AMS, and the complex legal frameworks of UNCLOS and customary international law all contribute to the challenge. Ultimately, the ASEAN Way neither leads nor outright hinders resolution; rather, it is one of many factors that complicate efforts to achieve a unified solution.

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## Appendix

### Salient features of the UNCLOS

#### Part II: Territorial Sea and Contiguous Zone, Section 2: Limits of the territorial sea

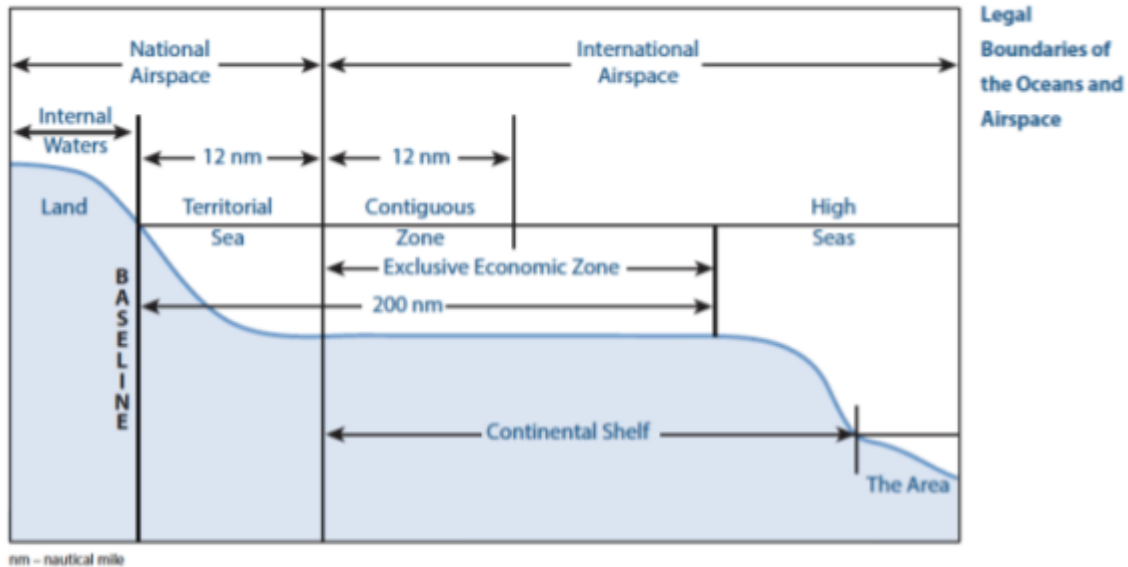


Figure 3: Maritime Zones Schematic <<https://sites.tufts.edu/lawofthesea/chapter-two/>> accessed 24 March 2025.

*Article 5* establishes the normal baseline, defined by the low-water mark officially recognized by the coastal state. *Article 7* permits straight baselines in exceptional cases (e.g., deeply indented coastlines, deltas, fringing islands), provided they follow the coast's general direction and enclose only waters connected to the land. Low-tide elevations are excluded unless they host permanent installations or have recognized status. Furthermore, *Article 14* allows states to combine different baseline methods, as long as they remain consistent with these provisions.

*Article 8(1)* defines internal waters as those on the landward side of the baseline, granting coastal states full sovereignty over rivers, lakes, ports, inlets, and bays. Under *Article 8(2)*, if a straight baseline encloses areas not previously classified as internal waters, foreign vessels retain the right of innocent passage. *Article 19(1)* clarifies that innocent passage must not threaten the peace, good order, or security of the coastal state, while *Article 19(2)(a)–(l)* lists prohibited activities, such as fishing, launching or landing aircraft, and conducting military exercises.

*Article 3* establishes that a coastal state's territorial sea extends 12 nms from its baselines. *Article 4* defines the outer limit as the line every point of which is 12 nms from the nearest

point on the baseline. *Article 2(1)* states that the coastal state exercises control and jurisdiction over its territorial sea, and *Article 2(2)* extends these rights to the sea floor, subsurface, and overlying airspace.

#### **Part II, Section 4: Contiguous Zone**

*Article 33(2)* establishes that the contiguous zone extends 24 nms from the baseline — that is, 12 nms beyond the 12-mile territorial sea — serving as a transitional area between the high seas and the territorial sea. Under *Article 33(1)(a)-(b)*, coastal states may enforce immigration, fiscal, sanitary, and customs laws in the contiguous zone, though their jurisdiction is limited to the surface and floor, unlike the territorial sea, which also covers the subsurface and airspace.

#### Part V: Exclusive Economic Zone

*Article 55* defines the EEZ as the area beyond and adjacent to the territorial sea, balancing the coastal state's rights with the freedoms of other states. Under *Article 57*, a coastal state's EEZ extends up to 200 nms from its baselines. *Article 56(1)(a)* grants sovereign rights over natural resources in the water column and seabed, including energy from wind, currents, and waves. Unlike the territorial sea or contiguous zone, the EEZ does not restrict freedom of navigation or overflight (*Article 87(1)(a)-(b)*); furthermore, *Article 87(1)(c)* allows all states to lay, remove, or repair submarine cables and pipelines, while *Articles 56(1)(e) and 87(1)(f)* protect fishing and marine scientific research rights.

#### Part VII: High Seas

*Article 86* defines the high seas as the ocean areas beyond the Exclusive Economic Zone, where no state may claim sovereignty. *Article 87* affirms that national jurisdiction does not extend to the high seas, though states may conduct activities, provided they are peaceful (*Article 88*), such as fishing (*Article 87(1)(e)*) and marine scientific research (*Article 87(1)(f)*).

This overview of UNCLOS provisions underscores the legal framework governing maritime entitlements, one that AMS must navigate when addressing the SCS disputes. Understanding these specific zones and rights clarifies the complexities ASEAN faces, beyond its consensus-based approach. In essence, while the ASEAN Way relies on consultation and non-interference, it must also contend with established international law that defines states' maritime claims. Appreciating UNCLOS is therefore key to grasping the scope and limits of ASEAN's influence in resolving the SCS conflict.