

## Dispute Settlement in South China Sea between ASEAN and China

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### Abstract

The purpose of this research is to study the background and importance of dispute and the method to settle dispute in South China Sea, covering the five ASEAN nations (Malaysia, Indonesia, Philippines, Brunei and Vietnam) mainland China and United States of America. This research is qualitative research in the form of documentary research. The result of this research finds that ASEAN has tried to manage the dispute through dialogue and Consultation and has not yet been successful in playing mediating role due to lack of consensus among ASEAN members. Furthermore, ASEAN as a collective organization cannot be a joint party in solving the territorial disputes in the South China Sea swing to ASEAN members may have variegated interests and relationship with mainland China. Thus, the ASEAN members do not want to discontent and hostile to mainland China. During the 6<sup>th</sup> ASEAN – China Summit on 4 November, 2002 at Panompenh, Cambodia, ASEAN – China Foreign Ministers jointly signed The Declaration on the conduct (DOC) for all parties in The South China Sea and on 21<sup>st</sup> July 2011, ASEAN – China Foreign Ministers have ratified the guidelines on the implementation of DOC at Bali, Indonesia.

**Keywords:** Dispute Settlement, South China Sea, ASEAN

## Introduction

The background of dispute in South China Sea among 5 ASEAN countries (Malaysia, Philippines, Indonesia, Vietnam, Brunei) and Mainland China was established first time in 1988 from the situation that 5 Vietnamese boat rammed sunk by Chinese vessel near the corals reef area call Fiery Cross Reef which cause Vietnamese crews to death for 70 persons. And the dispute was increasing when Mainland China announced the new law in 1995 call “Territorial Sea and Contiguous Zone Act” which refer that Paracel Island and Spratly Island are under the sovereignty of Mainland China. Mainland China has the right to prevent and protect their sovereignty and be able to expel the invaders. Moreover, this act also mentioned that whoever would like to travel pass this territorial sea must ask for the permission from Mainland China. After that there is the reencounter in South China Sea territorial almost every years between Mainland China and Vietnam and Philippines. The area that has the most dispute which get the interest from all around the world are the assertion over the Paracel and Spratly Islands which mostly is the conflict about the assertion over the natural resources such as oil and natural gas in South China Sea. And the issue of territorial that because the researcher pay attention in this article is the territorial water of South China Sea which very important to strategy and stability along with the huge economic benefits which can be concluded the important as state to 3 points as follow. First, South China Sea is world important cargo ship routing such as the energy product especially the crude oil from Persian Gulf that need to pass the India Ocean to Malacca Strait and South China Sea to others Countries in East Asian Region. Second, any Country that can control the ship routing in South China Sea that country will have significant advantages in terms of strategy and stability of the region. The assertion of Mainland China over the Islands in South China Sea cause the 5 countries of ASEAN members (Malaysia, Philippines, Indonesia, Brunei and Vietnam) including the powerful country like United State of America who is the strategic partner with Philippines were effected and cannot be ignore this issue. Third, South China Sea is very abundant with natural resources such as crude oil and natural gas which has the expect number of crude oil to 200 billion barrels in South China Sea and China currently very need crude oil and natural gas to use in the industrial part and export manufacturing. So the war to fight for natural resources as mentioned early has started in South China Sea and many region in the world. Currently South China Sea still has conflict and dispute between many countries and is the wildest sensitive area of International political issue in the regional level.

From the research of this issue cause to get the knowledge of background the source of dispute between ASEAN and Mainland China and knowing the role of United State of America and South East Asia also know the important reason that cause Mainland China and ASEAN to be able to agree on the dispute settlement in South China Sea. And the results of this research should give to the ASEAN unit that concern with the dispute settlement in South China Sea in order to apply in the dispute settlement between members and other countries outside the region.

## Objectives

1. To study the background and starting point of dispute between Mainland China and five members countries of ASEAN in South China Sea.
2. To study and analyze the policy and attitude of parties of dispute in South China Sea including role of United State of America in South China Sea.
3. To study the cause that make Mainland China and five member's countries of ASEAN able to achieve the dispute settlement in South China Sea.

## Methods

The study and research of this article was start since 1980 centuries until 2011 which includes only the ASEAN memo five countries (Malaysia, Indonesia, Philippine, Brunei and Vietnam) Republic of China and United State of America.

## Literature Review

The concept of thought that concern with the research article such as the concept thought about Region that mean to ASEAN group of countries that have contiguous territorial and rely on each other in certain level. There are two main important factors in the scoping of Region which are factor of geography and geography was determined by the delimitation and factor about group of countries that are in the same region, contiguous territorial and rely on each other's both economic and social.

For the theory that concern with research article has 2 theories that are Theory of International Cooperation and Theory of International Conflict which the Theory of International Cooperation always apply in the analysis and explain the International Cooperation at the region level by the international relationships academician such as the Asia region. For the Theory of International Conflict, Professor Andrew J. DuBrin the creator of Theory of International Conflicts said that International Conflicts mean the obstruction of other people or obstruction to use power of other person or the use of power that can be create International Tension which those situations was happening when the group of two countries or more knowing that the goal and value or situation that cannot be joint. It can be say in other way that the International Conflicts mean to the conditions that encourage the fight between the 2 countries or more in order to defend the other side achieve their target goal which always concern about authorities, natural resources and benefits that each state wish to achieve (DuBrin, 1984).

The part of literature that concern with the research article has the book that write by famous academician which bring the article as follow. Professor Amitav Acharya of American University said about ASEAN Regionalism as the procedure from of Interaction and Socialization that create Norms or the standard form of ASEAN Way which emphasizes about the meeting consultation both officially and unofficially. And have the consensus decision together or agreement of majority of members by emphasizing on the Non-Intervention

in Domestic Affairs which these things are the most important factors in the support of driving the exiting of ASEAN. So it can be say that ASEAN has the Regional Identity and have a duty as community of stability that ASEAN members have the agreement and identity together not only the diplomatic community only (Acharya, 2001).

Emeritus Professor Donald E. Weatherbee of University of South Carolina United State said that ASEAN is the sample of corporation of 10 ASEAN countries members for their own National Interest as a core and ASEAN will be cooperative in the management of the state outside South East Asia more than to manage the internal conflict in ASEAN that happen more often. Moreover, ASEAN Identity is just one of identity among the diversity of identities such as National Identity, race, ethnicity, religion, tradition and custom. When there is the case that need policy decision, ASEAN Identity will get less consideration than National Interest and international relationships in South East Asia Region that has the struggling to get the Autonomy for their country and not belong to other (Weatherbee, 2005).

Professor Michael Leifer under the London School of Economic said that ASEAN happened and exists with the Balance of Power from both domestic and outside ASEAN such as the balance of power of Indonesia as the biggest country among ASEAN members which done by Malaysia and Singapore which has the conflict with Indonesia and including the need to balance of power of powerful country outside ASEAN by using the method of joint among the South East Asia Countries or ASEAN (Association of Southeast Asian Nations) in order to increase the bargaining power with powerful country especially communist powerful countries such as People's Republic of China and ASEAN members that are Socialist Country such as The Socialist Republic of Vietnam and ASEAN members 5 countries which are the founder of ASEAN such as Thailand, Malaysia, Indonesia, Philippine and Singapore against Vietnam as the Socialist Country. Vietnam is the Socialist Country since 1960 decades to late 1980 decades by has the United State of America to support the against of Vietnam as stated under the Containment Policy of influent expansion of communists in South East Asia which United State of America believes in Domino Theory that of any country of South East Asia belong to the communist, the other countries in the region have potential to became communist too. Moreover, Professor Leifer said that ASEAN has limited national interests, not extensive and lack of identity as the same region. ASEAN then can be only Diplomatic Community that always has discussion only diplomatic whereby has no any bind same as Security Community that has obligations between each other. Despite the Cold War that has separate the world into two parts that are Democracy and Communist was end but ASEAN still have important role to balance the power (Leifer, 1988).

Consistent with Professor Ralf Emmers of Nanyang University, Singapore has analyze that the meeting about corporation of security in Asia and Pacific or ARF (ASEAN Region Forum) count as the instrument that ASEAN use to balance the power of People's Republic of China. China notice that ARF create the Multipolar System to against U.S. led Monopolar System (Emmers, 2003).

## Research Methods

The study and research of this case is the Qualitative Research in the form of Documentary Research and has the Data Collection from article book in journal and weekly newspaper such as Matichon Weekly and Siamrath Weekly Criticizes etc and including the information that exist in the internet as the analysis of information content that concluded as Descriptive Analysis and target to explain that how the conflict and dispute between Mainland China and Five countries of ASEAN members was created and the method of how to settle the conflict and dispute settlement in South China Sea.

## Results

The research of this issue has reveal to the world that South China Sea is the world fifth biggest sea which has area around 3.5 million square kilometers and comprehensive the area from Taiwan Strait and Malacca Strait which is one of the World busiest traffic water territorial. The three of four of the crude oil ship from Middle East have to use South China Sea routing to supply the crude oil. Moreover, in each year half of amount of big cargo ship over the world must use the Malacca Strait, Sunda Strait and Lombok Strait of Indonesia which the number of ship has increased every year. The important of South China Sea apart from the important of main ships routing of powerful countries such as China and Japan including important exporter like South Korea and Taiwan also be the main ship routing of ASEAN member's countries.

The most important reason that create dispute in South China Sea is the enormous number of Crude Oil and Natural Gas in South China Sea which many countries try to have assertions to be the owner. Despite Spratly Island has very little area of not over 3 square miles but still very important to the strategic and politics because if any country able to successfully own the Paracel and Spratly Islands will cause that country to be able to increase their assertion on the contiguous sea territorial that has enormous crude oil and natural gas under the sea of South China Sea. There is the estimation that during the time of next 20 years from now East Asia will increasing the need of oil and gas consumption every year, average of 5 percent per year and more than half of this number is from People's Republic of China and in 2020 the amount of oil consumption will increase more than 20 million barrels per day or 2 in 3 of energy consumption nowadays.

However, East Asian Region still rely on the import of crude oil from Africa and Middle East which the oil shipping and others goods shipping into this region must use Malacca Strait and continues to other countries in Asia and Pacific Region which show that South China Sea has importantly in economic, merchandising, shipping and strategic.

## Conclusions

The research results create the knowing of method and techniques that each parties of dispute bring to apply in dispute settlement and conflict in South China Sea which the method and techniques as stated able to apply using in conflicting and dispute of each region in the world apart from South China Sea territorial.

## Discussion

In the state of International Relationships in South East Asia Region, the neighbor's country likely to has conflict about the territory that close to each other's such as Thailand has dispute with Cambodia about Temple of Preah Vihear which belong to Cambodia and became world heritage nowadays. Despite in Europe before becoming EU (European Union) also have disputed and use the power to fight with each other all the time among European countries and until create the establishment of World War 1 and 2 as follow and recently happened in Asia Region which is the dispute between Mainland China and 5 ASEAN members countries in South China Sea and until both achieve the dispute settlement in South China Sea.

## Suggestions

The way that ASEAN will be able to successfully and effectively manage the problems of dispute in South China Sea, the researcher has suggestions to manage this conflict and dispute problem in South China Sea total 3 methods.

First method, the problem of South China Sea must be the problem in Bilateral Level instead of being a problem of Regional Level such as dispute between Mainland China and the Philippine, Mainland China and Vietnam etc. China wanted to discuss in bilateral level but in the other hand The Philippine and Vietnam wanted to make it as Multilateral Negotiations and try to get others members to involved in the negotiations to increase more power in negotiating with China but not successful due to the other members do not want to get involved in this issue because they do not wanted to create problems or stay opposite with China due to the closely benefits and political relationships, economic, merchandising and investment with China. Moreover from these reasons, they also do not want to get accused as interfering to the other state affairs which is the infringed the Treaty of Amity and Cooperation in Southeast Asia which ASEAN members must strictly consist to the 3 principles as follows.

- 1) Non-Intervention in Domestic Affairs of others state.
- 2) Peaceful Dispute Settlement
- 3) Non-Threat and Use of Military Force

Second method, ASEAN must act as mediator of dispute between China and five ASEAN countries that continue for long time which will affect to the stability in regional level and ASEAN cannot be ignore. ASEAN must try to not let the disputants use the military force which can say as mediator is the diplomatic method in peaceful dispute settlement.

Third method, ASEAN must allowed country outside ASEAN such as United State of America who is the Strategic Partnership with the Philippine to get involve and help to manage dispute in South China Sea because United State of America has the benefits in South China Sea both Strategic and Economic.

### The expectation of benefits from this research

1. To know the background and important of dispute and dispute settlement in South China Sea.
2. To know the attempting of ASEAN and Mainland China that will resolve and settle the dispute settlement in South China Sea.
3. To be able to achieve the agreement between ASEAN and Mainland China about Paracel Island and Spratly Island in South China Sea.

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