

ASEAN's Role in Preventing Conflict in the East Sea

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Abstract ASEAN's main ambition and goal since its establishment has been to create a environment of peace and stability in Southeast Asia to help its member countries maintain independence, sovereignty and develop in a sustainable manner. This has been manifested in most of ASEAN's documents, especially the ASEAN Charter that has been brought to life since December 2008. Moreover, the prevention, mediation and management of conflict is one of the main components of the ASEAN Political-Security Community (APSC), one of the 3 main pillars that the grouping is determined to realize by the end of 2015. Thus, participating in resolving disputes and conflicts in the East Sea is part of ASEAN's agenda and is a responsibility and in the interest of the Association. Moreover, the disputes in interests in the East Sea in the recent years have been pushed to a relatively serious level, increasing the intervention of the countries outside of ASEAN and of its members. This trend is deeply affecting the regional environment of peace and cooperation in the region, changing the perception and strategic actions of many countries, including arms races and rallying of forces to adapt to the volatility in the region.

This paper focuses on 3 main points: 1) Why should ASEAN participate in resolving disputes in the East Sea; 2) ASEAN's participation - successes and drawbacks; 3) What should ASEAN continue to do to exert itself as the center and catalyst for the mediation escalating disputes in the maritime region.

Keywords East Sea (Bien Dong) Dispute, ASEAN Solution

JEL Classification N4 - N45

1. ASEAN's interests in helping to resolve disputes in the East Sea

Among the 6 parties with claims to sovereignty, sovereign rights and jurisdiction in the East Sea, Vietnam, the Philippines, Malaysia and Brunei are over direct disputes in the maritime region. Other countries such as Singapore, Thailand and Cambodia are also countries in the East Sea, sharing great interest both economically and strategically, especially in the freedom of commerce and security and defense. Myanmar is not an East Sea nation but the East Sea is the most advantageous sea line for commerce and bettering relations with countries in the Asia Pacific rim¹. When the Greater Mekong Sub-region-based East West Economic Corridor

¹ Since the beginning of 2014, many high-level officials, especially in Indonesia's military have

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becomes more convenient, Myanmar's interests will be multiplied many times. Even countries without a coastline like Laos will benefit in using the East Sea's strategic advantage.² Therefore, escalating disputes in the East Sea not only threaten the national interests of ASEAN countries exercising sovereignty in the region but also worsen the Association's environment of peace and cooperation, especially ASEAN and its member countries' relations with external partners, first with China. The Southeastern Asian nations, especially those with sovereignty claims must spend more for defense. This is not only detrimental to investments for economic development but also increases mistrust and security concerns due to the accelerating arms race.

Equally important is the fact that ASEAN is making efforts to realize the Community, including the APSC by the end of 2015. APSC's components such as "building and sharing norms for conducts" and cooperating, finding and establishing institutions to "prevent conflict" in ASEAN and between ASEAN and external partners, are clearly outlined in the Action Plan for the ASEAN Security Community in 2004 and in the Comprehensive Plan for the APSC in 2009. Therefore, taking part in mediating disagreements, creating mechanisms to strengthen confidence and prevent conflict in the East Sea is both a responsibility and the interests of ASEAN. The lack of unity and consensus on a common position and indecisiveness of ASEAN and some member countries in implementing the signed agreements at the regional and global levels regarding the East Sea (DOC, UNCLOS) as well as the delay of negotiations and signing of the the COC has been impeding the realization of the APSC. Moreover, taking part in preventing conflict in the East Sea also helps ASEAN maintain and reinforce its central role, the driving force for the promotion, connection and creation of its multilateral cooperation mechanisms in the Asia Pacific, especially ASEAN's role in ARF, EAS and ADMM+. This will increase ASEAN and member countries' ability to resist the pressures of increased geo-political competition among major countries, first and foremost between China and the US. At the same time, this will increase ASEAN and member countries' attractiveness and effectiveness in expanding cooperation with external partners, elevating ASEAN's stature to new heights, an indispensable factor in creating an environment of peace and multilateral cooperation mechanisms in the Asia Pacific.

Therefore, ASEAN's participation in mediating disagreements and preventing conflict in the East Sea simultaneously achieves two goals: First, helping to realize the APSC; Second, prevent ASEAN and member countries from falling into the vortex or center of geo-political competition between major powers, maintain its central role in the regional architecture now taking shape. Moreover, ASEAN's participation helps making major countries, first and foremost China and the US, decrease their strategic rivalry in the region, thereby raising cooperation for shared interests.³ This would help reinforce the regional environment of cooperation and security, whereby the national sovereignty of ASEAN member countries will be respected and not drawn into the vortex of power competition. It can be argued that, ASEAN's aforementioned participation is both a responsibility and strategic interest for the Association. It is also a test for the realization of the APSC as well as the major countries' competition for geo-political control, first and foremost China and the US.

publicly declared that there country has territorial disputes with China in the East Sea. In March 12, 2014, Indonesia's Chief of Staff declared that China's "cow's tongue" and "nine-dashed line" claim has violated Indonesia's overlapping sovereignty in Riau, including the Natuna island chains. However, Indonesia's Foreign Minister later stated that the country does not have maritime sovereignty disputes in the East Sea. In early 2015, President Joko Widodo on many occasions said that China's "nine-dashed line" claim has no legal basis.

2 Laos is only 70km from the East Sea across Vietnam's territory

3 See: Trần Khánh. "Tranh chấp Biển Đông nhìn từ góc độ địa chính trị/Nghiên cứu Đông Nam Á, Số 2, 2012.

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

Territorial disputes in the East Sea took place before the Second World War and escalated during the Cold War.⁴ However, ASEAN's participation in this period was modest since East Sea disputes at the time was not the primary concern or direct threat to ASEAN and its members. The US's naval presence in the region then was very strong, serving as the security umbrella for the Association. All of the US and ASEAN's priorities were directed towards stopping communist influence. This explains why ASEAN and 5 founding members - the Philippines, Malaysia, Indonesia, Singapore and Thailand, did not react to China's use of force to take the Paracels in 1974 and parts of the Spratlys in 1988.

However, the above actions alerted ASEAN, firstly the Philippines as it is close to the Spratlys. Since 1971, the Philippines has sent its armed forces to take a number of islets in the archipelago. Along with the Chinese navy's first-time presence in the Spratly Archipelagoes in the late 1980's, the US navy's retreat from its naval bases in Subic and Clark airfield in the early 1990's worried ASEAN and especially the Philippines. This prompted ASEAN to pass the "ASEAN Declaration on the South China Sea" in 1992 (Manila Declaration 1992). This was the first time ASEAN produced an official document regarding the East Sea, which states: "any adverse developments in the South China Sea directly affect peace and stability in the region." and emphasized "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force."⁵

In 1995, after China took a number of shoals in the Mischief Reef, ASEAN repeatedly issued Joint Declarations or Statements on the issue. The ASEAN Foreign Ministers' declaration on March 1995 stressed that "We call on all parties to refrain from taking actions that de-stabilize the situation," and that ASEAN "specifically call for an early solution to issues stemming from developments in the Mischief Reef."⁶ The above points were reiterated in the 28th ASEAN Foreign Ministers' Meeting's Joint Declaration on July 1995 in Brunei and the 5th ASEAN Summit's Joint Declaration on December 1995 in Bangkok.⁷ With the US's unambiguous attitude relating to the Mischief Reef incident,⁸ ASEAN's unity and joint efforts in 1995 recorded encouraging results. The 19th ASEAN Foreign Ministers Meeting on July 1996 in Jakarta agreed to the drafting and passing a Code of Conduct (COC). This idea was reaffirmed in the Hanoi Plan of Action in 1998.⁹ However, the drafting of that document only began in 1999 when China agreed to join the process with their own draft. After 4 years of negotiations between ASEAN and China, ASEAN failed to achieve its prior objective of a COC but instead got a Declaration of Conduct (DOC) passed in November 2002 in Phnom Penh with the 7-point political commitments devoid of a guideline for implementation. Nevertheless, with the DOC, the commitment of the relevant parties to resolve disputes through peaceful means and outlined the measures to build confidence and cooperation has been reaffirmed.¹⁰

4 See: Nguyen Thi Hanh. Vietnam's Actions to Assert and Enforce Its Sovereignty over the East Sea during the Period 1884-1954: AN Approach from France's Archives/Southeast Asian Studies. 2013. pp.15-24.

5 1992 ASEAN Declaration on the South China Sea

6 1995 Joint Communique of ASEAN Foreign ministers Meeting.

7 The Declaration stressed that "ASEAN shall seek an early, peaceful resolution of the South China Sea dispute and shall continue to explore ways and means to prevent conflict and enhance cooperation in the South China Sea." (See the 1995 Bangkok Summit Declaration).

8 US Congress in March 1995 stressed that freedom of navigation in the South China Sea is a national interest.

9 Article 30 in the Hanoi Declaration states that ASEAN will enhance efforts to help resolve conflicts in the East Sea through peaceful means in accordance with international law.

10 DOC has 7 points, including commitments to the implementation of the 1982 UNCLOS, resolve all disputes through peaceful means and refrain from actions that may complicate the situation.

In reality, political commitments that are not legally-binding in the DOC have failed to effectively prevent the escalation of conflict in the East Sea. Faced with the worsening situation,¹¹ the ASEAN's Foreign Ministers' Meeting in Singapore in 2008 passed a Joint Statement "stressing the need to step up efforts to promote the implementation of the DOC, including early conclusion of a Guideline to Implementing the DOC."¹² This was reaffirmed in the AMM in Hanoi in 2010¹³. In 2011, when tensions in the East Sea worsened, the ASEAN countries worked with China to pass the "Guidelines for the Implementation of the DOC." Although the 8-point document is very general, not much different from the 2002 DOC, but it has contributed to the "de-escalation" of tensions in the East Sea, maintain ASEAN's internal unity facing challenges¹⁴. To promote the COC, in June 2012, ASEAN completed the "ASEAN Position Paper on essential components of the COC"¹⁵ and afterwards was presented to the AMM-45 in Phnom Penh. On July 9, ASEAN Foreign Ministers agreed to the main components of the COC. However, ASEAN later failed to issue a Joint Statement related to the East Sea. A week after the 45th ASEAN Foreign Ministers Meeting, with Indonesia's shuttle diplomacy, ASEAN issued a "6-point principle on the East Sea", in which the Third Point mentioned the "early conclusion"

11 Since 2004, China has unilaterally imposed fishing bans within the territorial waters of many Southeast Asian nations and carried out many military drills in the East Sea. Particularly in July, 2007, Chinese State Councilor established the Sansha administrative division which includes the Paracels and Spratlys.

12 41st Joint Declaration of the ASEAN Ministers Meeting

13 43rd Joint Declaration of the ASEAN Ministers Meeting

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

15 Since November 2011, ASEAN has begun discussions on the COC components without China, even though China wants to take part from the start. Although there are a few disagreements but ASEAN leaders at the 20th ASEAN Summit at Cambodia in April 2012 agreed to finish COC draft before discussions and negotiations with China. After 7 consultative sessions, especially after the ASEAN SOM meeting in Hanoi in June 24-26, 2012, ASEAN has finished the "ASEAN Position Paper on Essential components of the COC" with the following key contents:

- Affirm the principle of respect for international law, the UN Charter, the 1982 UNCLOS, the Treaty of Amity and Cooperation (TAC) and DOC;
- Reiterate the COC's objective of creating a framework based on international law to shape the activities of parties on the according to the above principles.
- Outline the responsibilities and conduct of parties in the East Sea. First, it must follow the objective of peace, stability, security, freedom and security of navigation, promote confidence-building,, prevent the escalation of conflict, and peacefully resolve disputes in accordance with international law and UNCLOS. At the same time, stress the respect for exclusive economic zones and continental shelf of maritime countries in accordance with 1982 UNCLOS;
- Chart out the mechanisms to ensure the implementation of COC, including establishing monitoring and penalize mechanisms, ensuring peaceful resolution of disputes in accordance with international law, UNCLOS, TAC (see interview with Deputy Foreign Minister Pham Quang Vinh on the SOM meeting in Hanoi (June 24-25, 2012) to form the COC on Vietnamnet June 30/2012.

of a COC.¹⁶ In terms of content, the 6-point declaration was similar to a stand-still, if not a regression, compared to previous ASEAN documents on the East Sea.

Confronted with the lack of progress on the diplomatic front in the resolution of the Scarborough shoal dispute,¹⁷ the Philippines chose the legal path by officially suing China before the United Nation's Arbitral Tribunal.¹⁸ China not only rejected the Philippines' request and declined to participate but also pressured ASEAN countries to persuade the Philippines to cease their actions in exchange for a restart of the COC process. China's lobbying of ASEAN and economic and diplomatic pressure on the Philippines yielded little results. However, the Philippines' legal actions forced China to adjust its strategy and restarted COC talks. Nevertheless, China only agreed to consultations (as opposed to negotiations) on promoting the COC.¹⁹ The first official negotiation on the COC between ASEAN and China took place in September 2013 in Suzhou, China. The meeting concurred to a working plan on the DOC (not the COC) for 2013-2014 and formed the Experts Group²⁰ to support the COC process that would meet in Thailand in 2014. However, official COC negotiations between ASEAN and China has yet to take place as of 2015.

Thus, the exact time for official COC negotiations between ASEAN and China has not been determined and is still faced with many challenges. It seems that China does not want official negotiations for the COC. This may be the main reason why realizing the COC may be difficult in the near future. This is not conducive to maintaining peace and stability in the East Sea.

It should be emphasized that, Indonesia has taken the lead as an independent mediator in promoting COC negotiations.²¹ However, the country's rejection of the "nine-dashed line" in early 2014 which includes a large maritime area around the Natuna island and Indonesia's declaration that it has territorial disputes with China can potentially complicate the situation in the East Sea in general and COC negotiations in particular. Indonesia's new actions on the one hand can create new pressure on China to make new commitments and return to the negotiating table but on the other hand can increase China's hard-handedness in territorial claims in the East Sea, including placing an ADIZ in the East Sea as it did in the East China Sea. Apart from establishing the DOC and working towards the COC, ASEAN and member countries have used

16 After 36 hours of shuttle diplomacy from Indonesian Foreign Minister Marty Natalegawa, ASEAN reached a 6-point principle on the South China Sea. Cambodia Foreign minister Hor Namhong on behalf of ASEAN declared those 6 points in Phnom Penh on July 20, 2012 (1 week after AMM-45). The 6 points are: 1) the full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002); 2. the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011); 3) the early conclusion of a Regional Code of Conduct in the South China Sea; 4) the full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS); 5) the continued exercise of self-restraint and non-use of force by all parties; 6) the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

17 In 2012, China sent hundreds of ships with the support of the navy to the Philippines' waters, blockading the Scarborough Shoal.

18 See: Le Thi Thanh Huong. *Scarborough Standoff and the Way the Philippines Struggles for It's Sovereignty in East Sea (Bien Dong)/Southeast Asian Studies*, 2013. pp. 55-66.

19 See: Carlyle A. Thayer. *ASEAN, China and the Code of Conduct in the South China Sea*, SAIS Review of International Affairs, Vol.33, No.2. pp.75-84.

20 Since April 2013, ASEAN and China since agreed to form the Eminent Persons Group to help governments in discussing policies pertaining to DOC and COC.

21 Indonesia's newly-elected President Joko Widodo when meeting the Japanese Foreign Minister in August 2013 reaffirmed that Indonesia is ready to play the role of intermediary to mediate disputes in the East Sea.

different dialogue channels, multilateral and bilateral cooperation to “institutionalize” the above mechanisms. Firstly, ASEAN has used the ARF to promote preventive diplomacy, including those with regards to the East Sea. Since the 17th ARF (2010), participants, including ASEAN claimants with claims and the US have brought up East Sea disputes in discussions to find a peaceful solution in the tense region. In the ARF’s Joint Statements in the recent years, member countries have stressed the need to implement in full the DOC, UNCLOS 1982 and to work towards the COC. In other forums such as the EAS and ADMM+, etc., ASEAN countries also have put the East Sea issue up for discussion and received more support for “internationalization” of the issue, resolving disputes through peaceful means and maritime freedom in the region.²²

China’s illegal deployment of an oil rig in Vietnam’s waters in May 2, 2014 lead to a significant step forward in ASEAN’s thinking and strategic action regarding the prevention of escalating conflict in the East Sea. Immediately after, in May 10, 2014, at the 24th ASEAN Summit in Nay Pyi Taw, Myanmar, ASEAN issued the “Declaration of ASEAN Foreign Ministers on the current situation in the East Sea,” which expresses deep concern regarding incidents in the East Sea... and asks relevant parties to exercise restraint and avoid actions that can harm regional peace and stability; resolve disputes through peaceful means, no use or threat of force.²³ At the AMM-47 in Myanmar last August, in the Joint Declaration on the East Sea issue was mentioned with new details and firmer words compared to previous documents. The declaration affirmed that “We continue to be deeply concerned with recent developments which have escalated tensions in the East Sea and reaffirmed the importance of maintaining peace, stability and security in the maritime domain as well as the freedom of navigation and over-flight above the East Sea and call for the resolution of disputes through peaceful means, non-use or threat of force, including friendly dialogue, consultation and negotiation, in accordance with universally accepted principles of international law, including the 1982 UNCLOS and that ASEAN agrees to step up consultations with China on the measures and mechanisms to ensure and further strengthen the full and effective implementation of DOC, especially Articles 4 and 5 as well as substantive negotiations for the early conclusion of a COC²⁴. Therefore, while the Declaration did not name China as the party increasing tensions in the East Sea but it implies that China’s recent actions have “harmed peace, stability and security in the East Sea.” Moreover, this time, ASEAN wants to send a message that ASEAN wants “substantive negotiations” with China. It can be said that after 22 years since 1992, ASEAN has issued a new joint statement on the East Sea (May 2014) and at AMM-47, showing its serious, detailed and deep concern about new developments in the East Sea regarding China’s illegal deployment of the HD981 oil rig in Vietnam Exclusive Economic Zone and continental shelf. However, there has been a lack of a breakthrough. Moreover, regarding China’s violations of the DOC, especially the rapid reclamation of islands in the past 2 years and turning islands in the Paracels and Spratlys that China took from Vietnam into military and logistic bases, ASEAN’s statements including in the 26th ASEAN Summit in Kuala Lumpur on April 27, 2015 did not name China directly to avoid clashes. However, ASEAN once again stressed its grave concern towards Chinese actions and stated that “land reclamation in the East Sea is erode confidence, trust and harming peace, security and stability in the East Sea” and reaffirmed its position to resolve disputes through peaceful means in accordance with international law, including the 1982 United Nations Convention on the Sea” and directed Foreign Ministers to immediately deal with the issue in a 22 If in the 16th ARF in 2009, not half of participants support “internationalizing” and highlighting freedom of navigation in the East Sea, at the 17th and 18th ARF, more than half was in favor. At the 19th ARF in 2012 25/28 countries mentioned the East Sea in their statements.

23 See ASEAN Foreign Ministers’ Statement on the current situation in the South China Sea

24 AMM-47 Joint Statement

constructive manner, including increasing consultations to ensure the quick establishment of an effective COC²⁵. It can be said that, ASEAN has expressed deep concern over escalating tensions in the East Sea due to China's assertive actions to pursue its claims but does not want to damage relations with China as the country has great commercial and political influence in the region and that not every ASEAN country is in dispute with China.

In conclusion, security concerns due to assertive actions, especially from China in the East Sea, since the 1990's have prompted ASEAN to make collective efforts to create new institutions to help resolve disagreements and prevent conflict from escalating in the region. In reality, ASEAN documents such as the 1992 Declaration on the East Sea²⁶, 2002 DOC, 2011 Guidelines for Implementing the DOC, 2012 ASEAN's views on necessary components of the COC, "ASEAN Foreign Ministers' Declarations on the current situation in the East Sea" and AMM-47 Joint Declaration in 2014 as well as other efforts from ASEAN in other security forums such as ARF, EAS, ADMM+, Shangri-La Dialogue, ASEAN Maritime Forum Plus, etc., have and is contributing to the building of confidence, promotion of peace, creating political and legal foundations for a COC in the future. However, the substantive implementation of the DOC and the process towards the COC has been met with new challenges due to the lack of political responsibility and strategic shortsightedness of some ASEAN countries and China's hardline position. As the ASEAN Secretary Le Luong Minh has said, "the enlarging gap between diplomacy and the situation on the sea demands that ASEAN and China immediately work towards the early implementation of a COC."²⁶

3. Conclusion: ASEAN needs to be more responsible and proactive in preventing escalating conflict in the East Sea

Although the DOC and DOC Guidelines stress the need to abide by the 1982 UNCLOS and call on the parties concerned to maintain the status quo, not to further complicate the situation and promote negotiations for a COC, in reality these political commitments have been seriously violated²⁷. The fact that AMM-45 failed to issue a joint statement, China's delay in COC negotiations and ASEAN's relatively weak reactions to China's illegal deployment of an oil

25 See "Regional and International Issues" section, Articles 59, 60, 61 and 62 from the Chair's statement at the 26th ASEAN Summit "Our People, Our Community, Our Vision.", in Kuala Lumpur and Langkawi, April 27, 2015.

26 See: "ASEAN quan ngại Trung Quốc nhưng ngại đối đầu", BBC Vietnamese, April 27, 2015.

27 Apart from the DOC and DOC Guideline, ASEAN countries have also signed various legal documents pertaining to the East Sea cooperation with relevant countries. For example, Vietnam have signed Treaty on Historical Waters with Cambodia (1982), Agreement for Joint Exploitation in the South China Sea with Malaysia (1992); Treaty for Border Delimitation with Thailand (1997); Treaty for Border Delimitation in the Gulf of Tonkin and Treaty for Cooperation in Fishery (2000); Treaty for the Delimitation of the Continental Shelf with Indonesia (2003). Furthermore, Vietnam and other countries in dispute in the East Sea such as China, Malaysia, Brunei, Indonesia, Thailand and Cambodia are carrying out negotiations for maritime delimitation such as in the area outside the Tonkin Gulf between Vietnam and China, delimiting the EEZ and continental shelf between Vietnam and Malaysia, delimiting the EEZ between Vietnam and Indonesia, delimiting the waters between Vietnam and Cambodia, delimiting overlaps in the continental shelf between Vietnam, Thailand and Malaysia and between Vietnam and Brunei. Moreover, Vietnam is patiently negotiating to protect its FIR, determining the regions for VNMCC, area for search and rescue in accordance with the SAR-79 convention, etc. However, security, peace and cooperation in the East Sea is developing in a complex manner without a unifying solution and feasible to lower tensions. The main reason being sovereignty claims and geo-political ambition from a few countries as well as the lack of responsibility from some ASEAN countries.

rig in the East Sea in 2014 is seriously challenging the implementation of the DOC (especially Article 5 on maintaining the status quo and not further complicate the situation in the East Sea) as well as signaling an unpredictable future for a substantive COC. Therefore, it can be argued that ASEAN's internal divisions and external actors' policy of "divide and rule" for their own geopolitical objectives as well as differing interests of relevant parties in the East Sea may weaken ASEAN's centrality in preventing conflict in the East Sea. This not only decreases ASEAN's role in the regional security architecture now taking shape but also adversely affect the realization of the APSC as well as maintaining peace and stability in Southeast Asia. Thus, more than ever, ASEAN needs to have high political determination, will and responsibility to soon have a COC in the East Sea, which has strong and detailed regulations that are legally binding. To achieve this objective, ASEAN needs to take the following efforts:

- In terms of perception and policy, more than ever before, ASEAN must regard taking part in resolving disputes in the East Sea as a major political responsibility and strategic interest. In other words, the binding of the member countries' fates and the affirmation of the Association's value and standing as a regional Community in the current complex situation depends greatly on ASEAN's effectiveness in creating institutions that can prevent and manage escalating conflicts in the East Sea. This is a test of breakthrough significance for the community's existence and development in the years to come. On this issue, ASEAN and member countries cannot be ambiguous.
- In terms of action, firstly, ASEAN needs to find all means necessary to soon conclude a substantive COC. To do this, ASEAN and member countries, especially the claimants need to take the following efforts:

First, along with asking China to go straight to negotiations on the COC, ASEAN countries with claims to sovereignty, sovereign rights and jurisdiction in the East Sea ought to determine whether the demarcation of their borders comply with international practices, especially the 1982 UNCLOS. Afterwards, those countries need to sit together to find common grounds and a shared position and then lobby other ASEAN countries to act as one for a COC.

Second, in the face of China's hesitation and unwillingness to engage in direct negotiations for a COC, ASEAN countries should together draft a COC of their own. If China continues to delay the process, ASEAN countries can issue its own COC. This is important not only to unify ASEAN's position but also to send a strong message to China so that the latter may adjust its strategic perception and actions for a COC.

Third, ASEAN countries should proactively suggest new initiatives like the one by the Philippines in 2011 on the "ASEAN-China region of peace, freedom, friendship and cooperation in the East Sea" or "The East Sea Commission for Cooperation, Development, Peace and Security" like the Mekong River Commission²⁸ that countries in the sub-region signed in 1995. The East Sea Commission does not force ASEAN member countries and foreign partners with interests in the East Sea take part from the start. Besides, ASEAN should create the mechanism of "Maritime police for ASEAN claimants in the East Sea," then "the ASEAN Maritime Police" and afterwards the "ASEAN-China Maritime Police in the East Sea."²⁹ Moreover, ASEAN countries should boldly initiate the "Southeast Asia Maritime Treaty" suggested by Professor Carlyle A.

28 See: Đàng Xuan Thanh. "Strategic Perspectives in the East Sea (Bien Dong)" in *Southeast Asian Studies*, No. 2, 2012, pp. 85-97.

29 See: Tran Khanh. "Bien Dong (East Sea Disputes: Fom a Geopolitic Views" in *Southeast Asian Studies*, No. 2, 2012, pp. 69-84.; "ASEAN' Role in Building the New Security Structure in Asia-Pacific Region" in *Southeast Asian Studies*, No. 1, 2013, pp. 3-9; "The East Sea (Bien Dong) Disputes: Realities and Solutions" in *International Studies*, No. 30, June-2014, pp.81-100.

Thayer. According to Thayer, this treaty will bind all ASEAN countries in the maritime security and claimant countries, including Vietnam, can be more independence and less reliant on the ASEAN's unified viewpoints. At the same time, these countries can readjust its baselines in accordance with international law. Moreover, the ASEAN Maritime Treaty is an effective tool to further link the member countries together in security cooperation in all maritime areas in the South China Sea and thus, can overcome the division in ASEAN between the ASEAN claimants and those without claims, especially in negotiating with China for a COC. Furthermore, the signing of treaty will be a good opportunity to expand security cooperation with external parties and thus can contribute to a new security architecture capable of maintaining peace and stability in Southeast Asia.³⁰

Fourth, ASEAN countries should issue a legally-binding document, asking the rotating Chair each year to bring the East Sea issue into the official agenda of cooperation mechanisms such as the ASEAN Summit, AMM, ADMM, ADMM+, ARF, EAS to promote DOC implementation and soon conclude a COC. ASEAN should establish the subsidiary to the "ASEAN Institute for Peace and Conciliation" that ASEAN created in 2012. Moreover, ASEAN countries should increase information exchanges regarding maritime issues, enabling civil society to take part in the struggle to protect freedom and security in and over the region. ASEAN countries with sovereignty claims, especially Vietnam should strengthen the legal front regarding this matter. To ensure continuity and focus, ASEAN should form "connecting points" between both sides to coordinate and promote the COC process. ASEAN can delegate Indonesia and Singapore for this end.

Fifth, ASEAN should step up using other channels and forces, especially in forums such as ARF, EAS, ADMM+, Shangri-La Dialogue, ASEAN Maritime Forum Plus, etc., to exert pressure, force the parties concerned to come to the negotiating table and find solutions to maintain peace in the East Sea. Moreover, ASEAN should draw the participation from the international community, especially the US, Japan, India, Australia, India and South Korea and other European countries, etc. in security and development cooperation in the East Sea, including giving priority to companies from the above countries to exploit resources in the East Sea. In conclusion, prevention and working towards managing conflict in the East Sea is part of ASEAN's geo-political activities and a responsibility as well as interest of the Association. ASEAN has had tireless efforts in the institutionalization of the East Sea issue. However, currently, ASEAN is facing new challenges in negotiating towards a COC with one of the main reasons being ASEAN's internal divisions. More than ever, ASEAN should seriously look at itself to come up with policies and actions that are consistent with the current times and push the COC process forward. Only then will ASEAN have a reason to continue to exist and develop. This is a new test for ASEAN's effectiveness on the path towards a regional community by the end of 2015 as well as becoming a center for mediating disagreements and preventing a geo-political disaster in Southeast Asia.

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³⁰ Carlyle A. Thayer also suggest that, all signatories of a Maritime Treaty for Southeast Asia should commit to de-militarizing islands and shoals that they control, including banning a number of specific weapons, i.e. surface anti-ship missiles (See: Hiệp ước Hàng hải Đông Nam Á: Giải pháp cho tranh chấp biển Đông?, Sept. 23, 2013.

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