

**CHAPTER IV**

**THE EFFECTIVENESS OF ASEAN WAY IN SOLVING**

**SOUTH CHINA SEA DISPUTES**

In the fourth chapter, the writer will explain about the effectiveness of ASEAN in using ASEAN Way to solve South China Sea disputes. In fact, ASEAN has conducted numerous meetings and negotiations as the implementation of the ASEAN Way. The effort is expected to resolve existing disputes, or even just to reduce conflict tensions over the South China Sea by the creation of a declaration and also through negotiations. ASEAN has addressed the issue of the South China Sea in Senior Official Meetings, ASEAN Ministerial Meetings, and the ASEAN Regional Forum. Informal meetings have also been pursued through workshops on Managing Potential Conflicts in the South China Sea held by the initiative of Indonesia since 1990.

The following will be discussed further on the efforts of ASEAN. Aside from meetings held, Claimant States has also reached some agreements, which are summarized in the Declaration of Conduct Parties and will continued on the preparation of the Code of Conduct's creation.

## **A. Document and Declaration**

### **A.1 ASEAN DECLARATION ON THE SOUTH CHINA SEA, Manila, Philippines, 22 July 1992**

ASEAN Declaration on the South China Sea was signed by six Foreign Ministers of ASEAN States (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand) on 22 July 1992 in Manila, Philippines. This declaration is the first step in reducing conflicts in the South China Sea.

Although Vietnam, which at the time, was not yet a member of ASEAN, Vietnam supported DoC to accedes TAC. On the other hand, China refused to conduct multilateral negotiations and considered that the Spratly Islands was not a problem of ASEAN. However, China supported the majority of this declaration, but it did not give an explanation part in which it supported and which part it disagrees. (Thuy, 2011)

After 1997, ASEAN and China more closely discussed the South China Sea disputes. They discussed the Code of Conduct in the South China Sea which aimed at boosting confidence in the South China Sea, but did not have the effect of binding force. However, ASEAN-China discussed about the Code of Conduct in the South China Sea which had two major difficulties, they are (Thuy, 2011):

1. The scope of the Code of Conduct in the South China Sea. Most of the parties do not want the territorial sea, inland sea and EEZ its object is inserted into the Code of Conduct in the South China Sea beyond international law and UNCLOS.

2. There are problems if the country gained freedom of sailing and flying above or close to the disputed region can take part in the preparation of the Code of Conduct in the South China Sea.

In the first point, the Claimant States has no mutual budge and both states want the territory which was not included in the Code of Conduct. However, in the second point, all the representatives of the State agreed not to involve outside States which had no intention in South China Sea region in the creation process of CoC. On 4 November 2002, ASEAN and China produce the Declaration on the Conduct of Parties in the South China Sea (hereinafter DoC) which was signed by 10 Foreign Ministers of ASEAN and China's Special Envoy, Wang Yi in Phnom Penh, Vietnam. DoC is clearly stated in the opening paragraph that the DoC is the result of a meeting between the government of ASEAN States and the government of the People's Republic of China. In other words, 10 Southeast Asian States signed the agreement in the collective capacity as the ASEAN member States. However, DoC was not a treaty nor a Code of Conduct (CoC) which was formally a political statement to reduce tensions in the region and began cooperation.

The DoC expected mutual trust among States in dispute which can be further improved and the potential for conflict can be removed and replaced with a mutual beneficial cooperation. However, there are instances in which the declaration did not run as expected in the DoC which was just a political document. It did not have binding legal force in

which the parties involved in the dispute violates existing agreements and there were no sanctions which can be applied to the breaching party. For example, it was shown in the Mischief Reef incident that if the Philippines report was true, then China had violated the article 5 of DoC. However, the DoC was an important step in maintaining the South China Sea disputes because the parties to the dispute had agreed to create stability and peace in the region to avoid confrontation and provocation inviting military conflicts. This declaration can also be used to support the implementation of cooperation which had been initiated through the Workshop on Managing Potential Conflict in the South China Sea and the starting point for the establishment of a legally-binding code of conduct.

To implement the provisions of the DoC into cooperation concretely, the Plan of Action to the Implement the 2003 Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity, which is a master plan to expand the ASEAN-China comprehensive and was mutually beneficial for the purpose of strengthening partnership for peace, development and regional prosperity, ASEAN and China had to act together to achieve a concerted effort to implement the DoC in an effective way. Plan of Action was adopted at the ASEAN-China Summit which is the eighth in Vientiane, Laos on 29 November 2004. It included the efforts and actions to hold the ASEAN-China Senior Officials Meeting (ACSOM) to realize the DoC; provide a benchmark for implementing the DoC, and set up a working group to draw up a reference from the DoC

implementation and provide recommendations for the ASEAN-China SOM. At the ASEAN-China SOM first in Kuala Lumpur on 7 December 2004, the participants decided to form a Joint Working Group (JWG) to study and recommend measures to strengthen the confidence of each country. JWG would transform the provisions of the DoC in the form of real cooperation. Forms of cooperation set out in DoC among others the protection of the aquatic environment (marine scientific research), scientific research, safety of navigation and communication at sea, search and rescue operations, and the fight against transnational crime. The meeting also adopted the Terms of Reference of the JWG. ASEAN-China JWG had the task to make recommendations on the:

- a. guidelines and action plan for the implementation of the DOC;
- b. specific cooperative activities in the South China Sea;
- c. a register of experts and eminent persons who may provide technical inputs, non-binding and professional views or policy recommendations to the ASEAN-China JWG; and
- d. the convening of workshops, as the need arises

Furthermore, as an attempt to implement the DoC, there is a Plan of Action to the next period (2011-2015) are set on 29 November, 2010 in Hanoi, which among other things states the Declaration on the Conduct of Parties in the South China Sea (DOC, 2002):

1. Push forward the full and effective implementation of the DOC in the South China Sea to maintain regional stability and promote cooperation in South China Sea including

through the regular convening of the ASEAN-China Senior Officials Meeting (SOM) on the DOC and the ASEAN-China Joint Working Group on the Implementation of the DOC and continued joint efforts in drafting the Guidelines for the implementation of the DOC while working toward the eventual conclusion, on the basis of consultations and consensus, of a code of conduct in the South China Sea;

2. Promote trust and confidence building through cooperative activities, in accordance with the principles of the DOC, in particular, those of consultations and consensus among the concerned Parties in the South China Sea, pending the peaceful settlement of the territorial and jurisdictional issues as stated in the DOC.
3. Adhere to the terminologies used in the UN Convention on the Law of the Sea and other instruments of the International Maritime Organization;
4. Promote joint cooperation and dialogue in areas such as marine scientific research, protection of the marine environment, safety of navigation and communication at sea, search and rescue operation, humane treatment of all persons in danger or distress, fight against transnational crimes as well as cooperation, among military officials.

## **A.2 Code of Conduct**

In the early days of the first year after the signing of the document DOC, both member States of ASEAN and China indeed has sought to establish maritime cooperation. In 2003, China and ASEAN member States decided to hold regular meetings of the ASEAN-China Senior Officials (Senior Official's Meeting/SOM) to discuss the implementation of the DOC. They also formed a partnership group to address specific issues related to the matter. In December 2004, the SOM meeting of DOC was held in Kuala Lumpur, and in the meeting, they decided to form a cooperative group to discuss the implementation of the DOC. They also prepare a document describing the composition, functions and responsibilities of the co-operation group. The cooperation group tasked to

study and provide ideas related to the implementation of the DOC policies, as well as to identify actions that may lead to the South China Sea conflict worse. Group cooperation is also expected to propose experts who can provide technical assistance or policy advice. Group cooperation is expected to hold meetings at least twice a year and submit a report to the SOM after each meeting. Areas of cooperation held including marine environmental protection, marine scientific research, navigation maritime security, search-rescue operations and anti-transnational crime.

The first meeting of the partnership group took place in Manila from 4-5 August, 2005. At the meeting, ASEAN proposed a seven-point document contains sample instructions to the implementation of the DOC. The second item of the document states that ASEAN will continue the tradition to hold internal consultations among ASEAN members before negotiating with the Chinese. China rejected this second point, arguing that the South China Sea is only associated with a number of ASEAN members only, and not the whole of ASEAN. Therefore, China stated that the Chinese preferred to discuss with the related ASEAN States rather than to ASEAN collectively. Differing views on the second point is constantly overshadowed subsequent meetings. At the second meeting the cooperation group held in Sanya in 2006, a very important agreement was reached was Claimant States can agree to focus on six things in the scope of cooperation.

ASEAN and China agreed to finalize guidelines on the implementation of DOC in July 2011 at a meeting of Foreign Ministers of China-ASEAN. Both sides managed to meet an agreement on the issue of the unity of ASEAN. At the High Level Conference on ASEAN-China held in November 2011, the former Prime Minister of China, Wen Jiabao, stated that China intended to continue to be a good neighbor, good friend and good partner for ASEAN. He stated that China intends to cooperate with the ASEAN States to implement the DOC as a whole. He also added that China intends to discuss the preparation of the COC. Wen also pledged to provide a loan of 10 billion US dollars (including preferential loans of 4 billion US dollars) for infrastructure projects in ASEAN States.

Since the late 2011 until mid-2012, ASEAN senior officials working within the framework of preparing a document describing the outlines of the document COC. Because the ASEAN States do so without the direct participation of China, China was not happy. However, China did not protest directly tangible manifestation of the solidarity of the ASEAN. At a meeting of Foreign Ministers in Phnom Penh in July 2012, when ASEAN proposed to China a document containing the main elements of the COC document, China had indicated its intention to cooperate with ASEAN in the process of preparation of the COC creation.



## **B. Meeting and Forum**

In addition to producing the ASEAN Declaration on the South China Sea and the Declaration of Conduct, ASEAN seeks to enter the South China Sea issue in several meetings of both informal and formal, important meetings and forums importance of ASEAN. One of the meeting was the ASEAN Ministerial Meeting held once a year. This meeting is an ASEAN sectoral ministerial body within the framework of the establishment of the ASEAN Political-Security Community. Agencies ASEAN sectoral ministries, among others, functioning in accordance with their respective mandates that have been established; implement the agreements and decisions of the ASEAN Summit under their respective purview; and strengthen cooperation in their respective fields to support ASEAN integration and community building.<sup>100</sup>

Almost at every meeting of the AMM, the ASEAN has always alluded to the issue of South China Sea. At the AMM to 25-44 (1992-2011), the issues of South China Sea were mentioned among others:

- The ASEAN Foreign Ministers support the Workshop on Managing Potential Conflicts in the South China Sea which donates a better understanding of the problem encountered and

---

<sup>100</sup> CHARTER OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS. Accessed in December 2015  
Download from  
<http://www1.umn.edu/humanrts/research/Philippines/ASEAN%20Charter.pdf>

the ASEAN States can discuss the possibility of cooperation in the South China Sea.

- The ASEAN Foreign Ministers gave a statement that the parties abide by and implement the principles in the ASEAN Declaration on the South China Sea
- The ASEAN Foreign Ministers urged the parties to withdraw from acts that could disturb the stability of the region, including interfere with the freedom of sailing and flying in the South China Sea region.
- The ASEAN Foreign Ministers encourage the parties to negotiate bilateral and multilateral, and the importance of Confidence Building Measures (CBMs) to be applied and continue to support the Workshop on Managing Potential Conflicts in the South China Sea.
- The ASEAN Foreign Ministers also support ASEAN Foreign Minister's approval in 1996 of the idea of the establishment of the setting behavior (code of conduct) regional.
- The ASEAN Foreign Ministers emphasized the importance of the preservation of peace and stability in the South China Sea and the action of the state to exercise restraint and encourage CBMs and the peaceful settlement of disputes in accordance with international law

The statements above arise because of the sympathy of ASEAN to the conflicts which often arise in the South China Sea. At least several times repeated in several meetings of the AMM. This is done with the hope to reduce the conflict and cool the atmosphere. In addition, repetition is also expected to strengthen ties peaceful conflict resolution.

Another meeting is the ASEAN Summit. In general, this conference addresses provide policy direction and make decisions on major issues concerning the realization of the objectives of ASEAN, the principal matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, one council ASEAN Community Council, and Agency-ASEAN Sectoral Ministerial Body and address emergency situations affecting ASEAN by taking appropriate actions.<sup>101</sup>

The issue of the South China Sea dispute is discussed at the summit 2004, 2006, 2009, 2011, and 2012. At the conference outline the importance of the implementation of the ASEAN remind DoC and the importance of promoting peace, stability and mutual trust in the South China Sea and to resolve disputes peace under international law, the UN Charter, UNCLOS, as well as negotiating the formation of a CoC. Specifically at the 18th ASEAN Summit held in Jakarta on 7-8 May 2011

---

<sup>101</sup> Chair's Statement of the 18th ASEAN Summit. Accessed on Mei 2015  
<http://cil.nus.edu.sg/2011/2011-chairsstatement-of-the-18th-asean-summit/>,

to discuss in more detail the issue of South China Sea. Things were agreed about the South China Sea disputes issue are:<sup>102</sup>

1. Reaffirmed the importance of the Declaration on the Conduct of the Parties in the South China Sea (DOC) as a milestone document signed between ASEAN and China embodying the collective commitment to promoting peace, stability, and mutual trust in the South China Sea and to ensuring the peaceful resolution of disputes in this area in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
2. Stressed that continuing the positive engagement of ASEAN-China is essential in moving forward the DOC issue. We stressed the need to further intensify the efforts of both ASEAN and China to ensure the effective and full implementation of the DOC and move forward the eventual conclusion of a Regional Code of Conduct (COC).
3. Welcomed the convening of the 6 ASEAN-China Joint Working Group on the DOC on 18-20 April 2011 in Medan, Indonesia. In this connection, we encouraged the continued constructive consultations between ASEAN and China, including the early convening of the ASEAN-China SOM on the DOC. We therefore reaffirm the principle of ASEAN, on the basis of unity and solidarity, to coordinate and to endeavour to develop common positions in its dialogues with its Dialogue Partners.
4. Resolved to take advantage of the momentum of the anniversary of the 20 years of ASEAN-China relations in 2011 and 10 years of the adoption of the DOC in 2012 to finalize the Guidelines on the implementation of the DOC and initiate discussions on a regional COC

Besides of AMM and the ASEAN Summit, ASEAN also has ADMM or the ASEAN Defence Ministers Meeting. ADMM formation was initiated by Indonesia and aims to promote peace and stability in the region, through dialogue and cooperation in the field of defense and security. ADMM has held its first meeting in May 2006 in Kuala Lumpur, Malaysia. ADMM is outward looking, open, transparent and involve the

---

<sup>102</sup> *Ibid.*,

ASEAN Dialogue Partners, so that in the future it is possible that mechanisms ADMM Plus.<sup>103</sup> At the fifth meeting of ADMM held in Jakarta on 19-20 May 2011 the Ministers adopted the Joint Declaration of the ASEAN Defence Ministers on Strengthening Defence Cooperation of ASEAN in the Global Community to Face New Challenges, which 8<sup>th</sup> point states:<sup>104</sup>

- Reaffirm ASEAN Member States' commitment to fully and effectively implement the Declaration on the Conduct of the Parties in the South China Sea, and to work towards the adoption of a regional Code of Conduct in the South China Sea that would further promote peace and stability in the region;
- Reaffirm also the importance of regional peace and stability, and freedom of navigation in and overflight above the South China Sea as provided for by universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Besides the important meetings of ASEAN, ASEAN also create a forum within which discusses the issue of South China Sea. The first forum is the ASEAN-China Senior Officials Consultation (ACSOC). This forum specifically set up a forum specifically scheduled disputed South China Sea, which was formed in April 1995. In the first ACSOC meeting in Hangzhou, China on 3-4 April 1995 China's apparent attitude which avoids discussion of the issue of South China Sea conflict. China's stance began to soften in the second ACSOC meeting in Bukit Tinggi on 10 to 11 June 1996, at the meeting China was willing to discuss the disputed South China Sea during the plenary session under the agenda Review on

---

<sup>103</sup> Direktorat Jenderal Kerjasama ASEAN, *ASEAN Selayang Pandang*, p. 24.

<sup>104</sup> *Ibid.*,

ASEAN-China Relations. To defuse the conflict in the South China Sea, ASEAN proposed the formulation of a Regional Code of Conduct in ACSOC 5th meeting on 5-7 April 1999 in Kunming, China. This proposal was then approved by China in the ASEAN-China Summit in 1999. In this regard, the ACSOC 6th meeting held on 24-25 April 2000 in Kuching, Sarawak, has agreed to establish a Working Group on the Code of Conduct in the South China Sea under ACSOC.

The second forum is ARF/ASEAN Regional Forum. It aims at discussing and negotiating the problems existing in the Southeast Asia. ARF formation was performed in July 1993 at AMM/PMC 26th. It was currently attended by 29 States, including Australia, Canada, European Community, Japan, New Zealand, and the United States. ASEAN then invited Russia and China to join. With the establishment of the ARF, began the political system and regional security started to be loose and layered in Asia Pacific.<sup>105</sup>

ARF was established as a forum for exchanging views and information among the States of the Asia-Pacific region on politics and security matters, both regionally and internationally. The goal of ASEAN in forming ARF is to decrease the chance of conflicts between States which were caused by the shift of power as a result of the rapid economic

---

<sup>105</sup> Peter Ho, *The ASEAN Regional Forum: The Way Forward?*, p. 253. Accessed in December 2015  
Download from <http://aseanregionalforum.asean.org/files/ARF-Publication/A%20Commemorative%20Publication%20for%20the%2020th%20ASEAN%20Regional%20Forum.pdf>

development rapid, attitude diversity in the region led to differences in approach to the problem of peace and security, territorial conflicts and disputes concerning other matters between States which have not been resolved.

The second ARF in Brunei Darussalam on 1 August 1995 had issued three concept in the South China Sea dispute resolution Confidence Building Measures (CBMs), Preventive Diplomacy (PD) and Conflict Resolution (CR). The basis of this CBM is how the parties concerned to reduce tension between them with the aim of finding a solution and as a step which is most useful to pave the way towards an agreement that is more comprehensive, while Preventive diplomacy (PD) or preventive diplomacy in which collective actions undertaken to prevent conflicts at an early stage and to enforce peace diplomacy preventive action is actually a collection of diplomacy, political, military, economic, and humanitarian. Meanwhile Conflict Resolution (CR) or a resolution of the conflict is a further effort for both the efforts which have been made.

Measures Confidence Building Measures and Preventive Diplomacy pursued by ARF in creating security dialogue among others through military cooperation which is based on the basis of communication, transparency, restrictions (limitation) and verification which are implemented in the programs submitted by ASEAN through the ASEAN meetings Regional Forum, among others:

1. Cooperation in arms control used in the field and cooperation in non-proliferation treaty
2. Transparency of the military forces which have or are used in the South China Sea to publish documents relating to the policies of defense and security
3. The collective activities such as joint military exercises, training courses and exchange of custody officer or another visit military facilities and training observation among them
4. Early Warning of Conflict Situations or early warnings of a state of conflict

At first, China, Malaysia and other States, refused to discuss the matter of the dispute in the South China Sea together and just wanted the issue resolved bilaterally between the two States involved in military clashes. But after last several years when the increased cooperation between the parties involved. At the beginning, there was no agreement between China and ASEAN States. To reduce the constraints faced in the implementation of CBMs and PD ASEAN managed to approach the Chinese to sit down together to discuss things which were necessary to reduce the tension in the disputed territory. Initially, China never wanted to talk about the South China Sea dispute in multilateral discussion and just wanted to find the settlement of disputes through the bilateral discussion, but with the CBM and PD are executed by the parties associated in the field. In the end, China is willingly to discuss the



problem by multilateral discussion with ASEAN States to find a way out of the problem through peaceful means.

In November 2002, foreign ministers of ASEAN and Deputy Foreign Minister of China Wang Yi signed the Declaration on the Conduct of Parties in the South China Sea at the ASEAN meeting in Phnom Penh which aims to prevent tensions in the disputed territory and to reduce the risk of military conflict in the Sea South China. Then on 7 October, 2003 China signed the treaty The Treaty of Amity and Cooperation in Southeast Asia. It is a treaty or a peace agreement among the States of Southeast Asia, which was formed by the founder States of ASEAN. This agreement can be considered as a sign of peace relations between China and States.

Two of these agreements signifies the good relationship between China and ASEAN in resolving the dispute Spratlys and Paracels in the South China Sea, because this agreement was followed by other agreements between China and ASEAN both in cooperation in the military field as well as joint management of the natural resources in the South China Sea. Therefore, so that all parties benefit on exploration were conducted. It is the success of the program CBMs and PD in strengthening the friendship between the parties involved in the dispute. So that the existing tensions in the South China Sea region, especially in the Parcel and Spartly which were caused by disputes could be alleviated.

Programs CBMs and PD agreed upon by the parties to the dispute in the South China Sea, tried to be implemented and applied by all parties

Although, at first, there were many obstacles, to all parties eventually are trying to implement their programs well. Therefore, the tension can be relieved and it also raised mutual understanding and understanding among them. Parties related also have a desire to resolve the dispute in multilateral through the ASEAN Regional Forum, and generate agreements in dispute resolution the South China Sea, especially the Spratlys and Paracel which also strengthened the relationship between China, Taiwan and ASEAN States both in cooperation of the military forces in the South China Sea and cooperation in the joint management of the natural resources that existing in that area.

From the above description it appears that the ARF had a significant role in a variety of security issues storing a number of conflicts. Beside, the meaning of ARF is becoming increasingly important as the only forum for dialogue which most in demand by States in the Asia Pacific region. This forum has been growing more than just a forum to foster mutual trust. Formally, this forum has been discussing the formation of a new regional order in the Asia Pacific region. However, as a forum for multilateral security dialogue and the development of mutual trust in the Asia Pacific region. It is expected to pave the way for mediation of the various problems faced by ASEAN States as in the case of the South China Sea. ARF's role is to contribute to the wider Asia-Pacific region to discuss security issues in the region in a comprehensive manner.

### **C. The Effectiveness of ASEAN Way in Constructivism Perspective**

Adler and Barnett have classified the phases of construction of the security community and what is done by the ASEAN classified in the second phase, namely the ascendent. Lack of collective confidence level that can be seen from the use of weapons in settling the disputes. However, with China's desire to join and settle the dispute peacefully signifies a deeper mutual trust movement, but not yet reached the mature stage. In this phase, ASEAN is an institution that has directed its bow toward the formation of a security community.

ARF established intensive and extensive cooperation framework between the Claimant States. It is viewed as an appropriate step towards establishing mutual trust and collective identity. Collective identity needs to be established and constructed through various cooperation, consolidation of values and principles, as well as transactions/other intersection so as to bring up a mutual trust. However, ASEAN still needs to review the principle and its implementation in the settlement of disputes. It is quite fundamental, and seeks to invest in ASEAN through the ARF and other formal meetings.

Special characteristic when viewed from the paradigm of constructivism is the existence of a common identity and mutual trust that is sociological. So, without the need for institutionalization in the form of any international organization, the security community will be formed. The state can stand independently with confidence that each Claimant

States will not attack each other and are willing to resolve the issue without military force. Constructivism sees this as a condition of peaceful change of sociological factors which ASEAN as a social community that is engaged in the field of security. Constructivism weakness in view of ASEAN lies in three things:

### **C.1 Measurement of Mutual Trust and Collective Identity**

Collective identity and mutual trust only visible if the security community has been formed, so both of are dependent variables that are non material that can not be quantified. It will be realized when the ASEAN security community has been described conditions. The ASEAN Way of diplomacy mainly includes non-interference in domestic affairs, quiet diplomacy, intensive consultation and consensus-building. This kind of diplomacy intends to enhance mutual trust and understanding and a sense of neighbourliness. But China easily press the Claimant States that other State to State. As happened at the 20th ASEAN Summit, Cambodia's decision, as the host of the 20th ASEAN Summit, to exclude about the South China Sea into the official agenda of the summit is seen as a result of China's influence and pressure to that State. In other words, if ASEAN can not unify the attitude as soon as possible, speculation that China's interest to suppress is easy to achieve and ASEAN will be justified as incapable mediator.

ASEAN's inability to formulate a common position regarding the CoC will also bear the criticism that the desire of ASEAN to have the same voice

as ASEAN Community in a Global Community of Nation still constitute the ideals which far from expectations. This of course have an impact on ASEAN's desire to continue to play a central role in Southeast Asia, particularly in managing relations with major States.

Following the will of Cambodia to engage China in designing the CoC, which incidentally is the desire of China, would undermine the credibility and independence of ASEAN as a regional organization. ASEAN does not need to be subject to pressure of any major States in deciding what is important for the region. Because, as mandated by the Bali Concord III, ASEAN must do all possible to speak with one voice.

Besides China accepted the invitation to submit the South China Sea dispute through negotiation table because ASEAN adheres to the principle would not be interfered by developed States. It is used by China to reinforce its claim over the South China Sea. Because no Claimant States can counterbalance China and the most important things is avoid the interference of other States which offset China's military power. This is done by following some of the ASEAN plan of conflict resolution and approved the proposal of ASEAN in the formulation of DoC and CoC. On the other hand, China's maneuver in asserting its claim, such as building military bases, sending the expedition team resources, and create sparks conflict with other claimant states.

The emergence of "invitation" is essentially based on the lack of confidence some ASEAN States with the status of the claimant's attitude and

integrity of ASEAN facing Chinese assertiveness. Indeed, ASEAN States are bound to DOC of South China Sea, but difficult to doubt also about the solidity of ASEAN to confront China. As is known, there are some certain ASEAN States which have proximity to China, so their solidarity with other ASEAN States is doubtful, if the situation in the South China Sea leads to a crisis or even conflict. Vietnam and the Philippines is a State that is actively assert their attitude toward China's unilateral claim, so no wonder that both States received special attention from China. The attitude of the two States of ASEAN is not separated from the tacit support of the extra power of the region, although Vietnam has not had a defense alliance agreement with the extra power of the region which has been actively involved in the South China Sea. In addition, ASEAN States are involved in the dispute was still different opinions about the boundary line of each claim, for example, between Malaysia and the Philippines.

However, it must be recognized too that it not realistic when China ignored the views and positions at all in this process. In the end, the success or failure of CoC becomes will become a reality depend on the willingness of Beijing as well. Therefore, ASEAN must find a reasonable form of consultation with Beijing in the process of designing CoC without having to relinquish the right of ASEAN to formulate a common position first. It was, among others, can be done through unofficial meetings (second track). Diplomatic deadlock can sometimes be solved just through meetings unofficial or semiofficial between the parties in conflict.

## **C.2 Inconsistency of ASEAN norms**

The second weakness is the contradiction between the norms of ASEAN with a description of the security community by Adler and Barnett. Security community leads to the overall integration, while ASEAN through the ARF emphasizes the coexistence of countries regards cooperation scheme multilateral, bilateral or trilateral. On the other hand, ASEAN could not make a rule-bound because of the norms adopted sometimes become an obstacle. The ideas and practice of ASEAN diplomacy are grounded in its own traditional approach. ASEAN's fundamental norms directly protect the sovereignty of its member states and ensure the principle of non-interference in others' domestic affairs. The principle of the doctrine of non-interference is one of the most fundamental principles to sustain the ASEAN regionalism. From the viewpoint of ASEAN member States, this doctrine emerged as a form of awareness of each member state at the domestic level is still vulnerable affected by internal threats in the form of unrest until the coup.

On the South China Sea disputes, ASEAN trying not to conduct critical assessment of government policies claimant states on its claim in the South China Sea with purpose to maintain a peace. It is shown by the absence of a rebuke at meetings organized by ASEAN to the Claimant States who were hostile when small conflicts surface. On the other hand Firstly and most significantly, articles 14 and 15 of TAC do not apply unless the parties to the dispute agree. This means that one of the disputants can block the use of the dispute settlement mechanism. The non-mandatory nature of the procedure

means that it will be used only if there is a significant change in the political mindset of the High Contracting Parties in favour of objective dispute settlement. As things stand, the solution to any dispute threatening to disturb peace and harmony in the region will be political.

### **C.3 The Role of ASEAN**

The existence of ASEAN as an institution that seeks to improve the confidence building as well as the proliferation of collective identity can actually inhibit this process. The existence of formal institution becomes dilemma in this paradigm. Institutions that are too binding can make the journey to the social community running slow because of the character of a highly professional institution. However, in the absence of an institution that houses it difficult for the security community identified its existence. Declaration on the South China Sea is one of the products made by the ASEAN-China regarding the settlement of the South China Sea Disputes. The DoC expected mutual trust among States in dispute which can be further improved and the potential for conflict can be removed and replaced with a mutual beneficial cooperation.

However, there are instances in which the declaration did not run as expected in the DoC which was just a political document. It did not have binding legal force in which the parties involved in the dispute violates existing agreements and there were no sanctions which can be applied to the breaching party. For example, it was shown in the Mischief



Reef incident that if the Philippines report was true, then China had violated the article 5 of DoC. However, the DoC was an important step in maintaining the South China Sea disputes because the parties to the dispute had agreed to create stability and peace in the region to avoid confrontation and provocation inviting military conflicts. This declaration can also be used to support the implementation of cooperation which had been initiated through the Workshop on Managing Potential Conflict in the South China Sea and the starting point for the establishment of a legally-binding code of conduct.