

CHAPTER V

CONCLUSION

The South China Sea is a region which has abundance of both renewable and non-renewable natural resources. The presence of fish and marine life are abundant the availability of oil, natural gas, and mining making this region become very important. Besides, a very strategic geographical location and contain a high economic value increase significant value of this region.

At least there are six States with fight for the South China Sea. 4 Claimant States are ASEAN States members, Vietnam, the Philippines, Brunei and Malaysia, and the other two are China and Taiwan. These States claim object based on different reasons. China, Taiwan, Vietnam use the historical aspects as the basis for making a claim, the Philippines claims base on the discovery and occupation, while Brunei Darussalam and Malaysia make a claims base on continental shelf and the EEZ as set in UNCLOS.

Seizure which occurs in the region is almost certain used to affect the stability and security of Southeast Asia for 4 Claimant States which are the members of ASEAN. Considering this, ASEAN as an international organization requires self intervention in the dispute settlement process.

As a third party in the resolution of conflicts that hard to be solved, ASEAN has some good bargaining position to act as a mediator in the settlement of the South China Sea Disputes. First, Judging from the characteristics and identity as a mediator, in the eyes of ASEAN member States, ASEAN is consider as a fair legal (being recognized by its members and parties which are involved in conflict and have the characteristic of organization) and measurable organization viewed from previous action in solving territorial disputes. It is seen on the completion of Sipadan-Ligitan territorial dispute between Indonesia and Malaysia. Although ASEAN has not been able to provide resolution for a dispute between Malaysia and Indonesia, it is able to lead dispute settlement through peaceful negotiations. Moreover, in the conflict between Cambodia and Thailand in 2011, Indonesia as the ASEAN leaders in 2011, is chosen as a mediator and facilitates a meeting between the two States.

Secondly, ASEAN is the closest international organization which can act as a mediator in the multilateral conflict both in psychological and the coordinate of operation. Four ASEAN member States are involved in this conflict. On the other hand, Claimant States originating from Southeast Asia assume that the strength of China is not comparable with 4 Claimant States from Southeast Asia, even if it is combined. This tension, then, leads to the settlement of the conflict in a balanced state in which there is no Claimant States which are feel intimidated. In addition, there is

the unwillingness of big state interference in this matter to support the bargaining position of ASEAN as a mediator. Third, the existence of informal meetings initiated by Indonesia become a trigger the growth of trusteeship among Claimant States (especially China) regarding the good faith of ASEAN in resolving the conflict. On the other hand, the formation of ARF and communications which are made by ASEAN is intended to insert the importance of conflict resolution in the South China Sea peacefully. It directly or indirectly affected the mindset of Claimant States.

ASEAN has ASEAN Way as a foundation and soft diplomacy in resolving the South China Sea Dispute. ASEAN Way norms stated in the reference are (1) have mutual respect for the independence, sovereignty, and territorial integrity of all nations, (2) maintain the presence of interference, subversion, violence from outside forces, (3) obey non-interference in other States, (4) resolve disagreements and disputes by peaceful means, (5) conduct non-use of force.

The foundation of ASEAN tries to resolve, seek solutions, and reduce conflict. The efforts made by ASEAN, among others, include the issue of South China Sea in a few formal meeting of ASEAN and ASEAN official forum, it also makes the Declaration of Conduct of Parties. Meetings and forums are the AMM, Summit, ADMM, ACSOC, and ARF. Moreover, the informal mechanism of the ARF, which contributes a great deal to security cooperation, can be seen from its track-two diplomacy. Track-two diplomacy in the ARF can be considered a form of confidence-

building. That is, it hosts a numbers of informal meetings for participants with non-binding conditions which are able to engender a cordial and cooperative environment. This informal dialogue contributes to rapprochement and familiarization. While the Declaration of Conduct of Parties is not a treaty nor a Code of Conduct (CoC), it is a political statement to reduce tensions in the region and to begin cooperation. Although, on the other hand, ASEAN and China agreed to develop a Code of Conduct in the South China Sea as a document which is expected to create better effect. It is still in the negotiation process. Therefore the beneficial results for all parties can be reached.

Considering ASEAN's efforts, the authors concluded that the ASEAN Way is not effective in resolving the South China Sea Disputes as to the current dispute can not be resolved. Even for a conflict resolution mechanism, ASEAN has not been able to devise a mechanism which can be used as the main basis in resolving any disputes in the South China Sea. On the other hand, ASEAN Way is effective in reducing conflicts which have sprung up. Thus it does not become an open conflict. It becomes an evidence by every time a conflict arises, ASEAN always alert to remind the importance of a peaceful solution and the DoC as the declaration agreed at the formal meeting of ASEAN and ASEAN formal forum. As can be seen, conflict escalation in the South China Sea has been contained since the formation of the ARF. The extensive dialogue within the ARF seems to be an incremental process of rapprochement that has resulted in

the socialization of China and mutual understanding between parties; China's behaviour has become less aggressive and more cooperative in the South China Sea.

The conflict management of ASEAN avoids discussing contentious issues in order to gloss over conflicts under the cover of cooperation and to resolve disputes incrementally by building a sense of friendship; therefore, China prefers ASEAN's approach to conflict, which can be considered conflict avoidance rather than conflict resolution. To sum up, the ASEAN Way of diplomacy imposes institutional drawbacks on the ARF. This consensus decision-making impedes the ARF from making progress in preventive diplomacy. The ASEAN Way appears to avoid conflict by building more cooperation rather than finding concrete and complete resolutions to conflicts.

However, the ideas of consultation and dialogue of the ASEAN are able to forge mutual trust among participants. Thus all parties should refrain from provocative actions because only in this way the regional security and stability can be maintained. All States with an interest in the strategic waters should realize together that the only acceptable solution to the dispute is a peaceful resolution through dialogue involving all relevant stakeholders. ASEAN and China need to accelerate the preparation of the Code of Conduct of Parties in the South China Sea (CoC). Even the implementation of the Declaration of Conduct of Parties in the South China Sea (DoC) is still ongoing. CoC preparation is crucial at a time of

strategy as it will be governed by how States act claimants in the South China Sea. Hopefully, by the CoC, the measures which are categorized as the provocative one can be prevented as early as possible which is in turn contributing positively to regional security and stability. Considering that the South China Sea requires long time to create peaceful settlement, the existence of CoC will be crucial to maintain the status quo while maintaining security and stability.