



CHAPTER 5

The South China Sea in Multilateral Forums: Five Case Studies

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INTRODUCTION

This chapter examines whether or not multilateral forums have had any discernible impact on the behavior of claimant states involved in the South China Sea maritime disputes. It explores the research question: Do multilateral settings help restrain different parties' behavior and provide a conducive environment and mechanisms to foster the management and resolution of existing disputes? It reviews five case studies to evaluate how multilateral forums may or may not have contributed to moderating state behavior in the South China Sea. The five case studies include:

45th ASEAN Ministerial Meeting (July 2012),
Third ADMM-Plus Meeting (November 2015),
Special China–ASEAN Foreign Ministers Meeting (June 2016),

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Mid-Term Meeting of the Non-Aligned Movement (April 2018),
and
32nd ASEAN Summit (April 2018).

This chapter also provides a brief overview and analysis of developments in 2019 with a particular focus on the response by the international community to play a greater role in settling the South China Sea maritime disputes.

Case Study 1: 45th ASEAN Ministerial Meeting (July 2012)

Cambodia, as the ASEAN Chair for 2012, hosted the 45th Association of Southeast Asian Nations Ministerial Meeting (AMM) in Phnom Penh from 8 to 13 July (this section draws on Thayer 2012).¹ Prime Minister Hun Sen stated in his opening address that “we should give emphasis to the implementation of the DOC [Declaration on Conduct of Parties in the South China Sea], including the eventual conclusion of ‘*Code of Conduct (COC) in the South China Sea*’ [emphasis in original] (Abbugao 2012; Agence France Presse 2012).” When the 45th AMM concluded, Cambodia’s Foreign Minister, Hor Nam Hong, assigned responsibility for drafting the joint communiqué summarizing the AMM deliberations to a working party of four foreign ministers: Marty Natalegawa (Indonesia), Anifah Aman (Malaysia), Albert del Rosario (Philippines), and Pham Binh Minh (Vietnam) (Bower 2012). Their 132-paragraph draft summarized the wide range of issues taken up including the South China Sea. During the AMM the Philippines expressed its concerns at the standoff with China at Scarborough Shoal. Vietnam also expressed its concerns about the award of oil exploration leases by the China National Offshore Oil Company in Vietnam’s Exclusive Economic Zone (EEZ). The wording of the South China Sea section of the joint communiqué (paragraphs 14–16) became such a sticking point between Cambodia and the drafters of the joint communiqué that no communiqué was issued at the prerogative of Cambodia as ASEAN Chair. This was unprecedented in ASEAN’s forty-five-year history.

¹The following meetings were also held: ASEAN Post-Ministerial Conference with dialogue partners, the 19th ASEAN Regional Forum, ASEAN Plus Three Foreign Ministers Meeting, and the 2nd East Asia Summit Foreign Ministers Meeting.

Cambodia argued that the matters raised by the Philippines and Vietnam were bilateral and should not be included in an ASEAN joint communiqué. Cambodia further argued that the insistence by the Philippines and Vietnam on including references to Scarborough Shoal and Vietnam's EEZ prevented a consensus from being reached and Cambodia had no recourse but to withhold the joint communiqué. The leaked record of the foreign ministers' retreat held after the AMM reveals a different story. Discussion on the South China Sea took place in the plenary session. All ten foreign ministers spoke in turn. Cambodia's Foreign Minister Hor Namhong rounded off this part of the discussion on the South China Sea by bluntly declaring, "[t]here is no consensus, [we should] bracket the entire paragraph 14...17 for our decision. The most difficult is paragraph 16. It is a complex problem (quoted in Thayer 2012)."² The draft paragraph 16 read as follows:

In this context, we discussed in-depth recent developments in the South China Sea, including the situation in the affected Shoal/disputed area, exclusive economic zones and continental shelves of coastal states, particularly those contrary to the provisions of the 1982 UNCLOS. In this connection, we call upon all parties to respect the universally recognized principles of international law including the 1982 UNCLOS. Further [we call] upon all the parties to resolve the disputes in accordance with universally recognized principles of international law.

The remarks by Hor Namhong as ASEAN Chair provoked an interchange with the foreign ministers of Indonesia, Malaysia, Vietnam, and the Philippines. After each foreign minister spoke, Hor Namhong shot back rejecting each suggestion to move forward. Then the foreign ministers of Indonesia, the Philippines, Malaysia, and Vietnam spoke up again and the same pattern was repeated. Hor Namhong once again rejected all their proposals. According to the Summary of Cambodia Chair's intervention at the AMM Retreat, Hor Namhong made the following points:

² Cambodia's Ambassador to the Philippines also claimed that "eight out of ten ASEAN Member States agreed to all 132 points in the Joint Communique of the AMM, including the three paragraphs (14, 15, 17) related to the South China Sea, except paragraph 16 which is the bilateral dispute between the Philippines and China and Vietnam and China," See: Sereythanh 2012.

On Scarborough Shoal, we all know it is situated in the South China Sea, and we are talking here about the South China Sea. So why should we specify the Scarborough Shoal precisely in the South China Sea. Up to now, we all know the disputes among the concerned parties [are] in Spratlys and Paracels, but we never mention these name[s] in our talks with China. We always mention only the South China Sea.

On the inclusion of the wording on EEZ and continental shelf, we believe that every one is perfectly aware that the 1982 UNCLOS have precisely defined the EEZ and continental shelf, and other issues related to the sea. Why should we repeat again?”

In case we not find a way out, Cambodia as Chair has no more recourse to deal with this issue. So the problem we are facing now is either we have compromise text, [that will] not satisfy[y] everyone. If we cannot agree on [the] text, there should be no text at all. For the Joint Communiqué, countries should not try to impose [their] national position, but the common view in spirit of compromise.

Discussions on the wording of the South China Sea paragraphs continued until Friday morning, July 13, without breaking the impasse (Peter and Naren 2012). Ernest Bower, who spoke to diplomats in Phnom Penh, wrote,

Repeatedly, however, after taking the draft under consideration, Hor Nam Hong consulted with advisers outside of the meeting room and came back rejecting language referring to Scarborough Shoal and the EEZs, even after multiple attempts to find compromise. He said Cambodia’s view was that those were bilateral issues and therefore could not be mentioned in the joint statement. (Bower 2012)

During the days following the AMM Retreat, the Indonesian and Singaporean foreign ministers made a last-ditch effort to broker a compromise. They persuaded Vietnam and the Philippines to agree on a compromise on the wording. But repeated attempts to persuade Cambodia’s Hor Namhong failed. At their last meeting, Foreign Minister Hor Namhong “picked up his papers, and stormed out of the room” arguing it was a matter of principle for ASEAN not to take sides in bilateral disputes (Perlez 2012). According to the Philippines Undersecretary for Foreign Affairs Erlinda Basilio who attended the meetings in Phnom Penh: At the 45th ASEAN Ministerial Meeting, Secretary del Rosario discussed the situation in Scarborough Shoal. The text of the proposed Joint Communiqué’s item/subhead on the “South China Sea” was drafted by

the ASEAN foreign ministers, and several revisions were made to make the text acceptable to all. However, the Cambodian Chair consistently rejected any proposed text that mentions Scarborough Shoal (Basilio 2012a, b).

As a result of ASEAN's lack of consensus, as of this writing, China continues to invest in the military sense of surround and occupy Scarborough Shoal and deny access to the lagoon to Filipino fishermen.

Case Study 2: Third ADMM-Plus (November 2015)

The Third ADMM-Plus meeting was held in Kuala Lumpur in November 2015. Discussions on the South China Sea reached an impasse over whether or not to include a reference to the construction of artificial islands in the South China Sea in the meeting's joint statement. Because of the opposition of China and Russia, reference to artificial islands was dropped from the draft joint statement. The United States then took the following position, "[i]n our view, no statement is better than one that avoids the important issue of China's land reclamation and militarization in the South China Sea" (Parameswaran 2015). Five other Plus states and all ten ASEAN members supported the United States. No joint statement was issued (Tan 2015). China sought to escape culpability by charging that, "Certain countries from outside the region try to cram irrelevant content into joint declaration [sic] despite existing consensus (Parameswaran 2015)." At the conclusion of the Third ADMM-Plus, Malaysia issued a Chairman's Statement that included general reference to the South China Sea but not the specific details sought by the United States and other Plus members. Paragraph 9 of the Chairman's Statement read:

The meeting noted the joint efforts of the ADMM-Plus countries in promoting practical cooperation and collaboration on maritime security. The Meeting also noted the importance of the effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) and the early conclusion of the Code of Conduct in the South China Sea (COC), in order to build mutual trust and confidence and maintain peace, security, and stability in the region. (Chairman's Statement of the 3rd ASEAN Defence Ministers' Meeting-Plus 2015)

As of this writing, China has continued to deploy advanced weapons systems on its seven artificial islands.

Case Study 3: Special China–ASEAN Foreign Ministers Meeting (June 2016)

On 14 June 2016, China and Singapore co-chaired the Special China–ASEAN Foreign Ministers Meeting in Kunming, Yunnan province. The Special Meeting discussed preparations for the 25th anniversary commemorative ASEAN–China summit, other ASEAN–China-related issues, and the South China Sea (Thayer 2016a, b). Originally the co-chairs of the special meeting, China’s Wang Yi, the host, and Singapore’s Foreign Minister Vivian Balakrishnan, were to have addressed a press conference at the end of the Special Meeting. According to *The Straits Times*, all ten ASEAN ministers reached prior consensus on an ASEAN statement to be read out to a joint press conference by Balakrishnan, as ASEAN country coordinator for dialogue relations with China (Goh and Sim 2016). “But at the last minute,” the report continues, “the Chinese presented the ASEAN ministers instead with a 10-point consensus, which ASEAN could not accept.” The Special Meeting ended five hours late. ASEAN ministers decided that Balakrishnan “would not attend any joint press briefing as it would be rude to disagree with the Chinese minister in public.” Balakrishnan abruptly left Kunming.

ASEAN ministers also decided to issue their media statement separately to the press.³ According to *The Straits Times*, “That, too, was scuttled by the Chinese who lobbied its friends in the grouping to block the statement.” Media reports suggest that China applied diplomatic pressure on Cambodia and Laos to get them to back away from their earlier endorsement of the media statement. ASEAN ministers then decided that each member could “issue their own statement as they saw fit.” There was also confusion over how the original ASEAN media statement was to be disseminated. It was in this context that Malaysia, frustrated “over the immense pressure China has put on ASEAN,” released the text of the original joint statement to *Agence France Presse*. According to one

³On 16 June 2016, the official Vietnam News Agency released the complete text of the media statement drawn up by ASEAN foreign ministers. The text of this statement confirms that “the ASEAN member states consented to the content of the Press Statement of their Foreign Ministers.”

ASEAN diplomat quoted by *The Straits Times*, “Malaysia releasing it [the joint press statement] was a manifestation of the extreme frustration of the original five ASEAN members plus Vietnam at the particularly crude and arrogant behaviour of the Chinese.”

When the media statement was published, Chinese foreign ministry officials sought clarification from Laos as ASEAN Chair. The ASEAN Secretariat then instructed Malaysia to rescind the document, which it did three hours after its release. By this time ASEAN ministers had dispersed. Chinese officials then claimed that the document in question was not an official ASEAN statement. After the special meeting at least four other ASEAN foreign ministries—Indonesia, Philippines, Singapore, and Vietnam—issued separate statements. What is most striking about the media statement was that it was quite forthright in linking ASEAN–China relations to the South China Sea dispute despite China’s insistence there was no linkage. The media statement read:

We noted that 2016 is a milestone for ASEAN-China relations as it marks the 25th Anniversary of ASEAN-China dialogue relations. We look forward to working together with China to bring ASEAN-China cooperation to the next level. *But we also cannot ignore what is happening in the South China Sea as it is an important issue in the relations and cooperation between ASEAN and China.* [emphasis added]

The rest of the media statement repeated standard ASEAN declaratory policy on the South China Sea.

Case Study 4: Non-Aligned Movement Meeting (April 2018)

The 18th Mid-Term Ministerial Meeting of the Non-Aligned Movement (NAM) was held in Baku, Azerbaijan from 3 to 6 April 2018. For the second time in a row ASEAN’s proposed update to the Southeast Asia section of the Final Document was not included (Thayer 2018b). In 2016, ASEAN filed a reservation on the wording of the Southeast Asian section (paragraph 449) of the Final Document at the 17th NAM Summit because its update was not incorporated in the final statement.⁴ NAM

⁴Laos, as ASEAN Chair, sought to include this update, “concerns expressed by some ministers/leaders on the land reclamations and escalation of activities in the area, including

protocol would normally incorporate the views of ASEAN as the recognized regional organization for Southeast Asia. In 2016, the NAM bowed to Chinese pressure to delete references to the South China Sea. In 2018, ASEAN was once again unsuccessful in its attempt to include an update on the South China Sea in the Southeast Asia section (paragraph 526) of the Final Document. The wording that ASEAN sought to include in paragraph 526 of the Final Document of the 18th NAM Mid-Term Meeting was exactly the same as point 14 of the Zero Draft of the Chairman’s Statement of 32nd ASEAN Summit and was the only point from the Zero Draft to be included in the official Chairman’s Statement of the 32nd ASEAN Summit on 28 April.

Point 14 in the Zero Draft largely repeated past ASEAN policy. It reaffirmed the importance of freedom of navigation, the full implementation of the Declaration on Conduct of Parties in the South China Sea (DOC), and “warmly welcomed the improving cooperation between ASEAN and China, and were encouraged by the official commencement of the substantive negotiations towards the early conclusion of an effective COC (Code of Conduct) on a mutually-agreed timeline.”

Point 14 also welcomed practical measures such as the hotline between the foreign ministries of China and ASEAN members, and the operationalization of the Code for Unplanned Encounters at Sea (CUES).

Point 14 “took note of the concerns expressed by some Leaders on the land reclamations and activities in the region, which have eroded trust and confidence, increased tensions and may undermine peace, security and stability in the region.”

Finally, Point 14 “emphasised the importance of non-militarisation and self-restraint in the conduct of all activities by claimant and all other states, including those mentioned in the DOC that could further complicate the situation and escalate tensions in the South China Sea.” Basically, Point 14 and the ASEAN update to the Southeast Asia section of the NAM Final Document were a repeat of past ASEAN declaratory statements.

Case Study 5: 32nd ASEAN Summit (April 2018)

ASEAN convened its 32nd Summit in Singapore on 28 April 2018 (this section draws on Thayer [2018a, b](#)). Prior to the summit, on 20 April,

the increased presence of military assets and the possibility of further militarization of outposts in the South China Sea.”

ASEAN officials drew up a consolidated Zero Draft of the Chairman's Statement on the 32nd ASEAN Summit to guide discussions. The Zero Draft was divided into four major sections, Key Deliverables, ASEAN's External Relations, Regional and International Issues and Developments, and Other Matters. The draft totaled twenty-five points. The Preamble of the Zero Draft touched indirectly on the South China Sea; it stated that ASEAN leaders reaffirmed their "full respect for legal and diplomatic processes, without resorting to the threat or use of force, in accordance with universally recognised principles of international law" including the 1982 UNCLOS. Since the 2016 Arbitral Tribunal Award in the case brought by the Philippines against China, ASEAN has used the circumlocution "legal and diplomatic processes" to refer to the Arbitral Tribunal. This expression was taken out of the section on the South China Sea and moved to the opening of the ASEAN Chair's statement to emphasize its importance.

The Zero Draft's section on Regional and International Issues and Developments contained seven points on the South China Sea. As a result of discussions among ASEAN senior officials and ministers the Zero Draft of the Chairman's Statement was revised on 26 April. The Zero Draft was annotated with the interventions by member states indicating their support, rejection, or other comments on the wording. The seven points related to the South China Sea, for example, contained sixteen annotations from six of ASEAN's ten members. Cambodia topped the list with seven interventions or nearly forty-four percent of the total, followed by the Philippines with three interventions, Malaysia and Vietnam with two each, and Indonesia and Singapore only one intervention each. There were no comments by Brunei, Laos, Myanmar, or Thailand. A review of annotated Zero Draft reveals that four of the original seven points (numbers 15–20) were deleted in their entirety. For example, ASEAN leaders deleted point 17 in the Zero Draft that included reference to "legal and diplomatic processes" and a proposal by Vietnam and the Philippines to welcome the "award by the Arbitral Tribunal constituted under Annex VII to the UNCLOS." These deletions were confirmed with the official release of the Chairman's Statement on the official ASEAN Secretariat website after the summit (Chairman's Statement of the 32nd ASEAN Summit Singapore 2018). Only three points in the Zero Draft, numbers 14, 19, and 20, were left unchallenged.

Point 15 referred to "candid discussions" on the South China Sea and expressed serious concern "over recent and ongoing developments,

including large scale/all land reclamations and militarization in the area.” Cambodia and Malaysia requested that the words in italics be deleted. In the following sentence, the Philippines requested the insertion of the words in italics: “We took note of *serious* concerns expressed by some Ministers on land reclamations and escalation of activities in the area, *massive* island building, construction of outposts, and deployment of military assets in the disputed areas....” Cambodia moved to retain the original wording. In other words, Cambodia sought to water down the language.

Point 16 reaffirmed “the importance of maintaining and promoting peace, security, stability, *safety* and freedom of navigation in and overflight above the South China Sea.” Cambodia queried the word *safety* and stated it would get back on that point. Point 16 also called for “full respect for legal and diplomatic processes.” Cambodia called for this wording to be deleted, while Indonesia, Malaysia, Philippines, Singapore, and Vietnam called for its retention.

In Point 17, Cambodia queried the following words in italics and stated it would get back, “We emphasized the importance of non-militarisation and self-restraint in the conduct of activities, *including land reclamation* that could further complicate the situation and *disputes* or escalate tensions in the South China Sea.” The Philippines and Vietnam requested that the following words (in italics) be inserted in the text as follows, “We articulated ASEAN’s commitment to full respect for legal and diplomatic processes. *In this regard, we welcomed the issuance of the 12 July award by the Arbitral Tribunal constituted under Annex VII to the UNCLOS.*” The intervention by the Philippines is notable since President Duterte declared he would not press China on the implementation of the Award. Finally, Cambodia queried Point 18 in its entirety and stated it would get back. Point 18 in the draft read, “We highlighted the urgency to intensify efforts to achieve further substantive progress in the implementation of the DOC in its entirety, particularly Articles 4 and 5 as well as substantive negotiations for the early conclusion of the COC including the outline and time line of the COC.” Article 4 called for the resolution of territorial disputes by peaceful means without the resort to the threat of force through consultations and negotiations by the parties directly concerned on the basis of international law and UNCLOS. Article 5 called for the parties to exercise self-restraint in activities “that would complicate or escalate disputes and affect peace and stability....”

The deletion of four points stands in marked contrast to the statement issued by the ASEAN Chair giving fulsome endorsement of “an ASEAN-centric regional architecture that is open, transparent, inclusive and rules-based” and ASEAN’s commitment to “full respect for legal and diplomatic processes... in accordance with the universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (Chairman’s Statement of the 32nd ASEAN Summit Singapore 2018).” ASEAN policy on the South China Sea, Point 23 of the official Chairman’s Statement (formerly Point 14 in the Zero Draft), did not mention the Arbitral Tribunal or legal and diplomatic process. In sum, ASEAN policy on the South China Sea was boiled down to seven points by the 32nd Summit:

First, ASEAN reaffirms “the importance of freedom of navigation and overflight above the South China Sea.”

Second, ASEAN underscores the importance of “the full and effective implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) in its entirety.”

Third, ASEAN warmly welcomes “the improving cooperation between ASEAN and China” specifically “the official commencement of the substantive negotiation towards the early conclusion of an effective Code of Conduct in the South China Sea (COC) on a mutually-agreed timeline.”

Fourth, ASEAN also welcomes practical measures that could reduce tensions, accidents, misunderstandings, and miscalculation such as the successful testing of the hotline between ASEAN members and China “to manage emergencies in the South China Sea” and the operationalization of the Code for Unplanned Encounters at Sea (CUES).

Fifth, ASEAN takes “note of the concerns expressed by some Leaders on the land reclamations and activities in the area, that have eroded trust and confidence, increased tensions and many undermine peace, security and stability in the region.”

Sixth ASEAN “reaffirmed the need to enhance mutual trust and confidence, exercise self-restraint in the conduct of activities and avoid actions that may further complicate the situation and pursue peaceful resolution of disputes in accordance with international law, including the 1982 UNCLOS.”

Seventh, ASEAN “emphasized the importance of non-militarisation and self-restraint in the conduct of activities by claimants and all other states, including those mentioned in the DOC that could further complicate the situation and escalate tensions in the South China Sea” (This is a reference to China).

CHINA PRESSES ON

In early July, China’s geological survey vessel *Haiyang Dizhi 8* and its escorts entered Vietnam’s EEZ without permission to commence a seismic survey. At the same time, the China Coast Guard harassed the oil drilling rig the *Hakuryu-5* and its service vessels on contract with Russia’s Rosneft Vietnam in adjacent waters. These actions precipitated a three-month standoff that ended in October. On 17 July, two weeks after the commencement of the standoff, Le Thi Thu Hang, spokesperson for Vietnam’s Ministry of Foreign Affairs, significantly called on “related countries and the international community to work together to contribute to the protection and maintenance of [order, peace and security in the South China Sea].” The United States was the first country to respond. The Department of State issued two strongly worded press statements, the first on 20 July and the second on 22 August. Vietnam’s call for support from the international community also received support from Trilateral Security Dialogue (TSD), comprising the United States, Japan, Australia, and the European Union. But, unlike the United States, neither the TSD nor the EU mentioned China by name. Nonetheless, the international community identified three new themes: concern about threats to oil and gas production, the need for China and the Philippines to comply with the Award of the Arbitral Tribunal, and the interests of third parties in the outcome of ASEAN–China negotiations on a Code of Conduct in the South China Sea. Vietnam, for its part, took the unusual step of raising China’s actions at the 69th United Nations General Assembly (28 September 2019) and the Non-Aligned Movement Summit in Baku, Azerbaijan (25–26 October 2019). When ASEAN convened its 35th Summit in Bangkok on 3 November 2019, the Chairman’s Statement made no mention of the three-month standoff between China and Vietnam. The Chairman’s Statement repeated past ASEAN formulations by taking note of “some concerns on... activities in the area which have eroded trust and confidence, increased tensions and may undermine peace, security and stability in the region.” The Chairman’s Statement

repeated ASEAN’s long-standing call for “self-restraint in the conduct of activities... that may further complicate this situation....” ASEAN’s call for self-restraint went unheeded by China. In April the following year, in a repeat of the events of 2019, the *Hai Yang Dizhi 8* accompanied by escorts sailed into waters off the East coast of Malaysia to contest the operations of the *West Capella*, a survey ship under contract with Petronas, the state oil company.

CONCLUSION

Five case studies were examined to determine whether multilateral forums may or may not have contributed to moderating state behavior in the South China Sea: 45th ASEAN Ministerial Meeting (July 2012), Third ADMM-Plus Meeting (November 2015), Special China–ASEAN Foreign Ministers Meeting (June 2016), Mid-Term Meeting of the Non-Aligned Movement (April 2018), and 32nd ASEAN Summit (April 2018). The five case studies, while not necessarily representative of all the multilateral forums convened by ASEAN and the Non-Aligned Movement, provide compelling evidence that multilateral forums did not moderate China’s behavior with respect to the maritime disputes in the South China Sea nor did multilateral forums mitigate major power rivalry within multilateral forums. The case studies revealed that internal divisions within ASEAN, exacerbated by Chinese interference, undermined the ability of multilateral forums to moderate state behavior as evidenced by the three-month standoff between Vietnam and China in the waters near Vanguard Bank. The multilateral forums discussed in this chapter operate on the basis of consensus. This results in watering down contentious issues between member states. In addition, multilateral forums issue non-binding statements that may bring some measure of political and moral pressure on states to comply but do not contain any enforcement mechanism or penalty for non-compliance. Thus, ASEAN’s October 2012 call on China “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features...” (Declaration of conduct 2002) has not restrained China from occupying uninhabited features in the Spratlys and transforming them into militarized artificial islands. In summary, national security and national sovereignty of ASEAN member states continues to override attempts to move beyond

consensus decision-making in matters that affect the region to adopt some form of qualified majority voting that parallels the $N-x$ in economic decision-making (Thayer 2017; Heydarian 2018).⁵

REFERENCES

- Abbugao, M (2012), ‘ASEAN Pushed on South China Sea Code’, *The Advertiser*, 9 July, viewed 29 May 2020, <https://www.adelaidenow.com.au/news/world/asean-pushed-on-south-china-sea-code/news-story/5ed7f60d854565fb02e1cbb936f2f60b>.
- Agence France-Presse (2012), ‘Hun Calls for ASEAN South China Sea Code’, *The Australian*, 10 July, p. 12 (online Dow Jones Factiva).
- Basilio, EL (2012a), ‘Why There Was No ASEAN Joint Communiqué?’ *Official Gazette*, 18 July, viewed 29 May 2020, <https://www.officialgazette.gov.ph/2012/07/18/why-there-was-no-asean-joint-communicue/>.
- Basilio, EL (2012b), ‘What Happened in Phnom Penh?’ *The Philippine Star*, 19 July, viewed 29 May 2020, <https://www.philstar.com/headlines/2012/07/19/829282/what-happened-phnom-penh>.
- Bower, EZ (2012), ‘China Reveals Its Hand on ASEAN in Phnom Penh’, Southeast Asia from the Corner of 18th and K Streets, 19 July. Retrieved from https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/120719_SoutheastAsia_Vol_3_Issue_14.pdf.
- Chairman’s Statement of the 3rd ASEAN Defence Ministers’ Meeting-Plus (3rd ADMM-Plus) Kuala Lumpur (2015, November 4). Retrieved from <https://www.asean.org/wp-content/uploads/images/2015/November/statement/Chairmans%20Statement%20of%20the%203rd%20ADMM-Plus.pdf>.
- Chairman’s Statement of the 32nd ASEAN Summit Singapore (2018, April 28). Retrieved from <http://asean.org/storage/2018/04/Chairmans-Statement-of-the-32nd-ASEAN-Summit.pdf>.
- Declaration on Conduct of Parties in the South China Sea (2012, October 17). Retrieved from https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

⁵In the $N - x$ formula, N stands for two or more ASEAN countries who agree to trade liberalization measures. The x stands for the remainder of ASEAN countries. Under this formula the N countries can proceed and the x countries can join later. As early as 2014, ASEAN officials initiated informal discussions on altering ASEAN’s consensus decision-making outside the economic sector by adopting a qualified majority voting system. This system would operate below the ASEAN Summit which would continue to make decisions by consensus. The idea of a qualified majority system has surfaced from time to time without any action.

- Goh, SN & Sim, W (2016), 'China "Consensus" Statement Left Asean Divided', *The Straits Times*, 16 June, viewed 29 May 2020, <https://www.straitstimes.com/asia/se-asia/chinas-consensus-statement-left-asean-divided>.
- Heydarian, RJ (2018), 'The Asean Way Needs Modifying', *The Straits Times*, 25 January, viewed May 30, 2020, <https://www.straitstimes.com/opinion/the-asean-way-needs-modifying>.
- Parameswaran, P (2015, November 4), 'China Blocked Asean Defense Meeting Pact Amid South China Sea Fears: US Official', *The Diplomat*. Retrieved from <https://thediplomat.com/2015/11/china-blocked-asean-defense-meeting-pact-amid-south-china-sea-fears-us-official/>.
- Peter, Z & Naren, K (2012), 'Cambodia Criticized for Asean Meeting Failure', *The Cambodian Daily*, 14–15 July, viewed 29 May 2020 <https://opendevelopmentcambodia.net/news/cambodia-criticized-for-asean-meeting-failure/>.
- Perlez, J (2012), 'Asian Leaders at Regional Meeting Fail to Resolve Disputes Over South China Sea', *The New York Times*, 12 July, viewed <https://www.nytimes.com/2012/07/13/world/asia/asian-leaders-fail-to-resolve-disputes-on-south-china-sea-during-asean-summit.html>.
- Tan, SS (2015), 'The 3rd ADMM-Plus: Did the Media Get It Right?' RSIS Commentary, No. 257, 26 November. Retrieved at <https://www.rsis.edu.sg/rsis-publication/rsis/co15257-the-3rd-admm-plus-did-the-media-get-it-right/#.Xbt63i1LIQI>.
- Sereythanh, H (2012), 'Letter to Ms. Ana Marie Pamintuan, Editor-in-Chief', *The Philippines Star*, 26 July, viewed 29 May 2020, <http://www.akp.gov.kh/?p=22903&print-1>.
- Thayer, C (2012, August 20), 'ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?', *The Asia-Pacific Journal*, 10(4), Issue 3. 1–23. Retrieved from <https://apjff.org/2012/10/34/Carlyle-A.-Thayer/3813/article.html>.
- (2016a, June 17), 'The ASEAN-China Special Meeting Mystery: Bureaucratic Snafu or Chinese Heavy-Handedness?', *The Diplomat*. Retrieved from <http://thediplomat.com/2016/06/the-asean-china-special-meeting-mystery-bureaucratic-snafu-or-chinese-heavy-handedness/>.
- (2016b, June 19), 'Revealed: The Truth Behind ASEAN's Retracted Kunming Statement', *The Diplomat*. Retrieved from: <http://thediplomat.com/2016/06/revealed-the-truth-behind-aseans-retracted-kunming-statement/>.
- (2017), 'ASEAN at 50: Still a Work in Progress', Chennai Centre for China Studies C3S Article, no: 75, pp. 1–4, viewed 30 May 2020, <http://www.c3sindia.org/geopolitics-strategy/asean-at-50-still-a-work-in-progress-by-carlyle-a-thayer/>.

——— (2018a, April 26), ‘The South China Sea and ASEAN’s 32nd Summit Meeting’, *The Diplomat*. Retrieved from <https://thediplomat.com/2018/04/the-south-china-sea-and-aseans-32nd-summit-meeting/>.

——— (2018b, April 30), ‘Consensus by Deletion: Reviewing the 32nd ASEAN Leaders’ Summit and the South China Sea’, *The Diplomat*. Retrieved from <https://thediplomat.com/2018/05/consensus-by-deletion-reviewing-the-32nd-asean-leaders-summit-and-the-south-china-sea/>.