

CHARLES UNIVERSITY

FACULTY OF SOCIAL SCIENCES

Institute of Political Studies

Department of Political Science

Bachelor's Thesis

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Ondřej Klajbl

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The Clash of Maritime Claims in the South China Sea

Bachelor's Thesis

Author of the Thesis: Ondřej Klajbl

Study programme: Political Science and International Relations

Supervisor: Mgr. et Mgr. Tomáš Kučera, Ph.D.

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Declaration

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague, 27.4.2024

Ondřej Klajbl

References

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Abstract

The aim of this thesis is to address two distinct mechanisms in international relations—bilateralism and multilateralism—concerning maritime disputes in the South China Sea. The objective of the comparative analysis is to assess the effectiveness of these mechanisms in resolving disputes and to determine which is more effective. In the first part of the thesis, a general description of the disputes will be provided to establish a foundational knowledge necessary for the analysis. The second part will assess the effectiveness of bilateralism in the South China Sea through four case studies involving Vietnam-China, Philippines-China, Malaysia-China, and Brunei-China relations. Subsequently, the thesis will examine multilateralism with the focus on the Association of Southeast Asian Nations (ASEAN) as the principal multilateral organization in the region. The final section will conduct a comparison of both frameworks, aiming to identify the more effective mechanism for dispute resolution in the South China Sea. Additionally, this thesis seeks to evaluate the applicability of two prominent international relations theories—realism and liberalism—to the dispute-resolution mechanisms in the South China Sea. In the concluding section, an assessment will be made to determine which theoretical framework more accurately explains the use of these dispute-resolution methods in the region.

Abstrakt

Cílem této diplomové práce je zabývat se dvěma odlišnými mechanismy mezinárodních vztahů – bilateralismem a multilateralismem – v souvislosti s námořními spory v Jihočínském moři. Účelem komparativní analýzy je posoudit účinnost těchto mechanismů při řešení sporů a určit, který z nich je efektivnější. V první části práce bude poskytnut obecný popis sporů, aby bylo zajištěno základní porozumění nutné pro analýzu. Druhá část zhodnotí efektivitu bilateralismu v Jihočínském moři prostřednictvím čtyř případových studií zahrnujících vztahy mezi Vietnamem a Čínou, Filipíny a Čínou, Malajsií a Čínou a Brunejí a Čínou. Následně se práce zaměří na multilateralismus s důrazem na Asociaci národů jihovýchodní Asie (ASEAN) jako hlavní multilaterální organizaci v regionu. V závěrečné části bude provedeno porovnání obou rámců s cílem určit efektivnější mechanismus pro řešení sporů v Jihočínském moři. Kromě toho si tato práce klade za cíl vyhodnotit aplikovatelnost dvou významných teorií mezinárodních vztahů – realismu a liberalismu – na mechanismy řešení sporů v Jihočínském moři. V závěrečné části bude provedeno hodnocení, která teorie přesněji vysvětluje použití těchto metod řešení sporů v regionu.

Key words

South China Sea, China, Maritime dispute, Maritime law, Bilateralism, Multilateralism

Klíčová slova

Jihočínské moře, Čína, Námořní spor, Námořní právo, Bilateralismus, Multilateralismus

Název práce

Střet námořních nároků v Jihočínském moři

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Introduction

The South China Sea region has experienced prolonged instability, primarily attributable to the expansive maritime claims of the People's Republic of China. China asserts sovereignty over the entire sea, grounding its claim in historical precedents and arguing for an inherent right to reclaim what it views as its traditional maritime territory. However, this stance conflicts directly with the principles established by the United Nations Convention on the Law of the Sea (UNCLOS), which allows other nations to claim parts of the sea based on defined legal criteria, such as the exclusive economic zone and continental shelf provisions.

The disputes over the South China Sea have become a central issue in regional diplomatic negotiations. To address this conflict, the involved countries employ two primary diplomatic strategies: bilateral negotiations between individual countries and China, and multilateral negotiations facilitated by the Association of Southeast Asian Nations (ASEAN). The results of these diplomatic efforts have varied; while some negotiations have yielded positive outcomes, others have failed to produce significant advancements. Ultimately, no framework has yet achieved the resolution of the disputes.

The objective of this bachelor's thesis is to analyse both diplomatic methods and to address the research question: Is the South China Sea dispute more effectively resolved through bilateral engagement between individual claimant states and China, or via the ASEAN as a regional multilateral institution? Determining the more effective diplomatic approach is crucial for informing politicians, diplomats, and scholars about the method that possesses greater potential to definitively resolve the dispute. Thus, this thesis aims to contribute to a strategic understanding that can guide future diplomatic initiatives and policymaking in the region.

To effectively address the research question, this thesis will be structured as follows: The first section will provide a brief overview of the South China Sea dispute, outlining the key concepts and events crucial for the subsequent analysis. The second section will describe and analyse the bilateral diplomatic engagements between China and the individual claimant states within the region. The third section will similarly examine the multilateral interactions facilitated by the ASEAN. Finally, the concluding section will present a comparative analysis of the two diplomatic approaches to determine their relative efficacy in resolving the dispute. Additionally, upon identifying the most effective diplomatic process for dispute resolution, the thesis will utilize the findings to assess whether the outcome aligns more closely with the international relations theories of realism or liberalism.

Extensive literature exists analysing the complexities of the South China Sea dispute. In his article *Examining ASEAN's effectiveness in managing South China Sea dispute*, Le Hu challenges prevailing views that see ASEAN's role as ineffective, arguing that such criticisms are somewhat misguided (Hu 2023). Furthermore, Naifa Rizani Lardo, underscores the importance of the ASEAN-led dispute-resolution framework, emphasizing its criticality and arguing against its dismissal (Lardo 2021). Peng and Ngeow provide a rare analysis that encompasses both bilateral and multilateral relations. However, they do not provide comparative analysis and their focus predominantly lies on proposing new alternatives to the existing multilateral framework, rather than assessing the effectiveness of both approaches (Peng & Ngeow 2022) (see also Koga 2022).

There are also scholars who express a more critical viewpoint regarding the current state of dispute-resolution frameworks in the South China Sea. Notably, Mark Beeson, in his article *The Great ASEAN Rorschach Test*, underscores the ineffectiveness of ASEAN and other multilateral approaches in the region (Beeson 2020). Jones and Jenne argue that claimant countries demonstrate a preference for bilateral over multilateral solutions, suggesting a predominant inclination towards bilateral negotiations for resolving the dispute (Jones and Jenne 2015). Additionally, Yasintha Selly Rossiana believes that an effective resolution to the South China Sea dispute requires the integration of both bilateral and multilateral measures (Rossiana 2022).

However, the above-mentioned literature primarily focuses on analysing the multilateral framework of ASEAN. While these works sometimes mention bilateral methods of dispute resolution, they do not engage thoroughly with these methods, nor do they provide a comparative analysis of both approaches. Therefore, the objective of this thesis is to equally investigate both diplomatic methods and subsequently provide a comparative analysis to constructively assess which method has demonstrated a higher level of effectiveness.

1. Methodology

The bachelor's thesis will adopt a qualitative case study methodology to examine two predominant approaches within international relations for resolving disputes between nations: bilateralism and multilateralism. Bilateralism is characterized by direct negotiations between the two parties directly involved in a dispute, facilitating targeted and specific dialogues. Conversely, multilateralism entails the participation of multiple nations in the resolution process, typically orchestrated through international organizations, treaties, or forums, thus leveraging collective action and broader consensus-building mechanisms (Kakoti & Singh 2023). In the context of the South China Sea (SCS), both approaches have been employed over the years as mechanisms to address and potentially resolve disputes.

Concerning bilateral approaches, the thesis will present and analyse four distinct case studies: the diplomatic relations and dispute resolution processes between China and Vietnam, China and the Philippines, China and Malaysia, and China and Brunei. The analysis will specifically focus on aspects relevant to dispute resolution in the SCS, examining how these bilateral engagements have sought to address territorial and maritime conflicts. In terms of multilateral approaches, this study will examine the role of the Association of Southeast Asian Nations (ASEAN) as the principal international institution providing multilateral dispute resolution mechanisms within the region.

The dispute has been largely escalated after the introduction of UNCLOS III, a document establishing the current international maritime law. Furthermore, in February 1992 China enacted the “Law on the Territorial Sea and the Contiguous Zone”, through which it claims considerably great proportion of the SCS based on its historic right of the “nine-dash line” concept (Council on Foreign Relations 2024). Given that these developments mark the beginning of the contemporary dispute, the presented cases will be measured since this moment and will exclude disputes sparked before this date.

The analysis of SCS disputes involves both primary and secondary data sources to establish a comprehensive understanding of the regional dynamics and the effectiveness of dispute resolution mechanisms. Primary data includes international agreements and official state statements. These are essential for capturing the official positions of the involved parties and serve as tangible evidence of the effectiveness of various dispute resolution mechanisms. For instance, the treaty between Vietnam and China concerning maritime borders in the Gulf of Tonkin is a primary source that illustrates a successful bilateral negotiation and agreement.

Secondary data consists of scholarly articles and books. These sources are crucial for contextualizing and interpreting the primary data. Academic works bring added value to the analysis by integrating primary data within broader research frameworks, thereby enhancing the relevance and objectivity of the findings.

To conduct an analysis of effectiveness, it is necessary to establish a clear definition of the term, ensuring the application of a valid measurement methodology. Within academic discourse, effectiveness is frequently conceptualized as “an actor’s ability to achieve its stated goals” (Hu 2023), emphasizing the outcomes. This may be termed as the “external effectiveness”.

However, in international politics is commonly recognized that an actor may not usually achieve all of its stated objectives and must compromise to fulfil at least some of them. Accordingly, this analysis will adopt a graduated scale of effectiveness, categorizing outcomes as high, medium, or low. High effectiveness is achieved when an actor secures more favourable outcomes than its adversary or successfully achieves all its objectives. Medium effectiveness is characterised by mutual compromises between the actor and its adversary, resulting in a relative equilibrium of outcomes. Low effectiveness is achieved in a situation where an actor’s outcomes are less favourable compared to the adversary, or when the bilateral measures fail. For the purpose of this bachelor thesis, the “adversary” will consistently be the People’s Republic of China.

However, in examining the effectiveness of multilateralism, it becomes necessary to add an additional type of effectiveness: internal effectiveness. Internal effectiveness measures the internal processes among the member parties of an international organization. The academic literature establishes various criteria for assessing the internal effectiveness of multilateral organizations (Hegemann 2012; Bretherton & Vogler 2013; Hu 2023). For the scope of this thesis, the criterion of coherence has been selected. Given that the ASEAN operates on a consensus decision-making model, the degree of coherence among its members is pivotal for achieving high external effectiveness. Coherence, in this context, refers to the alignment of goals, strategies, and actions among the member states.

2. Theoretical framework

The comparative analysis of these two diplomatic approaches aims to address the following research question: Is the South China Sea dispute better resolved through bilateral engagement between individual claimant states and China, or via the Association of Southeast Asian Nations (ASEAN) as a regional multilateral institution? This inquiry is supported by two key hypotheses. The first hypothesis critiques the efficacy of ASEAN as a dispute resolution mechanism. Critics contend that ASEAN lacks the requisite authority to effectively challenge Chinese claims in the SCS, rendering it an ineffective platform for dispute resolution (Amer 2015; Beeson 2020). The second hypothesis suggests that due to the perceived ineffectiveness of the ASEAN framework, claimant states are increasingly resorting to bilateralism as a more viable mechanism for resolving disputes (Jones & Jenne 2015).

In the thesis, the analysis of the hypotheses will serve as a mean to test two prominent theories within international relations: realism and liberalism. Realists believe that international institutions reflect the strategic calculations of self-interested states and often defer to the influence of a great power, in this context, China (Mearsheimer 1995). While realism does not explicitly advocate for the superiority of bilateral relations, the theory aligns more with bilateralism as it enables a state to negotiate more precise agreements that safeguard its security interests.

Conversely, liberalism believes that international institutions can discourage the states to act as self-interested, promoting more favourable outcomes through cooperation amongst a broader array of parties (Ibid.). Therefore, should the analysis demonstrate that bilateralism serves as a more effective mechanism for dispute resolution in the SCS, it would produce empirical support to the realist perspective. Alternatively, should multilateralism prove more effective, the liberalist view gains the victory.

3. The importance and problem of the South Cina Sea

Prior to conducting the analysis, it is essential to explain the significance of the South China Sea (SCS) and the resultant issues. The SCS possesses critical attributes that makes it one of the most pivotal maritime zones globally. Firstly, the SCS serves as a crucial trade hub, facilitating approximately 21% of worldwide trade flows, including 40% of China's imports and acting as the main maritime corridor between the Indian and Pacific Oceans (Ernst 2022). Secondly, the region is estimated to hold significant energy resources, with projections indicating 190 trillion cubic feet of natural gas and a minimum of 11 billion barrels of oil, alongside the potential for further undiscovered deposits (Asia Maritime Transparency Initiative 2024). Thirdly, the SCS is a biodiversity hotspot with approximately 10% of the world's fish stock and hosting over 3000 marine species, making it indispensable for about 1.5 billion people reliant on its fisheries. Nevertheless, the sustainability of these resources has been breached by overfishing, with reports suggesting up to a 90% reduction in marine biomass since 1950, thus posing a significant risk of resource depletion (Ernst 2022).

These characteristics make the SCS one of the most crucial areas for the global economy. Dominance over the SCS would lead to substantial control over international trade flows and afford a strategic military advantage, given the sea's critical geographical position in East Asia. These considerations have created a situation where four regional countries find themselves in an ongoing conflict with China, centred on allegations violating international law and the aggressive breach of their sovereign territories. Let us have a closer look at these problems.

3.1 UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) is an important multilateral treaty concluded on 10 December 1982 by the United Nations. The treaty replaces a previously widespread principle of the *freedom of the seas* used by most countries since the 17th century. Under the traditional doctrine, littoral countries were entitled to a territorial sea of 3 nautical miles from their shoreline, a measure based on the maximum range of cannon fire. Beyond the boundaries, the high seas were considered international waters, open to free access by all countries without exceptions (Young 2015).

However, in the 20th century, the development of underwater excavations technologies led numerous coastline countries to advocate their desire to extend the maritime territorial

limits, aiming to exploit the discovered seabed resources. These growing aspirations led to many multilateral discussions, conducted to find a solution to the needs. The culmination of these efforts was realized between 1973 and 1982 with the introduction of UNCLOS III, the third and final document resolving the problem of setting a binding international law of the sea for all parties within the UN. As of 2024, the document has been ratified by 168 countries and the European Union (United Nations 2023).

The convention establishes several key provisions, mainly three important maritime zones for littoral countries to obey. The first is the territorial sea, delineated as an area that must not exceed 12 nautical miles from the coastal baseline. Within the domain, states possess the autonomy to legislate and enforce laws according to their jurisdiction without any restrictions. Nevertheless, these states are obliged to provide passage to foreign vessels sailing under the rule of *innocent passage*, defined by UNCLOS as “not prejudicial to the peace, good order or security of the coastal state” (UNCLOS 1982, Article 19). The provision implies that foreign vessels are permitted, for instance, to enter local ports for trading purposes. However, activities such as fishing conducted by foreign actors are deemed as violation of innocent passage (Ibid.).

The second agreed demarcation is the contiguous zone, extending additional 12 nautical miles beyond the territorial sea. Within this zone, the coastal states are also permitted to exercise their jurisdiction but specifically limited to four areas: customs, fiscal, immigration or sanitary laws (UNCLOS 1982, Article 33).

The Exclusive economic zone (EEZ) represents the third and most debated maritime domain delineated by the UNCLOS. Extending up to 200 nautical miles from the coastal baseline, the EEZ affords a state exclusive rights over the exploration, exploitation, conservation, and management of natural resources, both living and non-living, within this area (UNCLOS 1982, Article 56). The most significant change from the territorial sea and contiguous zone is the fact that the littoral country cannot set their own laws but must follow the jurisdiction established by the convention. Regarding fisheries, foreign states are permitted to engage in fishing activities within the EEZ of another state only to the extent that such activities are not explicitly prohibited by the littoral country (Englander 2019).

The interpretation of EEZ provisions has emerged as a principal source of contention among the SCS coastal states. A problem occurs when the EEZs of two or more countries overlap. In such scenarios, UNCLOS mandates that the involved states are required to negotiate an agreement based on the convention’s legal framework. Nonetheless, despite being a

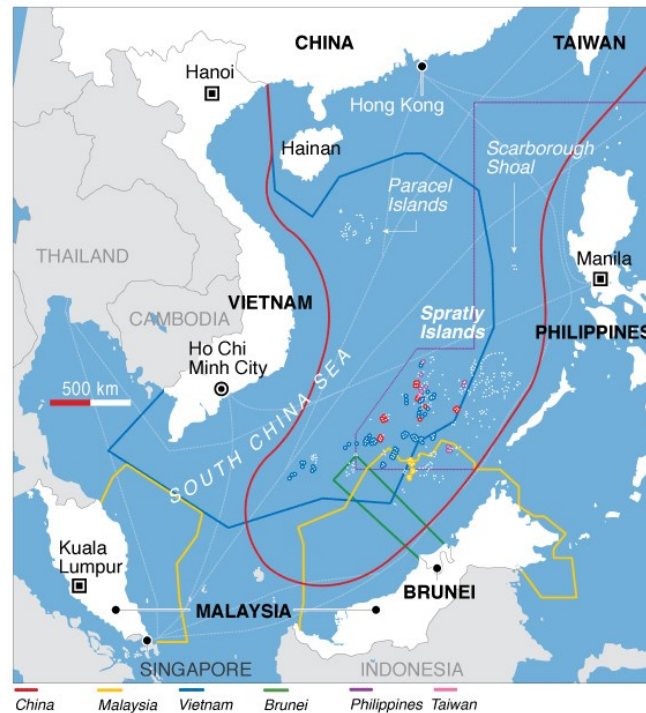
signatory to UNCLOS, China contends that it is entitled to exceptions based on historic rights. Let us look closely at the explanation of the China's maritime claims in the SCS.

3.2 The Nine-Dash Line

China's territorial assertions in the SCS are best described by the "nine-dash line", a demarcation visible on official Chinese maps, forming a U-shaped line. China defends these claims by asserting that it possesses historic rights to exert sovereignty over the maritime areas within the nine-dash line. The argument is not of recent origin. Chinese authorities have been invoking this right since the 1930s as a reaction to French annexation of the Spratly Islands. The narrative remained consistent through the transition to communist governance, with the only notable modification of a dash in the Gulf of Tonkin, reflecting negotiation processes with the newly established communist regime in North Vietnam (Caruana 2023).

The nine-dash line covers approximately 62% of the entire area of the sea, leading to jurisdictional conflicts with several Southeast Asia nations. Specifically, Vietnam, Philippines, Malaysia, and Brunei also claim portion of the SCS, mainly according to the principles of the EEZ. In the north, China and Vietnam competes over the Paracel Islands, with China maintaining presence there since 1974. Further south, both China and Vietnam claim to the entirety the Spratly Islands, while the Philippines, Malaysia, and Brunei assert sovereignty over parts of them (Rossiana 2022). Moreover, in the northeast, China and the Philippines clashed in 2012 over the Scarborough Shoal resulting in China's successful control since then (Petty 2023). Overall, these disputes render the South China Sea as one of the most contested maritime regions globally, characterised by overlapping claims from five countries (Rossiana 2022).

Figure 1: Visual representation of the SCS disputes



Source: Stearns 2012. Available at: <https://blogs.voanews.com/state-department-news/2012/07/31/challenging-beijing-in-the-south-china-sea/>

Within the territory, China has engaged in various activities aimed to strengthen their presence and control. These actions range from resource extraction and military exercises to harassment of foreign fishing vessels, actions which breach the international law set by the UNCLOS III. However, the most questionable practice is the construction and militarization of artificial islands in the Paracels and Spratlys. Since 2014, China embarked on extensive and rapid large-scale land reclamation efforts, transforming 20 features in the Paracel and 7 in Spratly Islands into approximately 3200 acres of new land. While China also controls the Scarborough Shoal, it has refrained from undertaking construction activities there, a decision arising from diplomatic negotiations with the Philippines government (Japan Ministry of Defence 2024). By militarizing these artificially created features, China significantly escalates tensions and undermines the rights of other SCS claimants, particularly concerning their EEZs.

China's assertive land reclamation efforts have served as a clear message to other claimants, especially to Philippines who instituted arbitral proceedings against China under the provisions of UNCLOS III. The arbitration addressed the legitimacy of Chinese historic rights, the status of certain maritime features and the legality of Chinese activities in the SCS (Permanent Court of Arbitration 2016).

In July 2016, the Permanent Court of Arbitration issued a ruling with two main findings. First, it established that China does not possess any historical rights to express the nine-dash line. Second, it found that the features in Spratly Islands and the Scarborough Shoal are “rocks which cannot sustain human habitation or economic life of their own” and, thus, do not qualify for EEZs under UNCLOS (Ibid.). The ruling constituted a de jure victory for the Philippines. However, China’s immediate reaction was the rejection of the findings, stating that they are in direct violation of the UNCLOS, declaring them “illegal, null and void” (The State Council Information Office of the PRC 2023).

Figure 2: Comparison of Fiery Cross Reef (occupied by China) from 2014 to 2016



Source: Woodruff 2018. Available at: <https://abcnews.go.com/International/reporters-notebook-flying-us-military-tabs-china-south/story?id=57745253>

3.3 Theoretical explanation of Chinese actions

To conduct an analysis of effectiveness of the dispute-resolution measures in the SCS, it is important to understand the motivations underpinning China’s actions within the region. To do so, we turn to ongoing academic discourse, which seeks to theoretically contextualize these behaviours. The academia reached consensus that especially two international relation theories stand out when accessing the problem: structural realism, more specifically its subset offensive realism, and constructivism.

Structural realism views the international system as anarchic, attributed to the absence of a supranational governing body or any authoritative entity overarching the sovereign states. Within this framework, states emerge as the principal actors, with their primary objective being to ensure their survival. To achieve this end, states strive to establish a balance of power,

thereby preventing any single state from achieving hegemonic dominance. Over time, structural realism has divided into two distinct strands: defensive realism and offensive realism. Defensive realism suggests that states should focus on maximizing their security to sustain their position within the international system. Offensive realism advocates for the maximization of power, believing that the pursuit of hegemony constitutes the most effective strategy to secure a state's survival and interests (Dinh 2019).

Realists interpret China's strategic ambitions, encapsulated in the vision of the "Chinese Dream" promoted by Xi Jinping, as aiming to displace the existing unipolar world order, dominated by the United States, with a new bipolar system. John Mearsheimer, a leading proponent of offensive realism, believes that China must first address and secure its regional sphere by establishing hegemony there, mirroring the historical precedent set by the United States under the Monroe Doctrine (Llanos 2020). Asserting dominance is also the question of economic survivability. Control over the SCS would ensure more secure access to essential resources, a vital concern for a nation with high production demands. Furthermore, with the development of maritime capabilities, China could more effectively challenge the naval supremacy of the US, shifting the balance of global geopolitics (Ibid.).

These considerations collectively underscore China's determination to augment its power, thereby challenging the prevailing global order—a notion that underscores the applicability of the offensive realism theoretical framework. China's militarization of the SCS serves as a strategic manoeuvre to consolidate control over this critical region, positioning itself favourably for future advancements. This strategy aligns with Xi Jinping's pronounced emphasis on the significance of military strength in China's external engagements. As articulated by Xi on December 8, 2012, "To achieve the great rejuvenation of the Chinese nation, we must steadfastly champion a unified goal of a rich country and powerful military" (Zhang 2014).

In addition to the realist perspective, there is a second explanation. Constructivists believe that state behaviours are shaped by collective norms, beliefs, and social identities. Between the 1839 to 1945, China suffered so called "century of humiliation", first marked by the Opium Wars, sparked by the European colonial powers, and the Japanese imperialism, an occupation of the Chinese territory until the end of Second World War. This period fostered in China an identity of a victim, having been deprived of its once dominant status in East Asia. By following the Chinese Dream, China aims to exercise the "great rejuvenation of the Chinese nation", a vision that encompasses the recovery of territories perceived as historically

belonging to China prior to the onset of the First Opium War. Thus, from the constructivist viewpoint, China's actions, while seen by others as aggressive, are construed by China itself as legitimate efforts to redress historical injustices (Llanos 2020).

Therefore, while constructivism provides an understanding of the reasons, realism more accurately explains the actions of China in the SCS. It is important to consider both theoretical perspectives, as they offer valuable insights into the analysis of the effectiveness of international dispute resolution mechanisms in the SCS.

4. Bilateral relations

Bilateral relations have consistently served as an essential diplomatic instrument in resolving disputes in the South China Sea. Proponents emphasize their role in cultivating trust and cooperation among nations, asserting that bilateral discussions are superior for addressing mutual concerns and facilitating dialogue in a more sensitive manner. Bilateralism effectively enhances the relationships between the parties involved (Banlaoi 2021). Furthermore, some scholars suggest that bilateralism could foster maritime joint development initiatives between China and the concerned parties, potentially leading to a peaceful resolution of disputes in the South China Sea (Widian & Arimadona, 2018). However, there are opposing views which argue that such joint activities might predominantly benefit China, enabling it to impose its own rules to the detriment of smaller states (Ibid.).

Since the beginning of the dispute, China has exhibited a preference for bilateral negotiations over multilateral approaches, asserting that involving only the directly concerned countries is essential for resolving the disputes. Additionally, China contends that multilateral discussions unnecessarily internationalize the disputes by deliberately involving extra-regional countries, which could lead to further escalation, a perspective Beijing views as a direct provocation (Embassy of the PRC in the Republic of Zimbabwe 2011). China also maintains that its policy of a "peaceful rise" aligns with these actions, thereby not posing a threat to individual claimant states (Lai 2017). Although in recent years China has shown a more favourable attitude towards multilateral approaches, bilateralism continues to play a pivotal role in the resolution of disputes. This paper will now examine four respective cases of bilateralism in the South China Sea.

4.1 Vietnam-China

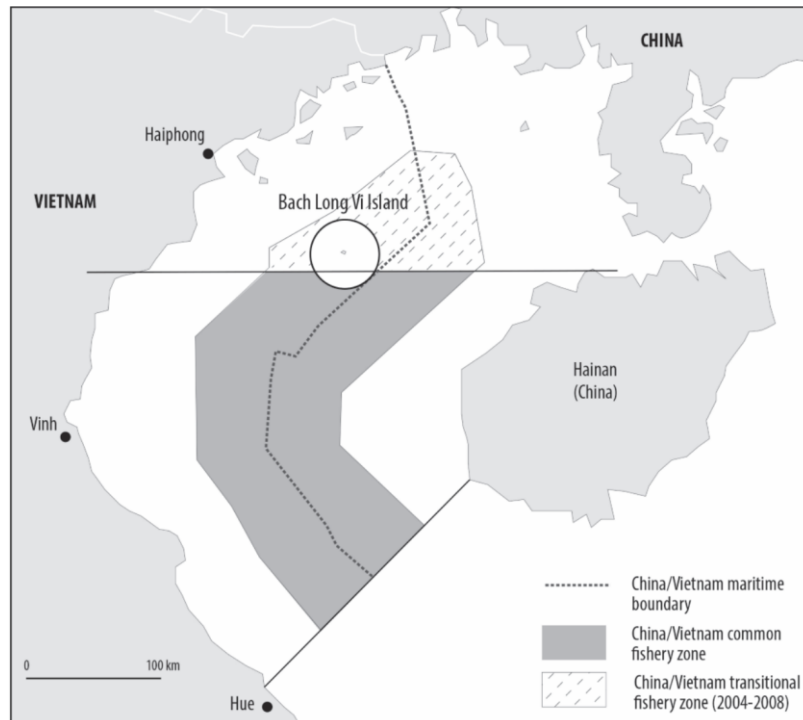
Vietnam and China possess deep-rooted bilateral relationships, fostered by geographical proximity and a shared commitment to communist ideologies. In January 1950, the People's Republic of China was the first nation to formally recognize the Socialist Republic of Vietnam. Initially, the two nations committed to uphold the principles of good-neighbourliness and comradeship in their diplomatic interactions. Nonetheless, since that period, Sino-Vietnamese relations have begun to deteriorate, influenced by events such as the Sino-Vietnamese War in 1979 and the Chinese military's seizure of the Johnson South Reef in 1988 (Thu 2020). Although the two countries normalized their relations again in 1991, the mutual distrust have

never vanished. Despite resolving their land conflicts and other tensions, a dispute over maritime borders continues to endure.

Since the beginning of 21st century, China and Vietnam have successfully negotiated several agreements concerning maritime borders and cooperation, predominantly in the Bei Bu Wan, also known as the Gulf of Tonkin the two nations ratified the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones, and Continental Shelves in the Gulf of Tonkin. This agreement was established in accordance with the principles established by the UNCLOS III concerning overlapping EEZs. Both parties consented to establish a demarcation line connecting 21 specified points determined by geographic coordinates (United Nations 2005).

To support the agreement, China and Vietnam negotiated additional settlement addressing fisheries issue in the Gulf. In the same year, both parties signed the Fisheries Agreement which was enacted in June 2004 (Food and Agriculture Organization 2004). The agreement established a joint fishery zone within their respective EEZs, facilitating cooperative fishery activities. Furthermore, the countries agreed to hold annual meetings to discuss regulations for fishing vessels, resolve disputes related to the agreement, address potential issues in the Gulf, and manage the issuance of fishing permits and maritime supervision (Ibid.). From 2006 to 2021, the two parties conducted 31 joint patrols in the Gulf of Tonkin, thereby enhancing the effectiveness of the agreement (Peng & Ngeow 2022). Although the agreement expired in 2020, both countries have committed to negotiate a new agreement in the forthcoming years (Vietnam Law 2023).

Figure 3: The Sino-Vietnamese maritime boundary and fishery zone in the Gulf of Tonkin



Source: Tréglodé 2016. Available at: <https://journals.openedition.org/chinaperspectives/7030>

However, the Gulf of Tonkin in its entirety represents only 9% of the claimed Vietnamese EEZ. To mitigate the maritime dispute outside of the gulf, Hanoi has sought to engage with Beijing in several ways. In 2011, both countries signed the Agreement on Guiding the Settlement of Sea-Related Issues Existing Between the Two Countries, establishing main principles in managing the SCS dispute in line with the UNCLOS III and Declaration on the Conduct of Parties in the SCS (DOC) (Embassy of the Socialist Republic of Vietnam in the USA 2011). Following this agreement, several bilateral working groups were established to discuss cooperative measures for dispute resolution. Since their inception, these working groups have convened regularly to address and navigate the complexities of the maritime issues (Peng & Ngeow 2022).

Despite the establishment of bilateral mechanisms, Sino-Vietnamese maritime disputes have progressively worsened year by year. In the Paracel Islands, China has undertaken extensive militarization of islands that fall within Vietnam's EEZ. In the Spratly Islands, Vietnam maintains control over 21 rocks and reefs, which actually exceeds the number controlled by China (Asia Maritime Transparency Initiative 2024). Various incidents have escalated tensions, such as in 2014 when China deployed an oil rig deep into the Vietnamese EEZ, nearly precipitating violent confrontations between the navies of both nations (Thu 2020).

Additionally, Hanoi's enthusiastic endorsement of the 2016 Tribunal Award has significantly exacerbated tensions with China. Conversely, while Vietnam portrays itself as an advocate for peaceful resolution of disputes, Chinese scholars assert that it was China that had to press Vietnam to extend the Gulf of Tonkin agreement, attributing the need for extension to Vietnam's lack of political will (Peng & Ngeow 2022).

The deteriorating state of Sino-Vietnamese bilateral relations has led Hanoi to seek partners outside the SCS to gain leverage above China. Following the 2014 oil rig incident, which persisted for several weeks without resolution, the Vietnamese government launched a global media campaign to counteract Chinese assertiveness and elevate international awareness of the dispute. This strategy proved successful, prompting China to terminate its operations ahead of the planned schedule (Leaf 2014). The effectiveness of this campaign served as a wake-up call for Hanoi, underscoring the necessity of international support to prevent further Chinese encroachments on Vietnamese maritime claims, despite the professed principle of good neighbourliness (Thu 2020).

Although being an advocate for dispute-resolution measures through ASEAN, Vietnam has embarked on a solo mission to counter the great power dynamics in the SCS. On one hand, Hanoi has strengthened its relations with the US through a series of defence dialogues, while also, on the other hand, holding discussions with China (Lan 2024). These efforts have yielded positive outcomes for Vietnam. Through strategic hedging, Vietnam has effectively struck into China's apprehension about the internationalization of the dispute, knowing that further Chinese escalation could prompt U.S. intervention. As a result, China is actively seeking to ease bilateral tensions, as evidenced by its keen interest in extending the Gulf of Tonkin agreement.

Considering the contemporary evolution of Vietnam-China bilateral relations, the results of effectiveness measuring are rather mixed. Looking at the Gulf of Tonkin agreement, the effectiveness of the bilateral relationship could be judged as medium. Vietnam was able to achieve compromise with China about equally dividing the gulf while cooperating on fishing activities. However, at the same time, the effectiveness of dialogues concerning the Paracel and Spratly Islands seems to be low, as no bilateral measure successfully addressed the tensions of militarizing the features. Additionally, the practice of hedging seems to be working for Vietnam, indicating that the diplomatic advantage is on Hanoi's side as they recently signed 36 agreements with China, some of them concerning maritime cooperation in the SCS and the establishment of a hotline between Beijing and Hanoi (VnExpress 2023).

Overall, the Vietnam-China bilateral relations exhibit the attributes of medium effectiveness, with Vietnam and China achieving relative equilibrium of outcomes, especially in the Gulf of Tonkin. However, if Vietnam chooses to further internationalize the dispute, for example by signing a defence agreement with the US, there would be a high risk of China abandoning its compromise stance and pursuing further escalation in the region to achieve military advantage over Vietnam and its allies.

Figure 4: Vietnam-China: Events and their impact on the bilateral relations

Events	Impact on the bilateral relations*
<i>1988 – Chinese seizure of Johnson Reef</i>	Negative
<i>2000 – Gulf of Tonkin agreement</i>	Positive
<i>2004 – Fisheries agreement</i>	Positive
<i>2011 – Agreement on Guiding the Settlement of Sea-Related Issues</i>	Positive
<i>2014 – Oil rig incident</i>	Negative
<i>2016 – Arbitral award</i>	Negative

* Negative: worsened relations; Positive: improved relations

Source: Compiled by the author

4.2 Philippines-China

Similar to Vietnam, the Philippines and China have a long and complex history of diplomatic relations concerning the SCS dispute, dating back to 1995 when a significant incident involving Mischief Reef in the Spratly Islands occurred. This event, initially triggered by reports of China constructing military infrastructure on a feature claimed by the Philippines, rapidly escalated into a full military standoff, with both countries damaging each other's infrastructure (Koga 2022). To resolve the conflict, China and Philippines reached an agreement on bilateral code of conduct on August 10, 1995, stating that “[d]isputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect”, establishing the first official bilateral framework in the region (Ministry of Foreign Affairs of the PRC 2016).

With some exceptions, the framework served as sufficient throughout the rest of the 1990s. Under the principles of the bilateral code of conduct, several working groups were established to address overlapping claims in the SCS. These groups were largely effective, with both China and the Philippines committing to prioritize peaceful development over their differences (People's Daily 2001). However, with the signing of the DOC in 2002, bilateral consultation between the two countries lost meaning, as China accepted the multilateral path for resolving the disputes. A renewed hope for a bilateral framework emerged in 2004 with the agreement on joint exploration of potential oil deposits in the sea. However, this agreement deliberately set aside territorial disputes and ultimately did not lead to significant dispute-resolution progress. After three years, it was apparent that the agreement had not yielded any substantial developments in resolving the disputes (Koga 2022).

A significant but negative breakthrough occurred in 2012 when Chinese military and fishing vessels initiated a standoff with the Philippine navy, culminating in the de facto Chinese occupation of the feature (Petty 2023). Located just 108 nautical miles from the Philippine shores, this incident represents the most substantial Chinese infringement within the Philippine EEZ. In response, the Philippines immediately sought to address the situation through bilateral means. Despite China's assurances against further militarization of the shoal, Manila struggled to secure a reasonable settlement that would compel China to relinquish control and restore effective Philippine jurisdiction over the feature (Koga 2022).

By the end of 2012, Manila felt it had exhausted all diplomatic measures due to obstruction from China on a bilateral level and from Cambodia on a multilateral level. Consequently, President Aquino of the Philippines argued that the only viable option left was to draw international attention to the dispute, a move that China would most likely perceive as a direct challenge, given its stance against the internationalization of the disputes. Therefore, on January 22, 2013, the Republic of Philippines initiated arbitral proceeding against China under Annex VII of the UNCLOS, addressing Chinese claims based on historic rights and the status of certain maritime features in the SCS (Permanent Court of Arbitration 2016). The period from 2013 until the Arbitral award in 2016 marks the worst time of Philippines-China relations, with China denouncing both the process and the results of the arbitration.

A surprising turn of events occurred in 2016, the same year as the Arbitral award came into effect, when Rodrigo Duterte succeeded Benigno Aquino as the President of the Philippines. Marking a significant shift in foreign policy, Duterte chose China as the destination for his first official overseas visit, signalling a China-friendly approach. Despite the recent

Arbitral award, this visit facilitated a diplomatic breakthrough, with both sides establishing a Bilateral Consulting Mechanism. The creation of such framework was widely acclaimed through the SCS region as an “exemplary practice in the peaceful management of conflicts in the SCS”, praising the effectiveness of bilateral approach (Peng & Ngeow 2022). One of the initial successes of this new framework was Beijing's decision to grant Filipino fishermen access to the Scarborough Shoal, which marked a significant concession and a positive step forward in bilateral relations (Ernst 2022).

Under the Duterte presidency, six BCM meetings were conducted, generating rather positive diplomatic outcomes. Both countries reaffirmed their commitment to principles such as the freedom of navigation and overflight in the SCS, and they mutually vowed to resolve ongoing territorial disputes through peaceful means. However, despite the BCM contributing to the overall improvement of Philippines-China relations, it did not adequately address specific dispute-resolution measures in the SCS (Banlaoi 2021). Moreover, the BCM's activity diminished due to the COVID-19 pandemic and the shift to a new, more China-sceptical administration in the Philippines in 2022. Since the change in presidency, only two BCM meetings have been held, reflecting the decreased engagement in this bilateral dialogue (Qingqing 2024).

Philippines-China relations present a complex dynamic, characterized by significant crises on one hand and bilateral breakthroughs on the other, making it a focal point of regional attention. While the Philippines has engaged in numerous bilateral discussions with its Chinese counterparts, these talks have not effectively resolved any incidents or territorial disputes in the region. Conversely, China has been assertively exercising its maritime claims, particularly in the Scarborough Shoal where it has "generously" granted access to Filipino fishermen. This move, while appearing conciliatory, has led Manila to de facto accept Beijing's claim over the shoal.

Additionally, the Bilateral Consultation Mechanism (BCM) has enabled China to gain international recognition for its willingness to engage in dialogue to ease tensions. However, the only notable positive development for the Philippines was the international backing received through the 2016 Arbitral award, which underscored the limitations and ineffectiveness of bilateral talks in resolving disputes. Thus, the bilateral relations between the Philippines and China can be characterized by low effectiveness, with the Philippines generally achieving less favourable outcomes than its adversary.

Figure 5: Philippines-China: Events and their impact on the bilateral relations

Events	Impact on the bilateral relations
<i>1995 – Mischief Reef Incident</i>	Negative
<i>1995 – Bilateral Code of Conduct</i>	Positive
<i>2002 – Signing of DOC</i>	Negative
<i>2012 – Scarborough Shoal Incident</i>	Negative
<i>2013 – The initiation of arbitral process against China</i>	Negative
<i>2016 – Bilateral Consulting Mechanism</i>	Positive
<i>2022 – New administration of the Philippines</i>	Negative

Source: Compiled by the author

4.3 Malaysia-China

Malaysia's approach to its bilateral relations with China distinctly differs from that of Vietnam and the Philippines, particularly in their shared stance against foreign involvement in regional disputes. Echoing China's perspective, Malaysia has asserted that “intervention or involvement of parties not directly concerned could be counter-productive and further complicate the aforementioned differences” (Embassy of the PRC in Malaysia 2014). During the Mischief Reef incident in 1995, which captured the attention of Asian nations, Malaysia called for a peaceful resolution through bilateral negotiations, emphasizing that “the South China Sea issue should be settled through bilateral negotiations” (Lai 2017). Additionally, despite being a founding member of ASEAN, Malaysia has expressed distant attitude to its framework, aligning more with the Chinese propositions, indicating warm relations with the country (Ibid.).

Despite maintaining a reasonably good bilateral relationship with China, Malaysia has not achieved significant progress in resolving maritime tensions over the years. For a long period, China actively encouraged Malaysia to establish a bilateral framework to address the overlapping claims in the SCS. This led to what was initially perceived as a breakthrough when the two countries announced the establishment of a bilateral consultation mechanism for

maritime issues in September 2019 (Chow 2021). However, the initial excitement was short-lived, as no substantial progress has been made since the announcement. The underlying reason of this stagnation is simple. Although Malaysia advocates for the bilateral negotiation of individual issues, it strongly favours the development of a dispute-resolution mechanism through an ASEAN Code of Conduct.

It also seems that Malaysia regrets the establishment of the BCM, as it has been purposefully avoiding making big statements regarding the mechanism. There are few reasons, apart from the advocacy of the COC, that explain this strange behaviour. First, there is a real fear from Malaysia that if they fully enter bilateral talks about the SCS, they will need to admit that there is a “dispute” in the first place, since Malaysia’s official statement is that there is no dispute at all. Second, Malaysia is aware that China is the bigger party and, thus, would have had significant advantage in the bilateral mechanism. This would potentially lead to Malaysia’s entrapment in China’s scheme, for example, through joint development processes, seeing the mechanism as a zero-sum game. Finally, Malaysia has closely observed the development of Philippines-China BCM which has shown that it is not working properly. Additionally, Kuala Lumpur feels that the Philippines have already been led to the “joint development trap” (Peng & Ngeow 2022).

The case of Malaysia-China bilateral relations is indeed intriguing. While maintaining ostensibly warm relations with China, Malaysia is cautious about altering the status quo, even when it means defying Chinese wishes. The establishment of the BCM initially promised a new avenue for potentially successful bilateral engagement. However, since there is currently no progress at all and none is predicted to happen in the future, Malaysia-China bilateral relations concerning maritime tensions in the SCS exhibits the attributes of low effectiveness, with the framework being de facto non-existent.

Figure 6: Malaysia-China: Events and their impact on the bilateral relations

Events	Impact on the bilateral relations
<i>2019 – Establishment of BCM</i>	Neutral*

*Cannot be judged, almost non-existent

Source: Compiled by the author

4.4 Brunei-China

Brunei's bilateral relations with China have deep historical roots, dating back nearly two millennia, with formal diplomatic ties established in 1993. Since then, the two countries have engaged in significant cooperative projects, such as joint petrochemical ventures and the construction of the Sultan Haji Omar Ali Saifuddin Bridge (Wei 2024).

However, when it comes to the contentious SCS disputes, Brunei has adopted a cautious and calculated approach. Brunei advocates for a two-step strategy that involves resolving individual maritime conflicts in accordance with the UNCLOS III while simultaneously participating in the development of an ASEAN-China Code of Conduct (Husseini 2023). Subsequently, Brunei has not established any formal bilateral framework with China that would concern the resolution of overlapping maritime claims.

Brunei's strategy in the SCS is indeed characterized by a desire to maintain a neutral position, unique among the claimant states. Unlike other countries embroiled in the SCS disputes, Brunei has not engaged in active control measures within its claimed EEZ. This has led some observers to mistakenly believe that Brunei is indifferent to the developments in the disputed waters. However, this perception was challenged in 2022 when Brunei took a significant step by announcing the implementation of a new coastal surveillance system operated using drones (Wei 2024). This development marks Brunei's most assertive move related to its maritime claims since they were initially declared

Brunei emphasizes the importance of multilateral mechanisms when resolving the SCS disputes. Nevertheless, it is worth to mention that Brunei is still the youngest state in the region, and it is possible that in the future might be more proactive in securing their maritime rights through other means of engagement with China. However, as of now, since Brunei does not have any specific bilateral framework with China dedicated to dispute resolution in the SCS, the effectiveness of its current approach in terms of concrete dispute resolution must be considered low.

Figure 7: Summary of the level of effectiveness of bilateral relations in the SCS

Bilateral Relations	Level of Effectiveness
<i>Vietnam-China</i>	Medium
<i>Philippines-China</i>	Low
<i>Malaysia-China</i>	Low
<i>Brunei-China</i>	Low

Source: Compiled by the author

5. Multilateral relations

The dispute in the South China Sea extends beyond the individual claimant states, by involving the most significant regional multilateral organization, the Association of Southeast Asian Nations (ASEAN). Following the end of the Cold War, many Southeast Asian nations found themselves at the centre of an emerging power vacuum. This shift marked a political momentum for ASEAN to assume the role of a regional security institution, thereby interlinking smaller states to collectively navigate the challenges posed by global power dynamics. Consequently, ASEAN occupies an indispensable role in maintaining regional stability.

ASEAN has demonstrated effectiveness in several ways. Firstly, since its establishment in 1967, there has been no war among its member states, despite the presence of certain tensions. Secondly, ASEAN has successfully established institutional rules and has effectively taught its member states to resolve intra-regional tensions through ASEAN-led mechanisms. Thirdly, the organization has facilitated economic cooperation and established forums for member states to engage in multilateral dialogues, coordinate policies, establish norms, and build mutual confidence (Koga, 2022). Overall, ASEAN has succeeded in linking Southeast Asian states in a manner that allows them to maintain autonomy without subordinating themselves to any great power.

One of the reasons why ASEAN has proven itself effective is its adherence to the unique concept of “ASEAN Way”, a diplomatic approach based on four core principles: non-interference, quiet diplomacy, non-use of force, and consensus-based decision-making (Mahaseth 2022). Collectively, these principles foster an informal atmosphere that sets ASEAN apart from other multilateral organizations. Member states are not constrained by rigid norms, allowing them to engage in mutual dialogues on a more personal level. Consequently, it is crucial to regard ASEAN as a process-oriented rather than a rule-based institution (Lardo 2021).

Regarding SCS, ASEAN aims to resolve the conflict by multilateral rather than bilateral means. By collaborating with member states and China, ASEAN seeks to establish a mutual Code of Conduct (COC) that would act as a framework for the peaceful resolution of disputes in the SCS. For ASEAN members, the COC would serve as a mechanism to moderate China’s actions in the region. Conversely, for China, the COC represents a pivotal document that could compel claimant states to avoid internationalizing the issue, thereby deterring the United States

from advancing military objectives in the region. Given recent developments, the COC negotiations have become a focal point of multilateral relations in the region (Ibid.).

Nevertheless, ASEAN has been experiencing problems when addressing the SCS and the COC. Critics contend that ASEAN has not effectively resolved the conflict, with their arguments summarized as follows: First, ASEAN has failed to adequately support its claimant members or effectively counter Chinese expansionism, leading to a lack of unity among member states. Many nations have opted for bilateral engagements or alternative dispute-resolution mechanisms, thereby undermining the organization's consensus-based decision-making processes. Second, sceptics argue that China exploits the multilateral framework to sway member states, thereby gaining an advantage and rendering ASEAN ineffective in managing the disputes (Hu 2023). An analysis of these criticisms is essential to assess the effectiveness of ASEAN's dispute-resolution capabilities in the SCS.

5.1 ASEAN's unity – internal effectiveness

One of the principal criticisms regarding the effectiveness of ASEAN's dispute-resolution mechanisms is the organization's lack of a unified stance on critical issues. This was particularly evident following the Scarborough Shoal incident in 2012, when the Philippines called for ASEAN to present a united diplomatic front against China at the ASEAN Foreign Ministers' Meeting (AMM). However, the AMM failed to issue a joint communiqué for the first time in its history, primarily due to Cambodia's veto. This incident led some external observers to speculate that Cambodia's decision was influenced by its close ties with China (Koga 2022).

However, ASEAN's disunity during the Scarborough Shoal incident was not solely due to Cambodia's close ties with China. During the meeting, Vietnam and the Philippines were the most vocal proponents of confronting China's intrusions in the South China Sea with firm diplomatic language. Cambodia, as the chair of ASEAN at the time, rejected these demands, citing a conflict with the ASEAN Way's principles, particularly the commitment to quiet diplomacy (Hu, 2023). The demands from Vietnam and the Philippines sought to internationalize the conflict, which directly contradicted this principle. Additionally, despite these challenges, ASEAN managed to articulate its stance through the "Six-Point Principles on the South China Sea," issued in 2012. This statement called for the peaceful resolution of conflicts and mutual cooperation in establishing the COC. This development demonstrates that, despite underlying tensions, all ASEAN members share a common interest in preventing

escalation in the SCS.

Another principle that every ASEAN member upholds is the importance of resolving the SCS dispute through an ASEAN-led approach to negotiate the COC. Firstly, successfully achieving the COC would reinforce the proclaimed centrality of ASEAN, aiding not only in managing the SCS dispute but also in addressing other potential future disputes. Secondly, the COC represents the only multilateral framework that is mutually accepted by both ASEAN member states and China. Thirdly, a binding COC could diminish the claimants' need to involve external powers such as the United States, thereby ensuring that ASEAN remains detached from the complexities of great-power politics (Hu 2023).

Although ASEAN claimant states often have differing objectives in the SCS disputes, they share fundamental mutual interests. Notably, none of the countries desires to confront these disputes in isolation. They recognize that the SCS issue is inherently regional and best addressed through an ASEAN-led framework. This awareness fosters unity among Southeast Asian nations, even during periods of mutual tensions or dissatisfaction. Consequently, it is reasonable to assert that ASEAN countries exhibit a significant degree of coherence and internal effectiveness.

5.2 ASEAN and China – external effectiveness

Since the resurgence of the dispute in the 1990s, China has expressed a preference for bilateral negotiations to resolve the South China Sea disputes. This preference stems from a straightforward reason: in bilateral settings, China, as the larger party, can often negotiate outcomes that are more advantageous to itself. Moreover, bilateral discussions tend to facilitate more direct and potentially fruitful results. However, through sustained consultations and workshops, ASEAN has successfully persuaded China to acknowledge that the conflict is a regional issue, necessitating a collective approach. All claimant parties have shown support for resolving the dispute through an ASEAN-led mechanism, aiming to establish a binding operational framework (To 1999). Due to this realisation, in 2002, ASEAN and China were able to achieve the first point on their path to COC by signing the Declaration on the Conduct of Parties in the South China Sea (DOC) (ASEAN 2002).

The DOC primarily serves as a mutual commitment to negotiate a more binding agreement in the future. However, the DOC itself outlines several general rules that all parties are expected to follow. Firstly, all conflicts must be resolved through international law,

specifically according to the provisions established by the UNCLOS III. Secondly, all parties are to refrain from inhabiting and militarizing the features in the Paracel and Spratly Islands. Thirdly, all involved parties should seek ways to cooperate and build mutual trust (Ibid.). Beyond these general norms, the DOC also facilitated two significant diplomatic achievements. Firstly, it induced China to shift from its preference for bilateral negotiations to engaging with the multilateral structures of ASEAN. Secondly, the period from the signing of the DOC in 2002 until 2008 was characterized by general peace in the South China Sea, with no significant incidents occurring (Hu 2023).

However, the DOC was unable to prevent the resurgence of rising tensions, particularly in 2011 and more significantly in 2012. It became evident that the DOC was no longer a viable option for maintaining the status quo. Additionally, the 2013 arbitration ruling further escalated tensions. Externally, ASEAN appeared disunified, as it failed to issue a strong diplomatic communiqué that would condemn China's unilateral actions. This situation led many observers to question ASEAN's external effectiveness, suggesting that the organization was not sufficiently equipped to resolve the intense and ongoing disputes in the region (Koga 2022).

Despite its apparent weaknesses, ASEAN's reluctance to use strong words of condemnation following the 2016 Arbitral Award played a crucial role in ensuring that the award did not jeopardize the ongoing willingness of both sides to resolve the dispute through the COC. Moving beyond the award, ASEAN exerted significant diplomatic pressure, while China, eager to divert attention from the arbitration's results, agreed to accelerate the COC negotiations. This joint effort partially culminated in August 2018 with the introduction of the "Single Draft Negotiating Text" (SDNT), a document that outlined the structure for future negotiations on the COC (Storey 2019). The draft was a pivotal development as it provided a concrete program for moving forward. The text specified that negotiations would address five key issues: the geographical scope of the COC, mechanisms for dispute settlement, duties to cooperate, the role of third parties, and the legal status of the COC (Koga 2022).

ASEAN and China successfully conducted their first official reading of the COC in 2019, marking a significant step forward in their diplomatic negotiations. However, the progress was severely disrupted by the emergence of the COVID-19 pandemic, particularly affecting China as it closed off from the global community. As a result, until 2023, there was no significant advancement in conducting the second reading of the COC, and the framework previously outlined remained unfulfilled. A breakthrough occurred in July 2023 when Indonesia, keen to reinvigorate the negotiation process, hosted the ASEAN Ministerial

Conference with China. During this conference, both parties agreed on a new set of guidelines to expedite the negotiations for the COC. They set an ambitious goal to conclude the talks by the end of 2026 (Laksmana 2023).

Despite the ongoing COC negotiations, some experts believe that the outcome might be unachievable, as there has not yet been any binding document negotiated between ASEAN and China (Hu 2023). However, there is a precedent that suggests potential for progress. In 2003, a year after the signing of the DOC, ASEAN successfully negotiated China's ratification of the Treaty of Amity and Cooperation in Southeast Asia (TAC), which was already binding for ASEAN members. The TAC outlines six fundamental principles that signatories must adhere to: mutual respect for each other's independence, sovereignty, and territorial integrity; the right of every state to lead its national existence free from external interference, subversion, or coercion; non-interference in the internal affairs of one another; settlement of differences or disputes by peaceful means; renunciation of the threat or use of force; and effective cooperation among themselves (ASEAN 1976). The ratification of the TAC by China was a significant achievement for ASEAN, as it demonstrated the ability of the organization to integrate external major powers into its regional framework.

Additional scepticism arises when considering the close ties between China and some ASEAN countries, particularly Cambodia and Laos. These relationships suggest that China could potentially leverage these ties to influence internal ASEAN discussions (Hu 2023). The influence of these relationships was notably articulated during the 2012 ASEAN communiqué incident involving Cambodia. While it is plausible to suspect that China may have played a role in Cambodia's actions during this episode, it's important to acknowledge that Cambodia's stance was also framed within the principles of the "ASEAN Way." This approach emphasizes non-confrontation, consensus-based decision-making, and non-interference, which Cambodia cited as reasons for its veto, thereby aligning its actions with established ASEAN norms.

Another incident concerning Chinese internal influence occurred in the 2016 Kunming meeting addressing the results of the Arbitral award. The initial ASEAN draft statement included a clause about "full respect for legal and diplomatic processes," signifying ASEAN's commitment to adhere to the Arbitral award (Koga 2022). However, due to vetoes from Cambodia and Laos, this proposition was overridden, and instead, a "10-point consensus" drafted by China, which omitted any mention of the award, was adopted. It was evident that the veto was initiated by China, putting ASEAN members into state of disunity. However, in the aftermath of this meeting, ASEAN members, including Cambodia and Laos, were able to

publicly express their dissatisfaction with the Chinese moves (Ibid.). Thus, the unity was partially regained.

On one hand, it is evident that China does exert some level of influence over certain ASEAN members. Although this influence has not yet been a significant force in negotiations, it could potentially serve as a substantial leverage in future discussions, especially as ASEAN and China continue to face disagreements over the legal scope and geographical parameters of the Code of Conduct (COC). It is also true that the ASEAN multilateral framework has proven ineffective in halting Chinese land reclamation activities in some features of the SCS. However, it is important to note that the Chinese influence proved to be not as strong as argued. Additionally, the issue of land reclamation is not exclusive to China; other countries such as Vietnam, Malaysia, and the Philippines have also engaged in similar activities, thereby violating the stipulations set forth in the DOC.

On the other hand, ASEAN-China multilateral framework has achieved three crucial objectives. First, ASEAN obtained formal recognition from China as a legitimate player in the SCS dispute-resolution mechanisms. Second, despite China's previous preference for bilateralism, ASEAN managed to convince China to negotiate under the ASEAN-led multilateralism. Third, despite China's reluctance, the COC will be to some extent binding, representing a more substantial commitment than the earlier DOC (Hu 2023). Thus, while making some concessions and compromises, ASEAN also managed to achieve some of its crucial goals, exhibiting the attributes of medium external effectiveness.

Figure 8: Events and their impact on the ASEAN-China multilateral relations

Events	Impact on the ASEAN-China relations
<i>2002 – Ratification of DOC</i>	Positive
<i>2003 – Ratification of TAC</i>	Positive
<i>2016 – Arbitral award</i>	Neutral*
<i>2018 – Single Draft Negotiating Text</i>	Positive
<i>2020 – The emergence of COVID-19</i>	Negative
<i>2023 - ASEAN Ministerial Conference with China</i>	Positive

*Initially escalated tensions but in the end did not damage the ASEAN-China relations as expected

Source: Compiled by the author

6. The most effective dispute-solving mechanism

In the preceding chapters, we have individually examined and analysed the bilateral and multilateral mechanisms for resolving disputes in the SCS. This analysis was conducted to evaluate two key hypotheses. First, critics of the multilateral mechanisms argue that ASEAN is ineffective in addressing or countering Chinese claims in the SCS. Mark Beeson, for instance, asserts that "ASEAN's historical record offers little comfort or grounds for hope" (Beeson 2020). Secondly, it is believed that due to this ineffectiveness, claimant states prefer to "pursue bilateral or trilateral agreements rather than building a supranational practice" (Jones & Jenne 2015). Building on these findings, this chapter will conduct a comparative analysis to assess the validity of these claims.

Over the years, Vietnam, the Philippines, and Malaysia have each established bilateral consultation mechanisms with China concerning the SCS. An analysis of Vietnam reveals a particularly intriguing outcome, as the bilateral framework has achieved medium effectiveness, despite Vietnam being characterized as the most assertive country in the region in opposition to Chinese claims. To date, the Gulf of Tonkin Agreement remains the sole international treaty regulating overlapping claims in the SCS. However, a recent incident suggests that China is attempting to violate this agreement by establishing new maritime baselines to delineate its EEZ, thereby expanding its territorial claims in the Gulf (Firn & Kang 2024). Given Vietnam's apparent reluctance to pursue an extension of the agreement, the future stability of the situation in the Gulf of Tonkin remains uncertain.

Regarding the Philippines, significant developments include the bilateral code of conduct established in 1995 and the BCM in 2016. However, both mechanisms have lost relevance over time. The former became less relevant due to the introduction of the DOC and a shift towards a multilateral framework. The latter's relevance diminished due to the COVID-19 pandemic and a change in the Philippines' administration. Additionally, the 2016 BCM proved to be ineffective as the Philippines did not achieve any significant maritime objectives, nor did it resolve the Scarborough Shoal incident or the issues surrounding the Arbitral award.

One could argue that the China-Philippines BCM did partially resolve the Scarborough Shoal incident, as President Xi Jinping granted Filipino fishermen access to the Shoal. However, as Max Ernst argues, by agreeing to this arrangement, President Duterte ignored the Arbitral award and "gave in to China's Realpolitik and ignored his country's legally assured territorial rights under UNCLOS" (Ernst 2022). It appears that the following administration

noted the error and, thus, does not advocate for the further development of the bilateral framework.

Consequently, Malaysia, having closely observed the challenges encountered in the China-Philippines BCM, also appears reluctant to develop its new bilateral mechanism with China. Despite their generally warm relations, Malaysia remains wary of Chinese claims, recognizing that it will always be the smaller party and, therefore, lack the necessary leverage to effectively pursue its claims. This argument is further supported by the minimal development observed in the China-Malaysia bilateral relations concerning the SCS.

Thus, it is apparent that bilateral relations have not yielded any significant positive developments for the claimant countries to date. They have generally proven to be ineffective, with the relative exception of Vietnam-China relations, which are also currently under scrutiny. This raises the question of whether South China Sea countries still prefer to use bilateral mechanisms over multilateral ones, as argued by Jones and Jenne. The evidence suggests otherwise. Vietnam, the Philippines, Malaysia, and Brunei ultimately favour an ASEAN-led approach, recognizing that the ASEAN-China framework represents the only viable strategy to effectively counter China's expansionist actions in the SCS (Odgaard 2003; Hu 2023).

Although ASEAN claimant states demonstrate a preference for multilateral frameworks, part of the critique contends that these mechanisms have been ineffective since the onset of the disputes. This argument holds merit. ASEAN has indeed been ineffective in preventing Chinese military expansions on the disputed features of the Paracel and Spratly Islands, as well as the occupation of Scarborough Shoal. Furthermore, ASEAN failed to capitalize on the favourable outcomes of the Arbitral award, moreover, it did not formally recognize the ruling.

Nevertheless, it is important to acknowledge the diplomatic achievements that have been reached by following the ASEAN-led approach. As discussed in the previous chapter, ASEAN successfully persuaded China to transition from its preference for bilateral mechanisms to a multilateral framework. Notably, no individual state had previously managed to alter China's position in such a manner through bilateral relations alone. Moreover, ASEAN secured Chinese acceptance of the ASEAN-led approach during the negotiations for a mutual Code of Conduct in the SCS, thereby positioning itself as an equal counterpart to China in these discussions. Such an outcome would not have been feasible for any individual claimant state within the SCS, given their relatively disadvantageous positions in comparison to China.

While some may contend that the diplomatic achievements are insufficient and that a final version of the COC has not yet been established, it is crucial to recognize the tangible successes of the ASEAN-led framework. First, the adoption of the DOC in 2002 was significant not only as a commitment by all parties to pursue a more binding COC but also as a mechanism that introduced norms, leading to nearly a decade of peaceful developments in the region. Furthermore, ASEAN successfully incorporated China into the Treaty of Amity and Cooperation (TAC), which serves as an additional mechanism for maintaining security in the region. While concerns exist that China might leverage this mechanism to compel ASEAN members to adhere to TAC principles of mutual respect for territory, it is equally viable that ASEAN can employ the same principles towards China, while also seeking international support, which China views with concern.

ASEAN is not as highly institutionalized as organizations like the European Union. It is likely that states engage in this multilateral framework not primarily out of a commitment to liberal ideologies, but rather to maximize their security. To achieve this, countries have established a regional security institution which provides a stronger foundation for contesting Chinese claims. Trust among member states is not absolute, as evidenced by persistent tensions among some members.

However, the realist assertion that international organizations are ineffective and predominantly serve the interests of great powers is challenged by the analysis of ASEAN. While Chinese influence on some member states is undeniable, it is not as significant as some critics suggest. It is also true that ASEAN has not been highly effective in countering Chinese expansionism. Nonetheless, when compared to the bilateral mechanisms employed by individual states, the ASEAN-led framework has proven to be substantially more effective.

Therefore, if a decision must be made regarding which international relations theory best explains the dispute-resolution mechanisms in the South China Sea, neoliberal institutionalism should be selected. This theory is supported by evidence that states have cooperated effectively under the multilateral framework, leading to relative stability in the region and the prospect of a binding international agreement. However, this analysis is only applicable to past events. The future effectiveness of ASEAN will be assessed based on the outcomes of the COC negotiations with China and adherence to established norms. Only this can keep ASEAN in the position of an irreplaceable institution in the South China Sea.

Conclusion

The primary objective of this thesis was to conduct a comparative analysis of bilateral and multilateral approaches to the resolution of the South China Sea dispute, in order to determine which approach has been more effective as a mechanism for dispute resolution. The analysis revealed that the multilateral frameworks facilitated by ASEAN demonstrated greater effectiveness than the bilateral mechanisms employed by individual claimant states in their interactions with China. Consequently, the findings suggest that the liberal theory of international relations provides a more accurate framework for understanding the prevailing dispute-resolution measures in the South China Sea region.

To investigate the outcomes, the structure of the bachelor's thesis was methodically outlined as follows: The initial segment provided a comprehensive description of the disputes, explaining key terms such as UNCLOS and the Nine-dash line. Subsequently, an analysis of bilateral measures was undertaken. The findings from this segment indicated a generally low level of effectiveness across most cases, with Vietnam being a notable exception. The third segment assessed the ASEAN-China multilateral framework. Despite encountering some challenges, the results demonstrated that the multilateral mechanisms were medium effective. In conclusion, when compared together, the multilateral framework provided by ASEAN was found to be more effective than bilateral approaches in resolving disputes.

Závěr

Hlavním cílem této bakalářské práce bylo provést komparativní analýzu bilaterálních a multilaterálních přístupů k řešení sporů v Jihočínském moři, s cílem určit, který přístup byl účinnější jako mechanismus řešení sporů. Analýza ukázala, že multilaterální rámce prokázaly větší účinnost než bilaterální mechanismy, které používaly jednotlivé státy nárokující si území ve svých interakcích s Čínou. V důsledku toho zjištění naznačují, že liberální teorie mezinárodních vztahů poskytuje přesnější rámec pro pochopení současných mechanismů pro řešení sporů v regionu Jihočínského moře.

Pro zkoumání výsledků byla struktura bakalářské práce metodicky rozvržena následovně: Úvodní část poskytla komplexní popis sporů, vysvětlila klíčové pojmy jako UNCLOS a Nine-dash line. Následně byla provedena analýza bilaterálních opatření. Zjištění z této části ukázala obecně nízkou úroveň efektivity ve většině případů, s výjimkou Vietnamu. Třetí část posoudila multilaterální rámec ASEAN-Čína. Přestože čelily výzvám, výsledky prokázaly, že multilaterální mechanismy byly středně účinné. Při srovnání obou přístupů, bylo zjištěno, že multilaterální rámec byl účinnější při řešení sporů než bilaterální přístupy.

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