

Indonesia and South China Sea From International Law Point Of View

by Birkah Latief

FILE	AN_AND_SOUTH_CHINA_SEA_FROM_INTERNASIONAL_LAW_POINT_OF_VIEW.PDF (201.02K)	WORD COUNT	6933
TIME SUBMITTED	15-FEB-2021 10:22AM (UTC+0700)	CHARACTER COUNT	36352
SUBMISSION ID	1509643987		

2

Indonesia and South China Sea From International Law Point Of View

S.M. Noor
Abdul Maasba Magassing
Laode Abd. Gani
Birkah Latif
Kadarudin
Robert Lowell Saputan

International Law Department, Faculty of Law, Hasanuddin University, Makassar, Indonesia

2

Abstract

Indonesia is not directly involved in the dispute at the South China Sea, but as one of the countries located around the region has initiated to conduct several negotiations and to facilitate a series of formal and informal meetings. In the event of an incident in the South China Sea, Indonesia-China is always looking for peaceful solutions. One of the most peaceful solutions ever declared between China and Indonesia was two important manifestos that have become historical records of what is called OBOR (One Belt One Road) and silk road in China by two state leaders, Xi Jieping (President of China) and Joko Widodo (President of Indonesia). China along with ASEAN countries has agreed with the framework of a peaceful solution in the South China Sea called the Declaration on the Conduct (DOC) and then refined in Code of Conduct (COC).

Keywords: Indonesia, South China Sea, International Law

1

I. Introduction

The South China Sea issue has brought to the fore the serious disputes in this region, including multi-level contestations among the coastal States. At the core are the territorial disputes among China (mainland and Taiwan), the Philippines, Vietnam, Malaysia and Brunei over certain maritime features,¹ and the maritime delimitation disputes arising from overlapping maritime claims among Indonesia and those aforementioned five States. The outer layer of the South China Sea issue is characterized as conflicting claims over rights of fishing and exploitation of hydrocarbon resources, and different views on certain concepts such as "freedom of navigation" and 'scientific research'.¹

In addition, the emergence of various interests in the South China Sea (LCS) also led to territorial disputes caused by overlapping areas in the region.

LCS is the never-empty water of the dispute even though the countries around the water judge it as a free, peaceful and neutral territory. This territorial water is also regarded as a no-man's sea due to the overlapping claims over small islands, corals scattered in this water.²

There are four disputed archipelagos clusters of LCS, such as the Macclevield islands, the Pratas Islands, the Paracel Islands and the Spratly Islands. However, two of them becoming international problems are Spratly Islands and Paracel Islands. As for, the countries involved in dispute, *inter alia*, the PRC, Vietnam, the Philippines, Brunei, and Malaysia.

The Spratly Island has different names where in China called Nansha Chuntao or in Vietnam called Truong Sa. At the end of 1974, eight islands in the southern part of the cluster were under control of Vietnam, four islands belong to the Philippines, several islands and other important corals under China control.

7

¹ Xiaoyi Zhang, "Problematic Expansion on Jurisdiction: Some Observation on the South China Sea Arbitration," *Journal of East Asia and International Law*, Vol.9, No. 2 Yijun Press, Seoul, 2016.

² S.M. Noor, "Sengketa Laut Cina dan Kepulauan Kuril," *Pustaka Pena*, Makassar, 2015., p.3

The archipelago lies approximately 400 kilometers in the northeast of Borneo and Palwan Island, Philippines, and about five hundred kilometers from the southern coast of Vietnam.¹ The Paracel archipelago is in China called Shisha Chuntao or in Vietnam called Hoang Sa. This island group is under China control after its attack on 1974 which ousts Vietnam out of the archipelago. The archipelago is located between Hainan island in Tonking Bay approximately 350 kilometers southeast of Yulinkang port from the coast of central Vietnam, about 400 kilometers east of Da Nang. From the strategic point of the archipelago, it is important to control the main shipping lanes in the LCS which is the world's supply point of the world from the Indian Ocean to the Pacific Ocean, especially the main supply lines of China and Japan oil imports from the Middle East.²

The distance between the Spratly Islands and the Paracel Islands is approximately 700 kilo meters, while the distance between the Spratly Islands and the Hainan Islands is 1000 kilo meters, while the distance between the Spratly Islands and the Natuna Islands is approximately 600 kilo meters.

The LCS dispute for Indonesia is of course very influential for the strategic position of national resilience as well as upholding the principle of the Indonesian Archipelago Country. For somehow, Indonesia still has an interest in the area of these waters.

² Although Indonesia is not directly involved in the dispute at the LCS, but as one of the countries located around the region has initiated to conduct several negotiations and to facilitate a series of formal and informal meetings. The Indonesia's initiation is aimed at finding peaceful formulation of conflict resolution (for example the LCS Workshop has been conducted more than 10 times in various regions in Indonesia by including all countries involved in the conflict). Many obstacles confront Indonesia in the negotiating process because there is still considerable mutual suspicion among the disputing countries so that the peaceful conflict resolution is difficult to achieve.³

II. Indonesian Perspective

The South China Sea lies to the north west of the Indonesian Archipelago. Despite the fact Indonesia is not included as a claiming country in some parts of the South China Sea but part of its territory is in contact with the South China Sea. The area that belongs to the South China Sea zone is a Natuna Islands group of nearly 30% of its territorial waters in the South China Sea zone. Especially concerning the line of exclusive economic zones (ZEE) along the northeast line of the Natuna Islands. The two claiming countries directly opposed to Indonesia in the South China Sea are Vietnam and People's Republic of China (PRC).

The boundary of the continental shelf of Indonesia's sea border with Vietnam has indeed been negotiated several times but failed. The series of negotiations have been conducted since 1977. On June 1978, the negotiations held in Hanoi but failed again. Indonesia adhered to the principle of the median line (the determination of the continental shelf in conversion) but Vietnam wanted to apply the principle of applying the line based on the deep-sea way and the natural sign of the land. Vietnam considered that some coastal areas on the small islands of Natuna leading to Vietnam were often covered by abrasive (abrasion) during certain seasons, especially the rainy season and the mud was derived from the overflow of the Mekong River delta. The term often used by Vietnam is the Mekong mud.

This view was rejected by the Indonesian delegates at each negotiation because natural phenomena of coastal mud formation in several islands in Natuna was a merely natural phenomenon and formed by itself.

The negotiations with Vietnam have been stalled for so long. But since Vietnam joined as an ASEAN member, there have been important changes. In 2000 re-enacted border negotiations until the June 26, 2003 negotiations were signed. The results of the negotiations were ratified by Act No. 18 of 2007. This result is very important for Indonesia because the Northwest of Natuna region is estimated that there are areas to have oil and gas reserves.

¹ *Ibid.*, p.4

² *Ibid.*, p.5, Also Research Institute of Indonesian Sciences (LIPI), "Perbatasan Wilayah Laut Indonesia di Laut Cina Selatan," LIPI Press-Jakarta, 2008, p.57, See further Abdul Rivai Ras, "Konflik Laut Cina Selatan dan Ketahanan Regional Asia Fasifik: Sudut Pandang Indonesia," Apsindo- Jakarta, 2001, p. 96.

³ Abdul Rivai Ras, *Ibid.*, p. 137

Indonesia and Vietnam also agreed to strengthen cooperation in the field of defense at a meeting held at the Ministry of Defense building, Jakarta, October 13, 2017. Indonesian Defense Minister, Ryamizard Ryacudu received the Minister of Defense of the Socialist Republic of Vietnam General Ngo Xuan Lich.

Ryamizard explained, the two countries have established cooperation for 62 years ago. On December 30, 1955, the two countries established cooperation by placing the Consulate General. Ten years later the relationship was fully increased with each placing the Ambassador. Lich appreciated the welcome and openness of Indonesia. "I believe we can build relationships with Indonesia to maintain defense cooperation."

Furthermore, Lich hoped to return to Indonesia to discuss the issues that are currently a common concern.¹ Both countries exchanged views on a number of issues of mutual concern, such as security stability in the LCS region and illegal fishing issues.

Even though there has been ratification between the two countries yet there is no implementation agreement between them. Especially if it concerns the establishment of an exclusive economic zone that should be the standard of both countries.

Besides Vietnam, Indonesia's connectivity in the South China Sea region is PRC or hereinafter referred to as Tiongkok. The agreement between Indonesia and China in the South China Sea does not exist because there is no overlapping area but Indonesia receives the impact of the overlap between Tiongkok and Vietnam. As part of the overlapping territory between Indonesia-Vietnam also overlaps Vietnam-Tiongkok. What is claimed in the territorial waters of Vietnam is also included in the claims of Tiongkok so that if Indonesia is dealing with Vietnam automatically confront Tiongkok. Thus, it is difficult to avoid Indonesia will face directly with China in the region overlap with Vietnam. In the Region finally formed a Triangle Claim among the three.

Ambiguous over the claims of triangular areas is due to the allegations or predictions of third-party experts that in the area of blocks the region contains abundant oil deposits. Prediction of these experts who brought the dreams of leaders and political figures of the three countries.

However, no exploration has been done in those areas. This means that claims over the continental shelf have not seen the facts of collision in the field.

III. Incident of the Fishery Zone

The most frequent collision facts in the LCS are on exclusive economic zone claims. The claims of fisheries and catchment areas are most often hard hit. The fishermen of these three countries (Indonesia, Vietnam and Tiongkok) often clashed and not a few of them are open incidents.

Such an incident occurred on Friday, June 17, 2016 where 12 Chinese fishing boats were chased by KRI Imam Bonjol and arrested six ships on them. On this occasion, the Chinese government has protested loudly. Even according to the Chinese government version denied by the Navy spokesman in the incident a fisherman was injured and has been treated in China Hospital.²

Meanwhile, Vietnamese fishermen most violate Indonesian waters and loot the fish. Throughout May 2017, the Indonesian authorities conducted three separate arrests of Vietnamese vessels. Most of the boats were taken to Natuna and Anambas Islands. There, some of it was eventually drowned gradually. While other ships were moored at the PSDKP station and around the Navy base while waiting for the drowning orders.

Until June 2017, the Indonesian government has even arrested no less than 700 Vietnamese fishermen and has sent some of them back. Meanwhile, the Indonesian government has repatriated 674 Vietnamese boatmen caught fishing in Indonesian waters. The returning Vietnamese boatmen (ABK) includes 342 fishermen from illegal fishing vessels whose case is handled by the KKF, 224 ABK whose cases are handled by the Navy, and 108 people whose cases have been completed and are being processed in immigration for repatriation to the country of origin.³

According to the Director General of Marine and Fisheries Resources Supervision, Ministry of Marine Affairs and Fisheries (KKP) Eko Djarmo Asmadi, "The return of ABK is the result of the agreement between the

¹ Indonesia and Vietnam Strengthen Cooperation, Kompas, 14 October 2017

² Kompas June 23, 2016

³ Kompas June 8, 2017

Government of Indonesia and Vietnam related to the fate of hundreds of Vietnamese crew. For almost two years, Indonesian government looked after them at detection center while awaiting repatriation policy from Vietnamese government.

Meanwhile, no less interesting scenery hunting fishing boats captured by Ship Motor Shark II owned by the Ministry of Marine Affairs and Fisheries of Indonesia. The Chinese fishing boat named Kwey Fey is found fishing in the Indonesian exclusive economic zone (ZEE) in Natuna Sea, March 21, 2016. The PRC fishing vessel was involved in an incident with a patrol boat, KKP Marine Named Ship Motor (KM) Shark II in Natuna Sea. Kwey Fey is sailing in ZEE Indonesia region with full load after catching fish in Indonesian waters with total cargo of 300,000 gross tons. KM Shark II spotted the Chinese-flagged fishing vessel, the Shark II officers inspected the ship and dragged it to the nearest harbor after the fishermen were arrested and held on board.

Before arriving at the harbor suddenly a Coast guard (PRC) came with high speed crashing into Kwey Fey's ship so the ship's hull broke. Some fish spill into the sea. Shark officer II was shocked. the shock of the Shark officer II plus the deft guard of the PRC coast plunged into the sea as the frog troops, tying Kwey Fey, then the troops climbed to Kwey Fey at once with high speed bring Kwey Fey run back into the territorial waters of the PRC. All fishing vessels are being held at the Port of Ranai Bay, Natuna.

Due to the event, there was an incident diplomatic between China and Indonesia being arisen. The Indonesians protest against the PRC has committed a violation by protecting fishermen with military escorts to fish theft in the territorial waters of Indonesia. However, the People's Republic of China rejects the assumption that the fisherman caught fish not entering the territory of Indonesia. The PRC even expects the Indonesian government to immediately release the Chinese fishermen.

The core of the Natuna incident, the Indonesian government tried to hold the fishing boat RRT Kwey Fey and its fishermen for violating Indonesian sovereignty. But China rejects it and asks the fishermen to be released. The incident is interesting. Indonesia has been asked by China to be careful to set its territorial waters not to touch the nine dashed lines it has set. PRC helps its fishermen enter Indonesian waters. The question is, in which waters where did the Kwey Fey fishing boat catch the fish?

If it is in the free sea area, the question is that there is a free sea territory in the entire South China Sea region that has been claimed entirely by the PRC that caused a collision with various countries such as the Philippines, Vietnam, Brunei Darussalam, and Malaysia. Indonesia, which has not felt in touch with the PRC in the South China Sea territorial dispute, apparently with this incident touching as well. This means that with this incident there is overlapping ZEE Indonesia (overlapping area) with PRC.

If the PRC sees its fishermen in free sea waters, then which is free ocean? It is permissible that the ZEE is a free sea territory, but it is for the purpose of international navigation, not as a fishing territory because if it enters into a fishing territory it is categorized as an area of exploitation and exploration of the economic sovereignty of Indonesia. China cannot behave in such a way. Something that is not less interesting is the coastal safe guard that suddenly appeared and seized the Chinese fishing boat and took him away from the territorial waters of Indonesia. The conventional strategy of PRC is actually escorting with the weapons of its fishing boats that catch fish in the disputed areas.

IV. Peace Solution

As far as has this research article been written, there has been no open conflict among disputed countries in the South China Sea. This indicates that all the countries involved in the dispute are still prioritizing a peaceful solution. For Indonesia itself, either for Indonesia with China or Indonesia with Vietnam.

Indonesia and China actually have a long history of friendly relation between the two countries. An important point in Indonesia's relationship with China is that Indonesia adheres to One China Policy, recognizing only the mainland (People's Republic of China-PRC) and Taiwan is part of PRC. This principle has not changed even though Indonesia had broken diplomatic relations with PRC in 1965 when the September 30th Movement/ Indonesian Communist Party (PKI) broke out because China was accused of being involved in a coup in Indonesia, even though China rejected the allegations. The diplomatic ties between the two countries have been broken since September 1965 to January 1989. Despite diplomatic break-ups for nearly 40 years, the principles adopted by Indonesia for 40 years remain consistent with one china policy.

Before breaking up the diplomatic relationship, Indonesia-China had a very close relationship so that it was known as political rope as "Axis Jakarta-Beijing" (Jakarta-Beijing axis).

When discussing China's representation to become a member of the UN, Indonesia was keen to support China's position as China's only representative who deserved to sit in the UN, not Taiwan (China Nationalist) despite diplomatic break-ups. Even when China was declared as a member of UN in April 1973, the UN General Assembly session was led by Adam Malik, the Chairman of Indonesian Representative at the United Nations.

The above points can actually serve as a foundation for China and Indonesia to draw a peaceful solution to the various incidents in the South China Sea that confront Indonesia-China.

The China-Indonesia relationship is now intimate. President Joko Widodo prefers to establish economic cooperation with the country's bamboo curtain. For example, the Jakarta-Bandung high speed train project held by China, beating Japanese investors who have long relationship with Indonesia. Moreover, the increasing volume of high trade between Indonesia-China can reach a fantastic percentage of 7%. Similarly, Chinese investment plus their experts are scattered everywhere in Indonesia.¹

Therefore, in the event of an incident in the South China Sea, Indonesia-China is always looking for peaceful solutions.

One of the most peaceful solutions ever declared between China and Indonesia was two important manifestos that have become historical records of what is called OBOR (One Belt One Road) and silk road in China by two state leaders, Xi Jieping (President of China) and Joko Widodo (President of Indonesia). China along with ASEAN countries has agreed with the framework of a peaceful solution in the South China Sea call the Declaration on the Conduct (DOC) and then refined in Code of Conduct (COC). China has pledged to maintain stability in the South China Sea region by ready to comply with and implement DOC and COC.²

The case with Vietnam on August 23, 2018 President Joko Widodo and Secretary General of the Communist Party Vietnam Nguyen Pu Trong held a meeting and issued a joint statement that stability, security and peace in the South China Sea are the concerns to the Government of Indonesia and Vietnam. Do not appreciate the development of South China Sea dispute process only, the two countries have always agreed to create stability, security and peace in the region, especially Southeast Asia. On the occasion, President Joko Widodo said that in addition to increased maritime cooperation, fisheries, trade and investment, the two leaders appreciated the progress of discussing the issue of the South China Sea. Progress was marked by the approval of the Code of Conduct (COC) in Manila in early August. Indonesia and Vietnam agreed to push ASEAN into a motor for the establishment of peace, stability, and prosperity in the region.

Nguyen Pu Trong added that Indonesia and Vietnam agreed that the ASEAN community should continue to maintain good relations and close cooperation in handling problems in the South China Sea region. In addition, ASEAN is also encouraged to take a central role in resolving conflicts in the region.³

Indonesian Foreign Minister, Retno LP Marsudi, further explained that the COC agreed in Manila is the entrance to negotiate. The framework is crucial because Indonesia and Vietnam share the same view that stability, security and peace are vital for all countries, especially those in the South China Sea region.

As it is known that code of conduct was first staged at a meeting of ASEAN senior officials in Surabaya, Wednesday, June 8, 2011 agreed on the South China Sea dispute peacefully. South China Sea COC is actually a refinement of the previous Declaration on The Conduct (DOC). The COC will regulate the behavior of ASEAN and China in the disputed area related to international rules concerning the free zone of shipping and aviation.

At the ASEAN Regional Forum - ARF meeting in Surabaya, participants discussed the acceleration of DOC to be implemented in COC. The DOC itself has lasted 10 years passed in the form of Declaration on The Conduct of Parties in The South China Sea since 2002 before ARF in Surabaya. Chairman of the Indonesian delegation to ARF in Surabaya Rear Admiral Eris Heryanto said that the meeting participants reached a positive initial understanding in the effort to resolve the conflict in the South China Sea. Some countries have said that the conflicts that arising cannot be solved individually but are discussed together. The agreement became the main capital in setting up peace-building measures in the South China Sea region. Indonesia itself, although not

¹ Subhan SD, *Ini Kedaulatan Bung*, Kompas June 25, 2016

² Kompas June 8, 2013

³ Kompas Agustus 24, 2017

part of the conflicting countries, together with other ASEAN members have an interest to create peace and security of the region. South China Sea COC will regulate the behavior of ASEAN countries and China in international dispute related areas concerning the free zone of shipping and aviation. (Mosaic Gait Chairmanship Indonesia in ASEAN 2011 - Antara News, Wednesday, June 8, 2011).

Furthermore, at the 19th ASEAN Summit in Nusa Dua, Bali, November 14, 2011 has been focused on the implementation plan of South China Sea DOC related to the proposed joint project of each party to the dispute. For the first time also ASEAN formed a working group to discuss the elements that will enter the code of conduct (COC) behavior in the South China Sea.

Chairman of the ASEAN Senior Officials Meeting (SOM) for the preparation of the ASEAN Summit in Nusa Dua, Bali Jauhari Oratmangun stated that SOM's priority is only on working groups preparing for COC and implementing the South China Sea DOC cooperation. Regarding the discussion of the COC working group, Jauhari said that it is still the initial stage and has not touched the substance. Some are discussed as to when further meetings are held and the working group guidelines. "Priorities for China and ASEAN are related to DOC implementation. In our meeting also discuss the cooperation project that will be implemented together with China" Jauhari said that this is stated because the Philippines urges ASEAN countries to jointly face China when the COC wants a common framework between ASEAN and China.¹

V. Arbitration vs COC

ASEAN and China actually have Declaration on the conduct of parties in the South China Sea (DOC) adopted since 2002. DOC aims to create Confidence Building Measures between ASEAN-PRC. ASEAN also has the Guidelines on the Implementation of DOC, the ASEAN Six Point Principles and the ASEAN Proposed Elements of the Code of Conduct. The three documents can be used for discussing on LCS issues, especially for COC settlement.²

Indonesia has stated that COC should have 3 + 1 Promoting Confidence, avoiding incidents, Managing the incidents (if they occur), plus creating condition conducive through early harvest achievement. These Early Harvest Measures can be implemented in advance even though formal COC discussions have not been resolved. ASEAN member countries have agreed to make the 3 + 1 formula as the basis for the formulation of COC objectives.

The PRC appreciates the Indonesian formulas and initiatives as a basis for discussing the COC. The PRC underscores that the consultation process on COC should also start with easy issues, gradually, building mutual trust and by identifying areas of convergence in accordance with the commonalities shared by ASEAN and the PRC. Consultation and discussion of COC between ASEAN and PRC are still continuing through Joint Working Group (JWG) under ASEAN-China SOM on DOC.³

What became Indonesia's formulas and initiatives were dispersed during the 20th ASEAN Summit in Phnom Penh, early April 2012. This is because the Philippines ignored China's formulation and appreciation of the COC and the Philippines wanted to formalize some of the COC regulations in the form of Legally Binding in order to have ASEAN togetherness against China which he considered hegemonic. Cambodia as the host of the summit did not want to be rash to take formal formulation so quickly because Cambodia wanted a cooler and more peaceful process. Formulation with China's challenging model together means eliminating China as ASEAN's main partner.

The Philippines had different attention with other ASEAN countries' which desired to negotiate the dispute at the very beginning. Even the Vice President of Indonesia, Boediono who attended the Phnom Penh summit representing President Susilo Bambang Yudoyono firmly stated, "The more concrete formulation of the COC will be done. Indonesia believes, in doing this procession we still have to hear a very important party in securing LCS, namely Cona!". the statement of the Vice President of Indonesia Prof. Boediono was reinforced by Indonesian Foreign Minister Marty Natalegawa who emphasized that ASEAN will formulate Code of Conduct as well as make constant communication through the framework of ASEAN-China. In essence, all parties should not be left behind, including the main partner of ASEAN-China. Presumably the Philippines

¹ Kompas November 15, 2011

² Basic Position of Indonesia's Foreign Policy 2016, Agency for Policy Review and Policy of the Ministry of Foreign Affairs 2016., p.390.

³ Basic Position of Indonesian Foreign Policy 2016, *Ibid.*, p.391.

delegation, led by President Benigno Aquino III, was deeply shocked and disappointed at the 20th ASEAN Summit in Phnom Penh.¹ a few days later that were on April 10, 2012, a stirring event that was incident Scarborough Coral Islands which is by China called Huangyan.

Scarborough Shoal or Huangyan is a cluster of coral islands located approximately 230 kilometers west of Luzon Island. Coral island is approximately 150 square kilometers. The archipelago not only has abundant fish but also has 28 billion barrels of oil reserves and 7.5 trillion meters of natural gas reserves.

The conflict began when the Chinese Warships confronted the Philippines Warship which was about to arrest Chinese fishermen who were engrossed in fishing on the island. On April 10, 2012, the Philippines' Department of Foreign Affairs shrank last week China still plunged its strength on the island. Since the heightened tension China has placed 21 Warships and 76 small ships as fishermen.²

With this Scarborough Shoal event and disappointment at the Phnom Pen summit, the Philippines immediately filed a suit to the International Tribunal. The Philippines filed a mandatory dispute settlement mechanism to Ad Hoc Arbitration in 2013 relating to the interpretation and application of the PRC's claim in the LCS. The Philippines has submitted the memorial of the lawsuit to the Arbitral Panel on March 30, 2014.

The PRC condemned that the Philippines moved and refused to participate in the arbitration. On December 7, 2014, the PRC issued a Position Paper to the public to respond to the Philippines lawsuit. One of the regulatory points of the PRC paper was that arbitration has not authorized to hear the case without an agreement from the PRC as a party. But Permanent Court of Arbitration (PCA) has stated that the PCA has the authority to examine the case.

The filing of the Philippine lawsuit to the PCA raises the pros and cons among the countries. The number of Support to China came from the Group of 77 and the developing countries where China defended them during the 3rd UN Conference on the Law of the Sea that produced UNCLOS 1982. Even some 77 group nations, mostly from Africa and Asia gathered in Doha, Qatar, June 2015 issued a declaration which is called the Doha Declaration in favor of China and the PCA

PCA Den Haag's decision came out on July 12, 2016 that won the Philippines. The result of PCA decisions was responded differently by experts from different countries. Some were pro-Chinese and some were Pro-Filipinos.

Interesting what was written by Kishore Mahbubani and Jeffery Seng on this issue; when Kishore (Dean of Lee Kuan Yew of Public National University of Singapore.

³ warned a group of Chinese foreign policy analysts during a think tank discussion in Beijing in the middle of 2014 that the Anglo-Saxon media were using China's assertive actions in the South China Sea to portray China as aggressive and belligerent. Indeed, Kishore used stronger words. He said that the Anglo-Saxon media had been trying to unleash a "tiger of anti-China sentiment" globally. China's actions in the South China Sea had finally enabled them to do so.³

It ³eds to be emphasized here that good relations between ASEAN and China will bolster the claim that China is committed to a peaceful rise. China's leaders have spoken eloquently about their goal of emerging peacefully. Zheng Bijian was one of the first Chinese senior officials to refer to his country's emergence as a "peaceful rise". He said, "Some emerging powers in modern history have plundered other countries' resources through invasion, colonization, expansion or even large-scale wars of aggression. China's emergence thus far has been driven by capital, technology and resources acquired through peaceful means."⁴

Meanwhile, the business powers of the Chinese Embassy in Indonesia, Sun Weide wrote;

In the last five years, China has run a great state diplomacy that not only creates an external environment but also promotes world peace, stability and prosperity. China actively encourages the "One Belt and One Road" (OBOR) initiative, establishes the Asian Infrastructure Investment Bank (AIIB) and the Silk Road Fund, and organizes high-level conferences for international cooperation.

¹ Kompas April 5, 2012

² Tempo, June 12, 2012, p.118.

³ Kishore Mahbubani and Jeffery Sng, *The ASEAN Miracle: A Catalyst For Peace*, Ridge Books, Singapore, 2017, p. 103.

⁴ Zheng Bijian, "China's Peaceful Rise to Great Power" in Kishore Mahbubani and Jeffery Sng, *Ibid*. p.103.

China is actively responding to global climate change by establishing a 20 billion RMB South-South Climate Cooperation Fund, opposing the deglobalization movement, and fostering a global management system reform with the initiative of building a sam community.

The 19th National Congress reports, the dream of the Chinese people is closely related to the dream of the people of the world. Therefore, its realization is impossible without a peaceful and stable international environment. China will always uphold the spirit of peace and cooperation, fostering mutual development in a friendly way with other countries based on the Five Principles of Coexistence in Peace.

China encourages the formation of new, respectable, just and cooperative, mutually beneficial, international relationships. China will always play a role as a world peace builder, a contributor to global developments and international governance guard.¹

Meanwhile, a review of the technical aspects of the law appealed to the following analysis from Xiaoyi Zhang;

¹ The South China Sea Arbitration was an unprecedentedly complex case. It brought together most complicated questions in the field of international adjudication, inter alia, mixed disputes involving competing territorial claims, rock principle, the correlation between an entitlement claim of relevant features and the dispute of maritime delimitation, the exemption situations of historic title, maritime delimitation and military activities, the issue of indispensable third party, etc. Here, the Philippines made full use of tactic for packaging and splitting unactionable core disputes into issues concerning the application and interpretation of the UNCLOS. However, the Tribunal's biased construction of both jurisdictional and substantive provisions is causing more worries of abusing not only legal process but also judicial discretion. Such an advanced law-making impulse comes at the expense of the consistency and legitimacy of international jurisprudence. It will finally impair the integrity and authority of international law.²

¹ Last but not least, there is a paradox throughout this case. Assuming China agrees to comply with the award, the rulings and findings on the legal status and entitlement of maritime features will consequently serve as a premise for the future negotiation between China and the Philippines on maritime delimitation. It ironically proves that the two issues are deeply entangled so that they would consequently repudiate the alleged precondition and foundation of the award in question. This partially explains China's "non-participation, non-recognition, non-acceptance and noncompliance" position on this case. As for China, it is essentially a legal trap that would put it in an unjust and embarrassing situation at any cost.³

VI. China, UNCLOS and Peace

China played a major role in the success of the UN maritime law III 1982. In contrast, the United States did not recognize and ratified UNCLOS even the United States rejected UNCLOS 1982 until today. In a series of seven times the signing of the consent and ratification of UNCLOS III 1982, China became the first country among first 35 signatory countries and among first five veto-rapping countries ratified UNCLOS III 1982. Britain and France in the third series, Russia's second series, the US to this day still refused to ratify UNCLOS III. Japan and Germany almost joined the United States but later Japan and Germany realized that UNCLOS III 1982 is very meaningful agreement for all the mankind so that Japan and Germany finally left the US and ratified the UNCLOS III 1982.

Since China was actively involved in maritime law conferences, China has shown a high level of enthusiasm and has been very active in sessions and debates. China, with the veto owned, actively defended its allies in the third world, group of 77 and Asia, Africa and Latin America. It was reflected in the fifth session of the third conference in the discussion of the subcommittee on the UN maritime commission in Caracas, Venezuela, on March 27, 1975 in which loudly criticized the outcome of the 1958 Geneva Convention as a result of the concept of colonialist imperialism, the Chinese delegate, Shen Wei Liang loudly voiced...

In 1958 when the first conference on the law of the sea was held, many Asian and African countines had not get won independence. Asian, African and Latin American countines made up only about half of

¹ Kompas, Tuesday, October 31, 2017.

² Xiaoyi Zhang, *op.cit.*, p.465.

³ *Ibid*, p. 464-465

*eighty-old countries the participating in the conference. And owing manipulation by the imperialist power, their many Season able proposition here not adopted.*¹

The accusation of Shen Wei Liang is interesting because at the 1958 Geneva conference, Indonesia has advanced the concept of straight base line at the 1957 Juanda Declaration but rejected. In the Chinese perception, the imperialist nations of the ocean did not want the control of the seas for coastal states within their sovereign territory, because it caused the freedom of navigation of ships disrupted in both military vessels (nuclear-powered aircraft carriers) and tanker and merchant vessels.

The presence of China in the Conference of the Law of the Sea UN III was a new spirit carrier for friends in the Third World and Group 77 (developing countries). To defend his friends did not hesitate to play his veto as a shield.² Especially when defending archipelago principles whose concept was advanced by the quartet of archipelagic countries (Indonesia, the Philippines, Fiji and Mauritius). China stands at the forefront of defending that principle, a principle which the United States desperately opposes. as a note, that the principle of the island nation was a new modification of the 1957 Juanda Declaration that was rejected at the 1958 Geneva Sea Law Conference.

Based on the above perception, it is erroneous to assume that China will withdraw from UNCLOS III. Some international expert (sea) laughed at the so fiery US talking about legally binding of UNCLOS III while he rejected UNCLOS III. China is unlikely to quit the UNCLOS III membership such as ambitious will of some circles. From UNCLOS III as the defense revealed above only a small portion of the "outsiders" about China's position, it may be even deeper that the Chinese legal experts examine the matters by themselves.

In the history of international politics China never left the United Nations, but was expelled, isolated. Since the popular revolution of 1949, China was isolated from the international world where China has always dreamed of bringing in its people around 1 billion to join the international community through the UN. But the United States and its veto group have all turned down. China knew itself and buried its dreams for 25 years-until October 1974 when for the first time the leader of the Chinese people through Deng Xiaoping made a speech of peace before the UN General Assembly. The entry of China to the UN was the result of the struggle of his friends from Asia, Africa and Latin America. Especially Tunisia, Egypt, and Brazil are drafting a resolution on the representation of Chinese representatives at the UN. China has never been absenting from the Non-Aligned Movement conference sessions (*non-alignment movement*).

The saddest at the Asian-African Conference (KAA) in Bandung, April 1955. So, enthusiastic that China sent the massive delegates to participate in the KAA for making it success. Fifteen times China Air Lines transported conference participants. for three days prior to implementation from and to Jakarta-Bandung. One of its plane flights crashed over the waters of the Karimata Strait causing 27 Chinese delegates to be killed. When the opening ceremony in Bandung, President Soekarno requested a moment of silence, said Chinese Premier Zou Enlai (famous for peace) shed tears. The Vietnamese prime minister Ho Chi Minh (popularly known as Uncle Ho in Asia) and Indian Prime Minister Pandit Jawaharlal Nehru standing next to him were touched.

Based on the above historical facts shows that China is not really hostile to the world but a world hostile to China. It may be true what has been written by a prominent French writer.

VII. Conclusion

Although Indonesia is not directly involved in the dispute at the LCS but actually has full responsibility in the peaceful settlement process. Indonesia has long been directly involved in mediating disputes between countries in the LCS, either as negotiators, facilitators or other good services to find a formula for solving LCS disputes. Moreover, in a dispute involving direct ASEAN member countries, an association of countries in south-east Asia where Indonesia was one of its founders. In addition, China has long been a major partner of ASEAN.

A series of peaceful settlement frameworks have been driven by Indonesia, both the 2002 Declaration of Conduct on the South China Sea (DOC) and the Code of Conduct (COC) have addressed the basic issues of peaceful resolution to realize the two main ideas of DOC and COC, to create a peaceful solution in the region, Indonesia neglects a clash of sovereign territories especially with China and Vietnam over Illegal Fishing in the

¹ Hung-dah Chiu, Peoples China and the Law of the Sea, Princeton University Press Princeton New Jersey, 1970.

² Mochtar Kusumaatmadja "Catatan Konferensi Hukum Laut Internasional III" Alumni, Bandung, 2005.

exclusive Economic Zone. Indonesia continues to advance with a peaceful solution in accordance with its constitutional wishes that participates to implement world order based on lasting peace and social justice.

References

- Abdul Rivai Ras, "Konflik Laut Cina Selatan dan Ketahanan Regional Asia Pasifik: Sudut Pandang Indonesia," Apsindo- Jakarta, 2001.
- Basic Position of Indonesia's Foreign Policy 2016, Agency for Policy Review and Policy of the Ministry of Foreign Affairs 2016.
- Hung-dah Chiu, Peoples China and the Law of the Sea, Princeton University Press Princeton New Jersey, 1970.
- Indonesia and Vietnam Strengthen Cooperation, Kompas, 14 October 2017
- Kishore Mahbubani and Jeffry Sng, The ASEAN Miracle: A Catalyst For Peace, Ridge Books, Singapore, 2017.
- Kompas June 23, 2016
- Kompas June 8, 2017
- Kompas June 8, 2013
- Kompas Agust 24, 2017
- Kompas November 15, 2011
- Kompas April 5, 2012
- Kompas, Tuesday, October 31, 2017.
- Mochtar Kusumaatmadja "Catatan Konferensi Hukum Laut Internasional III" Alumni, Bandung, 2005.
- Research Institute of Indonesian Sciences (LIPI), "Perbatasan Wilayah Laut Indonesia di Laut Cina Selatan," LIPI Press-Jakarta, 2008.
- S.M. Noor, "Sengketa Laut Cina dan Kepulauan Kuril," Pustaka Pena, Makassar, 2015.
- Subhan SD, *Ini Kedaulatan Bung*, Kompas June 25, 2016
- Tempo, June 12, 2012
- Xiaoyi Zhang, "Problematic Expansion on Jurisdiction: Some Observation on the South China Sea Arbitration," "Journal of East Asia and International Law, Vol.9, No. 2 Yijun Press, Seoul, 2016.

Indonesia and South China Sea From International Law Point Of View

ORIGINALITY REPORT

% **15**
SIMILARITY INDEX

% **13**
INTERNET SOURCES

% **1**
PUBLICATIONS

% **4**
STUDENT PAPERS

PRIMARY SOURCES

1 journal.yiil.org Internet Source % **5**

2 www.iiste.org Internet Source % **5**

3 Submitted to National University of Singapore Student Paper % **2**

4 seasissues.org Internet Source % **1**

5 link.springer.com Internet Source % **1**

6 www.voacambodia.com Internet Source <% **1**

7 Submitted to University of Southern California Student Paper <% **1**

8 Submitted to Webster University Student Paper <% **1**

9 www.beltandroad.news

EXCLUDE QUOTES ON
EXCLUDE BIBLIOGRAPHY ON

EXCLUDE MATCHES < 5
WORDS