

NAVIGATING OCEAN GOVERNANCE IN DISPUTED WATERS: LAW, INSTITUTIONAL DIALOGUE, AND FUNCTIONAL COOPERATION IN THE SOUTH CHINA SEA

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DOI: <https://doi.org/10.22452/jati.vol31no1.2>

Abstract

This paper investigates the fragmented state of ocean governance in the South China Sea, focusing on how legal frameworks, diplomatic engagement, and functional cooperation can be combined to advance responsible maritime governance in a politically contested zone. This study employs qualitative methods, including document analysis of legal texts, regional statements, policy reports, and academic studies, alongside case examples from environmental cooperation, maritime security, and counter-piracy practices. This study finds that UNCLOS operates primarily as a common diplomatic lexicon rather than an operative legal standard. The 2016 arbitration ruling, while legally significant, has not only produced corresponding changes in state behaviour, as major powers often interpret compliance. ASEAN's consensus-based model structurally constrains collective regional responses, deepening institutional paralysis. This study further finds that issue-based cooperation, in non-sensitive domains such as environmental protection and maritime safety, offer a viable pathway for incremental confidence-building measures without requiring prior resolution of sovereignty disputes. Confidence-building measures, including joint monitoring, public communication, and non-binding codes of conduct, are identified as practical tools for tension reduction. The paper concludes that future governance must be inclusive, combining legal tools, political dialogue, and functional cooperation, with meaningful roles for non-state actors and regional platforms to sustain flexibility.

Keywords: *UNCLOS, ASEAN, maritime security, marine environmental protection, 2016 Arbitral Award, functional cooperation*

INTRODUCTION

The South China Sea (SCS) is one of the disputed maritime areas in modern international relations. It lies at the intersection of some of the most vital shipping routes connecting the Pacific and Indian Oceans and serves as a key hub for global trade and energy logistics, as well as regional interconnectivity. According to scholarly estimations, one-third of global maritime trade passes through the SCS, transporting goods worth trillions of dollars each year (Kaplan, 2019). The industry is also blessed with abundant natural resources, including large reserves of oil, gas, and fish, which enhance its strategic and economic value (Buszynski & Hai, 2020). The SCS is geographically surrounded by several sovereign nations, namely, China, Vietnam, the Philippines, Malaysia, Brunei, and Indonesia, that have overlapping claims and have been the source of long-standing political conflict.

The key issue in this conflict is sovereignty over islands, reefs, and seas, particularly the Spratly and Paracel archipelagos. The SCS is covered by a historical claim first announced in 1947 by China, which consists of its nine-dash line, which almost covers 80% of the area (Beckman, 2013). Other littoral states, in turn, refute this claim, referring to the existing 1982 United Nations Convention on the Law of the Sea (UNCLOS), which sets clear standards for the territorial waters, exclusive economic zones (EEZs), and the continental shelves. In the *Philippine v. China* arbitral tribunal award of 2016, The Permanent Court of Arbitration, 2016, discarded the expansive claim of China under Annex VII of UNCLOS by concluding that the historical rights could not override maritime zones marked by the Convention (Permanent Court of Arbitration, 2016). The decision, however, did not resolve the issues; China did not accept it, and other claimants continued to consolidate their hold by building on the territory, patrolling it with their military, and issuing diplomatic protests.

In contested spaces such as the SCS, where overlapping claims and strategic rivalries persist, the absence of an ocean governance framework directly translates into tangible consequences like maritime accidents, rampant overfishing, and ecological degradation. When states resort to unilateral measures, such as enacting fishing laws, confrontations between coast guards and fishing vessels become increasingly frequent. Similarly, the construction of artificial islands and military installations has caused irreversible damage to the coral reef ecosystem while simultaneously eroding inter-state trust (Miyamoto & Storey, 2013). Addressing these realities requires transparent legal regulations, open information exchange, and sustained bilateral and multilateral dialogue. In the SCS specifically, this means operationalising the UNCLOS legal framework, pursuing diplomatic engagement, institutionalising confidence-building

measures, and exploring joint management arrangements are steps that can gradually transform competition into collaboration and align national policies with shared international standards.

Despite a substantial body of scholarship on the South China Sea disputes, existing literature tends to address legal, diplomatic, and cooperative dimensions in isolation. This study addresses that gap by examining how fragmented governance in the South China Sea might be reconstructed through the combined use of law, dialogue, and confidence-building measures, without requiring a prior political settlement. This research is guided by two interconnected research questions. First, what structural and political factors shape the current state of ocean governance in the South China Sea, and to what extent do overlapping of sovereignty claims, divergent legal interpretations, and asymmetrical power relations contribute to its observed limitations? Second, in what ways might the combined use of legal framework and dialogue contribute to confidence-building among disputant states, and what conditions would need to be present for such approaches to gain traction in practice? Together these questions direct the investigation towards understanding whether and how the existing governance landscape in the SCS might be reoriented towards greater cooperation and legal coherence.

The paper is organised into five parts. The first two parts establish the theoretical foundations of ocean governance and analyse the structural factors behind governance fragmentation, with attention to UNCLOS limitations, the 2016 arbitral ruling, and ASEAN's institutional constraints. The third and fourth parts examine how issue-based cooperation in non-sensitive domains and confidence-building measures, including joint monitoring and non-binding codes of conduct, offer incremental pathways toward regional stability. The fifth part synthesises these findings and proposes an inclusive, flexible, and legally grounded governance model. It concludes with policy recommendations for states, regional bodies, and non-state actors engaged in the SCS.

LITERATURE REVIEW

The literature of ocean governance in the South China Sea has developed across three interconnected areas. The first addresses the legal framework that defines maritime behaviour. The second examines how power politics shape the regional conduct. The third explores the role of cooperation, institutions, and confidence-building measures in managing tensions. Collectively, these strands demonstrate why governance remains disjointed and why multi-dimensional strategies are necessary to address persistent conflicts.

The Legal-Geopolitical Dichotomy: UNCLOS and Power Asymmetries

UNCLOS is widely recognised as the primary reference to maritime rights and responsibilities, providing a standardised legal vocabulary through which states articulate claims, resolve conflicts, and manage sea resources (Rothwell & Stephens 2016; Østhagen, 2020). Yet the assumption that legal clarity produces behavioural compliance has been progressively challenged. Beckman (2013) observes that the historical claims fall outside the legal categories recognised by the Convention, a conclusion reinforced by the arbitral tribunal in *Philippines v. China*, which found the line of nine dashes incompatible with UNCLOS (Permanent Court of Arbitration, 2016). What is theoretically significant, however, is not merely the ruling but the political response it generated. Post-ruling scholarship consistently finds that the award helped to enhance legal clarity without producing corresponding changes in state behaviour (Mitchell & Owsiak, 2021), exposing a foundational weakness in legalist governance assumptions. Hayton (2018a) attributes this compliance gap to competing national narratives and pronounced power asymmetries that render legal norms selectively applicable rather than universally binding.

This gap between legal prescription and state practice is not incidental but structural. Fravel (2008) and Buszynski and Hai (2020) examine that China's expanding military and coast-guard strength have altered regional behaviour patterns, enabling a preference for bilateral negotiation over multilateral legal engagement. McCook and Rothwell (2024) confirm that external powers' involvement introduces new complexity of strategic layers, while Emmers (2007) notes that it simultaneously deepens Chinese perception of strategic encirclement. What this body of scholarship reveals but does not adequately theorise is how governance might function precisely in the presence of power asymmetry rather than in its absence. This is the first gap the present study addresses.

Institutional Paradigms and the Limits of Regional Diplomacy

ASEAN has received a significant amount of academic attention as the main negotiating institution in Southeast Asia, yet the consensus emerging from this literature is deeply ambivalent. Severino (2010) and Caballero-Anthony (2018) also highlight ASEAN's strength in confidence-building while identifying its consensus-based model as the primary structural constraint on collective action. The consequence is an institution capable of facilitating dialogue but unable to compel agreement, a distinction that matters greatly where claimant and non-claimant member states hold incompatible interests. Thayer (2013) theorises that the internal fractures systematically undermine ASEAN's capacity to produce a

binding regional response, a finding that challenges optimistic institutionalists' account of the organisation's governance enforcement power (Jetschke, 2009). The Code of Conduct negotiations illustrate this pattern clearly, remaining procedurally active for over two decades without producing substantive commitments. Further, Hyung Jong Kim (2007) argues that the ASEAN Way, characterised by consensus-based decision-making, non-interference in domestic matters of member countries, informal diplomacy, and the rejection of binding legal mechanisms, has been central to maintaining regional cooperation and stability in Southeast Asia. However, he contends that these same principles have become obstacles to deeper regional integration. Kim highlights that ASEAN's diversity in political systems, level of economic development and national interests, together with emerging non-traditional security challenges and the need for stronger institutional mechanisms, has placed increasing pressure on the traditional ASEAN Way.

The literature on joint development agreements offers a partial counterpoint. Gao and Jia (2013) provide an overview of a number of cases in the Gulf of Thailand and the East China Sea and show that temporary arrangements work when the states are willing to avoid sovereignty issues. The implications of these findings for the broader scholarship of the South China Sea are that non-sensitive concerns are more likely to be resolved. This suggests that institutional progress may depend less on organisational reform than on strategic reframing toward functionality-first engagement. However, as Peou (2016) notes, even functionally oriented cooperation remains fragile without trust and enforceable accountability. The critical gap in this strand is its tendency to treat institutional limitations as fixed rather than as variable conditions that governance strategies can partially address. The present study engages with this gap directly.

Functionalism, Non-State Actors, and Bottom-Up Maritime Governance

A third strand examines governance from below, focusing on functional cooperation, contributions by non-state actors, and confidence-building measures. The implementation of the Code of Unplanned Encounters at Sea (CUES) in 2014 is often cited as a positive step, but its reach is limited. Bateman (2013) argues that CUES can reduce the risk to naval forces, but this does not apply to the coast guards actively engaged in the South China Sea. Ding (2024) analyses that search and rescue collaboration and the sharing of information can reduce misunderstandings even under strained political conditions.

Confidence-building measures are most effective when they focus on transparency, communication, and predictable behaviour. Yet the literature also identifies a critical vulnerability, such measures tend to be suspended precisely

when political tensions escalate, meaning their stabilising effects are least available when most needed. This fragility points to an under-theorised problem in the functionalist literature regarding the relationship between political conditions and functional governance capacity. Valencia (2010) demonstrates that scientific circles have been arguing in support of joint environmental assessments since they may contribute to the improvement of data quality and create informal cooperation channels, while Joshi et al. (2015) argue that the concept of inclusive governance is stronger since it exploits the expertise of many people and eliminates political pressure.

What this strand collectively demonstrates but does not yet synthesise is that bottom-up functional cooperation constitutes not a peripheral supplement to formal governance but a potential structural substitute during periods of political constraint. The absence of an integrated framework explaining how legal instruments, institutional dialogue, functional cooperation, and confidence-building operate as a mutually reinforcing governance strategy under persistent fragmentation is the central gap this study addresses.

When taken together, the literature reveals several convergent trends. The law offers structural foundations but is not applied equally. Power politics shapes decision-making whenever national interests intersect with sovereignty questions. Regional institutions promote dialogue but lack enforcement capacity. Confidence-building measures reduce risks but require sustained political support. Non-state actors contribute valuable knowledge and maintain communication networks even during periods of tension. Fragmented ocean governance in the South China Sea, therefore, cannot be explained by any single factor but by the interaction of law, politics, institutions, and ecological pressures.

THEORETICAL FRAMEWORK

Ocean governance explains how states, institutions, and communities manage the utilisation of marine spaces by using legal tools, normative standards, and procedures. It helps states balance national interests and collective responsibilities while maintaining stable maritime relations. According to the academic scholarship, ocean governance refers to the regulatory, protective, and guiding architecture that harmonises economic, environmental, and security goals (Rothwell & Stephens, 2016). This paradigm goes further than the territorial rule to include cooperation, scientific research, dispute management, and normative rules that promote peaceful and sustainable behaviour.

This framework provides a foundation for stability and predictability in areas with conflicting claims. The legal foundation of ocean governance rests on UNCLOS, which establishes maritime zones and defines the rights and obligations

related to them. However, governance is not limited to the treaty, but includes regional regimes, informal norms, institutions and confidence-building measures that influence interactions in contentious waters. These superimposed layers form a pluralistic system in which law coexists with diplomacy, practice, and shared expectations (Rothwell, 2022a). This plurality becomes especially significant where legal provisions alone have proven insufficient to prevent tension. Effective ocean governance, therefore, requires the combination of legal standards, dialogue, restraint, and cooperative engagement.

The Normative Architecture: Six Integrated Principles

Contemporary ocean governance rests on six interrelated principles that together constitute its normative architecture. These principles do not operate independently; each conditions and depends upon the others within a governance system that is simultaneously legal, diplomatic, ecological, and participatory.

The rule of law holds that maritime affairs should be regulated by explicit legal standards rather than coercive assertions. UNCLOS establishes rights in exclusive economic zones and sets out responsibilities for environmental conservation and freedom of navigation. It enhances predictability by discouraging states from asserting maritime territory on grounds of historical accounts or force. However, legal texts are subject to divergent interpretation across state actors, producing inconsistencies between formal commitments and actual practices. The rule of law, therefore, provides a foundational framework that requires reinforcement through diplomacy and cooperation.

Cooperation recognises that maritime challenges transcend national boundaries and require coordinated responses. Pollution, fishing, fish stocks, and sea accidents all demand harmonised action. UNCLOS emphasises cooperation, particularly in enclosed or semi-enclosed waters, where states are encouraged to share information, coordinate environmental protection and assist in research. Collaboration is especially needed in contentious waters whose sovereignty is questionable. Stability in contested waters can be supported through joint study, targeted patrols, and mutual surveillance, demonstrating that collaboration is possible even where territorial matters remain unresolved.

Sustainable development asserts that ocean governance must balance resource utilisation with ecological protection. Overfishing, pollution, climate change, and environmental degradation sit at the centre of maritime governance (Caballero-Anthony, 2018). States must consider the ocean not only as a strategic space but as a collective environmental asset whose long-term viability depends on responsible and coordinated management.

Peaceful dispute resolution holds that conflict over maritime claims is anticipated and that ocean governance must provide legal and diplomatic mechanisms, such as arbitration, negotiation, and mediation. UNCLOS provides dispute settlement procedures designed to clarify claims and reduce the chances of conflict. However, these mechanisms are effective only when states accept institutional outcomes and sustain dialogue despite disagreement. Dispute settlement, therefore, forms one component of a broader governance process that must incorporate communication and confidence-building to remain functional.

Transparency and confidence-building recognise that distrust generates instability, particularly when routine maritime operations are perceived as aggression. Transparency fosters open communication, operational reporting, and the sharing of information amongst maritime agencies.

Inclusiveness holds that states are not the only participants in ocean governance. Scientists, local communities, civil society, and regional organisations provide knowledge and policy capacity that enhance both legitimacy and technical richness of governance arrangements. Track II diplomacy sustains connectivity during periods of official negotiation breakdown, ensuring communication and mutual understanding even under political pressure.

Theoretical Tensions: Where Principles Meet Political Reality

While these six principles are theoretically interdependent and mutually reinforcing, a rigorous application of this framework requires acknowledgement of the structural tensions that challenge its underlying assumptions. Ocean governance resets on legalist and institutionalist premises that states will recognise the authority of legal norms, that institutions can coordinate behaviour, and that transparency will reduce strategic miscalculations. These assumptions are directly challenged by realist perspectives, which hold that, in conditions of significant power asymmetry, dominant states will prioritise strategic interests over legal obligations and engage with institutional frameworks selectively rather than consistently.

This tension produces what scholars identify as compliance gaps, where the formal existence of legal norms does not translate into consistent behavioural change (Krasner, 1983; Keohane, 1984). Under such conditions, the rule of law functions not as an enforceable standard but as a common diplomatic lexicon, a shared normative vocabulary that states invoke selectively. Cooperation similarly becomes conditional rather than automatic, dependent on interest alignment rather than institutional design alone. Peaceful dispute resolution mechanisms function only when states accept the legitimacy of institutional outcomes, and when powerful states contest or refuse to implement rulings, governance

fragmentation deepens. These tensions reveal that institutions can define norms but cannot independently enforce them against non-consenting powerful actors.

Confidence-building and inclusiveness, however, offer a theoretical pathway that partially circumvents these tensions. By operating below the threshold of sovereignty disputes, these principles enable functional cooperation in non-sensitive domains without requiring prior political resolution, suggesting that incremental cooperative practices may gradually generate shared behavioural standards that accumulate into greater governance stability over time.

A combination of these principles contributes to a holistic concept of ocean governance. The rule of law provides the basic normative structure. Cooperation supports joint responsibility. Sustainable development protects ecological systems. Peaceful dispute settlement addresses conflict without force. Transparency reduces miscalculation. Inclusiveness broadens participation and enhances capacity. These values reinforce one another, but their interaction is conditioned by the political and power realities within which governance operates. Ocean governance is thus a dynamic process shaped by law and policy, ecology and politics, and by the structural tensions between normative aspiration and strategic behaviour.

The operationalisation of this framework has both limitations and opportunities. Fragmentation occurs where states perceive law differently, pursue strategic competition, and engage in unilateral policy. These factors slow cooperation and undermine the rule of law. However, the same principles demonstrate that government does not depend solely on the sovereignty resolution. Joint research, cooperative monitoring and confidence-building can stabilise relations even in a disputed environment, and with time may promote shared standards under which responsible behaviour becomes the norm.

This framework portrays ocean governance as a feasible process combining legal requirements, diplomacy, science, and collaboration. It does not presuppose that conflicts will be eliminated. It demonstrates that states can manage competition through predictability, communication and respect for legal norms, and that long-term dialogue and collective responsibility are the key foundations for sustainable and peaceful utilisation of the ocean. These theoretical bases guide the analysis of governance in this study and justify the central argument that cooperative and legal actions must advance side by side.

METHODOLOGY

The study adopts a qualitative design grounded in interpretive inquiry, through which legal text, diplomatic documents, institutional records, and policy literature are examined to explain how governance operates, fails, and adapts in the South

China Sea. The qualitative approach is suitable since the issue at hand involves legal interpretation, political intent, institutional behaviour and the development of regional norms, factors that cannot be sufficiently measured using the quantitative metrics. This method requires careful reading of the text, contextual explanations and comparative readings of various documentary materials. Moreover, the lexical decisions that states make can be examined through qualitative inquiry, a dimension of critical importance because legal claims and diplomatic arguments in the South China Sea are advanced through statements, communiqués, policy papers, and official documents.

Primary Document Corpus

The study draws on a structured corpus of primary documents organised into four categories. The first category comprises foundational legal instruments, including the United Nations Convention on the Law of the Sea, the Declaration on the Conduct of Parties in the South China Sea, and the Award of the Arbitral Tribunal in the Matter of the South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China. The second category consists of regional institutional documents, including ASEAN Summit Declarations from 2002 to 2023. The third category encompasses state policy documents, including official position papers, diplomatic communiqués, and maritime zone proclamations issued by China, ASEAN nations, selected to represent the full range of claimant perspectives across the period from 2010 to 2023. The fourth category includes institutional and intergovernmental reports on maritime environmental conditions, fisheries management, and maritime safety. This corpus provides the empirical foundation against which governance patterns, compliance behaviours, and cooperative practices are systematically examined.

Analytical Framework and Operational Procedure

The analysis was conducted in four sequential stages. In the first stage, all primary documents were subjected to close textual reading to identify explicit governance commitments, legal interpretations, and institutional positions. Each document was read in full and annotated against the six principles of ocean governance established in the theoretical framework: rule of law, cooperation, sustainable development, peaceful dispute resolution, transparency and confidence-building, and inclusiveness. This annotation process produced a structured inventory of governance claims organised by principle, actor, and document type.

The paper recognises several limitations. The analysis of documents depends on the sources available; many maritime operations, conversations, and

conferences are not fully documented but only partially available. States do selectively disseminate information. To address these weaknesses, the research triangulates the sources. Another weakness is that documents indicate official stances that can differ from real behaviour at sea. The work thus encompasses scholarly studies, reports on maritime incidents, and independent research to document the efforts undertaken by the coast guards, navies, and maritime militias. This kind of triangulation assists in balancing between what is said and what is observed.

Source Triangulation

To address the inherent limitations of document analysis, including the selective dissemination of information by state actors and the gap between official positions and operational behaviour at sea, the study employs source triangulation across three categories of documents. Official state and institutional documents are cross-referenced against independent academic scholarship and against maritime incident reports and investigative records produced by non-governmental research organisations. This triangulation procedure allows the analysis to distinguish between stated governance commitments and observed governance behaviour, and to identify where the two diverge in analytically significant ways. The triangulation process is explicitly documented throughout the findings section, with each interpretive claim traceable to the specific documents from which it is derived.

FINDINGS AND ANALYSIS

This research was conducted to understand the interaction among law, dialogue, and confidence-building mechanisms in the South China Sea and to learn what the future of ocean governance in a controversial maritime environment may hold. The results have shown that there is heterogeneous governance in the region. States refer to UNCLOS to provide a reference point, but the law functions more as a diplomatic instrument than an operative legal standard. Negotiation is episodic, with short periods of cooperation separated by long intervals of tension. Confidence-building remains limited to low-risk and functional areas. These tendencies indicate the fact that the South China Sea has developed towards partial governance rather than comprehensive regional management.

UNCLOS as a Diplomatic Lexicon Rather Than an Operative Standard

The first finding concerns the use of UNCLOS in the regional practice. States cite UNCLOS when it aligns with their strategic interests, but diverge significantly in their interpretations. China prioritises historic rights and rejects the 2016 decision of the Permanent Court of Arbitration. The Philippines considers the ruling binding and constantly uses it to support its maritime claims. Vietnam agrees with the decision but makes it in a way that will not aggravate China. Malaysia and Indonesia refer to UNCLOS to support their claims in their exclusive economic zones, but without taking a clear stand on the decision. This proves that UNCLOS is more of a common lexicon, rather than a standard regime. The divergence supports the findings of Bateman (2013) and Schofield (2020), which claim that UNCLOS has limited force in situations where states regard maritime space as a strategic resource.

The arbitration award provided legal clarity without producing behavioural change, and the structural reason for these outcomes lies in the power asymmetry theorised in the literature review. No claimant has materially altered its strategy posture following the ruling. China has intensified patrols, maintained its presence around disputed features, and continued maritime infrastructure development, a pattern explicable by the fact that its relative power position insulates it from the legal consequences that smaller states would face under similar circumstances. The Philippines has filed diplomatic protests but lacks the enforcement capacity to operationalise the decision. Other claimants have avoided direct confrontation, reflecting a rational response to asymmetrical risk rather than indifference to legal norms. These results support the position of Kuok (2019) that legal outcomes in the South China Sea influence state behaviour only when consistent with the prevailing balance of power, confirming that the 2016 award functions as a political reference point rather than a conclusive legal settlement.

ASEAN and the Structural Limits of Consensus-Based Dialogue

The second finding concerns ASEAN and regional dialogue. ASEAN presents itself as the primary platform for dispute management, but its consensus-based decision-making model creates structural paralysis precisely on the issues where collective action is most needed. The structural cause of this paralysis, as theorised in the literature review, is the economic and political asymmetry between ASEAN member states and China. Cambodia and Laos maintain closer economic dependencies on China, which constrains their willingness to endorse a collective position on the South China Sea. Vietnam and the Philippines hold clearer legal positions but cannot convert them into organisational leverage within a consensus

framework. Malaysia and Brunei adopt a deliberately low-profile posture to avoid bilateral economic costs. The result is that ASEAN statements remain characteristically cautious and non-committal.

The Code of Conduct negotiations pattern illustrates this structural dynamic with particular clarity. Progress occurs during periods of reduced maritime tension and stalls when incidents escalate, demonstrating that the negotiation process is politically contingent rather than institutionally driven. Draft texts remain broad and unenforceable, with core questions of geographic scope, resource exploitation rights, and enforcement mechanisms consistently deferred. China advocates a narrow code restricted to direct claimants, while ASEAN members seek a broader framework but cannot align internally on its terms. This cycle of cautious engagement and strategic restraint is consistent with the pattern identified by Buszynski and Roberts (2015), confirming that outcomes remain procedural rather than substantive.

Functional Cooperation in Non-Sensitive Domains

The third finding concerns functional cooperation. Cooperation is most consistent and productive when it is deliberately decoupled from sovereignty considerations, a pattern that directly supports the theoretical argument for issue-based governance advanced in this study. Environmental protection has generated modest but meaningful results: Vietnam and the Philippines have conducted joint studies on marine pollution, and China and ASEAN have co-funded marine environmental research through workshops and short-term collaborative programmes. These activities are limited in scale but significant in principle, demonstrating that states are capable of sustained cooperation when the domain is functionally defined rather than politically framed.

Maritime security cooperation follows a similar pattern. Joint search-and-rescue exercises conducted through the ASEAN Regional Forum and the Heads of Asian Coast Guard Agencies Meeting have created regularised interaction channels that reduce operational miscalculation along congested shipping routes. Although these exercises deliberately avoid contested areas, they generate communicative habits and procedural familiarity that constitute incremental confidence-building in practice.

Counter-piracy cooperation in the adjacent waters offers the most instructive precedent for the South China Sea. Coordinated surveillance, incident reporting, and information exchange in the Strait of Malacca have demonstrably reduced maritime crime, providing a functional model that regional states recognise as effective.

Non-State Actors and Technical Communities as Governance Stabilisers

The fourth finding concerns the role of non-state actors and technical communities, a governance dimension introduced in the inclusiveness principle of the theoretical framework and identified as an under-theorised gap in the literature review. Research institutes, regional policy networks and marine scientific communities sustain information exchange across political divisions even during periods of diplomatic tension. Workshops on fisheries management, coral protection and disaster response continue independently of the diplomatic climate, creating spaces for professionals to experiment and exchange data. These interactions generate indirect communication channels that maintain working-level connectivity without changes in state positions. This finding confirms the observation that Track II processes function as stabilisers in sensitive maritime environments, performing a governance function that formal institutions cannot replicate under political pressure.

Confidence-Building Measures and the Gap Between Commitment and Practice

The last finding addresses confidence-building measures. Most of the confidence-building measures in the South China Sea are voluntary and symbolic, and the structural reason for this gap between commitment and practice lies in the divergence between political leadership preferences and maritime agency behaviour. Hotlines among some coast guard agencies, but they are rarely used. Declarations of restraint have been made jointly, but there are still cases of fishing ships, coast guard ships and maritime militia. Public messaging by state actors has, in several instances, intensified rather than reduced tensions. This confirms Hayton's (2018b) finding that confidence-building succeeds only when states are prepared to align their operational maritime practices with their stated political commitments. The evidence shows that the political officials express interest in stability while maritime enforcement agencies maintain an assertive posture in disputed areas, producing a structural gap between normative commitment and operational behaviour that directly reflects the compliance gap theorised in the analytical framework.

Finding 6: Capacity Asymmetry as a Structural Governance Constraint

This sixth finding addresses capacity asymmetry, which the theoretical framework identifies as a manifestation of the power asymmetry conditions under which legal and institutional governance assumptions break down. Smaller claimant states lack the maritime surveillance, coast guard capacity, and naval resources

necessary to enforce their legal entitlements, and consequently rely on diplomatic statements, legal argumentation, and third-party security alignments as functional substitutes for operational presence. China has a distinct edge in the strength of its coast guard, naval forces, and maritime militia. This asymmetry explains the stalling or slow-footed implementation of most initiatives. Capacity imbalances thus create a governance environment in which cooperation is simultaneously the least-risky available approach for smaller states and the most politically constrained, confirming the theoretical proposition that power asymmetry undermines cooperation and compliance within the ocean governance framework.

Collectively, these results depict that the South China Sea's ocean governance is a partial and politically contingent process rather than a comprehensive regional management system. The law offers principles of structure but not solutions to the conflicts. Dialogue is institutionally constrained by consensus requirements, economic dependencies, and national interests. Confidence-building takes place, but it is limited. Functional cooperation is the most promising, although only in a few fields. This is not a comprehensive system of governance but a gradual process.

As the evidence shows, conflicts in the South China Sea cannot be reduced to broader strategic conflicts. The behaviour of all the claimants is influenced by the presence of major powers and the risk of encircling strategies, further suggesting that ocean governance should take into consideration both the local and the broader Indo-Pacific context. The way ahead would be to find a balance between competition and cooperation, adopt the rule of law, address political realities, and build capacity to facilitate safer maritime practices. The South China Sea can be governed more stably without resolving sovereignty claims, but doing so requires deliberate alignment of legal instruments, political dialogue, functional cooperation, and long-term engagement by both state and non-state actors.

DISCUSSION

This paper aimed to understand how the ocean governance operates in a contested maritime space, how the interplay between legal and political instruments operates, and how confidence-building contributes to long-term stability. The findings demonstrate that ocean governance in the South China Sea operates as a patchwork of practices rather than a coordinated regional system. The following discussion interprets these findings with the broader debate on maritime governance, identifying where this study confirms, challenges, and extends existing scholarship.

Legal-Realist Paradox

The findings of this study confirm that UNCLOS functions as a common diplomatic lexicon rather than an operative legal standard, a conclusion that both supports and sharpens the existing literature. Bateman (2013) argued that legal instruments are ineffective when states have firm geopolitical preferences and reflects the finding that disputes over maritime jurisdiction in the South China Sea have not been resolved yet, because states believe the political price of modifying their claims to be too high to be offset by the legal certainty provided by UNCLOS, establishes a maritime order, but its effectiveness is bound to the desire of states to act upon it. This study therefore advances beyond Bateman by demonstrating that the compliance gap is not merely a product of geopolitical preference, but a rational strategic calculation conditioned by power asymmetry.

The arbitration decision of 2016 clarifies this gap and explains that the historic rights claim of China has no legal basis in the framework of UNCLOS, besides outlining the status of a number of features. The decision failed to bring substantive behavioural change: China dismissed it, but other claimant states accepted some of its points and could not enforce their findings. It is in line with the evaluation of Kuok (2019), who claims that the legal success in disputed maritime areas changes rhetoric but fails to change the balance of strategies at the water, meaning that ocean governance should be viewed as integrating political and diplomatic tools into its functioning in disputed areas. This finding reframes the legal-realist tension not as a failure of law but as a structural condition of governance in asymmetric maritime environments, a theoretical contribution that existing scholarship has not fully articulated.

The 2016 arbitration experience also suggests that ocean governance in disputed waters cannot rely on legal instruments alone. The findings show that legal outcomes require correlative political and diplomatic tools to produce behavioural change, confirming the pluralistic governance model of Rothwell (2022b) while specifying the conditions under which its legal component becomes operative rather than only rhetorical.

Institutional Paralysis vs. Functional Resiliency

The findings present a theoretically important tension that prevailing institutionalist scholarship has not appropriately resolved. As mentioned earlier, ASEAN has the most important governance role in the region and is the least capable of producing results due to internal divisions. The fact that Thayer (2018) defines this phenomenon as a structural constraint undermining ASEAN's ability to influence security outcomes is thus confirmed, but this study extends the

argument by identifying the specific mechanism that produces paralysis. As the economic and political asymmetry between China and ASEAN members creates differentiated incentives within the consensus model. Cambodia and Laos lean towards policies aligned with Beijing. At the same time, Vietnam and the Philippines strive to advance stronger positions on maritime issues, but cannot form a cohesive group to utilise a unified language. As such, a reserved stance is adopted, which keeps the lines open yet does not resolve conflicts or create binding obligations. The result is not merely a weak consensus but a systematically distorted consensus, where the least assertive position always prevails regardless of the legal merits.

The Code of Conduct negotiations illustrate this dynamic. Buszynski and Hai (2020) argue that bargaining in the South China Sea is influenced by the strategic environment and not just by the preferences of the law or institutions. The negotiation process demonstrates that regional diplomacy has merit as a means of conflict management. However, this study further demonstrates that the negotiation process itself performs a governance function independent of its substantive outcomes. It endures diplomatic connectivity, signals mutual recognition of organisational framework, and avoids the complete breakdown of multilateral negotiation. This finding provokes the implicit assumption in critical institutionalist scholarship that procedural activity without substantive outcomes constitutes governance failure. In the context of the South China Sea, procedural continuity is itself a form of conflict management.

The contrast with functional cooperation shows the theoretical contribution very clearly. The results indicate that cooperation is most effective when it focuses on issues that do not involve sovereignty. Participation is drawn to environmental protection, search and rescue, and scientific exchange, as these spheres are not considered political concessions by states. The fact is that such efforts are small scale and do not spill over into areas associated with enforcement or resource rights, which have been politically sensitised. States also shun practices likely to be construed as recognition of another state's jurisdiction over the disputed waters. This finding redefines the functionalist assumption of incremental integration as a contingent, rather than automatic, process, dependent on deliberate political management rather than on natural institutional momentum.

The Geopolitical Layering of Maritime Management

The findings reveal that confidence-building measures in the region are structurally capped by two interacting geopolitical conditions: first, internal power asymmetry between claimants and second, external big power competition.

Hayton (2018b) argues that confidence-building is not a rhetoric only but involves behavioural changes. The results indicate that maritime agencies will be more aggressive than political leaders, under pressure to protect national claims. This dilutes the effects of the regional commitments and adds to the recurring tensions. Maritime enforcement agencies operate under institutional incentives to assertively protect national claims, creating a systematic divergence between the stability preferences of political leadership and the operational behaviour of coast guards and maritime militias. This divergence is not an implementation failure but a structural feature of governance in asymmetric competitive environments.

This can be compared to the experience of counter-piracy cooperation in the Strait of Malacca. It works because the mechanisms in that context are based on obvious interests of states, and none of them faces the issue of territorial disagreements in the main areas of operation. The incidence of maritime crime has been reduced through joint patrols, information sharing, and coordinated response models. The South China Sea states acknowledge the usefulness of these models but do not adopt them because they fear that coordinated patrols would indicate acceptance of another state's claim. This confirms that the lack of trust in Southeast Asia extends to non-sensitive spheres of cooperation, and that the political price of the misinterpretation restricts the application of the best practices in other parts of the region.

Another dimension of governance is created by non-state actors. The results indicate that research institutes, track-two networks, and scientific communities play a role in ensuring that communication channels remain open during periods of diplomatic strain. Through these bodies, there is mutual data exchange and collaborative research, as well as informal areas where officials can interact on a personal level and discuss ideas without the obligation of a formal commitment. These platforms do not resolve sovereignty claims, but they preserve the relational conditions under which future progress in governance becomes possible.

All these trends suggest that the ocean governance in this region is influenced by politicking. Legal instruments give us a framework through which we interpret national interests. Diplomatic activity maintains the dialogue, and internal differences undermine regional organisations. Functional cooperation gradually generates trust, but there is a sovereign limitation on its growth. Confidence-building measures are used as an initial step and cannot offset clashing strategic interests, creating a system of partial government that seeks to avert, but does not remove, the possibility of uncontrolled conflict.

The involvement of big external powers should not be disregarded. The US conducts freedom-of-navigation operations and reinforces its ties with states

in the region, thereby influencing the claimants' risk-calculation mode. These measures are strategic reassurances to specific states, but they also raise concerns about the growing great-power rivalry in disputed waters. This relationship fits within a broader body of research on Indo-Pacific security, where regional conflicts intersect with international-level rivalry. The results show that the states in the region seek to reconcile the need to collaborate with China with the desire to gain the advantages of partnerships with external participants.

The discussion also indicates that governance in the South China Sea is advancing in small steps. Comprehensive agreements are unlikely given prevailing political limitations. Semi-cooperation in the chosen spheres seems to be the most practical way out. This gradualist methodology aligns with broader discussions about international regulation, where multifaceted conflicts require multifaceted solutions rather than monolithic plans. It is also reflective of the political nature of maritime security, in that states seek stability but do not wish to relinquish claims. This tension simultaneously sets both the boundaries and the possibilities of governance.

The other insight that stands out is that the future of governance in the South China Sea depends on a process of confidence-building that bridges functional cooperation with political dialogue. Functional cooperation creates trust, but it needs political assistance to grow. Conversation can ensure stability, but it requires realistic actions to develop credibility. Law is still required, but it requires complementing working mechanisms. These interdependencies imply that the governance process should comprise more than one instrument.

As the results have shown, non-state actors and regional platforms will remain significant. They create stability in cases where relations among countries fail, mobilise experience, and create mutual knowledge. They also have an opportunity to shape the policy by finding shared interests in environmental protection, disaster response, and maritime safety. These are modest yet vital contributions in a region where the lack of trust constrains state-based collaboration.

The overall picture that emerges from these dimensions is that ocean governance in the South China Sea is likely to continue being a disputed maritime area. Governance will take the form of half-baked, ad hoc collaboration rather than an extensive system. Legal principles, political dialogue, functional cooperation, and capacity building each have a role to play in promoting stability, and the way they interact defines the limits of progress. Such dynamics affirm that the disputed maritime zones must be addressed with flexible solutions that acknowledge the political realities while ensuring responsible actions. The research indicates that the region possesses the tools for greater governance stability, but their

effectiveness is contingent on political will, capacity asymmetry, and the broader Indo-Pacific strategic environment in which South China Sea governance is embedded.

CONCLUSION

The paper has explored the functioning of ocean governance in the South China Sea and the influence of legal norms, diplomacy and selective cooperation in shaping behaviour in a contested maritime space. The results indicate that governance in the region does not operate under a single unified system but rather across multiple layers. A combination of legal frameworks, regional procedures, unilateral action, and limited cooperation creates a system in which tensions are managed in ways that leave sovereignty differences unresolved. A comprehensive political settlement is unlikely in the near term, but still, pragmatic collaboration creates space to reduce risks and encourage more stable relations between claimant states.

International law provides the basic framework for maritime behaviour, although its impact is limited to the political realities. UNCLOS elucidates rights and obligations, but states are selective in their interpretation and application. The 2016 arbitration decision describes the disconnect between law and politics. China repudiated the award, and other claimants lacked mechanisms to enforce it. This paper acknowledges that law is critical, though it alone cannot determine behaviour in a strategic environment that is characterised by competition and historical grievances.

Governance also contributes to regional diplomacy, though it has diverse effects. ASEAN is also the most important forum for dialogue, but its consensus regulation does not allow it to impact maritime behaviour decisively. The Code of Conduct assists in minimising communication gaps, although the process has not yielded any binding enforceable promise. Dialogue acts as a stabilising tool; it ensures open communication and reduces the risk of false calculations, but it has not changed the strategic postures of claimant states. Incremental progress could be achieved through functional cooperation, which is more promising. Cooperation in environmental protection, marine research, and maritime security allows states to collaborate without regard to sovereignty. They are tapers and helpful activities that create familiarity amongst maritime agencies and reinforce shared interests.

Confidence-building measures provide a more pragmatic dimension of governance. There are hotlines, voluntary guidelines and operational commitments which are unevenly utilised. Sea incidents still occur due to agencies' perceived need to protect national claims and retaliate against perceived

provocations. The paper finds that confidence-building can help to mitigate misunderstandings, but it cannot offset more profound mistrust when states are determined to pursue consistency in their implementation. Another role is played by non-state actors, albeit in a small but consistent manner. Research networks, technical experts, and civil society organisations provide information, maintain informal communication in the event of diplomatic tensions, and assist in identifying common issues such as environmental degradation. Their role is indirect, but they sustain continuity in an area where the political processes are often interrupted.

The paper concludes that governance of the South China Sea constitutes not a unified regime but a set of overlapping practices. Law provides the normative foundation. Communication channels are sustained using diplomacy. Incremental trust is formed in functional cooperation. Trust building mitigates the short-run risks. Technical capacity is empowered by non-state actors. Territorial issues are not solved by using these tools alone, but their combination is effective in controlling competition and preventing crises. The future of governance depends on how states integrate law with the cooperative practice. Without political involvement, the country ends up in a stalemate due to a lack of legal clarity, and without legal grounding, cooperation may lead to confusion. There must be a balanced solution that is based on predictable behaviour, open communication, and joint accountability for marine resources. Progress will be incremental, built through gradual risk reduction and responsible management of the South China Sea.

ACKNOWLEDGEMENTS

The author wishes to thank the editorial team and anonymous reviewers of this journal for their valuable and constructive comments, which helped strengthen the arguments and presentation of this manuscript.

ETHICAL ASPECT

This research has not involved the collection of personal data. All sources used are publicly available and appropriately cited. Therefore, no ethical approval was required.

REFERENCES

- Bateman, S. (2013, February 14). Managing incidents at sea. *The Strategist*.
<https://www.aspistrategist.org.au/managing-incidents-at-sea/>

- Beckman, R. (2013). The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea. *American Journal of International Law*, 107(1), 142-163. <https://doi.org/10.5305/amerjintelaw.107.1.0142>
- Buszynski, L., & Hai, D. H. (Eds.). (2020). *The South China Sea: From a regional maritime dispute to geopolitical competition*. Routledge.
- Caballero-Anthony, M. (2018). *Negotiating governance on non-traditional security in Southeast Asia and beyond*. Columbia University Press.
- Ding, D. (2024, March 21). How maritime search and rescue cooperation can be strengthened in South China Sea. National Institute for South China Sea Studies. https://en.nanhai.org.cn/index/research/paper_c/id/583.html
- Emmers, R. (2007). Maritime disputes in the South China Sea: Strategic and diplomatic status quo. In Kwa K. C. G. & J. Skogan (Eds.), *Maritime security in Southeast Asia* (pp. 63-75). Routledge.
- Fravel, M. T. (2008). *Strong borders, secure nation: Cooperation and conflict in China's territorial disputes*. Princeton University Press.
- Gao, Z., & Jia, B. B. (2013). The nine-dash line in the South China Sea: History, status, and implications. *American Journal of International Law*, 107(1), 98-124. <https://doi.org/10.5305/amerjintelaw.107.1.0098>
- Hayton, B. (2018a). The modern creation of China's 'historic rights' claim in the South China Sea. *Asian Affairs*, 49(3), 370-382. <https://doi.org/10.1080/03068374.2018.1487689>
- Hayton, B. (2018b). *The South China Sea: The struggle for power in Asia*. Yale University Press.
- Jetschke, A. (2009). Institutionalizing ASEAN: Celebrating Europe through network governance. *Cambridge Review of International Affairs*, 22(3), 407-426. <https://doi.org/10.1080/09557570903107688>
- Joshi, D., Hughes, B., & Sisk, T. (2015). Improving governance for the post-2015 Sustainable Development Goals: Scenario forecasting the next 50 years. *World Development*, 70, 286-302. <https://doi.org/10.1016/j.worlddev.2015.01.013>
- Kaplan, R. D. (2019). *Asia's cauldron: The South China Sea and the end of a stable Pacific*. Random House.
- Keohane, R. O. (1984). *After hegemony: Cooperation and discord in the world political economy*. Princeton University Press.
- Kim, H. J. (2007). ASEAN Way and its implications and challenges for regional integration in Southeast Asia. *JATI – Journal of Southeast Asian Studies*, 12, 17–33. <https://jice.um.edu.my/index.php/jati/article/view/5779>
- Krasner, S. D. (1983). *International regimes*. Cornell University Press.

- Kuok, L. (2019). *The South China Sea arbitration ruling: Three years later*. Brookings Institution Press.
- McCook, T., & Rothwell, D. (2024). Territorial disputes and deep-sea mining in the South China Sea. *Melbourne Journal of International Law*, 25(1), 1-37.
- Mitchell, S. M., & Owsiak, A. P. (2021). Judicialization of the sea: Bargaining in the shadow of UNCLOS. *American Journal of International Law*, 115(4), 579-621. <https://doi.org/10.1017/ajil.2021.26>
- Miyamoto, M., & Storey, I. (2013). The South China Sea dispute: Recent developments. *Asian Affairs*, 44(3), 391–406. <https://doi.org/10.1080/03068374.2013.826013>
- Østhagen, A. (2020). Maritime boundary disputes: What are they and why do they matter? *Marine Policy*, 120, Article 104118. <https://doi.org/10.1016/j.marpol.2020.104118>
- Peou, S. (2016). Enduring mistrust and conflict management in Southeast Asia: An assessment of ASEAN as a security community. *TRaNS: Trans-Regional and -National Studies of Southeast Asia*, 4(2), 201-228. <https://doi.org/10.1017/trn.2015.24>
- Permanent Court of Arbitration. (2016). *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China), Award of 12 July 2016 (PCA Case No. 2013–19)*.
- Rothwell, D. R. (2022a). *Ocean governance: Reflections on theory and practice*. Cambridge University Press.
- Rothwell, D. R. (2022b). Rethinking ocean governance: A pluralistic approach. *Marine Policy*, 137, Article 104932. <https://doi.org/10.1016/j.marpol.2022.104932>
- Rothwell, D. R., & Stephens, T. (2016). *The international law of the sea* (2nd ed.). Hart Publishing.
- Schofield, C. (2020). Maritime jurisdictional disputes in the South China Sea. *Marine Policy*, 115, Article 103857. <https://doi.org/10.1016/j.marpol.2020.103857>
- Severino, R. (2010). *ASEAN's journey: Southeast Asia's integration story*. Institute of Southeast Asian Studies.
- Thayer, C. A. (2013). ASEAN, China, and the Code of Conduct in the South China Sea. *The SAIS Review of International Affairs*, 33(2), 75-84. <https://doi.org/10.1080/09733159.2017.1315343>
- Valencia, M. (2010). The South China Sea: Back to the future? *Global Asia*, 5(4). https://www.globalasia.org/v5no4/cover/the-south-china-sea-back-to-the-future_mark-j-valencia

How to cite this article (APA):

Sandano, I. A. (2026). Navigating ocean governance in disputed waters: Law, institutional dialogue, and functional cooperation in the South China Sea. *JATI-Journal of Southeast Asian Studies*, 31(1), 5-28.

Date received: 12 March 2026

Date of acceptance: 20 June 2026