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South China Sea Disputes: Achieving Peaceful Resolutions Through Cooperation

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Abstract

Recent development in the South China Sea (SCS) indicated some positive headway or “silver lining” that brings hope back to the peaceful resolution of the disputes. Amidst all of its aggressive actions, China has nevertheless repeatedly made statements for peaceful resolution and offered a two track approach for China and ASEAN nations for joint management and development activities. ASEAN and its claimants should not miss this window of opportunity opened by China. Using the “ASEAN Way” concept, ASEAN claimants should resolve their overlapping EEZ disputes first before engaging China. Proceeding for arbitration under international law as provided by UNCLOS should only be used as a last resort to contain China to overcome negotiations deadlock. Meanwhile, US military presence is still regarded as guarantor to the region’s peace and stability. The “silver lining” is achievable and the Chinese gesture is a positive indicator that will allow cooperation through diplomacy to forge ahead towards the attainment of regional peace and stability.

South China Sea Disputes: Achieving Peaceful Resolutions Through Cooperation

The South China Sea (SCS) dispute came to a head with China making aggressive constructions on some land features in 2014-15. Those activities have worsen the situation, endangering efforts for a peaceful resolution and the relations between China and the other four member nations of the Association of South East Asian Nations (ASEAN), as well as relation between China and the United States (US).

Recent development between China and the ASEAN nations however appears to indicate some positive headway or “silver lining” that brings hope back to the peaceful resolution of the disputes. Amidst all of its aggressive actions that have taken place, China has nevertheless repeatedly made statements for peaceful resolution and offered a two track approach for China and ASEAN nations to deal with the SCS problems.

At the recently concluded Asia Pacific Summit from 19th-20th November 2016 in Peru, Chinese President Xi Jinping met with the Vietnamese President Tran Dai Quang and suggested that the dispute between them in the Spratlys to be solved through bilateral consultations and dialogues, adhere to a cooperative path of shelving differences and engaging in joint development activities.¹ Taking this gesture as a positive sign, proposals along similar lines could also be taken by the other claimants to the SCS disputes with the objective to search avenues for a peaceful resolution.

Other claimants to the SCS disputes should give China a chance to show its sincerity and obligations in making the call. The onus is now with China to display its leadership by taking the rightful steps and to lead by example. Thus, the Chinese gestures and proposals are encouraging to create a path and quest for a possible peaceful resolution to the disputes. The Chinese promise seem workable and it is with their interest of doing that. It also blends well with the ASEAN norms popularly known

as the “ASEAN Way” of resolving disputes through negotiations and discussions as well as non-use of force.² Recently, China displayed its gestures of soft power approach towards the Philippines and Malaysia, when it pledged billions of dollars of investment in both countries. The Chinese gestures will go a long way towards bilateral agreement and cooperation. There seem to be a “silver lining” to this episode. All the parties involved could also envisage a joint development in exploration and sharing of the resources in the disputed SCS region.

This paper intends to discuss the objectives and interests of all claimants and analyze possible options available in the context of cooperation amongst all claimants towards achieving a peaceful resolution to the disputes. Following this first segment as the introduction, the second segment will discuss the background to the disputes and the long position held by China, the ASEAN claimants and the US. The third segment will discuss the recent development and actions by claimants. This segment will also touch on the China-US confrontation and the US interests. The fourth segment will be the discussions on the possible cooperation for peaceful resolution or the “silver lining” and recommendations. The final segment will be the conclusions of the paper.

Background on Dispute and Long-Held Positions

The Contentious Area and Overlapping Claims

The SCS covers an area of approximately 3,500,000 square kilometers (1,400,000 square miles)³, which geographically can be divided into four areas. The first is the group of Pratas Island in the northern part which is close to Taiwan and the other three areas are the group of islands, rocks, shoals and reefs known as the Paracels in the west, Macclesfield bank and Scarborough shoal to the east and Spratlys further south. Paracels and Spratlys are the two main groups of islands in the SCS. Each of

these two groups of islands are made up of land and other features in the form of rocks, shoals, sandbanks and reefs. All these features are either totally submerged or partly exposed at high tide and are uninhabitable.

During World War II, Japan had taken over the entire South China Sea. After the war, the Chinese government sent four military vessels to recover four archipelagos of the SCS namely Xinsha (Paracels), Nansha (Spratlys), Dongsha (Pratas) and Zhongsha (Macclesfield bank) and then published a map with the locations of all the islands in the SCS.⁴ The map that China drew contained the nine-dash line delineating major portions of the SCS and including all of the Paracels, Scarborough and Spratlys as belonging to China. The nine-dash line looks like an imaginary “free hand drawing”, without any reference to survey data or navigational charts and the map which encompass almost entirety of the SCS were without any coordinates.

The SCS is part of the Pacific Ocean, encompassing an area from the Straits of Malacca to the Straits of Taiwan. The SCS is an important sea lanes to the world’s economy as one third of world’s shipping especially commercial vessels, passes through its waters. The overlapping territorial claims begun only after the period from 1970 onwards, in which the areas of the SCS surrounding the groups of islands, rocks, shoals and reefs were believed to possess abundant natural gas and hydrocarbon reserves as well as provides new offshore fishing ground. The disputes concerns mainly over the islands and maritime territorial claims where China, Taiwan and four of the SEA nations namely Brunei, Malaysia, Philippines and Vietnam laid their sovereignty claims over the islands, rocks, shoals and reefs in the SCS. Each claimant argued that those islands and features are within their respective 200 nautical miles of the Exclusive

Economic Zone (EEZ). The EEZ is established as a feature of international law under the United Nations Convention on the Law of the Sea (UNCLOS).⁵ China, Taiwan and Vietnam also placed their claims on historical ground. China claim almost 90% of the SCS, which is based on its so-called nine-dash line map, whereas the claims from the other claimants were in parts of the SCS. The disputes mainly centers on the group of islands of Paracels, Spratlys and Scarborough Shoals, as each of the claimant's interpretation of their EEZ boundaries are overlapping to each other, hence the term "overlapping claims".

China, does not only claim the group of islands, rocks, shoals and reefs like the other four SEA nations, but also along with Taiwan, both laid claims on all the land features in the SCS. The claims on the land features are strategically significant and related to the EEZ issue, as China claims an EEZ from all the land features over which it asserts sovereignty.⁶ China believes that its claim on the land features is legitimate and that it could expand its maritime zones of sovereignty and EEZ, conduct activities, exert influence and jurisdiction over those "newly acquired zones". Unfortunately for China, the interpretation of law under UNCLOS however does not automatically give any offshore territorial rights to a country that possess any feature of rocks, shoals or reefs.

The Paracels

The disputes over the Paracels are between China, Vietnam and Taiwan, each nation basing their territorial claims on historical background. The Paracels group of islands consisted about thirty small islands, rocks and reefs. Shortly after World War II, the Chinese have dominated Paracels and built infrastructures, harbors and placed troops to assert their claims. China has controlled the northern portion of the Paracels

since 1950s and placed the island under the administrative of their Hainan province.⁷

The disputes have escalated into military confrontation between China and Vietnam in 1974. China ejected the Vietnamese forces and took control of the entire Paracels Islands.⁸

The Spratlys

The maritime territorial claim for Spratlys begun in the 1970s when the Philippines, Brunei, Malaysia and Vietnam referred the Spratly Island as included in their maritime territory. The Philippines on 11 June 1978 went a step further by issuing a Presidential Decree declaring the north-western part of the Spratly as their territory and to be known as Kalayaan Island.⁹ Meanwhile, China, Philippines, Malaysia and Vietnam have occupied a number of the small islands or rocks and reefs within the Spratlys group and constructed shelters and infrastructures to position their troops. For the purpose of discussions in this paper, these features of islands or rocks or reefs are known as islands. The situation in the Spratlys as of today, China controlled 8 of the islands, Vietnamese controlled the largest with 29 islands, 8 islands controlled by Philippines, 5 islands controlled by Malaysia and 1 island by Taiwan.¹⁰

Long-held Positions

China

China has the largest claim and holds the longest historical record, although it is still subject to dispute. China's claim over the nine-dash line is not clear, whether it is only the land features inside it, the natural resources, or water as well. China formally submitted a justification to UNCLOS to its long standing territorial claims in three documents, a first *note verbale* to the UN Secretary General and a preliminary

declaration of claims to an extended continental shelf both in May 2009 and a second *note verbale* in April 2011.¹¹

Over the years, there were a few skirmishes that occurred amongst the claimants. Apart from the main incident involving the China's People Liberation Army Navy (PLAN) and the Vietnamese Navy over the southern islands of the Paracels in 1974, other minor instances were clashes between the Chinese Coast Guard and the Vietnamese navy and against the Philippines fishermen. Minor skirmishes between other claimants which did not involve China occurred between the Philippines Coast Guard and the Vietnamese fishermen in 2001.¹²

There were also minor clashes between the Chinese and US ships in international waters in 2001 and 2009. Earlier incidents in the international airspace, Chinese fighter aircraft intercepted the US surveillance plane in April 2001.¹³ Otherwise, relatively the SCS region has remained calm and commercial vessels are enjoying the safe passage through its waters. China has undertaken a variety of activities to defend its claims. China maintains its troop's occupation within the whole of the Paracels and certain portion of the Spratlys group of islands. China has deployed vessels from its Coast Guard which is its maritime agency, conducting security patrols to enforce its ban on foreign fishing. Their actions involved detention of Vietnamese fishermen and cutting of cables of survey ships. China has also increased its scientific research activities and naval exercises in the contentious region.¹⁴

ASEAN's Claimants

Vietnam together with Malaysia, the Philippines and Brunei, stated their stand and staked their claims based on the 200 nautical miles of their respective EEZ. There was a collective agreement and understanding between China and the ASEAN's

claimants to the SCS issue on a code of conduct, which was proposed very much earlier during the ASEAN Ministerial Meeting (AMM) in Jakarta in 1996 by the then Indonesian Foreign Minister Ali Alatas.¹⁵ The original idea of this code is to foster an understanding amongst claimant states.¹⁶ Following that, in November 2002 at the ASEAN Summit in Phnom Penh, Cambodia, China and ASEAN agreed to a Declaration on the Conduct (DOC)¹⁷ of parties in the SCS disputes. The document calls on the parties to refrain from the occupation of uninhabited islands and other features, continue on consultations and to agree to work together towards a binding code of conduct.¹⁸ Amongst the four claimants from the ASEAN nations, Vietnam was the most vocal and aggressive against China, where both their navies fought in the battle over the Paracels. Vietnam claimed and occupied the most islands, rocks and reefs features in the Spratlys group. All the ASEAN claimants have called for a peaceful resolution to the dispute and denounced the use of force. The ASEAN nations have reiterated their willingness to cooperate and working together to maintain the status quo for a peaceful security environment in the region.

The US Position

Even though the US is not a claimant, the US is another interested and influential party to the disputes. The region is a vital and important strategic interest to the US. Throughout the post-World War II period, the region served as an anchor to US strategic relationships with the SEA countries, first in the containment of communism and more recently as a counterweight to the rise of China.¹⁹ As stated before, in the 2010 declaration, former US Secretary of State, Clinton, stated the US stand of not taking sides in the disputes and opposes the use or threat of force by any claimant.²⁰ Clinton explicitly declared a US “national interest” in the SCS, which the State

Department defines as being in “the maintenance of peace and stability, respect for international law, freedom of navigation and unimpeded lawful commerce” in the sea. The US 2012 Defense Strategic Guidance emphasized the US interest in the security and prosperity and “will of necessity rebalance toward the Asia Pacific region”.²¹ The SCS is bordered by the US treaty ally the Philippines, and is a key strategic waterway for the US navy.²² US reiterated further that the States support any form of collaboration through the diplomatic process and encouraged all claimants to resolve the territorial disputes without coercion. The US agrees that the SCS region should not be militarized so that the freedom of navigation is prevailed, as much of the commerce through shipping are critical to the American businesses. The US Pacific fleet maintains its presence in the region by regularly deploying its ships to conduct its freedom of navigation tasks. This is the US long held position to the disputes thus far.

Recent Developments in the South China Sea Dispute

Current Scenario

As this paper will only discuss disputes between China and the ASEAN claimants, the issues concerning Taiwan’s claims will not be touched. China is taking advantage over its ASEAN claimants by aggressively occupying and transforming the islands, rocks, reefs, shoals and features into man-made islands. These man-made islands were further improved to be capable of providing basic infrastructure for its troop including an airstrip in one of them. During the ASEAN August 2015 Summit in Kuala Lumpur, ASEAN issued a statement reiterating the importance of maintaining peace and reaffirmed their commitment to the DOC. This agreement, in my view, appears only in a temporary and weak state. It requires further commitment and political will by all parties to ensure the objectives stated in the document are met. At the ASEAN Summit

in Vientianne in 2016,²³ ASEAN head of states and China issued a joint statement on the application of the code for unplanned encounters at sea in the SCS.²⁴ The statement reaffirmed the recognition of maintaining peace and stability in the SCS which serves the fundamental interest of ASEAN and China (known collectively as the parties) as well as the international community.

Prior to that Laos as chairman to the summit was supposed to issue a statement in the Chairman's opening address concerning China's conduct in building the artificial islands in the SCS but it was not done due to some "pressure" from China, much to the displeasure of the other ASEAN members. China was seen as trying to put a wedge between the ASEAN states through its "soft landing" diplomatic maneuver. Laos has received assistance from China to maintain the Laotian currency value during the financial crisis in 1997 and has cancelled Laos' debt of USD 1.7 billion (according to Chinese figures) in 2003.²⁵ China has invested heavily and flooding Chinese goods in Laos, so much so that Laos' population and economic development is dependent on China. The proposal for a binding code of conduct could be further discussed, negotiated and expanded towards a joint effort and cooperation that is accepted and workable with China. It should be pursuit with the objective of achieving a peaceful resolution to the dispute, in line with the spirit of its inception way back in 1996.

Diplomatic, political courses and actions undertaken thus far by individual claimant are as mentioned below, including Indonesia which is not a party to the maritime overlapping disputes but contributed to the SEA strategic environment.

Philippines

International arbitration on 12th July 2016 has given its verdict in favor of the Philippines. This is a good takeaway and lessons for every claimant regarding legal

issues on UNCLOS. Adhering to the basic legal issues could further be exploited to settle dispute. In 2016, President Duterte “about turn” on the US and publicly announcing its leaning towards China has so far managed to ease its dispute with China on the Scarborough shoals. Duterte’s strategy seem to gain advantage for both sides as China’s investment will encourage Philippines’s economy and growth and China has announced that Philippines’s fishermen are allowed to fish in the contested areas. At the same time, China’s using its economy and money as a “soft power” to the Philippines looks like winning and improving its political influence.

Vietnam

Vietnam has responded with the same tactics as China in enlarging its construction and extending the runway on the disputed islands as well as deploying its military assets. This could lead to potential skirmishes and conflict. The US recently has lifted its ban on arms trade with Vietnam, indicating the strategic importance of the region to the US in balancing China’s influence. Vietnam has emerged as China’s biggest trading partner within ASEAN, despite the SCS dispute. There are many strategic partnerships apart from trade between both countries. There were cooperation in areas of cybercrime, border crime and human trafficking. China has announced that it values the relationship and wants to increase its investment and overseas development aid (ODA) to Vietnam. These are areas for cooperation that could possibly be exploited for further improvement, which could lead to peaceful resolution to the SCS issues.

Malaysia

Recently in 2016, the Malaysian Prime Minister visited China and managed to secure huge investment that set to come to Malaysia especially in the infrastructure projects. China is seen once again leveraging its economic power house to win

concessions from individual states in ASEAN that is claimants to the SCS issues. This is the same situation as in the Philippines. Malaysia stand has always been on solving dispute through peaceful and diplomatic means. Despite the importance of the international arbitration ruling in the Philippines' case, Malaysia's approach to the SCS disputes remains constant.²⁶ Malaysia's main considerations are protecting its national interests, sovereignty, territorial integrity and national well-being and adhering to international law including UNCLOS as well as other international conventions and regulations related to the management of the seas.²⁷ Malaysia maintains close relation with the US and Malaysia is seen as a supporter to US policy in SCS. US has stationed aircraft in Malaysia for surveillance duties. For that, China is seen as trying to win influences over the states within ASEAN to counter the US influences and power in the region.

Indonesia

Indonesian position is that there is no overlapping waters with China, where as the Chinese mentioned that their territorial waters and that of Indonesia overlap in the surrounding waters near Natuna Island. From here, there were numerous incursions by Chinese fishermen as they claim to fish around "their traditional fishing ground". So far, Indonesia is holding on to the strategy that they are not part of the claimants in the SCS dispute. Dispute between Indonesia and China were the stand-off incidents between Indonesian navy and Chinese fishing boats off the Natuna Island. In the incident in June 2016, the Indonesian navy fired warning shots at the Chinese fishing vessels, confiscated the catch and had their crew detained. The Chinese fishing boats were widely believed to be part of the Chinese PLA Navy and their presence in the area were

seen as testing the Indonesian response. This incident has added an additional reason for potential conflict to occur in the already hot spot zone in the SCS.

Brunei

Oil rich Brunei has been quiet all along, possibly due to its small armed forces and limited capabilities. They are a party to the SCS overlapping claims with regards to the EEZ. Brunei is a supporter for peaceful resolution to the dispute and so far have not make any attempt to occupy any reef or shoal. Thus far, apart from agreeing for joint development talks, Brunei have made no significant political moves.

China's Confrontation with the US

China's assertiveness over the maritime disputes has resulted in confrontation with the US military surveillance ships and aircraft operating in the waters and airspace of China's EEZ. In April 2001, one of China's two J-8 fighter aircraft collided with the US Navy EP-3E signals intelligence aircraft which resulted in the death of the Chinese pilot.²⁸ As a result of the collision, the EP-3E aircraft was forced to make an emergency landing in the Hainan Island. The US pilot and his crew were detained and interrogated by the Chinese authorities. They were subsequently released and returned to a heroic welcome at their base in Hawaii. This incident resulted in an international dispute between both countries. Following this episode however, US surveillance aircraft continued their routine as before the incident with close monitoring by the Chinese.²⁹ In March 2009, five Chinese vessels shadowed the USNS Impeccable conducting its routine naval surveillance in international waters in the SCS. The Chinese vessels came to almost 50 feet (15 meters) to the USNS Impeccable, telling the US ship to leave the area. The US ship sprayed its fire hoses to protect itself.³⁰ The confrontation occurred

about 120 kilometers (or 75 miles) from the Hainan Island where China has an underground naval complex for its submarines.³¹

The latest incident between China and the United States occurred when the Chinese submarine rescue ship illegally seized the US underwater drone in December 2016 in the international waters in the SCS.³² The incident occurred in Philippine's waters, about 50 nautical miles from Philippine's Subic Bay, barely a month the new Trump administration were to take office. The drone was subsequently returned by the Chinese. China maintains that it strongly opposed to US reconnaissance activities in the region and exerted its claims in the contentious SCS.³³ Another latest incident to occur was the close encounter between a Chinese early warning aircraft and a US Navy patrol plane in international airspace over Scarborough Shoal near the Philippines on 8th February 2017.³⁴ The Chinese aircraft came within 1,000 feet (305 meters) of the US plane. Both sides reported the incident as appeared to be unintentional. This incident was the first to have taken place under the new Trump administration.³⁵

Meanwhile, Chinese warships have conducted a week training exercises in February 2017 in the SCS, shortly after China's sole aircraft carrier tested its weapons in the disputed region. The flotilla of ships have been conducting drills amidst the US reportedly was planning several FONOPS patrols through the waters.³⁶ The US responded by deploying the aircraft carrier USS Carl Vinson together with the guided-missile destroyer USS Wayne E. Meyer to the SCS as part of routine maritime operations. Chinese Foreign Ministry responded by issuing a statement that warned Washington against challenging its sovereignty.³⁷

U.S. Interests

U.S. presence has always been the guarantor for stability in the SCS and the region as a whole. The U.S. interest in the SCS dispute lies in its stand for a stabilized and secured region. The United States is advocating the freedom of navigation and flight consistent with universally accepted rules and regulations as well as opposing to the use of force or coercion in settling dispute. Thus far, the U.S. position is unclear as the new Trump administration has yet to issue any new official policy or statement regarding the SCS disputes. The U.S. position may be subjected either to a status quo, meaning no changers to the current policy or a fresh U.S. stand to be adopted by the new Trump Administration which took office on 20th January 2017.

Only recently, the new administration broke silence and issued a statement vowing to defend “international territories” in the strategic waterway, which signaled a sharp departure from years of cautious U.S. handling of China’s assertive pursuit of territorial claims in the SCS.³⁸ China meanwhile asserted international community that their claims in SCS is “irrefutable” but also dedicated to protecting freedom of navigation and want to talk with nations directly involved to find a peace solution.³⁹ Referring to the new administration in the US, China reiterated that their actions in the SCS are reasonable and fair and no matter what happens in other countries, they are resolved to protect their maritime rights in the SCS.⁴⁰ Latest statement by U.S. official was from the new US Secretary of Defense Jim Mattis, when he made the suggestion during a visit to Tokyo on 6th February 2017 that diplomacy should be the priority and major US military action was not being considered to contend with China’s assertive behavior in the SCS.⁴¹ Thus far, ASEAN is supporting the U.S. stand on opposing the use of force or coercion by any claimant to settle dispute.

This stand for a peaceful resolution to the dispute is in the best interest of the United States and its rebalancing policy during the Obama's administration. At the moment, ASEAN is seen as "very weak" in its effort and actions towards solving the dispute. A more comprehensive stand or options should be taken up, possibly with the United States playing a supportive role rather than direct involvement to ensure the cooperation formula is workable. From the economic point of view, a reduction in regional security commitments by the United States, if the new Trump administration followed a more isolationist foreign policy, could risk heightened tensions from North Korea to the SCS.⁴² The US policy of standing together with allies and partners could be exploited for both US and ASEAN's interest against China. Even though the current atmosphere is relatively calm, the security environment in the SCS is volatile and from the incidences seen in the past, situation could easily deteriorated into conflict if not carefully handled.

"The Silver Lining"

"The Silver Lining", from the proverb every cloud has a silver lining, meaning in every bad situation there is an element of good.⁴³ This is the situation facing ASEAN and the ASEAN claimants in their maritime overlapping disputes with China. In spite of China's aggressive actions, there seem to be a window for a positive diplomatic engagement with China, which is best done through negotiations and discussions with the aim of achieving a peaceful resolution to the disputes. China has repeatedly made proposals for peaceful resolution and suggested that claimants solve the dispute bilaterally. Vietnam is the most vocal against China in the SCS disputes, having gone through a brief war over the Paracels and a few skirmishes between their navies and Coast Guard. As mentioned earlier, at the conclusion of the Asia Pacific Summit in

Peru, Chinese President Xi Jinping suggested to the Vietnamese President Tran Dai Quang that the dispute between them in the Spratlys be solved bilaterally and the two countries to engage in joint development activities. If this is the sign of an element of good as in the proverb, then there is hope for a “silver lining” in the dispute.

There are big questions as to the reasons on the China’s stand and suggestions. ASEAN and its four claimant members are always trying to figure out China’s strategic “game play” in the SCS. It is therefore imperative to look on a bright side, reflect and analyze the positive indicators that China has displayed to substantiate the “silver lining”. Listed below are some of the past and present events that can be considered as positive and relevant indicators:

- a. Since 1949, Chinese officials have stated that China has settled peacefully border disputes with 12 of its 14 land neighbors (the outstanding ones are with India and Bhutan).⁴⁴ The Chinese want to show that there was precedence on China’s willingness to cooperate and compromise on issues concerning territorial disputes.
- b. China and ASEAN established two joint committees in 1994, one on economic and trade cooperation, the other on science and technology.⁴⁵ Both parties also agreed to engage in consultations on political and security issues at senior official’s level. China has since increases its engagement with ASEAN and participated in the ASEAN Regional Forum (ARF), an Asia-Pacific gathering devoted to the discussion on security issues. Beijing’s participation in bilateral and multilateral talks about the SCS indicated its desire to seek peaceful solutions to territorial disputes.⁴⁶ China’s participation

- in ARF is a plus point for confidence building to SEA countries concerning the rise of China as a regional hegemon. Notwithstanding that China's participation in ARF is to block US efforts to contain China, it still believed that joining ARF help establish a stable regional environment.⁴⁷
- c. In 1996, China released a new security concept and in 1998 it released its defense white paper.⁴⁸ This action was seen as demonstrating its transparency in security matters. This action was again as a building up of confidence and allay fears amongst its SEA neighbors in the region that felt threatened by the rise of China. China's effort and its willingness to engage in confidence building measures is a positive indicator.
 - d. Open statements and proposals for bilateral or multilateral engagement and joint development from the Chinese President to the Vietnamese is another positive indicator of China taking a softer stand in the disputes. Looking back, these statements and proposals were nothing new for China has echoed and issued such a proposal before, reaffirming its consistency for peaceful solution which ASEAN should not ignore.
 - e. China proposed a joint defense hotline ⁴⁹ between China and ASEAN navies for joint naval exercises. China and Vietnam subsequently conducted joint patrols and undertake joint development efforts in the Gulf of Tonkin. The same arrangement could be established and taken to the next higher level with the other ASEAN claimants towards the promotion of joint cooperation and development in the SCS.

- f. China is much more confident about receiving some share of disputed territory in any negotiated settlement. As a first step towards achieving such a settlement in its engagement with ASEAN, China signed a joint seismic survey agreement with the Philippines and Vietnam in 2005.⁵⁰ Again China has shown that they were willing to cooperate.
- g. China has demonstrated its showing of a softer stand during the annual ASEAN plus 8 meeting in Hanoi when its willing to draw away from bilateral basis in their engagement with ASEAN in the SCS disputes as a result of persuasion from ARF members.⁵¹
- h. China was reportedly “open to different formulas and initiatives”, thus signaling an increased in flexibility to engage ASEAN in the disputes.⁵² China is reportedly considering the proposal to expand the protocols in the Code for Unplanned Encounters at Sea (CUES) to include coast guard vessels, aimed to prevent mishaps between naval ships.⁵³ China and all ASEAN claimant states are member countries that adopted the protocols in April 2014.⁵⁴

The Challenges – China’s Strategy

In any given territorial dispute, a state can pursue one of three general strategies to manage its claims, namely the strategy of cooperation, strategy of escalation or a delaying strategy.⁵⁵ China is seen as deploying the delaying strategy and its “flip-flop” policies in the SCS disputes. At the political front China supported the call for negotiations for conflict resolution but at the same time undertake aggressive actions in building and improving the facilities in the man-made islands. This call is nothing new as China has stated similar suggestion before which was viewed as “a delay tactic” to buy

time to consolidate its claims.⁵⁶ In the past, China has repeatedly stressed on bilateral engagement to ensure ASEAN do not possess the strength as a group and remain divided in the disputes. China has undoubtedly become the new powerhouse of the 21st century. China has set a milestone objective to be a great power by 2049⁵⁷ (or rounded up to be 2050) and its rise has transformed the political and economic landscape of the Asia Pacific region.

China has rejected the international arbitration ruling in its case with the Philippines. Indeed, China's obvious disdain for international mediation, arbitration, or adjudication essentially takes peaceful dispute resolution off the table. Apart from Vietnam which confronted China for the Paracels, none of the other ASEAN claimants or regional neighbors wants to face off with the mighty China for the fact that all are vulnerable to Chinese hegemony. Many in Southeast Asia believed that China does not seek to dominate the SEA region overnight but instead, it is pursuing an incremental approach to shaping the region according to its interests. Rather than launch an old-fashioned invasion, in which an approach could trigger a direct confrontation with the US, China is creating new facts on the ground by confounding, bullying and bribing adversaries. To scuttle efforts to build an international consensus against its unilateralism, China initiates and maintains generous aid and investment arrangements with countries in need. In the run-up to the arbitration ruling, China used its clout to force the ASEAN nations to retract a joint statement deemed critical of its role in the SCS.⁵⁸ Thus, ASEAN has to contend with China's tactics with delicate care without any loss of opportunity for negotiation and cooperation.

The Way Ahead

I envisaged the followings as the way ahead in the disputes. At the very least now, China is showing some form of conciliatory posture over its territorial claims, which ASEAN must take advantage. This change is evident after the arbitration ruling which the Philippines won in July 2016⁵⁹ even though China rejected the verdict. China do not want ASEAN's claimants to be strong together and seeking support from outside powers especially from the US. Taking this gesture as a positive sign, ASEAN claimants should capture the opportunity as suggested by China. Brunei, Malaysia, Philippines and Vietnam should also respond to the call and take relevant steps as necessary. The ends in mind is to search for avenues for cooperation effort towards achieving an enduring peaceful resolution.

ASEAN's Strategy

ASEAN and its claimants should take the initiative using diplomacy as the main tool in the "constructive engagement"⁶⁰ with China for a peaceful resolution. Employing the "ASEAN Way" concept as the means, the first vital and important step is to settle disagreement amongst the ASEAN families in the disputes prior to engaging China. ASEAN claimants should be able to find consensus amongst themselves, after all their disputes mainly concerns the overlapping 200 nautical miles EEZ without touching on the sensitivity of territorial sovereignty. ASEAN claimants must obtain consensus to settle their issues. The most pressing point of contention is to agree to limit their respective interpretation of their EEZ boundaries to avoid overlapping and then select and decide areas for joint development.

Concessions amongst the claimants will be the hallmark and posture an ASEAN solidarity, which will send a strong signal to China that ASEAN is not divided. The

importance of the “ASEAN Way” of solving disputes was not the way itself, but the belief that this was a way that was culturally common to all ASEAN countries.⁶¹ Again, harmony in diversity which has been the traditional trademark should again work for ASEAN. ASEAN must move forward and its solidarity will definitely communicate to China the need to relook its delaying strategy.

Next is to engage China diplomatically for talks on cooperation and joint development effort, echoing China’s earlier suggestions. It would be better if this could be done as an ASEAN group effort rather than just the four claimants versus China. Bilateral discussions are still an option, if China insisted. China will have to shoulder the responsibility and respond to ASEAN’s call, giving its earlier suggestion to Vietnam. ASEAN can argue that they adhere and respond to China’s call towards a peaceful resolution, thus giving China an image uplift and a sense of big power role in the region.

International law is an important tool for the creation of peace, stability, and equitable outcomes in international relations. Small and developing countries have tended to be most eager to use the new dispute-settlement procedures provided by UNCLOS to safeguard their interests against larger partners.⁶² This is demonstrated not only in the case of the Annex V Conciliation Commission invoked by Timor-Leste in 2016 but also by the Annex VII arbitration requested by the Philippines in its case against China.⁶³ ASEAN should take the arbitration ruling in the Philippines versus China case as a lesson learnt as well as an option to face China using the international law provided under UNCLOS. Pressure will be on China to display its big power responsibility as China is a signatory to UNCLOS. This option can be a useful negotiating tool with China to overcome deadlock.

Joint Development Model

There are a number of successful model in overlapping areas of resources between countries which could be emulated for this purpose. The Malaysian-Thailand model for joint development to exploit natural gas fields in the Gulf of Thailand under their 2,800 square miles (7,250 square km) overlap was first agreed in 1979. This then led to a creation of the Malaysia-Thailand Joint Authority (MTJA) operating on a 50-50 cost and benefit basis.⁶⁴ The same MTJA model was envisaged for joint development for the exploitation of the gas and oil reserves between Thailand and Cambodia and between Malaysia and Brunei. Australia and East Timor (Timor-Leste) also resolved their Timor Sea overlap problem through joint development.⁶⁵

ASEAN need to send signal and message to the world that the future of SCS is a predictable, manageable and optimistic one that can be done through the agreement of all claimants to the code of conduct for disputes in the SCS. The world is watching on how ASEAN is taking the lead and challenges to solve the SCS disputes. The outcome is an indication of just how effective and relevant ASEAN is. It is thus imperative that ASEAN must face and not let it be bullied by China.

China's Response

China cannot dismiss the ASEAN's claimant proposal outright. The four ASEAN claimants could eventually muster enough support from the other ASEAN member states, perhaps without agreement from Laos and Cambodia, for a diplomatic confrontation through arbitration in international courts with China in the maritime dispute. Other powers outside ASEAN are more willing to lend support. This collective dealing by ASEAN seem to be the Chinese fears on ASEAN's solidarity. China on the other hand needs ASEAN's acquiescence and cooperation to realize its leadership

ambitions in Asia and the world.⁶⁶ Its relationship with ASEAN is test case of Beijing's credibility as an engaged and constructive world power.⁶⁷ China is also very much aware of the SEA countries shift towards a closer alignment and relationship with the US. Heightened competition between China and the US for influence in SEA region will render China more willing to trade territorial concessions in the Spratlys or even the Paracels for improved ties with regional states.⁶⁸

By not involving the United States in the discussion will boost ASEAN's standing and clear any conflict between China and the US. International backing from other nations in the Asia Pacific region especially, Japan, South Korea, Australia, India and the US is a big morale booster to ASEAN. However, they should only echo their support indirectly, avoiding direct involvement and perceived confrontation with China. The United States, even though not a party to the claims, remains the sole influential figure that have the capacity to counter balance China. Recent positive assertiveness in its routine freedom of navigation operations (FONOPS) by the US navy has caused China some concerns. Security issues surrounding the region have an enduring effect to U.S. interests. The US has declared that it will not take side with any party, called for a peaceful resolution and denounced any aggressive actions or use of force by any claimant to the disputes. Even though China has repeatedly called for non-interference by outside powers to the disputes, it welcomed the U.S. stand.

Recommendations

It is recommended that the four ASEAN claimants should seek a fair settlement with China over the land features in the South China Sea. It would be unfair if China were to take all. The ASEAN's claimants must make full use of diplomacy as the main tool in their constructive engagement with China. The engagement with China would be

better taken as an overall ASEAN initiatives or as a group of four ASEAN claimants (Brunei, Malaysia, the Philippines and Vietnam) without the involvement of other big powers. Interaction with China will be the cornerstone of development and stability in the region. ASEAN's initiative will appease China. Proceeding for arbitration under international law as provided by UNCLOS should only be used as a last resort to contain China to overcome negotiations deadlock.

The United States however, should maintain its presence in the region as a balancer to China's aggressive actions and relieving the SEA countries fears of China's hegemony. The United States whilst displaying its military might through its routine conduct of the FONOPS and military exercises, should have more aggressive diplomatic and economic engagement with the countries in the SEA region.

The overall objective is to deepen China's belief of a shared security stake, encouraging it to help maintain regional stability through a closer diplomatic, economic relationship and cooperation with ASEAN. Multilateral discussion forum between ASEAN and China such as in the China - ASEAN's Free Trade Area (FTA) which was itself proposed by China ⁶⁹ is an established mechanism that can be utilized for this promotion. The ASEAN plus dialogue partners (ASEAN +) has proven to be successful. This approach will boost and highlight ASEAN's efficacy and its "ASEAN Way" diplomacy to forge ahead for regional peace and stability.

Conclusion

Recent developments appear to indicate some positive indicators for cooperative engagement that can lead to achieving a peaceful resolution. Amidst all of her aggressive actions, China has recently showed its willingness to soften its stand and offered suggestions to solve the dispute bilaterally and suggested for joint management

and development activities. In the past, China displayed its willingness to cooperate for settlement over contested territories, border issues and agreed for economic and trade cooperation. China was also opened to different formulas and initiatives and agree for consultations at senior official level to include security issues.

To allay fears amongst SEA countries, China has displayed confidence building measures by joining the ARF. It shows that China want to be among other nations in discussion forum on security issues in Asia. China has also openly giving out statements for joint development, opening up defense hotline and conducted joint patrol with the Vietnamese navy in the Gulf of Tonkin. The benefit of the doubt should be given to China, for it has displayed the willingness to discuss and negotiate for settlement regarding border issues. ASEAN and its claimants should not miss this window of opportunity opened by China and to regard the gestures as positive sign towards achieving a peaceful resolution. As recommended, the ASEAN + 1 is the best mechanism to be utilized for this promotion.

The ASEAN claimants however have to resolve their overlapping EEZ boundary issues first, before engaging China. This could be done using the “ASEAN Way” concept to display to China of their unity before approaching China to discuss on joint development effort. Responding to China’s call and letting it to lead without involving other powers especially the US, will boost China’s image as a regional power house. This approach would eventually turn out to be an advantage to the ASEAN’s claimants. All the parties involved could also envisaged a joint development in exploration and sharing of the resources in the disputed SCS region. The option available to the

ASEAN's claimants to proceed for arbitration under international law as provided by UNCLOS should only be the last recourse.

The United States together with other allies and partners should only show their support by calling for peaceful resolutions from the outside and not to interfere in the negotiation and discussion processes. The United States has declared that it will not take side with any party. The United States has called for a peaceful resolution and denounced any aggressive actions or use of force by any claimant to the disputes, which was quickly welcomed by China. As a super power, the United States has the responsibilities in upholding the principles of peace, law and fairness. Security issues surrounding the region have an enduring effect to its interests and the United States remains an influential figure. The US routine FONOPS and military exercises with partners and allies should continue, advocating the maintenance of its presence in the region. Nonetheless, the US should engage more in the diplomatic and economic sphere with the SEA countries, for together with its military might, the US is still regarded as the guarantor to the region's peace and stability.

Other claimants to the SCS disputes should give China a chance to show its sincerity, to display its leadership by taking the rightful steps and lead by example. The "silver lining" is achievable and the Chinese gesture is a positive indicator that will allow cooperation through diplomacy to forge ahead towards the attainment of regional peace and stability. As the analysis in this paper shows that my assertion stands.

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