

Maritime Diplomacy: The Significance of ASEAN's Single Political Action towards the Dispute Settlement of South China Sea Conflict through Maritime Security Approach

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Abstract

South China Sea conflict has become a significant discourse among international community, not just because China's claim has breached the sovereignty of several states and shifting the world's balance of power, but also because it challenges the stability on one of the world's most important sea routes. South East Asia is the region with the most concerns toward the issue, since all of the claimant states directly involved in the conflict against the 'nine dash line' claim by China come from the region. Association of South East Asian Nations (ASEAN) as the sole regional organization in South East Asia whose mandate is to maintain the stability of the region, has the responsibility to take action towards the conflict itself. This paper will deliver the arguments on the hypothesis whether the conflict has implications towards the unity of ASEAN or not; which later argue that the disunity became a more tangible threat rather than the territorial breaching conducted by China itself. Beside analyzing the implications of the conflict toward the Unity of ASEAN, this paper will also elaborate the possibility of using of maritime diplomacy as a significant tool for the settlement of dispute and how to apply the concept through maritime security approach. One of the discussion will regard the role of non-claimant states as the neutral parties in contributing to the conflict resolutions as well as promoting the idea of ASEAN taking single political action in dealing with South China Sea conflict.

Keywords: maritime diplomacy, South China Sea, ASEAN, dispute settlement, single political action

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Introduction

South China Sea extends as far as 3.5 million square kilometers from South East to East Asia regions, bordered by Indonesia, Malaysia, Brunei, The Philippines, Vietnam, China, and Taiwan. The sea is very vital to international shipping since one-third of the international shipping sails across the sea from Europe and Middle East to East Asia and vice versa. Besides being the Sea Lanes of Trade (SLOT), South China Sea is also rich with the natural resources; the fisheries and it is believed to contain huge oil and gas reserves under its seabed (Beckman, 2012).

South China Sea dispute started since 1947 along with the claim of eleven dash line by Republic of China (now Taiwan) which had been occupying Itu Aba (the biggest island on the Spratly Islands) before it lost power on mainland and fled to Taiwan. In 1947 Chinese soldiers called People's Liberation Army (PLA) ousted Southern Vietnam armed force out from Paracel Islands. After the incident, claims from the other countries surrounding South China Sea were starting to appear to the surface, one of them was the construction of tourism area on Swallow Reef inside the Spratly Islands by the government of Malaysia in 1991.

China's aggressiveness began as early as 1992, the time when China took assertive actions over their claim on Spratly and Paracel Islands; even though it meant that it would go against the international law. In 1994, China took its action to build two concrete buildings on Mischief Reef which was located only 135 kilometers from Palawan Island of the Philippines. This incident was only discovered in February 1995, which drew a concern from ASEAN to finally react towards Chinese aggressiveness (ISEAS, 2016).

ASEAN has undergone several efforts to establish a common ground and promote a single political action to face Chinese claim. But on the development, each of member country has its own national interests which are considered to be bigger than the regional interest. Therefore, the decision making process to establish single political of ASEAN was interrupted. One of the examples is the effort to bring the South China Sea dispute and to formulate the Code of Conduct (COC) and ask for commitment from both claimant states and China, COC would be legally-binding and more specific in nature (Joshi, 2016).

The escalating dispute then developed to be a physical contact among the armed forces of the disputing countries. For example in 1988, there was a military contact between Vietnam and China around the area of Fiery Cross Reef of the Spratly Islands, 70 Vietnam armed forces were dead in the incident (Joshi, 2016).

On 12 July 2016 the Permanent Court of Arbitration (PCA) whose headquarter is in The Hague, issued the Award in which the PCA in general has refused the historical based claims conducted by China. The case was submitted by The Philippines on 22 January 2013. The ruling considered that the historical based claims were extinguished and no longer be regarded once the country ratified UNCLOS, ratifying countries should have the commitment to comply with the international law and norms. China did not present at the proceeding of the arbitration hearing and chose to not to recognize the result of the arbitration ruling, although it has ratified UNCLOS and

thus it also has the obligation to comply with the dispute settlement mechanism that UNCLOS offered. (ISEAS, 2016)

As what have explained earlier, The South China Sea is an important sea lanes and source of natural resources. This fact motivates all countries surrounding it to have concern toward its own jurisdiction on the sea. But, the perspective of the countries will be different once the claimant states were seeing this from maritime security approach: the issue of jurisdiction would become lesser element to be prioritized than the stability of the region.

On every discourse of maritime security, the scholar who was trying to define maritime security will not stop at mentioning the effort of every country to fight for its own jurisdiction. For example, Allen et al (2010) stated that maritime security is all of operation that is conducted by a country to maintain its jurisdiction, but also to support the free flow of maritime trade, as well as to tackle down the non-traditional threats. Roell et al (2013) also explained that the first element included in maritime security is the national and international peace and security, Roell also mentioned about the security of the Sea Lanes of Communication (SLOC) as well as the protection from the maritime crimes and other threats.

Therefore, maritime security has provided the holistic perspective towards the use of maritime domain, which is not mainly talking about how each country is trying to protect its own jurisdiction, but also talking a lot about how the stability of SLOC is maintained and to promote and protect maritime trade, as well as to eradicate the non-traditional maritime threats.

If maritime security approach is put as the foundation to settle the dispute of South China Sea, the writer argues that the all claimant and non-claimant states which have the interest on the region would prioritize the stability and security of SLOC on top of their own national jurisdiction. In every practice of dispute settlement, the arbiter would always recognize the interest of the disputing parties, thus if the claimant and non-claimant states of South China Sea dispute should also consider the regional interest of ASEAN beside their national agenda. The main interest of ASEAN as a community will be discussed later on the other subtitle.

ASEAN, South China Sea Dispute, and its Implications

The first Chinese assertive action on South China Sea was shown in 1992 by passing the *Law of the Territorial Sea and Contiguous Zone of the People's Republic of China*, ASEAN then responded by issuing the 1992's Declaration on the South China Sea. The declaration was mainly based on the Treaty of Amity and Cooperation, which suggested all disputing parties to settle their 'sovereignty and jurisdictional issues' through peaceful meaning.

ASEAN's trace of willingness to have a unified diplomacy action towards the dispute was shown again after the illegal Mischief Reef occupation by China in 1994 (later discovered in 1995). The ASEAN foreign ministers issued a joint statement regarding their serious concern towards the case and encouraged China to participate 'a network of regional organizations' and promote the multilateral approach to settle the territorial dispute. Although until now, China is reluctant to take multilateral

negotiations and prefer to undergo on bilateral negotiations. This most likely to be assumed because China will have bigger bargaining power against individual claimant states rather than to face the whole pack of ASEAN countries (Collinson & Roberts, 2012).

On the chairmanship of Vietnam on the year of 2011, Hanoi pushed ASEAN to have a unified stance on the South China Sea dispute, it resumed the ASEAN-China Joint Working Group based on 2002 Declaration of Conduct (DOC). Unfortunately, this effort has weak impact since Beijing requested to remove the consultation between China and ASEAN member states once the agreement signed, this request was supported by one of ASEAN member state which is Cambodia. DOC did not stop China to display its assertiveness on the dispute, in 2012 the Chinese vessels (both fishing vessels and law enforcement vessels) were involved in a standoff on Scarborough Shoal against a single Filipino naval vessel. After the incident, some of the member states were alarmed and sought to renew the formation process of Code of Conduct (COC) and the clarity of the DOC guidelines.

The Arbitration Ruling has failed to impose China to take a more subtle approach towards the South China Sea Dispute. After delivering her rejection through statements of its head of government institutions, China has not surrendered to be assertive in executing its strategies to claim the disputed area. Meanwhile, most of claimant states are trying to play safe in dealing with China's power in the current development after the Arbitration Ruling. Although the Ruling has technically won The Philippines over China (ISEAS, 2016) but there was none of the claimant-states to take initiative to use the opportunity to strengthen its bargaining power against China. Therefore the Ruling is just like a passing wind, it does not have significant contribution whatsoever in resolving the dispute. Both parties were taking the matter for granted, one side rejected to obey and the other neglect the opportunity.

Even though the escalation of the dispute on South China Sea has been quite significant, but the territorial breaching of the countries involved are not the main problem of the region. Indeed, China has shown its eagerness to cross into others' territory and the tension surrounding the borders of South China Sea is escalated. However, the dispute escalation has spilled its implications towards the stability of the region and caused the diversities among the member countries of ASEAN. The said implication is the main problem faced by ASEAN currently.

ASEAN is the single regional organization whose almost half of the member states is involved in the South China Sea dispute, ASEAN's role is actually quite essential in dispute resolution. Unfortunately, ASEAN has been trying to maximally utilize the position to obtain bargaining power in demanding the resolution of the dispute, but China rejects such proposal to settle the dispute regionally. China demands the South China Sea disputes to be resolved bilaterally, which is quite obvious that ASEAN member countries do not have sufficient bargaining power to counter China one on one.

Seen from the history of different approaches of ASEAN member countries to deal with South China Sea dispute, it is safe to assume that the dispute implication has been testing ASEAN unity. As long as each of ASEAN member country perceives and faces this dispute on their own; the real and tangible threat may not be the

sovereignty dispute, but the disunity of ASEAN itself. As ASEAN also entering the new phase of regionalism, which is the ASEAN Community, therefore its member countries should take step ahead in rethinking about regional security. Moreover, one of ASEAN Community's three pillars is ASEAN Political-Security Community. Such establishment shall be utilized by ASEAN countries to take a collective response towards political and security issues, internally or externally.

Along its history, ASEAN had only been looking at security inward; the member countries are busy with their internal affairs, disputes and conflicts among themselves or even instability within their own state. In his writing, Richard Cohen defines this kind of security as collective security, which is the attempt to make sure that the security within a group of states are maintained (Cohen, 2001). Therefore, collective security focuses on preventing enmity conducted one or more member countries against the other member countries within a group.

ASEAN member countries should not stop their efforts to settle the dispute on the South China Sea, knowing that the sea route is one of the regional interests. ASEAN is required to move quickly in practical way, not by making China says "yes" to obey the international law and to respect the sovereignty of each party, but how to make it impossible for China to say "no" (Nankivell, 2017). In her lecture in Indonesia Defense University, Professor Nankivell delivered the idea that ASEAN needs to learn from the cleverness of China, meaning that when the negotiation and agreements do not seem to move it, the members of ASEAN should take steps administratively.

Role of ASEAN as a community on the settlement of dispute of the South China Sea dispute has been explained in a journal written by Limaye, the journal argues that the dispute among member states and the promotion of a unified ASEAN should remain to be the centre of gravity for ASEAN. The regional organization transformed to be a community by the ASEAN Charter with three community councils established under this charter: Political-Security, Economic, and Socio-Cultural Community Council. It is becoming more logical that in the form of community, shared voice and cooperation of ASEAN is the basic precondition as well as fundamental goal that should be pursued by ASEAN before achieving further through the councils. Limaye expresses their arguments as follows:

"if one takes the position that ASEAN should be what the charter lays out – a community, then unity on the South China Sea is a logical objective" (Limaye, 2017)

Therefore the unity of ASEAN is essential not only to deal with South China Sea dispute, but also because ASEAN naturally requires it, as a regional organization which soon turn to be a community. Amitav Acharya frames ASEAN's contemporary problems in terms of the duality of external and internal issues. He writes that ASEAN's challenges "have less to do with its external environment, such as great power policies and interactions [and] more [to do with] strains in ASEAN's internal cohesion and capacity, especially owing to its expanded membership and agenda" (Acharya, 2017). As elaborated with Cohen's theory above, ASEAN is in state of collective security which is always looking at the security inward, focuses on how to maintain internal stability. Biggest obstacle of regional security in ASEAN is not

coming from outside of the region, but rather is raising from among the member countries themselves causes by different perspectives on certain issues, which has possibility to lead to conflict.

Based on these arguments, the unity of ASEAN is not a mere option of dispute settlement, it is not just an ideal goal set by the ASEAN leaders. The unity of ASEAN is an obligation and a precondition for this regional organization to survive, to be ready of external threats, to have stronger position in international community. The next subchapter will discuss about how to utilize maritime diplomacy in order to maintain ASEAN unity.

Using Maritime Diplomacy in Establishing ASEAN Unity

On the discourse regarding both maritime and diplomacy, the term of maritime diplomacy might not as popular as naval and gunboat diplomacy. Maritime diplomacy has just become “a thing” when K. Rowland’s book was published in 2014 entitled *Maritime Diplomacy in the 21st Century*. Even so, the discussion on the book is still on and around the use of navies, which in the end creates no differences between maritime and naval diplomacy.

Naval diplomacy and maritime diplomacy should be differentiated; viewed from the term itself, naval diplomacy is the domain of navies. In his book, Ken Booth explains the naval function trinity which are constabulary, military, as well as diplomacy function. Diplomacy function of navy is the utilization of naval power in order to support foreign policy of their nation. This kind of diplomacy only covers the affairs of the navies which is related to defense and security affairs, including and not limited to military cooperation, military campaign, joint operation, joint exercise, and others. Navy elements and personnels posting is not based on the presence of threats but to shape opinions and develop trust among nation states. Both gunboat and naval diplomacy are sometimes considered related to each other, since both of the terms are utilizing naval power to influence other nations’ behavior (Booth, 1977).

Seeing from its familiarity, maritime diplomacy is considered younger term than naval diplomacy, which means this term is still lacking of definitions and concepts. This paper will base the definition of maritime diplomacy from a scholar from Indonesian Institute of Sciences (*Lembaga Ilmu Pengetahuan Indonesia/LIPI*), CPF Luhulima. He wrote a definition of maritime diplomacy which is close to what the world has practiced in his article:

“Maritime diplomacy is the management of international relations at sea and the use of ocean-related resources to manage such relations”(Luhulima, 2017)

By this definition, maritime diplomacy is closely related to International Relations, whose actors are both state actors as well as non-state actors. Since it is the relations among nation states thus there are broader maritime-related affairs than those in naval diplomacy; there are economic, political, trade, cultural, communication, and others. Maritime diplomacy also enables the other actors outside navy to talk or negotiate about maritime affairs, which is including and not limited to: state leaders, ministries,

government bodies/institutions, non-governmental bodies, regional bodies, or even multinational cooperation.

There are stages of dispute in South China Sea, as has been discussed in the introduction of this paper. It is not enough only to see the dispute only on its history, it must be observed from the current condition as well. On mid May 2017, the news has been filled with two events related and impacted closely on the dispute: the first one is the Belt and Road Summit in Beijing, China and the second one is the agreed rough draft of COC between China and ASEAN member countries.

What is important from Belt and Road Summit is that many of ASEAN's state leaders attended this Summit: Joko Widodo of Indonesia, Duterte of Philippines, Tran Dai Quang of Vietnam, Hun Sen of Cambodia, Bounnhang Vorachit of Lao PDR, and Aung San Suu Kyi of Myanmar. There are only three countries that were not sending their state leaders which are Brunei Darussalam, Singapore, and Thailand (Xinhua, 2017). However, these countries were still represented by the higher officers. Seeing from the list of state leaders attending Belt and Road Summit, it sparked a sign that ASEAN countries are somehow ready to take opportunities with the initiative that China offers.

Belt and Road Summit may not be directly related with the dispute, but the initiative involves some of disputed countries such as Vietnam and Malaysia, which are becoming the home of two prospected main hub ports. Other ASEAN countries were also coming to recent Belt and Road Summit which was held in Beijing on 14-15 May 2017, as mentioned earlier.

Moreover, the belt road initiative and South China Sea dispute are two parallel events. Belt and Road roadmap has just been raised by President Xi Jinping on 2013 during his visit to Central and Southeast Asia (Habib & Faulknor, 2017), the initiative introduced months after the Philippines submission to PCA on January 2013. The aim of the Belt and Road Summit may not be clearly related to South China Sea dispute, but there is certain possibility that China utilize this opportunity to engage the ASEAN member states through the economic cooperation.

Another noteworthy point from Belt and Road Summit is that the meeting in Beijing has brought China and ASEAN member countries to negotiate closer. Not so long after that, only in 4 days away, ASEAN and China held a meeting that resulted the agreement on rough draft of COC (Inquirer, 2017).

Main aim of Belt and Road Initiative is the continental and maritime connectivity between China and the rest of the world. Since we are talking about maritime diplomacy and South China Sea dispute, the writer only focus on its maritime route. The Belt and Road maritime route is passing through ASEAN's shipping route: crossing the southern part of China, eastern part of Vietnam, and western part of Philippines, which is the shipping route located nearby the disputed area of South China Sea.

Through Belt and Road Initiative, China wanted to redefine its maritime power, and China is in need of other countries' supports as the fuel. China offers the economic cooperation, a promise to a flourished international trade through the maritime silk

route. Therefore on certain measure, Belt and Road Initiative is maritime diplomacy of China. It was the strategy of China to gather the countries located along the maritime silk road, in the name of common development. If Belt and Road Initiative is China's maritime diplomacy, what about ASEAN? What should ASEAN do to respond?

At the very first step, ASEAN needs to be convinced within its own member states the regional interest is more important than national interest when it comes to disputed sea. Once it was achieved within the member states, ASEAN also needs to convince China that regional interest is more important and will contribute to national interests of each countries. We have seen in the history that ASEAN has less unity in responding to South China Sea dispute. Some seems friendly and somewhat submissive to China, such as Malaysia and Brunei Darussalam. Vietnam is still the most assertive and firm claimant states standing against China's claim. Meanwhile, Philippines now moves further from United States of America and closer to China under Duterte's governance.

Unity of ASEAN is the basic foundation for the regional political action to response to South China Sea dispute development. Each of ASEAN member state should be able to apply maritime diplomacy, which is aimed to unify ASEAN in promoting regional interest and maintaining the stability in South China Sea. SLOC and SLOT on South China Sea are put on stake which may be escalated to conflict and caused instability. A common understanding among ASEAN member states that this dispute influences economic development of each nation will enable ASEAN to unify and take solid political action to South China Sea. The maritime diplomacy should not stop to ASEAN member countries, but ASEAN needs also to apply this kind of thinking to negotiate with China as the second party of the dispute.

Once the common understanding among China and ASEAN is established, ASEAN must also realize that Belt and Road Initiative and COC rough draft agreement have their blessing in disguise. That only means that China needs ASEAN because Belt and Road Initiative would not be well constructed if there is no support from ASEAN countries. International Relations acknowledges the terms of Bandwagoning and Balancing, which is the reaction carried out by weaker power to counter a considered stronger power. At this point, ASEAN does not need to balance nor bandwagon to respond Belt and Road Initiative, since it would complicate the relationship between two sides.

ASEAN should try to play along with Belt and Road Initiative, but does not forget to also ensure that both sides are benefitted. The importance of playing along with Belt and Road Initiative is to maintain the stability of the region. But, it does not mean that ASEAN has to give up its claim on South China Sea, it only shows ASEAN's willingness to talk and its good intention on promoting regional stability on South China Sea. As long as the member countries ensure that the initiative is aimed for common development, then Belt and Road Initiative is apparently being an option that is worth to try in growing mutual trust between China and ASEAN member countries.

Conclusion

South China Sea dispute is long overdue, the countries of ASEAN has been impacted by the development of the dispute. The timeline of this dispute shown that ASEAN has no unified voice when it comes to South China Sea. Meanwhile, China advances its claim by launching the maritime silk road passing through the disputed area by initiating Belt and Road.

Concept of maritime diplomacy, which is to manage the International Relations on the sea matters, is the concept that is greatly required by ASEAN countries in South China Sea settlement of dispute. ASEAN needs to be convinced among the member countries, that the sea lanes as the regional interest has better reasons to be promoted rather than being dead-locked on the dispute by each of their own interest. This unity is the solid precondition for ASEAN to take further step in dealing with China.

As for the strategy to deal with China, ASEAN does not need to balance or bandwagon China in response to Belt and Road Initiative, since ASEAN is a home for SLOC and SLOD which is urgently needed by China to execute the initiative. ASEAN also does not need to overly suspicious towards Belt and Road Initiative, taking the positive outcomes of the initiative such as the improvement of trade route and the promised common development will enable ASEAN to ensure the benefit obtained by Belt and Road Initiative. Playing along smartly with the initiative while also ensure firmly that the agenda does not sided only to China may become another possible option for ASEAN in order to open new door for two sides (ASEAN and China) to grow their mutual trust and common understanding in regional development.

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