

From collectivity to Separativity: Capturing ASEAN Divide in South China Sea

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Abstract— *South China Sea has become an area where power politics continue to play out in each passing day. Though, there have not been the use of force by any claimant, the intense nature of the dispute is exacerbated by the power politics between China and United States. The dispute is between six states — China, Brunei, Malaysia, Vietnam, Philippines and Taiwan, with China and Taiwan the only non- Association of South East Asian (ASEAN) members. The dispute and the power politics are not unconnected with the strategic, economic and political significance of the sea to not only the claimants but non-claimants like United States. At the centre of the dispute is China with its nine-dash line claims which encompass all the islands — the Spratlys, the Paracels, the Pratas and the Macclesfield Bank. As a regional grouping with committed responsibilities, this paper interrogates ASEAN’s role in the dispute and argues that there is a large divide that affects the potency and masculinity of ASEAN to act; a divide that is caused by intra-ASEAN disjoint and incursion of United States. China is at the centre of the causes of the divide. Sufficiently relying on the existing related literatures (secondary sources) for proper analysis with empirical data in form of tables, the paper recommends that ASEAN needs to recalibrate and reinvent itself by forging a common bond against China after reconciling their overlapping claims, reconstructing the provisions of, and strengthening the enforcements of Declaration of Conduct of Parties (DOC), ASEAN Regional Forum (ARF) and East Asia Summit (EAS).*

Keywords— *ASEAN, China, South China Sea, U.S., DOC, ARF.*

I. INTRODUCTION

South China Sea is one of the most, if not the most contentious and disputatious territorial and maritime issues in contemporary times and the most entangling in the Asian continent. As Taylor Fravel rightly captures it, “no international maritime dispute has garnered more attention than the contest over the islands, reefs and waters of the South China Sea” (Fravel, 2011:292). The dispute involves six states: China, Brunei, Malaysia, Vietnam, Philippines and Taiwan with overlapping claims to territorial sovereignty and maritime rights over the control of all or some of the Spratly Islands, the Paracel Islands, the Pratas Islands and the Macclesfield Bank

which encompass over hundreds islands, reefs and banks throughout the South China Sea.

These islands are hotly contested due to their strategic, political and economic significance to the claimants and non-claimants like United States. As Barry Buzan asserts that the “dramatic rise in the realizable economic value of oceans and the rapid spread of sovereign states to cover virtually all land areas are reasons to explain why oceans have become areas of intense competition for scarce goods” in Andy (2011). These myriads and congregation of interests from both claimants and non-claimants further leave ASEAN in a divide as to how best to tackle and resolve the dispute even in the face of commendable mechanisms marshaled it marshaled aimed at reducing and diffusing tensions in the region. Likewise, these mechanisms have not also translated into pacifying an aggressive and assertive China whose claims incubate all the islands in the sea as captured in its nine-dash line. As a regional grouping hailed for its maintenance of cohesion and stability since its inception in 1967, ASEAN’s nightmare, at least recently, is how best to re-establish and re-strengthen the *ASEAN Way* which has been incapacitated and torn apart by ASEAN internal disjoint and foreign incursion of U.S.

The ASEAN divide can be pictured from two sources: the intra-ASEAN disjoint and United States’ incursion where China is the reason for the both. The intra-ASEAN disjoint is caused by the fear of some of the ASEAN members of risking economic interdependence between them and China coupled with China’s military power thereby negatively affecting the prospects of forging a common bond against China, the first ASEAN divide. Secondly, the incursion by U.S into the region further leaves ASEAN confused and inane as ASEAN members divide on whether U.S presence in the region should be indispensable or not, the second ASEAN divide. Candidly, the implication of these divides is the elusive peace in the region. It is in the light of these complicated and complex situations confronting ASEAN as a unit that this paper asks these questions: what attempts has ASEAN made vis-à-vis South China Sea dispute and how successful are they within the context of ASEAN divide? To what extent has U.S incursion in the region undermined the ASEAN unity? What can ASEAN do to amicably resolve the dispute and regain its prominence as a viable regional grouping without upsetting its members, China and U.S? In attempts to

address these questions, the paper is sectionalized into five. The first section explicates briefly the history and geography of South China Sea. Sections two and three capture the claims of the various disputants and what is at stake in the South China Sea respectively. While section four explains the first phase of ASEAN divide as ASEAN's internal disjoint, section five pigeon-holes the second phase of ASEAN divide as U.S. incursion into the region. Section six concludes the entire argument leaving behind useful recommendations that will reinvigorate a weakened ASEAN.

South China Sea: The Historical and Geographical Audit

The South China Sea was before now, an abandoned area that states were not interested in due to how dangerous the region was claimed to be prior to World War II. Today, it has become a region where different theories have been formulated to explain the geography, significance, claims and interests of the claimants and non-claimants like United States. South China Sea lies in the south east of the Asian continent. It also encapsulates part of the Pacific Ocean stretching from Singapore and the Strait of Malacca in the southwest (Monique, 2000). Furthermore, South China Sea contains a large expanse of water totaling 648,000 square miles from Luzon Strait in the north to the Malacca Strait in the south (Schofield and Prescott, 1985). Inside this water are thousands of islands, that include rocks, islets, reefs and low-tide elevations, which are fully submerged at high tide.

Beyond that, South China Sea contains islands which include Spratlys, Paracels, Macclessfields and the Pratas. These islands contain over 250 islands, atolls, cays, shoals, reefs and sandbars (Bautista, 2007). South China Sea was first occupied by France in the 1930s and later was handed over to Japan after the World War II. As a result, South China Sea was included into Japanese administrative system. At the end of the war, Japan left the region unoccupied. Since then, South China Sea has become "the mother of all territorial disputes" (Baviera, 2004:205).

The Spratlys are located between 4° and 11° 3' north latitude and 109° 30' and 117° 50' east longitude. Though, the Spratlys are too small for human support and settlement, they contain fresh water and other land-based resources which make the islands significant to the disputants (Joyner, 1999). The Paracels are located between 15° 46' and 17° 109' north and between 111° 11' and 112° 54' east. Besides, the Paracels are archipelagoes which are subdivided into the amphrite and the crescent group. The largest of them is Woody Island which is about 1.8 km long and 1.1 -1.2 km wide. Aside these two groups, the archipelagoes contain over 30 islets, sand banks or reefs and the area is rich in phosphate deposits

(Tonnesson, 2002). Scarborough Shoal is about 198 km west of Subic Bay. The shoal's highest point is south rock and it measures 1.8m above water during high tide. The shoal and its surrounding area are rich fishing grounds. The atolls' lagoon provide some protection for fishing boats during harsh weather which is why it is highly contested by Philippines and China as they are located in the Exclusive Economic Zone of the Philippines (Zou, 1999). The Macclesfield Bank is one of the largest atolls in the world even though it is completely submerged without any emergent cays or islets. It lies east of the Paracels, southwest of the Pratas and north of the Spratlys.

South China Sea: Which Disputant Claims Which?

The Philippines' claims are based on historical discovery and terra nullius, a term used by Philippines meaning that following the forfeiture of the Spratlys by Japan after the World War II, the area was left unoccupied and without devolution to any other state. This assertion is corroborated by Leszek Buszynski (2010:2) when he states that without an occupant, the way was open for Philippine adventurer Thomas Cloma to claim Kalayaan or "Freedomland" for the Philippines in May 1956. Cloma's declaration embraced an area that extended from Palawan and included 53 features. It was supported by Philippine's Foreign Secretary, Carlos Garcia who in December 1956 issued the Garcia Declaration which treated the area in Cloma's claim as terra nullius"

To further consolidate its claims, Philippines in 2009 passed the baseline laws to identify its archipelagic baselines. Beyond this, it petitioned China before International Tribunal in 2013 where it obtained widely expected favourable judgement against China in 2016.

Another persistent claimant is Vietnam. Vietnam's claims are both of the Spratlys and Paracels which it bases on historical discovery, historical occupation and continental shelf principle. It maintains that since 17th century when these islands were not under any state's control, it maintained effective, continuous and peaceful control over them. To solidify its claims, Vietnam released two white papers between 1979 and 1982 containing historical evidence. These evidential papers spurred it to further increase its occupations of the Spratlys in 1989 to 21 islets and reefs (Dzurek, 1996). More so, being that China is Vietnam's greatest rival in South China Sea, Vietnam has sought ways to define its claims within the provisions of the UNCLOS in that beyond ratification of UNCLOS in 1994, it also filed a joint claim with Malaysia to the UN Commission on the Limits of the Continental Shelf in 2009 claiming an area in the South China Sea beyond their 200 nautical miles exclusive economic zone, a move that inspired Vietnam to further occupy 27 islands (Monique, 2000).

Taiwan on its part has long insisted on becoming the only legitimate government of China. Thus, like China, Taiwan bases its claims on historical ties and that it was the first to establish a presence in the Spratlys (Joyner, 1999). Taiwan does not only claim the Spratlys but also all the islands in the South China Sea (Valencia, et al, 1999) and securing these islands would to a large extent cement its statehood, national boundaries, territorial claims and nationalism (Emmers, 2000). It has for four decades maintained control over Itu Aba, the largest island in the Spratlys.

China, just like Vietnam and Taiwan, bases its claims on historical discovery and occupation, further claiming that the sovereignty over the waters of the South China Sea has been known from time immemorial (Gia and Jia, 2013) dating back to Sung Dynasty around 12th century

and Qing Dynasty in the 18th century (Kurlantzick, 2007). Further, China’s claims encapsulate all the islands in the South China Sea which it released in its official map containing nine-dash line formerly eleven separate segmented lines which it has failed to clarify. Such claims to all the islands spur China to aggressiveness and assertiveness as it fights to maintain such claims by building artificial islands and structures on the occupied islands. It is these aggressiveness and assertiveness that thwarts ASEAN unity as ASEAN becomes wary of how best to deal with China without being seen by its members to have taken sides. Even in the face of the Tribunal’s declaration of China’s occupation as illegal, there is still growing fears that China might increase the tempo of its assertiveness.



Map.1: showing Disputants' claims and China's nine-dash lines

Source: Leszek, 2011

What Brunei actually claims is marred with controversy. While some scholars like Ji (1992) argue that Brunei’s claims a continental shelf and exclusive economic zone, others like Bautista (2007) argue that Brunei claims two reefs — Louisa Reef, which is also claimed by Malaysia and Rifleman Bank. Besides, it is only Brunei that does not occupy any island or maintain any military presence. Malaysia, which claims 12 islands in the Spratlys bases its claims on continental shelf principle which is rooted in

the 1958 Geneva Convention regarding to territorial waters and continental shelf boundaries (Dyke, et al, 1993). Evidences show that Malaysia has developed structures in its occupied islands including the establishment of a garrison on Layang Island and the development of Swallow Reef into a resort (Bautista, 2007). Of all the

Table.1: Showing Number of Occupations and Estimated Troops in SCS

Parties	Basis	Claims	Spratly Islands	Paracel Islands	Number of islands Occupied	Estimated number of troops
China	Historical	All	All	All	8 islands and reefs; several helicopter pads	325

Brunei	Legal	Portions	1	No claim	No occupation	No military presence
Malaysia	Legal	Portions	12	No claim	6 islands, one with 60 meter inway	70
Philippin s	Legal/ historical	Portions	8	No claim	8 islands, one with 300 meter inway	480
Vietnam	Historical	All	All	All	27 islands and reefs, one with 00 meter runway	600
Taiwan	historical	All	All	All	1 island with Helicopter pads; plans for runway	100

Source: Baker and Wiencek (2002)

claimants in South China Sea, only China and Taiwan are non- South East Asian claimants, a development that makes China suspect any ASEAN's move hence, its refusal for any consensus to be reached.

South China Sea: What is at Stake?

South China Sea is home to the world's richest marine resources, contributing 12 percent of the total marine global production (Edgardo, 2000). These marine resources range from fisheries, scads, mackerels, tunas to shrimps (Coulter, 1996). With the abundance of these marine lives, it is understandable why South China Sea continues to be a hotspot to the claimants which need these marine lives for domestic consumption and foreign exchange earnings. As Cronin (2012) captures it that food protein constitutes more than 22 percent of Asian diet which is higher than global average of 16 percent.

Besides marine resources, keeping the sea lanes of communications open are strategically important to the claimants. The Straits of Mallaca, Lombok and Sunda connect Indonesia, Malaysia, Singapore, Indian Ocean and the Pacific Ocean; choke points that allow littoral states to freely navigate through the sea for commercial and military purposes (Joyner, 1999). It is the sea's interconnectivity that fuels the dispute as both claimants and non-claimants have interests in freedom of navigation.

South China Sea also presents a viable option through which the claimants' governments especially China, Vietnam and Philippines would consolidate their legitimacy in the face of their demanding populations. As Lynn Kuok who interviewed one of the high-ranked civil servants in China but from non-claimant state reports that "in the past, few people in China would have known about nine-dash line, now it is printed on maps and passports. Giving up their claims in respect of the nine-dash line would be like giving up what their ancestors had handed them" (Kuok, 2014:11). Thus, in the eyes of the claimants' populations, surrendering any part or whole of the South China Sea would be conceived as a mark of weakness and ineffectiveness of the government which might cost the government of its mandate.

Large deposits of hydrocarbon in the sea further raises the tension and the style of the dispute. Though, there have been conflicting estimates of the actual hydrocarbon in the sea, the Chinese Ministry of Geology and Mineral Resources estimated in 1980s that the sea contained about 130 billion barrels of oil — an amount greater than the oil reserves in Europe and Latin America (Klare, 2001). On the other hand, United States Energy Information Administration in 2013 estimated that there could be approximately 11 billion barrels of oil reserves and 190 trillion cubic feet of natural gas in the South China Sea as contained in table two below.

Table.2: South China Sea Estimated Proved and Probable Reserves

Country	Crude oil and liquids reserves (billion barrels)	Natural gas reserves (billion cubit feet)
Brunei	1.5	15
China	1.3	15
Indonesia	0.3	55
Malaysia	5.0	80
Philippines	0.2	4
Taiwan	-	-
Thailand	-	1
Vietnam	3.0	20
Total	11.2	190

Source: USEIA (2013)

Each of these claimants needs the oil for both domestic consumption and foreign exchange earnings. As BP Energy Outlook 2016 forecasts that global GDP is expected to more than double driven by strong growth in emerging Asia; in which case, China and India will account for almost half of the increase in the global GDP which means energy consumption will increase by 34 percent between 2014 and 2035 (BP, 2016). Besides, ASEAN's oil needs and dependency is on steady rise since 1993 (Sovacool, et al, 2011).

ASEAN internal disjoint: the first phase of ASEAN divide

ASEAN at its formative years was seen as a landmark achievement in preserving and maintaining regional stability and cooperation. By 1967, at its incipience, five founding members pledged their support on the principles that would guide them as well as the myriads of objectives which the body set to accomplish: promoting mutual respect for the sovereignty of the member states, territorial integrity and national cohesion or identity for all member states. Going forward, ASEAN was seen as the world's most successful and developed regional grouping, a landmark that other regions would strive to emulate. With these set of objectives described as "ASEAN Way", founding members and other members that would later join the body felt protected and incubated; feelings that would translate into unique oneness as against individualism. First, these positive feelings led to the construction of mutual trust among its members that culminated into economic interdependence and growth, growth rate that catapulted some of its members to the taxonomy of "Asian Tigers". Second, beyond economic viability, ASEAN succeeded in erecting frameworks aimed at solidifying such economic buoyancy and its principles. The ASEAN plus 3 arrangement (arrangement that comprises China, Japan and South Korea for cooperation); the East Asia Summit (another milestone arrangement that converges ASEAN plus 3 countries with India, Australia, New Zealand, Russia and the United States), the Chiang Mai Initiative (a framework for currency swap between ASEAN plus 3), the Regional Comprehensive Economic Partnership (RCEP) that brings together states in Asian-Pacific Region under the canopy of free trade area) and ASEAN regional Forum (a security framework that invites East Asian States and other non-regional states. It is within these laudable achievements that ASEAN became an epitome other regional groupings sought to envy.

However, here comes a South China Sea dispute that leaves ASEAN toothless and in disarray. As David Rosenberg observes that ASEAN serves as a useful forum for promoting economic growth, political stability and social and cultural exchange in the region, however, it is sometimes subject to a "lowest-common-denominator syndrome, whereby policies are watered down to satisfy the wishes of the members with conflicting interests (Rosenberg, 1999). The once-viable organization now becomes a Hollywood movie which both people inside and outside a cinema watch with suspense and to a large extent with pity as to how a particular actor or protagonist would overcome a particular hurdle or impasse.

Certainly, there are obvious reasons why ASEAN renege and the first is what this paper terms "ASEAN internal disjoint", a phrase that would mean the internal

disagreement among ASEAN members. Perhaps, interrogative questions that need to be asked are these: Why ASEAN internal disjoint? What might be responsible? And to what extent has the internal disjoint affected ASEAN's viability and masculinity? The first and second interrogatives are unit question which shall be treated alike. One thing is clear: ASEAN's internal disjoint is caused by two factors — divergent strategic interests of the South East Asian members and the position of China in the region.

Divergent strategic interests of ASEAN members

As properly captured elsewhere in this paper, the divergence and variance of the interests of both ASEAN claimants and non-claimants in South China Sea further castrates ASEAN as a body. Rodolfo Severino (2010:37) posits that,

Vietnam needs its footholds in the South China Sea to avoid being practically surrounded by Chinese power, with which it was in conflict for many centuries. The Philippines feels compelled to extend its zone of jurisdiction and responsibility westwards, having been invaded by the Japanese from that direction at the start of the Pacific war. A vast area of the South China Sea both separates West East Malaysia and connects them to each other. Brunei Darussalam has to ensure for itself the resources in its claimed exclusive zone and continental shelf, which overlap with other claims.

Likewise, Jakarta has an interest in making sure that the rich gas resources of the Natuna Group of islands are under its exclusive authority and for its exclusive authority (Severino, 2010). Aside these interests, each of the ASEAN claimants has overlapping claims which they are yet to resolve in order to forge a common bond against their common rival — China (Valencia, 2012). Though these overlapping claims have not been escalatory as they have with China, the overlapping claims with their attendant strategic significance have resulted into subjective ways in which the claimants interpret international law (UNCLOS) and history. Furthermore, what constitutes peace and stability now depends on the claimant's interpretation in so far as it captures the claimant's interest. As worrisome as these developments are, ASEAN as a unit is divorced with serious pressure on how to reconcile these internal differences before facing a great rival in China.

Position of China in the region

No state or power has vehemently challenged ASEAN's centrality like China, a situation that leaves ASEAN with nightmare on how to engage China. First, China's nine-dash line claims which it has failed to clarify only to

assert that it has “indisputable sovereignty over the islands in the South China Sea and adjacent waters, and enjoys rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof” (Franckx and Benatar, 2011:213) leaves other claimants in limbo and draws states like Indonesia that otherwise would have nothing to do with South China Sea into the conflict. Second, China’s land reclamations and fortifications further trouble not only other claimants but ASEAN generally. Whereas China has argued that they are for peaceful purposes, the pictures of the fortifications and structures clearly testify that China is building a military zone capable of cohabiting with its planned Air Defense Identification Zone typical of the one it mounted in Senkaku/Diaoyu Islands, another territorial dispute between it and Japan. Third, China’s military power which rises conterminously as its economy raises further leave ASEAN with worries. Though, China has not used tangible force against any claimant, its sheer size of capabilities emboldens it to the point of aggressiveness, at least the Mischief Reef and Scarborough incidents are undeniable facts of China’s confrontations coupled with its navy modernization that is capable of confronting not only the regional states but outside powers also (as table below clearly indicates), a development that has led to retaliatory

Tank Landing Ships/ Amphibious Transport Dock	29
Medium Landing Ships	28
Diesel Attack Submarines	53
Nuclear Attack Submarines	5
Coastal Patrol (Missile)	86

Source: Cordesman, et al, 2015

modernization programmes by ASEAN states. As SIPRI explained that defense spending in Southeast Asia rose to 5 percent between 2012 and 2013, higher than in East Asia (4.7 percent) and Asia and Oceania as a whole (3.6 percent) in Storey (2015). Further, between 2010 and 2014, all Southeast Asian states increased their defense spending: Vietnam (59.1 percent), Philippines (35 percent), Malaysia (27.6 percent), Brunei (35 percent), Indonesia (50.6 percent), Singapore (21.4 percent) and Thailand (15.5 percent) in Storey (2015: 75). The implications of these retaliatory moves by ASEAN states are that developmental projects are sacrificed for capability acquisitions and modernizations and may embolden ASEAN states especially Vietnam and Philippines into confronting China, a situation that would further undermine an already deteriorating peace in the region.

Fourth, the complex economic interdependence between ASEAN member states and China further divides ASEAN. As US-China Economic and Security review Commission (2013) shows that the majority (78.8 percent) of ASEAN’s trade in 2013 was with outside bloc... China was the largest individual partner (14 percent) share of ASEAN trade while U.S was the fourth largest (8.2 percent) share.

Table.3: Size of the PLAN in 2015

Names of capabilities	Total
Aircraft Carriers	1
Destroyers	21
Frigates	52
Corvettes	15

Table.4: showing China’s Bilateral Trade with ASEAN Countries (US\$million) in 2013

		US\$million				Share of ASEAN (%)			
		1998	2003	2008	2013	1998	2003	2008	2013
ASEAN Total	Exports	10,919	30,935	114,139	244,133	100%	100%	100%	100%
	Imports	12,589	47,350	117,012	199,402	100%	100%	100%	100%
	Balance	(1,670)	(16,415)	(2,873)	44,731	100%	100%	100%	100%
High-Income									
Brunei	Exports	560	34	130	1,704	5.1%	0.1%	0.1%	0.7%
	Imports	0	311	83	87	0.0%	0.7%	0.1%	0.0%
	Balance	560	(277)	47	1,627				
Singapore	Exports	3,901	8,873	32,325	45,886	35.7%	28.7%	28.3%	18.8%
	Imports	4,226	10,486	20,092	29,969	33.6%	22.1%	17.2%	15.0%
	Balance	(323)	(1,613)	12,233	15,918				
Middle-Income									
Indonesia	Exports	1,172	4,482	17,210	36,947	10.7%	14.5%	15.1%	15.1%
	Imports	2,462	5,754	14,387	31,479	19.6%	12.2%	12.3%	15.8%
	Balance	(1,290)	(1,272)	2,823	5,469				
Malaysia	Exports	1,594	6,142	21,383	45,941	14.6%	19.9%	18.7%	18.8%

	Imports	2,675	13,998	32,131	60,068	21.2%	29.6%	27.5%	30.1%
	Balance	(1,080)	(7,856)	(10,748)	(14,128)				
Thailand	Exports	1,170	3,829	15,521	32,738	10.7%	12.4%	13.6%	13.4%
	Imports	2,423	8,829	25,636	38,518	19.2%	18.6%	21.9%	19.3%
	Balance	(1,253)	(5,000)	(10,116)	(5,780)				
Philippines	Exports	1,499	3,094	9,088	19,836	13.7%	10.0%	8.0%	8.1%
	Imports	517	6,309	19,508	18,205	4.1%	13.3%	16.7%	9.1%
	Balance	982	(3,215)	(10,420)	1,631				
Low-Income									
Burma	Exports	n.a	908	1,979	7,349	n.a	2.9%	1.7%	3.0%
	Imports	n.a	170	645	2,810	n.a	0.4%	0.6%	1.4%
	Balance	n.a	738	1,335	4,540				
Cambodia	Exports	n.a	295	1,095	3,411	n.a	1.0%	1.0%	1.4%
	Imports	n.a	26	39	361	n.a	0.1%	0.0%	0.2%
	Balance	n.a	268	1,056	3,050				
Laos	Exports	n.a	98	268	1,721	n.a	0.3%	0.2%	0.7%
	Imports	n.a	11	149	1,021	n.a	0.0%	0.1%	0.5%
	Balance	n.a	87	119	701				
Vietnam	Exports	1,024	3,180	15,139	48,599	9.4%	10.3%	13.3%	19.9%
	Imports	217	1,455	4,343	16,886	1.7%	3.1%	3.7%	8.5%
	Balance	806	1,725	10,797	31,714				

Source: US-China Economic and Security Review Commission (US-China ESRC, 2015)

The implication of this is that some ASEAN member states which are highly dependent on China's trade relations for survival tend to bend toward China thus making consensus a difficult task. It also emboldens China to freely dictate its choices and interests to ASEAN, an indication of is favoured bilateralism against multilateralism.

In an emergency meeting held by ASEAN in May 2012 to discuss the Scarborough standoff, Cambodia blocked the organization from releasing a document aimed at advocating restraints between China and Philippines. Perhaps, most worrisome was the July 2012 Foreign Ministers meeting in Phnom Pehn where ASEAN failed to produce a joint communiqué for the first time since its birth in 1967 (Kim, 2015; Valencia, 2012; International Crisis Group, 2012), a situation that left Luke Hunt in 2014 to declare that

Cambodia's dependence on Chinese aid and investment — worth more than 11 billion dollars during the last two decades and Cambodia's position as a party not directly involved in the territorial disputes have, led Phnom Pehn to support Chinese claims, inadvertently strengthening Beijing's position in territorial matters by publicly splitting ASEAN and making the organization “a dysfunctional trading bloc incapable of negotiating for itself” in (Kim, 2015:124).

Likewise, on the crafting of the Code of Conduct (COC), there was bitter division among ASEAN member states

whether or not to include a dispute resolution mechanism or perhaps to establish a different forum and an administrative plan that would oversee its implementation, an internal sabotage that left only Philippines standing when it moved to petition China to International Tribunal in 2013. Such intransigence due to trade interdependence could also be seen on the sides of Brunei and Malaysia in that when Chinese warships hopped over James Shoal which attracted wide condemnations, Malaysia claimed that the Chinese ships did not violate international law while Brunei failed to attend “talks among four Southeast Asian nations with claims in the South China Sea”, promoted by the Philippines, claiming that it would not be in Brunei's “national interest to do so” (Kim, 2015:125).

These shows of imperviousness and intransigence on the side of ASEAN member states make Ian Storey to summarize that “within ASEAN there is group of four versus the group of six. The former includes non-claimants — Thailand, Myanmar, Laos and Cambodia, the latter two being economically highly dependent on China. The group of six include claimants and stakeholders. Among them, Vietnam and Philippines see China as a threat to national security; Malaysia and Brunei downplay disputes with China; non-claimants Singapore and Indonesia are concerned about nine-dash line and see maritime stability as a vital national interest. With such diverse interests and opinions, moving beyond on agreement on a basic stance is difficult” in (International Crisis Group, 2015:27). Certainly, with

these dissensions in ASEAN, “*ASEAN Way*” has given way for “*ASEAN Divide*”, a first dilemma starring at ASEAN as a body for a durable fix so that it can recapture itself as a viable regional grouping capable enough of stopping China’s use of salami-slicing strategy which gradually emboldens its claims and gradually drowns the claims of others.

Incursion of U.S in South China Sea: the second phase of ASEAN divide

China’s burgeoning economy and military power continue to pose a serious nightmare to ASEAN. Irrespective of modernization programme by ASEAN member states, which is in a way to deter China and in another way to counter China if it strikes, China continues to be seen as biblical Goliath who caused Israel their peace save the timely intervention of David. Besides, not only has the modernization pose serious threat to ASEAN unity but it also accentuates economic haemorrhage faced by ASEAN member states as funds meant for development is diverted for capability acquisitions and modernization.

U.S is in South China Sea for two reasons — protection of its core interest and its treaty allies in the region. Again, China is at the centre of these reasons in that without China’s nature of claim which is projected with aggressiveness and greater activism, U.S and perhaps other outside powers may not see reasons to meddle in the region. Meanwhile, such incursion by U.S has further implicated ASEAN and complicated its nightmare as each ASEAN member continues to interpret U.S presence based on the state’s national interest and relation with China. As Kim rightly observes that the “escalating South China Sea disputes have continued to expose conflicting interests and divisions among ASEAN members and their lack of cohesive strategic vision for the future. In particular, their diverging perspectives on how best to handle Beijing’s growing assertiveness have increased the potential for them to be at the mercy of great power rivalry between China and United States for regional influence and to be caught in the middle of conflict between the two in the future, possibly forcing them to take sides” (Kim, 2015:129).

United States has vital interests in the South China Sea. First, it is bent on maintaining freedom of navigation in the region in order to consolidate its position as a world police (Rustandi, 2016; Bader, et al, 2014; Pedrozo, 2016). Beyond ensuring freedom of navigation in the regional waters, U.S also has interests in the vital resources of the South China Sea as well as ensuring that its allies in the region are protected (Salil, 2012:19). Valencia asserts that “U.S wants to maintain the existing status quo in Southeast Asia — a status quo in which it is the dominant actor and patron. This is essentially a

continuation of its cold war policy and posture in the region — a substantial forward deployed military presence and hub-and-spoke alliance structure” (Valencia, 2014:6). Accordingly, it is these interests of ensuring free lanes of communication and protection of its allies that the region now turns into “a political church” where different powers — Japan, Australia, South Korea and India which are in one hand allies to U.S and Russia and China congregate for a show of power and influence, a situation that worries Erik Beukel when he claims that “not only Japan and other regional powers, but also United States as the global super power, are closely watching China’s assertiveness in the South China Sea; whilst they maintain strict neutrality on the sovereignty substance of the disputes, any threat to free shipping by littoral countries, terrorists, or pirates will be met with a strong reaction, not only from America, but also from Japan” (Beukel, 2010:9).

Vietnam and Philippines are key allies of United States in Southeast Asia including Indonesia. The former, which are more confrontational with China invited U.S for rebalancing against China and have further strengthened their ties with U.S. This assertion is corroborated by Kim when he declares that “United States has strengthened its strategic relations with countries in the Asia-Pacific including key members of ASEAN, such as Indonesia, the Philippines, Singapore and Vietnam. The frequency of joint military exercises between and among the United States and those countries in the region has increased in conjunction with Washington’s strategic rebalancing to Asia” (Kim, 2015:130). As true as Kim’s declaration seems, other ASEAN members like Brunei, Malaysia, Laos, Cambodia and others which are more of Chinese allies have continued to view U.S incursion as destabilizing. Indonesia, for instance, which has so far demonstrated a lead role as a pacifier in the dispute has also vehemently opposed U.S presence in the region (Buszynski, 2012; International Crisis Group. 2012). This second ASEAN divide as a result of U.S presence in the dispute is the most pitiable.

China has outrightly objected to outside power intervention as it fears such involvement would mean internationalizing the dispute, a fear that makes it to favour bilateralism as against multilateralism and leads it into deeper confrontation with U.S. In 2001, a Chinese Jet intercepted America’s navy which resulted in Chinese pilot’s death and detention of 24 American crew members for 11 days after their plane made an emergency landing in Hainan. Further, in 2009, both Chinese vessels and U.S surveillance ship, “the Impeccable” clashed which China blamed on U.S for intruding into its jurisdiction. These confrontations further heightened the tension in the region and exposed ASEAN’s weakness. ASEAN second nightmare is how to reconcile the divergent opinions and

feelings its members have on U.S incursion in the region. Allowing U.S in the region will deter China and reduce its aggressiveness but will affect the economic interdependence between China and ASEAN members. Conversely, prohibiting U.S involvement would translate into Chinese- continued aggressiveness and flourishing economic interdependence as far as ASEAN does not rock the boat.

II. CONCLUSION AND RECOMMENDATIONS

South China Sea has become a global hotspot where two major powers in China and U.S converge with their stakes in sight. While U.S advocates for freedom of navigation as contained in the UNCLOS which would further guarantee its global dominance and the spread of its protective wings on its allies in Southeast Asia, China sees the sea as vital not only for its quest for regional consolidation but also for global recognition and dominance as a global power, a situation that pits U.S realism and Chinese realism together in a complex and nuanced regional dispute. Fisheries, hydrocarbons, nationalism and quest for freedom of navigation have been the source of rising tension in the region as claimants remain unyielding and uncompromising to any plan aimed at resolving the dispute.

All these complexities which the dispute has assumed divide a once-viable regional grouping in ASEAN, a divide that is caused by internal incoherence among ASEAN members and U.S presence in the region with China being at the centre of the divide. Furthermore, as a result of complex economic interdependence between China and ASEAN, a nightmare is further prolonged as ASEAN searches for the best way to engage China without compromising such economic interdependence. Funny enough, Vietnam and Philippines have indicated interests to risk such interdependence while some other ASEAN members are not ready for such regrettable risk, an unpalatable situation that hinders ASEAN from reaching a consensus on how best to deal with the dispute without compromising the bond that unites the group. As observes by Kim, "overall, underneath ASEAN's veneer of diplomatic unity, ASEAN diplomacy amid the China threat has shown more continuities than changes in terms of failing to present a united front in the maritime disputes to convince China to exercise self-restraint in the South China Sea" (Kim, 2015:129).

Beyond having Chinese nightmare, ASEAN has another nightmare on how to deal with U.S presence in the region. There is a second divide among ASEAN members whether U.S should be allowed to rebalance against China or be asked to hold its peace.

However, as divided as ASEAN might be at the moment, world including China and U.S believe that ASEAN is still the lynchpin to Southeast Asia's stability and

masculinity, a protagonist capable of leading and resolving the dispute. Thus, there is need for ASEAN to reinvent its lost aura by heeding to these number of recommendations adumbrated below

First, though Southeast Asian Claimants have made positive moves towards making their claims come to terms with the principles of UNCLOS, there is every need for them to properly clarify which of the land features in the South China Sea could be attributed to island, rock or low-tide elevation. Article 121(3) of UNCLOS states that rocks that cannot sustain human habitation or economic life of their own shall have no maritime zone. Whereas islands are entitled to maritime zones, low-tide elevations are not islands and thus not entitled to any maritime zone. ASEAN needs to forge a common bond and show resilience in the midst of great power intrusion.

Second, ASEAN needs to have a second look at its charter. The idea of "non-interference" into member state's affairs and total "consensus" before any move in plan is made have waned in the face of challenging contemporary global politics. Non-interference in a way affects ASEAN's ability to dictate how the dispute should be resolved. Likewise, reaching a consensus before any step could be taken in any issue is not only outdated but spoon feeding. In a world of realism where the national interest of any state is paramount, reaching a consensus before major step is taken on issue may be counter-productive. This is what is playing out among ASEAN members. In as much as member states have divergent views on how to relate with the major powers in the dispute, waiting for a consensus to be reached may further destabilize the region. Thus, there is need for these provisions to be oiled, refined and redefined to meet the politics playing out each day in the region.

Third, it is high time ASEAN came to the understanding of the fact that China needs ASEAN just as ASEAN needs China. ASEAN remains indispensable to China as it cannot globally dominate in isolation. Thus, the fear by some of the ASEAN members that their trade relations with China may be affected if ASEAN presses to resolve the dispute in its best way is unfounded. To this fact, codes and forum already established to reduce the tension or resolve the dispute should be given some bites.

There is no doubting the roles ASEAN has played in the dispute like the establishment of Code of Conduct (COC) in 1992 and Declaration of Conduct of Parties (DOC) in 2002. But, these codes are rule-based without enforcement mechanisms. Perhaps, before setting the tone for enforcement, there is a need to clarify some provisions in the DOC. For example, whether the DOC's call to exercise "self-restraint" and prohibit "inhabiting on the presently uninhabited" land features would include new construction or fortification or improvement on facilities already built in any occupied territory. More so,

clarification has to be made on how the DOC's provision for "freedom of navigation on and over flight" is to be reconciled with China's claim to "indisputable sovereignty" over the entire South China Sea. It is when these clarifications are done that implementation and enforcement of the code would be ripe.

Lastly, ASEAN would need to accommodate U.S in the region not as a competitor with China but as a benign role player capable of deterring China with its presence. Though competition between the two may not stop completely, the ASEAN Regional Forum (ARF) and East Asia Summit (EAS) that congregate both ASEAN and non-ASEAN members including Japan, China and United States should be encouraged and strengthened. To minimize mistrust between China - ASEAN and China - U.S, Indonesia which is seen as an honest broker or mediator in the dispute by both China and U.S should be encouraged to continue to play such role in any ARF and EAS meetings

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