

**Taming the Tiger:
A Transgovernmental Approach for ASEAN to
Engage China Regarding the Spratlys**

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Abstract

This paper investigates the issue concerning the diversity of the political and economic systems of the ten member states of the Association of Southeast Asian Nations (ASEAN) and how such a situation impacts on the decisions they make in the face of China's hegemonic behavior in enforcing its claim to the whole of the Spratly Islands. To do this, an evaluation of the political, economic and social engagements of the individual ASEAN member states with China is conducted. After evaluating such engagements, this paper proceeds to explain ASEAN's reactions vis-a-vis China's claims to about eighty percent of the South China Sea as enclosed by its nine-dash line. As the ASEAN member states are not unified in dealing with China, a need to engage with their powerful neighbor is in order. This paper, therefore, outlines an arrangement that could be workable for all parties, with the end in view of easing tensions in the South China Sea. This is a qualitative study, and it applies the theory of transgovernmentalism in explaining the kind

of arrangement between the ASEAN member states and China, taking into account the realization of peaceful co-existence.

Keywords: *ASEAN, diversity, international norms, Spratly Islands, hegemony*

1. Introduction

The Association of Southeast Asian Nations, or ASEAN, which covers 1.7 million square miles, with a population of 650 million and an economy valued at \$2.8 trillion (US-ASEAN Business Council, 2019), was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the Founding Fathers of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore and Thailand (ASEAN, n.d.). With the addition of Brunei in 1984, Vietnam in 1995, Laos and Myanmar in 1997 and Cambodia in 1999, the group started initiatives to boost regionalism (Albert, 2017). These attributes make ASEAN both politically and economically significant. As a regional group of states, its importance is acknowledged by global policymakers. The world's largest regional economy is taking shape. It includes China, South Korea, Japan, ASEAN states, Australia, Papua New Guinea and East Timor (Taggart, 2016). Economically, for the ten member-states of the regional grouping, this is rather a welcome development for it means certain foreseeable benefits that may translate into something concrete and could be directly felt by the people in the region in the form of job creation, improved infrastructures and decent quality of life. However, the member-states must realize that for such an arrangement to work in their favor, they must cooperatively act together as a group and the ASEAN integration is seen as a positive move towards that direction. Indeed, the ASEAN has

gone a long way since its inception almost five decades ago.

However, there are also criticisms calling the ASEAN as still a work in progress, and the group has yet to grow into a major multilateral actor (Ginsberg, 2009). Part of a criticism centers on the fact that in most pressing circumstances, its member-states find it difficult to immediately act as one entity especially in the face of threats from hegemonic and powerful neighbors. The case of China's unilateral actions in claiming the whole of the Spratly Islands in which some areas are subject to territorial dispute involving at least four ASEAN member-states is a case in point. At the conclusion of the 4th ASEAN Foreign Ministers Meeting in Kuala Lumpur, Malaysia on August 4, 2015 for example, the Foreign Ministers of ASEAN were not immediately able to issue a concluding statement because of different and varied opinions on how to refer to the disputed South China Sea. The delay is a sign of the divisions within the Association of Southeast Asian Nations (ASEAN) in dealing with China's assertiveness in the South China Sea, in particular Beijing's recent construction of artificial islands in the waterway (*Business Insider*, 6 August 2015). Earlier in 2012, during Cambodia's chairmanship of the regional group, the country was accused as being accountable for the non-adoption of a joint communiqué at the end of the 2012 ASEAN Defense Ministers Meeting which was the first time in ASEAN's history (*The Cambodia Daily*, 20 September 2013). Also, most Western leaders and even many of Southeast Asia's top officials do not consider the organization capable of handling any serious economic or security challenges including the current dispute in the South China Sea (Kurlantzick, 2012).

With the way things unfold, it can be said that the differences in strategic priorities coupled with weak leadership, contribute to the difficulty in immediately coming up with a consensus even on issues affecting the members. There has been no leadership inside ASEAN,

thus in times of crisis like the South China Sea Dispute, there is no leader to direct ASEAN member-states toward a united position (Tong, 2016). In fact their differences are subtly reflected in many official documents of the group. For example, Article 2 of the Association's Treaty of Amity and Cooperation (TAC) signed by the heads of states of the five original members of the Association in Denpasar, Bali, Indonesia on 24 February 1976 stipulates six basic principles that may guide the actions of each member country. These principles are: mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; the right of every State to lead its national existence free from external interference, subversion or coercion; non-interference in the internal affairs of one another; settlement of differences and disputes by peaceful means and renunciation of the threat or use of force and effective cooperation among themselves (ASEAN, 1976). It is clear from these pronouncements that the ASEAN member-states recognize each other's differences and because of their differences, the need to co-exist with one another without interference in the affairs of others becomes of utmost necessity. In a layman's term, States are like persons. Since no two persons are exactly the same, no two States are exactly the same as well.

This paper tries to answer this question: Being aware of their differences, how will the ASEAN member-states act as one entity in the face of external threat or use of force, which they must renounce in the first place as enshrined in the TAC? Corollary to this, this paper argues that while the principle to renounce external threat or use of force is firmly established in the ASEAN Charter that becomes even more pressing in the face of looming incidents in using force targeted directly at some of them, an individual member-state gives more premium to its own interest rather than the interest of the ASEAN as a body. This

argument will be plotted against China's use of force in enforcing its claim to most of the South China Sea through which about \$5 trillion in ship-borne trade passes each year (Reuters, 30 November 2018). Interestingly, the actions of China involve at least four members of the ASEAN. Under this scenario, why is it difficult for ASEAN to confront China even when 40 percent of its members are affected by China's actions? Given this reality, this paper offers a mechanism for ASEAN member-states to engage China through a win-win approach that could be acceptable to all stakeholders.

This paper makes use of the theory of transgovernmentalism in order to explain the problem. This theory refers to the relations among sub-units of government between States, be they legislative, bureaucratic or judicial. Instead of traditional diplomacy between States that is channeled through foreign ministries and embassies, transgovernmentalism refers to direct relations among sub-units, operating on the basis of shared interests (Beach, 2015). Aside from sub-units of government, transgovernmentalism also takes into account, the important role in diplomacy played by non-state actors like non-governmental organizations (NGOs). As Slaughter (1997) opined, "transgovernmental networks allow governments to benefit from the flexibility and decentralization of non-state actors". These non-state actors have the advantage over State actors because of the network of contacts at their disposal which make it easy for them to work on issues in collaboration with their network of contacts. Matthews (1997) further opined that "national governments are not simply losing autonomy in a globalizing economy but they are sharing powers – including political, social, and security roles at the core of sovereignty – with businesses, with international organizations, and with multitude of citizens groups, known as non-governmental organizations". Although statist maintain that the State remains the most powerful political actor, the role of civil

society cannot be discounted. As Faulks (1999) pointed out, “States seek to share their power with other States and the institution of civil society”. The engagement between the ASEAN member-states and China seen in the context of the Spratly Islands dispute will be explored and analyzed using this approach.

This is a qualitative study. Data cited in this paper come from secondary sources like books, journals, magazines, newspapers and internet articles.

2. The ASEAN: An Archipelago of Political Systems and Historical Narratives

The present composition of ASEAN is politically and economically diverse. Here, different political and economic systems as well as historical narratives all converge within one organization. For this reason, ASEAN can hardly be called as a cohesive organization but is more of a geographical grouping of States with different political and economic systems commonly located in a particular region. Since the main argument of this paper focuses on how the differences – whether it be political, economic and historical, of the ASEAN member-states impact on their stand against China’s unilateral actions in its claim of territories in the South China Sea, such differences are highlighted in the following sections.

2.1. Brunei Darussalam: A Tiny but Rich Islamic Sultanate

Brunei Darussalam is the second smallest member state of the ASEAN in terms of land area after Singapore. The country has a total land area of only 5,765 sq. km. (*World Atlas*, 2016). It is located in the northwest part of the island of Borneo. Its 161 coastline faces the South China Sea. On the land side it is enclosed by the Malaysian state of Sarawak, which

divides it into two (The Commonwealth, n.d.).

Brunei Darussalam is an Islamic Sultanate ruled by a monarch who is both the Head of State and Head of Government. The Sultan embodies the executive, the legislative and the judicial branches of government. He both reigns and rules with assistance from a Privy Council, on matters concerning the royal household and customs and by a cabinet and bureaucracy, on most other matters (Hussainmiya, 2016). For purposes of local administration, the sultanate is divided into four daerah (districts) – Temburong in the country's eastern segment and Belait, Brunei and Muara, and Tutong in the western segment. The daerah are subdivided further into units called mukim, each of which embraces a number of kampong or villages (Damit, 2016)

Like most other countries in the ASEAN, Brunei Darussalam also came under foreign domination. For a quarter century before independence, it had been a self-governing constitutional monarchy, with the British assuming responsibility for foreign affairs and defense (*Encyclopedia.com*, 2002). Brunei Darussalam became a fully sovereign, independent state on January 1, 1984 (Hays, 2015). Six days after gaining independence, the country became a member of the ASEAN. Brunei Darussalam's membership in the ASEAN on January 7, 1984 was followed by the establishment of diplomatic relations with the Western Block - the United States, Canada, Japan, South Korea and the European Economic Community (EEC). Even then, the ASEAN remains the cornerstone of Brunei Darussalam's foreign policy. The country chaired the ASEAN and the East Asia Summit in 2013 (Department of Foreign Affairs and Trade, Australian Government, 2016).

Brunei has not yet directly and actively confronted and challenged China in any way relating to the problem of territorial claims in the Spratly Islands. China wants to project an image that it is a friend of Brunei in spite of its claim to the Spratly Islands as encompassed by the

nine-dash line. In fact it was reported by China's Foreign Minister Wang Yi that China, together with Brunei, Cambodia and Laos reached a "consensus" on the South China Sea issue, and that the four countries agreed that the territorial and maritime disputes should be resolved through consultations and negotiations, by "directly concerned parties" under ASEAN's 2012 Declaration on the Conduct of Parties in the South China Sea (*The Japan Times*, 24 April 2016). Among the four countries that entered into this agreement, only China and Brunei can be said as "directly concerned parties" to the Spratly Islands dispute, though of course Cambodia and Laos are members of the ASEAN.

2.2. Kingdom of Cambodia: China's Top Military Ally in the ASEAN

Cambodia is a middle-sized country in Southeast Asia. Looking at a map of the region, it is bounded on the northeast by Laos, on the east by Vietnam on the west by Thailand and on its southwest by the Gulf of Thailand. Officially the country is known as the Kingdom of Cambodia. As such, it is a constitutional monarchy with a monarch serving as the head of state, while a Prime Minister serves as the head of government. The current Prime Minister of Cambodia is a former Khmer Rouge fighter who has wielded power through a combination of threats, clever deal-making and sheer willpower (Wallace, 2016).

Like most countries in Southeast Asia, Cambodia also came under foreign control. It became a French colony and during the 20th Century, it experienced the turmoil of war. Between 1975 and 1979, the country was devastated by the reign of the Khmer Rouge, a rural communist guerilla movement (Overton, 2016).

Cambodia and China are friends and their relationship is cordial. Past leaders of Cambodia including some monarchs were close friends of Chinese leaders. It should be recalled for example that the former king of Cambodia Norodom Sihanouk who abdicated because of poor

health in favor of his son Norodom Sihamoni, died of natural causes in Beijing, where he had travelled for medical treatment (*The Guardian*, 15 October 2012). Militarily, China is the biggest source of assistance to Cambodia's armed forces (Chanborey, 2015)

Cambodia became a member of the ASEAN on April 30, 1999 and it is the latest country to become a member of the regional group. Although Cambodia is the newest member of ASEAN, the country has enjoyed a special status within the group because of the nature of its political system and leadership (Chongkittavon, 2012). Cambodia chaired the ASEAN in 2002, after just three years since its membership in the regional group. The country chaired ASEAN again in 2012.

2.3. Republic of Indonesia: ASEAN's Giant Both in Land Area and Population

Indonesia is the biggest country among the ten ASEAN member-states both in terms of land area and population. It is also reputed as the largest archipelagic country as well as the largest Muslim country in the world.

Like most member-states of ASEAN, Indonesia also came under colonial rule. It has been a colony of the Dutch. Before the outbreak of the Second World War, Indonesia was still a Dutch colony. In March 1942, the Japanese occupied the Dutch Indies for which Indonesia was popularly called. At the closing of the Second World War, before Japan's surrender effectively ending World War II, the Japanese gave full support to the Indonesian nationalist movement. On August 17, 1945, Soekarno and Mohammed Hatta proclaimed the independence of Indonesia, by whom the two are said to be "Made in Japan" (Sluimers, 1996).

In 1966, Soekarno was named president for life. He enjoyed mass support for his policies but a growing power struggle between the military and the Indonesian Communist Party (PKI) loomed over his

government. The Chief of Staff of the Army that time, General Suharto and his officers killed hundreds of thousands of suspected communists in a massive purge aimed at undermining Soekarno's rule (*Infoplease*, 2000a)

As to the Indonesia-China connection, it is worth mentioning here that Surahto, a former president of Indonesia engineered the killing of the members of the Indonesian Communist Party (PKI). Its leaders including the party chairman D. N. Aidit, had close association with Chinese Communist leaders. This can be gleaned when in August 1965, Aidit outlined his plans to his friend, the Chinese leader Mao Zedong (Cribb, 2015).

Indonesia, unlike its fellow ASEAN member-states Brunei, Malaysia, the Philippines and Vietnam, is not a party to the territorial dispute in the Spratly Islands with China. However, it is having problems lately because Beijing is claiming Natuna Islands as part of its territory, even though the islands lie within Indonesia's exclusive economic zone. As Indonesia is hard to budge, the islands have been the latest irritant in the relations of the two countries.

Recently, Indonesia's president, ordered an expansion of offshore oil exploration and commercial fishing in the waters near the Natuna Islands, the latest in a new campaign to assert sovereignty over the area in the South China Sea (Reuters, 29 June 2016). Although Indonesia is receiving economic aid from China through the Belt and Road Initiative (BRI) like the approximately US\$3.6 billion during the first half of 2019 (Grossman, 2020), it seems doubtful that Indonesia will just turn a blind eye to China's hegemonic posturing especially if the country considers its territory to be compromised.

2.4. Lao People's Democratic Republic: Top Beneficiary of China's Economic Largesse

Laos is a land-locked country. It is bounded by China to the north, Burma to the northwest, Thailand to the west, Cambodia to the south and Vietnam to the east.

Like most members of ASEAN, Laos was also subjected to foreign domination. It has been a colony of France and it only gained its independence in 1954.

The country's president is the head of state and is elected by the National Assembly for a five-year term. The President also acts as the country's commander in chief of the armed forces or the Lao People's Army. The Council of Ministers is the country's highest executive organ, and its chairman is designated as prime minister (*GlobalSecurity.org*, 2012). Although Laos allows elections, the Communist Party dominates Lao politics, and opportunities for advancement are highly dependent on one's ranking within the party. Unlike the money politics of many neighboring countries, political success in Laos is highly dependent upon loyalty to the party and its ideology (*Encyclopedia of the Nations*, 2016).

Laos is diplomatically close China. The relationship of the two countries is made closer because they share similar ideology in running the affairs of the state. And although the former is economically weak, it finds a ready answer in the latter as loans and direct investments are made and realized. China is Laos' main source of loans for its infrastructure needs. On December 2, 2015, the two countries held the opening ceremony signaling the start of a rail project that will connect the two countries. The construction budget for the line through Laos is US\$6.8 billion, of which 40% is to be funded directly by the Chinese and Lao governments, with China taking a 70% share of this contribution. The remainder would be funded by various state

enterprises and a series of low-interest loans from China to Laos (*Railway Gazette International*, 4 December 2015). This is just one of the many Chinese-funded projects that benefit the two countries.

2.5. Federation of Malaysia: “Playing It Safe” with China

Malaysia, like the Philippines and Indonesia is an archipelagic country. A big part of the country’s territory is found on the Malay Peninsula in Southeast Asia, that is why this part is called peninsular Malaysia. The country also includes Sabah and Sarawak on the island of Borneo to the east (*Infoplease*, 2000b). Here, it has a common border with Brunei Darussalam and Indonesia. This part of Malaysia faces the South China Sea. Peninsular Malaysia, on the other hand has a common border with Thailand. Singapore is to its southeast while the Indonesian island of Sumatra is to its south.

Malaysia is a federation of 13 states and is considered as a Constitutional Monarchy. The monarch is considered as the head of the federation while a Prime Minister is the head of the government who wields real powers. The monarch has limited powers and such powers are mostly ceremonial.

Like most of its fellow ASEAN member-states, the country also came under foreign domination when Great Britain formally made Malaysia its colony in 1867. The country celebrates its Independence Day every 31st day of August as a commemoration of the Malaysian Declaration of Independence on August 31, 1957. This important date is spelled out in Article 160 of the country’s Constitution.

Like Brunei, the Philippines and Vietnam, the country is a party to the overlapping claims of territories in the South China Sea. However, as a claimant, it continues to adopt a “playing it safe” approach on the South China Sea issue, pursuing a combination of diplomatic, legal, economic, and security initiatives that can secure its interests as a

claimant state while being careful not to disrupt its vital bilateral relationship with China (Parameswaran, 2015). Its leaders are careful in dealing with this particular issue, yet proactive in staking its claims (*New Straits Times*, 2 March 2019).

2.6. Republic of the Union of Myanmar: China's Viable Business Partner in the ASEAN

Myanmar, together with Cambodia, Indonesia, Laos, Singapore and Thailand is an ASEAN member-state that is not a party to the Spratly Islands dispute.

Myanmar, also known as Burma, is bounded to the northwest by Bangladesh, to the northeast by China, to the south by the Bay of Bengal and to the southeast by Thailand. The country also came under colonial domination. It only gained independence from Great Britain on 4 January 1948 and became a democracy based on the parliamentary system.

Myanmar was considered a pariah state while under the rule of an oppressive military junta from 1962 to 2011. The generals who ran the country suppressed almost all dissent - symbolized by the house arrest of opposition leader Aung San Suu Kyi, and stood accused of gross human rights abuses, prompting international condemnation and sanctions (*BBC News*, 3 September 2018).

The present military leaders of Myanmar are close to the leaders in Beijing. Since the late 1980's, China has been Burma's major source of military equipment and training, a major investor in the Burmese economy, and a major export market for Burma's wealth of natural resources (Clapp, 2015). The relationship of the two countries is mutually beneficial in advancing their respective interests.

2.7. Republic of the Philippines: The ASEAN State that Brought China to the Permanent Court of Arbitration (PCA)

Like most countries in the ASEAN, the Philippines, considered as the oldest democracy in Asia, also experienced foreign domination. The country has been a colony of Spain for more than 300 years. This started when Ferdinand Magellan and his men arrived to the islands on March 16, 1521. Spain's more than three centuries control of the islands, making it the only Catholic country in Asia, ended after its defeat in the Battle of Manila Bay by the Americans on May 1, 1898. As a result, the Philippines came under a new colonial power when Spain ceded the country including Guam and Puerto Rico to the United States of America after it paid Spain US\$20,000,000.00 during the Treaty of Paris on December 10, 1898.

After the Treaty of Paris in 1898, the Philippines once again came under White tutelage (Coloma, 2009). Now controlled by the United States, the Philippines underwent noticeable changes in her political, economic and social institutions. The United States reinforced and strengthened democracy in the country and allowed more freedom and participation of Filipinos in governance. It was during the American occupation of the country when women were allowed to participate in elections for the first time.

The Philippines was an American colony for almost 48 years from 1898 to 1946. This period was interrupted by the Second World War when the country was occupied by the Japanese from 1941 to 1945. During the war, the Commonwealth government of the Philippines was exiled to the United States. Eventually, the Philippines was granted independence by the United States on July 4, 1946.

The form of government of the Philippines is patterned to that of the United States of America. It has a presidential type of government in which the President and Vice President are separately elected by the

people, by plurality vote. Unlike the United States however, this means that a President and a Vice President may come from different political parties.

Historically, the Philippines is a close ally of the United States and considers China not a very close friend. In fact, successive Philippine governments since the Marcos Administration until the former President Benigno Aquino III Administration consider China as a supporter of the Communists in the Philippines who are waging a war in the country to establish a Mao-inspired government. To make matters worse, a lot of incidents happened in between that contributed to the souring of relations between the two countries.

One of the factors that impedes the smooth conduct of relations between the Philippine and China is their conflicting territorial claims in the South China Sea. In fact, the Philippines and China has a long history of maritime squabbles (*The Japan Times*, 21 January 2018). As is known, the Benigno Aquino III Administration lodged a complaint against China at the Permanent Court of Arbitration (PCA) in The Hague, The Netherlands on January 22, 2013. This complaint centered on the Philippines' claim under the United Nations Convention on the Law of the Sea (UNCLOS) regarding China's occupation of Scarborough Shoal. Scarborough Shoal is not part of the Spratly Islands, but located in the South China Sea and enclosed within China's drawn nine-dash line. The shoal is 124 nautical miles from Zambales Province in the Philippines and 550 nautical miles from Hainan Island, the closest Chinese port (Wagner *et. al.*, 2012). Until November 2012, Scarborough Shoal was occupied and controlled by the Philippines, but since then, is now controlled by China.

After about more than three years of hearing the case, which China did not participate even once, the PCA issued its award in favor of the Philippines. It ruled that there was no legal basis for China to claim

historic rights to resources within the nine-dash line. Such rights were extinguished to the extent they were incompatible with the exclusive economic zones provided in the UNCLOS (PCA Press Release, 2016).

2.8. Republic of Singapore: Message to China – Respect the Rule of Law

Singapore is a city-state at the southern tip of the Malay Peninsula. It is bounded to the north by Peninsular Malaysia and to the south by Indonesia's Riau Islands. Geographically, the city-state is composed of one main island and 62 other islets. In order to increase its land area, Singapore underwent a massive reclamation program which increased its land area by 23 percent around 130 square kilometers or 50 square miles. The total land area of Singapore is 699 square kilometers including the small islets (The Commonwealth, n.d.).

Singapore was once a colony of Great Britain and so it is a member of the Commonwealth of Nations. As a former British colony, its form of government is patterned to that of England. It has a parliamentary form of government having a President as Head of State and a Prime Minister as Head of Government, who has real powers. The functions of the President are mostly ceremonial. It is the Prime Minister, together with the Cabinet who runs the affairs of government.

The Constitution of Singapore states that there are four commonly used languages in the country – Malay, English, Chinese Mandarin and Tamil. The use of Mandarin language in Singapore keeps it culturally close to the Chinese as many citizens of Singapore are in fact of Chinese descent.

The Republic of Singapore and China enjoy a meaningful economic and political relations. However, as a member of the ASEAN Singapore tilt more towards the interest of the association. Although the city-state is not a party to the territorial disputes in the South China Sea, Singapore

finds it to its best interest to settle the disputes through the use of peaceful means and a rules-based approach (*South China Morning Post*, 16 August 2016) as this has important implications to the ideals that the country subscribes like the freedom of navigation and principles of peaceful co-existence.

2.9. Kingdom of Thailand: The Only ASEAN State Untouched by Colonizers

The Kingdom of Thailand is the only country in ASEAN that did not come under foreign domination. The country is bounded to the northeast by Laos, to the southeast by Cambodia, to the west and northwest by Burma and to the south by Peninsular Malaysia.

Thailand is a Constitutional Monarchy wherein the Monarch is the Head of State as stated in Section 2, Chapter 1 of the Thai Constitution, and is aided in its official functions by a Privy Council. The real powers of government rests in the hands of a Prime Minister. The Monarch commands wide respect among the Thais. Like most monarchies in other parts of the world, the Thai Monarch is also vested with ceremonial powers, while the power of running the affairs of the State is vested in the Prime Minister. As a member of parliament, the Prime Minister is elected by simple majority of the members from among them and nominated for the King to give his royal assent. However, there had been instances when the head of government is installed to office through extra-constitutional means like military coups. The most recent was on May 2014 when the Royal Thai Army staged a coup d'état and established the National Council for Peace and Order (NCPO) which installed General Prayut Chan-o-cha as the leader of the caretaker government.

Thailand is not a party to the territorial disputes in the South China Sea. The country maintains close relation with China. The relations of

the two countries is also a result of some internal political developments in the region. Thailand's relations with China became closer and warmer in the 1980's as a result of the strategic convergence between the two countries over Vietnam's invasion and occupation of Cambodia in 1979 (Chinwanno, 2008).

2.10. Socialist Republic of Vietnam: War Knows No Ideology

Vietnam like most of the ASEAN member-states also came under foreign colonialism. The country has been a colony of France together with Laos and Cambodia and called it French Indochina. Vietnam came under French control for more than six decades (*Alpha History*, n.d.)

It is interesting to note that although Vietnam and China have more or less similar ideology in running their governments, the two countries remain at odds on so many issues. Like the Philippines, Vietnam is also a major challenger of China regarding the territorial disputes in the South China Sea.

Vietnam has been locked in territorial disputes with China not only regarding the Spratly Islands but with other islands in the South China Sea within its EEZ that it calls its own. The latest friction which many observers feared could escalate into an armed confrontation between the two socialist-inspired governments was in July 2019 when China sent a ship for a seismic survey to an area internationally designated as Vietnam's EEZ, but also claimed by China (*Reuters*, 8 November 2019). This was yet another reminder that the conflict between China and Vietnam is a sword of Damocles that can fall anytime. Barely 5 years before this seismic survey incident, in 2014, the two countries were also brought to a near war scenario over the Chinese oil rig HYSY-98 in an almost two-month-long standoff near the Paracels (Koh and Ngo, 2018).

The problem of territorial conflict between Vietnam and China is not new to them. In fact, even before this problem of territorial conflict

between some ASEAN member-states and China figured out as highlighted by the Philippines' memorial against China when it brought its case to the PCA in 2013, then South Vietnam and China already engaged in a historic war over the Paracel Islands in 1974. During that war, three of the four Vietnamese warships had to retreat while the fourth sank with its captain on board (*BBC News*, 15 January 2014). That war between the two states which took place more than four decades ago is a reminder that territory is always a non-negotiable issue between and among States. The overlapping territorial claims especially between Vietnam and China, regarding some parts of the Spratly Islands and the Paracel Islands, which are all located in the South China Sea, are potential causes for another military confrontation between the two communist-led governments.

3. Engaging China: From Strategic Alliance to Research Consortium

Given the fact that ASEAN as a regional group is not that cohesive due to so many factors, it is rather difficult for the group to come up with a common agenda to engage China. Some of the ASEAN member countries like Laos and Cambodia are close friends of China even before they joined the regional group. Other members like Singapore, Thailand, Myanmar and Indonesia who are not claimants and are not parties to the territorial dispute in the South China Sea, seem more to be just observers rather than partisan actors. And among the four ASEAN member-states that are party to the dispute, Brunei, Malaysia, the Philippines and Vietnam – only the Philippines and Vietnam are very vocal in opposing China's aggressive maneuvers in its claim to the South China Sea. Although Vietnam appears unperturbed by China's forceful posturing and even sending to it "an eye for an eye and a tooth for a tooth"

message, the Philippines on the other hand tries to be civil and takes the diplomatic path by invoking the rule of law in dealing with China. The country has filed a case in the UN-backed PCA in The Hague, with the end in view of letting the court decide the validity of China's nine-dash line, which released its decision on the case on July 12, 2016.

In the face of China's threat, which sent the ten ASEAN member-states scampering away seemingly lost for a better answer to their giant neighbor's saber rattling, some member-states nonetheless do not fail to subtly remind China to behave. For instance, the Indonesian President ventured on a symbolic journey to the vicinity of Natuna Islands which China is eyeing as its own after enclosing it within its nine-dash line but is within Indonesia's EEZ. However, even in the midst of this great animosity, certainly, the 10 ASEAN member-states can pick the pieces together and engage China in a win-win situation.

In order to engage China, this paper proposes the Joint Development Strategy (JDS), Joint Development Agreement (JDA) or Joint Development Method (JDM), particularly Strategic Alliance (SA). JDS, JDA and JDM are one and the same - the heart of the matter is joint development. SA refers to a co-operative business activity, formed by two or more separate organizations for strategic purposes, that allocates ownership, operational responsibilities, financial risks, and rewards to each member, while preserving their separate identity or autonomy (*Kaplan Financial Knowledge Bank*, 2012). The concept of SA aimed at engaging China by ASEAN as a group may work in favor of all stakeholders and all parties concerned. SA has also been called as Economy First Model (EFM). Whatever the name, the essence of the model remains the same and that is the setting aside, for the time being, of the sensitive issue of sovereignty. Such arrangement is plausible and in fact being practiced not only by the claimant states in the Spratly Islands dispute but also elsewhere. Becker-Weinberg (2014) for example

even pointed about the Timor Gap Treaty as the first wide-ranging joint development regime of offshore hydrocarbon deposits and has been an example for other similar arrangements. All such agreements are designed to minimize and at best avoid tensions in contested territories. The replication of such arrangement in the South China Sea particularly concerning the Spratly Islands dispute among the claimant countries, will be a welcome development that can possibly bring about an eventual peaceful solution to the problem.

Since not all the ten member states of the ASEAN are party to the Spratly Islands dispute, countries that are not affected by the problem seem not to take the matter very seriously. This state of event is compounded by their close economic relationships with China. Ironically, the countries that have close economic ties with China are not claimants or parties to the dispute, so it is very easy for them to decide and favor China as against their fellow ASEAN members who are party to the dispute. There had been several instances in the past when the ASEAN as a body, did not act singularly especially on issues where China is involved. Cambodia has close economic ties with China. The latter is the former's primary trading partner, largest source of foreign direct investment and top provider of development assistance and soft loans (Chanborey, 2015). Laos is another ASEAN member that has a very close economic ties with China. Their close relationship results to some economic benefits for both countries. Recently the two countries signed the Joint General Scheme of Mohan–Boten Economic Cooperation Zone which is the first cross-border economic cooperation zone that China has established in Laos and, for that matter, in the whole of Southeast Asia (Ku, 2016).

This paper argues that one of the reasons why ASEAN as a body cannot commonly act against China even if some of its fellow member-states are involved in the problem is because of China's "money

diplomacy". Apparently, Cambodia and Laos which are beneficiaries of China's economic largesse have every reason not to offend China. While the SA is believed to be a model that will make headway between ASEAN states and China as seen and implemented elsewhere, all the ASEAN member-states do not participate simply because they are not directly affected and some have greater stake in keeping silent than offending China as in the case of Cambodia and Laos.

And so, in order to engage every ASEAN member-state and China, this paper is taking a step further by proposing and establishing what I may call the Joint ASEAN-China Research Consortium (JACREC). This proposal will not abandon the SA Model altogether. JACREC will just serve as the icing so that everyone can enjoy his or her piece of the cake. Conventional wisdom dictates that when everyone is given the privilege to enjoy the delicious food available, discord is somehow lessened.

The JACREC will be composed of researchers from the academe coming from the different ASEAN States and China. ASEAN as a regional body will serve as a ready venue and will be partly responsible in the recruitment of researchers in cooperation with the best and top universities in the region and the world from where researchers will be pooled. Selection of researcher-scholars will be based on research experiences and fields of study. Those with ample research background about the South China Sea will be given primary consideration and they must be apolitical. Any research output in line with pre-agreed rubrics and mechanics among the members of the consortium, must be published for international consumption. After the publication of the research output, the researcher-scholars will endeavor to engage the respective governments of the JACREC to discuss the results and talk on how to thresh out a viable solution to the problem of territorial claims with advice from the researcher-scholars and the research results serving as a ready reference. The bottom line of this approach is the expressed

agreement and permission of every State in the consortium before such undertaking starts. For obvious reasons, the States that could be members of the consortium will be the 10 ASEAN member-states and China. However, researcher-scholars may be recruited internationally, based on their knowledge and expertise.

4. From SA to Research Consortium: Why the Leap?

Why is this paper taking a step further from the SA to research consortium particularly the JACREC? There are many reasons and the shortcomings of the SA or the EFM call for a more acceptable and easier-to-implement approach to diffuse tension in the region and the JACREC may just do the trick. As already pointed out, one obvious weakness of the SA or the EFM, as applied in this particular case is that, not all ASEAN member-states are involved or are party to the territorial dispute in the South China Sea. So, without abandoning the SA or the EFM, the JACREC is proposed so that all states that have immediate stake in the smooth resolution of the problem must be involved. The following realities are noted why JACREC is postulated:

First, there had been concerns about the sincerity of the parties in entering into such agreement. Although the SA approach is famous, some of the claimant states remain lukewarm to the idea simply because of trust and sincerity issues. For instance, since 2017, China has actively proposed a number of joint development schemes in the South China Sea with the Philippines and Vietnam (Qi, 2019), but it just fell on deaf ears because of the Philippines and Vietnam's distrust of China. So, having already taken such an initiative, it will not be difficult to engage China to join the consortium, after all it already floated the idea in the past. But even with this Chinese initiative, some countries in the ASEAN like the Philippines and Vietnam, view the SA as just another

lip-service which is not accompanied with concrete steps, to show China's sincerity and therefore ignored. Since all claimant states on the side of the ASEAN came under colonial rule during a particular period in their history or another, the sensitive issue of sovereignty must be given primordial consideration. The Philippines for example although willing to a peaceful settlement of its territorial conflict with China as reinforced by the pronouncements of the newly-elected President of the Philippines Rodrigo Duterte who said that he is not going to a war against China, is wary to enter into a JDA with that country. Senior Associate Justice Antonio Carpio for example said that "joint development of the Spratlys with China is not possible without violating the Constitution because China's offer of joint development in the Spratlys has one pre-condition – that the other State concedes to China's indisputable sovereignty over the Spratlys. No claimant State has accepted, or will accept China's offer because acceptance means the accepting State must immediately vacate any island it occupies in the Spratlys since that is the consequence of admitting China's sovereignty over the Spratlys" (Tordesillas, 2015). And China is not keeping secret about its claim to the South China Sea as defined by its nine-dash line. Quondam Chinese Foreign Minister Wang Yi has suggested four principles to guide the South China Sea dispute and he said that, "the dispute over the sovereignty of some reefs in the Nansha (Spratly) Islands is a leftover problem of history and historical facts should come first in handling the dispute" (Kim, 2014).

Second, unlike other personnel, researchers and scholars are apolitical and objective in their craft. With this, their ideas and findings are more or less devoid of bias and lend credence of objectivity that favors no one. Therefore, JACREC will be much easier to implement and attain than the JDA, JDS or JDM.

Third, such undertaking entails lesser budget requirements and the abundance of researchers and scholars in each of the ten ASEAN member-states and in China will make the undertaking easy to organize and manage. The utility and importance of research outputs among researchers and scholars makes this approach doubly appealing.

Fourth and most important, the researchers and scholars will serve as ambassadors of goodwill, they being on constant travel to and from the different countries that are members of the consortium. Such research travels will therefore be good steps toward confidence building activities between and among the countries especially those that are party to the dispute. This is transgovernmentalism at work, with the scholars and researchers serving as bridges that could narrow the river of distrust, insincerity and animosity between and among the disputants and non-disputants alike, thereby hopefully creating a peaceful region and an informed people.

5. Precedents of Transgovernmentalism among the Claimants

Since researchers and scholars are apolitical, they are not easily swayed by political considerations. They are oftentimes objective in their arguments, an attribute that makes them credible to the public. Even researchers or professors in state colleges and universities, who to some extent are employees of the State, cannot easily be swayed by political incentives, especially those who are already tenured, lest the reputation of the research institutions or higher educational institutions be compromised. In the event that State actors will use political vendetta to harass researchers and scholars, with the end in view of influencing and twisting research results to favor a desired outcome, such action could backfire because educators may have all the reasons to expose such high-handedness, which State actors may not be so willing to risk. Since

the consortium will be composed of researchers from all member-states of the ASEAN plus those from China and elsewhere, the possibility of a twisted research result to come out is nil. This makes this approach not only doable but appealing.

The JACREC, envisioned by this paper will be an international NGO. Clothing JACREC with such a persona can possibly help ease tension in the Spratly Islands dispute and in some other areas of concern. In fact, it is not only among the ASEAN member-states and China where NGOs take active role in the affairs of the State. Their ready presence in the community makes them a big help to the State in the furtherance of social, economic and political objectives, especially in situations when the apparatus of the State is weak, or when the direct involvement of the State will worsen the situation. Of course this may not sound good and may not sit well among statist but this makes the NGOs an important entity in helping the State realize some of its avowed goals and objectives like the preservation of peace and the realization of mutual trust and understanding between and among nation-states. The JACREC may just play a pivotal role in that direction.

In China even if the number of NGOs is few, their influence is nonetheless felt by the people both inside and outside the country. This is because the breadth of transgovernmentalism knows no boundary and the presence of like-minded individuals or organizations makes the arrangement easy to realize. In fact it is not only in the field of research that problems among States can be eased through the efforts of NGOs and private individuals. There are many different areas of concern that NGOs can fit into the picture. For example, in terms of realizing investment and inviting investors to a country, NGOs can do something to make a big difference. In other words, cooperation among members of NGOs of different colors can step into the scenario to help ease State concerns and problems. Therefore, the likelihood of a research

consortium having an NGO persona to succeed in this enterprise is great. This will also be a good and viable way to bring the official representatives of the different claimant-states face-to-face with JACREC researcher-scholars, who are apolitical and whose research outputs could benefit all stakeholders.

On a bilateral level concerning the Philippines and China for instance, NGOs can also be influential and can help greatly in advancing friendship and in narrowing distrust between the peoples of the two countries. Although the relationship of the Philippines and China at the state level soured as a result of the territorial dispute in the Spratly Islands, exchanges and interactions at the civil society level have been vibrant and unaffected by the territorial spat between the two countries. The relations of the Philippines and China spiked to a high cooperative level after the election of Rodrigo Duterte as Philippine President, who saw an ally in China after most leaders in the West and elsewhere, censured him for his draconian style in curbing the illegal drug problem in his country. But even before then, the problematic Philippine-China relations has been kept sanguine by the NGOs from both countries. For example, during the first half of 2015, a small delegation from the China NGO Network for International Exchanges (CNIE) visited Manila on a three-day mission to explore the possibility of holding a “high level regional people’s dialogue” (*The Manila Times*, 8 February 2015). Also, Shi Xueqin (2008) pointed out that from December 2000 to January 2001, members of a well-known NGO in China – the Shaanxi Research Association for Women and Family, visited the Philippines and examined rural development projects. On June 3, 2013 the China – Southeast Asia People to People High-Level Dialogue was held in Nanning, Guanxi Province. With the theme of “Peace for Development and Cooperation for Win-Win – Common Dream and Aspiration of the People,” the dialogue brought together government officials, political

leaders, former senior politicians, first ladies, academies, business leaders, and representatives from non-governmental organizations (ASEAN, 2013). It is clear that the realization of other state functions may well be addressed by NGOs and the civil society. The JACREC therefore is a push forward, towards that direction particularly in easing tensions in the South China Sea.

6. Conclusion

The simmering territorial disputes among Brunei, Malaysia, the Philippines, Vietnam and China in the Spratly Islands are a cause for alarm. This is because China has been very assertive in its claim. The country enclosed about eighty-five percent of the South China Sea with its so-called nine-dash line and went further by constructing artificial islands even those that are subject to disputes.

The ASEAN as a regional grouping is composed of ten member-states with different political systems. They also have different levels of interaction in their relations with China. Some of them are beneficiaries of China's economic largesse in forms of soft loans and direct investments, reasons enough for them not to offend the government in Beijing. With this scenario, it follows that the ten member-states of ASEAN will not and cannot act with one voice especially if China is involved in the problem. This is also due to the fact that the ASEAN itself only allows for policy statements that are agreed upon by all member-states. And who will expect all ASEAN member-states to condemn China when some of them are beholden to it economically and militarily?

The different approaches taken by the individual ASEAN member-states, to China's unilateral actions in claiming some territories in the South China Sea, as enclosed by its nine-dash line is expected, given the

fact that in Section 2 of the TAC of ASEAN, mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations and the right of every State to lead its national existence free from external interference, subversion or coercion are clearly stipulated. This reality which is outwardly manifested by the ASEAN member-states in their actions towards China's hegemonic posturing in claiming parts of the territories in the South China Sea even those subject to disputes, will have an impact on how the ASEAN as a body will address similar problems in the future. As every member-state is guaranteed to be free from external interference, the prospect of an ASEAN that is unified in the face of similar problems of even milder scale remains doubtful.

As postulated in several literatures, China uses the divide-and-rule tactic or salami tactic towards the ASEAN member-states in relation to the territorial disputes. In dealing with Brunei for instance, China brought into the fold, two ASEAN member-states, which are not even party to the territorial disputes, but China is closest with – Laos and Cambodia, by entering into an agreement among the four of them – China, Brunei, Laos and Cambodia, stipulating among other things “that the issue of the territorial dispute must be resolved through negotiation with countries directly involved in the problem” (*The Japan Times*, 24 April 2016). And although not heeded by the two fiercest challengers of China in its hegemonic ambition to occupy and control some islands in the Spratlys – the Philippines and Vietnam, China floated to them since 2017, the joint development scheme (Qi, 2019) if only to silence the two. In between, China's money diplomacy is unabated especially among the ASEAN member-states which are not party to the dispute, like the US\$3.6 billion aid Indonesia received through the BRI (Grossman, 2020), not to mention Cambodia that counts on China as its largest source of foreign direct investment and top provider of

development assistance and soft loans (Chanborey, 2015). Laos may not be far behind as in 2016, it signed an agreement with China for the establishment of an economic cooperation zone (Ku, 2016).

China's use of the divide-and-rule tactic or the salami tactic implies an easy-to-disintegrate ASEAN. As it exists today, the regional group is not that cohesive even without the usual problems that could cause its break-up. And with China's posturing, it appears even easier for the ASEAN member-states to bow to the pressure of money and influence. The ASEAN member-states must recognize this challenge if they want to exist as a reputable and principled regional association.

With their differences, SA as an approach to engage China is advanced. However, it is foreseen that the SA Model will not merit the participation of all members as some of them have their own vested interests. So, a further approach is advanced not to replace SA but to reinforce it. The approach that is further proposed is the JACREC that will be clothed with an NGO persona. This is based on the theory of transgovernmentalism wherein the role of NGO's in the performance of governmental functions is given premium, on the belief that State objectives like the preservation of peace and the realization of peaceful co-existence will be attained.

Note

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