



The risk of ASEAN split for Vietnam due to the territorial disputes with China in the South China Sea

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Abstract

China's use of military, financial, trading, and diplomatic tools to create divisions within ASEAN has made member states more solitary in the actions of expressing a common policy for the obvious expansion of the northern neighbor. ASEAN itself has brought Vietnam many great benefits, from economic cooperation to international empowerment and maintaining a peaceful and stable environment in the region, especially the handling of the issues on South China Sea through ASEAN mechanisms. Therefore, once ASEAN is dominated and split by the outside and its role and influence are reduced, Vietnam will also suffer many losses and risks.

Keywords: South China Sea, Vietnam, China, risk of division in ASEAN

1. Introduction

With the aim of making Vietnam become a country with a strongly developed economy towards modern industry and world economic integration, finding a way to neutralize the division in ASEAN due to disputes with China in the South China Sea is one of the most important factors determining the success or failure of the country. Its effects so far show a frightening threat from China from acquiring neighboring countries to monopolize the South China Sea including part of Vietnamese territory. Compared to other countries in the world, Vietnam is still a developing country and the South China Sea is a ladder for Vietnam to reach new heights. Therefore, the objective of this article is to analyze and evaluate the core benefits of China and the countries engaged in disputes on the South China Sea. The article proposed solutions to rescue ASEAN in the context of the its dangerous division and measures to protect interests and rights of each of its nations.

2. The core benefits of China having disputes in the South China Sea with ASEAN countries

The phrase "core benefits" or "core interests" proposed by China stems from a joint statement between China and the US during Obama's visit to China at the end of 2009. At that time, China proposed each side to define the core benefits that the other party must commit to respect. President Obama has agreed to include the term "core interests" in the joint statement, but in fact the US does not like to define any core US interests that China must respect. The way to put this issue of reciprocity is not attractive to the United States. The United States just wants to define the common interests that both sides must be responsible for as world powers. However, China still tried to bring out its "core interests" and said that the South China Sea could be raised to "core interests" of China, implying that China will not tolerate the US intervention in the South China Sea. The US side was shocked and then seemed to have released this information to the press. Although Chinese officials labeled the "core interest" for the South China Sea, Chinese leaders still did not make clear claims in their policy documents. After

September 6, 2011, the State Council Press Office published the "China Peace Development White Paper of 2011", emphasizing its commitment to the path of peace development, sending messages to all that China is not seeking hegemony and will be a reliable partner in the pursuit of world peace and development [1].

The white paper was published in the context of a major international situation. This requires China to show and develop a model of peaceful development, expand its influence and show the world the sincerity and goodwill of China with the world. The white paper also highlights the concerns of those who question China's actual strategic intentions. China has made great efforts since the release of the white book in 2005. China's GDP has surpassed Japan and China's international position has increased dramatically. This is the first time China has explicitly stated about the six core benefits of China. The white paper also aims to unify domestic thoughts when there are some domestic claims that require China to be tougher in the international arena. The white paper will inform the public that China will continue to be humble and cautious in foreign policy. Every foreign ministry spokesman to the Chinese Embassy in the United States has confirmed Beijing's core interests in the South China Sea.

The main cause of rising tensions between China and many countries in Southeast Asia is Beijing's claim to sovereignty over too many areas in the South China Sea. China has determined its indisputable sovereignty over nearly all of the sea along the Paracel and Spratly Islands. Vietnam, Philippines, Malaysia, Taiwan and Brunei are in dispute with China concerning many parts or all of China's requirements. China says that China's claim is based on hundreds of years of history, while others only began to voice their demands in the 1970s [7]. To make matters worse, Beijing recently identified the South China Sea as part of its core interest in sovereignty, similar to Taiwan and Tibet. In the case of Chinese political leaders resolutely raising the South China Sea into its core interests that means that Beijing will not accept any interference in the South China Sea and will be ready to use or threaten to use its military

might to protect its sovereignty rights. The problem of the South China Sea in relation to China's core interests is complex and sensitive. The reason China has raised the importance of the South China Sea in recent years is due to the country's growing energy needs. Beijing believes that the South China Sea's bottom contains large quantities of unexploited oil and gas, which can help the country meet its ever-increasing energy needs. Moreover, most of China's oil and gas imports go through the South China Sea.

3. The core benefits of ASEAN countries having disputes with China in the South China Sea

ASEAN is a loose association of politics and security. It can be argued that this group did not make any strong claims about the South China Sea regarding China's activities in this region. As a recent example of the Rohingya crisis in Myanmar with hundreds of thousands of people leaving Bangladesh's borders, ASEAN has no effective response. ASEAN members can meet each other in a bilateral framework to discuss these topics, but it is difficult to make the common voice of a bloc. Many countries in Southeast Asia, including Vietnam, are spending a lot on defense in the context of their GDP growth. However, he argued that military capacity needed a lot of time to build, not merely to buy military equipment. Military capacity includes many factors from leadership, training, logistics, and combat experience. China has been using its economic power effectively to influence some countries in Southeast Asia and it is hard to resist. This affects and weakens ASEAN. There is no indication that China has stopped accreting artificial islands and deploying weapons in these structures. Both China and the US are parties to the UN Convention on the Law of the Sea (UNCLOS) but Washington has been adhering to UNCLOS provisions more and better than Beijing. The Code of Conduct in the South China Sea (COC) has been a subject of discussions and debates for many years. COC has a great effect on preventing armed conflict, but it has no effect on preventing China from deploying its strategy of what it has been doing so far in the South China Sea ^[4].

Indonesia, the biggest country in ASEAN, has mobilized Southeast Asian nations to conduct maritime patrols in the disputed areas in the South China Sea to improve security. Indonesia is not a claimant in the South China Sea dispute but clashed with China over fishing rights around the Natuna Islands, and expanded its military presence there. Indonesia also changed its name to the northern edge of the exclusive economic zone, claiming to declare its own territorial waters. The ASEAN defense ministers propose that each country bordering the South China Sea patrolled up to 200 nautical miles (about 230 km). Indonesia is focusing on three regions, especially the Sulu Sea, the Strait of Malacca and the waters around Thailand's coast in a close cooperation with Thailand, Malaysia and Singapore, Vietnam, Cambodia and the Philippines ^[6].

4. Solution to maintain ASEAN's unified position before the dispute with China in the South China Sea

Persistent negotiation

At least that is the position of Vietnam. In order to have a final solution to the South China Sea dispute, Hanoi will pursue the path of persistent negotiation with disputed parties such as China, the Philippines and Malaysia. However, in addition, Hanoi did not put aside the same legal

measures that Manila sued Beijing to the Permanent Arbitration Court (PCA) in 2014. Hanoi supported the lawsuit of Manila and reserves its right to use the same legal means. In terms of negotiating ability, Hanoi has many experiences in negotiating sensitive and difficult issues on land border delimitation records with Laos, Cambodia and the sea with Thailand and Indonesia. Particularly for China, Vietnam has completed the demarcation of land borders and demarcation of the Tonkin Gulf. All of these disputes in Vietnam are resolved peacefully. Hanoi pursued the fair, long-term and acceptable solution and considered it a way to ensure peace and security in the region. While waiting for that long-term solution, Vietnam is also willing to accept temporary but satisfactory solutions. This temporary solution includes cooperation on non-sensitive issues such as search, rescue, humanitarian assistance and environmental protection and joint exploitation. Vietnam does not cooperate in exploiting the waters under Vietnam's sovereignty but only in overlapping sovereignty waters. In addition, Hanoi only cooperates to exploit after using international law to clearly define which waters have overlapping sovereignty ^[5].

The basic principle of Vietnam when pursuing the negotiation path as well as temporary solution is to follow international law, including the International Convention on the UNCLOS 1982 Law of the Sea, and other elements are only supplementary and only valid for consultation. This is contrary to China's stance that the historical sovereignty of the South China Sea is not based on international law. In order to negotiate successfully, the parties should persevere, restrain, show goodwill and mutual trust. The parties need to respect each other's legitimate rights as well as control the extreme national sentiment, incitation of hatred and xenophobia of the people in the country that hinder the negotiation process. The national (extreme) spirit is very harmful for each country in the process of seeking to resolve the dispute. However, there are many obstacles to peaceful settlement of disputes in the South China Sea, such as: the lack of responsibility, the lack of goodwill, the pursuit of hegemony through militarization, insisting on cooperating within the wrong place, not in the right order (before the clear boundary delimitation) and illegal claim (nine-dash roads and demanding maximum sea areas for territorial entities that are not be eligible under international law). The solution to the South China Sea dispute is possible, and to be seriously considered now and implemented as soon as possible. Southeast Asian states needs to strongly support the role of ASEAN in creating a favorable environment for successful negotiation.

The need of concessions

Negotiating to resolve the dispute is the way not impossible. In order to negotiate successfully, the claimants needed to have a concession. For example, in the case of Vietnam, the country cannot insist on being a legitimate sovereign state with rocks and shoals in the South China Sea. Vietnam and the Philippines currently have sovereignty disputes with some of the Spratly Islands. However, Hanoi does not have a harsh tone to Manila about these disputes and in fact the two countries have acted together to deal with China. Vietnam needed to agree with the Philippines that they recognized each other's sovereignty over the islands currently held by each party. Once they concede to the island, then the countries will base themselves on UNCLOS

to determine ownership of the related waters and the resources in them. After that, the two countries will proceed to take similar actions with Malaysia and Brunei. Once Southeast Asian countries have taken a position to make a concession to each other, they can agree to stand before China and call on China to make such concessions. However, it is not easy for Beijing to make concessions. Beijing does not have enough historical evidence to prove that they once possessed other entities than what they currently possess. This legal weakness will make Beijing give in. Beijing expressed its willingness to negotiate with the claimants' in a bilateral way. Treating the South China Sea as core interest by China means that China cannot make any concessions and is willing to take all measures, including military, to protecting that benefit. This approach would not be of any use to the dispute resolution as well as regional peace and security.

Judgment of the referee

The territorial sovereignty disputes in other parts of the world were resolved thanks to the International Court's ruling as well as the support of arbitration agency. Lessons could be drawn for the case of South China Sea. Professor Bec Strating of La Trobe University, Australia, raised the territorial sovereignty dispute over the Timor Sea as well as oil and gas disputes in the Greater Sunrise field of this sea between Australia and Timor Leste. Like China in the South China Sea, Canberra has always refused to participate in any lawsuit that Dili sued in the Permanent Arbitration Court (PCA) on the Timor Sea dispute. However, Australia cannot refute compulsory mediation under the dispute settlement mechanism in accordance with Annex 5 of UNCLOS. At Timor Leste's request, in April 2016, a United Nations reconciliation committee of five experts was set up to review the dispute and make recommendations (not binding on the parties) for a period of one year. From the beginning, Australia challenged the authority of this reconciliation committee, but after being rejected, Canberra had to sit at the table with Timor Leste. After some confidence-building actions, the two countries reached a breakthrough in July 2017. Accordingly, Timor Leste obtains between 70% and 80% of income from the Greater Sunrise oil field, which is estimated to be worth up to \$ 40 billion. This is said to be a victory for Timor Leste. However, the context in the South China Sea was more difficult because of the serious lack of trust among the parties while China did not accept multilateral negotiation channels as well as legal mechanisms for resolving disputes.

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