
Achieving Consensus in the South China Sea: Explaining Bilateralism's Bane and Multilateralism's Boon

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Abstract

A prolonged debate arises whether bilateralism or multilateralism is the most effective path to achieve mutual consensus among parties in the South China Sea dispute. This study identifies bilateral approach negativity to settle such a complex and overlapping dispute existed in that area grounded by two considerations. First, bilateralism is a non-transparent scheme of bargaining process. Due to bilateral implementation only conducted by two states, the more powerful actor will escape from the scrutiny of others, thus making it possesses the opportunity to put forward discriminatory bid and robust sphere to suppress other party's stance. The bilateral approach would result in a non-consensus agreement for less powerful parties. Second, the conflictual area draws the involvement of more than three sovereign parties with overlapping claims. Multilateralism, negotiation framework for multi-parties, is the most, perhaps the only, promising path to ease the existing tension numerous parties into the stage of consensus. Moreover, multilateralism may present positive norms – transparency and non-unilateralism – that could guide the involving parties to create consensus. The analysis of this paper obtained from utilization of qualitative data, library research methods, and by the comprehension of three conceptual frameworks, bilateralism, multilateralism, and consensus.

Keywords: Bilateralism, Consensus, Multilateralism, Resolution, South China Sea.

Abstrak

Debat panjang tentang apakah bilateralisme atau multilateralisme yang dapat dijadikan cara paling efektif untuk mencapai kemufakatan di antara pihak-pihak sengketa Laut China Selatan. Studi ini mengidentifikasi sisi negatif pendekatan bilateral untuk menyelesaikan sengketa Laut China Selatan yang kompleks yang didasari oleh dua pertimbangan. Pertama, bilateralisme adalah sebuah skema negosiasi yang tidak transparan. Karena bilateralisme hanya dilakukan dua negara, aktor yang paling kuat akan terbebas dari pengawasan aktor lain. Sebab itu, aktor yang paling kuat memiliki kesempatan untuk mengutarakan tawaran diskriminatif karena ia memiliki kemampuan untuk menekan aktor lain. Dalam suasana ini, pendekatan bilateral akan menghasilkan persetujuan yang jauh dari kemufakatan dan tidak memuaskan bagi aktor yang lemah. Kedua, konflik ini melibatkan kehadiran lebih dari tiga aktor dengan klaim yang saling bertabrakan. Multilateralisme, kerangka negosiasi banyak aktor, adalah jalan yang paling menjanjikan untuk meredakan tensi aktor untuk mencapai mufakat. Selain itu, multilateralisme juga dapat menghadirkan norma positif - transparansi dan non-unilateralisme – sehingga dapat memandu para pihak yang terlibat untuk menciptakan konsensus. Analisis studi ini diperoleh dari penggunaan data kualitatif, metode penelitian tinjauan pustaka, dan tiga kerangka teori, bilateralism, multilateralisme, dan konsensus.

Kata Kunci: Bilateralisme, Konsensus, Multilateralisme, Resolusi, Laut Tiongkok Selatan.

INTRODUCTION

Historically, the South China Sea (SCS) dispute is the heritage of the past

confrontation (Tonnesson, 2001). It existed early before the creation of

nation-state concept in Southeast Asian region (Maksum, 2017). As the wheel of trade became enormous in scale and increased in priority, the beneficial geographical location of SCS risen local kingdoms' desire to take control over it. Han Dynasty, Kingdom of Funan, Kingdom of Angkor, Kingdom of Sriwijaya, Kingdom of Ayutthaya, Kingdom of Champa, and Sultanate of Melaka were the entities which scrambling for power to dominate high-natural resources and shipping lines in the area of water (Tonnesson, 2001).

The struggle of power in the SCS which started centuries ago yet still exist to this day is not merely a competition without reason. SCS is an extraordinarily crucial area of water in a geo-economic consideration. It is the number two busiest sea lane around the globe, with over 10 million barrels of crude oil a day shipped through it. Moreover, the area consists of oil reserves of around 7.7 billion barrels, with an estimation of 28 billion barrels in total. Natural gas reserves are measured to total around 266 trillion cubic feet (U.S. Report, 2013). According to scientific research conducted by the Department of Environment and Natural Resources of the Philippines, SCS territory holds one-third of the world's most immense ocean biodiversity, thus making it a vital area of flora and fauna ecosystem

(Marine Conservation Philippines, 2017). Furthermore, based on 2016's data, an estimated US\$3.37 trillion worth of global trade take across the SCS on an annual basis (How much trade transits, n.d.). This global trade flows accounts for a third of global maritime trade (United Nations Conference on Trade and Development, 2018).

In early of the twentieth century, SCS remained stable as border-meet states concentrated their attention on other unfolding disputes, whether in international political or their national stage. No claimant states occupied a single island in the whole SCS area before the World War II. However, it only lasts until China regarded itself several features in the Spratly Islands and Woody Islands in 1946 and early 1947 (Mirski, 2015). During the mediation process of the San Francisco Treaty in August 1951, Chinese foreign minister Zhou Enlai officially and publicly declared China's sovereignty over Paracel and Spratly Islands. Then, in September 1958, China reemphasized its claim to these islands when it proclaimed the rights to territorial waters during the Second Taiwan Strait Crisis (Jinmen crisis). This event marked China's first attempt of China to anchor its assertion of maritime rights, in this case, the authority of territorial waters. From the mid-1970s to this date,

Chinese government's official have used the same language to delineate China's sovereignty claim. The claim is commonly sound as "*China takes possession of indisputable sovereignty over the Spratly Islands (or South China Sea islands) and adjacent waters.*" (Fravel, 2011).

In this decade, the SCS dispute significantly dominate topics of news reports and researches. The escalating dispute of SCS risen when China capturing world attention in 2009 since it officially submitted the nine-dash-line map to United Nations. The new Chinese maritime map, which considered by Jason Thomas as a tongue-shaped justification, was intended to define China's authority on a vast plot of the SCS. To show that they are not playing around with their claims, Chinese government's put the nine-dash-line map into the Chinese official maps and passports (Thomas, 2019). Michaela Del Callar, a GMA News analyst, believes that these actions are steps for China to strengthen its claims among some emerging debates. Brunei, Malaysia, the Philippines, Taiwan, and Vietnam have responded by detesting China's offensive claims on the territory (Callar, 2013). This circumstance then led to the tension growth among the involving parties (Trang, 2019).

Brunei, China, Malaysia, Taiwan, the Philippines, and Vietnam hold overlapping territorial demands

because all of them proposing similar sovereignty claims on Spratly Islands and Paracel Islands, the two most paramount islands in SCS. Those parties have an extraordinary level of confidence to defend their claims based on historical and geographical backgrounds (SCMP Reporter, 2019).

Not only did overlapping claims that exist, but also the involving states' approach to deal with, or to resolve this longstanding and convoluting dispute are contradictive to each other. China's tendency to discuss the dispute by bilateral approach is widely recognized, while other involving states, such as the Philippines (under President Aquino III), well-known for its multilateral approach and preference to internationalize the issue. In this sense, a debate arises among scholars in questioning whether bilateralism or multilateralism can serve to be the most effective path to build consensus among the conflicting actors and simultaneously resolve the conflict. The underlying presumption of this study is in a contrasting position with several realists, which implies a distinctive tendency to defend bilateral practice in SCS. This study inserts some theoretical arguments suggesting that multilateralism is the most competent means to escort the conflicting parties to consensus stage and undebatable resolution. The following section of

this study addresses the exploration on the existing literature related to this study's topic. The next segment examines the used-conceptual framework in a semi-depth explanation. The subsequent feature is the elaboration for understanding the underlying logic and interest of China in SCS and also its preference for bilateral approach. Then, the substantive discussion will be downplayed by explaining both how bilateralism will not be valid and how multilateralism can serve in otherwise.

LITERATURE REVIEW

Various scholars notions about multilateralism-related issues in SCS has popped up. Craig A. Snyder expressed a notion that the creation of security-based multilateral arrangements in the SCS could pave the way for maintaining pacific relation and peace among the relevant states. The approach of cooperative-security action would become the alternative growth engine for developing mutual understandings of security based on reassurance and transparency, cultivating habits of dialogue and cooperation among the involving states, increasing the effectiveness of preventative diplomacy mechanism, and establishing an informal or ad hoc security policies. Moreover, the proposed framework of cooperation does not limit itself to discuss security

case, but also a broad dimension of political, economic, and social issues. In this scenario, Snyder suggests that multilateral cooperative security, which facilitating forum of discussion, negotiation, cooperation, and compromise, can work as an essential catalyst for gradual thawing of tension in SCS (Snyder, 1997).

Christopher Roberts has an eye-catching way of portraying multilateralism in SCS that he prefers to use the terms of *multi-faceted*, *multi-layered*, and *multi-tiered*. He argued that multilateralism-related activities should be developed and its boundary could be extended further from the existing ASEAN's good offices. In the lens of Roberts, ASEAN is relatively impotent to give satisfying results, due to its limited capacity, in responding to a sensitive geostrategic problem such as in the SCS. ASEAN's tendency to pursue excellent effect of the Code of Conduct (CoC) turns to be hopeless due to its mechanism remains opaque and the growing shadow of self-interest from both ASEAN states and China. Given this circumstance, Roberts has a suggestion on his mind that ASEAN states should support the attempt to internationalize the issue by addressing it to legal arbitration, as like the Philippines *modus operandi* under Aquino III (Roberts, 2017).

The SCS dispute classified as a good sample of a "conflict with high-

level of conflict management”. The preservation of Track-1 and Track-2 diplomacy have often been attributed exclusively to this matter. Mikael Weissmann observed that the great intimacy of each governments elites, the existing regionalization, economic integration, interdependence, and combined forces of Sino-ASEAN rapprochement, have successfully maintained the scheme of conflict prevention and changing the status of SCS from a fragile peace condition in the 1990s into more stable one (Weissmann, 2010). Yet, in this regard, a critic has been delivered by David Scott. He argued that the Track-1 and Track-2 diplomacy indeed acted as a driving force behind the existence of conflict management. Nevertheless, there is an inherent inability for them, or it may not even be far-fetched to suggest, that they are still premature, in addressing conflict resolution strategy. Thus, Scott labeled the result of ASEAN approach in SCS as a “conflict irresolution” framework (Scott, 2012).

It may be far exaggerated to opine that this study is a rare commodity and premium. Yet, the intention of this paper to display the weaknesses prosecution of bilateralism and the defense trial of multilateralism could serve as the distinguishing quality of this study. Broadly speaking, this study is intended to paint a gloomy

picture and emphasize the negativity of bilateralism if it applied to deal with a dispute involving more than three parties such as SCS. On the other side, this study stands for multilateralism and argues that it is the most effective path for creating consensus among the relevant parties in the SCS dispute. Due to the positivity of multilateralism’s blood, veins, organs, and other internal values, this study believes and would explains how multilateralism can work better than bilateralism in resolving the SCS dispute, which well-known for its complexity.

CONCEPTUAL FRAMEWORK

Multilateralism

Multilateralism is the global governance system assembling large number of parties by constructing a common aim, which the struggle to achieve it conducted by mutual efforts and rules. Robert O. Keohane defines multilateralism as the activity of coordinating national policies in groups of three or more states. The practice of it carried out by the formulation of institutions or any kind of arrangements that provide a platform for states to have a collective purpose. (Keohane, 1990). John G. Ruggie argued that the definition proposed by Keohane disposed to be the nominal definition of multilateralism and missing the

qualitative value. Hence, he redefined and updated multilateralism meaning:

Multilateralism is an institutional form which coordinates relations among three or more states on the basis of generalized principles of conduct (that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interest of the parties or the strategic exigencies that may exist in any specific occurrence) whether or not any specific instance suits their individual likes and dislikes (Ruggie, 1992).

Since *ism* put at the end of *multilateralism*, James A. Caporaso put forward a linguistic consideration to define it. Caporaso acknowledges multilateralism as an ideology or belief which guided a straightforward affair of states (Caporaso, 1992).

Bilateralism

Bilateralism is a set of arrangements diffusing two states within a framework of cooperation based on self-interest orientation. Highly confront the anomalies of multilateralism, the relation conduct of bilateralism only involves two parties. In some occasion, bilateralism does not put aside common goal between two involving states, but particular state in bilateralism often possess a strong leveling impulse to achieve its personal goals rather than the existing common goal.

Some scholars argue that bilateralism is an institutional mode providing a best platform for governments to negotiate agreements in a reciprocity manner. They portrayed bilateralism as state's tool of diplomacy where the costs are just equal or, even better, below political benefits (Rixen & Rohlfing, 2005). Thompson and Verdier then examined the obligations (the agreements or consensus) that resulted in bilateralism activity only applied to two particular involving states (Thompson & Verdier, 2014).

In liberal terms, Chaiyakorn Kiatpongsan defines bilateralism as the conduct of relations serving a platform for converging the interests of two parties. The primacy of bilateralism is, as John Gerard Ruggie explained in Kiatpongsan's work, the indorsement of involving parties to have a straightforward discussion on specific issues. Bilateralism grants the involving parties to negotiate on 'issue-by-issue' and 'case-by-case' basis, which guarantee a high level of reciprocity (Kiatpongsan, 2011). Arie Reich emphasizes Ruggie's opinion by arguing that bilateralism allows governments to put forward the types of agreements they require the most in a way that best to corresponds their needs and interests and choose their partners to such agreements. Bilateralism is where actions can best

be arranged suitably to fulfill the needs of the constituents of the making decision unit (Reich, 2010).

Consensus

In literal meaning, consensus is a general agreement or understanding of different parties in effecting a given purpose. First emerged in 1861 as a term in physiology, consensus word derived from Latin *consensus* 'agreement or accord', past participle of *consentire* 'feel together', from assimilated form of *com* 'with or together' + *sentire* 'to feel' (Consensus, n.d.).

A conflict comprises of multiple and cumbersome issues. Consensus building, a collaborative action of problem-solving, is basically mediation stage to gain consensus among involving parties concerning the debated issue (Community Consensus Institute, n.d.). Within consensus building process, involving states design to construct and agree to support a decision in the best interest or goal of the entire group. By ensuring that all concerns, ideas, and demands are successfully taken account, and each party listens conscientiously to each other, consensus building group intends to come up with proposals that suitable for everyone. It is also considered as a creative and dynamic way of reaching agreement among all participant states.

Rather than only voting for an item and having the majority of the group getting their path, the achievement of consensus is committed for producing such solutions that everyone actively espouses, or leastwise, can accept to live with (Seeds for Change, 2010).

Consensus can perform in all types of platform setting, whether in small groups, local communities, businesses, even whole the nations and territories (Seeds for Change, 2010). Creating a consensus in a widely accepted manner requires a sense of common purpose. The participating states do not need to think similarly, have the same opinion, or support the same proposal in a unanimous vote. Instead, what is earnestly sought is a sense of the meeting. Consensus is the essence of what the group has in agreement on, the common ground, the shared understanding, or desire (Bressen, 2006).

DISCUSSION

Making Sense China's Rise and Its Goal in the South China Sea

Historical memories of territorial loss and its aspiration to restore the status of great power after its centuries of humiliation motivated China to be totally advancing nations. In recent years, there have been alarming perspectives that China is potentially a great power in the future. Bambang Cipto (2018) assumed that a country

only capable of gaining superpower status if it can gain a peak position in economic, military, technological and cultural development. To this view, China seemingly has succeeded in achieving the superpower status, signed by its tremendous economic growth, outstanding military capability, strong political influence, and widespread cultural values.

The forecast related to China's unpeaceful rise, which may stimulate conflictual and problematic dynamics, are various. Kim Jihyun predicted China's rise could be a threat to the region or even global security. Based on presumable supposition, China's eventual dominance on SCS by its military and economical cultivation will be inescapable (Kim, 2015). Eric J. Labs (1997) implies realism's prophesy on the inevitable conflict or dispute brought by the rising power of China. Realism, as he explained, offers a dismal prediction related to China's rise and its expansionist ambitions. Scholars who acknowledge the relevance of offensive realism or power transition theory bring China's threat seriously and simultaneously predict it to be a root cause of conflict in the future. Conflict in international politics, according to the theory of offensive realism, are feasibly to occur when rational parties apprehend power as the central source of security and seek to expand their probability

for survival in an anarchic-shaped world through expansion, as they mature more energetic relative to other great powers.

For a realist such as John J. Mearsheimer, he considers that China's rising position will not be peaceful, but rather aggravative and detrimental (Mearsheimer, 2010). It is due to China as a newly emerging power, along with its efforts toward outward expansion, challenges the interests of the existing hegemon (United States) in the system. This conclusion emerges based on the historical analysis, whereby rising powers have inclined to be troublemakers (Friedberg, 2005). In accordance with this view, Robert J. Art believes that China's ambitions will significantly accrue as its capabilities increase. Moreover, as its newfound power allows it to relish more opportunities for influence, China's goals will be more expansive than they now are (Art, 2010).

The prediction of Kim Jihyun, the offensive realism theory, John J. Mearsheimer, and Robert J. Art became a matter of reality when China unilaterally proposed its Nine-Dash Line to global society. China's claim has impaired Brunei Darussalam, Malaysia, the Philippines, Taiwan, and Vietnam territorial integrity and sovereignty. China's arbitrariness gave birth to strenuous tension among the

relevant actors and interrupted the foundation of peace and security within Southeast Asia region. The emerging dispute consists of a number of issues, such as natural resource development and management, freedom of navigation, and more importantly sovereignty disputes (Steffens, 2013).

In the second place, China's one-sided claim is also undermining the value of international law. The Permanent Court of Arbitration, in The Hague, strictly decides that the claim is inherently illegal since it is contradictive to 1982 UN Convention on the Law of the Sea (UNCLOS), the cornerstone for the present-day maritime law of over 160 states (including China). The treaty, among its numerous functions, grants exclusive authority for coastal nations to acquire sole exploitation rights over all resources in the zone extending across 200 nautical miles from the shore baseline (named as Exclusive Economic Zones) (Mollman & Timmons, 2016). China's Nine-Dash Line is extended outward into 800 nautical miles (about 920 miles) from the Chinese mainland to the Spratly Islands (the farthest claimed-area) (Poling, 2019). To this scope, the claim is obviously unparalleled with the existing legal international law.

Robert J. Art has a point in his thought that "It is not unusual for

rising powers to strive to secure their frontiers and even to challenge territorial boundaries, taking measures to have access to new markets, resources, and transportations routes. They are more likely to try to fully exercise their rights to protect core interest and reclaim their place in the sun." (Art, 2010). As a matter of fact, it is a habitual, commonplace, behavior of the rising powers to contest the territorial frontiers. Nazi Germany's power, as an instance, began to manifest its rising power and superiority by invading Poland in 1939, in the basis of "to regain the lost territory" (A&E Television Networks, 2009). This particular case proves that the new territorial integrity, gained by challenging the existing determination, is usual and become one of the rising power's core interests in order to reclaim their place in the highest realm.

Based on the realist's perspective, territorial disputes generally arise because of power-political interests, favorable power relations, or even selfish reasons. Although Hans J. Morgenthau indicates that a nation is not always "the more powerful, the more territory it possesses". Nevertheless, the follower of realism believes that power direction is usually to find geographical expressions (Fozouni, 1995). The territory also appears to be a fundamental power base since it provides an

imperative strategic and economic benefits to the relevant states. Liberman opines that geographical expansion enhances the power and prestige of states (Liberman, 1993). Having this light, China's arbitrariness and assertive actions in SCS is reasonable.

Beijing's inclination for dealing with SCS's Territorial dispute diplomatically in a bilateral framework rather than a multilateral forum is globally recognized. China's recalcitrance and keen personal interest have been entirely rendered the stagnancy of multilateral efforts at merely appeasing practical issues in the SCS dispute, such as the ongoing process in a code of conduct for Southeast Asian states and China in the SCS. To show its unwillingness to put SCS issues on the multilateral forum, the Chinese delegation to a preparatory meeting for ASEAN Defense Ministers Meeting Plus (ADMM-Plus) in 2015 refused to allow SCS issues onto the agenda (Panda, 2015).

China apparently have a narrow ability to achieve superiority if participate in a multilateral process that limits its ability to enhance sovereignty over the Southeast Asian area of water. China will continue to oppose the attempt to *internationalize* the SCS issue to prevent the intervention of other great power. As

long as China presumes that there is no convincing rational reason for it to pursue multilateralism, it will continue to, with unwavering commitment, pursue one-sided bilateral negotiations for conflict resolution, or even, at worst, nullify diplomatic agendas entirely. Making matters more malicious, China possibly has a chance to manage a considerable economic and political leverage over various ASEAN states, attenuating the ability of the group of 10 nations to join effort on matters of strategic importance on maritime issues (Panda, 2015).

China's Preference for Bilateralism Approach

Realists, as Ikenberry (2003) argues, sees a shift toward bilateralism in recent years influenced by the end of the Cold War and the unrivaled power of the United States as the single existing superpower (despite the debate over the collapse of the United States supremacy). John Ravenhill (2003) explains three fundamental reasons why there is a new interest in conducting bilateralism within interstate relations scope. One among them is the increasing circumspection of the weaknesses of existing regional or multilateral institutions and initiatives. Within the context of the SCS dispute, ASEAN weaknesses has been analyzed by Amador. He opines

that “ASEAN’s role comprises only the management of tensions rather than resolution (Amador III, 2016). To this extent, Euan Graham has a perception that Southeast Asian states are likely to step up bilateral relations with each other and China (Graham, 2016).

On the same side, China is also extremely attempting to bilateralizing the SCS dispute (Graham, 2016). Since 2016, China has deliberately expressed an impulse to conduct bilateral discussions rather than negotiating under the shadow of ASEAN (Rakhmat & Tarahita, 2020). China’s foreign minister, Yang Jiechi responded by expressing and simultaneously justifying his country’s preference for dealing this issue bilaterally and out of the public eye. To defend China’s bilateral tendency, he said "Turning the bilateral issue into an international or multilateral one would only worsen the situation and add difficulties to solve the issue" (Ernest, 2010).

Bilateralism preferred by China since it allows them to maximize up its relative strength. (Graham, 2016). The stronger party requires to forcefully assert its claims through military threat or law enforcement action if the competition for sovereignty claims still unresolved to be discussed in the bilateral forum. With its comparatively superior naval competencies, China

possesses the ability to outgrow direct challenges to its sovereignty claims with armed force. Not only does it have a powerful card on winning a military confrontation, but China is presuming that powerless competitor states within its bilateral-made negotiation would prefer to retreat or even surrender their claims, rather than pursue costly military action (Samson, 2012). As a high and wide cleft between China's military power and those of its neighbors grows, China has a superior position in bilateral territorial negotiations. China’s economic power can also be involved to bear in bilateral forums (Samson, 2012). In fact, there is a considerable number of countries have become the largest trading partner of China. China’s increasing economic pull certainly has a notable impact on the foreign policies of several Southeast Asian countries. Some Southeast Asian states may be increasingly pulled into China’s sphere of influence, which would then have an impact on these countries’ respective SCS policies through the AIIB’s assistance (Terada, 2016).

Bilateralism is Not Effective?

From the previous elaboration, bilateralism implies relatively high barriers to resolve SCS dispute due to China’s dominance. Bilateralism is considered as a discriminatory

arrangement and believed to heighten the powerful states leverage over the weak. Most states, commonly the smaller, weaker, and powerless states, are believed to be disadvantaged by the conduct of bilateralism in certain circumstances (Kahler, 1992). The sense of dissatisfaction is significantly striking the less powerful states in negotiation process since the greater country could provide an unfair, coercive offer. The weaker state feels obliged to accept the one-sided offer because of the tendency to fear of the powerful state's intimidation. This consideration implies that bilateralism could not provide a good reciprocity between the involving parties.

Confront the demeanor of multilateralism, bilateralism is a non-transparent scheme of bargaining process. Since bilateral activity only held by two states, the powerful actor will be exempted from the scrutiny of other entities. Therefore, the opportunity to provide a discriminatory bid by the powerful states is higher if the bargaining process held by the bilateral conduct. Especially in the purposes of conflict or dispute resolution, less powerful states commonly require the presence of third parties to become a bridge for the negotiation. As what John Vasquez (1993) suggests "...negotiation need not be bilateral. Frequently the most effective settlements involve third

party intervention or the imposition of drills by a concert of the most powerful states in the system". This notion proved by some shreds of historical evidences whereby most of the newly emerging states after the end of World War II assisted by the involvement of third parties to gain their territorial integrity, obtain international recognition, and even gain nation-building. The role of the United Nations, as an instance, is very significant to resolve the dispute between Indonesia and the Netherlands related to West Irian territory. The presence of the United Nations as the third party amid the 1954 proposed-dispute case has assisted Indonesia, which was considered as less powerful state compared to Netherlands in that era, to gain a proper negotiation result.

Furthermore, the non-transparency of bilateralism could become a means for the powerful states to conduct divide and concur tactic. This atmosphere might exist when the bilateral approach applies to resolve a conflict involving three or more states. Within bilateral conduct, the greater state would have the ability to influence less powerful state to defy other less powerful counterpart. The spokesperson of States Department of United States, Victoria Nuland, made an argument that was implying her objection on Chinese Government's

tendency to deal with the SCS dispute by bilateral approach:

We don't think that [the South China Sea] issue ... can be resolved through a series of bilateral intersections. We don't think that cutting deals with these countries individually is going to work, let alone be the expedient way or the best way under international law to get this done. Bilateral diplomacy that leads to, and is supportive of, an overall multilateral deal where all of the claims are satisfied and the arrangement that emerges under international law is fine. But an effort to divide and conquer and end up with a competitive situation among the different claims is not going to get where we need to go (U.S. Department of State, 2012).

Bilateralism's lack of ability to provide acceptable resolution for inter-state's relations has been delivered by Jardish Bhagwati, specifically in bilateral trading cooperation. Bhagwati believes that bilateral approach is a scheme producing a 'spaghetti bowl' of trade arrangements that creates disunity, lack of uniformity, and unpredictability in trading system and giving opportunities for strong countries to take excessive merit on the weaker ones (Bhagwati, 1995 in Reich, 2010).

The Philippines case on SCS might be an appropriate example to shed light how bilateralism may lead to powerful state's pressure on the weaker one. From 2012 to 2016, the

Philippines under President Aquino favor the multilateral-like approach and intend to internationalize the SCS dispute. Having that circumstance, China assigned several economic sanctions to the Philippines. As observed by Malcolm Cook, there are four kinds of the economic policy of China that signaling its strained relations with the Philippines. First, the Chinese massive scale project of One Belt One Road excluded the involvement of the Philippines. Second, China donated a slight fund of assistance for humanitarian assistance to Typhoon Haiyan disaster in 2013. Third, the dismissal of a travel permittance to Chinese tourists to visit the Philippines. And fourth, the disallowance of the Philippines's banana entrance to Chinese market (Cook, 2016).

Realizing that a disharmony with China will only invite loss, the Philippines under Rodrigo Duterte prefer to have bilateral-like approach with China in dealing with the dispute, which in parallel with China's interest. Since then, the economic leverage as mentioned above allow China to act more dominant and aggressive within the bilateral negotiation with the Philippines. As a result, President Duterte has unexpectedly shifted the Philippines' firm stance to the SCS in manners that are more parallel with China's interest. For instance, the

Philippines no longer uses the *West Philippines Sea* to refer to the SCS. The Philippines has also minimized its commitment to the United States – the Philippines proximity in the fields that China finds unsuitable to its interests (Cook, 2016). Furthermore, the Philippines is no longer wave its flag in its claimed area (Mourdoukoutas, 2019). In return, China has responded favorably by making it easier for the Philippines to export bananas and coconuts to its market and lifting its travel warning to the Philippines (Cook, 2016). This kind of affair indicates that bilateral approach is opening the floodgate for China's economic leverages which already in the pipeline to influence other countries' approaches to the SCS disputes and the Philippines has been one of its scapegoats.

Why Can Multilateralism be Effective to Reach Consensus?

The relevant parties within a dispute always have full authority to decide how their discord being settled. International practice in the past proved that face to face negotiation between the parties is always the best way and a priority choice under international law (Jia, 2012). The Charter of the United Nations specifies that parties to any dispute shall seek a solution through

negotiation, as mentioned in Article No. 2, Point No. 3 and 4:

“3.) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. 4.) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations” (United Nations, n.d.).

The peaceful means for discussing such a dispute is clearly mentioned. The settlement of negotiation among the relevant parties of the dispute includes as the first concern. In the SCS dispute, scholars have been divided into two sides of a coin since they propose different opinions whether the relevant parties on the dispute should utilizing bilateral or multilateral approach as the negotiation framework to resolve the conflict and create consensus among them. Both bilateral and multilateral approaches are included as the peaceful means to *settle their international disputes* as upheld by the United Nations Charter. Nevertheless, there are several matters that make multilateralism provide better offers to the relevant parties in the SCS dispute. This consideration is based on the analysis on the values held by

multilateralism (inner context) and the important things in the case of the SCS (outer context).

Two internal factors that make multilateralism, compared to bilateralism, able to create consensus amid the dispute of SCS. First, transparency curtains that accompany multilateral engagement create for more efficient and effective strategic planning and decision than could be achieved through bilateral scheme (Samson, 2012). The use of multilateral forms is associated with an ideology system which stresses the shared values, aspirations, and characteristics of the participant (Mansbach, 1970). The involvement of more than two parties would allow each other to receive more transparent and adequate information, based on the diverse point of views of the parties, about something in particular related to the main discussion or problem.

In the case of SCS dispute, which involving more than three states, multilateral activity grants open space and opportunity for the relevant states to introduce, or at least to notify, other claimant states about their demands or claims, complaints or objections to the other parties, and suggestions and input to resolve the conflict. Due to the flows of transparency, which make each of participating parties aware of other's interests, the negotiation would

be run accountable, consensus possibly can be reached because all claimant states comprehend other parties' demands or claims. The result hopefully can be acknowledged and recognized by all of the relevant states. To this extent, multilateral framework creates a safety valve for deescalating interstate tensions and provides transparent information so that states can take effective pre-emptive action to shield themselves against potential external threats (Aris, 2009). On the contrary, bilateral approach faces a significant barrier to attain the previously expected achievements provided by multilateral engagement.

Second, a multilateral framework lessens the opportunity for the involving parties to pursue unilateral-related action. If there are no good multilateral systemic orders, prospectively, individual actors will strive to get their issue *put on to the table* of the bilateral forum and resolved by practice or allocation mechanism, which would make it most likely to win them at the minimum cost. The unilateral tendency of the stronger party gives them advantages in the negotiations and leads to a substandard result, either from a perspective of distributive justice or from a perspective of efficiency. On such occasions, multilateral negotiation grants less powerful countries the possibility of

coordinating their positions and bargaining collectively with the stronger countries, which may lead to better result (Vasquez, 1993, pp. 307).

Participation in multilateral-related activity necessitates the acceptance common principles for governing behavior and support for a framework within which issues of mutual concern can be managed properly. To this extent, institutionalization of norms created by multilateralism increases predictability regarding state behavior (Kawasaki, 2006). John Vasquez (1993) believes that international rules are understood and norms followed by a state if it involved in high systematic institutionalization (multilateral). If a multilateral approach can ensure the rules and norms upheld by the participating parties, presumably, it would be able to eradicate the unilateral tendency of decision-making processes of different governments.

Unilateral action amid the escalation of the SCS dispute is undeniable. China's rising power has indicated that China is the only possible source of unilateral-related action. Other claimants, such as Taiwan, the Philippines, Malaysia, Brunei Darussalam, and Vietnam, which considered non-powerful states, would be the victim of China's arbitrary policy if the negotiation is

conducted by bilateral form. By the establishment of a multilateral framework, which consists of common principles for governing behavior, the feasibility of China's tendency to act unilaterally could be diminished.

Anna Samson mentioned that *"The rising power of China has led to an almost universal consensus that such a settlement must be multilateral in nature in order to avert the dispute from escalating to the stage of open armed conflict."* She proposed three fundamental reasons that gave birth to this conclusion. First, the claims themselves are overlapping and having conflicting groundwork. Second, uncertainty concerning sovereignty rights has aggravated the security dilemma for states in the region, prompting increased militarization in and around the SCS (Samson, 2012).

On the other side, several intellectual notions arise from some scholars arguing that negotiation concerning the SCS dispute must run bilaterally. The opinion of Sam Bateman is particularly striking in this context. He considers that:

"It is a mistaken notion that sovereignty over the islands and reefs of the sea can be resolved on a multilateral basis. This is incorrect because sovereignty is fundamentally a bilateral issue for resolution between the states that claims a particular

feature. While arrangements for cooperation in managing the South China Sea and its resources can be discussed multilaterally, sovereignty is a matter for bilateral discussions between the disputing parties. ASEAN, for example, as a regional grouping, cannot discuss sovereignty over particular features with China” (Bateman, 2011).

Bateman has explicitly mentioned that multilateralism approach is unaccepted to discuss a territorial dispute since it related to sovereignty issues. The sovereignty matters, regarding to the opinion of him, are primarily a bilateral issue. Yet, he precludes the fact that China’s claim not only impairs a country’s sovereignty, but it has disturbed more than three countries’ sovereignty. To this matter, bilateral is relatively incompetent to perform as negotiation scheme because it is not the issue *between* the two states, but the problem *among* several states.

Bateman’s incompatibility with multilateralism seemingly triggered by his consideration that regional or international organization (which become the embodiment of multilateralism) do not possess sovereignty as well as a state. Indeed, sovereignty refers to the construction of the highest independent authority in a territory (Mubin, 2019), which a regional or international organization,

such as ASEAN, do not own. To this extent, it is a normal event when Turkey has territorial disputes with Greece, a member of the European Union, Turkey did not negotiate with the EU, but directly negotiate with Greece because they are the only two were having a dispute.

If a dispute involving some sovereign state resolved by, or at least, manage by a non-sovereign regional or multilateral organization, it does not mean that those states’ sovereignty being abolished or decreased. It is because such a regional or multilateral organization would recognize its limit of action and authority on dealing with a sovereign state. Nonetheless, power demarcation does not attenuate the regional or multilateral organization ability to serve a role as the negotiation bridge of the dispute. There is no reason for a sovereign state of being hesitate, or even willing to disdain, such regional or multilateral organization. On top of that, multilateralism manifestation is diverse and not only implied by such an organization. Any form of negotiation framework that involving more than three states is a multilateralism manifestation, for instances, international conferences, joint comprehensive plan of action, and etc. Thus, ASEAN's inability (because it does not have the value of sovereignty) to handle the SCS case does not mean

to be the justification for eliminating the presence of any kind of multilateral engagement amid the SCS dispute.

Furthermore, the complexity of dispute which originated from the collide claims of the relevant states necessitates the engagement of multilateralism. This argument is the external factor for multilateralism being an utmost required. Malaysia claims fourteen maritime features which already been occupied by its military force around the Spratly islands, including Mantanani Reef, Ubi Reef, Layang-Layang Reef, Laya Reef, Siput Reef, Peninjau Reef, Small Amboyna Island, Perahu Reef, and Laksamana Reef. The first six features have been occupied by Malaysia and the rest are occupied by Vietnam and the Philippines (Ahmad & Sani, 2017 cited by Suharman, 2019). Natuna Island, for another example, it has been officially and recognized by Indonesia as part of its territory by the establishment of the United Nations Convention for the Law of the Sea (UNCLOS) 1982 (Prayuda, 2020). Even though so, Taiwan and China both claim Natuna Island to be part of their territory (Shaohua, 2006). The states' similar claims make bilateralism being powerless to deal with this. In the case of Natuna Islands claim, if China tries to negotiate bilaterally with Indonesia and then a result has been drafted, how could Taiwan recognize

and admit the deal which excluding his presence? In the case of Sparty Island's claim, if Malaysia decides to have a bilateral negotiation with Vietnam concerning the disputed reefs and then a consensus has been successfully achieved, how can the Philippines accept the two countries' consensus? Bilateral-related activity only gives birth to the agreement that would only be accepted, applied, obeyed by two related parties. If there are more than two parties involving in a dispute, how could bilateralism able to create consensus among those parties? The elaboration of this matter emphasizes that multilateralism, which able to include all of the parties with similar claims, is the only path that provides the possibility to achieve consensus.

Luo Jia (2012) expressed his skepticism on the application of multilateralism by saying that "*If any of these disputes had to be settled multilaterally, with the involvement of parties without a direct concern, it would only lead to chaos in the current international order*". It is a plausible truth that there are several interested parties seek to involve in the dispute. The United States could be posed as an instance. Yoga Suharman argues that "*The United States has always sought to maintain its unipolar position in the international system by expanding its military presence in almost all regions of the world.*" (Suharman, 2019). By considering this

fact, China in general and Luo Jia in specific, apparently afraid that United States and his counterparts, within the creation of the multilateral framework, would utilize this issue to interfere and disrupt China's growing influence towards Southeast Asian Region. Richard W. Mansbach has a prediction that when two or more *strong* party-regimes are involved, a prolonged conflict over interests and objectives may occur. A hostile and overbearing United States' response would affirm Chinese suspicions that the United States aims to contain its rise. As Bonnie S. Glaser predicted that it could cement the emergency of a United States-China Cold War (Glaser, 2012).

The most important thing to remind is that the multilateral framework to deal with the SCS dispute does not mean that external parties must be involved. But, to some extent, third parties may be a necessity since it could serve as the observer to oversee the actions of deviant actors. In other words, third parties have the ability to prevent the unilateral tendency of an actor. But in the case of SCS dispute, which China has its participation in it, the United States, with its striking interests, is unable to fulfill the qualification as the third actor. Perhaps, the role of the United Nations, International Court of Justice, or any other multilateral

organization would be efficient. This argument emerges from a set of data where international organization significantly able to aid the resolution of a territorial dispute involving more than two states. International Court of Justice, as an instance, has successfully solved the dispute of some Caribbean countries (Colombia, Honduras, Nicaragua) in 2012 regarding the sovereignty over Serranilla Bank and Bajo Nuevo Bank.

Ken Sato, head of the Institute for International Policy Studies (IIPS), observed that East Asia (including Southeast Asia) is remain absent of a permanent organization or regional body to become the platform for the states addressing maritime security issues. In his opening remarks to the 2015 Symposium on New Maritime Security Architecture in East Asia, he suggested the establishment of a new body named the Asia Maritime Organization for Security and Cooperation (AMOSC). In the view of Sato, AMOSC's primary goal would be to prevent, or at least manage, existing maritime disputes among countries by increasing domain awareness, enhancing capacity-building, and enacting confidence-building measures (Parameswaran, 2015).

Sato comprehends that a multilateral-related activity serves to be the most promising path for consensus concerning to a maritime dispute.

Southeast Asian countries, along with China, advisably should create a distinctive platform, as proposed by Sato, to bridge consensus among multiple claimant states. The urgency of that idea is crystal clear since bearing in mind that Southeast Asia is a regional sector consist of vast and important maritime area. Ankit Panda has a brilliant thought that, if Southeast Asian states, particularly those with maritime disputes among themselves, were able to convene a pacific negotiation process, resolve their disputes, and consolidate their understanding of maritime issues, a multilateral process on disputes involving China would be more promising (Panda, 2015). Without a widely accepted agreement in place, a simple miscalculation could proceed into a serious military incident (Kaplan, 2011). Hence, consensus must immediately pursue by the involving actors of the dispute through a multilateralism path.

CONCLUSION

Undeniably, China has become a great power whether in economic, political, military, and cultural fields. Rising power has been driving its arbitrary behavior and led to the escalating dispute regarding to the sovereignty claims over SCS. Based on China's perspective, bilateral approach is the best path for dealing with other

claimants. That policy is preferable due to bilateral negotiation would allow it to act arbitrarily and suppress other claimants with its economic, political, and military leverage.

Bilateralism is a non-transparent bargaining process. The powerful actor will be exempted from the surveillance of others since the bilateral activity only held by two states. Hence, the opportunity to provide a discriminatory bid by the powerful states is relatively high. Especially in the purposes of conflict or dispute resolution, less powerful states commonly require the presence of third parties to become a bridge for the negotiation. This assumption implies that bilateralism could not offer a better mechanism to result in acceptable reciprocity and consensus among the involving parties.

Consensus building is a creative and dynamic result of reaching agreement among all participant states in a dispute. Consensus establishment signifies that all opinions, ideas, and concerns are successfully taken into account. Consensus means that involving states agree to acknowledge, or at least can accept to live with, the decision which has been drafted in the best interest of the whole group. Multilateral engagement is argued to be the only path for gaining consensus values since it provides transparency curtains that produce more efficient

and effective strategic planning and decision. The involvement of more than two parties would allow each other to receive more transparent and adequate information, based on a diverse point of view of the parties, about something in particular related to the main discussion. Furthermore, the multilateral activity offers open space and opportunity for the relevant states to announce other claimant states about their demands or claims, complaints or objections to the other parties, and suggestions and input to resolve the conflict. The multilateral framework also decreases the opportunity for the involving parties to pursue unilateral-related action, which sometimes happens amid the conduct of conflict negotiation. This positivity is achievable if and when multilateral-based activity been held in high esteemed and common principles and international norm been upheld.

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