

The Efficacy of Asean Way of Preventive Diplomacy and Conflict Management in the South China Sea Conflict.

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Abstract ASEAN's reputation has been strongly criticized by the international observers and academic scholars because of its continued adherence to the socio-cultural norms of non-intervention, consultation, and consensus-building, which came to be known as the ASEAN Way. It is also mocked as impotent regional organization that has no capacity or political will to deal with interstate and intrastate conflicts; and has no capability of coming up with a coherent position on what prove to be the most pressing issue, particularly the South China Sea disputes. Moreover, the ASEAN Way is also being criticized for being ineffective when it comes to dealing with difficult or contentious issues. The burgeoning argument between the Western belief that legal-binding and multilateral conflict management is the effective way to reach a successful dispute-settlement, and the ASEAN Way and bilateral management is more effective. The theoretical framework for this research relies on examining and analyzing the principles enshrined in the ASEAN Way of preventive diplomacy, mechanisms of dispute settlements, legal, and institutional documents of ASEAN. The constructivist approach was taken in to consideration however rigid adherence to the claims, ideas and principles of this theory was not dogmatically followed. The inputs and analyses made by academic scholars and experts on ASEAN, ASEAN Way, preventive diplomacy, conflict prevention, and conflict management particularly in the South China Sea disputes have guided, enriched and informed this research. This study explores the ASEAN Way of preventive diplomacy, particularly the Spratly Islands, Scarborough Shoal and the Mischief Reef conflicts; and aims to answer how effective and successful is ASEAN Way of preventive diplomacy in avoiding and preventing conflict; and reducing the degree of conflicts in the South China Sea. Instead of focusing on the imperfections or flaws of the ASEAN Way as being ineffective in reaching a conflict resolution particularly in the South China Sea conflicts, this study concludes that the ASEAN Way is however doing the lion's share of preventive action on the sidelines of ASEAN, ARF meetings, workshops, and among others. ASEAN Way's informal setting makes it more flexible than other mechanisms of dispute settlement and somehow an effective strategy of preventive diplomacy in conflict avoidance or conflict prevention; and lessening the degree or intensity of conflict. Thus, ASEAN Way helps to maintain regional peace and stability.

Keywords: ASEAN, ASEAN way, preventive diplomacy, conflict prevention, Spratly Islands, Scarborough Shoal, Mischief Reef, South China Sea

INTRODUCTION

The Association of Southeast Asian Nations (ASEAN), from the time of its conception in August 1967, has given its member states a forum to address numerous maritime disputes in the South China Sea, human rights abuses, border conflicts, economic crises, and among other interstate and intrastate crises. These issues implore solutions and ASEAN must establish institutional mechanisms for conflict prevention. In order to maintain regional peace and stability, ASEAN has conducted and hosted several intergovernmental security cooperation initiatives namely: ASEAN Regional Forum (ARF), the East Asian Summit (EAS), and the ASEAN Plus Three (APT) (Bateman, 2011).

However, when it comes to tackling issues, ASEAN's reputation has been strongly criticized by the international observers because of its continued adherence to the socio-cultural norms of non-intervention, renunciation of using force, non-involvement in bilateral disputes, quiet diplomacy, consultation, and consensus-building, which came to be known as the ASEAN Way diplomacy and conflict management (Guan, 2004, p.74). ASEAN is mocked as impotent regional organization that has no capacity or political will to deal with interstate and intrastate conflicts; and has no capability of coming up with a coherent position on what prove to be the most pressing issue, particularly the South China Sea disputes. Moreover, the ASEAN Way is also being criticized for being ineffective when it comes to dealing with difficult or contentious issues (Beeson 2017, p. 6-7; Swanstrom 1999, p.94). According to Adriene Woltersdorf, Director of the Friedrich Ebert Foundation's regional cooperation office in Singapore, the lack of cohesion of the member states in managing maritime disputes with China only shows that the ASEAN Way prevents real solutions and advancements. In another article, it was pointed out that since the end of Cold War, there have been increasing number of conflicts in the region in which ASEAN Way of managing conflict ceased to function well (Oishi 2015). It was also argued that the changes in the ASEAN environment have changed the conflict management process to a low degree because ASEAN is not in control over the process (Swanstrom 1999, p.125). There is also burgeoning argument between the Western belief that legal-binding and multilateral conflict management is the effective way to

reach a successful dispute-settlement, and the ASEAN Way and bilateral management is more effective.

The criticisms and debates about the ASEAN Way of diplomacy and conflict management raised the core question in this research: How effective and successful is ASEAN Way of preventive diplomacy in avoiding and preventing conflict; and reducing the degree of conflicts in the South China Sea? The ASEAN Way of maintaining regional peace and stability is seen as a viable preventive diplomacy approach. Hence, it will be worthwhile to examine the efficacy of ASEAN Way of preventive diplomacy.

This paper suggests that instead of emphasizing on the flaws or weaknesses of the ASEAN Way as being ineffective in reaching a conflict resolution, particularly in the South China Sea dispute, it is however an effective strategy of preventive diplomacy in conflict avoidance or conflict prevention to maintain regional peace and stability. This is what the paper will explore.

In the interest of brevity, this paper examines the actual cases of conflicts and incidents in the South China Sea (or the West Philippine Sea, as the Philippines refers to it). These cases will be limited to the case between China and the Philippines over sovereignty and jurisdiction of the Spratly Islands, Mischief Reef, and the Scarborough Shoal (or the Huangyan Island, to China). With these cases, the paper also analyzes how the ASEAN Way of diplomacy and conflict management in the South China Sea conflict has been conducted in order to examine its efficacy.

The results of this research will have a great impact to the organization on whether the qualities of the ASEAN Way or flexible interpretation of the ASEAN Way core principles can equip ASEAN to meet the emerging security challenges in an adequate and effective way.

METHODOLOGY

The theoretical framework for this research relies on examining and analyzing the principles enshrined in the ASEAN Way of preventive diplomacy, mechanisms of dispute settlements, legal, and institutional documents of ASEAN.

The social constructivist approach was taken in to consideration however rigid adherence to the claims, ideas and principles of this theory was not dogmatically followed. The inputs and analyses made by academic scholars and experts on ASEAN, ASEAN Way, preventive diplomacy, conflict prevention, and conflict management particularly in the South China Sea disputes have guided, enriched and informed this research.

The research method adopted in this paper is a qualitative research method that aimed to answer research questions “How” and “Why” questions and geared toward complex phenomenon, exploration, and discovery (Patton, 2002). Furthermore, he also argued that the goal of qualitative research method is to uncover emerging themes, patterns, concepts, insights, and understandings. This research method is a systematic subjective approach to examine, understand and give meaning to certain phenomenon, processes and related events. Moreover, this method is better suited for this study because this approach provides conceptual and methodological potential for the reinstatement of the question of meaning (Jovanovic, 2011).

Documents and text are primary source of data used in this research, and these have been obtained through study archives. This gives the researcher with accessibility since the source of data is mostly available online. The data consists of both primary and secondary data sources.

The primary data derives from official documents published and released by ASEAN, China and the Philippines. These can be accessed publicly online through official websites. Access to the actual diplomatic negotiations is limited due to the secrecy, quiet and close-doored nature of diplomacy. Thus, the secondary data sources are expedient to alleviate limited access. In addition, secondary data derives from analysis, publication and research of academic scholars and experts in related fields.

Given the main research objective of this study which was to investigate if ASEAN Way of preventive diplomacy is effective and successful in resolving conflict, avoiding conflict or preventing conflict, and lessening the degree of the conflict in the South China Sea. I will use descriptive qualitative analysis and historical analysis approaches to describe and examine events in the past to gain insights and to understand the relevance of these events to the study being conducted. To complement the research design, it is deemed necessary and worthwhile to carefully review relevant literature to the study being conducted.

Kirsti Malterud (2001) argued that, “A researcher's background and position will affect what they choose to investigate, the angle of investigation, the methods judged most adequate for this purpose, the findings considered most appropriate, and the framing and communication of conclusions”. Contrary to her claim, the researcher’s personal background, beliefs and position will not be an issue and/or affect any angle of the investigation or analysis on the subject being studied. In order to avoid such claim, it is therefore important to consult, weigh and consider all possible interpretations and other alternative explanations relevant to the study to be more objective..

LITERATURE REVIEW

Emergence of Preventive Diplomacy

The concept of preventive diplomacy appears to be encapsulated in the contemporary global collective security agreement. The UN Charter states that the purpose of the organization is “to main international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means...” (Article 1, paragraph 1, UN Charter). The UN’s purpose in the peace maintenance is also embodied in the League of the Nations (LN) covenant, which is to prevent war through collective security and disarmament and settling international disputes through negotiations and arbitration.

The first utterance of the term preventive diplomacy was attributed to former UN Secretary General Dag Hammarskjöld in 1960 (Lund, 2009; Babbit, 2012). He then referred to “keeping regional conflicts localized so as to prevent their spill-over in to the super power arena”. However, when the end of the Cold War brought unexpected intra-state wars in Yugoslavia, the same concept was revived by UN Secretary-General Boutros Boutros-Ghali’s in 1992 and redefined preventive diplomacy as “an action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.” This conceptual breakthrough altered the moment for taking action back to an earlier stages when non-violent conflicts were evolving but had not escalated in to significant violence and armed conflict (Lund, 2009). Furthermore, Boutros-Ghali, in his *An Agenda for Peace* in 1992, reiterates that the primary aims of preventive diplomacy are: “to seek to identify at the earliest possible stage situations that could produce conflict, and try through diplomacy to remove the sources of danger before violence results”; where conflicts, to engage in peacemaking aimed at resolving the issues that have led to conflict; and in the largest sense, to address the deepest causes of conflict (Boutros-Ghali 1992: Article 15). The *Agenda for Peace* also states that preventive diplomacy, peace-keeping, and peacemaking are integrally related. Peace-making is defined as “an action to bring hostile parties to agreement, essentially through peaceful means”, while peace-keeping as “the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned normally involving United Nations military and/or police personnel and frequently civilians as well.” The early definition provides a central understanding of the ultimate goals of preventive diplomacy which the United Nations have set specific tools included in the early preventive diplomacy arsenal such as confidence and build confidence; informal and formal fact-finding missions, early warning, preventive deployment, and promotion of demilitarize zones (UN *Agenda for Peace*, 1992).

Since then concept of preventive diplomacy and conflict prevention has emerged. There has been a change from a focus on preventing inter-state conflict during the Cold War to preventing intra-state conflict in the post-Cold War (Emmers and Tan, 2009). This claim was agreed by Muggah and White(2013) that there was a change from state-led interventions with “supermen” mediators, such as diplomats or trusted individual, and a focus on interstate conflicts to regional and non-state engagement in intra-state conflicts. Moreover, they argue that a “sprinkler system” of interventions is increasingly active to generate early prevention.

Regional bodies, sub-regional organizations, international organizations, NGO’s, governments, have increasingly taken up the language of preventive diplomacy and conflict prevention (Mancini, 2011). The Pacific Island Forum has mediated conflicts in Fiji (Muggah and White, 2013); Organization of American States (OAS) has facilitated resolutions in El Salvador, Guyana and Honduras (Lesser, 2012); Organization of Security and Cooperation in Europe (OSCE) have been closely engaged with preventive action initiatives, including Georgia, Macedonia, and Ukraine (Babbit, 2012). The ASEAN’s creation of the ASEAN Regional Forum (ARF) in 1994 is mandated to help in the prevention and de-escalation of conflicts and disputes.

Conflict, Preventive Diplomacy, Conflict Prevention and Conflict Management

Two or more words exactly like one another and used in different ways both within the academic literature and in general usage, often make us confused. Thus, this section provides various definitions of terminologies [conflicts, preventive diplomacy, conflict prevention and conflict management] suggested by scholars and experts in the field of international conflict management.

According to Ernst-Otto, conflicts are not defined simply in terms of violence or hostility but also include differences in position vis-a-vis to the issue. This definition of conflict includes behavior and attitudes; and conflicts beyond the traditional military domain. Another definition suggested by scholars, conflicts are perceived differences in issue positions between two or more parties at the same moment in time. Conflict is the pursuit of incompatible goals by different groups or any political conflict whether pursued by peaceful means or by the use of force (Ramsbotham, 2011). The usage of this definition applies to any political conflict whether it is pursued by peaceful means or by the use of force.

Conflict prevention and conflict management are general terms for methods and mechanisms that are used to avoid, lessen, manage disputes between opposing parties (Russett, 1998). Conflict prevention is defined as “set of instruments use to avoid or to find a solution before a dispute or conflict progressed into active conflicts.” The actions to prevent conflict before they become active and violent are designed to resolve, manage, or contain conflicts to shun from further escalation. Any processes operating to avoid the development of contentious issues and goal of incompatibilities are regarded as conflict avoidance (C.R. Mitchell, 1981: p.257).

On the other hand, Michael Lund’s preventive diplomacy as he had put it as, “any structural or intercessory means to keep intrastate or interstate tension and disputes from escalating into significant violent conflict for resolving such disputes peacefully, and to progressively reduce the underlying problems that produce these issues and disputes.” This definition regards any techniques, strategies, mechanism, processes or method that prevent violent conflicts and fortify the the magnitude of the two or more parties to lessen the degree of conflict. The perception of conflict prevention includes avoidance and resolution of conflicts, with several mechanisms such as mediation, peace-keeping, peacemaking, confidence-building measures, and track-two diplomacy (Tanner, 2000). According to Muggah and White (2013), preventive diplomacy and conflict prevention are both intended to stop armed conflict before they escalate. Preventive diplomacy in practical terms, refers to the use of mediation and resolution to avert a descent in to war, while, conflict prevention is a broader concept referring to the monitoring, containment, and reduction of risk factors that shape war onset, intensification, and spread.

Fred Tanner (2000) stated that conflict management emphasizes on the limitation, mitigation and containment of conflict to lessen the degree of the conflict but without a necessary solution. According to Swanstrom and Wallenstein that in the manner of active parties' interactions, conflict management strongly suggests change from destructive to constructive. Their concept of conflict management is interrelated to C.R. Mitchell's idea of conflict management, he defined conflict management as a way in which society attempts to deal with its inter-party conflict; to prevent the development of conflict situations; or once these have developed, to prevent them from resulting in disruptive conflict behavior; to halt the undesired conflict behavior, or remove its source, through some form of settlement agreement or resolution of the conflict." (C. R Mitchell, 1981; p. 256). This only means that armed conflict not certainly needed in containing or managing the conflict. However, in the event that conflict has been militarized the political and economic cost to settle or manage the conflict accelerate. In this case, confidence-building measures in both cases of formal and informal conflict management play a pivotal role in fortifying the conflict management process by establishing trust between active parties. The handling or managing conflicts underpins for more effective conflict resolution. Both the aspects of conflict resolution and the conflict management is expedient to achieve positive outcomes (Zartman, 2000).

Early literature argued that regional organizations help reduce conflict by isolating and dividing local conflicts before they become intractable global issues (Burton, 1962; Fisher. 1964). Regional organizations may be effective at mediating conflict because their members states share common interests that make their actions more timely and effective (Moore, 1987). Some regional organization effectively carry out these strategies or mechanisms in managing conflicts, one in particular is ASEAN. The ASEAN had faced numerous conflicts and crises such as its relations with other member states. But the region had been able to handle or manage conflicts and crises. For that particular experience, it can be argued that the ASEAN as regional organization has been reasonably successful in managing regional conflicts. The following section, briefly reviews what makes conflict management successful and effective.

Historical Underpinnings of the ASEAN Way of Preventive Diplomacy

The ASEAN Way was derived from the customary and traditional practices of consensus decision making in Indonesia, known as the system of *musyawarah- mufakat* (consensus and consultation) (Swanstrom, 2001). In their respective studies in dispute management, Caballero-Anthony and Hoang have emphasized the distinctive characteristics of the ASEAN Way of conflict management as: adherence to the ground rules enshrined in ASEAN's various declarations and communiqués; stress on self-restraint, acceptance of the practices of consultation and consensus, using third-party mediation to settle disputes and agreeing to disagree while deferring the conflict resolution. This framework of conflict-settlement has evolved from the experience of dealing with the interstate conflicts, maritime disputes and territorial disputes that the ASEAN member states had faced from its inception. Its six well-known core principles are: sovereign equality, avoidance of the use of force, non-interference, quiet diplomacy, mutual respect, and tolerance. All adherents to these ASEAN principles, therefore, settle disputes peacefully. ASEAN way is more of a way of avoiding or preventing conflicts. This has been the norm of the all member states in ASEAN as far as interstate conflicts are concerned. These core principles were not an endemic construct (Jones & Smith, 2007) because prior to the ASEAN conception in 1967, known as Bangkok Declaration, which is the founding document of ASEAN and laid the underpinnings for regional co-operation in Southeast Asia with the goals of regional peace and stability, these core principles were identified in the Charter of the United Nations 1945 Chapter 1, Articles 1 and 2:

Art. 1.1 "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;"

Art.2.1 "The organization is based on the principle of sovereign equality of all its Members."

The ASEAN took a stern interpretation of the UN Charter's purposes and principles on the nonnegotiable inviolability of state national sovereignty and non- intervention. These ASEAN principle were also stipulated in the Ten Principles of Bandung, a political document containing the codes of conduct in the efforts to promote world peace. and world cooperation. This was the ramification of the 1955 Afro-Asian Conference in Bandung Java, popularly known as the Bandung Conference attended by Non-Aligned nations in Africa, Asia and Middle East in Bandung Indonesia (Weatherbee, 2015).

In 1971, another constituent document, Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN 1971) was ratified in Kuala Lumpur, Malaysia, by the Foreign Ministers of Indonesia, Malaysia, the Philippines, Singapore, and Thailand (Severino, 2006). ZOPFAN does not impose any legal obligations to all member states who ratified it. Although ZOPFAN is not a legal binding document, it guided and helped the ASEAN's relations with respect to other states. ZOPFAN was inspired by the principles of respect for the sovereignty and territorial integrity of all states, eschews the threat or use of force, impartiality of the signatories in conflict between other states; and non-involvement or non-interference of foreign countries in the domestic affairs and regional affairs of the neutral states (Hanggi, 1991).

Five years after ZOPFAN was ratified by the original 5 members of ASEAN, to harden the mandate and to uphold these principles of non-interference or non-involvement in the internal affairs of member states, the other two basic documents the Treaty of Amity and Cooperation (TAC) and the ASEAN Concord were both signed at Bali, Indonesia in 1976 (Weatherbee, 2009). The TAC, a document that similarly reflects the core ideals of the United Nations (UN) Charter, stipulated the following core principles of conflict management:

- (1) Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- (2) The right of every state to lead its national existence free from external interference, subversion or coercion;
- (3) Non-interference in the internal affairs of one another;
- (4) Settlement of difference or disputes by peaceful means;
- (5) Renunciation of the threat or use of force; and
- (6) Effective co-operation among themselves.

The Treaty introduced specific mechanism for peaceful dispute settlement among the ASEAN member states. As stipulated in Article 15, that in the event no solution is reached through direct negotiations the High Council will recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. This treaty paved way to formal mechanism for peaceful disputes settlement however the High Council has not been established and none of the member states invoke any of the Treaty's provisions. Flexible procedures are most preferred by the ASEAN member states rather the well-defined procedures. This made the conflict management a more acceptable for ASEAN.

The ASEAN Concord endeavors to promote peace, progress, prosperity and the welfare of the people of member states; and emphasizes enhancing cooperation among the members through economic, social, cultural, and political. Therefore, the settlement of differences or disputes between member states should be regulated by rational, effective and sufficiently flexible procedures, avoiding negative attitudes which might endanger or hinder regional cooperation, peace, and stability.

These ASEAN constituent documents laid the underpinnings of the ASEAN Way. One can argue that the ASEAN Way of conflict management strategy is a unique and distinctive because of its ability to combine these core principles together with the norms and shared values rooted in traditions- such as the practice of self-restraint and responsibility, patience, informality, and the respect to each member states. These norms and shared values help member states regulate their behavior and play a pivotal role when interstate-level conflicts arise. Moreover, these are also reflected in the decision-making process, wherein member states favor consultation, consensual-decision making, confidence building, reciprocity, informal diplomacy rather than majoritarian voting (Solingen, 2001).

Constructivist's Theory

The concept of constructivism was first introduced by Nicholas Onuf to international relations. He proposed that human beings are social beings, and we would not be human but for our social relations. In Onuf's World of Our Making, as he had put it: "people and societies construct, or constitute each other". In short, people make society, and society makes people.

Meanwhile, Alexander Wendt views the concept of constructivism as a structural theory of the international system that makes the following core claims:

- (1) states are the principal units of analysis for international political theory;
- (2) the key structures in the state system are intersubjective rather than material; and
- (3) state identities and interests are an important part constructed by these social structures, rather than given exogenously to the system by human nature [as (neo)realists claim] or domestic politics [as neoliberals favor].

In Wendt's essay, *Constructing International Politics*, he defined social structure as one that is "composed of intersubjective understanding in which states are so distrustful that they make worst-case assumptions about each others' intentions, and as a result define their interests in self-help terms." Constructivists believed that the building blocks of any social structure is intersubjective or shared perception and shared knowledge and ideas. Due to the shared nature or intersubjective understanding, ideas that make up the international structure are social.

In simple terms, Wendt believed that states exist within a world of our own making, and focus more on the integral components of social structures- shared knowledge and ideas, material capabilities, and state practices; rather than materialism. These integral components determine who the actors are, how each actors interact to each other, and whether their relationship is susceptible to conflict, resolution, or cooperation. What is meant of shared knowledge and ideas by Wendt in his essay, are the norms and principles which can be either constitutive or regulative. Finnermore and Sikkink explained constitutive norms “create new actors, interests,

or categories of action” and regulative norms “order and constrain behavior”. Regardless of what these norms portray, the norms that are stronger will be more influential notwithstanding dependent variables such as identity, interest, individual behavior, or collective practices and outcomes. These norms and principles help shape not only states’ behavior, but also their identities and interests.

The the focal point of constructivism in the study of states is on the constitutive effects of norms, ideas and social structure to how interstate develop (Wendt, 1992). Hence, interests are not independent of social context. Interests are constituted by the identities of the states, whether as friends or enemies, that emerged in the process of interaction to each member states (Wendt, 1992:398-399). On the other hand, identities of the states are created by the structure of their interactions which are conceived by shared ideas (Wendt, 1999). Wendt also argued that actors

acquire the identities and interests through socialization and interaction externally given structures (Wendt, 1999). Therefore, the constructivism theory stresses that the structures of interaction of states suggests that states’ identities as either friends or enemies, sequentially lead up their interests.

In the context of studying ASEAN Way of diplomacy and conflict management, the main ultimate objective of the informal multilateral institution and non-legal binding mechanism is to have a play for elites to interact or socialize and become familiar with one another, and to facilitate problem-solving. The norms, ideas and principles help us to better figure out how and why unique and distinctive mechanisms have evolved and forged. Moreover, it helps us grasp how the norms and principles enclosed in the so-called ASEAN Way of conflict management work in actual cases (Caballero-Anthony, 2005). Furthermore, norms help us to comprehend how these norms contained in the ASEAN Way influence conflict management.

Success, Efficacy and Failure of Conflict Management

Jacob Bercovitch and Patrick M. Regan (1999) argued that there are little systematic evidences that identifies the effectiveness of conflict management. He also pointed out that conflict management is widely perceived to be an attempt by differing actors or parties in conflict to lessen the degree of hostility and generate some order in their relations. According to them, conflict management connotes a mechanism that defined conflict as terminated or at least temporarily. It also a rational and conscious decisional process whereby differing parties or actors, with or without external assistance, push forth to transform, lessen or terminate a conflict in a mutually acceptable manner. Furthermore, they argued that the outcomes of conflict management can be of two kinds: success or failure. Jacob and Regan pointed out that the success of conflict management is when conflict management efforts resulted in a ceasefire, a partial, or a full settlement of the dispute. Settlement pertains to the successful management of hostilities in a specific dispute or conflicts (Burton 1990). On one hand, failure is described as conflict management that had no impact on the level of conflict. In essence, under different strategies or methods of the conflict management is said to be successful when these efforts ended up a complete resolution of differing parties or actors; mutually acceptable settlement, ceasefire or partial agreement; and reduction of or at least lessening or limiting the degree or level of destructive effects

In the book written by Mely Caballero-Anthony entitled, *Regional Security in the Southeast Asia: Beyond the ASEAN Way* (2005), she argued that success of managing regional conflicts could be explained by the manner in which members have worked in defining regional affairs, as well as the nature of political space created for its respective members to play a part in securing their interests. The success in managing and or resolving conflicts rely on preference for a particular mechanism used to manage or handle interstate conflicts or crises.

C. R. Mitchell (1981) also pointed out that the effectiveness of conflict management efforts, whether explicit or implicit, can be gauged by their success in helping parties or actors possessing incompatible goals to find some solution to their conflict; and in limiting the behavior employed by conflicting parties during the course negotiation to lessen the hostile attitudes and disruptive behavior caused by the conflict.

FLASPOINTS IN THE SOUTH CHINA SEA

Background and the issues of the South China Sea (SCS) Conflicts

The South China Sea (SCS) is geopolitically an extremely significant body of water and it is one the world’s busiest trade routes. The sea also is the center of an escalating crisis in the Southeast Asia because of its uninhabited islands such as the Spratly Islands, Paracel Islands, Pratas Islands, Macclesfield Bank, and the Scarborough Shoal. These mostly uninhabited islands are subject to competing claims of sovereignty by several ASEAN member states driven by economic prospects and energy resources.

Among the disputed islands, the Spratly Islands have become the major arena of a competition for sovereignty rights by several ASEAN member states because of their speculations that the surrounding areas contain extensive oil and gas resources. Such speculations have given the Spratly Islands great strategic value, and have fueled disputes over ownership.

The territorial and maritime issues in SCS have been in existence since the 1930s, but the case of the Philippines against China is a direct result of very recent events arising out of the long-festering dispute between the two countries. China and the Philippines are both claiming, either in whole or in part, the Spratly Islands, along with Taiwan, Malaysia, Brunei, and Vietnam (Del Callar, 2014). Each has been involved in attempts to assert their maritime zone jurisdictions and control of either parts of, or the entire island chain itself. The ASEAN jurisdictional and sovereign rights to zones are under tremendous great political, economic, and military challenges from China.

Opposing Claims of China and the Philippines over the Ownership of the Spratly Islands in the South China

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In the interest of brevity, on the disputed Spratly Islands, the focus will be on the conflict analysis between the two major claimants, which are the People's Republic of China (PRC) and the Philippines. From China's perspective, the legal basis for asserting its ownership of the Spratly Islands comes from early discovery and exploration during the Qing Dynasty (Livingstone, 2006). In 2009, China submitted its 9-dash-line map to the United Nations, stating it "has indisputable sovereignty over the islands in the South China Sea and the adjacent waters." ("Timeline", 2016). Its historic rights and indisputable sovereignty within the South China Sea conflict with and are predated by the 1982 UN Convention International Law of the Sea (UNCLOS), within the South China Sea areas falling within the 9-dash-line map. This map covers 80 to 90 percent of the South China Sea including large parts of the Philippines' Exclusive Economic Zone (EEZ) (Liu, 2016). This has increased the intensity of the conflict. From the Philippines' perspective, the three legal bases for claiming the Spratly Islands are as follows: (i) 200 nautical mile Exclusive Economic Zone (UNCLOS); (ii) the Spratly Islands are very close to the Philippines, less than 200 nautical miles; and (iii) historical rights as the ancestral domain of the Sultanate of Sulu during the Mahjapahit and Shrivijaya Empire, which extended from Sabah (North Borneo, to the Sulu archipelago, Palawan, parts of Mindanao, the islands now known as the Spratlys, and up to the Visayas and Manila (Somoso, 2011). Moreover, the Philippines claims the Spratly Islands both for economic and security reasons. The Spratlys are significant in the defense of the Philippines. If an invader takes over the Spratly Islands, any infiltration of the main islands can easily be carried out (Swanstrom, 2001).

In recent months, China has increased its aggressive efforts to fortify its territorial claims by building artificial islands, enlarging rocks and submerging reefs hundreds of miles off its shore, capable of supporting runways for military airstrips and lodging for soldiers as well as radar equipment and missile systems in the South China and East China Seas (Short, 2016). China's efforts definitely strengthen its territorial claims in the region. China's island building efforts in the South China Sea have come under increasing criticism and tension. China has focused its efforts on building ports, airstrips, radar facilities, and other military buildings on the islands. The installations bolster China's foothold in the Spratly Islands. This has unnerved the ASEAN member states, particularly the Philippines, Malaysia, and Vietnam, and posed possible security threats. China has put its nonnegotiable claims of sovereignty and jurisdiction at odds with ASEAN maritime states. The Philippines, Malaysia, Vietnam and their regional allies dispute the legitimacy of the islands built by China.

The Philippines perceives China's 9-dash-line claim, whatever its historical and sovereign rights, to be ambiguous as to what, exactly, the Chinese claims are. For example the entirety of the territory and water within the 9-dash-line; all land features within the 9-dash-line, plus the maritime area that those features command under the terms of the United Nations Convention on the Law of the Sea (UNCLOS) (e.g., in certain cases, 12-nautical mile territorial seas and 200- nautical mile exclusive economic zones); only the land features but not the adjacent waters; only the UNCLOS- claimable land features, but not certain other land features or waters; or some other configuration of land and/or water (Santos, 2016).

The Philippines filed its case in January 2013 to the Permanent Court of Arbitration (PCA) following a tense standoff between Chinese and Philippines ships at Scarborough shoal in April 2012 (Santos, 2016). Since the initiation of the arbitration case, China has conducted several islands building efforts to turn submerged reefs into artificial islands capable of hosting military structures and equipment. China's activities such as building artificial islands have alarmed other ASEAN member states, particularly Vietnam, that also have competing claims in the South China (Short, 2016).

In July 2016, the ruling of the Permanent Court of Arbitration (PAC) concluded that there was no legal basis for China's claims to historic rights to resources within the 9-dash-line (Santos, 2016). As declared years earlier, on the contrary, China rejected the decision and will not heed it. China has always wanted these disputes with other states to be managed through negotiation and consultation (Philipps, 2016).

Among the ASEAN member states, only Myanmar, Singapore, and Thailand mentioned their common hope to see the full and effective implementation of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), and the early conclusion of ASEAN-China talks on a Code of Conduct in the South China Sea (COC), which the ASEAN side wants to make a legally binding international agreement (Chalermphanupap, 2016).

Analysis on the ASEAN Way of conflict management and negotiations in the South China Sea Disputes

When ASEAN was conceived, it had an interest in regional security. It is considered as a regional entity that has an important role in lessening and preventing conflict escalation from spilling over into the broader regional agenda. Over the past two decades, ASEAN's response to China's sovereign claims and jurisdiction in the South China Sea has been to engage in diplomatic exchanges with China in a non-confrontational approach. This is to prevent jurisdictional and territorial rivalries among other ASEAN member states and to maintain peace and stability in the South China Sea.

ASEAN and China have already agreed upon multilateral risk reduction and confidence-building measures in 2002 Declaration on the conduct of Parties in the South China Sea which details how to approach problems in the South China Sea (Weatherbee, 2015). The text of the DOC clearly reveals three purposes: promoting confidence- measures, engaging in practical maritime cooperation, and setting the stage for the discussion and conclusion of a formal and binding COC. It appeared that the ASEAN strategy was successful in stabilizing and de-escalating the conflict in the region, specifically the relations between China and the Philippines. In 2009, Vietnam and Malaysia submitted their claims for areas of the continental shelf beyond 200 nautical miles in the South China Sea, in accordance with UNCLOS. The relations between parties took a downturn. China was prompted to protest and insisted on their SCS claim known as the 9-dash-line (Xu, 2014).

ASEAN has not fulfilled its mission in building greater trust between the claimant states and preventing the dispute from escalating. One could argue, however, that the DOC has not been a total failure. As the embodiment of political goodwill of all parties, the DOC has, by and large, helped maintain the overall stability in the South China Sea. It has served as a platform for all disputant parties to communicate and exchange views. Another political and diplomatic strategy of ASEAN to further the objectives of regional peace and security was the establishment of the East Asia Summit in 2005. It is an ASEAN- based annual multilateral leader forum for strategic dialogue and cooperation on political, security and economic issues of common regional concern. China is one of the original members in this forum. In November 2011, the Sixth East Asia Summit (EAS) and Third U.S.-ASEAN Leaders Meeting was held in Bali, Indonesia. One of the most compelling and important issues facing the region that was supposed to be addressed was the maritime security and cooperation that will encompass the discussions of the South China Sea and related issues. But China refused to allow South China Sea disputes to be discussed in the regional forums (Bower, 2011). China maintains that the territorial disputes in the South China Sea must be discussed and resolved bilaterally between claimants (Swanstrom, 2001). It has consistently opposed efforts to have conflicting claims discussed in a regional setting like ASEAN, East Asian Summit, or among other dispute settlement mechanisms. From China's perspective, the SCS disputes are not an ASEAN-China issue (Kundu, 2016).

Ongoing consultations between ASEAN and China still hold some promise for reinvigorating a multilateral framework toward greater cooperation and conflict resolution. However, given China's preference to resolve the conflicts bilaterally, it is uncertain whether progress can be made..

CONCLUSIONS AND RECOMMENDATIONS

The results of my analysis indicated that the ASEAN Way has applied its non- confrontational strategy to the situation in the South China Sea and exerted efforts in processing, handling, mediating, and supporting provision for the dispute settlement among the claimant states in the South China Sea by polite manners, diplomatic and peaceful steps in managing the conflict. On the contrary, ASEAN member states do not always adhere to the ASEAN Way. In 2009, Malaysia and Vietnam made a joint submission to the UN Commission of the Limitations of Continental Shelf (CLCS) in accordance with UNCLOS, Article.76, paragraph 8, relating to their extended continental shelves in a defined area in the southern part of the South China Sea (UN Law of the Sea, 2009). In 2013, the Philippines filed its case over the maritime features in the SCS to the Permanent Court of Arbitration (PCA) in The Hague, Netherlands.

The involvement of third- parties to the dispute settlement suits their interests. However, the addition of these opposing interests undermines ASEAN solidarity. It can be argued that the conflict management of ASEAN between China and the Philippines is somehow a success of the ASEAN Way. The tensions in the Spratly Islands could easily have expanded militarily, but the efforts of ASEAN informal consultation and negotiation, have prevented war and lessened the intensity of the conflict in the South China Sea. Furthermore, China and the other claimants in the South China Sea are unwilling to risk their economic development for territorial expansion. The disputants, who wanted to avoid intra-organizational disputes and do not want to formalize the conflict because of fear of failure indicated that conflict must be managed bilaterally through peaceful and informal negotiations. China has been very reluctant and consistently refused to internationalize and formalize the South China Sea disputes (Swanstrom, 2001). This means China's insistence to solve the SCS disputes bilaterally somehow reduced the intensity of the conflict.

One could argue, the ASEAN Declaration on Conduct of Parties in the South China Sea, supported by China in some ways, has helped in the management of conflict in the South China Sea.

Narine argues that "ASEAN is not capable of resolving many issues of contention between its members, but it can move these issues aside so that they do not prevent progress in other areas" (Narine, 2002). For Narine, "the ASEAN Way" is a phrase for deferential attitudes that member states have adopted towards interstate problems, suggesting that members agree to disagree in order to maintain an illusion of ASEAN unity.

In a similar vein, Amitav Acharya argues that "the ASEAN Way involves a commitment to carry on with consultation without any specific formula or modality for achieving a desired outcome" (Acharya, 1997). For him, ASEAN regionalism is a process of interaction and socialization, but it remains primarily a vehicle through which its members pursue their national interests. He warns that "the ASEAN Way" has paradoxical reactions on ASEAN's future as a security community, and as such, the regional bloc needs to "reinvent itself", if it is seeking to become a progressive regional institution.

In this paper, I have tried to show that the ASEAN Way is an effective strategy and successful in avoiding conflict or preventing conflict, and lessening the degree of the conflict in the South China Sea. It is much more than the principle of non-interference. In fact, this strategy has prevented armed conflict and possible costs to humanity have been avoided. It has helped to ensure regional peace and stability. This strategy also helped to reduce the recurring danger of China, among other instigators in the affairs of the region. The ASEAN Way has been applied with good results in conflict intervention.

Furthermore, I think that the ASEAN Way is a unique viable strategy in conflict management and security cooperation because of its process in framework of regional interaction requiring deliberation, informality, consensus-building and non-confrontational bargaining approaches. This conflict management strategy is based on interpersonal contacts, and is unstructured, non-formal and non-binding. It is the identity and institutional structure of ASEAN. The informality of this strategy highlights comfort level and the flexibility of a framework of cooperation and coordination among the member states. As a result of this apparent informality, dispute settlements or ASEAN agreements are non-binding and non-legalistic. Non- adherent member states to such settlements or resolutions do not lose face in public..

REFERENCES

- Acharya, A. (1997). Ideas, identity, and institution-building: From the 'ASEAN way' to the 'Asia-Pacific way'?. *The Pacific Review*, 10(3), 319-346.
- Acharya, A. (1998). Culture, security, multilateralism: The 'ASEAN way' and regional order. *Contemporary Security Policy*, 19(1), 55-84.
- Acharya, Amitav. (2001). *Constructing A Security in SE Asia. ASEAN and the problem of regional order*. London and New York: Routledge. p.48
- Bateman, S. (2011). Solving the "wicked problems" of maritime security: are regional forums up to the task?. *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 33(1), 1-28.
- Beeson, M. (2017, June). ASEAN's and Asia's Continuing Lack of Leadership. In *ISA International Conference, Hong Kong* (p. 13).
- Bercovitch, J., & Regan, P. M. (1999). The structure of international conflict management: An analysis of the effects of intractability and mediation. *International Journal of Peace Studies*, 4(1), 1-19.
- Bower, Ernest Z. (2011). The Sixth East Asia Summit and Third U.S.-ASEAN Leaders Meeting in Bali, Indonesia. CSIS. Retrieved from: <https://goo.gl/xCD2P9>
- Burton, J. W. (1990). *Conflict: Resolution and prevention* (Vol. 1990). Macmillan.
- Caballero-Anthony, M. (Ed.). (2005). *Regional security in Southeast Asia: beyond the ASEAN way*. Institute of Southeast Asian Studies.
- Chalermphanupap, Termsak. (2016, July 21). *No ASEAN Consensus on the South China Sea*. *the Diplomat*. Retrieved from: <https://goo.gl/7FALrD>
- Charter of the United Nations and Statute of the International Court of Justice.(1945). San Francisco, USA. Retrieved From: <https://goo.gl/HwWhJ7>
- Clément, S. (1997). *Conflict prevention in the Balkans: case studies of Kosovo and the FYR of Macedonia*. Institute for Security Studies, Western European Union.
- Declaration on the Conduct of Parties in the South China Sea 2002. Center for International Law. National University of Singapore. Retrieved from: <https://goo.gl/BG5nF7>
- Del Callar, Michaela. (2014, March 30). PHL proceeds with case vs. China over West Philippine Sea. GMA News Online. Retrieved from: <https://goo.gl/pKn1Xd>
- March, J. G., & Olsen, J. P. (1998). The institutional dynamics of international political orders. *International organization*, 52(4), 943-969.
- Ebbighausen, Rodion. 2017. *The ASEAN Way: Where is it leading?* Retrieved from: <https://goo.gl/exXsoZ>
- Chang, F. K. (2003). Economic and security interests in Southeast Asia. *Orbis*, 58(3), 378-391.
- Muda, M., Daud, S. N., & Eldeeb, I. M. I. (2004). Bilateral Trades between Egypt and Malaysia: Issues and Opportunities for Further Development. *International Journal of Economics and Finance*, 9(1), 202.
- Hanggi, H. (1991). *ASEAN and the ZOPFAN Concept* (Vol. 4). Institute of Southeast Asian Studies.

- Jones, D. M., & Smith, M. L. (2007). Making process, not progress: ASEAN and the evolving East Asian regional order. *International Security*, 32(1), 148-184.
- Jovanović, G. (2011). Toward a social history of qualitative research. *History of the human sciences*, 24(2), 1-27.
- Kundu, Sampa.(2016). *China divides ASEAN in the South China Sea*". In the *East Asia Forum online*. 21 May, 2016.
- Livingstone, D. (2006). *The Spratly Islands: A Regional Perspective*. *Journal of the Washington Institute of China Studies*. 1(2), 149. Retrieved from: <https://goo.gl/rURfvd>.
- Liu, Zhen. (2016, July). *What's China's 'nine-dash line' and why has it created so much tension in the South China Sea?*". *South China Morning Post*. Retrieved from: <https://goo.gl/8vkv1s>
- Luhulima, CPF. (2016, June). *Toward a code conduct on the South China Sea*. *The Jakarta Post*. Retrieved from: <https://goo.gl/wwhzus>.
- Lund, M. S. (2002). Preventing violent intrastate conflicts: Learning lessons from experience. *Searching for peace in Europe and Eurasia: An overview of conflict prevention and peacebuilding activities*, 99-122.
- Malterud, K. (2001). Qualitative research: standards, challenges, and guidelines. *The lancet*, 358(9280), 483-488.
- Mitchell, C. R. (1981). *The structure of international conflict*. Springer.
- Narine, S. (2002). *Explaining ASEAN: Regionalism in Southeast Asia*. Lynne Rienner Publishers.
- Oishi, M. (2016). Introduction: The ASEAN Way of conflict management under challenge. In *Contemporary Conflicts in Southeast Asia* (pp. 1-17). Springer, Singapore.
- Quinn Patton, M. (2002). *Qualitative research and evaluation methods*.
- Philipps, Tom. (2016). *Beijing rejects tribunal's ruling in South China Sea case*. *the Guardian*. Retrieved from: <https://philippines-wins-south-china-sea-case-against-china>
- Ramsbotham, O., Miall, H., & Woodhouse, T. (2011). *Contemporary conflict resolution*. Polity.
- Wallensteen, P. (1998). *Preventing violent conflicts: Past record and future challenges*. Uppsala: Dept. of Peace and Conflict Research [Institutionen för freds-och konfliktforskning], Univ.
- Santos, Matikas. (2016). *Key points of arbitral tribunal's verdict on PH-China dispute*. *Inquirer.Net*. Retrieved from: <https://goo.gl/D6RXfe>
- Lallana, E. C. (2006). *ASEAN 2.0: ICT, governance and community in Southeast Asia* (No. 13). Institute of Southeast Asian Studies.
- Severino, Rodolfo C.(2007). *A Sense of Community for Southeast Asia*. *Friedrich Ebert Stiftung(FES) and S. Rajaratnam School of International Studies (RSIS)*. Singapore. Retrieved from: <https://goo.gl/RL6FWD>
- Short, John Rennie.(2016). *Troubled waters: conflict in the South China Sea explained the Conversation*. Retrieve from: <https://goo.gl/VKWmF6>
- Solingen, Etel.(2001). *Regional Conflict and Cooperation: the case of Southeast Asia*. Retrieved from: <https://goo.gl/EdMe9K>
- Somoso, Dennis. (2011). *The Philippines Spratly Islands - 200 NM EEZ is claimed by china*. *Peso Reserve*. Retrieved from: <https://goo.gl/44a5p1>.

- Swanstrom, Niklas. (2001). *Conflict Management and Negotiations in the South China Sea; The ASEAN Way*". (Doctoral Dissertation). Uppsala University Institute for Security and Development Policy. Retrieved from: <https://goo.gl/DrD4xB>.
- Tanner, F. (2000). Conflict prevention and conflict resolution: limits of multilateralism. *International review of the Red Cross*, 82(839), 541-559.
- Weatherbee, D. E. (2014). *International relations in Southeast Asia: the struggle for autonomy*. Rowman & Littlefield.
- Wendt, A. (1992). Anarchy is what states make of it: the social construction of power politics. *International organization*, 46(2), 391-425.
- Wendt, A. (1999). *Social theory of international politics*. Cambridge University Press.
- Waltz, K. N. (1979). *Theory of international politics*. Waveland Press.
- Xu, Beina. (2014). *South China Sea Tensions*". *Council on Foreign Relations*. Retrieved from: <https://goo.gl/zG1vgT>
- Zartman, I. W. (2000). Conflict management: The long and the short of it. *SAIS Review*, 20(1), 227-235.