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Sherlyn Mae F. HERNANDEZ

**Philippine International Studies Organization and
University of the Philippines Diliman**

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The 'ASEAN Way' and the South China Sea Disputes

Institutional Design and Cooperation on Regional Security Issues

Sherlyn Mae F. Hernandez
Philippine International Studies Organization
and
University of the Philippines Diliman

The Association of Southeast Asian Nations (ASEAN) is always proud to have the unique 'ASEAN Way' for setting the record of not having inter-regional conflict because of the principle of non-intervention and favoring consensus over confrontation. Now that the issue on South China Sea disputes is affecting four member-states of ASEAN, namely Brunei Darussalam, Malaysia, the Philippines and Vietnam, the ASEAN Way will be put into test. While several studies have been written about the success of the ASEAN Way in terms of maintaining peace in the region at least in preventing open warfare, it is also important to examine the hindrances it imposes on its member states which also affects the region's interaction with other international players. This study examines whether the ASEAN Way is a contributory factor or a hindrance to the peaceful resolution of the South China Sea disputes. This issue was examined using Acharya and Johnston's framework explaining the link between the differences in institutional design of six regional organizations (EU, NATO, ASEAN, OAS, AU and the Arab League) and the variation of cooperation amongst states. Applying the framework to explain the impact of the ASEAN Way to the South China Sea disputes, the study reveals that the ASEAN Way and the principles behind it hinders the member states to come up with a united regional stand on the disputes.

Introduction

The South China Sea Disputes is a very timely and critical issue in the Southeast Asian region because it involves member states claiming for different territories in the South China Sea, namely Brunei Darussalam, Vietnam, the Philippines and Malaysia. Several issues surrounding the dispute resolution have already studied by scholars, including the factors of absence of united stand of the contending states or the ASEAN against China, the non-cooperative behavior of the parties, adherence to the 'ASEAN Way', interventions of other state and non-state actors, sovereignty issues, and the like. Hence, it will be worthwhile to examine these factors affecting the success of the negotiations regarding the South China Sea dispute.

Among the factors being considered by scholars on what affects the success of the territorial dispute resolution in the South China Sea, the ‘ASEAN Way’, pertains to the principle adhered by ASEAN member states which favors consensus over confrontation, conviviality over candor and process over substance. Over the years, ASEAN considers the ‘ASEAN Way’ as a successful mechanism in preventing tensions from escalating in the region, for keeping the member states diplomatic in terms of dealing with issues of regional concern. The legacy of the ASEAN Way is not only credited to political and security issues but its ability to help its member states to improve its relationship with one another also helps improve the economic situation of the region as a whole. However, the ‘ASEAN Way’ also had reputations on being a hindrance to the different attempts of the association to intervene in internal affairs of its member states. This mostly includes natural disasters and non-traditional security issues, such as disaster risk reduction and management, typhoons, rice shortage, agricultural problems and the like. Because of the principle of non-intervention, any other member state or ASEAN itself, though having the sincerest intention of reaching out to member states in need, cannot easily intervene.

Aside from the aforementioned issues which put the legacy and record of the ‘ASEAN Way’ to test, issues which require at least a united stand or a single regional stand like the South China Sea Disputes also questions the utility of the ASEAN Way. The South China Sea Disputes involves four ASEAN member states – Brunei, Malaysia, the Philippines and Vietnam – states who have their own stands, strategies, and plans of action for resolving the issue. This also puts into question whether the other member states of ASEAN at least have a stand or are supporting those member states involved in the issue. Lastly, another point of discussion is whether ASEAN has a stand on the issue and whether this stand reflects the individual stands of all member states.

This study will first discuss the ASEAN Way, the principles behind it and its role on the different issues of security and territorial disputes in the region. Second, the ASEAN Way will be analyzed using Acharya and Johnston’s (2007) framework explaining the impact of the differences of institutional design to different levels and types of cooperation among states in different regional organizations. Analysis of the ASEAN Way using the framework will be applied to the South China Sea Disputes and will be analyzed whether adherence to the ASEAN Way is serving as a contributory factor or a hindrance to the peaceful and successful settlement of the issue. The results of the study will contribute to the literature of the study of institutional design and cooperation.

Sovereignty, Principle of Non-Interference and the ASEAN Way

Pek Koon Heng (2014) described the ASEAN Way specific to regional security cooperation as “based on principles of sovereignty, non-intervention, peaceful resolution of conflict, and consultation and consensus decision-making” and it is known to have maintained intra-ASEAN harmony since the grouping’s formation in 1967. Walter Woon (2012) on the other

hand described the three aspects to the ASEAN Way (with emphasis to the first element), namely: (1) a desire not to lose face in public or to make other members lose face, (2) a preference for consensus rather than confrontation, and (3) a rejection of the notion that states have the right to interfere without consent in the internal affairs of other states. Given this, exercising decisive influence by the Association to its member states seemed to be difficult

The ASEAN Way was formulated with the goal of uniting its members in order to prevent outside great power influence in the region. However, this idea was formulated in the context of a declining Soviet Union, a relatively weak China, and a light-handed approach to the region by the United States (Mazza and Schmitt, 2011). In several situations, the ASEAN Way has proven itself to be an effective mechanism in maintaining order in the region, but given that the situation has changed over time, with China rapidly and continuously rising and with the US tightening its grip to the region, the ASEAN Way will be placed under different challenges.

The ASEAN Way: Strengths

ASEAN was founded on 7 August 1967, making it one of the longest-standing regional organizations in the world. In its 48 years of existence, it has accomplished several agreements with its member-states in dealing with different issues in the region, ranging from economic, political, strategic, and socio-cultural aspects. Moreover, it has successfully presented itself outside the region as an organization worthy of building trust and confidence from other states, and even the great powers, such as the US, China, and the EU, among others. Specifically in terms of maintaining peace and security in the region, another milestone for ASEAN is the establishment of ASEAN as a nuclear-free zone, avoiding the region from being involved in great power conflicts by not letting any nuclear weapons enter the region. All these, among others, have proven that ASEAN is doing its part in Southeast Asian region as a successful organization.

Mazza and Schmitt (2011) poses no question on ASEAN's ability and role as a multilateral platform to keep the peace in the region for the past 30 years. During that time, there have been no large-scale conflict that have occurred in the region, and there have been a vast array of treaties, agreements, and points of cooperation among member states in the region. The ASEAN Way gets the credit for these achievements because it was able to unite the member states without them having to compromise their sovereignty over regional interests.

Aside from the reputation of maintaining peace and stability in the region, Pek Koon Heng (2014) also credits to the ASEAN Way the improvement of the region's external relationship with other state and non-state players outside the region in a form of different multilateral mechanisms such as ASEAN Plus Three, East Asia Summit, the ASEAN Regional Forum, among others, but these are not specific to regional security issue management. These are more towards an economic improvement in the region. Aside from that, Pek Koon Heng also recognized ASEAN as the "default instrumentality" in multilateral security cooperation in

Asia Pacific region because it is a more effective mechanism compared to how Japan and China dealt with their own regional security issues.

The ASEAN Way: Weaknesses

It has been the goal of ASEAN to let China succumb to the ASEAN Way together with the hope that the Association and China will commit to the 2002 Declaration on the Conduct of Parties. In fact, the Declaration is part of the region's strategy on China. Mazza and Schmitt (2011) emphasized that ASEAN wants "to create a web of arrangements in the economic, cultural and security realms intended to socialize Beijing to the ASEAN way, under which disputes are settled by the precepts of non-interference and decision-making by consensus." While at first the discussions based on the Declaration were somehow progressive, it is not as satisfying to the ASEAN member states involved given that China continued to be aggressive in claiming the territories under issue.

Another considered weakness of the ASEAN Way is the existence of different political systems of ASEAN member states which was consistently blamed for internal contradiction in the region. If the member states themselves cannot resolve their internal differences, then issues involving external players are more difficult to deal with. Cases would include the inability of ASEAN to intervene in the conflict of Thai-Cambodian border, in responding to the effects of the cyclone in Myanmar, the effects of political turmoil in some of its member states, among others. Thus, if involving other state and non-state players outside the region, the ASEAN Way will indeed expose its weaknesses in responding to different issues.

Pek Koon Heng (2014) also highlighted the weakness of ASEAN specifically in terms of dealing with the South China Sea Disputes: "the consensus-seeking, shallowly institutionalized ASEAN Way approach has seemed poorly equipped to handle Chinese assertive divide-and-rule diplomacy that has accompanied its power projection in the South China Sea. As China mounts its maritime claims and seeks to expand its regional influence relative to the United States, ASEAN is challenged to maintain intra-ASEAN unity, deepen intra-ASEAN integration and effectively engage the United States, China and other powers in safeguarding peace and stability in the region." Having said that, ASEAN Way is not only ineffective but lacking in terms of only limiting its scope to its member states and not considering the possible role of other players outside the region.

While the ASEAN Way was based on a political climate existing during the end of the Cold War and the situation is not bound to stay in the future, it means that the ASEAN Way is not flexible and only considered the situation in a specific time. Today, the Soviet Union may have declined but it is still considered as a state with influence on several other states and several issues. Moreover, China has been rising economically and militarily and has been gaining allies in the Southeast Asian region, something that the ASEAN Way did not consider. The same thing goes with the United States, adding to the fact that because of the Pivot to Asia, it increased its presence in the region and it somehow tightened its grip of some

ASEAN member states. Given that, the ASEAN Way's principle of non-interference cannot stop its member states in deciding whether to side with any great power, like China or the United States.

All the weaknesses presented against the ASEAN Way are evident in several circumstances that challenged the effectiveness and validity of the ASEAN Way, and Weatherbee has provided several examples on this. For instance, ASEAN was not able to intervene during the East Timor Crisis where it involves an ASEAN member-state, Indonesia. Therefore, there are issues surrounding East Timor's membership to the organization. Also, during the military junta in Myanmar, ASEAN's principle of noninterference prevented it from 'rescuing' the people of Myanmar from the military junta. Worse, during the 2008 cyclone, ASEAN did nothing to help because the military junta refused to let any foreign aid to penetrate Myanmar. The same issue goes with the recent crisis in the military junta in Thailand where ASEAN did nothing to intervene in the issue. In the recent Rohingya issue, the Southeast Asian region and the international community has not heard anything from ASEAN. In terms of resolving non-traditional security issues, the ASEAN Way's weakness is more evident because it failed to assert its intervention in issues traversing territories which logically requires a higher level of united cooperation from its members, ranging from the issue of human rights and democracy to the recent environmental issue involving the haze. The principle of noninterference prevailed because Indonesia does not want to cooperate in terms of identifying the companies responsible for causing the haze. Given these examples, it is evident that the ASEAN Way, apart from failing to unite in response to a particular issue.

The Framework: Institutional Design and Cooperation

Amitav Acharya and Alstair Iain Johnston (2007) found the importance of studying institutional design considering that institutions have been the basic unit of regionalism in terms of political and economic security after World War II and the Cold War. As the pioneering region for institutions, Europe has a higher density of institutionalization compared to Africa and Asia given that it has several overlapping institutional mechanisms in responding to different issues. Acharya and Johnston's observation involves the possible reasons behind the different types and levels of cooperation in different regions and different institutions given that all parts of the world deal with the same kinds of issues, ranging from human rights, food security, natural disasters, climate change, among others. Their framework, then focuses on the variations of institutional designs which resulted into varying forms of responding to the same concerns and varying forms and types of cooperation that were developed by states. The nature and characteristic of these institutions are then the point of issue: "Are the more formalized, bureaucratized, more highly-integrated and oftentimes intrusive institutions of European cooperation more effective than the more informal, weakly organized 'talk-shops' of Asia-Pacific in promoting cooperation?"

The framework linking the variations of the different institutions around the world as a factor to the variations in the levels of cooperation among the states involved is the focus of Acharya and Johnston. They compared six (6) institutions in the different parts of the world -- EU, NATO, ASEAN, OAS, AU and the Arab League with an attempt to determine what specific characteristics of the institutions affects the cooperation patterns of the states. For ASEAN, Yuen Foong Khong and Helen Nesadurai examined the ASEAN Free Trade Area (AFTA) and the ASEAN Regional Forum (ARF) and how it affected cooperation in Southeast Asia. They observed that in Southeast Asia, the level of actor independence is really high and that ASEAN cannot easily intervene with the individual states' affairs, unless the intervention is something that involves a high-level security, political or economic concern. However, Acharya and Johnston did not see it as a failure on the part of ASEAN as an institution because low cooperation is still better than no cooperation at all. The political history of Southeast Asia is also something that contributed to the institutional makeup of ASEAN.

For the other institutions, Jorge Dominguez examined the institutions in the Americas. Same with ASEAN, the principle of non-intervention also prevails at first, but later the principle of non-intervention and sovereignty were given up in exchange of democratization. Moreover, due to the different changes in institutions brought about by the end of the Cold War, the increasing role of the international non-government organizations and domestic changes in the countries, there has been an improvement in the institutionalization of the organizations, but this did not indicate a level of success in its role to the Americas. Given the existence of other institutions currently existing in the Latin Americas, the OAS can also be considered a failed institution because of how it worked for the region. For instance, the Bolivian Initiative is a more effective and more radical in terms of advancing the regional initiatives of Latin America as a region. Moreover, the OAS did not survive in the first place because it is realized that an alternative type of institution in the region is not a neoliberal model. For Africa, the institutions are also deemed weak because the region has a strong boundary regime. This is considered an advantage to both the institutions and the individual states because there are no or minimal external threats to be dealt with by the institution. However, it is also considered as a challenge by both institutions and the states as well because of the failure to maintain and intervene with 'failed states', like Somalia. In this case, while other regions have to give up their sovereignty in order to develop regional institutions, 'failed' African states have to use institutions to restore their sovereignty.

Among the institutions under analysis, NATO is considered as one of the most highly institutionalized and the most flexible region in terms of giving way to institutional mechanisms in addressing different issues. NATO has a broad scope of issue areas, has a process-oriented mandate, and implements conditional membership, making it an institution that can cope up with the issues on cooperation. However, the NATO cannot be compared to other institutions in this framework because the conditional membership of NATO is because of its military foundation – it is basically a product of the Cold War response of the West to contain the spread of communism. It is in no way similar to the goals of other organizations like the ASEAN and the EU. In the case of the Arab League, Acharya and Johnston

considered it as an example of an institutional failure – being the least effective regional organizations in the developing world and at the same time among the first to be established after World War II. Like how they explained the failure of ASEAN, the competing national interests and the norms of pan-Arabism were the primary factors that contributed to an ineffectively functioning institution because the desire for national interest over regional interest prevailed. While other regions found shared identity as a contributing factor for the success of institutions, it is not the case in the Arab League because it instead became a hindrance to institutionalization because of their collective sentiment involving threats to sovereignty. Lastly, the institutionalization in the EU is high because of two factors: rationalizing and persuasion. Rationalizing involves weighing the costs and benefits of each decision to be made mostly basing from scientific research methods and persuasion which involves a psychological study of convincing the other states to agree on a specific decision or agenda. Given these strategies, a deeper level of cooperation is obviously present among the EU member states.

Although the focus of this paper is only to revisit the institutional design of the ASEAN, specifically the ‘ASEAN Way’, and not to come up with a comparative analysis of institutions, Acharya and Johnston’s comparative framework is important in order to serve as a baseline for analyzing ASEAN. The data from other regional organizations outside the Southeast Asian region can give an explanation on what elements are present and absent in ASEAN which affects its levels and types of cooperation and how ASEAN can adjust its mechanisms to improve cooperation in the region.

The South China Sea Disputes

The South China Sea Disputes, being one of the most pressing issues faced by ASEAN, created an impression on how the world see ASEAN from the outside. Some of them say ASEAN is a failure in not being able to come up with a single stand on issues like the South China Sea territorial disputes, for not being able to intervene in the internal affairs of the states because at the same time the principle of non-intervention is very important to ASEAN states, and for not being able to integrate the member states in any common concerns because national interests still prevails. Limaye (2015) used the ‘eye of the beholder’ approach on how ASEAN itself views the issue on the South China Sea, because how the outsiders see ASEAN is not the same thing how the Association sees itself. The approach argues that “there are several reasons to question why the SCS disputes should be considered “central” to ASEAN or that ASEAN should have a unified position on the disputes”. ASEAN’s failure to issue a joint communique in 2012 for a single stand on the South China Sea Disputes is considered by others a failure of ASEAN itself, however it has to be considered that the South China Sea Disputes is a developing issue and that ASEAN also has to deal with its developments. Moreover, it does not reflect that the South China Sea Disputes is not in the forefront of the ASEAN regional interest. The issue on South China Sea then creates an

impression to the ASEAN about its failure to create a community amongst its members in the context of how they treat the issue on the South China Sea.

An important factor to be considered in the South China Sea Disputes is the rise of China as a potential hegemon in the Southeast Asian region. The rise of China has been considered an international issue worthy of discussion, but another important event involving China is the territorial and maritime disputes in South China Sea because it involves several contending states such as Brunei Darussalam, Malaysia, the Philippines and Vietnam. Beckman provided his analysis of the Philippines-China dispute on South China Sea using customary international law, particularly the provisions of the UNCLOS and the legal bases for the Philippines' claim for the Scarborough Shoal, specifically citing Annex VII of the said declaration. On the other hand, Baviera provided an analysis of the future of the ASEAN-China relations with regards to the South China Sea dispute given the entry of the US in the issue, stating that China's aggression over the expansion of its territory by claiming sovereignty over islands in the South China Sea is a threat to the US naval supremacy, and that US only worsened the problems in the area. Given that, it can be asserted that both Beckman and Baviera were able to emphasize the importance of the role of international state and non-state actors (the US, ASEAN and the UNCLOS) in resolving regional disputes. However, Beckman's argument can be critiqued for insisting that granting sovereign rights to either party was not covered by UNCLOS, but not offering alternatives therein and not even analyzing the future of the case at hand, and Baviera made a realization that maybe it is not the US factor alone which worsens the situation, but also the inability of the ASEAN to unite and strengthen against a great power like China.

Beckman did not only provide his own analysis of the application of the UNCLOS provisions in the South China Sea dispute, but offered no alternatives especially upon recognizing that the case being contested by the Philippines is not covered by the provisions of the UNCLOS because granting of territorial sovereignty cannot be decided by the Tribunal. Beckman presented his article in a way that a typical jurisdiction is presented, stating the facts being contested by a party, stating the issues at hand, analyzing the facts in the light of provisions applicable to the case, but since it is a pending case, no decision can be stated yet. He could have analyzed it using the current strategies of China and the countries involved, and other factors outside the region, like the role of the US pivot to Asia Pacific, like Baviera did. On the other hand, Baviera should not ask "China-ASEAN Collision or China-US Hegemonic Competition?" in her title, because both options can provide their own distinct contributions to the worsening of the dispute in South China Sea. For instance, the competition for the hegemonic status in Asia between China and the US is already one possible explanation, and the relative weakness of the ASEAN states along with their individual foreign policies can also be another independent explanation.

Aside from the role of China, the United States and ASEAN, the role of other factors have to be considered which puts the ASEAN Way into test, this includes the international law and other institutions that the ASEAN, particularly the Philippines, has resorted to resolve the issue. According to Gou and Jia, the nine-dash line of China has always had its foundation

and basis in customary international law as well as the UNCLOS. On the other hand, Dupuy and Dupuy argue that China's definition of the term 'historic rights' is vague to the point that it will not justify their claim of the islands covered by the nine-dash line. Moreover, they argue that China's stand does not meet the standards of Public International Law. Although Gou and Jia made salient arguments on how firm the historical foundations of China on the islands covered by the nine-dash line, Dupuy and Dupuy provided an analysis on the role of other institutions outside the ASEAN Way and outside the China and US Factors: (1) history is not sufficient in claiming sovereignty over a territory and (2) if ever history is sufficient and justified properly by China, it needs to be accepted at least by its neighboring contenders, like the Philippines.

Like what Dupuy and Dupuy has mentioned, historical claim can only be taken into account only if (1) there is effective and continuing exercise of sovereignty a titre souverain, and (2) exercise of authority is accepted by the other states concerned. Given this, China indeed did not pass the 'sovereignty claim test' and therefore cannot insist on asserting their historical claim over the islands. In my opinion, a claim with legal basis is stronger and more accepted compared to a mere historical claim which not everybody is even aware of. In fact, the Philippines can also opt to justify its claim on a historical basis, but it chose to do the legal way instead. China is an unpredictable contender, and applying the realist perspective, the Philippines indeed have to seek help from other states to balance the power in the Asia Pacific area.

According to Gou and Jia, their claim of the islands covered by the nine-dash line has foundations in the international law, specifically the customary law of discovery, occupation and historic titles, and their maritime claim is based from the provisions of UNCLOS. However, the Philippines can also present its arguments in the same way. The Philippines, in the name of Tomas Cloma, moved to annex the territory to the Spratly islands under the principle of res nullius and geographical proximity and China occupied the islands in response. Moreover, China does not enjoy the same application of the UNCLOS provisions like the Philippines because it is not an archipelagic state. All of these, among others, are the reasons why China is becoming an aggressive and unacceptable contender, especially in the viewpoint of the Philippines. Gou and Jia mentioned that 'a careful balance between history and reality' is necessary in order to solve this dispute, but I think the consideration on 'reality' is what is missing from China because of its strong reliance on 'history'.

The ASEAN Way and Regional Security Cooperation in Southeast Asia

ASEAN wanted to come up with an ASEAN-China Code of Conduct in terms of dealing with the issues in the South China Sea. This Code of Conduct will impose a greater responsibility among member states, whether or not they are involved in the issue, to work together. ASEAN Way, then, is adopting more of a rules-based cooperative solutions in order to keep the negotiations from escalating into a military one. However, due to several identified factors, the ASEAN Way was indeed affecting the cooperation patterns of the ASEAN member states, specifically in dealing with South China Sea Disputes. The changing balance of power in the world indeed exposed the vulnerability of the ASEAN Way because by

nature it is not flexible and did not foresee the future changes of the world's political landscape. Thus, in response to the South China Sea Disputes, some member states involved in the issue seek refuge from external players, like the United Nations (UNCLOS) and the United States of America.

Limaye (2015) has criticized ASEAN for having the paradox of “if one has big ambitions (a community) for ASEAN, than unity on the SCS is a logical ultimate goal, but the least of ASEAN's problems; if one has minimal goals for ASEAN (a shared voice and cooperation) then unity on the sea does not much matter but does detract in a more visible way”. This indeed contradicts the goals of the ASEAN of having a community and at the same time not being able to properly deal with issues that require them to be a community. The ASEAN Way, in short, is not helping out not only in South China Sea Disputes, but in the regional community-building as a whole.

On the other hand, there are scholars who claim that the ASEAN Way cannot even be considered a mechanism in resolving the South China Sea disputes; and those who consider the ASEAN Way as a mechanism see it as lacking. The International Crisis Group (2015) however sees a light in the multilateral manner of resolving the disputes, mentioning that “Beijing has softened its resistance to multilateral approaches and verbally endorses ASEAN's lead role in managing and maintaining peace and stability in the South China Sea at least in preventing open warfare in the region – even if it does so mainly to block U.S. influence and rein in the Philippines.” Even if the motivation behind giving in to multilateralism is not directed towards ASEAN but more on resisting US supremacy in the region, this is still considered a development in the ASEAN Way of resolving disputes. Also, China expressed being open with the Code of Conduct for the South China Sea, expressing a sign of cooperation with the ASEAN.

Swanstrom (2001) emphasized the ineffectiveness of ASEAN and being “more of a reason for the leaders to play golf and avoid regional criticism” and cited how the principle of non-intervention came to be as the ASEAN Way. The formal and multilateral approach is adopted from the West, while a more informal and bilateral way of resolving dispute is more Asian, hence adopted by China. During the course of resolving the disputes, it is observed that an informal and bilateral approach (like what China adopts) is more effective than the Western way of bilateral and formal talks. Several circumstances happened in ASEAN over the years that could have been taken advantage by China by using different manners of aggressiveness, such as the 1997 Asian Financial Crises and during those times that ASEAN states could not agree on some issues like human rights, but China chose not to take advantage of them. The stability of ASEAN as an organization is an advantage for China to assert its power and influence, but China remained diplomatic by insisting a bilateral yet informal way of settling the disputes. Given this, Swanstrom believes that is it the ‘China Way’ and not the ‘ASEAN Way’ that is taking place because the instability of ASEAN is making China dictate the game with China using economic and military aggression when ASEAN refuses to follow the guidance of China.

The China Factor

Before analyzing China's behavior on the South China Sea Disputes, it is important to know where China is coming from, and this comes from how China shapes its foreign policy. China's foreign policy is of a very great importance to contemporary international relations, but it is something that is really hard to interpret as compared to the foreign policy of other states like the US and the EU. Through the ages, China's strategy is not grounded on political motives alone, but since it has a strong cultural, religious and philosophical history, China's foreign policy is a peculiar one. Zhu Liqun provided a framework on how to understand China's foreign policy (by analyzing the debates on *shi*, identity and strategy) and analyzed it using international relations theories. Zhu revealed that China's foreign policy can be characterized into four theories, namely realism, liberalism, constructivism and Marxism, but China's foreign policy it can be best described by a shift from realist to liberalist perspective.

It can be traced in China's history that it is once a state which adopts the basic assumptions of realism, and one obvious manifestation is the type of regime it adopted. The communist regime in general may reflect non-cooperation in the international affairs and being concerned only on its self-preservation and survival. Analysis on *shi*, which concerns the international power structure and the distinctive feature of the current times, gives us a realist point of view since the concern of China is power relations and it definitely reflects a classic realist idea: the balance of power. In addition to that, China's realist past can be attributed to its history of victimization and humiliation. On the other hand, it was revealed by the academic study of Qin Yaqing that after 1990, most of the academic articles written about China is liberalist in perspective, thereby reflecting a shift from the realist to liberalist contemporary foreign policy. Given China's "peaceful rise" and a domestically-motivated development, China can be seen as an international actor which does not necessarily seek self-preservation, but rather promoting peace and cooperation in the international arena. The liberalist side of China can be reflected in its idea on sovereignty and the responsibility to protect. China has been very positive about the lax of sovereignty in the age of globalization so as to promote cooperation in the international affairs, particularly in dealing with issues of global concern. Thus, this particular change in identity of China from 'closed and uncooperative' to 'open and cooperative' created an impression that China is leaning towards liberalism.

Given the climate that the (re) rise of China has provided to the contemporary inter-state relations, can it be really said that China is really shifting from a realist to liberalist foreign policy? Liqun argued yes, and I agree to that. The mere fact that China is creating a superpower identity in the international arena, with or without intention of being so, is already indicative of its attempt to blend in to the current international system. It can be that China has remained to be a communist regime, but it did not hinder the state to achieve what the other non-communist states were able to achieve, and it did not hinder the state to get noticed by the international community. Hence, China indeed is becoming a liberalist-oriented superpower.

A united ASEAN discussing peaceful settlement of disputes with China is multilateral in nature, but one hindrance to the success of these discussions attributed to China is its desire to have the issue discussed bilaterally among the four claimant states in ASEAN. This Chinese preference per se defeats the purpose and role of the Association in binding the region to stand up as one against China. It does not necessarily exposed the weakness of the ASEAN Way, but it excludes the need for an ASEAN Way of resolving the disputes. Thus, in this situation, the ASEAN Way is something that cannot satisfy the Chinese agenda in the South China Sea dispute resolution.

The growing military aggressiveness of China has prompted Vietnam and the Philippines to take military countermeasures because individually they consider this as a solution to the problem, something that the ASEAN Way will not recommend. With ASEAN wanting peaceful settlement of disputes as much as possible, the Philippines, for instance, does not see any light with this option, hence the ‘Aquino Way’ (Baviera, 2012), which contains the following elements: (1) being openly critical about China’s assertiveness, (2) adopting a multilateral, rules-based approach, (3) establishment of “Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) which determines which areas are disputed and which are not, and (4) the readiness to bring the issue to international adjudication, like the UNCLOS.

While many scholars have commended the Aquino Way for being a progressive mechanism to resolve the dispute, critics, mostly from the Chinese government, however, expressed concerns with the Aquino Way of resolving disputes (Baviera, 2012). Aside from encouraging a multilateral approach to discuss the issue, the Aquino Way may have been dragging another player in the picture: the United States. The Philippines and the US have strong military ties and the Philippines would indeed welcome an increased US military presence in the region. This ruins ASEAN’s constructive diplomacy approach that the ASEAN seeks to pursue with China.

With regards to the involvement of the other ASEAN member states in the South China Sea disputes, it is clear that Indonesia and Singapore who are considered the leaders of ASEAN, cannot easily go against China and side with their fellow member states involved in the issue. With the fear of China because of its growing power, “Jakarta and Singapore are more than content to note their non-claimant status to the territorial disputes as a reason to take a back seat on the issue. (Mazza and Schmitt, 2011) Definitely in this case, there will be no consensus on the part of the Association and this is affected by China’s influence in some parts of the region.

ASEAN Way’s legacy continues to go on, especially in terms of dealing with internal security issues in the region, but it has proven to be ineffective in terms of dealing with issues involving players outside the region. Pek Koon Heng (2014) pointed out that “the adherence of ASEAN member countries to the norms articulated in the ASEAN Way has to date sustained intra-ASEAN security cooperation and maintained regional stability in Southeast Asia. However, security cooperation involving external powers in the South China Sea and

the wider Asia-Pacific region has proved more complex and problematic.” In this case, it is clear that the South China Sea Disputes is clearly not being resolved by the ASEAN Way.

The US Factor

Aside from the China Factor, the United States also in a way affects the effectiveness of the ASEAN Way primarily because of its relationship with China. Baviera (2012) argued that the South China Sea Disputes is ‘dragging’ another state player into the picture, challenging the ASEAN Way and the ASEAN-China relations: the United States. Indeed the involvement of the United States is inevitable in the case at hand because of its strategic relationship with some ASEAN members and because of its rivalry with China, but it must be noted that even before the South China Sea Disputes, the US is always present in the region. In fact, the birth of ASEAN itself can be attributed to the US-China relations during the Cold War as a strategy of the United States to unite the Southeast Asian region against the spread of communism in the mainland Southeast Asia. Before the US Pivot to Asia of the Obama administration, the US became preoccupied with the Middle East because of its War on Terror after the September 11 attacks, but it does not mean that it lost its sight over Southeast Asia. The US is very active in helping the Philippines in dealing with the South China Sea disputes, and the presence of the US is magnified by the EDCA by allowing the presence of US military forces in the Philippines for an indefinite period of time.

US-China Relations, the South China Sea Disputes, and the ASEAN Way

The fact that China is rapidly rising economically and militarily is very evident, and different scholars have their interpretations of it in terms of its impact to the internal socio-economic climate of China, to its relationship with other Asian states especially to its allies, and its relationship with other great powers like the United States. Other perspectives on China’s rise is whether it can rise peacefully or it can threaten the stability of the international system by projecting threats to other major powers like the US. In the case of the South China Sea Disputes, the rise of China combined with the increased presence of the US military in the region are also factors challenging the ASEAN Way of settling the disputes. In a realist perspective, Mearsheimer (2006) argued that China definitely cannot rise peacefully, because according to the hegemonic stability theory which he tried to incorporate with his very own ‘offensive realism’ theory, hegemony is defined by supremacy in economic and military aspects of a state, hence the rise of economy and military expansion of China will indeed cause a conflict with the United States. In this case, the ASEAN then becomes a playground of these two major powers, challenging the very own reputation of ASEAN as a regional organization.

The history of the China Factor not only in the South China Sea Disputes but also in other aspects of Southeast Asia and other regions of the world can be attributed to its relationship

with the United States. The United States, for long, continues to dominate the economy of the world despite experiencing 'economic wounds'. On the other hand, twenty years since the end of the Cultural Revolution, China has achieved an extremely fast rate of economic growth (Goodhart and Xu, 1996). China's booming economy primarily being the low-cost manufacturing platform of the world, may even surpass the United States' GDP, according to Goldman Sach's report. Art (2010) sees the current US-China relations not necessarily as a repetition of the "history of rising versus dominant great power competition, including great power war" because of the difference of this case with those happened previously. Moreover, Art's assumption included unpredictability of the Chinese actions despite its obvious moves on expansion, and the inability of the United States to stop China's rise and its ability to at least slow it down by implementing some hostile economic policies. Thus, aside from China, the United States also contributes to the weakness of the ASEAN Way as an effective conflict resolution mechanism because of its strong influence in the affairs of the region.

Conclusion

The ASEAN Way, although has a defined set of elements that has been observed as a pattern among Southeast Asian states in providing regional responses to different issues, still has gained different analysis and interpretations not only from scholars studying ASEAN but also the international community at large. The ASEAN Way has a contribution to the longevity of ASEAN as an organization, has proven its effectiveness in maintaining peace among its members at least in preventing large-scale wars and conflicts in the region, and by emphasizing importance to the preservation of sovereignty of its member-states. On the other hand, the ASEAN Way has also its weaknesses, ranging from inability to protect and help its members from internal turmoil because of the principle of nonintervention, its inability to unite the region in terms of dealing with different issues of security which involves member states with no direct interest in such issues. The China and US Factors have also affected the ASEAN Way primarily because these two Great Powers have huge influence in how ASEAN arrives at decisions, and the individual decisions of member-states are another issue at point. The case at hand, the South China Sea Disputes, have challenged the institutional make-up of the ASEAN and its ability to encourage cooperation among its member-states.

Using the framework of Acharya and Johnston (2007), ASEAN's institutional design was examined side by side with other existing regional institutions in other regions of the world, considering that these organizations have been dealing with the same issues, asking why there are different levels of cooperation among them. Findings on ASEAN focus on its principle of nonintervention and weak institutionalism that makes it less effective compared to other institutions such as the highly-institutionalized European Union. Acharya and Johnston then concluded that there is no ideal institutional design that guarantees cooperation. Factors that affect the levels of cooperation include the internal situation of the member-states, its relationships with each other and with the other players in the international arena, and the political climate during the time of the establishment and existence of these institutions. For

ASEAN, the strong regard to national interest by the states and their value to sovereignty is considered by Acharya and Johnston's framework as a hindrance to achieving its goals as a regional organization given the ideal definition of an institution.

Now, to answer the question on whether the ASEAN Way serves as a contributory factor or a hindrance to the South China Sea Disputes, this paper would argue that ASEAN Way indeed hinders a possible successful negotiation of the disputes. ASEAN simply cannot unite at least its four members involved in the issue into coming up a single stand on the issue and each of them coming up with their own ways and making their own moves to support their own agendas with the issue. Moreover, with the high regard to national interest over regional interest, ASEAN will always find it difficult to unite its member-states into something that do not actually or directly benefit them, and this is where the issue on cooperation with members not directly involved in the issue comes in. In the case of South China Sea Disputes where only four out of the 10 ASEAN member-states are directly involved in the issue, one cannot easily assure the cooperation of the six remaining member-states, and with Indonesia and Singapore serving as the de facto leaders of ASEAN. Aside from the weaknesses and inflexibility of the ASEAN Way, the China and US has also an intervening effect on the effectiveness of the ASEAN Way. Specifically for the South China Sea Disputes, China has somehow affected how ASEAN will decide on the issue by targeting the weaknesses of the states, and the United States affecting ASEAN's relations with China. Thus, the ASEAN Way is a hindrance to a successful negotiation on the South China Sea Disputes coupled by US and China factors.

Given the evident weaknesses of the ASEAN Way and its hindering factor in the South China Sea negotiation, it can be implied that the ASEAN Way is not a compatible solution for the dispute resolution and its characteristics cannot actually merit a success to resolve other issues concerning regional security. Like how Acharya and Johnston would argue, the low institutionalism in Southeast Asia through the ASEAN is what makes it weak in terms of meeting its objectives of regionalism in the region. Nor ASEAN Way is necessary in resolving the disputes. Scholars have argued that an informal bilateral manner is more progressive than the insistence of a formal multilateral one. The cases of Philippines and Vietnam proves this arguments, coupled with China's history of success of bilateral talks in dealing with other territorial disputes in the Tibet and North Asia region. The ASEAN Way absent, which means giving up the principle of noninterference and sovereignty to yield to the resolution of the dispute, there can be several other alternative ways in resolving the disputes, the closest of which is a bilateral talk with China.

The case of South China Sea Disputes have also exposed the weakness of the ASEAN Way for being inapplicable when regional security issues involving state actors outside Southeast Asia takes place. It is not only irrational to insist on the principle of noninterference for a situation that requires unity against an outside 'enemy', but it is also detrimental to the securities of each individual states. It can be then said that the ASEAN Way is a paradox in itself because a principle that requires giving up one's sovereignty for unity is the same principle that promotes the principle on noninterference, Like how Weatherbee would argue,

ASEAN can be considered a failure in many aspects, but it has also contributed to the economic and social aspects of the region at the same time.

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Southeast Asia Research Centre

City University of Hong Kong
Tat Chee Avenue
Kowloon
Hong Kong SAR
Tel: (852) 3442-6330
Fax: (852) 3442-0103
<http://www.cityu.edu.hk/searc>