

Projecting the Intramural ASEAN Norms into Extramural Terrain - Constructivism: Does TAC Work in the South China Sea?¹⁴⁹

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Abstract: This article examines the role of ASEAN's norms in managing dispute over the South China Sea. ASEAN shares the beliefs that the settlement of differences or disputes by peaceful means and the abandonment of the threat or use of force are necessary to ensure the stability over the region. It attempts to analyze the possibility of exporting this intramural norm of ASEAN's model of dispute settlement into an extramural terrain and seeks to answer the question whether ASEAN's norm of cooperation can alter claimants' perception towards each other, and thus in return will constrain the urge to solve the dispute by force.

Keywords : ASEAN norm, ASEAN's model of dispute settlements, TAC, South China Sea, China

Abstrak: Artikel ini membahas peran norma ASEAN dalam mengelola sengketa Laut Cina Selatan. ASEAN berbagi keyakinan bahwa penyelesaian perbedaan atau perselisihan dengan cara damai dan ditinggalkannya ancaman atau penggunaan kekuatan yang diperlukan untuk menjamin stabilitas di kawasan ini. Ia mencoba untuk menganalisis kemungkinan mengekspor ini norma intramural model ASEAN penyelesaian sengketa menjadi medan luar sekolah dan berusaha untuk menjawab pertanyaan apakah norma kerja sama ASEAN dapat mengubah persepsi dan membatasi keinginan untuk memecahkan permasalahan dengan tidak menggunakan kekerasan

Kata kunci : norma ASEAN, model penyelesaian sengketa ASEAN, TAC, Laut Cina Selatan, Cina

Introduction

During ASEAN meeting in Phnom Phen last year for the first time in 45 years of ASEAN history the lowest denominator mechanism has failed to produce a closing communique with regard to the Code of Conduct (COC) in South China Sea. Political bargaining between Cambodia as a chair and China as the biggest claimant was presumed as the driving factor behind Cambodia uneasiness to advance for further talks. Philippines sent clear signal of its disappointments to fellow member states for failing to agree on concerted actions *vis a vis* China. Fragmentation within ASEAN was so apparent and it posed as a threat to ASEAN

credibility as a regional bloc.

Mitigation response was immediately taken by Indonesia Ministry of Foreign Affairs, Marty Natalegawa by touring bilaterally to each of ASEAN member states aimed to negotiate the needs to create an unanimous ASEAN declaration on the South China Sea. Yet such move failed to conceal doubtness on ASEAN effectiveness in managing conflict.

China's assertive stance to exert its 'ownership' over the South China Sea creates heavy atmosphere in Southeast Asia politic. The use of force seems possible by the neglected Philippines in order to hold their territorial sovereignty. A move that is shared by China due to the 'massive' presence of Chinese military and

¹⁴⁹ This paper is a continuation of previous paper that was written under the similar heading and has been presented in an national workshop on Southeast Asian Study. Referring to recent ASEAN's stance on South China Case especially under Cambodia presidency, the writer thinks it is necessary to test the hypothesis by incorporating the

para military at Second Thomas Shoal and the Scarborough Shoal.¹⁵⁰ Questions rise on the possibility of US's involvement in accordance to its rebalancing move towards Asia. However, On Kerry's visit in Brunei he has emphasized that it is not at 'US interest to contain or to counterbalance any country [China]', which might disappoint The Philippines who is eager for foreign support from its allies in time Beijing decided to unilaterally claimed its occupation on the South China Sea. At worst has ASEAN's style of dispute management proved as misleading?

The South China Sea is disputed by six claimants; four of the clamaints are the member states of ASEAN -The Phillipines, Malaysia, Vietnam and Brunei Darussalam- in addition to China and Taiwan. The conflict was dated back to 1974 when China seized the Paracel islands from Vietnam and maintain its sovereignty over the territory since then.¹⁵¹ The disputed territory includes the Spartly and Paracel islands and extensive set of island clusters, atolls and reefs that are stretching along the Strait of Malacca in the Southwest and the Taiwan Strait in the Northeast. This area is often regarded as 'the throat' of the Pacific and Indian Oceans.¹⁵²

It is argued that this body of water holds abundant amounts of oil and hydrocarbon reserves,¹⁵³ thus it is considered as the potential "second Persian Gulf."¹⁵⁴ Furthermore, it is of great strategic importance as sea lines for commerce as well as for maritime security and thus, bores geopolitical implications for the security in Southeast Asia.¹⁵⁵ Consequently, this body of water serves as an incentive for states to secure access to oil resources and to exert control over this region. In return, the competition for more control has led to conflicting national interests between several regional powers. This dispute does not solely involve a state's desire to

¹⁵⁰ Stuart Grudgings and Manuel Mogato, China Agrees S.China Sea Talks Amind New Row With Manila. 1st July 2013, Jakarta Post

¹⁵¹ This in return has triggered various skirmishes over the territorial dispute between China and Vietnam. Disputes over the islands also contributed to China's war against Vietnam in 1979. For details see table 1.

¹⁵² Mingjiang Li, "Reconciling Assertiveness and Cooperation? China's Changing Approach to the South China Sea Dispute." *Security Challenges*, Vol. 6, No. 2 (2010), pg 52.

¹⁵³ The total reserve of oil and hydrocarbon in this body water was estimated up to 17.7 billion tons making it the world's fourth-largest reserve bed. Moreover the prospects of fishery on these waters are worth explored. Although it doesn't occupy the largest portion of the economic value, fishery offers an addition on the commercial strategic of the South China Sea. Over 11 million metrics tons of fish and invertebrates were harvested, this constitute to about ten percents of the world's total marine catch.

¹⁵⁴ Zou Keyuan, "Cooperative Development of Oil and Gas Resources in the South China Sea", in: *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime*, 2009, edited by Sam Bateman and Ralf Emmers. London: Routledge, pg 80.

¹⁵⁵ The geopolitical implications of the South China Sea do not share only between China and the ASEAN member states, but also by external powers, especially the United States. It is United States' interest to maintain a neutral position in the territorial dispute and it even encourages the claimants to peacefully resolve these conflicting territorial claims. Considering a stable condition in the South China Sea is needed to ensure its sea line of trade and political alliance with some of the claimants. See, The United State Institute of Peace, *The South China Sea Dispute prospect for Preventive Diplomacy*, A Special Report of the United State Institute of Peace, (August 1997), pg 2.

ensure that its economic and security needs are met, but it also implies competition on sensitive issues of sovereignty.

As one of the long-standing conflicts in the Southeast Asia region, territorial disputes over the South China Sea are portrayed as the most prominent challenge faced by China and ASEAN in the field of security. ASEAN and China are two strong advocates of sovereignty and they see the notion of sovereignty as delicate and sensitive issue, as it touches their very main of existence.¹⁵⁶ Threat to territorial integrity can be seen as a threat to sovereignty because sovereignty constitutes and defines a state. Anything that can be portrayed as a violation of sovereignty can be presented as a security problem, regardless of the size of the threat.¹⁵⁷ Thus, China's assertions of sovereignty over the South China Sea are provoking ASEAN's concerns regarding the Southeast Asia future security arrangement.¹⁵⁸

Although the dispute harbors the potential for a flashpoint conflict in Southeast Asia region, presently an open war between claimants has not taken place yet.¹⁵⁹ Various arguments have been put forward regarding to the influential factors behind the relatively stable South China Sea. A hard nationalist sees China's restraint from the South China Sea as a tactical move, because Beijing is still occupied with the Taiwan issues. 'Once the Taiwan front is closed, [China] may turn to South China Sea'.¹⁶⁰ Meanwhile, integrational views argue that there are common norms or values that are upheld by the claimants; in this sense ASEAN and China, and in return have restrained and altered claimants' behavior towards an attainment of peaceful settlement of dispute management.

This paper uses the latter argument as the backbone of the research in its aim to analyze whether such norm is the determinant factors that drive claimants' behavior in the region. The main research question for this paper is "*To what extent does the norms of ASEAN's model of*

¹⁵⁶ China sensitiveness over sovereignty is partly derived from what Chinese calls as the century of humiliation. During this period China has lost all the wars it fought and as a result China has to give a major concession. Some major wars are the Opium War I and II with European and the British invansion to Tibet. Whilst ASEAN sensitiveness mainly driven by the colonialization and the Cold War era.

¹⁵⁷ For an example, Beijing sees Tibet and Taiwan cases as threats to its sovereignty. The independence of these two areas will undermine Beijing rights and legitimacy to manage and maintain its power. This in return may create a negative perceptions of China's credibilities, not only domestically but also internationally. Cited from Buzan, Barry Ole Wæver & Jaap de Wilde, *Security: A New Framework for Analysis*, (1998), Lynne Rienner Publishers, pg 142-145.

¹⁵⁸ Large increase in China's military expenditure disturbs China's status quo in the region. There is incremental increase in China's defense spending; amounted 18,860 US\$ m in 1991 up to 129,272

US\$ m in 2011. Suspicion on higher Beijing's real defense spending is plausible. Cited from Stockholm International Peace Research Institute (SIPRI).

¹⁵⁹ An open scale war has not taken place yet, although various skirmishes have indeed occurred since 1974. But it is argued that the tensions have not lead to open conflict. Diplomacy and peaceful settlement mechanism were opted as part of bilateral solution for conflict settlements.

¹⁶⁰ Cited from Craig S. Smith, "China Reshaping Military to Toughen Its Muscle in the Region", *New York Times*, 16 October 2002. See also S. P. Seth, "US Not Likely to Forfeit Role in Asia", 8 July 2011 <http://publish.gio.gov.tw/FCJ/past/02110862.html.tml>

dispute settlement can influence China's behaviour with regard to the conflict of the South China Sea?". The following subsections will address several points. Constructivism will be used as a main theory as it highlights the importance of norms in international relations. An analysis on the Treaty of Amity and Cooperation (TAC) as ASEAN's intramural norm of dispute settlement will be presented. Whether the ASEAN's norm of dispute settlement is able to duplicate itself into extramural terrain will be analyzed by looking at (in)consistency of China behaviours with regard to the dispute.

Constructivism

In order to see whether the norm of ASEAN's dispute settlement has the ability to influence the courses that take place in the South China Sea thus, Constructivism is argued as the best approach to do so. Constructivism focuses on the presence of ideas, and how ideas are able to influence—even alter state's behavior.¹⁶¹ Conflicting or cooperative relations between states thus, argued by Constructivism is influenced by the existing perceptions amongst states in such group. In other way, if states choose to perceive each others as friends, cooperative environments will emerge. *Vice versa*, if states perceive each other as threats, then conflicting relations will emerge between those states. Thus, how actors think about each other determines states behavior towards others.

¹⁶¹ Christian Reus-Smith, "Constructivism", in *Theories of International Relations*, (1996), Palgrave Macmillan, pg 222.

Since prevailing perceptions towards each other decides the type of relations that emerges between states, a change in this perception will naturally lead to a change in the type of relationship. As 'anarchy is what states makes of it'¹⁶² thus, cooperative relations can be achieved if states on the initial stage have a 'positive'¹⁶³ perception towards the other. Subsequently, in order for a cooperative environment to take place, a positive shared perception between states must be achieved first.

Norms in this way can be a prominent tool that helps to establish certain perceptions. Norms can endorse cooperation once its shared, embedded and perceived as a guideline in conducting interaction between states. Once norms are institutionalized, it can 'define the meaning and identity of the individual actor and the patterns of appropriate economic, political,¹⁶⁴ and cultural activity engaged by those actors'. The constructivist definition incorporates both regulatory and constitutive aspects.¹⁶⁵ The regulatory function refers to norms as standards

Cited from Alexander Wendt, "Anarchy is what States Make of it : The Social Construction of Power Politics", *International Organization*, Vol. 46, No. 2. (1992).

A positive perception refers to a situation where states in such group or community agree on conflict avoidances and to some extent seek for cooperation building.

J. Boli, J. Meyer and G. Thomas, "Ontology and Rationalization in the Western Culture Account", in *Institutional Structure: Constituting State, Society, and the Individual*, (1989), edited by G. Thomas et al, London, pg 12.

See Frederick V. Kratochwill, *Rules, Norms and Decisions : On the Conditions of Practical and legal Reasoning in International Relations and Domestic Affairs*, (1989), Cambridge : Cambridge University Press, pg 59 and Neta C. Crawford, *Changing Norms of Humanitarian Intervention*,

of behavior defined in terms of rights and obligations. Thus regulatory norms help actors to distinguish normal and abnormal behavior and to help coordinate expectation and decrease uncertainty, to influence decision making and to legitimate their action and the actions of others. Likewise, the constructivist definition of constitutive aspects of norms argues that norms not only establish expectations about how particular actors will behave but it also introduces states to a new interest and identity.¹⁶⁶ Norms in this understanding constitute state identities and interest. The constitutive aspect of norm has the ability to transcend a state from a very Westphalian-sovereignty state to being a member of a group sharing common interests, values, a common identity (to some extent even giving up some of their sovereignty to supranational power, as the European Union does). Norms help to coordinate values among states and societies¹⁶⁷ and help to ensure that the principle and practices of peaceful conduct and war avoidance are shared among the group.¹⁶⁸

(1 April 1994), presented at International Studies Association Conference, Washington DC, page 4-5.

¹⁶⁶ Peter J. Katzenstein, "Introduction: Alternative Perspective on National Security", in *The Culture of National Security: Norms and Identity in World Politics*, (1996), edited by Peter Katzenstein, New York: Columbia University Press, pg 5.

¹⁶⁷ Amitav Acharya, "*Constructing a Security Community in Southeast Asia: ASEAN and the problem of Regional Order 2nd edition*", (2009), London: Routledge, pg 24-26.

¹⁶⁸ This leads to the understanding of Deutschian security community. Karl Deutsch argues that a security community can be defined as a group that has become integrated. This integration indicates an accomplishment of a sense of community and a presence of strong and widespread (in)formal institutions or practices, which ensure 'peaceful

As Wendt argues that '500 British Nuclear Weapons are less threatening to the United States than 5 North Korean Nuclear because the British are friends and the North Korean are not'.¹⁶⁹ With regard to the South China Sea dispute, positive social interactions between states can lead to a benign relationship. If China is perceived as a friend by the ASEAN states and *vice versa*, claimants will be reluctant to impose hard policies to manage the tensions over the South China Sea. Conflict escalation can be restrained through investing in the (re)building positive image of each others that leads to amicable relationship.

The ASEAN Way

The norms and values that are at play in the South China Sea dispute are none other than the ASEAN norms. It is precisely due to two reasons. Firstly, ASEAN is the only regionalism in the Southeast Asia region. With most of the claimants are its member states, any developments in the conflicted body of water will surely drag ASEAN. Secondly, China's 'good-neighbour' policy has put ASEAN as Beijing's 'ally' towards the achievement of China's peaceful co-existence. This in return can explain China's eagerness to engage the ASEAN.¹⁷⁰

changes' among the members lasts over a long period of time. Cited from Karl W Deutsch, "Security Communities", in *International Politics and Foreign Policy*, edited by James N. Rosenau, (1961), New York: Free Press, pg 99.

¹⁶⁹ Alexander Wendt, "Constructing International Politics", *International Security*, Vol. 20, No. 1. (1995), pg 73.

¹⁷⁰ Some arguments stated that one of the reasons

The ASEAN's norms themselves are well embraced under the concept of the ASEAN Way. However, the understanding of the ASEAN way itself remains vague. Some scholars and politicians emphasize on the unique decision making process of *musyawarah dan mufakat*,¹⁷¹ while others depict the paramount principle of sovereignty and non-intervention. Some even argues that the ASEAN Way is built upon the practice of Asian culture, while other incorporated both the practices and the principles into one set of ASEAN's security and diplomatic culture. Haacke argues that imbedded in the ASEAN Way are the six core norms of the ASEAN Way: sovereign equality,

¹⁷¹ Some arguments stated that one of the reasons behind China's foreign policy shift with regard to its ASEAN counterparts was an implication of Jiang Zemin's Peaceful Rise (later on changed to Peaceful Coexistence). Peaceful development signifies a good neighbor policy in which China seeks to establish partnership not only with large states but also with smaller states and partnership, not only with Western, developed countries but also with the Asian region to support Beijing's economic development. It is suggested that the total trade between China and ASEAN has increased more than twenty times in just 7 years. From 36.52US\$ billions in 2001 to 202.55 US\$ billions in 2007 (Cited from Direction of Trade Statistics, Ministry of Commerce of China). Furthermore, as China sees the post Cold War era as a period moving towards a multipolar world system, in which a few major powers can develop friendly ties with each other and in which non-zero-sum games. It tries to engage ASEAN by participating in ASEAN Regional Forum to solve the territorial dispute over the South China Sea. Thus, China has adopt the ASEAN Way as the regulation norm in its tension with the ASEAN's claimants.

The concept of *Musyawarah dan mufakat* emphasizes the achievement of consensus and 'consultation on the basis of equality, tolerance and understanding with overtones of kinship and common interest Amitav Acharya. *Constructing a Security Community in Southeast Asia : ASEAN and the Problem of Regional Order* (2nd ed), (2009), London: Routledge, pg 83.

non-interference, the non-resort to the threat or use of force, quiet diplomacy, the non-involvement of the Association in the resolution of bilateral disputes and mutual respect.¹⁷² Meanwhile the primacy of non-interference and quiet diplomacy has been linked to sovereign equality and consensual decision-making.¹⁷³ Haacke mentions that there are at least three distinct conceptualizations of the ASEAN Way. First conceptualization conceives the ASEAN Way as a 'process of identity building which relies upon conventional modern principles of interstate relations as well as traditional and culture-specific modes of socialization and decision-making that are prevalent in Southeast Asia'.¹⁷⁴ The second has centered on the ASEAN Way as a distinct decision-making procedure that is associated with processes of consensus finding, a consultation-consensus mechanism of *musyawarah dan mufakat*. The third focuses on

¹⁷² Jurgen Haacke, *ASEAN's Diplomatic and Security Culture : Origins, Development and Prospect*, (2005) London: Routledge, page 3.

¹⁷³ The ASEAN Way he argues, is identical with the shared assumption of 'socio cultural norms' of a pattern of consultation and consensus building in relation to the role and conduct of diplomacy as well as about what security challenges and how best to address it. ASEAN member states share the norms of tolerance and respectful, which is derived from its common Asian culture Jürgen Haacke, "Enhanced Interaction" with Myanmar and the Project of a Security Community: Is ASEAN Refining or Breaking with its Diplomatic and Security Culture?", *Contemporary Southeast Asia : A Journal of International and Strategic Affairs*, Vol.27, No.2, (2005), pg 213.

¹⁷⁴ Haacke, *ASEAN's Diplomatic and Security Culture*, pg 58-59 and Thambipillai, P., "ASEAN negotiating styles: asset or hindrance?", in *ASEAN Negotiations: Two Insights*, edited by P. Thambipillai and J. Saravanamuttu, (1985), Singapore: Institute of Southeast Asian Studies, pg 3-28.

it as an intramural approach to dispute management and confidence building.¹⁷⁵

In its conceptualization as an intramural approaches to dispute management The ASEAN Way drew out the Treaty of Amity and Cooperation (TAC) as a legal cornerstone of its model of dispute management. Because, TAC embodies 'universal principles of peaceful coexistence and friendly cooperation among States in Southeast Asia'.¹⁷⁶ It also emphasizes the necessity of 'settlement of differences or disputes by peaceful means and renunciation of the threat or use of force' when conflicts arise.¹⁷⁷

The signing of the Treaty of Cooperation and Amity (TAC) on 24 February 1976¹⁷⁸ implies that ASEAN leaders finally agreed to express their intention for a better cooperation into a stronger written agreement. TAC inherits the basic concept of what is now called as the

ASEAN Way along with the spirit of the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955.¹⁷⁹ These guidelines are projected into a set of unique characteristics of ASEAN regionalism that is known as the ASEAN Way, determines ASEAN's response to disputes and conflicts within the region.

TAC depicts the principles of non-intervention, peaceful settlement, independence and sovereignty in their relations with one another, as stated in article 2: "in their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles: a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; b. The right of every State to lead its national existence free from external interference, subversion or coercion; c. Non-interference in the internal affairs of one another; d. Settlement of differences or disputes by peaceful means; e. Renunciation of the threat or use of force and; f. Effective cooperation among themselves".¹⁸⁰

In addition, TAC provides a regional diplomatic instrument and a code of conduct for

¹⁷⁵ See M. Caballero-Anthony, "Mechanisms of Dispute Settlement: The ASEAN Experience", *Contemporary Southeast Asia*, Vol. 20, No.1, (1998), pg 38-66.

¹⁷⁶ *ASEAN Secretariat*, "Text of The Treaty of Amity and Cooperation and Related Information", ASEAN Knowledge Kit, March 2008.

¹⁷⁷ Cited from *ASEAN Secretariat*, "Treaty of Amity and Cooperation (TAC)", 3 Nov 2010 <http://www.aseansec.org/1217.htm>.

¹⁷⁸ ASEAN was established with the signing of The Bangkok Declaration on 8 August 1967. It aims and purposes "to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter". Over time, Brunei Darussalam joined the ASEAN on 8 January 1984, followed by Viet Nam on 28 July 1995. On 23 July 1997, Lao PDR and Myanmar joined the association, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN. The Bangkok Declaration thus, becomes one of the cornerstones of ASEAN's regionalism. See official website for ASEAN Secretariat.

¹⁷⁹ The Bandung Asia-Africa Conference was the result of non-alignment (non-bloc) movement that were conducted by Asia and Africa country in their aim to balance the big-power influences to weaker states in Asia and Africa. Especially during the backdrop of the Cold War between the United State and the USSR. Imbedded in it is the concept of non-use of force. The non-bloc movement was initiated by Indonesia (Sukarno) along with Ghana (Kwame Nkrumah), Egypt (Gamal Abdul Nasser), India (Pandit Jawaharlal Nehru) and Yugoslavia (Joseph Broz Tito).

¹⁸⁰ Cited from *ASEAN Secretariat*, "Treaty of Amity and Cooperation (TAC)", 3 Nov 2010 <http://www.aseansec.org/1217.htm>.

the peaceful settlement of disputes.¹⁸¹ The settlement of disputes between members is outlined on Chapter IV: Pacific Settlement of Disputes Article 13 states that 'in case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations'.¹⁸² If no solution is reached through direct negotiations, as stated in the Article 15, 'the High Council shall take cognizance of the dispute or the situation and shall recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation'.¹⁸³

Originally, TAC was conceived as an intramural ASEAN mechanism of 'legally binding code of friendly inter-State conduct'.¹⁸⁴ It depicts the use of peaceful mechanism to manage conflicts. In 1987, the treaty was amended to allow accession by states outside the Southeast Asia thus, shifting the intramural ASEAN's model of dispute settlement into extramural context. Papua New Guinea - an

observer in ASEAN- signed TAC in 5th of July 1986, followed by China as the first foreign countries to show its commitment and adherence to ASEAN norms by signing the TAC on 8th Oct 2003. TAC then signed by India on the 8th of October 2003, Japan and Pakistan on 2nd July 2004, Republic of Korea on 27th November 2004 and lastly the Russian Federation on 29th November 2004.¹⁸⁵

TAC doesn't hold any binding or legal consequences -which is typical of ASEAN's style of loose multilateralism. Yet, it was a great achievement because the signing of TAC implies that each member state agrees and explicitly shows their agreeance with an ASEAN's model of dispute settlement; which relies on the notion that any dispute should be regulated in a manner that avoids negative attitudes that might hinder mutual cooperation. The ASEAN's norm to some extent has forced the signatory states to comply and behave accordingly to their commitments, because by submitting to TAC, states agree to bind itself to ASEAN's norm of the use of non force in dispute or conflict settlement. To highlight, the signing of TAC by the claimants implies the primacy of peaceful dispute settlement in managing conflicts over the South China Sea.

China pragmatic - rhetoric actions in South China Sea dispute settlement processes

To what extent does the norm of TAC –peaceful settlements- can influence China's behavior with regards to the South China Sea

¹⁸¹ Cited from *ASEAN Secretariat*, "Political Achievement", 3 November 2010 <http://www.asean.org/11833.htm>.

¹⁸² Cited from *ASEAN Secretariat*, "Treaty of Amity and Cooperation (TAC)".

¹⁸³ *Ibid.*, *ASEAN Secretariat*, "Treaty of Amity and Cooperation (TAC)". However it is argued that the High Council is not an effective body, due to the inability of this body to solve major issues within ASEAN, such as the recent border dispute between Cambodia and Thailand. Additionally, in order to solve disputes, the conflicting party often prefers bilateral negotiations or mediation from third parties.

¹⁸⁴ *ASEAN Secretariat*, "Text of The Treaty of Amity and Cooperation and Related Information", ASEAN Knowledge Kit, March 2008.

¹⁸⁵ *Ibid.*, *ASEAN Secretariat*, "Text of The Treaty of Amity and Cooperation and Related Information".

will be analyses based on the (in)consistency of China stands towards the settlement dispute process; whether diplomatic solutions are Beijing's top priority in managing the dispute or Beijing is willing to breach its commitment by unilaterally using forces in settling the dispute.

The dispute over the South China Sea is seen as an obstacle for a multilateral security structure in this region. Although ASEAN welcomes Beijing's intention to solve the problem of the South China Sea dispute peacefully, this does not mean that the cooperative arrangements are free from problems.¹⁸⁶ During his visit to Singapore in 1990, Chinese premier Lie Ping visit, he re-emphasized China's periphery policy by highlighting Beijing willingness to shelve the sovereignty issues and encourage cooperative joint development with Southeast Asian countries in the South China Sea.¹⁸⁷ Yet, in March 1992 Beijing passed the China Territorial Sea Law which formally announced China claims over all the Sparty Island. This maritime law allows Beijing to exercise its sovereignty over its territorial sea and to emphasis its rights by exercising control over its contiguous zone in order to safeguard Beijing's maritime rights and

¹⁸⁶ The cooperative agreement between China and ASEAN aside from managing territorial sovereignty and dispute will also cover the area of marine environmental protection and scientific research, safety of navigation and communication at sea as well search and rescue operation. It also indicates the necessity on combating transnational crime, including trafficking in illicit drugs, piracy and armed robbery and illegal traffic in arms, in the South China Sea.

¹⁸⁷ Eric Hyer, "The South China Sea Dispute: Implications of China's Earlier Territorial Settlements", *Pacific Affairs*, Vol. 68, No.1, (1995), pg 48.

interests.¹⁸⁸

China rejects th UN Conviction on The Law of the Sea 1982 (UNCLOS) as basis for resolving the South China Sea dispute when President Ziang emphasized Chinese's claim to the 'indisputable sovereignty over the island and their adjacent waters'.¹⁸⁹ In addition, in 1998 when the Philippines president visited Beijing, China advanced its commitment to pursue a peaceful soulution by pledging not to attack Filipino troops that were stationed in the Sparty islands.¹⁹⁰ Nevertheless, China continued its building activities on the island that were being claimed by the Philippines. Later on, in 1999 Chinese warships were accused of harassing a Philippine navy vessel near the Spratly Islands.

A positive development was finally reached on the 4th of November 2002 when China agreed to sign the Declaration on the Conduct of Parties(DOC) in the South China Sea. The DOC

¹⁸⁸ Article 10 stated "The relevant responsible organs of the People's Republic of China shall have the right to order an immediate eviction of foreign military ships or ships owned by foreign Governments and operated for non-commercial purposes that violate the laws or regulations of the People's Republic of China while passing through the territorial sea of the People's Republic of China" and article 13 stated "The People's Republic of China has the authority to exercise powers within its contiguous zone for the purpose of preventing or punishing infringement of its security, customs, fiscal sanitary laws and regulations or entry-exit control within its land territories, internal waters or territorial sea" see <http://libweb.uoregon.edu/ec/e-asia/read/sealaw.pdf>.

¹⁸⁹ Amitav Archarya, "The ARF Could Well Unravel", in *The Evoving Pacific Power Balance*, 1996, edited by Derak da Cunha, Institute of Southeast ASEAN Studies: Singapore, pg 63-69.

¹⁹⁰ Hans Indorf, "The Spartylys : A Test Case for the Phillipine Base", Center for Research and Communication, (1998), Manila 1998, pg 14.

is a first step towards the establishment of a Code of Conduct (COC) in the South China Sea. It calls all parties to apply the principles of the Treaty of Amity and Co-operation in Southeast Asia as the basis of their relations in the South China Sea. The signing of DOC implied the adoption of TAC in which claimants agree to the non use of force in managing conflicts that arise between them.¹⁹¹ It was seen as a great leap toward better future arrangements because ASEAN has successfully set up the first step for the dispute settlement in the South China Sea and has influenced China to submit to such multilateral solutions.¹⁹² An endorsement came in 2002 when the Philippines Foreign Minister Blas Ople stated that the signing lay a 'string foundation for future negotiation with China and our other ASEAN partners on maritime security and territorial issues'.¹⁹³ Meanwhile China Vice Foreign Minister Wang Yi, responded by arguing the signing will 'send a positive signal to the outside world that China and ASEAN have full capability to resolve disputes among

themselves, peacefully through dialogue.¹⁹⁴ Since the signing of the DOC in 2002 the tension over the South China Sea lessened and temporary peace was present over the disputed sea.

China's eagerness to acknowledge the norms that are embedded in the ASEAN were extended when in 2003 Beijing signed the Treaty of Amity of Cooperation (TAC). The signing itself makes China as the first among the major countries that adhere to the principles and practices of the ASEAN Way. Non-legally binding as they may be, the signing of the TAC indicates China's goodwill to create a stable and peaceful region,¹⁹⁵ by prioritizing peaceful settlements.

However, tensions were rising again during 2011 and early of 2012. In May 2011, a Vietnamese survey ship operating on its claimed continental shelf had its seismic cables cut by a Chinese patrol boat.¹⁹⁶ In the same year, the Philippines placed diplomatic protest after China's territorial intrusion in Sparty island and urged China to avoid unilateral action that could

¹⁹¹ Pessimist arguments stated that the signing of DOC by China was a pragmatic move in order to put forward the economic ties between China-ASEAN, indicated by the fact that on the same day China has signed the Framework Agreement on China-ASEAN Comprehensive Economic Cooperation that will open the road for a free trade area. China Ministry of Commerce, "China-ASEAN FTA", <http://fta.mofcom.gov.cn/topic/chinaasean.shtml>.

¹⁹² Christopher Chung, "Southeast Asia and the South China Sea Dispute", in *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime*, edited by Bateman and Emmers, (2009), Abingdon: Routledge, pg 95.

¹⁹³ See Ople Lauds, *Signing of Declaration on the Conduct of parties in the South China Sea*, Department of Foreign Affairs, The Philippines. www.dfa.gov.ph/news/pr/pr2002/nov/pr246.html.

¹⁹⁴ Christopher Chung, "Southeast Asia and the South China Sea Dispute", pg 95.

¹⁹⁵ China tries to avoid hard line policies in the dispute of South China Sea, because it undermines Beijing's efforts to forge good relations and peaceful co-existence with its ASEAN neighbors. The Chinese government sees stability as a prerequisite of economic development. China's development would be impossible without Asia. On the other hand, Asia's prosperity is also impossible without China. See Judith F. Kornberg and John R. Faust (2005), *China in World Politics: Policies, Processes, Prospects*, Lynne Rienner, pg 159.

¹⁹⁶ Mark Valencia, "Did US Push China Over the Edge?", <http://the-diplomat.com/2011/06/24/did-us-push-china-over-the-edge/>, June 24 2011.

harm the effort of peaceful dispute settlement over the territory. Shortly after the incidents took place, China sent two Vice Chairmen of the Central Military Commission to Southeast Asia to reassure other ASEAN claimants on Beijing's commitment to uphold the norms of peaceful settlement.

On his visit to Singapore in June 2011, the Chinese Defense Minister General Liang Guanglie re-emphasized China's commitment 'to maintain peace and stability in the South China Sea' and that 'China stood by' the DOC.¹⁹⁷ Later on, China and the Philippines pledged 'responsible behavior' in the disputed areas; repeated their commitment to a peaceful resolution of conflicting territorial claims,¹⁹⁸ and agreed to avoid 'unilateral actions' that could further worsen the tensions over Spratlys Islands.¹⁹⁹ Yet, this seems not sufficient enough as China's encroachment persists occupying not only the Scarborough Shoal which is located just around 230 km from Philippines territory, but expanding in to the Second Thomas Shoal. The blunt move had raised strong objection from Philippines Foreign Minister Albert del Rosario calling it as an 'illegal occupation' and has thwarted the positive efforts toward establishing peaceful conducts in South China Sea.

However, recently Beijing decided to soften its stance toward the territorial conflict by agreeing to hold an 'official consultations' on COC in South China Sea during a meeting with ASEAN senior officials in China this coming September. Chinese Foreign Minister Wang Yi expressed his agreeance on the necessity of maritime cooperation in South China Sea.²⁰⁰ Various comments can be extracted with China's sudden agreeance. Thailand Foreign Minister applaud it as a 'very significant' movement meanwhile, the Philippines Foreign Minister expresses his hope that 'China is in earnest in terms of moving forward'. In contrast, a rather bleak perspective is widely shared. Ian Storey, for example a senior fellow at the ISEAS arguing that although China's offer is an 'encouraging sign' it was not 'a very significant step' considering the history of Beijing reluctantness to actually strive for a binding regulations.²⁰¹ It merely is a rhetoric movement of China to buying more time. Despite whether China intentions are true, it is evident that China prefers to promote diplomatic solutions over brute force in solving dispute with ASEAN's claimants over the South China Sea.

On recent speech refuted by Prime Minister of Republic of China Li Keqiang at the opening of the 10th China-ASEAN Expo and the China-ASEAN Business and Investment Summit in Nanning China, he re-emphasized China's upholding of the good-neighbour policy

¹⁹⁷ Mark Valencia, "Did US Push China Over the Edge?", <http://the-diplomat.com/2011/06/24/did-us-push-china-over-the-edge/>, June 24 2011.

¹⁹⁸ See Ben Bland and Kathrin Hille, "New Clash in South China Sea", *Financial Times*, May 27 2011.

¹⁹⁹ Cited from *ABS News*, "China Intrusion in Spratlys Sparks Diplomatic Protest", July 25 2011 <http://www.abs-cbnnews.com/nation/05/24/11/china-intrusion-spratlys-sparks-diplomatic-protest>.

²⁰⁰ Stuart Grudgings and Manuel Mogato, China Agrees S.China Sea Talks Amid New Row With Manila. 1st July 2013, *Jakarta Post*

²⁰¹ Lesley Wroughton and Stuart Grudgings, "Kerry Presses China, Southeast Asia to Ease Sea Tensions" 2nd July 2013.

toward ASEAN and sees this regional organization as a 'long term strategic option instead of a matter of expediency'.²⁰² However, this rhetorical good willing seems half hearted since the Chinese government did not extend their invitation to Philippines President Benigno Aquino III as a result of heightened tension over the South China Sea.²⁰³

Skirmishes between claimants are indeed prevail in the South China Sea since the year of 1974 until 2012 (table 1). During this 3-decade history of conflicts, China is the most involved claimant: waged and provoked tensions over the U shaped territory of the South China Sea. With the Phillipines and Vietnam are high on the list, a cease fire lasted only after China agreed to sign the DOC in 2002. But this temporary peace ended when China and the Phillipines involved in a new skirmish last year.

Tabel 1. Clashes in The South China Sea Since 1974

Year	Conflicting Countries	Conflict
1974	China - Vietnam	China seized the Paracels from Vietnam, with 18 of its troops killed in the clashes. Since then China continues to maintain its sovereignty over the islands. This in return has triggered various skirmishes over the territorial dispute between China and Vietnam. Disputes over the islands

²⁰² Abridged version of speech by Li Keqiang, Jakarta Post 6 September 2013.

²⁰³ Hrvoje Hranjski, Manila Says China Withdraws Invitation For Aquino, Manila, Philippines August 29, 2013.

		also contributed to China's war against Vietnam in 1979 ²⁰⁴
1988	China - Vietnam	Chinese and Vietnamese navies clashed at Johnson Reef in the Spratlys. Three Vietnamese boats were sunk and over 74 sailors were killed.
1992	China - Vietnam	Vietnam accused China of landing troops on Da Luc Reef. China seized almost 20 Vietnamese cargo ships that were transporting goods from Hong Kong to Vietnam.
1994	China - Vietnam	China and Vietnam had naval confrontations within Vietnam's internationally recognized territorial waters over Vietnam's Tu Chinh oil exploration blocks 133, 134, and 135. Chinese claim the area as part of their Wan' Bei-21 (WAB-21) block
1995	China - Philippines	China occupied Philippine-claimed Mischief Reef. Philippine military evicted the Chinese in March and destroyed Chinese markers. The Mischeef Reef

²⁰⁴ Cited from Samuel S. G. Wu and Bruce Bueno de Mesquita, "Assessing the Dispute in the South China Sea: A Model of China's Security Decision Making", *International Studies Quarterly*, Vol. 38, No. 3 (1994), pg 381 and see K. C. Chen, "China's War with Vietnam, 1979: Issues, Decisions, and Implications", (1987), Stanford, CA: Hoover Institution Press.

		incident between China and Phillipine was one of the major conflicts which involved military forces. Phillipine's National Security Adviser Roilo Golez claimed that China's decision to exert its force in the Mischief Reef was due to the Philippines agreement with U.S. energy company Vaalco on 8 May 1994 which gave it a six month permit to collect information about the area. ²⁰⁵ This agreement with an American company strengthened Phillipines claims on the area which was also disputed by China.
1996	China - Philippines	In January, Chinese vessels engaged in a 90-minute gun battle with a Philippine navy gunboat near the island of Capone, off the west coast of
1997	China - Philippines	The Philippine navy ordered a Chinese speedboat and two fishing boats to leave Scarborough Shoal in April; the Philippine navy later removed Chinese markers and raised its flag. China sent three warships to survey the Philippine-occupied islands of Panata and Kota. The Philippines considers China's occupation in 1995 an 1997 as direct assaults on

²⁰⁵ Buszynski, "ASEAN, the Declaration on Conduct, and the South China Sea", pg 348.

		the Philippines' territory ²⁰⁶
1999	China - Philippines	In May, a Chinese fishing boat was sunk in a collision with Philippine warship.
1999	China - Philippines	In May, Chinese warships were accused of harassing a Philippine navy vessel after it ran aground near the Spratlys.
2000	China - Philippines	In May, Philippine troops opened fire on Chinese fishermen, killing one and arresting 7.
2001	China - Philippines	During first three months, the Filipino navy boarded 14 Chinese flagged boats, confiscated their catches, and ejected vessels out of contested portions of the Spratlys.
2001	China - Philippines	In March, the Philippines sent a gunboat to Scarborough Shoal to ward off any attempt by China to erect structures on the rock
2002-2010	n/a	China has agreed to signed the Declaration Of Conduct 1992 in 2002. Since then temporary peace was retain over the South China Sea, until the incidents took places in 2011 between China and Philippines as well China and Vietnam
2011	China - Philippines	Department of National Defense and the Armed

²⁰⁶ Liselotte Odgaard, "The South China Sea: ASEAN's Security Concerns About China," *Security Dialogue*, Vol. 34, No. 1, (2004), pg 16.

130 Ratih Indraswari, Projecting the Intramural ASEAN Norms into Extramural Terrain - Constructivism: Does TAC Work in the South China Sea?

		Forces of the Philippines reports that a China Marine Surveillance vessel and other People's Liberation Army Navy ships were seen unloaded building materials there in Reef-Amy Douglas Bank, a territory that belongs to the Philippines ZEE. ²⁰⁷ The Philippines and China pledged not to resort to "unilateral actions" that could further worsen the tensions over Spratlys island chain.
2011	China - Vietnam	Three Chinese patrol boats damaged an oil exploration ship operated by Petro Vietnam (the state owned oil and gas company). Vietnam has accused China for escalating the long-running dispute over control of the South China Sea and breaching the 1982 UN convention on the law of the sea. China action has undermined the agreement to reduce tension over the South China Sea.
Early 2012	China - Philippines	Philippines and China are at odd once again over a territory ; called Scarborough Shoal by the Philippines and Huangyan Island by China. This territory located up to 100 miles from the Philippines and

²⁰⁷ Cited from *ABS News*, "China Denies 'Invasion' of South China Sea", July 25 2011 <http://www.abs-cbnnews.com/nation/06/02/11/china-denies-invasion-south-china-sea>.

		500 miles from China ²⁰⁸
2013	China - Philippines	I n c r e a s i n g militarization of Chinese presence in Scarborough Shoal and Thomas Second Soal has raised strong opposition from the Phillipines.

Source : US Energy of Information²⁰⁹

Aside from skirmishes that illustrated CHINA-ASEAN's claimants relationship over the conflicting area of the South China Sea, an open warfare nor a 'full-scale' conflict did not take place. It can be argued that China's compliance to promote peaceful settlements is also derived from strategic consideration, especially economy.²¹⁰ Nevertheless, claimants prefer peaceful dispute settlements in order to maintain and manage the tension. Thus, it did not undermine the 'enforceability' of the norm of TAC in influencing claimants' behaviour, especially China, in the South China Sea.

²⁰⁸ This recent clash drew quite heavy opinions from both side. The Phillipines supported Aquino's confronting arguments toward China, meanwhile in China people started to seriously advocating war. See BBC, 'China Bangs the War Drum over the South China Sea', 10 May 2012, <http://www.bbc.co.uk/news/world-asia-china-18016901>.

Mainly cited from the US Energy Information

²⁰⁹ http://205.254.135.7/EMEU/cabs/South_China_Sea/pdf.pdf.

²¹⁰ See footnotes 23 for detail information on ASEAN – CHINA economic relationship.

Conclusion

As norms and values constitute states' interest and identity. It can be argued that to some extent the norm of TAC actually works in influencing Beijing's stands on the settlement process of the overlapping claims in the South China Sea. It is indicated by China's compliances to sign the DOC in the South China Sea in 2002, followed by the signing of TAC a year after. Additionally, China's eagerness to promote peaceful dispute settlements were exemplified by Beijing's top government statements and its recent subtle agreement to pursue a Code of Conduct of behavior over the South China Sea.

The China - ASEAN's claimants relationship were painted by skirmishes, tensions, diplomatic tensions and hard rhetoric stances. Nonetheless, there was no open war taking place between claimants remembering how important this body of water is. This has underlined claimants' commitments to the norm of TAC in resorting to peaceful dispute settlements with regard to the South China Sea case.

In the other side of arguments, China's commitment to uphold TAC's norm of peaceful settlement is questioned due to the inconsistency of Beijing's behaviors with regard to the territorial dispute. In most of the cases China opts for diplomatic solutions, but it does not mean that China will restrain itself to what Beijing considers as violations to its sovereignty. Force is still an option, although it is not a key option. Based on the arguments above, it also can be argued that the norms of TAC solely can not fully restrain nor alter Beijing's behavior in the South China Sea.

However, arguing that TAC is completely useless in restraining claimants' behaviour is an impartial argument. Although the present of norm *solely* can not help scholars to understand the complex nature of the dispute, at some extent the norm of TAC does influence claimants' perception towards the dispute. By perceiving that the norm of TAC –peaceful settlement is the prominent norm that regulates the international relations in the region, states then must submit to its commitment in order to maintain the prevailing stability. Thus, norm itself is surely one of the consecutive parts of the whole picture and is needed to understand the complexity of the South China Sea dispute.

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