THE EFFICACY OF ASEAN WAY OF DIPLOMACY AND CONFLICT MANAGEMENT IN THE SOUTH CHINA SEA DISPUTE

BY

MR. NORBERTO TENORIO BONDOC

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN ASEAN STUDIES

PRIDI BANOMYONG INTERNATIONAL COLLEGE
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2017
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BY

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ENTITLED

THE EFFICACY OF ASEAN WAY OF DIPLOMACY AND CONFLICT MANAGEMENT IN THE SOUTH CHINA SEA DISPUTE

was approved as partial fulfillment of the requirements for
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on August 4, 2018

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ABSTRACT

ASEAN’s reputation has been strongly criticized by the international observers and academic scholars because of its continued adherence to the socio-cultural norms of non-intervention, consultation, and consensus-building, which came to be known as the ASEAN Way. It is also mocked as impotent regional organization that has no capacity or political will to deal with interstate and intrastate conflicts; and has no capability of coming up with a coherent position on what prove to be the most pressing issue, particularly the South China Sea disputes. Moreover, the ASEAN Way is also being criticized for being ineffective when it comes to dealing with difficult or contentious issues. The burgeoning argument between the Western belief that legal-binding and multilateral conflict management is the effective way to reach a successful dispute-settlement, and the ASEAN Way and bilateral management is more effective. The theoretical framework for this research relies on examining and analyzing the principles enshrined in the ASEAN Way of diplomacy and conflict management; mechanisms of dispute settlements, legal, and institutional documents of ASEAN. The constructivist approach was taken in to consideration however rigid adherence to the claims, ideas and principles of this theory was not dogmatically followed. The inputs and analyses made by
academic scholars and experts on ASEAN, ASEAN Way, conflict prevention, and conflict management particularly on the South China Sea disputes have guided, enriched and informed this research. This study explores the ASEAN Way of diplomacy and conflict management, particularly the cases in the Spratly Islands (Mischief Reef) and Scarborough Shoal; and aims to answer how effective and successful is ASEAN Way of diplomacy and conflict management in avoiding and in preventing conflict; and reducing the degree of conflicts on the South China Sea. Instead of focusing on the imperfections or flaws of the ASEAN Way as being ineffective in reaching a conflict resolution, this study concludes that the efficacy and success of ASEAN Way is evident in the conflict management through the ARF; joint workshops; inter-sessional groups on CBMs; informal meetings; China’s affirmation and ratification on the 2002 Declaration; ongoing consultations and negotiations on the Code of Conduct (CoC); strengthening the ASEAN-China Maritime Cooperation; consultations between PRC and RP on the South China Sea; and the absence of war in the region. ASEAN Way’s informal setting makes it more flexible than other mechanisms of dispute settlement and somehow an effective strategy of conflict avoidance or conflict prevention; and lessening the degree or intensity of conflict. Thus, ASEAN Way helps to maintain regional peace and stability.

**Keywords:** ASEAN, ASEAN way, efficacy, diplomacy, conflict management, conflict prevention, Spratly Islands, Scarborough Shoal, Mischief Reef, South China Sea
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TAC    Treaty of Amity and Cooperation
UN     United Nations
ZOPFAN Zone of Peace, Freedom and Neutrality
CHAPTER 1

Introduction

1.1 Background and Significance of the Research

1.1.1 Background of the Research

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

However, when it comes to tackling issues, ASEAN’s reputation has been strongly criticized by some scholars because of its continued adherence to the socio-cultural norms of non-intervention, renunciation of using force, non-involvement in bilateral disputes, quiet diplomacy, consultation, and consensus-building, which came to be known as the ASEAN Way diplomacy and conflict management (Guan, 2004). The efforts of ASEAN’s are mocked as ineffective as well as the organization for its lack of capacity or political will to resolve interstate and intrastate conflicts; and has no capability of coming up with a coherent position on what prove to be the most pressing issue, particularly the South China Sea disputes. Moreover, the ASEAN Way is also being criticized for being ineffective when it comes to dealing with difficult or contentious issues (Swanstom, 2001; Beeson 2017). According to Adriene Woltersdorf, Director of the Friedrich Ebert Foundation’s regional cooperation office in Singapore, the lack of cohesion of the member states in managing maritime disputes with China only shows that the ASEAN Way prevents real solutions and advancements (as cited in Ebbighausen, 2017). In another article, it was pointed out that since the end of Cold War, there
have been increasing number of conflicts in the region in which ASEAN Way of managing conflict ceased to function well (Oishi, 2015).

It was also argued that the changes in the ASEAN environment have changed the conflict management process to a low degree because ASEAN is not in control over the process (Swanstrom, 2001). There is also burgeoning argument between the Western belief that legal-binding and multilateral conflict management is the effective way to reach a successful dispute-settlement, and the ASEAN Way and bilateral management is more effective. It has also been argued that judicial settlement, made by an established court, is an effective solution. But is not always true that legal solution or judicial solution will satisfy all parties in dispute.

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

This paper suggests that instead of emphasizing on the flaws or weaknesses of the ASEAN Way as being ineffective in reaching a conflict resolution, particularly in the South China Sea dispute, it is however an effective strategy of in conflict avoidance or conflict prevention to maintain regional peace and stability. It argues that the ASEAN’s way of handling and managing conflict in the South China Sea is able to instill cooperative values, diplomacy and confidence building measures among conflicted states.

The rest of the study will be structured into four parts. In Chapter 2, I will discuss and review general concepts and terminologies such as conflict or dispute, conflict prevention, and conflict management; review the mechanisms of conflict management; define efficacy, success and failure of conflict management; explain the relevance of constructivism theory; revisit the historical underpinnings of the ASEAN Way of diplomacy and conflict management approach; and the ASEAN mechanisms of conflict management. In Chapter 3, I will thoroughly discuss the flashpoint of disputes in the South China Sea, clashing claims of
China and the Philippines, development of conflicts in the disputed area, and how ASEAN handle or manage the conflict through the ASEAN Way; and the options or approaches of both parties to defuse the tensions and to seek solutions on the South China Sea disputes. In Chapter 4, I will provide my analysis on the ASEAN Way of diplomacy and conflict management in the South China Sea before finally concluding this research.

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

1.1.2 Significance of the Research

This research will examine the efficacy and adaptive capability of the ASEAN Way of diplomacy and conflict management in the South China Sea conflict. The main focus of this research is to study the ways in which the ASEAN Way of diplomacy and conflict management has contributed to ASEAN’s ability or inability to address and to respond to the conflicts in the South China Sea. The results of this research will have a great impact to the organization on whether the qualities of the ASEAN Way or flexible interpretation of the ASEAN Way core principles can equip ASEAN to meet the emerging security challenges in an adequate and effective way.

1.2 Research Questions

This research attempts to answer the core question: Is the ASEAN Way of diplomacy and conflict management effective and successful in avoiding conflict or preventing conflict, and lessening the degree of the conflict in the South China Sea?
1.3 Delimitation and Selection of Cases

In the interest of brevity, on the disputed South China Sea, the focus of this research is on the incidents and disputes at Spratly Islands (Mischief Reef) and Scarborough Shoal. These cases have been selected as they reflect the different roles of the ASEAN Way has played in molding the results of conflict management. These cases in the South China Sea are viewed by ASEAN as a major flashpoint of conflict after the Cold War. Their importance is intensified by the existence of natural and mineral resources and their strategic location for national security. These incidents and cases will be used as examples to support my hypothesis and to draw conclusions on how the ASEAN WAY of conflict management has been applied between the disputants, the People’s Republic of China (PRC) and the Philippines.

1.4 Research Objectives

This research attempts to seek out answers to following core questions: How effective and successful is ASEAN Way of diplomacy and conflict management in avoiding conflict or preventing conflict; and in lessening the degree of the conflict in the South China Sea? And how the ASEAN Way informal approaches or mechanisms have been conducted in defusing the tensions in the South China Sea?

1.5 Theories and Analysis Framework

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

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

1.6 Research Methodology

1.6.1 Research Design

The research method adopted in this paper is a qualitative research method that aimed to answer research questions “How” and “Why” questions and geared toward complex phenomenon, exploration, and discovery (Patton, 2002, p. 363). Furthermore, he also argued that the goal of qualitative research method is to uncover emerging themes, patterns, concepts, insights, and understandings. This research method is a systematic subjective approach to examine, understand and give meaning to certain phenomenon, processes and related events. Moreover, this method is better suited for this study because this approach provides conceptual and methodological potential for the reinstatement of the question of meaning (Jovanovic, 2011).

1.6.2 Data Collection

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

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

The method used in this thesis is based on documentary research by searching and analyzing textbooks, articles, interviews, documentary videos, online journals, newspapers, government publications, scholars’ opinions, information available on the internet, and other relevant documents. In order to be unbiased with the outcome of my analysis, I included data and evidences obtained from the official documents of Philippine and Chinese authorities that explained their historical and legal bases, full text of the verdict of the Permanent Court of Arbitration (PAC), and other documents that contain conflict management in the South China Sea disputes. Moreover, I also take into considerations, without biased treatment, on the analyses made by scholars and experts about ASEAN, ASEAN Way, and conflict management in the South China Sea disputes.

1.6.4. Data Analysis Method

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

Kirsti Malterud (2001) stated that, “A researcher's background and position will affect what they choose to investigate, the angle of investigation, the methods judged most adequate for this purpose, the findings considered most appropriate, and the framing and communication of conclusions” (pp. 483-484). Contrary to her claim, my personal background, beliefs and position will not be an issue and/or affect any angle of the investigation or analysis on the subject being studied. In order to avoid such claim, it is therefore important
to consult, weigh and consider all possible interpretations and other alternative explanations relevant to the study to be more objective.
CHAPTER 2  
LITERATURE REVIEW

This chapter begins with the literature review of key concepts and related studies deemed necessary and worth mentioning in this study. This chapter briefly discusses and reviews the general concepts of conflict or dispute, conflict prevention and conflict management. Then briefly discusses some literature defining what an effective and successful conflict management is. It is also necessary to revisit what the mechanisms of conflict management are. Followed by a brief review of the usefulness of the theory of constructivism in understanding ASEAN Way of diplomacy and conflict management. Then discusses the ASEAN Way diplomacy and conflict management; and the historical underpinnings of the ASEAN Way. Lastly, before concluding this chapter, discusses the different ASEAN mechanisms of conflict management: formal mechanisms and informal and normative mechanisms.

2.1 General Review of Relevant Concepts: Conflict or Dispute, Conflict Prevention and Conflict Management

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

2.1.1 Conflict or Dispute

According to Ernst-Otto Czempiel (1981), “conflicts are not defined simply in terms of violence or hostility but also include differences in position vis-a-vis to the issue”
(p. 198). This definition of conflict includes behavior and attitudes; and conflicts beyond the traditional military domain. Another definition of conflict suggested by scholars is, “conflicts are perceived differences in issue positions between two or more parties at the same moment in time” (Swanstrom & Weissmann, 2005, p. 9). While Ramsbotham and Miall (2011) define conflict as, “the pursuit of incompatible goals by different groups or any political conflict whether pursued by peaceful means or by the use of force.” (p. 30). The usage of this definition applies to any political conflict whether it is pursued by peaceful means or by the use of force. The term conflict(s) can be referred to as dispute(s). According to the Judgement of the Permanent Court of International Justice (PCIJ) in The Mavrommatis Palestine Concessions (Greece v. UK), 1924 P.C.I.J (ser. A) No. 2, “dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between two persons” (Art. 1, para. 19). Thus, the case of China and the Philippines certainly possess these descriptions. Both parties are asserting their sovereign rights, maritime rights, and their interest to the Spratlys.

2.1.2. Conflict Prevention

According to Russett “conflict prevention and conflict management are general terms for methods and mechanisms that are used to avoid, lessen, manage disputes between opposing parties as cited in Swanstrom (2005, p. 5). While Clement (1997) described conflict prevention as “set of instruments use to avoid or to find a solution before a dispute or conflict progressed into active conflicts” (p. 65). It only means that the actions to prevent conflict before they become active and violent are designed to resolve, manage, or contain conflicts to shun from further escalation. Any processes operating to avoid the development of contentious issues and goal of incompatibilities are regarded as conflict avoidance (C.R. Mitchell, 1981).

The goal to prevent conflict has become one of the backbones that underpinned the United Nations system from the time of its conception. The UN Charter states that the purpose of the organization is “to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace and for
the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means…” (Article 1, paragraph 1, UN Charter). The UN’s purpose in the peace maintenance is also embodied in the League of the Nations (LN) covenant, which is to prevent war through collective security and disarmament and settling international disputes through negotiations and arbitration. This is how the term “preventive diplomacy” was coined and it is attributed to former UN Secretary General Dag Hammarskjold in 1960 (Lund, 2009; Babbitt, 2012). He then referred to “keeping regional conflicts localized so as to prevent their spill-over in to the super power arena” (Ackerman, 2003, p. 3). However, when the end of the Cold War brought unexpected intra-state wars in Yugoslavia, the same concept was revived by UN Secretary-General Boutros Boutros-Ghali’s in 1992 and redefined preventive diplomacy as “an action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur” (UN Agenda for Peace, 1992, para. 15) This conceptual breakthrough altered the moment for taking action back to an earlier stage when non-violent conflicts were evolving but had not escalated in to significant violence and armed conflict (Lund, 2009). Furthermore, Boutros-Ghali, in his *An Agenda for Peace* in 1992, reiterates that the primary aims of preventive diplomacy are: “to seek to identify at the earliest possible stage situations that could produce conflict, and try through diplomacy to remove the sources of danger before violence results”; where conflicts, to engage in peacemaking aimed at resolving the issues that have led to conflict; and in the largest sense, to address the deepest causes of conflict (Boutros-Ghali, 1992, Article 15). The 1992 *Agenda for Peace* also states that preventive diplomacy, peace-keeping, and peacemaking are integrally related. Peace-making is defined as “an action to bring hostile parties to agreement, essentially through peaceful means”, while peace-keeping as “the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned normally involving United Nations military and/or police personnel and frequently civilians as well” and a technique that expands the possibilities for both the prevention of conflict and the making of peace” (Part II, para. 20). The early definition provides a central understanding of the ultimate goals of preventive diplomacy which the United Nations have set specific tools included in the early preventive diplomacy arsenal such as confidence and build confidence;
informal and formal fact-finding missions, early warning, preventive deployment, and promotion of demilitarize zones (UN Agenda for Peace, 1992). Boutros-Boutros-Ghali (1996) redefined the concept preventive diplomacy as “the use of diplomatic techniques to prevent dispute from arising, prevent them from escalating into armed conflict […] and prevent armed conflict from spreading” as cited in Erik Melander (2007, p. 10). Since then concept of preventive diplomacy and conflict prevention has emerged. There has been a change from a focus on preventing inter-state conflict during the Cold War to preventing intra-state conflict in the post-Cold War (Emmers & Tan, 2009). This claim was agreed by Muggah and White (2013) that there was a change from state-led interventions with “supermen” mediators, such as diplomats or trusted individual, and a focus on interstate conflicts to regional and non-state engagement in intra-state conflicts (p. 6). Moreover, they argue that a “sprinkler system” of interventions is increasingly active to generate early prevention (p. 8). Regional bodies, sub-regional organizations, international organizations, NGO’s, governments, have increasingly taken up the language of preventive diplomacy and conflict prevention (Mancini, 2011). The Pacific Island Forum has mediated conflicts in Fiji (Muggah & White, 2013); Organization of American States (OAS) has facilitated resolutions in El Salvador, Guyana and Honduras (Lesser, 2012); Organization of Security and Cooperation in Europe (OSCE) have been closely engaged with preventive action initiatives, including Georgia, Macedonia, and Ukraine (Babbitt, 2012). The ASEAN’s creation of the ASEAN Regional Forum (ARF) in 1994 is mandated to help in the prevention and de-escalation of conflicts and disputes.

Michael Lund (2002) defines preventive diplomacy as, “any structural or intercessory means to keep intrastate or interstate tension and disputes from escalating into significant violent conflict for resolving such disputes peacefully, and to progressively reduce the underlying problems that produce these issues and disputes” (p. 117). This definition regards any techniques, strategies, mechanism, processes or method that prevent violent conflicts and fortify the magnitude of the two or more parties to lessen the degree of conflict. The perception of conflict prevention includes avoidance and resolution of conflicts, with several mechanisms such as mediation, peace-keeping, peacemaking, confidence-building measures, and track-two diplomacy (Tanner, 2000). According to Muggah and White (2013),
preventive diplomacy and conflict prevention are both intended to stop armed conflict before they escalate. Preventive diplomacy in practical terms, refers to the use of mediation and resolution to avert a descent in to war, while, conflict prevention is a broader concept referring to the monitoring, containment, and reduction of risk factors that shape war onset, intensification, and spread.

2.1.3. Conflict Management

Fred Tanner (2000) stated that the conflict management emphasizes on the limitation, mitigation and containment of conflict to lessen the degree of the conflict but without a necessary solution. According to Swanstrom and Wallensteen that in “the manner of active parties’ interactions, conflict management strongly suggests change from destructive to constructive confidence building measures (CBM)” (Swanstrom, 2002, p. 2; Wallensten, 1994, p. 53). This thus enhance the conflict management process particularly the informal mechanisms of conflict management. This will become the foundation for more effective conflict resolution. Their concept of conflict management is interrelated to idea of C. R. Mitchell (1981) which he defined conflict management as a way in which society attempts to deal with its inter-party conflict; to prevent the development of conflict situations; or once these have developed, to prevent them from resulting in disruptive conflict behavior; to halt the undesired conflict behavior, or remove its source, through some form of settlement agreement or resolution of the conflict” (C. R Mitchell, 1981; p. 256). This only means that armed conflict not certainly needed in containing or managing the conflict. However, in the event that conflict has been militarized the political and economic cost to settle or manage the conflict accelerate. In this case, confidence-building measures in both cases of formal and informal conflict management play a pivotal role in fortifying the conflict management process by establishing trust between active parties. The handling or managing of conflicts underpins for more effective conflict resolution. According to Zartman (2000) both the aspects of conflict resolution and the conflict management is expedient to achieve positive outcomes (as cited in Swanstrom, et al., 2005, p. 25).
Early literature argued that regional organizations help defuse conflict tensions by isolating and dividing local conflicts before they become intractable global issues (Burton, 1962; Fisher, 1964). Regional organizations may be effective at mediating conflict because their members states share common interests that make their actions more timely and effective (Moore, 1987). Some regional organization effectively carry out these strategies or mechanisms in managing conflicts, one in particular is ASEAN. The ASEAN had faced numerous conflicts and crises such as its relations with other member states. But the region had been able to handle or manage conflicts and crises. For that particular experience, it can be argued that the ASEAN as regional organization has been reasonably successful in managing regional conflicts. The following section, briefly reviews what makes conflict management successful and effective.

2.2 Success, Efficacy and Failure of Conflict Management

Jacob Bercovitch and Patrick M. Regan (1999) argued that there are little systematic evidences that identify the effectiveness of conflict management. They also pointed out that conflict management is widely perceived to be an attempt by differing actors or parties in conflict to lessen the degree of hostility and generate some order in their relations. According to them, conflict management connotes a mechanism that defined conflict as terminated or at least temporarily. It also a rational and conscious decisional process whereby differing parties or actors, with or without external assistance, push forth to transform, lessen or terminate a conflict in a mutually acceptable manner. Furthermore, they argued that the outcomes of conflict management can be of two kinds: success or failure. Bercovitch and Regan pointed out that the success of conflict management is when conflict management efforts resulted in a ceasefire, a partial, or a full settlement of the dispute. They also reiterated that that the effectiveness and success of conflict management is when it is able to defuse or lessen the degree of conflict, violence or hostility between parties. On one hand, failure is described as conflict management that had no impact on the level of conflict. In essence, under different strategies or methods of the conflict management is said to be successful when these efforts
ended up a complete resolution of differing parties or actors; mutually acceptable settlement, ceasefire or partial agreement; and reduction of or at least lessening or limiting the degree or level of destructive effects. Similar view was also expressed by Jacob Bercovitch (1983) that “the success or effectiveness of strategies or mechanisms of conflict management can be gauged by the extent to which they lessen conflict behavior and the extent to which they help to achieve satisfactorily” (p. 109).

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

C. R. Mitchell (1981) also pointed out that “the effectiveness of conflict management efforts, whether explicit or implicit, can be assessed by their success in helping parties or actors possessing incompatible goals to find some solution to their conflict; and in limiting the behavior employed by conflicting parties during the course negotiation to lessen the hostile attitudes and disruptive behavior caused by the conflict” (pp. 255-256). Similar view on the assessing the success of conflict management is also expressed by Ramsbotham, Woodhouse, and Miall (2005) and they defined success as “the conjunction of a de-escalation of political tensions and steps towards addressing and transforming the issue in the conflict” (p. 8).

### 2.3 Mechanisms of Conflict Management

C.R Mitchell explains that the “mechanisms for conflict management refer to the processes, methods, devices, techniques, and strategies used to resolve or manage a conflict” (Mitchell, 1981, p. 257). While Alagappa (1997) defines mechanisms as “strategies that regional organizations could be employed, based on the types of the conflict, such as intrastate or interstate conflicts, for prevention, containment, and termination” (p. 276). Furthermore,
Alagappa identifies that most of the strategies for managing conflict are familiar and available to ASEAN. The strategies or mechanisms primarily used by ASEAN are usually in informal setting, which is an important feature of intra-regional relations. Some of the available strategies to regional organizations are: norm setting, assurance, community-building, deterrence, non-intervention, isolation, intermediation, enforcement and internationalization (Caballero-Anthony, 2005). The setting of norms defines identities of the member states and influence its internal and international behavior in the political, economic, and security domain. Caballero-Anthony also articulated that the strategies used in the conflict prevention are assurance, community-building, and deterrence. Moreover, these strategies or mechanisms aim to lessen the degree of conflict, to build confidence, to abstain from using force and create a security community. Alagappa (1997) and Deutsch (1957) both have similar views on the idea of security community where deterrence strategies which include collective security and collective defense attempt to avert situation that might challenge security, member states must preserve the security of each and every state against a common adversary or threat.

The strategies which are employed and used in containing conflicts are non-intervention or isolation and intervention. Non-intervention or non-interference is when a regional bloc, which is a common norm practiced and adhered by ASEAN member states, avoids being involved in the domestic affairs or in any conflict. While isolation, is preventing the conflict spillover or spreading of the conflict through the participation of other states. According to Deutsch (as cited in Caballero-Anthony, 2005) “the intervention is the direct or active participation in a conflict through the use of collective defense and other available regional collective resources to control or to end up the conflict” (p. 24).

To resolve or terminate the conflict, the intermediation and internationalization are the strategies being employed. Karl Deutsch described it as non-partisan or non-coercive strategy to conflict resolution where two conflicting parties or states are encouraged to invoke regional or global dispute settlement mechanisms. While the strategy of internationalization is used when the regional organ interferes as negotiator or mediator.
2.4 Constructivist’s Approach

The concept of constructivism was first introduced by Nicholas Onuf to international relations. He proposed that human beings are social beings, and we would not be human but for our social relations. In Onuf’s *World of Our Making* (1989), as he had put it: “people and societies construct or constitute each other” (p. 38). In short, people make society, and society makes people.

Meanwhile, Alexander Wendt (1994) views the concept of constructivism as a structural theory of the international system that makes the following core claims:

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

In Wendt’s essay, *Constructing International Politics* (1995), he defined social structure as one that is “composed of intersubjective understanding in which states are so distrustful that they make worst-case assumptions about each other’s intentions, and as a result define their interests in self-help terms” (Wendt, 1995, p. 73). Constructivists believed that the building blocks of any social structure is intersubjective or shared perception and shared knowledge and ideas. Due to the shared nature or intersubjective understanding, ideas that make up the international structure are social.

In simple terms, Wendt believed that states exist within a world of our own making, and focus more on the integral components of social structures- shared knowledge and ideas, material capabilities, and state practices; rather than materialism. These integral components determine who the actors are, how each actor interact to each other, and whether their
relationship is susceptible to conflict, resolution, or cooperation. What is meant of shared knowledge and ideas by Wendt in his essay, are the norms and principles which can be either constitutive or regulative. Finnermore and Sikkink (1998) explained constitutive norms “create new actors, interests, or categories of action” and regulative norms “order and constrain behavior” (p. 891). Regardless of what these norms portray, the norms that are stronger will be more influential notwithstanding dependent variables such as identity, interest, individual behavior, or collective practices and outcomes. These norms and principles help shape not only states’ behavior, but also their identities and interests.

The focal point of constructivism in the study of states is on the constitutive effects of norms, ideas and social structure to how interstate develop (Wendt, 1992). Hence, interests are not independent of social context. Interests are constituted by the identities of the states, whether as friends or enemies, that emerged in the process of interaction to each member states (Wendt, 1992). On the other hand, Wendt argues that identities of the states are created by the structure of their interactions which are conceived by shared ideas Wendt also argued that “actors acquire the identities and interests through socialization and interaction externally given structures” (p. 397). Therefore, the constructivism theory stresses that the structures of interaction of states suggests that states’ identities as either friends or enemies, sequentially lead up their interests.

The ASEAN member states, from the viewpoint of the constructivists, though they are believed to be frail, they can demonstrate leadership through the promotion of norms and principles that can influence the behavior of powerful states such as China and the United States (Acharya, 2009). These norms and principles are enshrined in the so-called ASEAN Way of diplomacy as previously mentioned above. The ASEAN Way of diplomacy has imperfections or flaws that make the leadership inherently problematic as well as its effectiveness when it comes to dealing difficult or contentious issues, particularly the South China dispute.

In the context of studying ASEAN Way of diplomacy and conflict management, this approach draws attention to the ideational factors, to actors and agents beyond the state. Constructivism has put a lot of emphasis on the social interaction process and networking
among actors. These ideational factors are crucial in comprehending the nature of conflict management mechanisms in ASEAN and these explain why other mechanism are favored as a product of intersubjective understanding among actors and help to better figure out how and why unique and distinctive mechanisms in ASEAN have evolved and forged. Moreover, constructivism theory helps us grasp how the norms and principles enclosed in the so-called ASEAN Way of conflict management work in actual cases (Caballero-Anthony, 2005). Furthermore, norms help us to comprehend how these norms contained in the the ASEAN Way influence conflict management. The norms and principle that are encapsulated in the ASEAN Way such as non-interference, non-confrontation, quiet diplomacy, peaceful dispute settlements, and among others are the underlying bases on the kinds of formal and informal strategies of conflict management.

2.5 The Historical Underpinnings and Definitions of the ASEAN Way of Diplomacy and Conflict Management

The ASEAN Way was derived from the customary and traditional practices of consensus decision making in Indonesia, known as the system of musyawara-nufakat (consensus and consultation) (Swanstrom, 2001). In Indonesia, musyawara is a way by which a village leader makes an important decision which has often been observed in village meetings that could affect the social life in the village. A distinguished scholar of Indonesian politics describes musyawara as “a leader should not act arbitrarily or impose his will, but rather make gentle decisions of the path a community should follow, being careful always to consult all other participants fully and to take their views and feelings into consideration before delivering his synthesis conclusions” (Feith, 1962, p.40). In essence, nufakat or consultations are significant element of building consensus.

Amitav Acharya (2009b) described the ASEAN Way particular to regional security cooperation “as based on principles of sovereignty, non-intervention, peaceful resolution of conflict and consultation and consensus decision making” (pp. 54-98). On the other hand, in their respective studies in dispute management, two scholars have emphasized the distinctive
characteristics of the ASEAN Way of conflict management as: adherence to the ground rules enshrined in ASEAN’s various declarations and communiques; stress on self-restraint, acceptance of the practices of consultation and consensus, using third-party mediation to settle disputes and agreeing to disagree while deferring the conflict resolution (Caballero-Anthony, 1998; Hoang, 1998). This framework of conflict-settlement has evolved from the experience of dealing with the interstate conflicts, maritime disputes and territorial disputes that the ASEAN member states had faced from its inception. Its six well-known core principles are: sovereign equality, avoidance of the use of force, non-interference, quiet diplomacy, mutual respect, and tolerance. All adherents to these ASEAN principles, therefore, settle disputes peacefully. ASEAN way is more of a way of avoiding or preventing conflicts. This has been the norm of the all member states in ASEAN as far as interstate conflicts are concerned. These core principles were not an endemic construct (Jones & Smith, 2007) because prior to the ASEAN conception in 1967, known as Bangkok Declaration (See Appendix N), which is the founding document of ASEAN and laid the underpinnings for regional co-operation in Southeast Asia with the goals of regional peace and stability, these core principles were identified in the Charter of the United Nations 1945 Chapter 1, Articles 1 and 2:

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

**Art. 2.1** “The organization is based on the principle of sovereign equality of all its Members” (Articles 1 & 2, UN Charter, 1945).
The ASEAN took a stern interpretation of the UN Charter’s purposes and principles on the non-negotiable inviolability of state national sovereignty and non-intervention. These ASEAN principles were also stipulated in the Ten Principles of Bandung, a political document containing the codes of conduct in the efforts to promote world peace and world cooperation. This was the ramification of the 1955 Afro-Asian Conference in Bandung Java, popularly known as the Bandung Conference attended by Non-Aligned nations in Africa, Asia and Middle East in Bandung Indonesia (Weatherbee, 2015).

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

Five years after ZOPFAN was ratified by the original 5 members of ASEAN, to harden the mandate and to uphold these principles of non-interference or non-involvement in the internal affairs of member states, the other two basic documents the 1976 Treaty of Amity and Cooperation (TAC) and the ASEAN Concord were both signed at Bali, Indonesia in 1976 (Weatherbee, 2005).

The 1976 Treaty of Amity and Cooperation (TAC), a document that similarly reflects the core ideals of the United Nations (UN) Charter, stipulated the following core principles of conflict management (See Appendix B):

(1) “Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
(2) The right of every state to lead its national existence free from external interference, subversion or coercion;
(3) Non-interference in the internal affairs of one another;
(4) Settlement of difference or disputes by peaceful means;
(5) Renunciation of the threat or use of force; and
(6) Effective co-operation among themselves” (Chapter 1, Article 2, 1976 TAC).

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

The ASEAN Concord (1976) endeavors to promote peace, progress, prosperity and the welfare of the people of member states; and emphasizes enhancing cooperation among the members through economic, social, cultural, and political (See Appendix E). Therefore, the settlement of differences or disputes between member states should be regulated by rational, effective and sufficiently flexible procedures, avoiding negative attitudes which might endanger or hinder regional cooperation, peace, and stability.

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

2.6 ASEAN Mechanisms for Conflict Management

2.6.1 Formal Mechanisms

From the time of ASEAN’s conception in 1967, various mechanisms for conflict management have been created to relentlessly maintain regional peace and stability. In this section, I will briefly discuss some mechanisms that have been invoked and preferred by ASEAN in managing and handling intrastate and interstate conflicts and other issues. The formal and informal or normative mechanisms are the two important types of mechanisms thereafter created by ASEAN. The formal mechanisms are sub-divided as follows: institutionalized framework of discussions and consultations of mutual interests; institutionalized bilateral mechanisms and processes; and the legal instruments to prevent and to manage conflicts (Caballero-Anthony, 2005).

The institutionalized framework of consultative mechanisms is demonstrated in the establishment of various ASEAN meetings conducted regularly by the ASEAN officials. These meetings are as follows: (1) The ASEAN Summits, (2) The ASEAN Ministers Meetings (AMM), (3) The ASEAN Post-Ministerial Conference (PMC); and (4) The ASEAN Senior Official Meeting (SOM). These were all formulated in the Bangkok Declaration in 1967. The ASEAN Summits are held informally annually and semi-annually between their formal summits by the member states to improve ASEAN’s capacity to set policy directions and to discuss regional issues; and to promote economic, political, socio-cultural and security cooperation. These summit meetings are considered the most observable institutionalized mechanisms because it is where the top level decision-making takes place. The 1st ASEAN summit was held in Bali in 1976 after nine years of establishment of ASEAN. It was in this Summit were the consultative meetings were given importance in the Declaration of ASEAN Concord 1976. The ASEAN Concord deepen the political co-operation. The ASEAN Ministers Meetings (AMM), is the second highest level of decision-making in ASEAN. The
meetings are held annually and sometimes held for a specific purpose only. The ASEAN ministers from different sectors such as environment, education, health and labor also meet to discuss pertinent issues.

The ASEAN Post-Ministerial Conference (PMC), where ASEAN Foreign Ministers meet their counterparts from the dialogue partner countries, such as Australia, Canada, China, the European Union (EU), India, Japan, the Republic of Korea, New Zealand, Russia and the United States (ASEAN Secretariat). This is a venue for the Foreign Ministers to address security concerns. Eventually, the ASEAN Regional Forum (ARF) in 1994 was established primarily tasked for consultations on security matters.

The ASEAN Senior Official Meeting (SOM) was first convened in 1987 that aims to assist the ASEAN Foreign Ministers in relation to political co-operation. There were also special Senior Official Meetings held where the political and defense officials of every member states in ASEAN meet up to strengthen the political and security co-operation. In matters related to economic co-operation, the ASEAN Senior Economic Officials Meeting (SEOM) was created (Flores, 2000).

In essence, these various ASEAN meetings have created venues for dialogue and consultation and strengthened the bilateral avenues for co-operation and conflict management; have intensified and established trust and confidence among member states for political co-operation; and have strengthened interaction or socialization process of the ASEAN political leaders.

While the institutionalized bilateral mechanisms and processes had been established not only to address security issues but also to discuss matters pertaining to mutual interests. These meetings serve to improve bilateral relations and to foster better understanding between member states.

On the other hand, the 1976 Treaty of Amity and Co-operation (TAC) is the only attempt of ASEAN to provide the arrangement and the legal instrument for member states to order their relations according to the principles stipulated to peacefully resolve conflicts or disputes. Article 15 of the Treaty is enabled to recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. If the disputing
parties so agree, it may constitute into a committee of mediation, inquiry or conciliation (ASEAN Secretariat, 1994). The Treaty has given the ASEAN a particular and formal mechanism for the peaceful conflict or dispute settlements. However, the High Council has not been established and it can be argued that no member state has invoked to any of the given provisions because of the following limitations of the Treaty: no specific provisions or requirements to seat in the High Council; and the assumption of role of the High Council only takes place when there is no conflict resolution (Muntarbhorn, 1986). These limitations have demonstrated flexibility in its procedures and have emphasized that the Treaty has given the member states the freedom of choice to decide on what suits them best. Although the Treaty of Amity and Cooperation (TAC) is legal binding, it lacks of efficiency due to the will of the ASEAN member states themselves. It only proves that TAC is not an option for settlement of disputes among ASEAN members states because most of the member states hesitate to solve their disputes by legal means. The freedom to choose and flexibility of procedures raised a level of comfort that entails the avoidance of open disagreement among the ASEAN member states. According to Caballero-Anthony (2005) the flexibility of procedures appears to work in ASEAN’s advantage and it has made the exercise of conflict management a more manageable task for ASEAN.

Another mechanism for conflict management is the Declaration of the Zone of Peace, Freedom and Neutrality (ZOFPAN). It is also an important ASEAN document ratified for the purpose of guiding and defining ASEAN’s relations towards other states. ZOFPAN reiterated that every state has the freedom of from external interference in its domestic affairs (See Appendix C). Although ZOFPAN is not a legal document and it does not impose legal obligations to its members, it had laid down the ideas of what code of conduct of ASEAN should be within the region or outside the region (Hanggi, 1991).

The TAC and ZOFPAN have never been fully utilized and no dispute has been brought for ASEAN as corporate entity to resolve. Conflict management and resolution are dealt and managed bilaterally (Caballero-Anthony, 2005). In sum, the formal mechanisms have helped the ASEAN member states to order and to structure their relationship with each other.
2.6.2 Informal and Normative Mechanisms

In the previous discussion, the literature of conflict management revealed that the formal mechanisms of conflict management were not fully used or practiced by the ASEAN members states. This suggested that formalistic and legalistic procedures of conflict management and institutions of conflict resolution are not preferred by ASEAN member states. As Acharya (1997) had put it, “the virtues informality over structured, formalistic, and legalistic procedures have been seen by decision-makers in Southeast Asia as an important feature of intra-regional relations” (p. 329). It clearly indicated that the informal mechanisms of conflict management is the preference of ASEAN. Moreover, the ASEAN’s informal mechanisms of conflict management are restricted within the framework of avoiding, containing and preventing conflict to maintain regional peace and stability in the region. In the case of ASEAN, conflict avoidance is not directly confronting certain issues but allowing the conflict to lapse over time. The degree of conflict or disputes is lessened and was no longer considered relevant (Askandar & Oishi, 2002). The preference of conflict avoidance in ASEAN has necessitated the association to absorb the norms and informal process or patterns of behavior to achieve the aims of avoiding conflict in the region. These norms and behaviors are enshrined in the ASEAN Way. The ASEAN Way as described by Acharya as a process of identity building which relies upon the conventional modern principles of inter-state relations as well as traditional and culture-specific modes of socialization and decision making that is prevalent in Southeast Asia (Acharya, 2001). He also articulated that the ASEAN Way is about the process through which such interactions are carried out. The socialization process requires the development of certain behaviors such as discretion, informality, consensus-building, and non-confrontational building. While Jurgen Haacke (2003) described the ASEAN Way as normative framework in mediating disputes, guiding interaction and underpinning process of identity construction. Furthermore, he defined ASEAN Way as a set of behavioral norms interstate relations among ASEAN members states intended to allow each member state to pursue policies of development and political consolidations without having to be concerned about unstable external relations. Fundamentally, the ASEAN Way is about managing disputes and mechanisms for collective decision-making (Haacke, 2003).
The elements of these ASEAN informal mechanisms are follows: (1) diplomacy of accommodation, (2) consultation and consensus, (3) networking, (4) agreeing to disagree, and (5) third-party mediation.

The diplomacy of accommodation in conflict management involves mutuality among members states and is bound by ground rules of restraint, respect, and responsibility. In the context of managing disputes, restraint means tolerance and non-intervention. Respect is observed when member states adhere to the ground rules or ASEAN’s practices to decision-making done through consultation and consensus. Lastly, responsibility is the carefully minding of the member state’s interest and awareness of the effect of the domestic policies towards other members (Antolik, 1990). This type of informal mechanism was observed and applied in the territorial dispute over Sabah between Malaysia and the Philippines in 1968. Inspite of the military threats and show of military force within these two member states, restraint was exercised to the fullest. The respect was seen in the Philippines when the diplomatic directive questioning the competence of Malaysia in the representation of Sabah in various meetings was withdrawn. Moreover, Malaysia and the Philippines both hold on to Indonesia’s interference to agree to a cooling off period. The responsibility was demonstrated in the sensitivity of both claimants over Sabah the drawback or pitfall of their ongoing internal issues at the same time with their disputes vis-a-vis to Sabah (Caballero-Anthony, 2005). The diplomacy of accommodation also worked during the Indonesia-Singapore crises in 1968. The crisis was triggered by the hanging of two Indonesian marines in Singapore after being found guilty of sabotage in Singapore during the Konfrontasi period in October 1968. Indonesian Prime Minister Adam Malik and former President Soeharto took the initiative to diffuse the conflict and intervene in the conflict management. Next is the ASEAN’s preference to the practice of consensus (mufakat) and consultation (musjawarah or masyawarah). According to Acharya (1997) the concept of consensus is a common norm and a particular style of decision making in many Asian countries. Herb Faith (1962) describes consensus as “a leader should act arbitrarily or impose his will, but rather make gentle suggestions of the path of a community should follow, being careful always to consult all other participants fully and to take their views and feelings into consideration before delivering his synthesis or conclusions” (p. 40). While
M. J. Nam (1995) argues that in the context of ASEAN, consensus means seeking for the fusion of the most acceptable ideas of each member. The unanimous decision on a particular regional issue or problem is reached through a process of consultation (musyawarah). The process of decision-making and consultations in several informal meetings are usually conducted behind closed doors. So if there are disagreements during these informal meetings especially on contentious issues that need to be discussed, these do not come out publicly to save faces and maintain good relations between parties. However, according to Thambipillai and Saravanamuttu (1985) the ASEAN’s style of decision-making is a long-drawn process and floated for extensive discussions in coming out with one common stance or unanimous decision. Although the process is incremental and slow, there are advantages that cannot be disregarded. As a conflict management mechanism, it recognizes every member state has an equal opportunity to voice out its position, it provides a venue to get along well with officials of every member state, and develops the awareness of each member’s interest and sensitivities in matters of political, economic, and security issues. This explained why the practice consensus and consultation have succeeded in ASEAN. Another informal mechanism that speed up decision-making and that promote trust and confidence is through networking among ASEAN officials and leaders. Through the various official regular meetings, ASEAN officials and leaders developed closeness, made them aware of each other’s internal issues, fostered understanding of other’s view on certain policy initiatives, and strengthened better relations. In essence, it made the informal mechanism of agreeing to disagree to be adopted as another strategy for conflict management. According to Hoang (1996) agreeing to disagree is shelving disagreement for later settlement. Similar view to what Acharya (1997) had stated, “sweeping controversial issues under the carpet” (p. 332). As what critics argue “not dealing with underlying tensions but by simply ignoring them” (Jones & Smith, 2006: p. 71). This happened when consultations and negotiations among member states have become a deadlock or no progress. The agreeing to disagree allows member states to buy time and to avert being affected by controversial issues or problems and eventually come to an agreement. Caballero-Anthony (2005) articulated that the essence of employing the informal mechanism of agreeing to disagree for conflict management strengthened the ASEAN’s approach to managing
conflicts or resolving disputes. Once the member states have reached the comfort level and eliminated the distrust, the long-drawn process and incremental process, is still the effective way. The last element of the informal mechanism and normative mechanisms according to Caballero-Anthony is the third-party mediation, which is a mechanism of bringing in third party actors to mediate in times of disputes. Bercovitch and Rubin (1992) define third party mediation as process of conflict management related to but distinct from the parties’ own efforts, where the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change or influence their perceptions or behavior, without resorting to a physical force, or invoking the authority of the law. These third-party mediations are usually done and conducted in closed doors and in a quiet diplomacy. This informal style of dispute management was not followed officially by ASEAN (Hoang,1996). Arguably, ASEAN member states follow the established norms and traditions which use political, diplomatic and relation-based approaches to prevent and resolve their conflicts rather than legal-binding approaches. Although the third-party mediation was not officially adopted, during the Malaysia-Philippine dispute over Sabah, Indonesian President Soeharto played a pivotal role in encouraging disputants to agree to the cooling-off period to normalize its bilateral relations. It is also worthwhile to mention the intervention and mediation of the former Thailand Foreign Minister Thant Khoman between 1959 and 1971 to improve the bilateral relations of Malaysia and Indonesia during the Konfrontasi period. This has led to series of meetings and between the two members states until the end of the Konfrontasi and change of Indonesian leadership. Some ASEAN members, particularly the Philippines, have actively tried to engage USA and Japan as third party mediators in 1999 to vis-a-vis to the the South China Sea disputes but China refused and ASEAN is divided over the importance to engage other nations (“South China Sea Morning Post”, March 1999). The territorial disputes over the ownership of Pedra Branca or Pulau Batu Puteh, between Malaysia and Singapore (Malaysia v. Singapore, 2003). The Court consequently awarded sovereignty over Pedra Branca or Pulau Batu Puteh to Singapore in 2008. The islands of Ligitan and Sipadan between Malaysia and Indonesia were endorsed to the International Court of Justice (ICJ) to determine the sovereignty of these islands (Indonesia v. Malaysia, 1998). The Court
concluded that the sovereignty over Pulau Ligitan and Pulau Sipadan belonged to Malaysia. The Court concluded that sovereignty over Pulau Ligitan and Pulau Sipadan belonged to Malaysia. The claimants or disputants have agreed to adhere to the Court’s judgment.

2.7 Summary

This chapter has defined theoretical concepts related to conflict prevention and conflict avoidance as well as theories and definitions used to describe successful and effective conflict management. In the discussions that followed, the core intentions of conflict prevention and conflict management are to de-escalate, to mitigate and to ease the tensions before they become global issues and result to violence. It is also noted that the outcomes of conflict management could either be a success or failure. The success and efficacy of conflict management is when is able to lessen or defuse the tensions of both parties with incompatible goals; when it efforts, strategies or methods resulted to partial agreement or full settlement of disputes. The various conflict management strategies and mechanism that ASEAN have created from the time of conception were identified to maintain regional peace and stability. The norms and principles which are encapsulated in the contemporary global collective security agreement such as the United Nations Charter, 2008 ASEAN Charter, TAC, and ZOPFAN have become the cornerstones in the underpinnings of the ASEAN Way of diplomacy and conflict management. The ASEAN Way of diplomacy and conflict management which by definition implies consultations and consensus building, conflict prevention, confidence-building, instilling cooperative values, avoidance of the use of force, and peaceful settlement of disputes. The theory of constructivism can be helpful in understanding the uniqueness of the ASEAN Way of diplomacy and conflict management and in grasping how the norms and principles of the ASEAN Way work in managing regional conflicts, intrastate conflicts, and territorial disputes.

The literature suggested that the use of non-binding mechanism seemed to be a significant development for an organization that had been uncomfortable in employing legal-binding dispute settlement mechanisms and institutions. Although this type of mechanism is beyond the ASEAN framework, third party mediations ensure that conflicts or disputes can be
settled objectively without members states having to lose faces. In general, the literature revealed that ASEAN’s preference to informal types of mechanism of conflict management over legalistic procedures and binding conflict resolutions, not only because ASEAN lacks institutional capacity in conflict resolution, but also because of their ultimate goals of inculcating trust and confidence among member states. The ASEAN lack of institutional capacity means that the ASEAN lacks more institutions or clear presence of regional institutions that handle the conflict mediation and prevention issues (Agus, 2010).
CHAPTER 3

Flashpoint of Disputes on the South China Sea (West Philippine Sea)

This chapter sets the background and the issues of the South China Sea or “West Philippine Sea” (referred to by the Philippines) disputes. Secondly, it presents qualitative studies relying on descriptive and case information based on historical summaries, evidences and claims of the two claimant countries, China and the Philippines to better understand the position of both actors, China and the Philippines in the South China Sea vis-a-vis to the disputed islands, namely the Spratly Islands (Mischief Reef) and the Scarborough Shoal. Thirdly, identifies the conflict management efforts and role of ASEAN in attempting to de-escalate or defuse the tensions on the South China Sea dispute. Then discusses the Philippine approaches in pursuit of finding solutions to the South China Sea disputes. Finally, concludes the chapter by analyzing the opposing claims of China and the Philippines; and the outcomes of the ASEAN efforts, initiatives, and conflict management attempts on the South China Sea dispute.

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

The South China Sea (SCS) or the West Philippine Sea is geopolitically an extremely significant body of water and it is one the world’s busiest trade routes. The South China is grouped into three archipelagos namely, Paracels, Spratlys, and Scarborough Shoal. These archipelagos consist of approximately 250 small islands (Chalk, 2014). These mostly uninhabited islands are subject to competing claims of sovereignty by several ASEAN member states driven by economic prospects and energy resources. Among the disputed islands, the Spratly Islands have become the major arena of a competition for sovereignty rights by several ASEAN member states because of their speculations that the surrounding areas contain extensive oil and gas resources. Such speculations have given the Spratly Islands great
strategic value, and have fueled disputes over ownership. The overlapping sovereignty claims of each of the claimant’s Exclusive Economic Zone (EEZ) remains an issue.

The territorial and maritime issues in SCS have been in existence since the 1930s, but the case of the Philippines against China is a direct result of very recent events arising out of the long-festering dispute between the two countries. China and the Philippines are both claiming, either in whole or in part, the Spratly Islands, along with Taiwan, Malaysia, Brunei, and Vietnam (Del Callar, 2014). Each has attempted to assert their maritime zone jurisdictions and control of either parts of, or the entire island chain itself by invoking their respective interpretations of history, national and international laws. The ASEAN jurisdicational and sovereign rights to zones are under tremendous great political, economic, and military challenges from China. The root cause of this longstanding securities issues in the ASEAN region can be attributed to the 1951 Treaty of Peace with Japan. Japan’s relinquishment of “all rights, title and claim to the Spratly Islands and to the Parcel islands” was problematic because Japan did not specify which country has sovereignty or has right, title and claim to the maritime features in the South China Sea (Treaty of Peace with Japan, 1951, Article 1b).

3.2 Opposing Claims of China and the Philippines over the Spratly Islands and the Scarborough Shoal

3.2.1 China’s Sovereignty, Interest and Maritime Rights in the South China Sea

According the official statement of the People’s Republic of China on its territorial sovereignty, interests, and maritime rights in the South China Sea in 2016 (See Appendix Q), China affirms that:

(1) “China is the first to have discovered, named, explored and
exploited the Nanhai Zhudao, popularly known as the South China Sea, and relevant waters.

(2) China is the first to have exercised sovereignty and
(3) jurisdiction over them continuously, peacefully, and effectively.

(4) China’s legal instruments, such as the 1958 Declaration of the Government of the People’s Republic of China on China’s Territorial Sea, the 1982 Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone, the 1998 Law of the People’s Republic of China on the Economic Zone and the Continental Shelf and the 1996 Decision of the Standing Committee of the National People’s Congress of the Republic of China on the Ratification of the UN Convention on the law of the Sea (UCLOS), have further reaffirmed China’s territorial sovereignty, interest and maritime rights in the South China Sea.

(3) Based on the practice of the Chinese people and the Chinese government in the long course of history and the portion of consistently upheld by successive Chinese governments, and in accordance with the national law and international law, including the United Nations Convention on the Law of the Sea, China has sovereignty and interests, maritime rights in the South China Sea.

(4) China is always firmly opposed to the invasion and illegal occupation by certain states of some island and reefs of China’s Nansha Qundaon, and activities infringing upon China’s rights and interests in relevant maritime issues under China’s jurisdiction. China stands ready to continue to resolve the relevant disputes peacefully through negotiation and consultation with the states directly concerned on the basis of respecting historical facts and in accordance with international law. Pending final settlement, China
is also ready to make effort with the states directly concerned to enter into provisional arrangements of a particular nature including joint development in relevant maritime areas, in order to achieve win-win results and jointly maintain peace and stability in the South China Sea.; and lastly

(5) China respects and upholds the freedom of navigation and overflight enjoyed by all states under international law in the South China Sea, and stays ready to work with other coastal states and the international community to ensure the safety of and the unimpeded access to the international shipping lanes in the South China Sea” (para. I-V).

The Government of China clearly states that their claims in the South China Sea has historical bases. Although China never made an official “historic claims” to the water within the South China Sea (Hayton, 2014, p. 165). The activities of Chinese people in the South China Sea can be traced back from early discovery and exploration during the Qing Dynasty (Livingstone, 2006). China’s sovereignty, rights and interests over Nanhai Zhudao or the South China Sea have been established and strongly grounded in history, national and international laws. Moreover, from China’s perspective, the Law of the Sea (UNCLOS) defined their sovereign rights and jurisdiction over waters surrounding the South China Sea.

### 3.2.2 The Controversial Nine-Dash-Line on China’s Map

The origin of the *Nine-Dash-Line* or *9-Dash Line* appeared on Chinese map as *11-dash line* which was drawn up in 1947. The *Nine-Dash-Line* or *9-Dash Line* eventually emerged and was published by the government of the People’s Republic of China in 1948. When the People’s Republic of China was founded in 1949, two dashes were removed to bypass the Gulf of Tonkin as a gesture to communist comrades in North Vietnam (Liu, 2016). Within the demarcation line or dashes were key archipelagos
namely: Spratly Islands, the Paracel Islands, and Scarborough Shoal. China claims a big backyard in the South China Sea. The nine-dash line drawn in a u-shape around the South Sea, as shown in figure 1, encompassing almost the entire South China Sea, and close proximity to the mainland territories of East Malaysia, Vietnam and the Philippines.

Figure 1.1 Map of China's Nine-Dash Line (known as U-Shaped Line)
Sources: EIA, Middlebury College, National Geographics, CIA Factbook
Note: This map was retrieved from http://www.southchinasea.org/files/2014/09/China-claims-a-big-backyard.png
The dashes run as far as 2,000 kilometers of the Philippines, Malaysia and Vietnam (“South China Morning Post”, July 2016). Chinese analyst articulated that before the UNCLOS came into force in 1994, cannot deny China’s demarcation line which its 9-dash-line map to the United Nations, stating it “has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed” (“Timeline”, 2016). Its historic rights and indisputable sovereignty within the South China Sea conflict with are predated by the 1982 UN Convention International Law of the Sea (UNCLOS), within the South China Sea areas falling within the 9-dash-line map. This map covers 80 to 90 percent of the South China Sea including large parts of the Philippines’ Exclusive Economic Zone (EEZ) (Liu, 2016). Moreover, China’s claims of these islands within the Nine-dash-line has foundations in the international law particularly the customary law of discovery, occupation and historic titles, and their maritime claims are based from the provisions of the UNCLOS (Gao & Jia, 2013). The Exclusive Economic Zone (EEZ) is one of the core innovations in the law of the sea, and of the 1982 Unite Nations Convention on the Law of the Sea (UNCLOS). The Article 55, Part V (UNCLOS) defines EEZ as “an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention” (Article 55, Part V, UNCLOS). In 2009, the Government of China submitted coastal State and the rights and freedoms of other States are governed by the relevant provisions of this convention. In essence, within the EEZ, a coastal State can enjoy sovereign rights over its natural resources and can exercise its jurisdiction over certain activities for the purpose of protecting the environment (See Appendix J). But the coastal state is obliged to respect the rights of other states, such as the freedom of navigation. It can be argued that both China and the Philippines have sovereign rights in accordance to the provision of UNCLOS. In respect of the sovereignty claim of China over the island in the South China Sea, China must have solid evidences to support or to prove that no other state have a better rights than China and China must prove that China did not abandon her continuous display of sovereignty.
However, China did not join the case and that is why it is quite hard to ascertain that such China’s claims are valid.

The three ASEAN member states who were against and objected China’s claim over the South China Sea were Vietnam, Indonesia, and the Philippines. These claimants argued that China’s claim was without legal basis under the 1982 UNCLOS. Under the 1982 UN Convention of the Law of the Sea, coastal nations get an exclusive economic zone (EEZ) 200 nautical miles from their shores. In that zone they have sole exploitation rights over natural resources, freedom of navigation and but does not have exclusive over flight rights. The territorial sea up to a limit not exceeding 12 nautical miles are territorial waters, where a State has full sovereignty (Section 2, Article 3, Part 2, UNCLOS).

3.2.3 The Philippine’s Sovereignty, Interest and Maritime Rights in the South China Sea

In recent years, the official position of the Philippines was not to claim sovereignty over or ownership of these islands and regarded by the Philippines as being not part of the Spratly Islands but as terra nullius or nobody’s islands (Severino, 2010). Bill Hayton (2014) described terra nullius as “empty land” and therefore such “territory can be acquired through occupation” (pp. 92-93). In international law terra nullius is a territory which has never been subject to the sovereignty of any state, or over which any prior sovereign has expressly or implicitly relinquished sovereignty and which is therefore subject to acquisition by occupation (Yorac, 1983). In 1930s, when France and Japan acquired the islands. When Japan was defeated during WW II, Japan surrendered its sovereignty over the islands in the San Francisco Treaty of 1951. The turning over of the sovereignty or right to the islands did not include any country who has sovereignty over them. China and Vietnam’s claims in particular can be traced back thousand years ago, while the Philippines’ claim only asserted its position in 1956 when former Philippine Admiral Tomas Cloma unilaterally declared a state of 53 features in the South China Sea, calling it “Freedomland” (which is
translated in Philippine local language, *Kalayaan*. This “Freedomland” or also known as Kalayaan Group of Islands (KIG) in the West Philippine Sea, is the name Cloma gave to Nansha group of islands, islets, atolls, reefs shoals, adjacent waters, and among others. At that time, Cloma declared all these islands as nobody’s islands or undiscovered territory. However, the Philippine government remained unsure of Cloma’s claim. Cloma transferred his claim to the Republic of the Philippines in 1974.

The Philippines did not assert its claim to these islands until June 1978. The Spratly Islands aren’t mentioned in following documents and treaties: 1898 Treaty of Paris, Treaty of Peace Between the United States and Spain; the 1900 Treaty between the Kingdom of Spain and the United States of America for cession of outlying islands of the Philippines; the 1930 Convention between the United States of America and Great Britain delimiting the boundary between the Philippine archipelago and the State of North Borneo; the “National Territory” according to the Article 1 of the 1935 Constitution of the Philippines; and lastly an “An Act to Define the Baselines of the Territorial Sea of the Philippines” of the 1961 Philippine Republic Act No, 3046. In June 1978, former Philippine President Ferdinand Marcos issued Presidential Decree No.1596, s. 1978, declaring cluster of islands and islets in the South China Sea situated within the Kalayaan Island Group, due to their proximity, are part of the continental margin of the Philippine archipelago (See Appendix K). It is also articulated in the Presidential Decree No. 1596 that the areas are *terra nullius* or nobody’s islands. In essence these areas are not legally owned by any state or nation and by reason of history, indispensable need, and effective occupation and control established in accordance with international law, such areas be deemed belong and subject to the sovereignty of the Philippines. This declaration was a strong attempt of the Philippines to provide legal basis for its sovereignty and maritime rights as part of the Philippine territory. Contrary to Continental Shelf regime, the coastal State can exercise its sovereign rights only for the purpose of exploring it and exploiting its natural resources; and coastal State cannot have sovereignty over it (Part V, Article 77, para. 1, UNCLOS).

The Republic of the Philippines has two major claims in the South China Sea over the Mischief Reef (known under Filipino name Panganiban Reef), northeastern part
of the Spratly Islands, which Philippines administers as Kalayaan Group of Islands (KIG), and the Scarborough Shoal (known under Filipino vernacular as “Panatag Shoal”). As shown in figure 1.2, the water features within the dotted line marked PD 1596, stands for the Presidential Decree 1596, are the Philippine claims. In the northern part of the South China Sea is the Scarborough Shoal which is also claimed not only the Philippines and China but also by Taiwan. The Scarborough Shoal is the largest atoll in the South China Sea. It is approximately 120 miles off the west coast of Luzon and it is within the 200 nautical mile exclusive economic zone (EEZ) of the

*Figure 1.2. Map of Philippine Claims Outside of the Main Archipelago: Scarborough Shoal and Spratly Islands (Kalayaan Group of Islands)*

*Source:* Center for Naval Analyses, VA

Philippines and the continental shelf. The Shoal is 500 nautical miles away from the physical cost of China.

The Republic of the Philippines has two major claims in the South China Sea over the Mischief Reef (known under Filipino name “Panganiban Reef”), northeastern part of the Spratly Islands, which Philippines administers as Kalayaan Group of Islands (KIG), and the Scarborough Shoal (known under Filipino vernacular as “Panatag Shoal”). As shown in figure 1.2, the water features within the dotted line marked PD 1596, stands for the Presidential Decree 1596, are the Philippine claims. In the northern part of the South China Sea is the Scarborough Shoal which is also claimed not only the Philippines and China but also by Taiwan.

The Scarborough Shoal is the largest atoll in the South China Sea. It is approximately 120 miles off the west coast of Luzon and it is within the 200 nautical mile exclusive economic zone (EEZ) of the Philippines and the continental shelf. The Shoal is 500 nautical miles away from the physical cost of China.

The Philippines perceives China’s 9-dash-line claim, whatever its historical and sovereign rights, to be ambiguous as to what, exactly, the Chinese claims are. For example the entirety of the territory and water within the 9-dash-line; all land features within the 9-dash-line, plus the maritime area that those features command under the terms of the United Nations Convention on the Law of the Sea (UNCLOS) (e.g., in certain cases, 12-nautical mile territorial seas and 200- nautical mile exclusive economic zones); only the land features but not the adjacent waters; only the UNCLOS- claimable land features, but not certain other land features or waters; or some other configuration of land and/or water (Santos, 2016). Contrary to the China’s 9-dash line, Philippine Supreme Court Senior Associate Justice Antonio Carpio, in his primer on “The South China Sea”, he said that “China did not explain the meaning or the basis of 11-dash lines or 9-dash lines. China did not also give the coordinates of the 11 dashes” (“GMA News Online”, July 2016).

Furthermore, according to Swanstrom (2001), the three legal bases of the Philippines for its maritime claims in the Mischief Reef and the Scarborough Shoal are as follows: (i) 200 nautical mile Exclusive Economic Zone (Art. 56, 1982 UNCLOS); (ii) these maritime features are very close to the Philippines; and (iii) historical rights as the ancestral
domain of the Sultanate of Sulu during the Mahjayahit and Shrivijaya Empire, which extended from Sabah (North Borneo, to the Sulu archipelago, Palawan, parts of Mindanao, the islands now known as the Spratlys, and up to the Visayas and Manila (Somoso, 2011).

The rights, jurisdiction and duties of the coastal state, particularly in the Philippines, in the Exclusive Economic Zone (EEZ) are articulated in the Article 56 of the UNCLOS. The EEZ states that coastal State “has sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, both living or non-living; and the State also has the jurisdiction with regard to the establishment and use of artificial islands, installations and structures; maritime research; and protection and preservation of marine environment” (Art. 56, UNCLOS). In the context of the EEZ, the sovereign rights must not be construed with sovereignty. Sovereign rights are partial and conditional rights while sovereignty refers to full and absolute rights of the state. In the Philippine EEZ, others coastal states also have rights and duties subject to the provision of Article 58 of the 1982 UNCLOS. Moreover, other States, particularly China, also enjoy the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other international lawful uses of the sea such and compatible with other provisions. Thus, the sovereign rights and duties of the Philippines in its exclusive economic zone is in accordance with the provisions of the Article 58 of UNCLOS; and Philippines must have due regard to the rights of other coastal State (Article 56, para. 2, UNCLOS).

3.3 Development of Conflicts Between the Philippines and China

3.3.1 The Incident at Mischief Reef in 1995 and 1999

The issue on sovereign rights, maritime rights and interests in the West Philippine Sea or the South China Sea has been disputed by number of coastal states in the Southeast Asia. As previously discussed above about China and the Philippines’ opposing claims on who owns what in the South China Sea, one of the core issues is China’s historic rights outlined by a 9-dash line, which claims the entire Exclusive Economic Zones (EEZs) not
only the Philippines but also some ASEAN member countries like Vietnam, Malaysia, Brunei, and Indonesia.

China seized Subi Reef, which is located within the continental shelf of the Philippines, by building a radar structure and military facilities on the reef in 1988. This is followed by China’s occupation of the Philippine-Claimed Mischief Reef, also known as the Panganiban Reef, located 150 nautical miles West from the Philippine island of Palawan in 1995. China’s territorial assertions of its sovereignty over the Mischief Island was triggered when the Captain of a Filipino fishing boat reported to the Philippine authority that some Chinese had detained them and his boat when he went there and released after a week. On February 2, 1995, the Ramos Administration sent a naval ship and aircraft to verify the report. On February 5, 1995, President Fidel V. Ramos announced that the Chinese had illegally occupied the Philippine-Claimed Reef and described their action as a violation of the international law and the 1992 ASEAN Declaration on the South China Sea. The 1992 ASEAN Declaration on the South China Sea suggests all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means without resort to force (See Appendix D). It is also articulated in this Declaration the cooperation in the South China Sea relating to the safety of maritime navigation and exploration (ASEAN Declaration, 1992). China did not sign the Declaration but issued a separate statement that recognized and welcomed the ASEAN initiative. Contrary to the Philippine government’s allegations, Chinese Foreign Minister, Chen Jian denied the accusations and the statement did not mean that they are bound to the 1992 ASEAN Declaration on the South China Sea (“Manila Times”, April 1995). Moreover, China reiterated that they never detained nor arrested any Filipino ship nor built up any military base on the Philippine-claimed Reef.

The tensions heightened between the Philippines when China increased its military presence in the Mischief Reef, which is within the 200 nautical miles of the Philippines and 140 nautical miles away from Palawan; and 80 nautical miles away from Pag-asa Island (China referred it as Thitu Island), which is the second largest naturally occurring Spratly Islands (Raman, 1999; Tiglao, 1995). The Mischief incident was the first militarized dispute that China had with any party apart from Vietnam vis-a-vis to South China Sea. This gave the
ASEAN a reason to strengthen their military preparedness and defense cooperation which has not been successful. The retaliation between China and the Philippines continued when Chinese fishermen were incarcerated for invading within the Philippine waters ("South China Morning Post", March 1999). Consequently, China has increased its aggressive efforts to fortify its territorial claims by building artificial islands, enlarging rocks and submerging reefs hundreds of miles off its shore, capable of supporting runways for military airstrips and lodging for soldiers as well as radar equipment and missile systems in the South China and East China Seas (Short, 2016). China’s efforts definitely strengthen its territorial claims in the region. China’s island building efforts in the South China Sea have come under increasing criticism and tension. China has focused its efforts on building ports, airstrips, radar facilities, and other military buildings on the islands. The installations bolster China’s foothold in the Spratly Islands. Arguably, Articles 56 and 58 of the 1982 UNCLOS do not mention nor prohibit military activities or military presence of other States in the Exclusive Economic Zone (EEZ) of the coastal state.

In sum, the incident in the Mischief Reef has unnerved the ASEAN member states, particularly the Philippines, Malaysia, and Vietnam, and posed possible security threats. China has put its nonnegotiable claims of sovereignty and jurisdiction at odds with ASEAN maritime states. The Philippines, Malaysia, Vietnam and their regional allies dispute the legitimacy of the islands built by China.

3.3.2 The Standoff at Scarborough (Panatag) Shoal in 2012

Scarborough Shoal is known to Filipinos as the “Panatag Shoal” or Bajo de Masinloc, while to China, Huangyan Island. The Shoal is one of the oldest known fishing grounds of the Philippines. The Marine Science Institute conducted studies and projects on the Shoal. They realized that Scarborough Shoal is important as an offshore shelter, regeneration area, migration path, and food supply for the fisheries, as well as round the South China Sea (Batongbacal, 2014). It is 124 nautical miles away from Zambales, Philippines and its distance from China is 550 nautical miles.
The dispute over the Scarborough emerges from conflicting territorial and maritime claims between China and the Philippines on ground of discovery and occupation. China’s claim is based the argument that it acquired its sovereignty through discovery of unoccupied territory and established a legal presence on the island before anyone else. On the other hand, the China’s position over the sovereignty of the Shoal is debatable due to its proximity to the Philippines and according to the 1978 PD No. 1596. Prior to the 1978 Presidential Decree No.1596 of the Philippines, stating that the South China Sea islands in close proximity to the Philippine territory should belong to the Philippine, China publicly reaffirmed its claim of sovereignty in its 1958 Declaration on China’s Territorial Sea (See Appendix P), declaring that:

“The breadth of the Territorial Sea of the People's Republic of China shall be twelve nautical miles. This applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas” (para. 1).

This declaration of China on territorial sea was a strong protest against the Philippine’s legal validity over the territory as far as proximity is concerned. Arguably, the Shoal’s proximity to from the Philippine according to the 1978 Presidential Decree No. 1596, states that the Scarborough Shoal, as shown in figure 2 laying within in the 200 nautical mile, is part of the Philippine territorial Sea. However, both States’ declarations are contradictory to Section 2, Article 3 of the Territorial Sea and Contiguous Zone of 1982 UNCLOS, that states that “every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.” The Law implies that the disputed Scarborough Shoal is neither part of
Philippine territorial sea nor China’s territorial Sea because the Shoal is 120 miles off the west coast of Luzon and 500 nautical miles away from the physical coast of China. However, if China did claim sovereignty in the past successfully, occupied the island, and exercised its sovereignty power over the disputed islands, China may have legal title to the sovereignty. This Shoal has been a source of contention between the Philippines and China since 1997 because of its marine resources. In April 2012, the most serious stand-off between China and the Philippines occurred when the Philippine deployed its largest warship, BRP Gregorio Del Pilar, prompted standoff and confronted the Chinese fishing vessels in the Scarborough Shoal, but the situation was not resolved (Glaser, 2012). The Philippine filed a diplomatic protest but China asserted that it had indisputable sovereign rights over the shoal citing their historic claims that exists in the 1982 UNCLOS. Former President Benigno Aquino III ordered the removal of Philippine Coast Guard patrol vessel and survey ship as part of their agreement with China to lessen the degree of tension in the Shoal. But China did not fulfill its promise to withdraw its ships from the Shoal. Thus, China was able to gain control of the Shoal and Chinese coast guard vessels will remain permanently on the Scarborough Shoal by developing Sansha. Sansha, is located in Woody Island in the Paracels. The tension rose when Chinese ships blocked the Philippine ships and fishing vessels from the lagoon of the disputed Shoal by putting barriers to its entry point. The Scarborough standoff triggered unprecedented case against China’s claims.

The Philippines filed its case in January 2013 to the Permanent Court of Arbitration (PCA) in the Hague, Netherlands following a tense standoff between Chinese and Philippines ships at Scarborough shoal in April 2012 (Santos, 2016). The Philippine has summarized its claims for arbitration in the three categories:

(1) China’s assertion of the "historic rights" to the waters, sea-bed and subsoil within the "nine-dash line" (i.e., China's dotted line in the South China Sea) beyond the limits of its entitlements under the Convention is inconsistent with the Convention.
(2) China’s claim to entitlements of 200 nautical miles and more, based on certain rocks, low-tide elevations and submerged features in the South China Sea, is inconsistent with the Convention.

(3) China’s assertion and exercise of rights in the South China Sea have unlawfully interfered with the sovereign rights, jurisdiction and rights and freedom of navigation that the Philippines enjoys and exercises under the Convention (China v. Philippines, 2013).

Since the initiation of the arbitration case, China’s behavior has become aggressive and unacceptable contender particularly with the Philippine Government’s position in the South China Sea. China’s aggression can be observed by several islands building efforts to turn submerged reefs into artificial islands capable of hosting military structures and equipment. China’s activities such as building artificial islands have alarmed other ASEAN member states, particularly Vietnam, that also have competing claims in the South China Sea (Short, 2016). All states have the rights to construct artificial islands within their own territorial sea or in their own maritime zone or even in the high sea (Art. 56, para. 1b, UNCLOS). However, States should not construct artificial island in the maritime of other states because both shall act in a manner compatible with the provisions of the Convention (Art. 56, para. 2, UNCLOS).

In response to Philippine’s case submitted to the Arbitral Tribunal, the Chinese Government has reiterated their position not to accept nor participate in the arbitration. In the China’s Position Paper (2014), states that:

“arbitral tribunal established at the request of the Philippines for the present arbitration ("Arbitral Tribunal") does not have jurisdiction over this case. It does not express any position on the substantive issues related to the subject-matter of the arbitration initiated by the Philippines. No acceptance by China is signified in this Position
Paper of the views or claims advanced by the Philippines, whether or not they are referred to herein. Nor shall this Position Paper be regarded as China's acceptance of or participation in this arbitration.” (para. 2) (See Appendix H).

The core arguments of China were articulated in their Position Paper. Firstly, that they have indisputable sovereignty over the South China Sea Islands because of the are the first country to discover, name, explore and exploit the resources of the South China Sea. Chinese activities in the South China Sea can be dated to over 2,000 years ago. Secondly, The Arbitral Tribunal has no power or authority over the Philippine claims for arbitration. It will also not in any way to participate in the arbitration and the Arbitral Tribunal will not be in authority to determine the extent to which China’s may claim rights in the South China Sea. Lastly, it is impossible to decide whether the extent of China’s territorial sovereignty in the South China Sea have violated the provisions of the UNCLOS without determining the sovereignty over maritime feature. This only means that if the sovereignty over a maritime feature is not yet decided or determined, therefore there is concrete and real dispute for arbitration as to whether or not the maritime claims of a State based on such a feature are compatible with the Convention (Position Paper of Government of China, 2014). One scholar argued that the case being contested by the Philippines is not covered by the provisions of the UNCLOS mainly because the granting or awarding of the territorial sovereignty cannot be decided by the Arbitral Tribunal (Beckam, 2010).

In July 2016, the ruling of the Permanent Court of Arbitration (PAC) concluded that there was no legal basis for China’s claims to historic rights to resources, in excess of the rights provided for by the 1982 UNCLOS; the China had violated the Philippines sovereign rights with respect to its EEZ and continental shelf; China had breached its obligations under the Convention on the International Regulations for Preventing Collisions at Sea, 1972, and Article 94 the convention concerning maritime safety; and lastly, the Tribunal concluded that China had violated its obligations to refrain from aggravating or extending the Parties’ disputes during the arbitration process. This decision of the Arbitral
Tribunal was rejected by the Government of China and will not heed to it. China has always wanted these disputes with other states to be managed through negotiation and consultation (Philipps, 2016).

Among the ASEAN member states, only Myanmar, Singapore, and Thailand mentioned their common hope to see the full and effective implementation of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC), and the early conclusion of ASEAN-China talks on a Code of Conduct in the South China Sea (CoC), which the ASEAN side wants to make a legally binding international agreement (Chalermpalanupap, 2016). Contrary to the claim of Chalermpalanupap, ASEAN wanted to defuse the tensions and aimed to apply the ASEAN Way as mechanism of diplomacy conflict management.

3.4 Defusing the Tension on the South China Sea: The ASEAN Way

The ASEAN informal approaches and mechanisms of conflict management in the South China Sea disputes were refined, known as the ASEAN Way emphasizing consultations, consensus building, accommodation among members, informal diplomacy, reciprocity, and confidence building measures (Solingen, 2001). Scholars describe the ASEAN Way of diplomacy and conflict management as a track-two-diplomacy a flexible and non-threatening manner and promotes climate of understanding and facilitate confidence building measures (Askandar, Bercovitch, & Oishi, 2002). This allow the parties to discuss comfortably and prevents one party from losing face. The ASEAN Way of conflict prevention tends to be indirect through socialization and interaction of parties regulated by the norms and principles. On the other hand, as previously discussed, formal approach to conflict management is a legal-binding conflict resolutions. Moreover, the attempts of formal approach had low impact on conflict management process due to China’s strong disinclination to internationalize the conflict in a multilateral setting. ASEAN lacks institutional capacity to implement it. Thus, informal approaches to conflict management, according to academic literature, is the most
preferred mechanism to manage the conflict because their ultimate goal is to socialize, instill trust and build confidence not only among member states but also with China.

The conflicts between China and other claimant states of ASEAN in the South China Sea posed a serious test of ASEAN’s unity and to its norms and principles of conflict management concerning the peaceful settlement of conflict in the South China Sea, or the West Philippine Sea (termed used by the Philippines). Apart from the Philippines, other ASEAN members states also have overlapping claims in the East and South China Seas namely Brunei, Vietnam, and Malaysia. Thus, the role ASEAN in the South China Sea disputes is complex.

The standoff in the Mischief Reef created a doubt to resolve the conflict by peaceful means among China and ASEAN. ASEAN had not taken a common stance or united stand regarding the South China Sea not until after the Mischief Reef incident in 1994. This incident became a turning point to ASEAN and they issued a statement on March 18, 1995. The ASEAN foreign ministers released and expressed their official statement regarding the issue:

“We, the ASEAN Foreign Ministers, express our serious concern over recent developments which affect peace and stability in the South China Sea. We urge all concerned to remain faithful to the letter and spirit of the Manila Declaration on the South China Sea which we issued in July 1992 and which has been endorsed by other countries and the Non-Aligned Movement. The Manila Declaration urges all concerned to resolve differences in the South China Sea by peaceful means and to refrain from taking actions that de-stabilize the situation. We call upon all parties to refrain from taking actions that destabilize the region and further threaten the peace and security of the South China Sea. We specifically call for the early resolution of the problems caused by recent developments in Mischief Reef. We urge countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area. We encourage all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesian-sponsored
Workshop Series on Managing Potential Conflicts in the South China Sea” (as cited on Severino, 2010: pp. 42-43).

ASEAN has a strong interest in defusing tensions and in preventing the escalation of conflict into a larger scale war in the South China Sea. In response to China’s assertiveness in the South China Sea, the 1992 ASEAN Declaration on the South China Sea (DoC) was adopted by ASEAN during the 1992 ASEAN Annual Ministerial Meeting (AMM). The parties or signatories of the 1992 ASEAN Declaration on South China Sea were reaffirmed about resolving disputes and issues by renouncing the use of force and preventing the escalation of the tension in the South China Sea in order to maintain regional peace and stability. It also emphasizes a resolution to explore the possibility of cooperation. The Declaration encouraged all parties to exercise of restraint and the principles articulated in the 1976 Treaty of Amity and Cooperation (TAC) in the Southeast Asia as the fundamental element for establishing a code of conduct vis-a-vis to the disputed islands in the South China Sea. After the publication of the 1992 ASEAN Declaration on the South China Sea, China agreed that territorial disputes or maritime disagreements should be resolved through peaceful negotiations. Moreover, if conditions for negotiation are not yet in place, concerned parties can set aside disputes and seek joint development (Penghong, 2015).

Furthermore, ASEAN members also encouraged parties concerned and other ASEAN member countries to address the issues diplomatically through bilateral and multilateral fora, confidence building measures (CBMs) and workshops on managing possible conflicts in the South China Sea. ASEAN and its dialogue partners, China and Russia were present though they were not yet ASEAN Dialogue partners, Vietnam and Laos, not yet ASEAN member, and Papua New Guinea, started the ASEAN Regional Forum (ARF) for consultations on regional political and security issues. The establishment of ARF in 1994, through informal meetings with its dialogue partners, is one the most important step taken by ASEAN to address regional security issues. ARF was considered an expedient diplomatic instrument in socializing China into habits of good international behavior (Leifer, 1995). In its intention, as consultative forum, to resolve the issue between the two parties, there have been
several initiatives undertaken by various parties to lessen the tensions in the Spratly Islands. The conception of ARF’s goals is reflected in the norms, practices and principles encapsulated in the ASEAN Way of conflict management. ASEAN and ARF are supported by “track-two diplomacy” and fora on regional issues. Montville (1991) describes “track-two diplomacy” as “unofficial, informal interaction between members of adversary groups or nations that aim to develop strategies, influence public opinion, and organize human and material resources in ways that might help to resolve their conflict” (p. 162). Montville also reiterated that the “track-two-diplomacy” assists official leaders to settle or to manage conflicts by finding possible solutions in a quiet diplomatic and informal way.

In the inaugural ministerial meeting of ARF in Bangkok in July 1994, optimism on constructive dialogue on political and security issues; and cooperation in confidence building measures were highlighted. The sensitive issues on the South China Sea was avoided because ASEAN was aware that China did not want to multilaterally tackle the Spratly issues and kept out of formal ARF discussions (Severino, 2011). The sensitiveness of ASEAN to China’s reluctance to discuss the issue on the Spratlys somehow created a climate of understanding with China in further strengthening trust and cooperation in maintaining the regional peace and stability. The attitude of China’s reluctance to multilateral negotiations reflects a realist view that China should depend on a balance power to protect its own interest, and avert compromising China’s sovereignty through participation or involvement multilaterally (Garrett & Glaser, 1997).

Indonesia, as a member of ASEAN and with the support of Canada, has taken the initiative to lead in developing an informal strategy and non-official approach to defuse the flashpoint in the South China Sea in the form of a series of confidence building workshops on managing potential conflicts in the South China (Severino, 2010). This initiative was an attempt to project ASEAN’s role in managing conflict in the region. Moreover, these workshops were not intended to resolve the disputes in the Spratlys but to transform the potential threat of disputes into security dialogue and cooperation on maritime resources in the region (Gault, 1996). These informal workshops that have been conducted by Indonesia are
considered substantial in confidence building and instilling cooperative values to engage the parties in the conflict management.

Eventually, the Joint Statement on PRC-RP Consultations on the South China Sea and on Other Areas of Cooperation was signed in August 1995. The Joint Statement emphasized China and the Philippines commitment to regional peace’s ability and cooperation (See Appendix L). They both agreed to hold further consultations to resolve the differences and to abide the principles for a code of conduct in the territorial disputes, the 1982 Convention on the Law of the Sea (UNCLOS). Their disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect; and confidence building and trust. The Joint Statement also aimed to narrow their differences, to negotiate a settlement of the bilateral disputes through a gradual and progressive process of cooperation (PRC-RP Joint Statement, August 1995). China’s occupation to Philippine-claimed Mischief Reef prompted the Philippines and other ASEAN member countries to negotiate a legal binding Code of Conduct (CoC) between the ASEAN member states and China (Thayer, 2013). The CoC would compel or restrict China from further intrusion in the disputed islands of the South China Sea. It was also planned to include measures of mutual restraint and conduct activities in the South China Sea. ASEAN’s ultimate goal in developing set of guidelines that will correspond to the international norms of the 1982 UNLCOS, is to encourage China to agree to resolve the dispute peacefully and lessen the degree of conflict in the South China Sea (See Appendix F). To date the development of the ASEAN proposed CoC with China, the negotiation is still underway and is on slow pace. The negotiations on a Code of Conduct has been a long goal for claimant of ASEAN members.

In 1996, the ASEAN Regional Forum (ARF) mediated in the standoff between China and the Philippines by holding the Inter-sessional Group (ISG) on Confidence-Building Measures (CBMs), working committees dealing with specific issues, held in China in an attempt to manage the conflict (Dickens, 1998). The ARF seeks to interact and socialize with China in a system of cooperative norms, confidence building measures, transparency, and preventive diplomacy (ASEAN Concept Paper, 1995). China was at first unwilling to join the ARF and hesitant to adopt multilateral conflict management. Moreover, China was suspicious
that the ARF is being used by the United States as a strategy for containment. The suspicion of China can be attributed to its adversarial relationship with the US during the Cold War. According to Mark Valencia (1995) China has developed a “Three No Strategy” (p.12) which are: no to internalization of the conflict; no to multilateral negotiations; and no to specification of China’s territorial demands. Similar view to “Three No Strategy” is Swanstrom’s “China Way”, which he describes as “strict control over a bilateral process” (Swanstrom, 1999: p. 121). It can be observed that this approach contradictory to the spirit of the UN Charter especially in the framing of settlement of disputes which opens to all mechanisms for the pacific dispute settlement (Art. 33, Chapter VI, UN Charter). China was reassured by the ASEAN based principles, enshrined in the ASEAN Way of conflict management, of non-intervention, consensus decision-making, and incremental progress (Hines, 2013). China has shown good gestures that it was cooperating with the ASEAN norms and principles. Moreover, China was ready to collaborate with others to defuse the conflict by peaceful means according to international law and UNCLOS (Hines, 2013). The 1996 ISG on Confidence Building Measures was co-chaired by China on confidence building measures with the Philippines which was held in Beijing. The ISG has provided the venue for dialogues on preserving and enhancing security cooperation in the region. The ARF inter-sessional meeting on confidence building measures in Beijing attracted great attention from the international community and laid the underpinning for inter-sessional meetings on maritime security (Penghong, 2015). Through the ARF’s ISG on CBMs, the tensions and differences between China and ASEAN, particularly the Philippines, brought by the standoff in the Mischief, was lessened and set aside when both parties had shown cooperation in co-hosting the Inter-sessional Group on CBMs. The ARF played an important role as a regional “talk shop” and was successful in de-escalating the tensions and in building understanding (Dickens, 1998: p.9). The ARF became instrumental in confidence building despite of its slow-paced confidence building modalities (Emmers & Tan, 2009).

Furthermore, China’s good gestures vis-a-vis to the South China Sea conflict was its affirmation and ratification of the non-binding 2002 ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC). It encourages all the signatories to resolve the territorial
and jurisdictional disputes in a peaceful manner, and to respect freedom of navigation in the South China Sea (ASEAN Declaration, 2002). The DoC articulates four trust and confidence building measures (CBMS) as follows: holding dialogues and exchange of views; ensuring just and humane treatment of all persons either in danger or in distress; notifying (on a voluntary basis) other parties concerned of any impending joint/combined military exercise; and exchanging (on a voluntary basis) relevant information. And five voluntary cooperative activities as follows: marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operation; and combating transnational crime such as illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms (DoC, 2002). China and ASEAN member states agreed to promote regional peace and stability; and to gear up the realization of the Declaration based on consensus (ASEAN Secretariat, 2002). Emmers (2007) has stated that China’s affirmation in the 2002 Declaration was a sign of China’s readiness to adhere to principles of the ASEAN Way of conflict management and readiness to accommodate the ASEAN member states over Spratlys. Thus, the involvement of China in these essential elements of ASEAN Way of conflict management has shown to ASEAN and the international community its willingness to participate on peaceful negotiations and dialogues to seek solutions in the South China Sea Conflict.

Numerous attempts have been made by ASEAN to continue the negotiations and conflict management in the South China Sea starting from the mediation of ARF, negotiations and ratification of DoC, drafting of the CoC, and ASEAN-China Maritime Cooperation. In 2003, ASEAN member countries and China decided to convene regular ASEAN-China Senior Official Meetings (SOM) to oversee the implementation of the DoC and established a joint working group to handle specific issues, particularly the disputes of China and the Philippines. That same year China became parties of the Treaty of Amity and Cooperation and 2002 ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC). Through the DoC and TAC, ASEAN was able to exert essential elements of diplomacy and conflict management. The signing of the DoC was a symbolic diplomatic attempt of ASEAN and China to de-escalate and lessen the tension between the Philippines and other claimant member states in the Spratlys.
In April 2005, the 11th ASEAN-China Senior Officials Consultations was held in Shanghai, where foreign ministers acknowledged China’s view emphasizing that the DoC is essential. Together with the communiqué, ASEAN foreign ministers endorsed the Joint ASEAN-China Working Group (JWG) to study and to provide specific guidelines for the implementation of the provisions in the DoC, as well as to investigate actions that triggered such dispute escalation. It took six years of discussions and consultations for the JWG before the final agreement on the Guidelines to Implement the DoC was reached. China demanded that the sovereignty and jurisdictional disputes could only be solved bilaterally by the parties directly concerned. The DoC was amended and included the promotion of dialogue and consultations. To further the instilling cooperative values and confidence building measures (CBMs) of ASEAN, the foreign ministers announced the China-ASEAN Maritime Cooperation Fund during the 14th China-ASEAN Summit and Commemorative Summit in November 2011 (ASEAN, 2014). The ASEAN-China Maritime Cooperation Fund (ACMCF) is aimed to support various practical cooperation between ASEAN and China, focusing particularly on maritime economy; connectivity; scientific research and environmental protection; navigation safety; and among others (Parameswaran, 2015). In 2012, the Indonesian Foreign Minister Marty Natalegawa’s shuttle diplomacy, an effort to encourage his ASEAN counterparts to commit to a common stance on the South China Sea, resulted to the diplomatic formalities of Six-Point Principles on the South China Sea (Emmers, 2014). On July 20, 2012, the ASEAN Foreign Ministers reaffirmed their commitment to:

(1) the full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002);
(2) the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011);
(3) the early conclusion of a Regional Code of Conduct in the South China Sea (CoC);
(4) the full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);

(5) the continued exercise of self-restraint and non-use of force by all parties; and

(6) the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

This official statement was consistent with the norms and principles articulated in the 1976 Treaty of Amity and Cooperation (TAC) and the 2008 ASEAN Charter (See Appendix B & Appendix O).

China’s involvement in continuing peaceful negotiations, talks and engagement with ASEAN’s conflict management is ASEAN’s success in encouraging cooperative values and confidence building measures. It cannot be denied that ASEAN was able to or was successful in instilling values of cooperation, confidence building and peaceful measures in defusing and lessening the degree of tensions in the South China Sea. Lincoln Hines (2013), an international affairs analyst argued that the confidence building efforts, and instilling security cooperation of ASEAN had helped to improve China’s image in the region and defuse the fear that China’s rise in the South China Sea would be accompanied by violation of sovereignty of the member states and international law (Hines, 2013). Another scholar also argued that China’s perception among ASEAN policy makers has eventually changed (Emmers, 2007). Restraint and accommodation on the part of China towards have eased the ASEAN-China relations over the Spratly conflicts. In essence, the multilateral attempts to conflict management through the ARF, joint workshops, informal meetings and involvement of China have indicated a level of confidence between parties. It can be argued that these attempts are successful in mitigating and in avoiding conflict rather than resolving the conflict. The opportunities have been successful in engaging China and have shown how significant confidence building measures are for the negotiations and conflict management to improve. In
contradiction, China could use these opportunities to secure its own interest to which extent and under what terms.

3.5 The Philippine Approaches in Pursuit of Solutions on the South China Sea Disputes

The Philippines, among the other ASEAN claimant states, has been the most vocal about the disputes in the South China. It can be argued that the conduct of the Philippines has extremely caused towards the subsequent and aggressive conduct of China and its strong position vis-a-vis to the disputed islands. The Philippine approach in this paper describes the subsequent actions or approaches of the Philippines to conflict resolution in the South China Sea. I define the Philippine approach as the attempts or approaches of the Philippines to find outcomes or solutions in regards to the South China Sea disputes. There are two clashing political positions, particularly on how to manage or to deal the maritime and territorial disputes with China in the South China Sea: the previous administration’s antagonism against China along with the politicians mustering the anti-Chinese sentiments against incumbent President Rodrigo Duterte; and the Duterte’s China policy shift on the South China Sea. The previous administration during the time of President Benigno Aquino III has sought a legal warfare and taking China to the court, that lead to the Arbitral victory. While the Duterte Administration has decided to de-emphasize Philippine’s legal victory from the UNCLOS and to promote bilateral economic relations with China (Baviera, 2018).

The Philippine’s approach does not mean that the ASEAN is impotent but rather it is hard to reach a common stance or a consensus on conflict management. Putra (2015) argued that China’s behavior towards ASEAN policies is extremely dependent upon the current dynamics of other actors in the South China Sea disputes. The attempts of the previous Aquino Administration to find outcomes or solutions, to make it look good for the Filipino nationalist sentiments and the Filipino anti-Chinese are by means of: diplomatic protests, third party intervention such as arbitration and resolution from the UN General Assembly.
The Scarborough standoff on April 10, 2012 prompted then President Benigno Aquino III to formally lodge the maritime dispute to the Permanent Court of Arbitration (PAC) in the Hague in January 2013 (Thayer, 2013). On January 23, 2013, the Philippine government announced that it had initiated an arbitration case against the People’s Republic of China (PRC) in accordance with the dispute settlement provisions of the United Nations Convention on the Law of the Sea (UNCLOS) concerning a range of issues relevant to the ongoing sovereignty dispute in the South China Sea (SCS) (China’s Position Paper, 2014). The case was submitted by the Philippines unilaterally and disregarded the ASEAN. ASEAN was alarmed by the Philippine legal action because it could compromise the ongoing Code of Conduct (CoC) consultations and discussion with China. For the Aquino Administration, taking the issue to the Arbitral Tribunal was the most peaceful recourse after a long-drawn political and diplomatic negotiations (Lopez, 2016). After two years, the Arbitral Tribunal ruled out that the Philippines had jurisdiction over 7 out 15 issues raised by the Philippines against China in the South China Sea on October 29, 2015. Unfortunately, the Arbitration Award was rejected by China and that the Arbitral Tribunal does not have jurisdiction over the case (“Xinhua”, 2016).

Paragraph 1198 of the Arbitration decision states that, “the purpose of dispute resolution proceedings is to clarify the Parties’ respective rights and obligations” (The South China Sea Arbitration Award, para. 1198, 12 July 2016) (See AppendixG). Arbitration decision stressed that the case will not resolve queries of territorial sovereignty but rather to clarify the rights and obligations of China and the Philippines in reference to the provisions of UNCLOS. The Arbitral Tribunal found that China violated some of the Philippine maritime rights. But it is not stated in the decision the necessary actions to be taken of the Philippines or China. It is also not stated in the Arbitral decision that the Philippines has sovereignty in the South China Sea. This case does not concern any query relative to the legal title to territory in the disputed features.

Even though the Arbitration ruling was in favor of the Philippines, it cannot compel or force China to disassemble to demolish its structures and its artificial islands on the South China Sea islands. Moreover, the Arbitral Tribunal nor the UN Security Council (UNSC) can
impose punishment to China. UN Security Council can only steps in if tensions escalated threatening international peace, security and stability (Chapter -V-VII, Articles 23-25, UN Charter). Besides, China is one of the five permanent members (US, France, Russia, United Kingdom) with veto power. The way forward instead of challenging or confronting China and getting help from the Philippine allies, is to negotiate, compromise, joint development or joint exploration. Is this what the Duterte Administration stance on the South China Sea? A wise move?

President Rodrigo Duterte has been criticized by his temperament and demagogue style he has often displayed in the media. President Duterte was also criticized by flip flopping on Philippine’s South China Sea disputes after trying to build congenial relationship with China and announcing a separation from the US (Mourdoukoutos, 2016). Duterte’s flip-flops started after the South China Sea Arbitral Award in favor of the Philippines in July 2012, 2016. One can argue that Duterte’s flip flopping with his foreign policy caused confusion with ASEAN members states and Philippine allies, particularly the US.

Duterte Administration is building a congenial diplomatic relation with China. Duterte’s congenial relationship with China are evident in his statements and actions: refusing to participate in the joint US-Philippine naval patrols in the South China Sea (“Daily Mail Online”, July 2017); setting aside the Hague-based tribunal decision against China’s claims (Gomez, 2016); and lastly assenting to China’s firm opposition to the involvement of extra-regional powers namely US, Arbitral Tribunal, or any intervention from a third party (Fook, 2018). According to the statement of incumbent Philippine Secretary of Foreign Affairs Alan Peter Cayetano, the Administration foreign policy on the South China Sea is to defuse the tense build up by the previous Aquino administration with China (Cayabyab, 2017). In the article published on East Asia From, Baviera (2017) revealed in her analysis that Duterte’s de-emphasizing and compartmentalizing territorial and maritime disputes is a wise move. De-linking economic cooperation from conflict management on the South China disputes will spur economic growth and simulate development. The antagonist Filipino politicians along with the anti-Chinese can argue on Duterte’s China policy shift whether it will promote or undermine the Philippine interests. At regional level, will the Duterte’s downplaying of
territorial and maritime disputes in favor of pursuing close economic and political ties China reduces disagreement within ASEAN and impede or expedite the ongoing consultations on the ASEAN proposed South China Sea Code of Conduct (CoC)? The future remains uncertain.

3.6 Summary

This chapter has laid down the opposing positions of People’s Republic of China and the Philippines vis-à-vis to sovereign rights, maritime rights and interests in the South China Sea. The crux of the issue in the South China Sea, that have heightened the tensions, is China’s claims to sovereign rights jurisdiction and to historic title with respect to the maritime areas of the South China Sea. It’s 9-dash line is claiming almost the entirety of the South China Sea. Moreover, the territorial disputes on islands and reefs; and overlapping claims in sovereign rights, maritime rights and interests in the waters of the South China Sea. These disputes are prompted by the unlawful occupation of some islands and reefs of china’s Nansha Islands, also known as the Spratlys, by some coastal State in the ASEAN region. In respect of sovereignty claim of China based on 9 dash lines, it is quite evident that the said claim contradicts with the territorial sea zone, contiguous zone, continental shelf, economic zone and of the high sea. Thus, Chinese claims must be voided and have no legal effects.

However, some historic rights such as fishing rights in the EEZ of other coastal state in the region must be respected by other states concerned as the exception of the EEZ regime. Accordingly, Chinese historic rights in this regard are binding vis-a-vis the Philippines as well as based on the principles of implied acquiescence. Such binding nature base on historic title is a situation of non-acquiescence. Historic title was superseded by 1982 UNCLOS only if such historic title contradicts with the provisions of UNCLOS.

It is, however, quite hard to conclude that Chinese occupation on some islands in the South China Sea as unlawful because the Arbitral Award in the case between the Philippines did not examine any territorial claim as such in the region. It is noted that the main dispute in this case is about the sovereign right issues but not the sovereignty issues.
This chapter has identified that the informal approaches to conflict management is the most preferred mechanism to manage the conflict because their ultimate goal is to socialize, instill trust, and build confidence not only among ASEAN members but also with China. Despite pessimism of some scholars towards the efficacy of the informal approach to conflict management on the South China Sea, the so-called ASEAN Way of diplomacy and conflict management. ASEAN were able to exert efforts to ease the tensions of differing parties.

Since 1990, Indonesia, as a member of the ASEAN, initiated series of informal confidence-building workshops on managing potential conflicts in the South China Sea. Thus, these helped to lessen the flashpoint and instilling cooperative values to engage the parties in the conflict management (Gault, 1996; Severino, 2010). The series of confidence-building workshop lead to China and the Philippine’s affirmation in the signing of the 1995 Joint Statement between PRC and the RP on Consultations on the South China Sea and on Other Areas of Cooperation.

Through the ASEAN information meetings with its dialogue partners in 1994, ASEAN Regional Forum (ARF) was established. It is the most important step taken by ASEAN to de-escalate and defuse the tensions in the Spratlys.

The sensitiveness of ASEAN, during the ARF’s inaugural meeting in 1994, to reluctance to discuss the issue on the Spratlys created a climate of understanding with China to further the strengthening the trust and cooperation in maintaining the regional peace and stability in the region.

The 1992 ASEAN Declaration on the South China Sea (DoC) reaffirmed the ASEAN members and China in resolving disputes through peaceful negotiations, renouncing the use of force; and defusing the tensions and preventing the escalation of the conflict in the South China Sea.

The conflict between China and the Philippines vis-a-vis to the disputed islands could easily have escalated but instead, through the help of informal networking ad confidence-building measures, it avoided and it prevented larger escalation of conflict. There have been no large-scale conflicts nor war that have occurred in the region; there have been agreements,
points of cooperation, confidence-building measures, and workshops on managing possible conflicts in the South China Sea.

In 1996, ARF mediated in the standoff between China and the Philippines by holding the Inter-sessional Group (ISG) on Confidence-Building Measures (CBMs) to manage the conflicts (Dickens, 1998). ARF was able to engage and to socialize with China in a system of cooperative norms, confidence-building measures, transparency, and preventive diplomacy. Moreover, China has shown good gestures that it was cooperating with the ASEAN norms and principles.

Through the ARF’s inter-sessional group, the tensions and differences between China and ASEAN, particularly the Philippines, brought by the standoff in the Mischief Reef, was lessened and was shelved when both parties had shown cooperation in hosting the inter-sessional group on confidence-building measures. The ARF played an important role as regional talk shop and was successful in the de-escalation of conflicts in the South China as well as in building understanding between China and ASEAN. ARF remains primarily a confidence-building exercise despite its slow paced in promoting confidence-building measures (Emmers, 2009).

China’s affirmation and ratification of the non-binding 2002 ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC) is an evidence that China is willing and ready to participate on peaceful negotiations and dialogues to seek outcomes in the South China Sea; and China has shown signs that it is willing to accommodate ASEAN members over the South China Sea and has shown indication to adhere to the principles of the ASEAN Way of diplomacy and conflict management. Moreover, the signing of DoC was a symbolic attempt of ASEAN and China to defuse and de-escalate the degree of the conflicts between the Philippines and other ASEAN member claimants in the South China Sea.

The ASEAN endorsed the Joint ASEAN-China Working Group (JWG) in 2005 to study and to provide specific implementation of the provisions in the DoC; and to investigate actions that triggered such dispute escalation.
The creation of the ASEAN-China Maritime Cooperation Fund (ACMCF) has helped the ASEAN and China to further the instilling of cooperative values and confidence-building.

The multilateral attempts to conflict management, through the ASEAN’s preventive actions, and the involvement of China are successful in mitigating and in avoiding conflict rather than resolving the conflict in the South China Sea. The conflict management at large tends to be more successful in focusing more on the conflict avoidance and conflict prevention rather than conflict resolution.

On the other hand, Duterte’s congenial diplomatic moves with China as well his decision to de-emphasize the Arbitral decision enables to promote bilateral economic relations are reflections of the core ideals of the Treaty of Amity and Cooperation (TAC), UN Charter, and the ASEAN Way norms and principles in managing conflicts.

It cannot be denied that the ASEAN efforts, norms and principles enshrined in the ASEAN Way have helped and contributed to the success of conflict management in preventing and avoiding conflict, defusing and de-escalating the tensions on the South China Sea.
Chapter 4

Conclusion and Recommendation

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

ASEAN and China have already agreed upon multilateral risk reduction and confidence-building measures in 2002 Declaration on the Conduct of Parties in the South China Sea (DoC) which details how to approach problems in the South China Sea (Weatherbee, 2015). ASEAN has successfully promoted peaceful change through the DoC by socializing with China in easing the tensions in the South China Sea and in eschewing force or violence. It appeared that the ASEAN Way of diplomacy and conflict management was successful and effective in de-escalating the conflict in the region as well as in stabilizing the relations particularly between China and the Philippines. The text of the DoC clearly reveals three purposes: promoting confidence-building measures, engaging in practical maritime cooperation, and setting the stage for the discussion and conclusion of a formal and binding COC. As the embodiment of political goodwill of all parties, the DoC has, by and large, helped maintain the overall stability in the South China Sea. It has served as a platform for all disputant parties to communicate and exchange views. In essence, the DoC is an effective political and diplomatic strategy of ASEAN to further the objectives of exploring ways for building trust and confidence on the basis of equality and mutual respect; and in accordance with principles of the UN Charter and the 1982 UN Convention on the Law of the Sea, and the Treaty of Amity and Cooperation. The ongoing consultations between ASEAN and China on the ASEAN-China Framework of Code of Conduct (CoC) still hold
some promise for reinvigorating a multilateral framework toward greater maritime cooperation, promotion of trust and confidence-building measures, conflict prevention and peaceful settlement of disputes on the South China Sea. However, given China’s preference to resolve the conflicts bilaterally, it is uncertain whether real progress is possible. Furthermore, China also strongly oppose any form of legally binding agreement which would restrict its activities in the South China Sea. There is also changing sentiments with some ASEAN claimant countries, especially the Philippines, on the preference of non-legally binding over the legally-binding Code of Conduct. It can be argued that there would be wariness toward a legally binding CoC. This was evident when China refused to adhere to the 2016 Arbitration Ruling and it had eroded China’s image as good neighbor to ASEAN. On the other hand, the ongoing consultation and negotiations on the CoC can be viewed as China’s diplomatic moves to calm discontent and suspicion in the region. Moreover, the constructive engagement of China relative to the maritime cooperation in the South China Sea is a diplomatic sign that China may finalize a long anticipated Code of Conduct (CoC) in the South China Sea but maybe according to its terms. In essence, if CoC would be finalized and ratified whether legally binding or not it would still be useful as a confidence-building mechanism to help strengthen trust and mutual understanding to help facilitate maritime cooperation. Not only that, it might also work as conflict management and conflict prevention mechanism should incidents occur in the South China Sea.

The ASEAN efforts and initiatives in ASEAN Regional Forum have demonstrated good record of diplomacy by enhancing regional cooperation and have fostered trust and constructive environment not only for its member states but most importantly with China to cooperate in maritime security. Although no concrete conflict resolutions have emerged vis-à-vis to the South China Sea disputes, China and other ASEAN claimant states have agreed to negotiate and to continue the process of finding peaceful solutions. The considerable limits of the ARF’s institutional structure and conflict management mainly due to the traditional ASEAN Way of diplomacy, where the decision-making process of the ARF is based on consensus building and incremental process approach, thus it cannot effectively and successfully resolve conflicts but rather prevents conflict from escalation in the region. It can
also be argued that the ARF was unable to play supreme role in resolving contentious issues. The confidence-building measures, track-two diplomacy attempts, intensive consultation and dialogues proved that the ASEAN diplomacy and conflict management worked at its best in the de-escalation of conflicts. The multilateral approach through the ARF and the informal meetings and consultations have increased the level of confidence between China and ASEAN member states.

The ASEAN has applied its non-confrontational strategy to the situation in the South China Sea and exerted efforts in instilling cooperative values, confidence building measures, mediating, and engaging on peaceful negotiations and talks to mitigate the tensions among the claimant states in the South China Sea. On the contrary, other ASEAN member states do no always adhere to the norms and principles of the ASEAN Way of diplomacy. In 2013, the Philippines filed its case over the maritime features in the SCS to the Permanent Court of Arbitration (PCA) in The Hague, Netherlands. The Philippines has decided to internationalize the dispute to put international pressures to China and to seek judicial or legal solutions. The involvement of third-party mediation or internationalization of the disputes of the Philippines against China suits the interests of Aquino Administration and the anti-Chinese politicians. But the hard truth is that China shows little compromises when it gets to the issue of territorial disputes and has the capacity to continue its assertiveness in the South China Sea. China has been very reluctant and consistently refused to internationalize and formalize the South China Sea disputes (Swanstrom, 2001). This means China’s insistence to solve the SCS disputes bilaterally somehow reduced the intensity of the conflict.

It can be argued that the initiatives and conflict management strategies of ASEAN between China and the Philippines have directly or indirectly changed China’s assertive behavior to cooperative behavior over the South China Sea. ASEAN was able to engage and to socialize China by adopting the norms and principles of ASEAN Way. From the constructivist’s point of view, institutions serve as venues for interacting and socializing states or agents. Through socialization, state behavior switches to adhere to the norms, rule or principles. This was observed in the utility of the ASEAN and ASEAN Regional Forum, as regional institutions for mitigating the South China Sea dispute. China has interacted with ARF and it has incorporated some of the norms
of the ASEAN Way. The China was reassured by the ARF’s ASEAN based principles of consensus decision making, quiet diplomacy, consultation, and non-interference. Thus, China has shown symbolic gestures and has demonstrated its willingness to cooperate with the ARF norms. The ASEAN through the ARF was able to influence or to persuade China to become more cooperative.

ASEAN and the ARF have played an important role in developing confidence building measures, security cooperation, security dialogues and consultations. These measures would lead up to the task of building a system of preventive diplomacy in ASEAN. Preventive diplomacy is more realistic basis for organizing new regional security architecture than dispute settlement or conflict resolution.

It is noted in this study that the tensions in the Spratly Islands could easily have expanded militarily but because of the efforts of ASEAN in the confidence building measures, consultations, series of workshops, and inter-sessions, these efforts and strategies lessened the intensity of the conflict in the South China Sea.

One could argue that the 2002 ASEAN Declaration on Conduct of Parties in the South China Sea (DoC), has helped in the management of conflict in the South China Sea. This is a proof that ASEAN’s aim is to instill values of cooperation and confidence-building measures to continue the process of finding solutions over the South China Sea disputes. Since China became parties of the DoC in 2002, China can fully understand the core intentions of ASEAN.

This paper also taken into consideration that the ASEAN Way of diplomacy is not effective in resolving contentious and it have been discredited and undermined by some scholars. One in particular was Narine’s (1997) argument that “ASEAN is not capable of resolving many issues of contention between its members, but it can move these issues aside so that they do not prevent progress in other areas” (Narine, 1997, p. 964). For Narine, the ASEAN Way is a phrase for deferential attitudes that member states have adopted towards interstate problems, suggesting that members agree to disagree in order to maintain an illusion of ASEAN unity because ASEAN Way is not binding.
Similar perspective to Narine, Amitav Acharya argues that “the ASEAN Way involves a commitment to carry on with consultation without any specific formula or modality for achieving a desired outcome” (Acharya, 1997, p. 329). For him, ASEAN regionalism is a process of interaction and socialization, but it remains primarily a vehicle through which its members pursue their national interests. He warns that “the ASEAN Way” has paradoxical reactions on ASEAN’s future as a security community, and as such, the regional bloc needs to “reinvent itself”, if it is seeking to become a progressive regional institution.

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

Furthermore, I think that the ASEAN Way is a unique viable strategy in conflict management and security cooperation because of its process in framework of regional interaction requiring deliberation, informality, consensus-building and non-confrontational bargaining approaches. This conflict management strategy is based on interpersonal contacts, and is unstructured, non-formal and non-binding. Furthermore, ASEAN Way appeared to avoid the conflict by instilling cooperative values and confidence building rather than resolving the conflict. It is the identity and institutional structure of ASEAN. The informality of this strategy highlights comfort level and the flexibility of a framework of cooperation and coordination among the member states. As a result of this apparent informality, dispute settlements or ASEAN agreements, some are non-binding due to its political nature and some agreements of ASEAN members have legally binding nature depending on the intention of the State parties to such agreement or pacts whether they agreed on the binding effects or not.

The efficacy and success of the ASEAN Way of diplomacy and conflict management are evident in the conflict mitigation through the ASEAN Regional Forum
(ARF); joint workshops; inter-sessions on confidence-building measures; annual informal meetings; China’s constructive engagement with ASEAN and its affirmation on the 20002 ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC); the ongoing negotiations and consultations on the Code of Conduct (CoC); strengthening the ASEAN-China Maritime cooperation; the PRC-CP Consultations on the South China Sea; and lastly the absence of war in the region.
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APPENDICES

APPENDIX A

2002 DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA

The Governments of the Member States of ASEAN and the Government of the People’s Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People’s Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;

2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;

3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

a. holding dialogues and exchange of views as appropriate between their defense and military officials;

b. ensuring just and humane treatment of all persons who are either in danger or in distress;

c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and

d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

a. marine environmental protection;

b. marine scientific research;

c. safety of navigation and communication at sea;

d. search and rescue operation; and

e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.
7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;

9. The Parties encourage other countries to respect the principles contained in this Declaration;

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.
For Brunei Darussalam

Mohamed Bolkish
Minister of Foreign Affairs

For the People's Republic of China

Wang Yi
Special Envoy and
Vice Minister of Foreign Affairs

For the Kingdom of Cambodia

HOR Samloun
Senior Minister and Minister of
Foreign Affairs and International Cooperation

For the Republic of Indonesia

Dr. Hatta Wirayuda
Minister for Foreign Affairs

For the Lao People's Democratic Republic

Somxay Virasavat
Deputy Prime Minister and
Minister for Foreign Affairs

For Malaysia

Datuk Sri Syed Hamid Albar
Minister of Foreign Affairs
For the Union of Myanmar

Win Aung  
Minister for Foreign Affairs

For the Republic of the Philippines

Dios F. Ople  
Secretary of Foreign Affairs

For the Republic of Singapore

Prof. S. Jayakumar  
Minister for Foreign Affairs

For the Kingdom of Thailand

Dr. Surakiart Sathirathai  
Minister of Foreign Affairs

For the Socialist Republic of Viet Nam

Nguyen Dy Nieu  
Minister of Foreign Affairs
APPENDIX B

1976 TREATY OF AMITY AND COOPERATION IN SOUTHEAST ASIA

The High Contracting Parties:

CONSCIOUS of the existing ties of history, geography and culture, which have bound their peoples together;

ANXIOUS to promote regional peace and stability through abiding respect for justice and the rule or law and enhancing regional resilience in their relations;

DESIRING to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia consistent with the spirit and principles of the Charter of the United Nations, the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955, the Declaration of the Association of Southeast Asian Nations signed in Bangkok on 8 August 1967, and the Declaration signed in Kuala Lumpur on 27 November 1971;

CONVINCED that the settlement of differences or disputes between their countries should be regulated by rational, effective and sufficiently flexible procedures, avoiding negative attitudes which might endanger or hinder cooperation;

BELIEVING in the need for cooperation with all peace-loving nations, both within and outside Southeast Asia, in the furtherance of world peace, stability and harmony;

SOLEMNLY AGREE to enter into a Treaty of Amity and Cooperation as follows:

CHAPTER I: PURPOSE AND PRINCIPLES

Article 1

The purpose of this Treaty is to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship,

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;

f. Effective cooperation among themselves.

**CHAPTER II: AMITY**

Article 3

In pursuance of the purpose of this Treaty the High Contracting Parties shall endeavour to develop and strengthen the traditional, cultural and historical ties of friendship, good neighbourliness and cooperation which bind them together and shall fulfill in good faith the obligations assumed under this Treaty. In order to promote closer understanding among them, the High Contracting Parties shall encourage and facilitate contact and intercourse among their peoples.

**CHAPTER III: COOPERATION**

Article 4

The High Contracting Parties shall promote active cooperation in the economic, social, technical, scientific and administrative fields as well as in matters of common ideals and aspirations of international peace and stability in the region and all other matters of common interest.

Article 5

Pursuant to Article 4 the High Contracting Parties shall exert their maximum efforts multilaterally as well as bilaterally on the basis of equality, non-discrimination and mutual benefit.

Article 6
The High Contracting Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful community of nations in Southeast Asia. To this end, they shall promote the greater utilization of their agriculture and industries, the expansion of their trade and the improvement of their economic infrastructure for the mutual benefit of their peoples. In this regard, they shall continue to explore all avenues for close and beneficial cooperation with other States as well as international and regional organisations outside the region.

Article 7

The High Contracting Parties, in order to achieve social justice and to raise the standards of living of the peoples of the region, shall intensify economic cooperation. For this purpose, they shall adopt appropriate regional strategies for economic development and mutual assistance.

Article 8

The High Contracting Parties shall strive to achieve the closest cooperation on the widest scale and shall seek to provide assistance to one another in the form of training and research facilities in the social, cultural, technical, scientific and administrative fields.

Article 9

The High Contracting Parties shall endeavour to foster cooperation in the furtherance of the cause of peace, harmony, and stability in the region. To this end, the High Contracting Parties shall maintain regular contacts and consultations with one another on international and regional matters with a view to coordinating their views actions and policies.

Article 10

Each High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party.

Article 11

The High Contracting Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities.

Article 12
The High Contracting Parties in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, cooperation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia.

CHAPTER IV: PACIFIC SETTLEMENT OF DISPUTES

Article 13

The High Contracting Parties shall have the determination and good faith to prevent disputes from arising. 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.

Article 14

To settle disputes through regional processes, the High Contracting Parties shall constitute, as a continuing body, a High Council comprising a Representative at ministerial level from each of the High Contracting Parties to take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony.

Article 15

In the event no solution is reached through direct negotiations, 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. The High Council may however offer its good offices, or upon agreement of the parties in dispute, constitute itself into a committee of mediation, inquiry or conciliation. When deemed necessary, the High Council shall recommend appropriate measures for the prevention of a deterioration of the dispute or the situation.

Article 16

The foregoing provision of this Chapter shall not apply to a dispute unless all the parties to the dispute agree to their application to that dispute. However, this shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute. Parties to the dispute should be well disposed towards such offers of assistance.
Article 17

Nothing in this Treaty shall preclude recourse to the modes of peaceful settlement contained in Article 33(l) of the Charter of the United Nations. The High Contracting Parties which are parties to a dispute should be encouraged to take initiatives to solve it by friendly negotiations before resorting to the other procedures provided for in the Charter of the United Nations.

CHAPTER V: General Provision

Article 18

This Treaty shall be signed by the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand. It shall be ratified in accordance with the constitutional procedures of each signatory State. It shall be open for accession by other States in Southeast Asia.

Article 19

This Treaty shall enter into force on the date of the deposit of the fifth instrument of ratification with the Governments of the signatory States which are designated Depositories of this Treaty and the instruments of ratification or accession.

Article 20

This Treaty is drawn up in the official languages of the High Contracting Parties, all of which are equally authoritative. There shall be an agreed common translation of the texts in the English language. Any divergent interpretation of the common text shall be settled by negotiation.

IN FAITH THEREOF the High Contracting Parties have signed the Treaty and have hereto affixed their Seals.

DONE at Denpasar, Bali, this twenty-fourth day of February in the year one thousand nine hundred and seventy-six.
For the Republic of Indonesia:

SOEHARTO
President

For the Republic of Singapore:

LEE KUAN YEW
Prime Minister

For Malaysia:

DATUK HUSEIN ONN
Prime Minister

For the Kingdom of Thailand:

KUKRIT PRAMOJ
Prime Minister

For the Republic of the Philippines:

FERDINAND E. MARCOS
APPENDIX C

1971 ZONE OF PEACE, FREEDOM AND NEUTRALITY DECLARATION

1971 ZONE OF PEACE, FREEDOM AND NEUTRALITY DECLARATION

Adopted by the Foreign Ministers at the Special ASEAN Foreign Ministers Meeting in Kuala Lumpur, Malaysia on 27 November 1971

(http://www.aseansec.org/1215.htm)

We, the Foreign Ministers of Indonesia, Malaysia, the Philippines, Singapore and the Special Envoy of the National Executive Council of Thailand:

FIRMLY believing the merits of regional cooperation which has drawn our countries to cooperate together in the economic, social and cultural fields in the Association of South East Asian Nations;

DESIRING of bringing about a relaxation of international tension and of achieving a lasting peace in South East Asian Nations;

INSPIRED by the worthy aims and objectives of the United Nations, in particular by the principles of respect for the sovereignty and territorial integrity of all states, abstention from threat or use of force, peaceful settlement of international disputes, equal rights and self-determination and non-interference in affairs of States;

BELIEVING in the continuing validity of the "Declaration on the Promotion of World Peace and Cooperation" of the Bandung Conference of 1955 which, among others, enunciates the principles by which states may coexist peacefully;

RECOGNISING the right of every state, large or small, to lead its national existence free from outside interference in its internal affairs as this interference will adversely affect is freedom, independence and integrity;

DEDICATED to the maintenance of peace, freedom and independence unimpaired;

BELIEVING in the need to meet present challenges and new developments by cooperating with all peace and freedom loving nations, both within and outside the region, in the furtherance of world peace, stability and harmony;

CONSCIOUS of the significant trend towards establishing nuclear-free zones, as in the "Treaty for the Prohibition of Nuclear Weapons in Latin America" and the Lusaka Declaration proclaiming Africa as a nuclear-free zone, for the purpose of promoting world peace and security by reducing the areas of international conflicts and tension;

REITERATING our commitment to the principle in the Bangkok Declaration which established ASEAN in 1967, "that the countries of South East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples";

AGREEING that the neutralization of South East Asia is a desirable objective and that we should explore ways and means of bringing about its realization; and
APPENDIX D

1992 ASEAN DECLARATION ON THE SOUTH CHINA SEA

Documents on ASEAN and the South China Sea

1992 ASEAN DECLARATION ON THE SOUTH CHINA SEA
Manila, 22 July 1992

Adopted by the Foreign Ministers at the 25th ASEAN Ministerial Meeting

WE, the Foreign Ministers of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIRING of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea directly affect peace and stability in the region.

HEREBY

EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;

URGE all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;

RESOLVE, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;

COMMEND all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;

INVITE all parties concerned to subscribe to this Declaration of principles.
APPENDIX E

THE DECLARATION OF ASEAN CONCORD, BALI, INDONESIA, 24 FEBRUARY 1976

The President of the Republic of Indonesia, the Prime Minister of Malaysia, the President of the Republic of the Philippines, the Prime Minister of the Republic of Singapore and the Prime Minister of the Kingdom of Thailand:

REAFFIRM their commitment to the Declarations of Bandung, Bangkok and Kuala Lumpur, and the Charter of the United Nations;

ENDEAVOUR to promote peace, progress, prosperity and the welfare of the peoples of member states;

UNDERTAKE to consolidate the achievements of ASEAN and expand ASEAN cooperation in the economic, social, cultural and political fields;

DO HEREBY DECLARE:

ASEAN cooperation shall take into account, among others, the following objectives and principles in the pursuit of political stability:

1. The stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience.
2. Member states, individually and collectively, shall take active steps for the early establishment of the Zone of Peace, Freedom and Neutrality.
3. The elimination of poverty, hunger, disease and illiteracy is a primary concern of member states. They shall therefore intensify cooperation in economic and social development, with particular emphasis on the promotion of social justice and on the improvement of the living standards of their peoples.
4. Natural disasters and other major calamities can retard the pace of development of member states. They shall extend, within their capabilities, assistance for relief of member states in distress.
5. Member states shall take cooperative action in their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies.
6. Member states, in the spirit of ASEAN solidarity, shall rely exclusively on peaceful processes in the settlement of intra-regional differences.
7. Member states shall strive, individually and collectively, to create conditions conducive to the promotion of peaceful cooperation among the nations of Southeast Asia on the basis of mutual respect and mutual benefit.

8. Member states shall vigorously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of selfdetermination, sovereign equality and non-interference in the internal affairs of nations.

AND DO HEREBY ADOPT

The following programme of action as a framework for ASEAN cooperation.

A. POLITICAL

1. Meeting of the Heads of Government of the member states as and when necessary.
3. Settlement of intra-regional disputes by peaceful means as soon as possible.
4. Immediate consideration of initial steps towards recognition of and respect for the Zone of Peace, Freedom and Neutrality wherever possible.
5. Improvement of ASEAN machinery to strengthen political cooperation.
6. Study on how to develop judicial cooperation including the possibility of an ASEAN Extradition Treaty.
7. Strengthening of political solidarity by promoting the harmonization of views, coordinating position and, where possible and desirable, taking common actions.

B. ECONOMIC

1. Cooperation on Basic Commodities, particularly Food and Energy
   i) Member states shall assist each other by according priority to the supply of the individual ~country’s needs in critical circumstances, and priority to the acquisition of exports from member states, in respect of basic commodities, particularly food and energy.
   
   ii) Member states shall also intensify cooperation in the production of basic commodities particularly food and energy in the individual member states of the region.

2. Industrial Cooperation
   i) Member states shall cooperate to establish lae-scale ASEAN industrial plants particularly to meet regional requirements of essential commodities.
ii) Priority shall be given to projects which utilize the available materials in the member states, contribute to the increase of food production, increase foreign exchange earnings or save foreign exchange and create employment.

3. Cooperation in Trade

i) Member states shall cooperate in the fields of trade in order to promote development and growth of new production and trade and to improve the trade structures of individual states and among countries of ASEAN conducive to further development and to safeguard and increase their foreign exchange earnings and reserves.

ii) Member states shall progress towards the establishment of preferential trading arrangements as a long term objective on a basis deemed to be at any particular time appropriate through rounds of negotiations subject to the unanimous agreement of member states.

iii) The expansion of trade among member states shall be facilitated through cooperation on basic commodities, particularly in food and energy and through cooperation in ASEAN industrial projects.

iv) Member states shall accelerate joint efforts to improve access to markets outside ASEAN for their raw material and finished products by seeking the elimination of all trade barriers in those markets, developing new usage for these products and in adopting common approaches and actions in dealing with regional groupings and individual economic powers.

v) Such efforts shall also lead to cooperation in the field of technology and production methods in order to increase the production and to improve the quality of export products, as well as to develop new export products with a view to diversifying exports.

4. Joint Approach to International Commodity Problems and Other World Economic Problems

i) The principle of ASEAN cooperation on trade shall also be reflected on a priority basis in joint approaches to international commodity problems and other world economic problems such as the reform of international trading system, the reform on international monetary system and transfer of real resources, in the United Nations and other relevant multilateral fora, with a view to contributing to the establishment of the New International Economic Order.
ii) Member states shall give priority to the stabilisation and increase of export earnings of those commodities produced and exported by them through commodity agreements including bufferstock schemes and other means.

5. Machinery for Economic Cooperation

Ministerial meetings on economic matters shall be held regularly or as deemed necessary in order to:

i) formulate recommendations for the consideration of Governments of member states for the strengthening of ASEAN economic cooperation;

ii) review the coordination and implementation of agreed ASEAN programmes and projects on economic cooperation;

iii) exchange views and consult on national development plans and policies as a step towards harmonizing regional development; and

iv) perform such other relevant functions as agreed upon by the member Governments.

C. SOCIAL

1. Cooperation in the field of social development, with emphasis on the well-being of the low-income group and of the rural population, through the expansion of opportunities for productive employment with fair remuneration.

2. Support for the active involvement of all sectors and levels of the ASEAN communities, particularly the women and youth, in development efforts.

3. Intensification and expansion of existing cooperation in meeting the problems of population growth in the ASEAN region, and where possible, formulation of new strategies in collaboration with appropriate international agencies.

4. Intensification of cooperation among member states as well as with the relevant international bodies in the prevention and eradication of the abuse of narcotics and the illegal trafficking of drugs.

D. CULTURAL AND INFORMATION

1. Introduction of the study of ASEAN, its member states and their national languages as part of the curricula of schools and other institutions of learning in the member states.

2. Support of ASEAN scholars, writers, artists and mass media representatives to enable them to play an active role in fostering a sense of regional identity and fellowship.
3. Promotion of Southeast Asian studies through closer collaboration among national institutes.

E. SECURITY

Continuation of cooperation on a non-ASEAN basis between the member states in security matters in accordance with their mutual needs and interests.

F. IMPROVEMENT OF ASEAN MACHINERY

1. Signing of the Agreement on the Establishment of the ASEAN Secretariat.
2. Regular review of the ASEAN organizational structure with a view to improving its effectiveness.
3. Study of the desirability of a new constitutional framework for ASEAN.

DONE, at Denpasar, Bali, this Twenty-Fourth Day of February in the year One Thousand Nine Hundred and Seventy-Six.
APPENDIX F

FRAMEWORK OF A COC

Adopted at the 14th ASEAN-China Senior Officials’ Meeting on the Implementation of the Declaration on the Conduct of Parties in the South China Sea (SOM-DOC) Guiyang, China May 18, 2017

1. Preambular provisions
   a. Bases of the COC
   b. Inter-connection and interaction between DOC and COC c. Importance and aspirations

2. General provisions
   a. Objectives:
      i. To establish a rules-based framework containing a set of norms to guide the conduct of parties and promote maritime cooperation in the South China Sea;
      ii. To promote mutual trust, cooperation and confidence, prevent incidents, manage incidents should they occur, and create a favourable environment for the peaceful settlement of the disputes;
      iii. To ensure maritime security and safety and freedom of navigation and overflight.
   b. Principles
      i. Not an instrument to settle territorial disputes or maritime delimitation issues
      ii. Commitment to the purposes and principles of the Charter of the United Nations, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Treaty of Amity and Cooperation in Southeast Asia (TAC),
the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law

iii. Commitment to full and effective implementation of the DOC

iv. Respect for each other’s independence, sovereignty and territorial integrity in accordance with international law, and the principle of non-interference in the internal affairs of other states

c. Basic undertakings

i. Duty to cooperate

ii. Promotion of practical maritime cooperation

iii. Self-restraint / Promotion of trust and confidence

iv. Prevention of incidents

1. Confidence building measures

2. Hotlines

v. Management of incidents

3. Final Clauses

a. Encourage other countries to respect the principles contained in the COC

b. Necessary mechanisms for monitoring of implementation
c. Review of the COC
d. Nature and Entry into force
APPENDIX G

THE SOUTH CHINA SEA ARBITRATION AWARD OF 12 JULY 2016

PCA Case No. 2013-19
IN THE MATTER OF THE SOUTH CHINA SEA ARBITRATION

- before -

AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

- between -

THE REPUBLIC OF THE PHILIPPINES

- and -

THE PEOPLE’S REPUBLIC OF CHINA

____________________________
AWARD

____________________________
Arbitral Tribunal:
Judge Thomas A. Mensah (Presiding Arbitrator)
Judge Jean-Pierre Cot
Judge Stanislaw Pawlak
Professor Alfred H.A. Soons
Judge Rüdiger Wolfrum

Registry:
Permanent Court of Arbitration

12 July 2016
1197. The Tribunal accepts that various provisions of the Convention make clear that States are under a duty to resolve their disputes peacefully, and that States are under a general duty to have “due regard” to the rights and obligations of other States.

1198. There is, however, no dispute between the Parties that these general obligations define and regulate their conduct. The root of the disputes presented by the Philippines in this arbitration lies not in any intention on the part of China or the Philippines to infringe on the legal rights of the other, but rather—as has been apparent throughout these proceedings—in fundamentally different understandings of their respective rights under the Convention in the waters of the South China Sea. In such circumstances, the purpose of dispute resolution proceedings is to clarify the Parties’ respective rights and obligations and thereby to facilitate their future relations in accordance with the general obligations of good faith that both governments unequivocally recognise.

1199. To the extent that the matters presented by the Philippines have fallen within its jurisdiction, the Tribunal has already acted, through this Award, to clarify the Parties’ respective rights and obligations in the South China Sea. The Tribunal notes that much of the Philippines’ concern reflected in Submission No. 15 that “chaos and insecurity” will result from “unilateral actions in the absence of a precisely defined legal order” is connected with the hypothetical situation of potentially overlapping entitlements to maritime zones and the absence of an interim regime pending the delimitation of a maritime boundary. The Tribunal’s findings with respect to Submissions No. 3, 5, and 7, however, and its conclusion that there is no possible overlap of entitlements that would require delimitation, render that concern purely hypothetical and no basis for further action by the Tribunal.

1200. Going forward, it is a fundamental principle of international law that “bad faith is not presumed,” and Article 11 of Annex VII provides that the “award ... shall be complied with by the parties to the dispute.” It goes without saying that both Parties are obliged to resolve their disputes peacefully and to comply with the Convention and this Award in good faith.
APPENDIX H

CHINA'S POSITION ON THE TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA BETWEEN CHINA AND THE PHILIPPINES

--BY ZHANG HUA

2014/04/03

On March 30, the Philippine Department of Foreign Affairs stated that it submitted its Memorial to the Arbitral Tribunal that is hearing the case it brought against China under the United Nations Convention on the Law of the Sea in January 2013. A lot of media friends ask for comments on this issue. In order that China's position is clearly understood, I would like to elaborate on the following issues.

1. **The Philippines' initiation of and push for international arbitration has undermined China-Philippines relations.**

Under normal circumstances, submission of dispute to international arbitration requires an agreement reached between the two parties concerned. Yet, the Philippine side had failed to notify the Chinese side, not to mention seeking China's consent, before it actually initiated the arbitration. After the Philippine side initiated the arbitration, the Chinese side promptly made its position clear that China does not accept the arbitration. The Philippine side, in disregard of China's position, has insisted on going ahead with the arbitration. What the Philippine side did seriously damaged bilateral relations with China. We find it very hard to understand these moves of the Philippines and we are deeply disturbed by and concerned with the consequence of such moves.

2. **Why does China not accept the arbitration?**

First, China is committed to resolving its disputes with the Philippines through bilateral negotiations.

China and the Philippines have between them territorial and maritime disputes. And it is just natural that disputes might exist between neighbors. What is important is how to resolve the disputes.
In both international law and international practices, direct negotiation between countries concerned is the most common and preferred way to resolve such disputes. Negotiations may well take time, but agreement reached through negotiations is acceptable to both parties, and is hence the most equitable and durable. International justice or arbitration is one way of settling international disputes, but it does not offer a solution to all problems. In reality, there have been quite a number of cases where international judicial or arbitral bodies passed a ruling, but relevant issues still remained unresolved.

It is advisable to note that to resolve disputes over territory and maritime rights and interests through negotiations by the sovereign states directly concerned is an important consensus contained in the Declaration on the Conduct of Parties in the South China Sea signed by China and all ASEAN countries, the Philippines included. Now that the document is signed, all parties should honor their commitment. Moreover, China and the Philippines also have reached explicit consensus at the bilateral level on settling disputes through negotiations. In the joint statement on the issue of Nansha Islands released in August 1995, China and the Philippines agreed that "a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of bilateral disputes". In the Joint Statement Between China and the Philippines on the Framework of Bilateral Cooperation in the 21st Century issued in May 2000, the two sides agreed "to promote a peaceful settlement of disputes through bilateral friendly consultations and negotiations in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea". In September 2011, China and the Philippines issued a joint statement, in which leaders of the two countries "reiterated their commitment to addressing the disputes through peaceful dialogue."

China has had rich practices in successfully settling boundary, territorial and maritime disputes through negotiations. China's 14 land neighbors all have vastly different national conditions. On the basis of respecting historical facts and international law and in the spirit of equality and mutual understanding, China has conducted peaceful and friendly negotiations and consultations with these countries and settled most of the boundary and territorial issues in an equitable and reasonable way. China has so far successfully solved the boundary issues with 12 of its land neighbors, and delineated and demarcated 20,000 kilometers of boundary, which accounts for 90% of China's total land boundary with neighbors. China's position and practices are the same concerning maritime disputes, which came up at a relatively later time. In 2000,
China and Vietnam equitably delineated the maritime boundary in the Beibu Gulf and, along with it, signed the Agreement on Fishery Cooperation in the Beibu Gulf. We see no reason why China should abandon such successful practices that it has upheld for long.

Second, China's refusal to accept the arbitration is an exercise of its right under international law.

According to international law, China has every right not to accept the arbitration initiated by the Philippines. This is also in conformity with international practice.

The Philippines' initiation of arbitration is based on the United Nations Convention on the Law of the Sea. However, the framework of the Convention is not applicable to all maritime issues. First, the disputes between China and the Philippines are principally territorial disputes over islands, which are not covered by the Convention. Second, according to the Convention, in case of disputes over territory, maritime delineation and historic title or rights, a signatory to the Convention may refuse to accept the jurisdiction of any international justice or arbitration as long as it makes a declaration. So far, 34 countries have made such declarations based on this provision. China made its declaration back in 2006. So why can't China exercise its lawful right?

In international practice, when their major national interests or positions are involved, many countries have taken the position of not accepting the jurisdiction nor enforcing the rulings of related international litigation or arbitration. Among them are both big countries like the United States and small and medium-sized countries. This is a commonplace practice.

To accuse China of disobeying international law on the ground that it has not accepted the arbitration is an act of applying "double standards". This is not fair to the Chinese side. And it does not conform to the true spirit of international rule of law. In fact, and much to the contrary, China's refusal to accept the arbitration submitted by the Philippine side is an act truly in keeping with the law.

Third, a resort to arbitration does not meet people's expectations for friendship in both China and the Philippines.
Territorial and maritime disputes are not the entirety of the China-Philippines relationship. The underlying trend of this relationship remains good-neighborliness and friendship. China-Philippines friendship has a long and profound history and enjoys strong and extensive public support. It also meets the practical need for both countries to pursue common development. For the Chinese people, to avoid lawsuit is part of the Chinese culture and tradition. And the Philippine people also value friendship and good faith. We see every reason for both sides to sit down and resolve problems through negotiations instead of taking the issue to court.

3. It is China's sincere wish that the disputes between China and the Philippines will be settled through bilateral negotiations.

China has long exercised sovereignty over the Nansha Islands. After the Second World War, China recovered the Nansha Islands occupied by Japanese aggressors in 1946 and took a series of steps to confirm and reaffirm its sovereignty over the Nansha Islands. At that time, the Philippines, an independent country already, made no objection to China's moves. It was only after oil reserves were discovered in the 1970s in the waters surrounding the Nansha Islands that the Philippines began to claim sovereignty over these islands and sent troops to occupy some of the islands and reefs. The Chinese side has for many times made diplomatic representations with the Philippine side over its behavior and demanded that the Philippines stop infringing upon China's sovereignty and jurisdiction.

Meanwhile, acting in the larger interest of China-Philippines relations and peace and stability in Southeast Asia, and proceeding from China's consistent approach in handling such issues, China has adhered to resolving its disputes with the Philippines through negotiations. Starting from the 1970s, the two sides have exchanged views many times on relevant disputes and made some positive progress. In 1988, in his meeting with then Philippine President Corazon Aquino, Chinese leader Deng Xiaoping put forward the constructive approach of pursuing "joint development " in handling the disputes, which received positive response from the Philippine leader. The two sides have also made some headway in this respect and carried out some maritime cooperation, which was widely welcomed and applauded internationally.

To put the negotiations and consultations between China and the Philippines on a more institutional basis, China officially proposed to the Philippine side establishment of a "regular consultation mechanism on maritime issues" in 2010. The Philippine side indicated that it
would study the proposal, but has since given no reply. In 2012, China proposed that the "CBM Working Group" established in 1999 be restarted, but has not received any response from the Philippine side. The Chinese side has found it very hard to understand why the Philippine side should unilaterally shut the door to negotiations and consultations.

I would like to emphasize that China's stance of neither accepting nor participating in the arbitration does not change and will not change. Forcing the arbitration is not conducive to the settlement of the disputes on the South China Sea between China and the Philippines, it will not change the fact that China has sovereignty over the Nansha Islands, nor will it shake China's will and resolve to safeguard its national sovereignty. We hope that the Philippine side will correct its mistake and come back to the right track of resolving the disputes through bilateral negotiations.

4. China's Basic Position on the Issue of the South China Sea

The core of the South China Sea issue rests with the territorial disputes on islands and reefs, and overlapping claims on maritime rights and interests in waters of the South China Sea, which are caused by the illegal occupation of some islands and reefs of China's Nansha Islands by some coastal countries. Formed in the long historic course, China's sovereignty and relevant rights in the South China Sea have solid historic and legal basis, and have been upheld by successive Chinese governments.

The basic guidelines for China's neighboring diplomacy is to build good-neighborly relations with and bringing harmony, security and prosperity to neighboring countries, and concentrate on the concept of amity, sincerity, mutual benefit and inclusiveness. This conforms to the traditional Chinese culture, and is the strategic option of China. As a coastal country of the South China Sea, China has always been a staunch force for maintaining peace, stability and promoting cooperation and development. China is the last country that hopes to see any turbulence in its neighborhood, including in the South China Sea, which does not meet the common aspiration and interests of all parties including ASEAN countries.

Proceeding from the overall interests of safeguarding regional peace, stability and prosperity, and on the basis of respecting historic facts and international laws, the Chinese side has always adhered to resolving relevant disputes with sovereign states directly concerned, including the
Philippines, through consultations and negotiations. This has been the consistent position of the Chinese side, and conforms to the consensus that China and ASEAN countries reached in the DOC.

In September 2013, China and ASEAN countries held the Sixth Senior Officials' Meeting and Ninth Joint Working Group Meeting on the Implementation of the DOC in China. All parties exchanged views on the full and effective implementation of the DOC and enhancement of maritime cooperation. Consultations on the COC were also held under the framework of implementing the DOC. The Tenth Joint Working Group Meeting on the implementation of the DOC recently held in Singapore by China and ASEAN countries scored progress in the COC consultation process. This is in sharp contrast with the consistent provocations on the South China Sea issue by the Philippine side, and fully reflects the utmost good-will and sincerity of the Chinese side's continuous commitment to peace and stability in the South China Sea.

5. The Nature of China-Philippines Disputes in the South China Sea

China has ample historic and legal basis for its sovereignty over the Nansha Islands and their adjacent waters. China was the first to discover, name, develop and operate on the Nansha Islands. It is also the first country that exercised and has been exercising sovereign jurisdiction over the islands, which has been long recognized by the international community including the Philippines. China resolutely safeguards national territorial sovereignty, sovereign rights and interests, and remains committed to maintaining regional peace and stability.

The Philippines' territory was determined by a series of international treaties, including the Treaty of Peace between the United States and Spain in 1898, the Treaty between the United States and Spain for Cession of Outlying Islands of the Philippines in 1900 and the Convention between the United States and Great Britain Delimiting the Boundary between the Philippine Archipelago and the State of North Borneo. All these documents state that the border line of the western part of the territory of the Philippines is 118° East in longitude. China's Nansha Islands and the Huangyan Island of the Zhongsha Islands do not lie within the boundary of territory delimited by any of the above treaties or conventions. Moreover, the 1935 Constitution of the Republic of the Philippines, the Treaty of General Relations between the Republic of the Philippines and the United States of America in 1946, the Mutual Defence Treaty between the
the Republic of the Philippines and the United States of America in 1951, the Republic Act No. 3046, an act to define the Baselines of the Territorial Sea of the Philippines in 1961, the Republic Act No. 5446, an act to amend Section One of Republic Act No. 3046 in 1968 reiterated the legal effect of the above three treaties or conventions and reaffirmed the scope of the Philippine territory.

In a long period of time after the WWII, there were no such South China Sea disputes between China and the Philippines, and the Philippine side never raised objection to the Chinese government's exercise of sovereignty over the Nansha Islands and their adjacent waters. Before the 1970s, there were neither legal documents nor speeches by national leaders of the Philippine side which mentioned that the Nansha Islands lied within the scope of the Philippine territory.

At the beginning of the 1970s, the Philippine side started to make territorial claims on certain islands and reefs of China's Nansha Islands. In violation of the Charter of the United Nations and the basic norms governing international relations, the Philippine side conducted military operations four times respectively in 1970, 1971, 1978 and 1980, and illegally occupied 8 Chinese islands and reefs, namely: Mahuan Dao/Nanshan Island, Feixin Dao/Flat Island, Zhongye Dao/Thitu Island, Beizi Dao/Northeast Cay, Nanyao Dao/Loaita Island, Xiyue Dao/West York Island, Shuanghuang Shazhou/Loaita Nan and Siling Jiao/Commodore Reef. The territorial disputes between China and the Philippines over certain islands and reefs of Nansha Islands thus came into being. This is the most fundamental and direct cause of relevant disputes in the South China Sea between the two countries. The Chinese side has always been firmly against the illegally infringement and occupation by the Philippine side, and has solemnly demanded the Philippine side over and again to withdraw all its personnel and facilities from China's islands and reefs.

On 11 June 1978, then Philippine President Ferdinand Marcos issued Presidential Decree No. 1596, which announced major parts of Nansha Islands as Kalayaan Islands Group of the Philippines in an attempt to provide legal basis for its illegal claims and put approximately 65,000 square kilometers of waters adjacent to Nansha Islands under the Philippines' claims. In April 2012, the Philippine warship harassed the Chinese fishing boats and fishermen conducting regular operation by force, and inflicted severe inhuman treatment on the Chinese fishermen. The Chinese side has made resolute reaction against that.
The Philippine side willfully initiated the arbitration under UNCLOS, regardless of China's legal rights as a party to the UNCLOS, and ignoring the fact that the essence of the disputes between China and the Philippines is the territorial disputes caused by Philippines' illegal occupation of the islands and reefs of China's Nansha Islands. The Philippines' arbitration proceeding completely confuses right and wrong, distorts the fact and diverts attentions. The aim of its move is to cover up the illegal nature of Philippines' infringement and provocative behaviour by the "Abuse of Process" against China, and to defraud the international community of its sympathy and support. Recently, by submitting the memorial to the arbitral tribunal, the Philippine side has launched a "Media Campaign" to smear the Chinese side by playing up the South China Sea issue and the arbitration proceeding. All these willful acts exposed the real motive of the Philippines' pushing for the arbitration proceeding.

The real purpose of the Philippine side's attack on the South China Sea dashed lines is to attempt to deny China's sovereignty over Nansha Islands and their adjacent waters, and cover up the illegality of the Philippines' occupation of some islands and reefs of China's Nansha Islands, which the Chinese side will never accept. No matter how the Philippine memorial is packaged, the direct cause of the disputes between China and the Philippines is the latter's illegal occupation of some of China's islands and reefs in the South China Sea. At the heart of the matter are the disputes between the two sides on the sovereignty over islands and reefs. The most effective approach is to resolve the disputes through friendly consultations and negotiations.

China has never thought of taking the Philippine territory. It is actually the Philippines that occupies China's islands and reefs. Some people believe that these islands and reefs are closer to the Philippines, and therefore they belong to the Philippines. This has no basis in international law. Geographical proximity has never been a criterion that determines the ownership of territory. Many countries in the world possess territories far away from their mainland or closer to other countries. All countries, big or small, should abide by the rules and stick to the truth.

As for what has happened in the South China Sea in recent years, all were provoked by the Philippines. Take the 2012 incident at Huangyan Island as an example, the Philippines harassed unarmed Chinese fishermen with a Navy ship around China's Huangyan Island, and forced them to take off clothes and stand exposed under the scorching sun. Do you think it is China
that bullies the Philippines? Another example is the Ren'ai Reef. A Philippine navy ship was "grounded" off the reef in 1999, over which the Chinese side has never stopped making representations. Initially, the Philippines stated that the ship was "grounded" due to "technical malfunction", and promised to tow it away. However, 15 years have passed, instead of carrying out its promise, the Philippines is now trying to transport rebar and cement in order to build facilities on the reef. The Chinese side certainly can not just sit idly by.

6. The Consensus between China and the Philippines on the South China Sea Issue

As early as in the 1980s, the Chinese side proposed "shelving disputes and seeking joint development" to the Philippine side, which reflects China's sincerity and good faith and its adherence to international laws and practices. It has gained wide approval of the international community. However, the Philippine side did not take it seriously, nor make any positive responses.

There was clear consensus of solving disputes through bilateral negotiations between the Chinese and the Philippine sides. It is stated in the Joint Statement-PRC-RP Consultations on the South China Sea and on Other Areas of Cooperation in August 1995 that a gradual and progressive process of cooperation shall be adopted in a view to eventually negotiating a settlement of the bilateral disputes, and disputes shall be settled by the countries directly concerned. The Joint Statement between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century in May 2000 states that the two sides "agreed to promote a peaceful settlement of disputes through bilateral friendly consultations and negotiations in accordance with universally-recognized principles of international laws, including the 1982 United Nations Convention on the Law of the Sea. The leaders of the two countries reiterated to address the disputes through peaceful dialogue in the Joint Statement in September 2011.

In 2002, China and the ASEAN countries including the Philippines signed the Declaration on the Conduct of Parties in the South China Sea (DOC), and the Section 4 stipulates that the parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized

With the active facilitation by the Chinese side, China and the Philippines exchanged views on relevant disputes, and made some progress. In September 2004, with the approval of both governments and witnessed by the two heads of states, China National Offshore Oil Corporation and Philippine National Oil Company signed the Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea, which was expanded into China-Philippines-Vietnam trilateral agreement in March 2005. In order to further institutionalize relevant negotiations and consultations between China and the Philippines, the Chinese side officially proposed to the Philippine side to set up a Regular Consultation Mechanism on Maritime Issues. However, the Chinese side has not received any reply from the Philippine side until today. After the Philippine side provoked the Huangyan Island incident, the Chinese side took measures safeguarding sovereignty. The Chinese side then suggested again to restart China-Philippines Consultation Mechanism for Confidence-Building Measures. So far, there has been no reply from the Philippine side. At a time when bilateral peaceful means to settle the disputes are yet to be further explored, the Philippine side shut the door for bilateral negotiations on the excuse that they have exhausted other peaceful means and the arbitration is the only option.

7. The Issue of Huangyan Island (Scarborough Shoal)

The Huangyan Island is China's inherent territory. The Philippines once clearly stated that the island is not within its territory. First, a series of international treaties defining the domain of the Philippine territory provide that the Huangyan Island is outside the territory of the Philippines. The then Philippine ambassador to Germany explicitly stated in 1990 in his letter to German radio amateurs that the Huangyan Island is not within the territory of the Philippines. The documents issued in 1994 by the Philippine National Mapping and Resources Authority as well as the Philippine Amateur Radio Association all confirmed that the Huangyan Island is outside the Philippine territorial boundary. The Philippine official map issued in 2011 also marked the Huangyan Island outside the Philippine territorial border limits.

It is absolutely justified for the Chinese side to enforce the law in its own territory and waters. The Chinese side never bullies other countries, but we stick to the principle of "not to attack
unless attacked”. If certain countries are tolerated to create new territorial disputes in the 21st century, would there be any rules in the world? We urge the Philippine side to stop any provocative action at the waters off Huangyan Island, so as to avoid undermining peace and tranquility of the waters.

8. The Issue of Ren’ai Reef (Second Thomas Shoal)

In 1999, a Philippine Navy vessel illegally "grounded" off the Ren'ai reef of China's Nansha Islands under the pretext of "stranding". The Chinese side has been repeatedly making representations to the Philippine side, urging the latter to tow away the ship. The Philippine side claimed that they did not tow away the ship due to "lack of spare parts". The Philippine side stated that it had no plan to build facilities on the reef, and it was not prone to provocation. Since 2003, the Chinese side has repeatedly made representations to the Philippine side, and the Philippine side claimed that as a signatory to the DOC, it would not and was not willing to become the first one to violate the DOC, and that the Philippine side had not built any construction on the reef, and posed no threats to any parties.

However, the Philippine side has not yet towed away the vessel. To make matters worse, the Philippine side has kept taking actions in an attempt to build facilities on the reef. Recently, the Chinese government vessels on routine patrol in waters off the Nansha Islands found again that the Philippine side, under the cover of reprovision to the "grounded" vessel, sent ships to transport rebar and cement in order to reinforce the facilities on the reef. There is no way for the Chinese side to accept this.

The statement released by the Department of Foreign Affairs of the Philippines on March 14 openly stated that the vessel "grounded" 15 years ago was actually meant to occupy the reef, which proves that the Philippine side has been lying for 15 years. The sitting Philippine government was not the one 15 years ago, but as a country, the Philippines is obliged to honor its commitment. A public denial of its own promise will make it lose credibility to the international community. Recently, the Philippine side has been playing up the issue of Ren'ai Reef, playing cards of sympathy everywhere, and including the issue into the so-called international arbitration, with an aim to gather sympathy and trust of the international community and legalize its occupation of the Ren’ai Reef. The Chinese side is steadfast in
defending its territorial sovereignty and maritime interests and rights. The Philippines' plot is doomed to fail.


For a long time, there has been no such a problem of freedom and safety of navigation in the South China Sea. Freedom and safety of navigation in the South China Sea has not been affected by disputes of Nansha Islands, nor will there be any problem in the future. The South China Sea is the main sealane for China's trade and transportation of imported energy. To ensure freedom and safety of navigation in the South China Sea is equally important for China. The Chinese government has always maintained that the freedom of navigation of all countries in the South China Sea should be safeguarded, and has actively participated in the maritime safety cooperation in this region. The actions taken by China in safeguarding its sovereignty and maritime interests in the South China Sea do not affect other countries' freedom of navigation and overflight which are conducted in accordance with the international law. It is with ulterior motive to play up the concept of "freedom of navigation in the South China Sea". It is neither in favour of peace and stability of the region, nor conducive to efforts of defending freedom and safety of navigation.

China has the right to establish Air Defence Identification Zone (ADIZ), which is not related to and should not be linked to disputes on territorial sovereignty, maritime rights and interests, and bilateral relations. Whether to establish ADIZ or not depends on the threats to air safety and the degree of such threats. All aspects should be comprehensively taken into consideration, so this is a complicated and systematic project. The present situation in the South China Sea is generally stable. China and ASEAN countries are committed to implementing the DOC in a comprehensive and effective manner, and safeguarding peace and stability in the South China Sea. Relevant differences and disputes should be properly resolved through negotiations and consultations by countries directly concerned.

10. China is Committed to a South China Sea of Peace, Friendship and Cooperation

For a long time, the Chinese side has stayed committed to implementing the DOC together with parties concerned to safeguard peace and stability of the South China Sea, to resolve relevant disputes through negotiations and consultations with parties directly concerned, and
has been upholding the proposition of "shelving disputes and seeking joint development". China has proposed a series of measures that aim to promote maritime cooperation. In November 2011, the Chinese side set up the China-ASEAN maritime cooperation fund with RMB 3 billion, in view of promoting maritime cooperation between China and ASEAN countries in the fields of environmental protection on the sea, maritime science and technology, maritime connectivity, safety of navigation and rescue, as well as combating transnational crimes, and etc. In May 2013, China and relevant ASEAN countries announced the initiative of the establishment of China-ASEAN maritime emergency rescue hot-line. China and relevant ASEAN countries are in close communication on the approach to properly handle the South China Sea issue. Positive progress has been achieved in maritime issue consultations and mutually beneficial cooperation. So long as all parties earnestly implement relevant consensus, adhere to consultations and negotiations, promote practical maritime cooperation and joint development, the South China Sea will become a sea of peace, friendship and cooperation.

(Zhang Hua is the Spokesperson of the Embassy of the People's Republic of China in the Republic of the Philippines)
APPENDIX I


2016/07/12

With regard to the award rendered on 12 July 2016 by the Arbitral Tribunal in the South China Sea arbitration established at the unilateral request of the Republic of the Philippines (hereinafter referred to as the "Arbitral Tribunal"), the Ministry of Foreign Affairs of the People's Republic of China solemnly declares that the award is null and void and has no binding force. China neither accepts nor recognizes it.

1. On 22 January 2013, the then government of the Republic of the Philippines unilaterally initiated arbitration on the relevant disputes in the South China Sea between China and the Philippines. On 19 February 2013, the Chinese government solemnly declared that it neither accepts nor participates in that arbitration and has since repeatedly reiterated that position. On 7 December 2014, the Chinese government released the Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines, pointing out that the Philippines' initiation of arbitration breaches the agreement between the two states, violates the United Nations Convention on the Law of the Sea (UNCLOS), and goes against the general practice of international arbitration, and that the Arbitral Tribunal has no jurisdiction. On 29 October 2015, the Arbitral Tribunal rendered an award on jurisdiction and admissibility. The Chinese government immediately stated that the award is null and void and has no binding force. China's positions are clear and consistent.

2. The unilateral initiation of arbitration by the Philippines is out of bad faith. It aims not to resolve the relevant disputes between China and the Philippines, or to maintain peace and stability in the South China Sea, but to deny China's territorial sovereignty and maritime rights and interests in the South China Sea. The initiation of this arbitration violates international law. First, the subject-matter of the arbitration initiated by the Philippines is in essence an issue of territorial sovereignty over some islands and reefs of Nansha Qundao (the Nansha Islands), and
inevitably concerns and cannot be separated from maritime delimitation between China and the Philippines. Fully aware that territorial issues are not subject to UNCLOS, and that maritime delimitation disputes have been excluded from the UNCLOS compulsory dispute settlement procedures by China's 2006 declaration, the Philippines deliberately packaged the relevant disputes as mere issues concerning the interpretation or application of UNCLOS. Second, the Philippines' unilateral initiation of arbitration infringes upon China's right as a state party to UNCLOS to choose on its own will the procedures and means for dispute settlement. As early as in 2006, pursuant to Article 298 of UNCLOS, China excluded from the compulsory dispute settlement procedures of UNCLOS disputes concerning, among others, maritime delimitation, historic bays or titles, military and law enforcement activities. Third, the Philippines' unilateral initiation of arbitration violates the bilateral agreement reached between China and the Philippines, and repeatedly reaffirmed over the years, to resolve relevant disputes in the South China Sea through negotiations. Fourth, the Philippines' unilateral initiation of arbitration violates the commitment made by China and ASEAN Member States, including the Philippines, in the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) to resolve the relevant disputes through negotiations by states directly concerned. By unilaterally initiating the arbitration, the Philippines violates UNCLOS and its provisions on the application of dispute settlement procedures, the principle of "pacta sunt servanda" and other rules and principles of international law.

3. The Arbitral Tribunal disregards the fact that the essence of the subject-matter of the arbitration initiated by the Philippines is issues of territorial sovereignty and maritime delimitation, erroneously interprets the common choice of means of dispute settlement already made jointly by China and the Philippines, erroneously construes the legal effect of the relevant commitment in the DOC, deliberately circumvents the optional exceptions declaration made by China under Article 298 of UNCLOS, selectively takes relevant islands and reefs out of the macro-geographical framework of Nanhai Zhudao (the South China Sea Islands), subjectively and speculatively interprets and applies UNCLOS, and obviously errs in ascertaining facts and applying the law. The conduct of the Arbitral Tribunal and its awards seriously contravene the general practice of international arbitration, completely deviate from the object and purpose of UNCLOS to promote peaceful settlement of disputes, substantially impair the integrity and authority of UNCLOS, gravely infringe upon China's legitimate rights as a sovereign state and state party to UNCLOS, and are unjust and unlawful.
4. China's territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China opposes and will never accept any claim or action based on those awards.

5. The Chinese government reiterates that, regarding territorial issues and maritime delimitation disputes, China does not accept any means of third party dispute settlement or any solution imposed on China. The Chinese government will continue to abide by international law and basic norms governing international relations as enshrined in the Charter of the United Nations, including the principles of respecting state sovereignty and territorial integrity and peaceful settlement of disputes, and continue to work with states directly concerned to resolve the relevant disputes in the South China Sea through negotiations and consultations on the basis of respecting historical facts and in accordance with international law, so as to maintain peace and stability in the South China Sea.
APPENDIX J

PART V, ARTICLE 55-58, 1982 UNCLOS

PART V

EXCLUSIVE ECONOMIC ZONE

Article 55
Specific legal regime of the exclusive economic zone

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56
Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:
   (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
   (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
      (i) the establishment and use of artificial islands, installations and structures;
(ii) marine scientific research;
(iii) the protection and preservation of the marine environment;
(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

**Article 57**

*Breadth of the exclusive economic zone*

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

**Article 58**

*Rights and duties of other States in the exclusive economic zone*

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.
APPENDIX K

PRESIDENTIAL DECREE NO. 1596

PRESIDENTIAL DECREE NO. 1596 - DECLARING CERTAIN AREA PART OF THE PHILIPPINE TERRITORY AND PROVIDING FOR THEIR GOVERNMENT AND ADMINISTRATION

WHEREAS, by reason of their proximity the cluster of islands and islets in the South China Sea situated within the following:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwardly to the point of beginning at 7°40' N, latitude and 116°00' E longitude.

are vital to the security and economic survival of the Philippines;

WHEREAS, much of the above area is part of the continental margin of the Philippine archipelago;

WHEREAS, these areas do not legally belong to any state or nation but, by reason of history, indispensable need, and effective occupation and control established in accordance with the international law, such areas must now deemed to belong and subject to the sovereignty of the Philippines;

WHEREAS, while other states have laid claims to some of these areas, their claims have lapsed by abandonment and can not prevail over that of the Philippines on legal, historical, and equitable grounds.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree as follows:

Section 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to
PRESIDENTIAL DECREES NO. 1596 - DECLARING CERTAIN AREA PART OF THE
PHILIPPINE TERRITORY AND PROVIDING FOR THEIR GOVERNMENT AND
ADMINISTRATION

WHEREAS, by reason of their proximity the cluster of islands and islets in the South China Sea
situated within the following:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East
of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian
of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with
the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the
meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection
with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to
its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at
7°40' N, latitude and 116°00' E longitude.

are vital to the security and economic survival of the Philippines;

WHEREAS, much of the above area is part of the continental margin of the Philippine
archipelago;

WHEREAS, these areas do not legally belong to any state or nation but, by reason of history,
indispensable need, and effective occupation and control established in accordance with the
international law, such areas must now deemed to belong and subject to the sovereignty of the
Philippines;

WHEREAS, while other states have laid claims to some of these areas, their claims have lapsed
by abandonment and can not prevail over that of the Philippines on legal, historical, and
equitable grounds.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of
the powers in me vested by the Constitution, do hereby decree as follows:

Section 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East
of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian
of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with
the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the
meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection
with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to
its intersection with the parallel of 10°00' N, thence South westwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude;

including the sea-bed, sub-soil, continental margin and space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."

Section 2. Pending the election of its regular officials and during the period of emergency declared in Proclamation No. 1081, and unless earlier provided by law, the administration and government of the area shall be vested in the Secretary of National Defense or in such officers of the Civil government or the Armed Forces of the Philippines as the President may designate.

Section 3: This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.
APPENDIX L

1995 JOINT STATEMENT OF RP-PRC ON THE SOUTH CHINA SEA AND ON OTHER AREAS OF COOPERATION

Joint Statement Republic of Philippine-People’s Republic of China Consultations on the South China Sea and on Other Areas of Cooperation 9-10 August 1995

Delegations from the Philippines and China met in Manila on 9-10 August 1995 for consideration on the South China Sea and on other areas of cooperation.

The consultations were held in an atmosphere of cordiality and in a frank and constructive manner.

The two sides reiterated the importance they attach to their bilateral relations. They recognize that the continued prosperity of their economies depends upon the peace and stability of the region. They reaffirmed their commitment to regional peace, stability, and cooperation.

Frank discussions on Mischief Reef (“Meiji Reef”) were held. The two sides expressed their respective positions on the matter. They agreed to hold further consultations in order to resolve their differences. On the South China Sea issues as a whole, they exchanged views on the legal and historical bases of their respective positions.

Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct in the area:

1. Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner though consultations on the basis of equality and mutual respect.

2. Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes.

3. In the spirit of expanding common ground and narrowing differences, a gradual and
APPENDIX M
CHAPTER VI, ARTICLE 33, UN CHARTER

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES

Article 33
1 The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2 The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34
The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35
1 Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2 A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3 The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36
1 The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2 The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3 In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.
APPENDIX N

ASEAN DECLARATION (BANGKOK DECLARATION) BANGKOK 1967

The Presidium Minister for Political Affairs/Minister for Foreign Affairs of Indonesia, the Deputy Prime Minister of Malaysia, the Secretary of Foreign Affairs of the Philippines, the Minister for Foreign Affairs of Singapore and the Minister of Foreign Affairs of Thailand:

MINDFUL of the existence of mutual interests and common problems among countries of South-East Asia and convinced of the need to strengthen further the existing bonds of regional solidarity and cooperation;

DESIRING to establish a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region;

CONSCIOUS that in an increasingly interdependent world, the cherished ideals of peace, freedom, social justice and economic well-being are best attained by fostering good understanding, good neighbourliness and meaningful cooperation among the countries of the region already bound together by ties of history and culture;

CONSIDERING that the countries of South-East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;

AFFIRMING that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development;

DO HEREBY DECLARE:

FIRST, the establishment of an Association for Regional Cooperation among the countries of South-East Asia to be known as the Association of South-East Asian Nations (ASEAN).

SECOND, that the aims and purposes of the Association shall be:
1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;

2. 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;

3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;

4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;

5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;

6. To promote South-East Asian studies;

7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

THIRD, that to carry out these aims and purposes, the following machinery shall be established:

(a) Annual Meeting of Foreign Ministers, which shall be by rotation and referred to as ASEAN Ministerial Meeting. Special Meetings of Foreign Ministers may be convened as required.

(b) A Standing committee, under the chairmanship of the Foreign Minister of the host country or his representative and having as its members the accredited Ambassadors of the other member countries, to carry on the work of the Association in between Meetings of Foreign Ministers.

(c) Ad-Hoc Committees and Permanent Committees of specialists and officials on specific subjects.
(d) A National Secretariat in each member country to carry out the work of the Association on behalf of that country and to service the Annual or Special Meetings of Foreign Ministers, the Standing Committee and such other committees as may hereafter be established.

FOURTH, that the Association is open for participation to all States in the South-East Asian Region subscribing to the aforementioned aims, principles and purposes.

FIFTH, that the Association represents the collective will of the nations of South-East Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.

DONE in Bangkok on the Eighth Day of August in the Year One Thousand Nine Hundred and Sixty-Seven.
Ref. code: 25605927040070SGH

For the Republic of Indonesia:

\[ Signature \]

ADAM MALIK
Presidium Minister for Political
Minister for Foreign Affairs

For Malaysia:

\[ Signature \]

TUN ABDUL RAZAK
Deputy Prime Minister,
Minister of Defence and
Minister of National Development

For the Republic of Singapore:

\[ Signature \]

S. RAJARATHNAM
Minister of Foreign Affairs

For the Kingdom of Thailand:

\[ Signature \]

THANAT KHOMAN
Minister of Foreign Affairs

For the Republic of the Philippines:

\[ Signature \]

MARCISO RAMOS
Secretary of Foreign Affairs
APPENDIX O

2008 ASEAN CHARTER

INSPIRED by and united under One Vision, One Identity and One Caring and Sharing Community;

UNITED by a common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations;

RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity;

ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms;

RESOLVED to ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process;

CONVINCED of the need to strengthen existing bonds of regional solidarity to realise an ASEAN Community that is politically cohesive, economically integrated and socially responsible in order to effectively respond to current and future challenges and opportunities;

COMMITTED to intensifying community building through enhanced regional cooperation and integration, in particular by establishing an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural
CHARTER OF THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS

PREAMBLE

WE, THE PEOPLES of the Member States of the Association of Southeast Asian Nations (ASEAN), as represented by the Heads of State or Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam:

NOTING with satisfaction the significant achievements and expansion of ASEAN since its establishment in Bangkok through the promulgation of The ASEAN Declaration;

RECALLING the decisions to establish an ASEAN Charter in the Vientiane Action Programme, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter;

MINDFUL of the existence of mutual interests and interdependence among the peoples and Member States of ASEAN which are bound by geography, common objectives and shared destiny;
Community, as provided for in the Bali Declaration of ASEAN Concord II;

HEREBY DECIDE to establish, through this Charter, the legal and institutional framework for ASEAN,

AND TO THIS END, the Heads of State or Government of the Member States of ASEAN, assembled in Singapore on the historic occasion of the 40th anniversary of the founding of ASEAN, have agreed to this Charter.

CHAPTER I
PURPOSES AND PRINCIPLES

ARTICLE 1
PURPOSES

The Purposes of ASEAN are:

1. To maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region;

2. To enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation;

3. To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction;
4. To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment;

5. To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital;

6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation;

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;

8. To respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges;

9. To promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples;

10. To develop human resources through closer cooperation in education and life-long learning, and in
science and technology, for the empowerment of the 
people of ASEAN and for the strengthening of the 
ASEAN Community;

11. To enhance the well-being and livelihood of the 
people of ASEAN by providing them with equitable 
access to opportunities for human development, social 
welfare and justice;

12. To strengthen cooperation in building a safe, secure 
and drug-free environment for the peoples of ASEAN;

13. To promote a people-oriented ASEAN in which all 
sectors of society are encouraged to participate in, and 
benefit from, the process of ASEAN integration and 
community building;

14. To promote an ASEAN identity through the fostering 
of greater awareness of the diverse culture and heritage 
of the region; and

15. To maintain the centrality and proactive role of ASEAN 
as the primary driving force in its relations and cooperation 
with its external partners in a regional architecture that is 
open, transparent and inclusive.

ARTICLE 2
PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN 
and its Member States reaffirm and adhere to the 
fundamental principles contained in the declarations,
agreements, conventions, concords, treaties and other instruments of ASEAN.

2. ASEAN and its Member States shall act in accordance with the following Principles:

   (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

   (b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;

   (c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

   (d) reliance on peaceful settlement of disputes;

   (e) non-interference in the internal affairs of ASEAN Member States;

   (f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

   (g) enhanced consultations on matters seriously affecting the common interest of ASEAN;

   (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
(i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

(k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

(l) respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;

(m) the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

(n) adherence to multilateral trade rules and ASEAN’s rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.
Done in Singapore on the Twentieth Day of November in the Year Two Thousand and Seven, in a single original in the English language.

For Brunei Darussalam:

HAJI HASSANAL BOLKIAH
Sultan of Brunei Darussalam

For the Kingdom of Cambodia:

SAMDECH HUN SEN
Prime Minister

For the Republic of Indonesia:

DR. SUSILO BAMBANG YUDHOYONO
President
For the Lao People’s Democratic Republic:

BOUASONE BOUPHAVANH
Prime Minister

For Malaysia:

DATO' SERI ABDULLAH AHMAD BADAWI
Prime Minister

For the Union of Myanmar:

GENERAL THEIN SEIN
Prime Minister

For the Republic of the Philippines:

GLORIA MACAPAGAL-ARROYO
President
For the Republic of Singapore:

LEE HSIENT LOONG
Prime Minister

For the Kingdom of Thailand:

GENERAL SURAYUD CHULANONT (RET.)
Prime Minister

For the Socialist Republic of Viet Nam:

NGUYEN TAN DUNG
Prime Minister
APPENDIX P

1958 DECLARATION OF THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA ON CHINA’S TERRITORIAL SEA

Beijing, September 4, 1958

The Government of the People’s Republic of China declares:

1. The breadth of the territorial sea of the People’s Republic of China shall be twelve nautical miles. This provision applies to all territories of the People’s Republic of China including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas.

2. China’s territorial sea along the mainland and its coastal islands takes as its baseline the line composed of the straight lines connecting base-points on the mainland coast and on the outermost coastal islands; the water area extending twelve nautical miles outward from this baseline is China’s territorial sea. The water areas inside the baseline, including Bolin Bay and the Qiongzhou Straits, are Chinese inland waters. The islands inside the base line, including Dongyu Island, Gaodeng Island, the Mazu Islands, the Bainan Islands, Gaoping Island, the Greater And Lesser Jinmen Islands, Dadan Island, Erdan Island and Dongdu Island, are islands of the Chinese inland waters.

3. No foreign aircraft and no foreign vessels for military use may enter China’s territorial sea and the air space above it without the permission of the Government of the People’s Republic of China.

While navigation Chinese territorial sea, every foreign vessel must observe the relevant laws and regulations laid down by the Government of the People’s Republic of China.

4. The principles provided in paragraphs 2) and 3) likewise apply to Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha islands, and all other islands belonging to China.

The Taiwan and Penghu areas are still occupied by the United States armed force. This is an unlawful encroachment on the territorial integrity and sovereignty of the People’s Republic of China. Taiwan, Penghu and such other areas are yet to be recovered, and the Government of the People’s Republic of China has the right to recover these areas by all suitable means at a suitable time. This is China’s internal affair, in which no foreign interference is tolerated.
APPENDIX Q

STATEMENT OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON CHINA'S TERRITORIAL SOVEREIGNTY AND MARITIME RIGHTS AND INTERESTS IN THE SOUTH CHINA SEA

2016/07/12

To reaffirm China's territorial sovereignty and maritime rights and interests in the South China Sea, enhance cooperation in the South China Sea with other countries, and uphold peace and stability in the South China Sea, the Government of the People's Republic of China hereby states as follows:

I. China's Nanhai Zhudao (the South China Sea Islands) consist of Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands). The activities of the Chinese people in the South China Sea date back to over 2,000 years ago. China is the first to have discovered, named, and explored and exploited Nanhai Zhudao and relevant waters, and the first to have exercised sovereignty and jurisdiction over them continuously, peacefully and effectively, thus establishing territorial sovereignty and relevant rights and interests in the South China Sea.

Following the end of the Second World War, China recovered and resumed the exercise of sovereignty over Nanhai Zhudao which had been illegally occupied by Japan during its war of aggression against China. To strengthen the administration over Nanhai Zhudao, the Chinese government in 1947 reviewed and updated the geographical names of Nanhai Zhudao, compiled Nan Hai Zhu Dao Di Li Zhi Lüe (A Brief Account of the Geography of the South China Sea Islands) and drew Nan Hai Zhu Dao Wei Zhi Tu (Location Map of the South China Sea Islands) on which the dotted line is marked. This map was officially published and made known to the world by the Chinese government in February 1948.

II. Since its founding on 1 October 1949, the People's Republic of China has been firm in upholding China's territorial sovereignty and maritime rights and interests in the South China Sea. A series of legal instruments, such as the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1998 Law of the People's...

III. Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and in accordance with national law and international law, including the United Nations Convention on the Law of the Sea, China has territorial sovereignty and maritime rights and interests in the South China Sea, including, inter alia:

i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao;

ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;

iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;

iv. China has historic rights in the South China Sea.

The above positions are consistent with relevant international law and practice.

IV. China is always firmly opposed to the invasion and illegal occupation by certain states of some islands and reefs of China's Nansha Qundao, and activities infringing upon China's rights and interests in relevant maritime areas under China's jurisdiction. China stands ready to continue to resolve the relevant disputes peacefully through negotiation and consultation with the states directly concerned on the basis of respecting historical facts and in accordance with international law. Pending final settlement, China is also ready to make every effort with the states directly concerned to enter into provisional arrangements of a practical nature, including joint development in relevant maritime areas, in order to achieve win-win results and jointly maintain peace and stability in the South China Sea.

V. China respects and upholds the freedom of navigation and overflight enjoyed by all states under international law in the South China Sea, and stays ready to work with other coastal
states and the international community to ensure the safety of and the unimpeded access to the international shipping lanes in the South China Sea.
**BIOGRAPHY**

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