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INTERNATIONAL CONFERENCE
ON INTERNATIONAL SYSTEM_

THE END OF THE WESTPHALIAN SETTLEMENT?

CONTEMPORARY GLOBAL CHALLENGES TOWARDS THE NATION-STATE SYSTEM

Yogyakarta, November 11th 2013

REVIEWERS :

Dr. Linda Quayle (Universitas Muhammadiyah Yogyakarta)
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Achmad Zulfikar

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Yogyakarta, November 11ᵗʰ 2013

Head of International Relations Department UMY
Dr. Nur Azizah, M. Si.

Preface

The proceeding is one of widespread ideas in an academic work produced by participants of the International Conference on International System (ICIS). In the proceedings, the papers are divided into 3 clusters. The division is made by grouping the papers based on the theme to make the readers understand the structure of the main ideas of the conference as well as the dynamic *dialectical* of each paper.

Cluster I examines various issues under the topic of "Democracy, Human Security, Humanitarian Intervention, and State Sovereignty, followed by discussing "The Uprising Role of Unprecedented Non- State Actors: How Nation-States Dealt with It in the cluster II, while the cluster III focuses on the topic of "The Westphalian Nation-State System vs. the Rest: Are There Any Other Alternative?"

Through this opportunity editorial team would like to thank the authors who have contributed their expertise and thought in accordance with the conference theme entitled The End of Westphalian Settlement?: Contemporary Global Challenges Toward the Nation-State System.

Acknowledgements, we wish to thank to Gemini Publishing as the publisher of this proceedings and International Relations Department of Universitas Muhammadiyah Yogyakarta, Universiti Utara Malaysia, and University of The Philippines as the organizer of this conference and co-publisher. Papers in the proceeding are contributed by academia from 6 different countries, i.e.: Indonesia, Malaysia, Philippines, Australia, Japan, and Spain. With diverse backgrounds and perspectives, authors show various viewpoints and discussions on westphalian issues. Thus, we hope our readers will be able to enrich and deepen the understanding of the theme related. Finally, we hope the publication of the proceedings will provide great benefit to us.

Warmly regards,

Editors Team

Winner Agung Pribadi & Achmad Zulfikar

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ICIS

CLUSTER I

Democracy, Human Security, Humanitarian Intervention, and State Sovereignty

Working in the Gap between the Old and the New: 'Responsibility To Protect' and the Practice of Consensus

Linda Quayle
Universitas Muhammadiyah Yogyakarta

Abstract

This paper uses ideas from the 'English School' (ES) approach to International Relations to examine the evolution of the 'Responsibility To Protect' (R2P), an important example of an attempt to bridge the old-new gap in the area of humanitarian practice by consensually extending (rather than coercively trying to overthrow) traditional ideas of sovereignty. The practice of consensus is routinely pilloried. Following the lead of pluralist ES scholars, however, the paper argues that it should rather be seen as an invaluable transition mechanism. As is illustrated by the case of R2P, attempts to expand the remit of international society, so that it can better meet the various global challenges it faces, acquire through consensus a legitimacy and authority that coercion or unilateralism simply cannot provide. Through its ES lens, the paper concludes that consensus-building, though it offers no quick route to dealing with global challenges, can – as is the case with R2P – offer an incremental way of overcoming the dilemmas of the 'in-between times'.

In any evolving situation, there is an overlap and a tension between the old and the new. This is also the case in the debate surrounding sovereignty and state control.[1]

On the one hand, globalization, liberalism, terrorism, communications technology, and a host of other transnational influences present the state with a formidable range of challenges, indisputably complicating the formulation of policy.

On the other hand, the state entity still wields considerable power and influence. It was to states that citizens flocked for security after 11 September 2001, and to states that they looked for solutions

to the global financial crisis that began in 2008. Migration policy in many parts of the world is also a powerful reminder not only that states have walls but also that many of the residents of those states want the walls preserved. Nationalism, likewise, is still a powerful force behind states' continued propensity to distinguish 'ours' from 'theirs', and fight, if necessary, to preserve it.

Nor is it clear that a world without walls would be automatically better or safer. The global norm of sovereignty has not always succeeded in protecting the small and weak against the predations of the large and strong, but it has at least had a restraining effect. Contemporary states do not routinely march over each other's borders with the aim of conquest or annexation.

We are currently, therefore, living both *with* and *beyond* sovereignty. The old certainties are no long so certain. But a new order, despite the confident predictions at the end of the Cold War, has still not been born. These are, then, 'in-between times'. It remains to be seen whether they will ultimately lead to an upgraded version of our current system, to an impaired and fatally fragmented version, or to something entirely different. The current muddle, however, which is compounded by extensive global power shifts, looks likely to continue for some time at least.

In no field is this awkward transition stage more clearly exposed than in the area of humanitarian challenges. It is increasingly unacceptable, at international level, to simply allow state-created suffering to continue unopposed and unchecked, and yet attempts at intervention have also been subject to considerable criticism from many national and ideological viewpoints. The muted response to Rwanda's 1994 catastrophe represents a 'too little too late' approach that has remained for champions of humanitarianism the epitome of what must be avoided. Yet more muscular attempts at intervention also attracted considerable opprobrium.

Particularly since 2003, the spectre of Iraq has loomed over the humanitarian debate as an example of all that intervention should not be: largely unilateral; instigated by a dominant power and its small club of supporters; scantily clad with a humanitarian garment of convenience; and unblessed by any definition of global legitimacy.

The 'Responsibility To Protect' (R2P) doctrine represents an important attempt to avoid inertia in face of humanitarian disaster, while also guarding against the co-option of humanitarian responsibility by shifting coalitions of would-be freelance sheriffs. At the same time, the R2P initiative endeavours to knit together old and

new versions of international order by extending (rather than trying to overthrow) traditional ideas of sovereignty (Glanville, 2011).

The focus of this paper is the consensual approach that led to the adoption of R2P. Consensus generally suffers from a bad press. Critics see consensual arrangements as tedious to negotiate, liable to represent the 'lowest common denominator', and ultimately satisfactory to no-one. Indeed, it is frustration with the tiresome nature of consensus-building that often leads to demands for coercion and unilateralism.

Yet, following the lead of the so-called 'English School' (ES) approach to International Relations, this paper argues that broad, cross-cultural consensus is an invaluable transition mechanism. Attempts to expand the remit of international society, so that it can better meet the various global challenges it faces, can acquire through consensus a legitimacy and authority that coercion or unilateralism simply cannot provide.

The paper is divided into two. The first section briefly sketches ES ideas on international society in general and consensus in particular, and outlines how the process of consensus can fulfil a 'gap-filling' function between conservative and more progressive models of international relations. The second illustrates these ideas by focusing on the elaboration of a consensus on R2P as an example of a transition in the practice of sovereignty.[2] Through its ES lens, the paper concludes that consensus-building, though it offers no quick route to dealing with global challenges, can – as is the case with R2P – offer an incremental way of overcoming the dilemmas of the 'in-between times'.

The English School, consensus, and transition

The ES's flagship idea is the concept of international society. Buzan articulates the idea of this society very simply: 'Just as human beings as individuals live in societies which they both shape and are shaped by, so also states live in an international society which they shape and are shaped by' (2001, 477).

But the international version, of course, is an anarchical society (Bull, 2002). In a world with no 'boss', international society has to establish and maintain order in rather different ways from those that hold sway in domestic societies. It attaches particular importance to the *institutions* that underpin order and cooperation, understanding these institutions not primarily in the sense of visible organizations,

but in the sense of underlying sets of 'habits and practices shaped towards the realisation of common goals' (Bull, 2002, 71).

International society exists not only at the global level, but also at the regional level. Its manifestations are not all the same, however. Thinner, so-called 'pluralist' societies stress the values of individual state autonomy, diversity, and minimalism, while thicker, 'solidarist' societies seek a more ambitious level of cooperation, involving not only a wider range of functional areas, but also a higher tolerance of the enforcement of rules (Alderson & Hurrell, 1999, 9-10). Individual ES scholars also divide into 'pluralists' and 'solidarists', endorsing different normative positions along the pluralism-solidarism spectrum.

Global international society, which encompasses vast political, economic, cultural, and historical differences, inevitably exhibits more pluralist traits than do the more homogeneous regional sub-societies. A classic example of solidarism is seen in Europe, whose multi-level cooperation is clearly visible in the workings of the European Union. Southeast Asia's regional international society, symbolised by the Association of Southeast Asian Nations (ASEAN), is still located in the pluralist half of the spectrum, but has nevertheless advanced significantly beyond the minimal pluralism of global society as a whole.[3]

Solidarist societies generally possess an ideological and/or cultural 'glue', which enables them to mandate quite sweeping corporate action in face of pressing global challenges. Because they share fundamentally similar worldviews, it is comparatively easier for them to craft cooperative solutions to problems of human rights or the environment, for example. More fragmented, pluralist societies, on the other hand, have to find different routes to collective responses (Bull, 2002, 238-9).

This is where considerations of consensus become highly significant. Contrary to frequent caricatures, consensus is not the same as unanimity. Writing of ASEAN, an organization that has long privileged consensual outcomes, former Secretary-General Severino notes that consensus is reached when 'enough' people support a proposal, and no-one feels sufficiently strongly to oppose it outright (2006, 34-35). This is the understanding of consensus that will be adopted here. To be called consensual, there is no requirement that a course of action wait until the very last recalcitrant has formally signed up.

Even without the characteristic of unanimity, however, cross-national, cross-cultural, cross-ideological consensus provides a firmer

basis on which to advance solutions to global challenges than is available if consensus is absent. If everyone agrees on the direction the bus should take, and climbs aboard, the corporate endeavour of the journey can be 'owned' and legitimated in a way that is impossible if significant groups opt for a better conveyance that only they can afford, while yet other groups are left behind entirely.

It is not that consensus offers simple answers. Aside from the hard diplomatic yards involved in its forging, it is hard to measure objectively, and what is consensually agreed on one issue may undermine or conflict with consensus on another. Nor should the process be romanticized. In a world of unequally powerful states, consensus can never be divorced from the harsh realities of coercion and blackmail.

Nevertheless, according to ES pluralist scholars, attempts to meet global challenges in a way that consistently *circumvents* consensus-building are liable to open up dangerous rifts in international society, and set dangerous precedents. Even the most minimalist pluralist international societies have agreed on a set of foundational norms, such as preserving independence, limiting violence, keeping promises, and stabilizing possession. Premature, non-consensual attempts to lead international society in a more sophisticated direction not only risk failure in themselves, but also risk undermining the consensus that exists on the basic issues (Bull, 2002, 90-2).

Consensus also promotes egalitarianism. International society, according to ES thinkers, contains both egalitarian and hierarchical tendencies (Watson, 2002). Theoretically, sovereign states are equal, and key 'institutions' of international society – most notably the institution of sovereignty itself, but also diplomatic norms, international law, and the quintessentially anti-hegemonic balance of power – serve to check hegemony and create a more level playing-field. Patently, however, sovereign states are unequally *powerful*. This reality is reflected in another key institution: great power management. Consensus reinforces the first of these competing tendencies, while routinely overriding it reinforces the hierarchical one.

Coercion – on issues ranging from human rights and intervention to economic policy – has often been the mechanism of choice for powerful states when consensus seems elusive, and particularly characterized the unipolar period immediately following the Cold War. This practice markedly increased the hierarchical tendencies of international society, producing a two-tier version with

a solidarist core and a pluralist periphery (see, for example, Clark, 2001; Dunne, 2003). The less powerful states in international society therefore have high stakes in defending the procedural norm of consensus as global challenges mount.

In the eyes of pluralist ES scholars, then, consensus offers an alternative route to solidarism – one that retains a distinctive voice for its smaller members, while also retaining the key goal of being better equipped to deal with global challenges. As a replacement for the 'motor' of ideological convergence, consensus is inevitably slower. For this reason, many feel that the bumbling process of consensus-building acts as a brake on cooperative endeavours. Yet the other side of the coin shows consensus to be an accelerator. Once consensus has been forged, solid action can follow. Snowballing global consensus, for example, has over the years outlawed moral arguments for slavery, colonialism, and apartheid.

This section has argued that the ES's 'middle-ground' position gives it a usefully different perspective on consensus. From an ES vantage-point, consensus can be seen as an issue-by-issue route to a solidarism that is better able to face global challenges. It makes a valuable contribution to the task of navigating the 'in-between times', when power is shifting and the relationship between sovereignty and globalization is evolving. The next section will examine a practical case of contemporary consensus-building in this light.

The R2P consensus process

R2P offers an informative case study of the consensus process at work. The topic of civilian protection, which is at the heart of R2P's remit, reaches deep into a domain that is quintessentially the state's. Contention can be expected. But the version of R2P that has been current since 2005 reflects an attempt to ensure normative progress without the divisiveness of coercive approaches. Consensus-building has been at the heart of this attempt.

The broad international consensus that advocates of R2P have tirelessly sought to forge and maintain revolves around a rearticulation of state sovereignty. The doctrine reaffirms that it is primarily the responsibility of the individual *state* to protect its citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. Nevertheless, the principle of R2P makes clear that states also have responsibilities in two other areas: to assist each other in fulfilling their protection mandate; and, if an individual state is clearly failing in its protective remit, to 'respond collectively in a

timely and decisive manner' (in any of a number of ways, which include, but only as a last resort, using force) (UN, 2009).

R2P is not as radical a change as is sometimes implied. Sovereignty has never given states *carte blanche* to do whatever they like. As Bull notes, a state's right to sovereignty 'is a right enjoyed to the extent that it is recognised to exist by other states'; as something that is socially conferred, it may be qualified or even removed by the rest of international society (1999, 149). Nor has sovereignty ever meant 'freedom to do as the state pleases' (Northedge, 1976).

Though some of its genes derive from the 2001 International Commission on Intervention and State Sovereignty, the formal birthing of R2P came in 2005 when the principle was unanimously adopted by the United Nations (UN) World Summit.[4] It is true that the 2005 consensus was less than robust, in that its active negotiation was in the hands of a comparatively small number of states, which then asked the rest to endorse it (Williams, 2009, 402). And it involved no small amount of horse-trading. As Claes points out, 'a broad commitment to the Millennium Development Goals' ensured 'significant concessions' on R2P during the 2005 World Summit negotiations (2012, 87).

It then took 'six months of intense debate' to produce the 'hard-won consensus' culminating in 2006 in UNSC Resolution 1674 on the Protection of Civilians in Armed Conflict, while the 2009 reaffirmation of R2P in Resolution 1894, during the eighth open debate on the protection of civilians, also involved considerable diplomatic pressure (Bellamy, 2010, 144-8).

Nevertheless, the very fact that R2P made it into the 2005 Outcome Document is still noteworthy (Reinold, 2010, 61), and even critics concede that 2005 marked the beginning of 'the new consensus over R2P' (Cunliffe, 2010, 35). Since then, UN Secretary-General Ban Ki-moon has proved effective in 'forging a wider and deeper consensus' on R2P (Bellamy, 2010, 146), and increased receptivity on the part of many countries from the Non-Aligned Movement can be seen as evidence of 'a very remarkable shift' – part of a 'new momentum of global awareness' (Deng, 2010, 86, 88).

Multiple examples can be cited to illustrate that R2P has gained significant currency in the years since it was first endorsed. The cases of Kenya and Darfur at least 'elicited a consensus that the international community has a role to play', even though the latter case could not bridge a 'persistent gap between what is needed and what is delivered' (Bellamy, 2010, 155). The 'political consensus on R2P' also helped to craft responses to the crises in Côte d'Ivoire and

Libya in 2011 (Bellamy & Williams, 2011, 827, 829-46). The ground-breaking Resolution 1973 on Libya certainly involved plenty of abstentions, but crucially, those who were not for it did not veto it (Eyal, 2012, 56-7).

Dunne and Gifford differentiate between 'the broad acceptance of the R2P principle in international society' – which makes '*non*-intervention in the face of mass atrocity crimes *less* likely' – and the 'controversial and contested' application of the principle in specific cases; accordingly, debates in the UNSC are now much more likely to reflect disagreements about the implementation of R2P than about its overall validity (2011, 519-22, 525).

The process of building consensus to support action on specific cases is inevitably unique each time. Factors that have played a role in recent instances include host-state consent, regional consent, interest in pursuing R2P on the part of at least one permanent member of the UNSC, and the degree of diplomatic isolation of the host-state leader (Bellamy, 2010, 155; Bellamy & Williams, 2011, 832-833, 848-849, Johnson, 2012 #2081, 4). In the cases of Kenya, Côte d'Ivoire, and Libya, the action contemplated could also be argued to stand a good chance of doing more good than harm (although such judgments are always more easily made with hindsight).

Unfortunately, many of these elements have remained elusive in the still unfolding Syria case. While R2P ideas were clearly animating diplomatic attempts to protect Syria's civilians from the beginning, possibilities for concerted action that would not make the situation worse remained elusive until the September 2013 Russian-US agreement on pressing for a chemical weapons deal gave at least the hope of a renewed diplomatic push (Evans, 2013a). The outcome cannot be predicted at the time of writing, but highly *non*-consensual US air strikes were at least temporarily averted (ICG, 2013).

Yet hesitation over the correct course of action in Syria, while undoubtedly tragic for suffering civilians in Syria, does not mean that consensus on R2P has completely unravelled. As Evans points out (2013b), there is substantial evidence, both from UN General Assembly debates and from UNSC resolutions on Yemen, South Sudan, and Mali, that R2P is still very much a live consideration. The issue now, he argues, is working out how it should be applied 'in the hardest cases, the sharp-end cases', such as Syria.

One of the obstacles he identifies is the climate of distrust within the UNSC (Evans, 2013b). Frustratingly, this, and the resultant veto threat that has hung over almost every proposed remedy in Syria, stems at least in part from the egregious *breach* of consensus that

accompanied the Libya action. This campaign was broadly accused of unilaterally stretching the mandate of the UNSC resolution from protection of civilians to regime change (Dunne & Bellamy, 2013, 4-5). As Evans tartly puts it:

> If the justified intervention in Libya by the US, the UK, and France had not later been conducted with such cloth-eared indifference to Russian, Chinese, and developing-country concern about mandate overreach, greater unity on Syria could have been achieved in the Security Council in 2011, when a united message might have stopped Assad cold (2013a).

Indeed, Eyal documents a more general habit of 'fudging the real extent of the operation being contemplated', expanding it to encompass regime change, and then refusing further debate on the interpretation and applicability of the resolution passed (2012, 61-2). The lamentable story of UNSC disunity over Syria conveys with abundant clarity that consensus, once gained, should not be abused, since such opportunism will exponentially increase the difficulty of gaining consensus next time around.

The second challenge Evans (2013b) identifies in dealing with R2P 'hard cases' is that of *consensually* escaping the bind that just one UNSC veto can effectively thwart any action, since the 2005 World Summit Outcome Document (WSOD) clearly ties the legitimacy of proposed action to UNSC approval.

Here he is on less safe ground. Certainly, he emphasizes the need to deal with the 'current chemical weapons dilemma in Syria in a way that does not make it even harder to find consensus in the future'. And his suggestion involves establishing whether military action against Syria would be 'legitimate and wise' by using a series of moral and prudential criteria, which would not only have to be fulfilled, but would have to be *seen* to be fulfilled 'by the broad international community'. So far, so consensual. In the event of an action gaining broad approval as 'legitimate and wise', however, the next challenge is that of 'having a credible answer to the question of whether such action could still be justified in the absence of Security Council endorsement'. On this issue, Evans argues:

> The most credible way of overcoming the lack of formal legal authority is to offer the equivalent of a domestic court plea in mitigation: "We may have breached the letter of the law, but [we] don't challenge its applicability and won't make a habit

> of it—it's just that in the very particular circumstances of this case there was an overwhelming moral imperative to act as we did, and any censure should reflect that." Much better, in trying to rebuild longer-term consensus in these hard cases, to put the argument in such popularly understandable terms, placing particular emphasis here on the horrifying, morally game-changing use of CW [chemical weapons] (2013b).

This is a very slippery slope, however. As Dunne and Bellamy argue, the 'orthodox' R2P line is that the WSOD 'explicitly places the use of force for human protection within the framework of the UN Charter, and therefore limits authorisation solely to the UNSC'. This, after all, is the current expressed extent of the R2P consensus. This is what states have actually *agreed*. Overall, Dunne and Bellamy contend, the route that seeks to circumvent the UNSC is risky, and 'the resilience of the R2P norm depends on its usage remaining consistent with the operative paragraphs of the WSOD' (2013, 6-7, 13). The existing consensus, in other words, must be fostered, protected, and if possible (consensually) extended – not exploited.

This section has argued that a meaningful, if shallow, consensus has formed around the general principle of the need to protect civilians – though not around the specific ways to operationalize that principle in every individual circumstance. For many observers – and certainly for many victims – this is unimpressive.

From an ES point of view, however, as expounded in the previous section, this small gain is still notable, and worthy of protection. Rather than setting up a vanguard that races ahead, oblivious to the fears and concerns of the majority, this initiative has kept international society marching together. Even though it touches on issues that very closely affect states' self-conceptualization, it has managed to identify courses of action on which all can agree. In providing agreed mechanisms for beginning to tackle a huge global challenge, it has enabled states to take a small step towards solidarism, while still preserving the pluralist basis on which international order currently rests. There is a long path ahead, and many will remain sadly unprotected while it is being trodden, but a solid consensual foundation has been laid for further moves in the future.

Conclusion

This paper has argued that 'in-between times' characterize our contemporary political era. While sovereign states are still very much alive and well, they are forced to respond to an ever more complex range of global challenges. The end point of this transition is uncertain. But international society has proved remarkably resilient and adaptable so far. Although the family likeness with their first Westphalian ancestors is still there, that society as a whole and its individual members are now hugely different in character. The state's extraordinary flexibility has so far secured the survival of its 'species'.

The international society that is navigating these 'in-between times' is also profoundly heterogeneous. For that reason, ES pluralists set great store by the concept of consensus. While critics from a variety of theoretical perspectives inveigh against the messiness and slowness of consensus-building, pluralists look to consensual approaches to preserve the fundamental arrangements that undergird international society, while still allowing for incremental, pragmatic, inclusive progress.

R2P is an important example of this dynamic in action. By definition, there can be no ready-made consensus on every specific application, since each case is unique, and the practice is still too new to have thrown up much in the way of precedents. Nevertheless, the existence of consensus around the generality of the R2P principle seems undeniable.

Of course, consensus can also be shattered. Unfairly exploiting agreements that have been reached – taking a mile from the inch that has been given – will, as has been so tragically illustrated in Syria, make future consensus more difficult to achieve.

Nevertheless, the evolution of this principle demonstrates that consensual progress can make a difference. If just some of the diplomatic energy that goes into bluster, moral grandstanding, threat, and coercion could be diverted into consensus-building channels, then international society and the individuals that inhabit it would arguably be in a much better position to tackle the pressing global challenges that lie ahead.

Notes

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[1] In all such discussions, it is worth carefully distinguishing, as Donnelly does, between the idea of sovereignty (which is a state of being 'subject to no higher authority… a matter of authority, the right to rule') and the idea of control over outcomes. 'Sovereignty,' he argues, 'is the right, not the ability, to determine one's policies. Like any right it may or may not be effectively enjoyed, infringed, violated, or ignored… Like all social practices, sovereignty both persists and is transformed over time… Imposing a static stipulative theoretical model [therefore] obscures the reality of sovereignty in practice' (Donnelly, 2005, 2-7). Yet just such a static model often rears its head in discourse that seeks to radically differentiate the globalizing order from its predecessors. The resultant depictions of an idealized 'Westphalian model' often exaggerate its supposed original qualities of autonomy. Contrary to such claims, it is false to suppose that 'the principle of *complete domestic autonomy* ever existed in the relations of sovereign states' (Suganami, 2007, 513, 527-8). For a relatively sober discussion of the intersecting dynamics of sovereignty and globalization, see McGrew (2006).

[2] For a discussion, from an ES perspective, of consensus as a reconciler of order and justice, and of the ways in which existing elements of consensus on R2P might be extended and deepened, see Quayle (forthcoming).

[3] For discussions of regional international societies, see Buzan and Gonzalez-Pelaez (2009) and Quayle (2013).

[4] A range of sources provide useful overviews of R2P's evolution (see, for example, Evans, 2008; Bellamy, 2010; Welsh, 2010; Caplan, 2011; Evans, 2011; Kuperman, 2011; GCR2P, 2013).

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Democracy in Myanmar:
Some Challenges that Lie Ahead

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Abstract

Despite the rapid developments taking place in the direction of political and economic reforms in Myanmar, following the November 2010 general elections and the return of the country from military rule to a nominally civilian government, the idea of becoming a full-fledged democratic nation appears a distant remote. Undoubtedly, the institutions of democracy have been put in place, and there is certainly more space for public dissent, more space for human rights and freedom of expression than before. Yet there are still many issues that stand as obstacles along the way to full democratic rule in the country. The paper discusses some of these issues that pose as serious threat in realizing true democracy in the nation. These include the ethnic problems that have plagued Myanmar since independence, the 2008 Constitution which has created a permanent role for the military in the law-making body which has become a very contentious issue, and also unfair clauses in the same constitution which prevents opposition leader Aung San Suu Kyi's bid for the presidency in the 2015 general election.

Keywords: Myanmar, Democracy, Ethnic problems, 2008 Constitution, Aung San Suu Kyi

Introduction

Following the 7th November 2010 general elections, the appointment of Thein Sein from the military-backed Union Solidarity and Development Party (USDP)[1], as the civilian President of Myanmar in March 2011, marked a new beginning and gave great hope to the people of Myanmar who had suffered a lot under the military regime for half a century. Since then, there has been unprecedented development in the country of 65 million people. To prove to the world that the civilian government of Myanmar was serious in bringing about political reforms, one of the first things

President Thein Sein did on assuming office was to extend an olive branch to Aung San Suu Kyi, the main opposition leader from the National League for Democracy (NLD) who was denied the right to participate in the 2010 election by the former military regime. Thein Sein's move was clearly meant to accommodate the wishes of the opposition and to win the hearts and minds of the Myanmar people to support his reforms. At the same time it was to appease the world outside that he was committed in bringing political reforms. Clearly, he needed Suu Kyi's support to get western countries to lift sanctions on Myanmar. He had meetings with her, all travel ban imposed on her by the former regime has been lifted. He made further concessions by amending the election laws to allow NLD to be registered as a political party. In the by elections held in April 2012 her party won, 43 out of the 44 seats it contested, in many cases by huge margins, including the four seats in Naypyidaw, the new capital, where residents there work for the USDP-dominated government. Su Kyi is now the opposition leader in the parliament. To gain the support of the local people and to get European countries including the US to lift various sanctions against Myanmar, Thein Sein signed an amnesty for political prisoners, allowed for greater freedom of the Press, has given workers right to organize labour unions and even ordered the suspension to the construction of the Myitsone Dam carried out by a Chinese-owned company in the Kachin state in north Myanmar on allegations of negative environmental impact. All these are clear indications that Thein Sein meant business. In the realm of foreign relations too there has been a flurry of activities. There has been a line of world leaders visiting Myanmar offering all forms of aid and help to rebuild the country, including a visit by President Barrack Obama of the United States in November 2012.This was a big boost for democracy in Myanmar. Relations with European countries have been further strengthened by Thein Sein's visits to several European countries such as United Kingdom, Australia including a visit to the United States to reciprocate Obama visit to Myanmar. There has also been a flurry of economic activities going on in Myanmar with investments from Europe and Asia pouring in. Clearly no one can deny that Myanmar, in nearly two years under President Thein Sein, has moved ahead in socio-economic and political developments. However all these positive developments have been marred by serious ethnic violence in the country between some ethnic minority groups and the government forces, including the Muslim Rohingya in the Rakhine state. There are also issues related in the military-drafted 2008 Constitution which goes against basic democratic principles that

need to be amended. One is the contentious role of the military in the law-making body, and the other is the clause that bars anyone married to a foreigner from contesting for Presidency.[2] These and several other issues pose as great obstacles in moving forward along principles of true democracy. This brief article discusses these issues and its implications they have on the country.

Background to study

The nation-building of Myanmar began in the 11th century when the Burmese established their kingdom centred at Pagan with the Bamar or (Burmans) the largest ethnic group having hegemony over other indigenous groups. At the end of Third Anglo-Burmese War in 1885, the country succumbed to British rule. The last ruler, King Thibaw, was exiled to India and the Konbaung Dynasty collapsed. Under British rule, because of the physical nature of the country and for administrative convenience, the British practiced direct and indirect rule. In areas where they had great economic interest, which they called "Burma-proper" they established direct rule and in the inaccessible far away mountains regions, where they had little economic interest and which they called the "frontier provinces" they practiced indirect rule. No mechanism was created to integrate the frontier provinces with "Burma proper". Hence regionalism and loyalty to their local chiefs took root. Moreover mistrust against the Bamar had for long festered among the ethnic groups. In the 20th century feelings of anti-colonialism began to simmer among the Bamar with socialist ideas gaining importance over others. During independence struggle, freedom fighter General Aung San had tried to get the various ethnic groups to support him based on equality. Then the occupation of Myanmar by the Japanese began. Mistrust and division among the various ethnic groups of Myanmar was further exacerbated in World War 2, when the Bamar sided with the Japanese that led to many atrocities against some ethnic groups in Myanmar.[3] The subsequent anti-Japanese resistance and the independence struggle against the British were undertaken mainly by the Bamars and that brought them glory as independent fighters of Myanmar. Myanmar became independent of British rule on 4th Jan. 1948 with U Nu as prime minister but because of political infighting within ruling the Anti-Facist People's Freedom League (AFPFL), the communist insurrection and ethnic problems ever looming, the armed-forces chief General Ne Win seized power of the government in 1962, justifying the take-over as a pre-emptive measure to avoid national

disintegration.[4] The 1947 constitution was suspended and in its place a ruling Revolutionary Council (RC) was established to govern the country. Then in 1974 a new constitution was implemented which transferred power from the military RC to the one-party socialist unitary state under Ne Win. But after half a century of authoritarian rule, Ne Win's socialist economy collapsed and the country was on the verge of bankruptcy. Ne Win resigned. Meanwhile on 8 August 1988 riots broke against the oppressive military rule.[5] To quell the uprising the State Law and Order Restoration Council (SLORC) headed by General Saw Maung announced free and fair elections in 1990, after which the military would transfer power to the duly elected party to form a civilian government. Sure enough, in May 1990 the promised elections were held and the National League for Democracy (NLD) under Aung San Suu Kyi, won by a landslide victory, taking 80 percent of the seats and 60 percent of total votes cast in contrast to parties favoured by the SLORC, which received just 2 percent of the seats and 25 percent of the votes. Obviously, humiliated by the results the SLORC refused to allow the NLD to form the next government. Instead the military declared that the newly elected legislators could not convene parliament until a new constitution was written. Obviously this was done in bad faith to deprive NLD its legitimate right to form the government. The SLORC then started to harass and arrest opposition members. Then in 1992, General Than Shwe replaced General Saw Maung. He began asserting his power by putting Suu Kyi under house arrest on cooked-up charges. In 1997, the SLORC was reconstituted as the State Peace and Development Council (SPDC). There was a major protest against the military junta in August 2007 in which more than 200 protesters were brutally killed by the army, including monks. This incident came to be known as the Saffron Revolution. Meanwhile due to sanctions and mounting pressure from several world governments especially from the US and European Union countries, the military came up with its own plans for political reforms known as the Roadmap for Democracy.

The first step to the Roadmap for Democracy involved the writing of a new constitution to institutionalize the role of the military in national politics as a solution to the problem of dysfunctional party politics.[6] However the whole process of writing a new constitution took almost 15 years. It started in January 1993 and was concluded on 3 September 2007. This was followed by a national referendum, held in early May 2008, to get the people's approval. And on 29th May 2008 the SPDC announced the constitution had been formerly

adopted. However the constitution was clearly biased in favour of the military. Twenty-five percent of the seats in the parliament were reserved for the military. The other seats could be contested by any military personnel but they had to resign from the army first. This was to ensure the military remained a dominant power in the next government. There were also unfair clauses in the Election laws that prevented Suu Kyi from taking part in the election.[7] As a result NLD boycotted the elections by refusing to register the party for election. Election was held on the 7 November 2010 and as expected the military-backed Union Solidarity and Development Party (USDP) became the winner with former general and prime minister under the military regime, Thein Sein assuming the post of a civilian President of Myanmar. He officially he took office only in March 2011.

Some Obstacles in Achieving True Democratic Reforms

1. Ethnic Problems

One serious problem that stands in the way of Myanmar becoming a truly united, developed, democratic country, after its return to "civilian" rule following the 7th November 2010 general elections, has been the long running ethnic strife between the majority Bamar who live in the delta region and the fertile rice plains and the various ethnic groups or hill people in the remote countryside. Apart from the Bamar who form the majority or 60% of the population, others include the Kachin, Shan, Chin, Mon, Karen, Rakhine, to name a few. The various minority ethnic groups, had from the beginning, not got along well with the Bamar. There seems to be a inherent distrust for the Bamar among the other ethnic groups. The problem between the majority Bamar and various minority groups is not something new. The root cause goes way back to time long before the coming of the British. The various ethnic groups have lived relatively distinct from one another and have their own language, culture, patterns of production, and political traditions.[8] The wide differences between the Bamar and the other ethnic groups also stemmed from differentiations in wealth generated by the geographical locations of the various groups. The Bamars occupation of rich and fertile plains allowed for the cultivation of wet rice. This gave rise to a comparatively wealthier and powerful Bamar group. In contrast, the ethnic minorities who largely lived on the highlands and who depended mainly on hill rice lived comparatively poorer lives. This differentiation and division further widened during British colonial

rule, as the present day Myanmar, is a product of British colonial rule, its borders determined largely for the convenience of British administrators. As mention earlier, when the British ruled Myanmar, they practiced two systems of administration, namely, direct rule and indirect rule. Briefly, in areas where they had great economic interest especially in the delta region, they practiced direct rule. Here the omnipotent British administrators had control over all important institutions of administration. In the far away regions and hills that were not easily accessible and in places where the British had little economic interest, they practiced indirect rule. In such areas the colonial government allowed the local chieftain to retain his power over his territory, with a British Resident or Commissioner to advice him with other British officials making occasional visits to supervise them. This allowed regionalism and parochialism to take root with the various ethnic groups having their own cultural practices, language and traditions with no allegiance to the central government. So, under British rule, the ethnic minorities were never integrated with the majority Bamar nor were they brought into the mainstream of development. Furthermore, the Kachin, Chin, Shan, Mon, Karen and other ethnic groups never wanted to share a country with the Bamar who had never treated the minorities as equals. However at the end of the Second World War they were brought into the Union of Myanmar through the efforts of independence fighter General Aung San. When independence was taking shape, General Aung San promised independence on ethnic equality. The minorities agreed to be part of Burma on the basis of the Panglong Agreement between them and Aung San in 1947. This agreement promised them "full autonomy in internal administration for the frontier areas", envisaged the creation of a separate Kachin state and guaranteed that "citizens of frontier areas shall enjoy rights and privileges which are regarded as fundamental in democratic countries.[9] The 1947 Constitution had even had a clause which stated ethnic groups, could secede after ten years of independence.[10] But after the unexpected death of Aung San, the Panglong Agreement was never implemented. In fact to the disappointment of the ethnic minorities, from the moment the majority Bamar formed the government in 1948, they began to ignore the accord. The Bamar started to dominate all areas of life - business, civil and military services and in politics (which remains true to this day). This caused a greater chasm between the Bamar and the minorities. The various disgruntled minority ethnic groups felt cheated. As a reaction, they formed their own armies to fight for greater autonomy if not outright independence from the Union. In fact

one of the excuses given by General Ne Win when he seized power from the civilian government of prime minister U Nu in 1962 was "to prevent national disintegration". [11] And when Ne Win drew a new constitution, all reference to the Panglong Agreement and other concessions made to minority groups found in the 1947 Constitution completely disappeared. Over the years, especially during the period of the military rule, little attempt was made to bring the various minority ethnic groups to be integrated with the Bamar and into the mainstream development of the country. Instead they had been subjected to all forms of cruelty and mistreatment. They had been forced to work as underpaid porters and labourers at road and bridge building construction sites etc.

Despite the fact that now a civilian government has been formed there are still thousands of Myanmar refugees still living in refugee camps in neighbouring Thailand and in Malaysia. For example, as of 28 February 2013, there were a total of 92,762 Myanmar asylum seekers and refugees in Malaysia.[12] A larger number of refugees are also found along Myanmar-Thailand border.

The Karens have been involved in an armed struggle for almost forty years. And so have the Kachins and the Mons.[13] Various attempts to appease the armed ethnic groups through ceasefires have failed and neither has it led to any political settlement. In the 1990s and in the 2000s, the former military regime tried to arrange ceasefires with armed ethnic groups but these have been a failure. The latest ceasefire with the Kachins was signed on Thursday 10th October 2013 The government has said that the deal was aimed at laying the "foundation for a political dialogue" and working towards ending the conflict in Kachin that broke out two years ago when a 17-year ceasefire crumbled.[14] The Kachins rebels are fighting for a federal type of government where their natural resources could be safeguarded. Their land is rich in jade and other precious-stones and other mineral resources. During the period of military rule many generals and their cronies had invested heavily in these mines, which they will tend to lose if the Kachins take control of their region. Clearly the present government of Thein Sein is aware that the ethnic strife could undermine whatever they want to achieve. They also know the conflict could frighten away international investors which the government needs badly to help rebuild their economy. And the present government is trying its best to end the conflict. Under the leadership of Aung Min, a former railways minister, it has signed 13 ceasefire agreements since end of 2011.[15] There are serious implications arising from the ethnic problems in the furthering of

democratic process. In a way the ethnic problems in Myanmar are working in favour of the military. The military-dominated civilian government may use the armed struggle by the ethnic group as an excuse to retain indefinitely the 25% seats in parliament reserved for the army in the civilian government. As long as there is ethnic strife, the government would always use this as an excuse for the need of the military in the law-making body. The 2008 Constitution even allows the military to take control of the government in the event of an armed struggle.

2. The Rohingya Issue

Another ethnic problems confronting the country is the case of the Muslim Rohingya who have long been persecuted by the government and which has been globalized since Thein Sein's government came into power. The Rohingyas are Muslims who live in north-western part of Rakhine state or Arakan and which shares a common border with Bangladesh. They are mainly settled in the towns of Maungdaw, Buthidaung and Rathedaung close to the Bangladesh border. The actual number of people living here is difficult to say but is estimated to be between 700,000 to 1.5 million[16] and they form about 30% of the total population of Rakhine state. The reason for their persecution has been over the origin of these people which is a subject of great controversy. While the U Nu government recognized the Rohingya as a distinct indigenous ethnic group, the subsequent military government of Ne Win, relegated them into a non-entity, through the introduction of the 1982 Citizenship Act and have refused to recognize them as a distinctive ethnic group within Myanmar. Ten years later, on 26 February 1992 the Ministry of Foreign Affairs of Than Shwe military government even denied the very existence of the Rohingya when it stated:

> *In actual fact, although there are (135) national races living in Myanmar today, the so-called Rohingya people is not one of them. Historically, there has never been a 'Rohingya' race in Myanmar. The very name is a creation of a group of insurgents in the Rakhine state. Since the First Anglo-Burmese War in 1824, people of Muslim faith from the adjacent country illegally entered Myanmar Ngain-Ngan, particularly in Rakhine state. Being illegal*

> *immigrants they do not hold immigration papers like*
> *other nationals of the country.*[17]

While the Myanmar government has branded them as people of Bengali origin, who migrated to Myanmar after it became independent in 1948 others argue that the origin of Rohingya in Myanmar dates back to the time of British rule when Muslims from Chittagong were brought in as labourers to work in Myanmar. They claim they have been living there for hundreds of years and that their forefathers were brought to the Rakhine state during the British period. However, many in Myanmar see them as recent arrivals and illegal immigrants from Bangladesh. But what has generated international attention and outrage is the outbreak of violence against this minority Rohingya Muslims, especially in the last two years. The Rohingya issue has been globalized since the civilian government came to power with Thein Sein's government being blamed for not taking enough action against the perpetrators of the crime on the Rohingya people. There have been two outbreaks of conflict in the Rakhine state between Buddhists and Muslims in June and in October 2012 which left about 200 people dead and thousands of mainly Rohingya Muslims homeless. Again in March this year, sectarian strife in Meiktila killed at least 44 people – although many observers say the toll was much higher and thousands of homes set ablaze.[18] In September this year, again violence started in the Thandwe township. The riot was sparked by an argument between a Rakhine man and a Kaman (Muslim) over parking of motorcycle in front of the Kaman-owned shop on September 29. As a consequence 480 people were made homeless and 114 homes were destroyed by fire during the violence. Three mosques and a petrol warehouse were also destroyed. It shows how sensitive the Rohingya issue is, that a trivial incident, like this could flare up into violence resulting in the death of five people.[19] The unrest continued despite a visit by President Thein Sein who spent a night in Thandwe as part of his first trip to Rakhine. Around 250 people have been killed and more than 140,000 left homeless in several outbreaks of Buddhist-Muslim violence around the country since June 2012, mostly in Rakhine. It is believed that a Buddhist movement, spearheaded by radical monks under the name "696" has been accused of fanning the flames of hatred and posters of the group were visible around Thandwe.[20]

The Rohingya issue is a sticky problem which the government must address immediately in order to get the support of Muslim nations in its efforts at nation-building and also ASEAN

countries which have a large Muslim population, and of which Myanmar is also a member.

3. Military Role in Law-Making Body

Another obstacle that stands in the way of realizing true democracy in Myanmar is the contentious role of the military in the law-making body. The 2008 Constitution was drafted mainly by the military under the strict supervision of Than Shwe, the former leader and ratified in a national referendum in 2008 which was widely seen as a sham. The referendum was carried out right in the midst of cyclone Nagris. It was clearly drawn to ensure the continuity of the military in the parliament. Chapter 1 of the Constitution of the Republic of the Union of Myanmar 2008, Under Basic Principles of the Union 6 (f) states:

"Enabling the Defence Services to be able to participate in the national political leadership role of the state." [21] For this purpose a total of 25% of the seats in both houses of parliament were reserved for the military. Currently 56 out of the 224 seats in the Lower House and 110 out of the 440 seats in the Upper House are reserved for the army. The civilian government is still dominated by former military officers, only difference is that, some have resigned from the military to contest in the last elections. They are like Thein Sein, military men in civilian clothes.

The NLD and other opposition parties consider the current constitution undemocratic because it has given the military 25% of the parliamentary seats. NLD says there must be democratic values and devolution of power and a federal system of government must come first. Ethnic minority parties also oppose provisions in the constitution that require chief ministers in their regions to be appointed by the central government. Many want a new constitution all together. They believe national reconciliation would be easier with new laws. But the government is adamant and says there is no provision in the present constitution that allows a new one. It could lead to a confrontation with the military.

The reservation of 25% of the seats in the parliament for the military goes against democratic principles. In most democracies, the military is subservient to the civilian government. By legitimizing and entrenching the military in the law making body, the government has subverted democratic principles. Clearly, unseating the military from parliament is going to be an uphill task.

Meanwhile, a 109 member Parliamentary Review Committee formed in July 2013 and chaired by Deputy Speaker of the Union Parliament and made up of MPs from both Houses including military representatives has set November 15 as the deadline to review public opinion about constitutional reforms.

Meanwhile MPs from all parties have been submitting constitutional clauses that they want to see amended to a Constitutional Review Committee by December 1 2013. There has been a flurry of debate as to which section of the 2008 Constitution should be modified or amended. Some experts say it will a difficult task to amend the constitution as it requires over 75% of the MPs to pass any changes in the parliament when 25% of the seats are allotted to the military and there are many more retired military men in parliament. Any changes must then be ratified in a nation-wide referendum. Meantime there already signs of strong opposition to any changes. The USDP, the ruling party has voiced its opposition saying it would be a threat to national security.

"People will suffer bad consequences if the 2008 Constitution is abolished and redrawn"[22]

4. 2008 Constitution and Aung San Suu Kyi's bid for Presidency

Another clear discrepancy in the 2008 Constitution is the discriminatory clause that states that anyone married to a foreigner or who has children who are foreign citizens is barred from standing for the presidency. It is obvious that this clause was intentionally introduced in the 2008 Constitution by the former military regime to prevent Aung San Suu Kyi from running for the presidency in any future elections, knowing very well that Aung San Suu Kyi was married to the late British academic Michael Aris and has two children who are British citizens.

Aung San Suu Kyi has called for a change in the constitution before 2015 to avoid any crisis and to put the country firmly on the path to true democracy. She has said that the present constitution is undemocratic. Time is running short for her as she had already declared her intention to go for the president's post in the 2015 election. But under the present constitution she will not be able to do so. It is clear that she is quite frustrated that Thein Sein, despite all the goodwill shown to her, has not shown any indication in amending that particular clause in the constitution that would allow her to stand for presidency. Will Thein Sein be able to get parliament to amend this clause and allow Suu Kyi to go the presidency in the 2015 election?

But President Thein Sein's hands are tied as he has to get the approval of the military-dominated parliament to allow any amendments to the constitution. Suu Kyi has now called on the European Union countries to help push for constitutional reforms in Myanmar so as to enable her to contest for the presidency in the 2015 election. She was talking at a conference in Brussels.[23]

Conclusion

This paper has discussed how despite the various political, economic and social reforms that had taken place under a civilian government in Myanmar since March 2011, there are still serious issues that stand in the way of true democracy and nation-building in the country. The crucial issues that need to be addressed immediately include those concerning the long-running conflict between the various ethnic groups and the government forces including violence against the Rohingya Muslims. The other issues concern reforms that need to be made to the 2008 Constitution. It is mere rhetoric to say Myanmar practices democratic rule and all Myanmar people are equal when the minority ethnic groups who make up 40% of the population are denied a fair share of their political and economic rights. A federal system of government, where states can manage their own political affairs and get their fair share of the natural resources is an ideal model that the government should seriously consider. The Rohingya Muslim issue should also be settled amicably. Proper documents must be issued to identify who is and who is not a citizen of Myanmar. The government must also be firm in dealing with the perpetrators of crime. With regard to rules in the 2008 Constitution, that has given the military a special role in the law-making body and clauses that denies Aung San Suu Kyi to contest for Presidency in the 2015 elections the Review Committee should be brave enough to do away with this. The military should always be subservient to the civilian government. Through this way, perhaps Myanmar can be kept intact as a nation and true democracy can prevail.

Notes and References

[1] Thein Sein was a former army General, Prime Minister and head USDP under the military regime of Than Shwe.He was hand-picked by Than Shwe to lead the civilian government.

[2] This clause appears to have been intentionally inserted in the military-drafted 2008 Constitution to bar Aung San Suu Kyi from contesting for the Presidency in the 2015 elections.

[3] Roberts, Christopher, (2010) *ASEAN's Myanmar Crisis*, Singapore, Institute of Southeast Asian Studies. P.54

[4] Funston, John,(2001) *Government and Politics in Southeast Asia*, Singapore, ISEAS, p.205

[5] For the 1988 demonstrations, see Bertil Linter (1990) *Outrage: Burma's Struggle for Democracy*, Bangkok: White Lotus.

[6] Funston, 2001

[7] She was denied participation by the Political Parties Registration Law.- According to this law, anyone convicted by a court and serving a jail term could not form or join a political party. This provision adversely impacted several political parties, most of all, the NLD, as over 370 of its members including Su Kyi had been convicted and imprisoned.

[8] Roberts, Christopher,p.53

[9] . see The Economist May 25-31st 2013 p.11

[10] Funston, p.205

[11] Funston, p. 205

[12] See UNHCR, Report. Malaysia

[13] For Mons struggle for nationalism, see Ashley South (2005) *Mon Nationalism and Civil War in Burma*, London, Routledge.

[14] The Sun, October 11th 2013.

[15] The Economist, May 25th -31st 2013 p.

[16] Smith, M (2002) *Burma (Myanmar): Time for Change*. London: Minority Right Group International. P.18

[17] ALTERN – Burma, 2006 p.2

[18] The Star, 26 August 2013

[19] New Straits Times, 3 October 2013

[20] The Star, 7 October 2013

[21] See, Chapter 1 of the 2008 Constitution of the Union of Myanmar

[22] UPI Business News, 7th October 2013

[23] Al-Jazeerah News 9.pm 20 October 2013

The Refugee in the International Public Law: Illustration of the Post-Westphalian International Relationships

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Abstract

This essay tries to explain how the Westphalian structures have evolved until our contemporary "post-Westphalian era" using the concept of the "refugee" as a paradigmatic illustration of this transition. Having chosen the refugee is not random: the institutionalization of refugees took place, precisely, just after the Peace of Westphalia, when countries were allowed to accept migrants who escaped from religious prosecution - especially Huguenots. As the entity who expelled refugees and the one who accepted them, the state was the main character; the raison d'état *was in his most splendorous moment. Nowadays the problem of refugees still exists and in terrible conditions. Nevertheless, the leadership of the state has become to an end in terms of absolute capacity of decision. With the appearance of International Organizations and the participation of NGO's and other private organizations in the international field, the role of the state in the refugee question has become secondary, it still has the power to decide certain aspects of the refugee camps management and to provide the right to asylum, but all this, always in coordination with the other international structures and international law that limit the state's scope. The loss of state's leadership marks the transition from a Westphalian paradigm to a post-Westphalian one: the question of refugees is a present and worrying demonstration of this transformation.*

Keywords: Westphalia, refugees, sovereignty, post-Westphalia, international law

I. The contemporary International Relationships are qualified by the general political doctrine as "post-Westphalian", as having surpassed, through the historical evolution, the Classic International Law that first appeared as such in 1648 with the Peace of Westphalia. On the contrary, other authors argue that the post-Westphalian political universe is "post", not because of its overcoming, but because of the contemporary return of some Westphalian structures that haven't disappeared. The goal of this text is to make visible the refugees' question status, more than to generate a concluding and final diagnosis, and to show the exceptional of this contemporary situation in which sovereignty, despite having been left in the background, has still some influx in the international task.

The refugee, as an institutionalized figure, emerged in the Westphalian scene, i.e. when the raison d'état, the sovereignty, triumphed. So, to study the connection between the refugees and Westphalia, a brief historical summary is required. The Peace of Westphalia (1648) meant the birth of the Classic International Law and was signed to end up with the bloody religious wars that went across Europe. This period created institutionalized and formal politics, self-conceived as neutral and impartial, based in the international coexistence and equilibrium according to the motto that every state is sovereign and can't intervene neither be intervened in its politics by others; any nation can't exercise his power over another one. Thereby it was intended, in practice, to deal with the absolutism of the Habsburg Monarchy and the Papacy, and in theory, to end with the political arguments based in religion, dogma and partiality.

Nevertheless, under this apparent rationality and confrontation against imperialism what it existed was a hegemonic and well concealed fight of an empire against another one: specially the one who faced France with the Habsburgs. The difference with former periods was that this battle had place through institutionalized and apparently neutral ways: the ones of the *Ius Publicum europaeum*, subtitle that acquires the International Law in its formation. This context of pretended "balance of power" – consolidated with the Peace of Utrecht in 1713 – is tackled in this text from a critical perspective following the critical school of International Relationships thought. It was witness of how the Edict of Nantes, issued by the king Henri IV in 1598 in favor of religious freedom was revoked in 1685, provoking the prosecution and consequent escape of the French protestants – Huguenots – which, in this way, became the first "refugees" as recognized legal figures.

"*The Peace of Westphalia built upon this foundation by arguing for the right of* jus emigrandi– *the right to emigrate with one's personal property – as a universal right. It is in this very context that the term "refugee" emerged. In its historic form, it denoted a separate class of people from ordinary migrants, and was first used in reference to the Huguenots, French Protestants*". (SIMEON: 2010, 184)

So here we appreciate how the question of refugees shows the intern contradiction of the Westphalian context, the "hegemony/*pluriversum*" and "*raison d'état*/balance of power" tension, because even though the rights of refugees are recognized, their apparition is motivated by the revocation of an edict that, in principle (defender of religious freedom) was according to the mood of Westphalia (that wanted to substitute the religious discussions for the political ones). Consequently, the migrants by religious causes – origin of the "refugee" differentiated of the migrant by reasons of other nature – could be accepted with his relatives and belongings by other state, becoming his situation of "refugee" institutionalized in an apparent context of independence and coexistence between nations. The reverse of this reality is that, as a cause, refugees had to suffer being expelled by another sovereign nation and therefore, the host states were forced to accept them because the risk they involved for the sanctified sovereignty:

"*It came into being as a way to deal with individuals who otherwise might be stateless, and would thus constitute either a burden, or a threat, or both, to the nascent Westphalian nation-state system".* (SIMEON: 2010, 184)

In theory, Westphalia ends in 1960, when the false formality ends and "friends" were well demarcated from "enemies". However, there is a deep discussion about when did the end of the Westphalian universe really happen: rather when became patent what was hidden formally, that is, the impulses of the sovereign entities. Several dates are proposed, the mere revocation of the Edict of Nantes supposed already a breach of the Westphalian spirit: 1799 (Napoleonic wars), 1870 (Franco-Prussian war), the two World Wars and 1960 as the definite change of paradigm.

Nevertheless, it is with the end of the Cold War and then with 11S when theorists began to talk of a completely new

international paradigm, for some of them as a definitive end of the Westphalian era, for others, as a return – obviously modified historically and by the advance of technology – of the Westphalian structures. So that, if the last is true, if the ambition of power and hegemony of nations has always been the leitmotiv of the International Relationships, it makes sense that the conditions of the refugees are still dramatic despite the passing centuries. It will be necessary to calibrate if, despite this possible hegemonic instinct of nations, this exists under the same conditions of simulation of neutrality and diplomacy as Westphalia was, but now by the hand of the International Organizations. We cannot affirm that the situation of the refugees nowadays is the same as the ones of the XVII century, but we can insist on the fact that the reasons of their drama have the same Westphalian roots: a sovereign impulse that expels them and an international context that, apparently well-meaning, is structured in base to the sovereign hierarchies.

The link "refugee"/ "state sovereignty" is not trivial – "*theoretically, in the sphere of international law, it had always been true that sovereignty is nowhere more absolute than in matters of "emigration, naturalization, nationality, and expulsion...*" (ARENDT: 1976, 278) –, but determines an axial and congenital structure of the International Relationships, the one of the sovereign entity that always will try to impose. This analysis doesn't involve a radical distrust towards the institutions, but the thesis that we need to analyze them to detect where the demonstrations of hegemony could be present. To denounce and point them may not be very optimistic regarding the international alliances, but at least can contribute to make them more transparent.

II. The Geneva Convention of 1951 and the Protocol relating to the status of refugees of 1967 are the main legal texts that provide the international regulation about refugees. We could discern that in the difference between the first and the second lies, besides the historical development, a *Ius publicum europaeum's* inheritance, given the fact that in the 1951 Convention only the European area is taken into account, while the 1967 Protocol:

> "*eliminates the geographical and temporal limitations contained in the original Convention, according to which, in most cases, only the Europeans involved in the events happened before*

> *1st of January of 1951 could request asylum".*(UNHCR: 30415, 7)

As for the International Organizations, the United Nations are in charge, through the United Nations High Commissioner for Refugees (ACNUR), of the refugees' protection in cooperation with the host countries with the help of NGO's. On the other hand, it's very remarkable and symptomatic of a post-Westphalian era, the increasing intervention of the private sector in the management of the refugee camps ("*The High Commissioner should distribute among private and, as appropriate, official agencies which he deems best qualified to administer such assistance any funds, public or private, which he may receive for this purpose*" (UNHCR: 2007, 3)). This fact would highlight the end of the state's or sovereignty's prominence. But let's begin with the definition of "refugee" that provides the first article of the Geneva Convention:

> *"As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".* (UNHCR: 2010, 14)

It is noted here that the refugee is a person who has been expelled and prosecuted by a state, with which breaks his link as a national or a citizen, and who feeling threatened has to run away from it. The refugees, being torn away from their nationalities, are bereft from their birth – hence the insistence of Hannah Arendt on the loss of birth certificates, on people who don't remember where they were born or who claim "*nobody here knows who I am*"" (ARENDT: 1976, 287) –, from a link with the land that has to be restored in the country that receives them. There, the citizenship conditions have to be re-established, which begins by having a juridical status. The importance of recovering the relationship with the law lies in the intimate connection between human rights and the state, so

that the one who doesn't belong to a country lacks of those rights, inasmuch that as rights, they depend on law:

> *"...people without their own national government were deprived of human rights. In this conviction, which could base itself on the fact that the French Revolution had combined the declaration of the Rights of Man with national sovereignty…"*. (ARENDT: 1976, 272)

And the refugee is the man/woman with no law, "*an outlaw by definition*" (ARENDT: 1976, 283); in comparison with the legal, they represent the state of nature – "*their ever-increasing numbers threaten our political life, our human artifice (…) as the wild elements of nature…*" (ARENDT: 1976, 302). Hannah Arendt and also Giorgio Agamben, philosophers that have deeply thought about the refugee question, underline that, precisely because their states cannot protect them, the refugees are the field where more visible and patent should be the presence of human rights as belonging to human beings and not only to citizens, as the Rights of Man were supposed to "*be "inalienable", irreducible to and undeducible from their rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal"*(ARENDT: 1976, 291).
The two following texts are illustrative of this situation:

> *"The paradox that H. Arendt raises at this point is that the figure – the refugee– that should have embody par excellence the man of rights, concludes, however, the radical crisis of this concept"*. (AGAMBEN: 2010, 160)

> *"If refugees (...) represent, in the order of the modern nation-state, a so disturbing element, is, above all, because breaking the continuity between man and citizen, between birth and nationality, put in crisis the original fiction of modern sovereignty (...) And in this sense, is, as remarks H. Arendt, truly the "man of rights", his first and only real appearance without the citizen mask that continuously covers him"*. (AGAMBEN: 2010, 166-167)

The problematic link between "refugee" and "statehood" is present, not only in connection with the foregoing comments and with the country that expels them, but also with the host countries. The international law obliges the signatories of the Refugee Conventions to receive and protect them. But this collides with an important circumstance: the state's faculty to proceed in this sense as it deems appropriate, i.e., in convenience and in defense of the sovereign power; therefore it's about the classic problematic of international obligations versus national sovereignty, so that "*the positive obligation to admit refugees, provide them with asylum and treat them in accordance with specific standards, thus contrasts sharply with the absence of a mandatory obligation to admit foreigners to the state's territory*". (SIMEON: 2010, 52)

That appears clearer in the context of the *non-refoulement* principle, the basis of the refugee law, which implies the prohibition of returning or expulsing the refugee back to the area where he/she can be in danger. Nevertheless, would this violation of customary law entail a sanction beyond the verbal warning of the international community? Anyway, the complexity in this century increases insofar when those states that receive refugees are not solid and powerful states but weak ones that see their selves as even more vulnerable with the arrival of refugees, so that produces that the desire of sovereignty is empowered.

And this impossible "*overcoming the barrier of national sovereignty, something no international organization has yet managed to accomplish consistently*" (LOESCHER: 1996, 150), manifests itself in what Kant has to say about the right to hospitality (*Wirthbarkeit*) in the Third definitive article of *Perpetual Peace*: "*We are speaking here, as in the previous articles, not of philanthropy, but of right; and in this sphere hospitality signifies the claim of a stranger entering foreign territory to be treated by its owner without hostility. The latter may send him away again, if this can be done without causing his death; but, so long as he conducts himself peaceably, he must not be treated as an enemy*"(KANT: 1795, 137). Kant glimpses the gap, the dialectic of the issue: the obligation of the state to host a refugee given his exceptional situation, and at the same time, the ability of this state to operate "freely" by virtue of its national sovereignty. Kant affirms that there is no "*right to be treated as a guest*", but a "*right of visitation*", what shows well this constant tension, that the arrival of the refugee shouldn't be so spontaneous as to have many exigencies, but should limit his role to a non annoying visitor.

Since, as we've just told, we cannot forget that this blind alley in which the refugees are the real victims has as counterpart the fact that the countries that receive more refugees are underdeveloped countries that become overwhelmed by the arrival of refugees and are witnesses of the rise of social tension because of the entry of this population flow (price increase, insecurity, resources access). The UNHCR (2008) speaks of "*the insufficient ability of many States to provide the necessary protection*".

III. One of the spheres where the possible return of Westphalian forms in the present can be discussed is the one of "neutrality" – main theoretical attribute to describe the Westphalian context. On behalf of this neutrality, humanitarian law has been depoliticized: politics are supposed to be related to citizenship and nation (which refugees lack of), the humanitarian realm is separated from politics and is only focused on protection:

> "*The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees*". (UNHCR: 2007, 6)

This seeming depoliticization – which we stand it doesn't exist – is visible in the motto at the base of the refugees' management: *Do no harm*, meaning that's crucial not to intervene in the political issue that has originated the conflict not to complicate even more the situation. Nonetheless, neutrality rarely shows up when dealing with state matters, neither now nor in the Westphalian context.

UNHCR itself recognizes that the 1951 Convention "*wasn't designed to deal with the causes, but to alleviate their consequences*" (2007, 11) and that humanitarian law cannot act in place of politics. This, that is perfectly comprehensible from the point of view of "protection", ignores the complex network of political issues involved in the refugees' affair, which has an important and basic political component that can be noted in different stratums. First, from the angle of the "cause" that has provoked the escape of refugees – hence the UNHCR (2007, 52) comment about the fact that "*prevention is the best way to avoid refugee situation*". Second, from the standpoint of "International Relationships", asylum is part of economic and commercial relations, and in that outlook there are always political interests between nations, for example, to avoid giving the refugee status; even more, the guidelines on refugees' normative come from

the General Assembly of the United Nations in cooperation with local governments. Third, from an "economic" point of view, refugees' management depends specially on the "interests" of the donor agents:

> "*Even the funds made available to the UNHCR by donor states depend on how useful those states perceive a particular refugee population to be to their ongoing foreign policy. The extent of UNHCR activities and influence is delineated by political constraints*". (LOESCHER: 1996, 30)

Fourth, because of what we talk about is the right to citizenship and his connection with politics is radical ("*it cannot be separated from such other areas of international concern as migration, human rights, international security, and development assistance*" (LOESCHER: 1996, 130). For example, in some countries since the 11S attacks the refugee condition has been linked, in a "*perverse equation*" (MURILLO: 2013), with the figure of "terrorist". If we consider that date as a new rupture of the Westphalian context towards a post-Westphalian one, we could affirm that the breach has not involved the overcoming of the state's impulse, but even more the state's reinforcement in name of "security", as a revival of one of the most claimed attributes of the Westphalian states. The sovereign entity, as "leviathan", will always want to expel the "other", the one who opens its limit and form, and will do it controlling, i.e., closing, what defines and characterizes it as entity facing this "other", that is, its borders. In some countries, what has closed the borders hasn't been terrorism, but the economic crisis, that has reinforced the idea of the necessity of "protection and security" against the "external".

Analyzing the "consequences" is easy to see how most of the matters related to refugees have an important political constituent. Let's see the next example of H. Arendt:

> "*… like virtually all other events of our century, the solution of the Jewish question merely produced a new category of refugees, the Arabs, thereby increasing the number of the stateless and the rightless by another 700,000 to 800,000 people*". (ARENDT: 1976, 290)

With regard to the "solution" we could ask: political or humanitarian solution?, that is, take notice of the political origins of the conflicts that have originated the existence of refugees or mere

attention care? There are three return options: repatriation to the country of origin, integration in the host country or resettlement in a third country. None of the three is possible or has sense without political estimations. It's not only about the desire of the refuge of coming back home, but his political right to be given a juridical status: "*what is unprecedented is not the loss of a home but the impossibility of finding a new one*" (ARENDT: 1976, 293).

It's very dramatic how some refugees don't even know their rights and legislation, which can create tragic situations. For example, the Dublin Convention determines in the EU which country is the competent to process the asylum application: the first country where the refugee arrives (the Frontex is in charge of controlling it) is in which he must apply for asylum. But refugees ignore it and arrive to the first European country they can with the idea of travelling to another one where their families are to regroup, but if they first arrived, for example in Spain and their asylum is granted there, they won't be able to live anywhere else, even if their relatives live abroad (information provided by CEAR).

Even the legal language shows its politicization, the hegemonic impulse that in fact international law exercises (with the right of veto of the Security Council, for instance). To give just one example, as Arendt points, the term "stateless" is replaced by "displaced persons": "*for the express purpose of liquidating statelessness once and for all by ignoring its existence*" (ARENDT: 1976, 279). If the negativity that refugees bear is not even named (the fact that they are state-less), statehood itself disappears from reference, discourse and reality.

> "*When they reach the sealed borders, refugees are trapped to die in silence*". (CHOSMKY: 2001)

IV. A refugee camp is a singular place, how to insert this space as a paradigmatic scenario of a political-philosophical frame, going beyond the facticity that composes the refugee camp nature? To dedicate an epigraph, an appendix apart from the text is a sign of how the camp constitutes a margin, a border, an edge, but nevertheless a fundamental part of the issue, as articulating hinge. In this sense, the philosopher Badiou defined "singular" as the "*term that is presented but not shown (that belongs without being included)*" (SERRANO: 2007, 38). The refugee camp is a critical space because represents the indetermination between the refugees' arrival and the sovereign's decision to deal with them, the moment when the refugee wanders

with no status waiting for the authorities to have it. So, the camps become the place where the non-citizen condition of the refugee appears more clearly. It's curious how the refugee camp seems away of any theoretical problem: what matters there is to provide solutions independently of the historical nature of the problem, the concerns are about the tents, the blankets and the latrines, not the philosophical roots of the refugee figure. Nevertheless, a philosophical consideration is needed especially in these cases.

And just as the camps use to be placed in huge empty areas far from the big cities, near the borders so there is proximity with the flow's origin, inhabited spaces in the host country but not really inside it, so is their political status, in the way between non-citizenship and a false citizenship that can be removed, being deprived in that case of an identity right. The refugee has been despoiled of his condition of citizen of his own country, now it's about obtaining the citizenship of another state that in principle receives him as a trouble. The horizon of accomplishment of the refugee is loaded with negativity, they are not desirable (they are not rich refugees, that use to install in the cities of the host country); and this negativity is combined with another one: that the humanitarian organizations don't consider the camps as the best option but can't find neither a better one:

> "...the Camp Management Kit doesn't stand up for the camps establishment nor promotes their permanence. However, the Kit assumes that the camps are often the only option and the last resort for the settlement of displaced people and therefore adopts a pragmatic approach".
> (NRC: 2008, 14)

Provisional camps aren't always the norm; many of them are no longer transitory places but become permanent and turn into annex and part of the cities. We can even talk about a center and a periphery inside the camps. A first sample of a permanent establishment is the creation of shops and businesses (as one of the managers of the Zaatari refugee camp for Syrians in Jordan – the world's second largest – asks about the appearance of a main street ironically called "Champs Elysées": "*a good or bad indicator?* Andrew Harper (twitter)). Those refugees override the thesis of the camps as temporary solution and got inserted in the logic of the city, even as a margin of it. In fact, the refugee camps reproduce the conditions of

possibility of the city, not only through commerce, schools and hospitals, also in matters as crime or prostitution. There even exist migratory dynamics between camps from refugees who emigrate to camps with better conditions, the so-called "*Hilton camps*" (NRC: 2008, 33).

Actually, there also exist forms of participation that give some semblance of political conditions: the preexistent social hierarchy is maintained when possible and representation forms similar to the non-exceptional context ones are created, namely, a spontaneous legislation is established without the conditions of citizenship and statehood. So, with regard to justice matters, the legal system of the host state is combined with the own camp justice systems (NRC: 2008, 261), and that makes that statehood got dissolved.

> "*The prolongation of their lives is due to charity and not to right, for no law exist which could force the nation to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow*". (ARENDT: 1976, 296)

The camps administration depends on the national authorities in coordination with the agency (ACNUR in case of armed conflicts, OIM for natural disasters) which is in charge of managing with the service providers (NGO's, private and local services, etc.), with the camp population's chiefs, etc.

> "*…the State is the first responsible of protecting all those who are in its territory (…) and of guarantying the public order and the security against any kind of internal or external threats. Human and humanitarian rights agents mustn't give any guarantee of security or protection because that could generate a false security feeling. Nevertheless, they do have the responsibility of taking protecting actions to contribute mitigate the risk of violence and his devastating effects*" (NRC: 2008, 366)**.**

At first it seems that the State has the principal role, its functions are the ones related to state's sovereignty, land and territory: he's in charge of the camp's opening and closure (process curiously

called "*durable solution*"), whilst the responsibility of the agencies is to help the country in the management works (*"...management agencies don't have a legal mandate nor have a system of sanctions to impose coordination or to directly penalize those who refuse to assume their responsibilities ..."* (NRC: 2008, 116)). But even though this coordination and the appearance that everything goes through the host state's filter, it's not clear who exercises the real decision. There is a kind of tension between agencies and state: agency management – as representing UU.NN. – is invading the action field of the national political power, maybe in name of effectiveness or neutrality, but even in matters as environment – critical question when talking about refugee camps – health and education, agencies and state share power and take decisions even to the detriment of the late one.

V. To the question, *"have the refugees experienced any improvement?"* is easy to answer "yes", given the juridification of their status (and some specific measures, as the established by the Spanish Government in 2009, according to which prosecution by reasons of gender or sexual orientation are new motives for asylum). However, how to explain the contradiction that supposes the fact that refugees still suffer in a critical way and don't feel at the most existential level those legal advances? Arendt saw a clear progress in the XX century:

> "*minorities had existed before* (*the first minorities arose when the Protestant principle of freedom of conscience accomplished the suppression of the principle* cuius regio eius religio*), but the minority as a permanent institution, there cognition that millions of people lived outside normal legal protection and needed an additional guarantee of their elementary rights from an outside body, and the assumption that this state of affairs was not temporary but that the Treaties were needed in order to establish a lasting* modus vivendi – *all this was something new, certainly on such a scale, in European history*" (ARENDT: 1976, 275).

This essay isn't capable to give a final answer; it has the only intention to highlight some critical points that can help to understand a figure, "the refugee", which goes beyond the legal, which invades the political, the social and the existential fields. The purpose was especially to delineate a diachronic analysis of the relations between the refugees and the sovereignty, from his origin – precisely, with the

birth of the State and International Relationships, as institutionalized realities – until today, to show in that way the intrinsic connection between those three spheres: the one of the refugees, of the state and of the interstate relationships.

What is considerable in our analysis is not the "date Westphalia (1648)"; history is not made of key dates but of processes that materialized, and in this sense, refugees have always existed; the point is that their recognition in a legal framework had place in the same context of the state's blooming, showing there a connection that will affect the refugee for better and for worse. What should be analyzed , as background of what has been announced at the beginning of the text, is if our contemporary societies are post-Westphalian because our system has retaken Westphalian structures – with its play of hegemonies behind a false neutrality and formality –, something apparently present in the United Nations (in the line of what A. Blin defends: "*en effet, la paix de Westphalie de 1648 prépare la mise en place d'un régime de "gestion de puissances", comme l'appellent les politologues, qui perdura durant presque trois siècles, jusqu'en 1914, et dont certains annoncent aujourd'hui le grand retour*". (BLIN : 2006, 7)) – or if instead, the state has lost all his leadership – even in the refugee field –, having been replaced by post-national and private actors, being the world installed in a completely post-Westphalian era.

Finally and to sum up, it's fundamental to insist and remember – following the line of the feminist philosopher Kate Millet , who said that personal issues are always political –that humanitarian matters do always have an important political component that can't be forgotten.

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Authors Acknowledgement

From Geneva to Geneva:
A Discourse on Conflict Resolution in Laos:
1954-1962

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Introduction

The internationalization of the conflict in Laos between the two Geneva conferences of 1954 and 1962 forms an important aspect in the history of international relations. During the Cold War period, the problem of Laos was exacerbated due to the strategic location of Laos and the national interest of external actors. The present paper would endeavor to analyze various ramifications of the conflict in Laos.

The landlocked country of the Lao People's Democratic Republic has passed through vicissitudes of history facing problems like foreign invasion, external interference, and ideological conflict. Beginning from the First Indochina War (1946-1954), fate of Laos was linked very closely with that of Vietnam. With the escalation of conflict, a solution to the problem of Laos was nowhere in sight. The collapse of Dien Bien Phu on 7 May 1954 ended French colonial rule. The Geneva Conference of 1954 did not solve the problem. The politics of Laos revolved round three major groups; Pathet Lao, the neutralists and the rightists.

Both the United States and North Vietnam came into conflict, as they were committed to help their respective allies in Laos, and regarded the other's action in Laos as harmful to their interest in South Vietnam. An agreement on Laos became contingent upon ending the war in Vietnam. The net result of outside intervention was the prolongation of the conflict in Laos. The gulf between the internal factions in Laos widened, and freedom of choice was restricted for the belligerents in Laos. The problem of Laos remained unsolved and there was de facto partition of the country. The civil war soon became internationalized. Each side drew outside support, and the external support aggravated the conflict.

Struggle for independence

During World War II, the Japanese took control of Laos and declared its independence from French colonial rule on March 9,

1945. After the surrender of the Japanese, Phetsarat established the independent Lao Issara (Free Laos) Government on September 1. New avenues were opened for the Lao elite to chart out a course of independence. The Lao Issara was short-lived and the French began to re-conquer their colonial Empire of Indochina. Laos was soon engulfed in the First Indochina War (1946-1954) and the French granted limited independence on July 19, 1949.

The developments in Laos were viewed differently by political groups. The three major strands in Laos; Pathet Lao, the neutralists and the rightists became a constant feature of Lao politics henceforth. The left leaning Pathet Lao (land of Lao) vociferously opposed the French move, whereas Souvanna Phouma (1901-1984) joined the new Royal Lao Government (RLG) formed in February 1950. The term, Pathet Lao is generally used for the Communist movement of Laos that began in 1945 and continued until 1975, when the whole of Laos became Communist. It fought along with the Viet Minh and Khmer Rouge in the First Indochina War against the French. The three communist factions of Indochina had formed the Viet-Khmer-Lao alliance on 11 March 1951. The collapse of Dien Bien Phu on 7 May, 1954 ended French colonial rule in Indochina and the next day, the Indochinese session of the Geneva Conference began.

The participants in the Geneva Conference were France, the United States, the Soviet Union, British, China, Cambodia, Laos and both the Vietnams. The Pathet Lao representative did not succeed in becoming a conference participant and it was not recognized as a resistance government. It received official stature as "Pathet Lao Fighting Units" (*Unites Combatants Pathet Lao,* UCPL). There were six documents concerning Laos in the 1954 Geneva Agreements. The Agreement on the Cessation of Hostilities in Laos provided that except for certain French instructors and garrisons, foreign forces should be withdrawn from Laos within 4 months. The Pathet Lao troops 'pending a political settlement' (Article 14) were to regroup in the provinces of Phong Saly and Sam Neua. An International Commission for Supervision and Control (IOC) was to supervise the agreements. India (Chairperson), Poland and Canada were its members. By another declaration pertaining to Articles 4 and 5 of the final declaration, the RLG pledged that it would not enter into military alliances and would settle its disputes by peaceful means.

But the Geneva Conference of 1954 did not solve the problem of Laos. There was the formation of a national union

government after the signing of the Vientiane Agreements of 1956-1957 between the Pathet Lao and RLG. But the politics of the country turned towards the extreme right. In December 1959, the military dominated Government of General Phoumi Nosavan (1920-1985) arrested the Pathet Lao members of the National Assembly. Laos was heading towards a crisis point in the context of Cold War. Peace became illusive and Laos was plunged into civil war in 1960s.

Involvement of External powers

The situation in Laos was exacerbated by the involvement of external powers, which aggravated the conflict. The actors involved viewed the situation in Laos from their standpoint. The crisis escalated or de-escalated according to the interest of superpowers, great powers and the neighboring countries. The United States and the then North Vietnam were major actors in the Lao scenario, developing a patron-client relationship with the RLG and the Pathet Lao respectively. The United States administration saw the situation as part of the communist drive for world domination. Laos was included in the containment strategy as a first line of defense against North Vietnam and China. The American Secretary of State, John Foster Dulles, had called Laos an "outpost of the free world" [1] and said the day after the Geneva Conference began:

Whether this can be stopped at this point, and whether Laos, Cambodia and the southern part of Vietnam, Thailand, Malaya, and Indonesia can be kept out of Communist control depends very much on whether we can build a dike around the present loss. [2]

Thailand also became a key factor in American involvement in Laos. Bangkok was judging the American commitment to it by the steps that Washington was taking against the spread of Communism in Laos.[3] The United States supported the leaders of Laos, who would best serve its interest. It strengthened the RLG by massive military and economic aid. Laos became the only country in the world, whose military budget was being supported by the United States one hundred percent. A special Protocol added Laos to be protected by the South East Asia Treaty Organization (SEATO) of September 6, 1954. The Military Advisory Assistance Group (MAAG) could not be sent to Laos under the terms of the Geneva agreements and therefore, a Program Evaluation Office (PEO) was established. It was a military mission staffed by the United States armed forces, whose military ranks were removed temporarily. [4] The PEO also was controlling the 25, 000 strong Royal Lao Army (RLA), which was receiving eighty percent of total American aid to Laos. It was the

State Department, which was in favor of supporting the RLA's entire military budget and the Joint Chiefs of Staff were of the opinion that military considerations were not taken into account. [5]

In the crisis of Laos, it would be seen afterwards that different departments of the United States Administration were not unanimous in their opinion as to the policy to be followed. The Central Intelligence Agency (CIA) helped in the formation of a rightist grouping, the Committee for the Defense of National Interests (CDNI) on June 17, 1958.[6] Its aim was combating communism in Laos and the CIA backed the rightist politician, General Phoumi. The CIA advisor John Hazey was very close to him. [7] On the other hand, the State Department was supporting Phoui Sananikone (1903-1983), the Premier of Laos. But the CIA found Phoumi more pliable and it along with the PEO advised him to stage a coup. He also stage managed the elections of April 1960 and the CIA agents were distributing money to village chiefs at the time of the elections. [8] The cooperation between the Governments of United States, Laos and Thailand was going on well. The American aid was passing through Thailand to land locked Laos and the United States had built three new airfields in north-eastern Thailand. Both Laos and Thailand were maintaining close economic and military cooperation under the auspices of SEATO. The United States was encouraging the development of close relations between Vientiane and Bangkok. Transport and communication facilities improved between the two, which was a part of the American sponsored communication network in Laos, Thailand and South Vietnam. The United States also built up the clandestine army (*Armee Clandestine*, AC) consisting of the Hmong (Meo) tribals and mercenaries from Thailand, Myanmar, Cambodia and the Philippines. Thailand became a rear base for the American policy of containment of communism.

North Vietnam and Laos

Laos was strategically vital to North Vietnam. The close collaboration between communist factions of the three Indochinese states began with the formation of the Indochinese Communist Party in 1930. The leader of the Pathet Lao, Prince Souphanuvong had met the Vietnamese Communist leader Ho Chi Minh in 1945 and gained control of central Laos with the help of Vietnamese troops.[9] The Prince along with leaders like Kaysone Phomvihan , Phoumi Vongvichit , and Nouhak Phoumsavan had nurtured the Communist movement. Souphanouvong proclaimed the parallel Government of Pathet Lao along with its political organ, Neo Lao Issara (Lao Free

Front) on August 13 , 1950. [10] Hanoi's goal was the unification of Vietnam and Ho Chi Minh had proclaimed after the Geneva Conference of 1954 that it would be achieved. [11] The northern provinces of Phong Saly and Sam Neua, controlled by the Pathet Lao were of immense help as agents could be sent to South Vietnam through these areas. The mountain terrain adjoining these provinces of Laos and North Vietnam was suitable for guerilla warfare also. North Vietnam reacted sharply to the formation of SEATO and the American aid to South Vietnam. An independent South Vietnam would not have survived without aid from Washington and that country was "essentially the creation of United States." [12] Hanoi had realized this fact and increased support to the Communist factions of Laos, Cambodia and South Vietnam. In December 1960, the National Liberation Front (NLF) of South Vietnam had come into existence and Laos became more closely interlinked in Hanoi's task for reunification.

Apart from giving material help to the Pathet Lao like supply of arms and training, Hanoi was playing an important role in its organizational structure. The Pathet Lao Army (PLA) was formed with the assistance of North Vietnam. As the war engulfed Indochina in the 1960s and 1970s, the PLA provided a supporting role to the North Vietnamese Army (NVA). Hanoi had a military mission in each of the Pathet Lao controlled provinces. Advisers were present from the NVA in Pathet Lao with six in each battalion, three in a company and two advisors in each platoon.[13] The North Vietnamese also exerted a strong influence in the Phak Pasason Lao (People's Party of Laos) proclaimed on March 22, 1955. [14] It was renamed the following year as the Lao People's Revolutionary Party (LPRP). Modelled closely after the Lao Dong party of North Vietnam, the LPRP also was controlling the broad based political organization, the Neo Lao Hak Sat (NLHS, Lao Patriotic Front) established on January 6, 1956. Many of the LPRP men had been members of the ICP. Kaysone was the Secretary General of the LPRP, which had a Central Committee of twenty members. In May 1959, Hanoi began to give more aid to the Pathet Lao after a decision by the Lao Dong party. It also began to increase assistance to the NLF and exerted strong influence on it after the formation of the People's Revolutionary Party in January 1962.

Crisis in Laos

From the 1960s, the Lao crisis escalated and the country was plunged into a civil war. The 1962 Geneva Accords gave temporary

respite to the country. The pattern of escalatory and de-escalatory momentums continued until the whole of Laos became Communist in 1975. Events moved fast in Laos after the coup of Captain Kong Lae of the Second Paratroop Battalion on August 9, 1960. He was irked over the rampant corruption and American interference in Laos. The Pathet Lao leader Phoumi Vongvichit welcomed the coup as well as the establishment of a neutralist Government formed by Souvanna Phouma. [15] Both the rightist leaders like Phoumi Nosavan and Boun Oum were opposed to it. Boun had declared that Souvanna's Government was illegal and charged that it had opened Laos to North Vietnamese aggression. [16] He declared himself the Premier of Laos.

The situation in Laos became a three sided struggle and fighting soon broke out. To the left there was the Pathet Lao, the Boun Oum -Phoumi Nosavan faction represented the right; and in the center stood Souvanna with his neutralist followers. Upon internal quarrels, international rivalry was imposed. The civil war became internationalized with each side drawing external support. The different branches of the American Government had conflicting policies towards development in Laos. Winthrop G. Brown , the new ambassador to Laos, supported Souvanna. J. Graham Parsons , the former ambassador to Vientiane headed the Bureau of Far Eastern Affairs. He persuaded Souvanna to break off relations with the Pathet Lao and support Phoumi Nosavan. The American President Dwight David Eisenhower later wrote that Parsons mission was to break with the Pathet Lao. [17] In October 1960, both the State and Defense Departments decided that Souvanna should go and suspended American aid to Laos.   Faced with this and an economic blockade by Thailand, Souvanna turned towards the Soviet Union. [18]

Diplomatic relations were established between Laos and the Soviet Union. Alexander N. Abramov became the first Soviet ambassador to Laos on October 13, 1960. On November 18 Souvanna and the Pathet Lao signed an agreement for the formation of a coalition Government and the establishment of diplomatic relations with North Vietnam and China. This was the period of the deteriorating relationship between the Soviet Union and China. Beijing had accused Moscow of not doing its duties to promote world revolutions. The Soviet leader Nikita Khrushchev had denied this. He wanted to have the support of North Vietnam in the Sino-Soviet rift. The Soviet Union did not want be blamed by Hanoi for betraying national liberation movements. Hence it gave support to the Pathet Lao. Moscow also vehemently criticized the American policy in Laos. On August 17, 1959, it had released a lengthy document on

Laos, where it blamed the United States for giving military help to the RLG and interfering in the internal affairs of Laos. [19] The document commented that neither North Vietnam nor China was sending military equipment and personnel to Laos. Moscow backed the Government of Souvanna, which was being supported by the Pathet Lao. It began to supply rice and oil from December 4, 1960 and the Soviet planes arrived daily with these supplies. [20] Afterwards the Soviet Union began supplying military aid to the neutralist-Pathet Lao faction. On 11-12 December, the Russian aircraft delivered three 105 mm howitzers, three heavy mortars and ammunition to Vientiane. [21] The airlift to the strategic Plain of Jars became a top priority for the Soviet Union with 180 sorties to Laos in between December 15, 1960 and January 3, 1961. [22]

The Sino-Soviet rift was one of the major factors in determining the Chinese policy towards Laos. On April 16, 1960, the Chinese in an article entitled, *Long Live Leninism*, criticized the policy of peaceful coexistence and peaceful transition to socialism of Khrushchev. [23] As China shared over three hundred and fifty kilometers of border with Laos, it viewed with concern the prospect of any foreign power having a foothold in Laos. Apart from expressing concern over American military aid to the RLG, Beijing criticized SEATO for its aggressive design over China and interference in the internal affairs of Laos. Diplomatic relations were established with Laos. China supported the agreement of Souvanna with the Pathet Lao. On October 7, 1961, it established a consulate in Phong Saly and after a month, a cultural delegation visited Laos. The Chinese military journal, *Kung-tso T' ung-hsun* mentioned that the United States had supplied Phoumi with 105 mm howitzers, M-24 tanks and Thai military personnel were training his troops. [24]

The Pathet Lao-neutralist Government was short lived as Phoumi's forces marched towards Vientiane in December 1960. He became the Defense Minister in the new Government and Boun Oum was the Premier. The subsequent defeat of Phoumi's forces raised the possibility of American intervention. The Administration of John F. Kennedy was confronted with the dilemma of intervening or not intervening. In an obvious warning to the Communist powers, the President ordered the Seventh Fleet to move into the Gulf of Thailand. At the SEATO Council meeting, it was declared that action might be taken unless the Pathet Lao agreed to a ceasefire. [25] In the press conference of March 23, 1961, Kennedy said that the United States preferred a neutralized Laos, but would not hesitate to intervene if necessary. [26] In the National Security Council meeting

the question of sending American troops was discussed. But the Bay of Pigs invasion on Cuba of April 17 had made Kennedy remark, "If it hadn't been for Cuba, we might be about to intervene in Laos." [27] Fearing that his adversaries would think him weak, the task force in Okinawa was put on alert. The Commander-in-Chief of Pacific Forces was ordered to move American combat brigades of 5,000 personnel each to north-east Thailand and the South Vietnamese coast as "a threat to intervene in Laos." [28]

Peace Process and events of Nam Tha

Attempts to bring an end to the civil war were going on. [29]India as Chairperson of the International Commission for Supervision and Control (ICC) sent a message to Britain and the Soviet Union (Co-chairpersons) proposing reactivation of the ICC. [30] It was agreed that an international conference would be convened in Geneva to end the crisis in Laos. The different factions in Laos were to observe a ceasefire and send their representatives to Geneva. On May 16, 1961, the 14-nation conference began consisting of the signatories of the 1954 Geneva Conference (Great Britain, Cambodia, China, France, Laos, Soviet Union, United States and both the Vietnams), the members of the ICC, Thailand and Myanmar. The Soviet Union, United States and China sponsored Souvanna, the Vientiane Government and the Pathet Lao respectively.

It took more than a year for final agreement and peace efforts were punctuated by hostilities. The problem of the ceasefire provoked heated debates with charges and counter-changes. In late May and early June 1961, a battle began around Ban Padong, about 10 kms south of the Plain of Jars. The Hmong tribes numbering about 9,000 were conducting guerilla operations against the Communists with help from the CIA chief of Vientiane. [31] Ban Padong was captured by 5, 00 Pathet Lao and the North Vietnamese soldiers. Much hue and cry was raised and the American delegation headed by Averell W. Harriman walked out of the conference, which was suspended for five days.

The situation improved after the Kennedy- Khrushchev meeting on June 3 and 4, 1961 in Vienna. It had a healthy effect on the course of events in Laos, albeit temporarily. Laos was the only area, on which there appeared some prospect of agreement in the summit meeting. Kennedy said:

The only area which afforded immediate some prospect of accord was Laos. Both sides recognized the need to reduce the dangers in that situation. Both sides endorsed the concept of a neutral

and independent Laos much in the manner of Burma or Cambodia. Of critical importance to the current conference on Laos in Geneva, both sides recognized the importance of an effective ceasefire. [32]

Until the three factions of Laos agreed to form a coalition Government and on a cessation of hostilities, a settlement in Geneva was not feasible. Souvanna, Souphanouvong and Boun signed a communiqué in Zurich on 22 June in this regard. The declarations of Zurich were not followed with appropriate action and each faction began to build up its strength with fresh supplies. While the delegates in Geneva were preparing the modalities of an agreement, the skirmishes continued, snowballing to the serious crisis of Nam Tha in 1962.

Phoumi's strategy was to continue the hostilities so that he would retain American support. He had even announced that Chinese and Russian troops were active in the area. The United States did not believe in these and in January1962 stopped the cash grant of 4 million dollars so that Phoumi would yield. [33] The President had appealed personally to Phoumi to merge the RLG under a tripartite coalition led by Souvanna. The CIA handler of Phoumi also was transferred from Laos. In February, the United States suspended the salary money that Phoumi used to pay every month to the army. The American pressure was to bring Phoumi to agree to a coalition Government. [34] The cutting off of aid went on for four months. But, the supply of military equipment continued, lest the Pathet Lao along with the neutralists take a stronger position.

Nam Tha, a strong hold of Phoumi was situated about 10 kms from the Chinese and 125 kms from Thai borders respectively. It served as a base for probing into the Pathet Lao territory and the hostilities intensified by the end of April 1962. It was believed that the CIA had prodded Phoumi to reinforce Nam Tha garrison. He believed that there would be policy difference in the United States administration as in 1960 and Phoumi could count on the support of the CIA and the Pentagon in opposing a coalition Government. [35] On May 6 Nam Tha fell into the hands of the Pathet Lao and Phoumi's troops along with the Commander-in-Chief of the RLA crossed to Thailand.

Alarmed by the events in Laos, Thailand had sent its troops to Nam province bordering Nam Tha. The Thai concern was motivated by security and anti-Communism. [36] It wanted a friendly regime in Laos. The hostility of Marshal Sarti Thanarat ,the Thai Premier towards Pathet Lao was motivated by Communist phobia and he shared this with his close relative Phoumi. In north-eastern

Thailand, Communist insurgency had been on the increase with support from the other side of the border along with China and North Vietnam. [37] Both the United States and Thailand signed the Rusk-Thanat agreement on March 6, 1962, which spelled out that obligations under SEATO were "individual as well as collective." [38] The United States declared a unilateral defense guarantee and military assistance to Thailand was doubled.

Alarmed at the Nam Tha developments, the United States took measures to deter the Communists from further advances. There were different opinions in the American administration regarding the course of events to be followed. The Pentagon, keen on preventing a coalition Government urged an all-out effort including a nuclear attack on China. [39] The State Department representing a political line advocated for a limited military intervention. The Seventh Fleet moved into the Gulf of Thailand on 12 May and two days later, 1,000 American soldiers moved to Udorn situated about 50 kms from the Lao border. The United States announced the dispatch of 5,000 troops to Thailand. Australia, Great Britain and New Zealand also sent token forces. Kennedy in a press conference of 17 May said that the purpose of sending troops was to ensure Thailand's territorial integrity. [40] The Pathet Lao troops did not violate the ceasefire and the American soldiers did not cross the Mekong River. The crisis thus fizzled out.

On June 7, 1962, talks were resumed between the Lao leaders once again on the Plain of Jars. A coalition Government was to be formed with Souvanna as the Premier. Phoumi and Souphanouvong were to be Deputy Prime ministers. The delegates of the Geneva Conference presented on 23 July two documents on Laos: a Declaration on the neutrality of Laos and a Protocol to it. [41] The signatories pledged that they would not indulge in any action affecting the sovereignty, independence, neutrality and territorial integrity of Laos. The introduction of foreign troops was prohibited and the ICC would supervise the ceasefire. The July 9 statement of the Lao coalition Government, pertaining to *penkang* or neutrality was also included in the Geneva Accords. It had proclaimed the establishment of diplomatic relations with all countries and adherence to the five principles of peaceful co-existence.

Compromise between different actors

The main participants of the crisis in Laos were on the brink of getting involved in a war, but they opted for a compromise. Behind the de-escalation, the considerations of major actors were obvious. By 1962, the strategic considerations of the Soviet Union and China over Laos were divergent. While Moscow visualized Laos in the context of its relations with the United States, China was following a policy of struggle and it was not yet talking of a policy of detente with the United States. Khrushchev had strongly opposed a militant line on Indochina. In his speech of January 6, 1961, on wars of national Liberation, the Soviet leader had said that the Soviet Union was for peaceful co-existence. [42] The Communist countries would support national liberation, but should not internationalize it. In the crisis of Nam Tha, the Soviet Union did not interfere. It also asked the Pathet Lao to show a more flexible attitude towards forming a coalition Government. The Soviet Union was interested more in the affairs of Europe. Its policy in Laos was to strengthen its bargaining position in Europe vis-à-vis the United States. The limited arms supply to the Pathet Lao-neutralist alliance in 1960-1961 was more of an exception than a rule as will be evident from the Soviet policy after 1962.

China supported the Pathet Lao as the victory of rightists would mean another pro- United States Government on its southern border. Suspicious of the Soviet Union's policy of peaceful coexistence and its reluctance to provide nuclear weapons, China was very much concerned about American military bases in Japan, Taiwan, South Korea and the Philippines. Yet, it could not risk a war with the United States. Weakness on the economic front after the Great Leap Forward movement was another constraint. Hence, it was suggesting a dual policy in Laos: local military operations coupled with political negotiations. Going to the Geneva conference would be advantageous for it as Laos would be neutralized. The protective umbrella of SEATO also would be removed from Laos. Following the dual revolutionary tactics, 'Nam Tha' had to be followed by political negotiations. The military strategy had to be guided by political thinking in the People's War.

Laos was not worth risking a global war for the United States and it went to the Geneva Conference after its show of force in the Nam Tha crisis had become successful The Communists responded to the ceasefire. Kennedy applied coercive diplomacy so as to halt the Pathet Lao advance. This type of diplomacy points towards "focusing the enemy's will rather than upon negating his capabilities." [43] The

United States wanted to gain time so that in future anti-Communist forces would conduct the struggle from an advantageous position. As Hilsman, the Director, Bureau of Intelligence and Research in the administration of Kennedy had admitted: "We understood perfectly well that (it) was the starting gun…If we had used negotiations…as an excuse to withdraw from Laos…we in effect would have been turning it over to the communists."[44]

The application of a show of force was to stall an outright victory for the Pathet Lao. The United States favoured a political solution, at least for the time being. The Kennedy- Khrushchev meeting in Vienna was another factor for a compromise solution. The other reasons that might have influenced the decision of Kennedy were: i) The SEATO members were not unanimous about an outright intervention in Laos, ii) The American embassy, especially its ambassador, Brown, believed that a compromise formula was the best course of option and (iii) The increase in Viet Cong activities in South Vietnam required more troops and attention from the United States.

North Vietnam and the Pathet Lao also agreed to de-escalate the crisis. Hanoi had seen that the Pathet Lao had increased its strength as compared to the time of Geneva Conference of 1954; numerically and area wise. It had become easier to send cadres to South Vietnam through the north eastern provinces of Laos, which were controlled by the Pathet Lao. The landing of American troops in Thailand, Soviet pressure, political gain at the a conference table and a lack of resources to occupy whole of Laos were factors responsible for the Geneva talks. The Pathet Lao had changed its tactics from armed insurrection to a national front as it did at the time of the Geneva conference of 1954 and the 1956-1957 Vientiane agreements.

Two basic and three preliminary conditions are to be present for a compromise settlement [45] and all these were there in the Lao situation of 1960-1962. [46] The basic conditions are stalemate and the redistribution of aims. Stalemate in the battlefield was restored, when the United States sent its troops in Nam Tha crisis and the Pathet Lao agreed to negotiate. It was to the middle faction of neutralists that both the rightists and the Communists made concessions. Souvanna was acceptable to both and distribution of portfolios was easier. The three basic conditions were the identity of parties, duration of the conflict and the existence of contact between the parties. In the Lao scenario, the identity of parties was well known. The conflict between the rightists and Pathet Lao was of long duration and a quick

victory was unlikely. The channel of communication was open due to the meeting of the factions and the presence of the ICC.

Conclusion

The coalition Government that was formed after the Geneva Accords of 1962 functioned smoothly in the beginning with the three factions: left, neutrals and the right cooperating with each other. However, the troika or three-pronged administrative structure did not last long. Souvanna Phouma became Premier in charge of defense. Souphanouvong and Phoumi Nosavan, both the Deputy Premiers represented the left and rightist groups respectively. All the decisions of the Government were to be taken in accordance with the unanimity rule. Such an arrangement was doomed from the beginning. The wrangling over distribution of foreign aid began and each side endeavored to channel the maximum to its own faction. They also kept control of their military forces. Mutual suspicion among the three groups prevented the smooth functioning of the Government. There was also a split in the neutralist camp after a series of assassinations in the capital Vientiane.

The politics of Laos henceforth witnessed two strands, the rightists and leftists with neutralist joining either faction. Though Souvanna wanted national reconciliation, he did not want Pathet Lao to play a dominant role. He gradually drifted away from the Pathet Lao and moved towards the right. The military Generals began to assume real power and he remained a 'symbolic' figure. By 1964, the three pronged administrative structure had become defunct and the situation in Laos returned to the pre- 1962 situation. The tripartite meeting of Souvanna, Souphanouvong and Phoumi Nosavan in September 1964 at Paris failed. Hostilities were resumed and some of the signatories of the Geneva Accords observed the provisions by violating it.

Laos was became a 'side show' of the Vietnam War. The two major actors, the United States and North Vietnam followed policies in Laos keeping in mind the compulsions of the War. The escalation of the Vietnam War aggravated the conflict in Laos and Washington as well as Hanoi became deeply involved in the affairs of Laos. The problem of Laos remained unsolved and there was de facto balkanization of the country. A solution to the Lao conflict was in sight after the Geneva accords of 1962. However, the gradual linkage of the country with the Vietnam War made the solution of the Loa conflict dependent upon the outcome of the conflict in Vietnam. However, the whole of Indochina became red after the end of the Vietnam War.

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[22] *Department of State Bulletin* (Washington, January 23, 1961), pp. 114-115.

[23] For details see, *Peking Review*, no.17, April 26, 1960, pp. 6-23.

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[25] P.C. Phuangkasem, *Thailand and SEATO* (Bangkok, 1972), p.34.

[26] *Public Papers of the President of the United States, John F. Kennedy, 1961* (Washington, 1962), pp, 213-218.

[27] Schlesinger Jr.n. 18, p.316.

[28] *The Pentagon Papers*, n.12, p. 89.

[29] For details see, Mishra, n.3, pp, 71-75.

[30] The ICC was formed after the Geneva Conference of 1954 to supervise the agreements. Poland and Canada were the two members.

[31] *The Pentagon Papers*, n.12, pp, 134-135.

[32] *Department of State Bulletin*, June 26, 196, p.993.   Khrushchev had told Kennedy in Vienna that the Soviet Union had "no desire to assume responsibility in remote geographical area." See, Schlesinger, n.18, p.333.

[33] *New York Times*, January 16, 1961.

[34] Hariman said that the salary money was stopped as the Vientiane Government was not "negotiating in good faith for a coalition government." See, Senate, Committee on Foreign Relations, Foreign *Assistance Act of 1962*. Cong. 87, Sess. 2, 1962 (Washington, 1962), p.369.

[35] Hilsman, n. 6 , p. 138

[36] For details see, Mishra, n. 3, pp, 81-83.

[37] "Communist Insurgency in Thailand" (Unofficial Summary of the Government White Paper), *South-East Asian Spectrum*, vol.1 1, no. 4, July 1973, p.33. A separatist movement also was there in north-eastern Thailand, whose goal was creation of a neutral Laos.

[38] *Department of State Bulletin*, March 26, 1962, p.499.

[39] Hilsman, n. 6, p. 142.

[40] Department of State, *American Foreign Policy: Current Documents, 1962* (Washington, 1966), p. 1094.

[41] For the text, see, UK, Central Office of Information, *Laos* (London, 1967), pp. 50-55.

[42] *Communism- Peace and Happiness for the Peoples, January-September 1961* (Moscow, 1963), vol.1, pp. 389-391.

[43] Alexander L. George and others, *The Limits of Coercive Diplomacy* (Boston, 1971), p. 18.

[44] Senate, Committee on Judiciary, *Refugee Problem in South Vietnam and Laos*. Cong. 89, Sess. 1, (Washington, 1965), p.328.

[45] George Modelski, "International Settlement of Internal War", in James N. Rosenau, ed., *International Civil Strife* (Princeton, 1964), p. 143.

[46] Martin E. Goldstein, *American Policy Toward Laos* (Cranbury, 1973), pp. 283-285.

The Challenges of Violent Mass-Organizations towards a Nation-State: Indonesia Case

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Abstract

This paper discusses how Indonesia as a nation-state deals with violent mass-organizations as non-state actors within its boundary. The discussion is important because the handling of the issue will determine the Indonesian level of security. The emerging of the groups constitutes challenges towards three components of a state, they are ideas, physical base, and institutions. One problem which Indonesia is still facing is how to manage the relations among the state, the groups, and civil society. They constantly challenge the nation-state of Indonesia in terms of ideas of state and the istitutions (the three branches of power and their apparatus). The discussion uses Barry Buzan's conception on three components of a state. Globalization has help emerged the violent mass-organizations that challenged the three components of a state. By using the concept, the answer to the problem is by strengthening the the ideas of the state, the physical base, and the institutions (mainly the state apparatus).

Keywords: Security, state, weak and strong states, mass-organization

Introduction

Indonesia is facing a liberal democracy. Many societal organizations emerge during this reform era. Among the societal organizations, there are some organizations that often conduct violent activities. Their violent activities are such as clashes with societies, clashes with other organizations/ groups, or even clashes with police officers. Other their bad activities are such as sweeping night clubs, destroying statues, and parading down the street by using motorcycle. The worst of all are their 'attack' to the revered figure such as Gus

Dur, their 'attack' to President Susilo Bambang Yudhoyono, a threat to overthrow the government.

The organizations have already attacked the ideas of the state, the symbols of the state, the population, and the state apparatus. The attack to the components of the state could be considered or classified as an attack to the security of a state. A state comprises three components, namely ideas, physical base, and institutions.

The majority of Indonesian society does not like the violent actions of the organizations. The big problem is the government does not act firmly to those organizations. There should be a good relationship among the state, the societal organizations, and the society. This paper discusses the violent actions the societal organizations have done and relate the actions to the security of the state.

Security and the Nature of the State

Buzan, Weaver, and Wilde define security as an ability to survive in facing the existential threat (1998: 21). While Arnold Wolfers says that security has two meanings, objective and subjective. In objective sense, security measures the absence of threats to acquired values, while in a subjective sense, the absence of fear that such values will be attacked (Buzan, Weaver, and Wilde, 1998:150). Buzan states that the talk of security is a discussion about the pursuit of 'freedom from threats' (Buzan, 1991:18).

Since the state is central to the concept of security, we have to discuss what a state is. Barry Buzan (1991: 60) defines a state from the systemic perspective. From the systemic perspective, one is almost compelled to see states as territorially defined socio-political entities. They represent human collectivities in which governing institutions and societies are interwoven within a bounded territory. For many, though not all, of all the major purposes of interaction within the system this nexus of territory, government, and society is what constitutes the state. In international perspective, the linkages that bind this package together are central to understanding security, and thus the merger of the two views of the state is a key to effective analysis. For the purposes of security analysis, 'state' has to be conceptualized broadly enough to encompass not only the relationship between the internal dynamics of the way in which these packages relate to each other.

A state is vulnerable to physical damage (such as loss of territory), but the state appears to be much less connected with its

body. A population and its associated territory constitute the physical foundations of a state but they can exist without the state. Conversely, damage to territory and population does not affect the survival of the state. Buzan argues that the state exists, or has its essence, primarily on the socio-political rather than on the physical plane (1991:63).

The centrality of a binding state is particularly important to the broad conception of the state that is necessary for security analysis. It is the idea of the state that both provides the major bindings holding the territorial-polity-society package together, and defines much of its character and power as an actor in the international system.

Barry Buzan suggests that there are three components of a state; they are the idea of the state, the physical base of the state, and the institutional expression of the state (1991:65). There is no suggestion that the three components stand separately, for they are obviously interlinked in myriad ways. These three features alone, however, do not add up to statehood. An agricultural commune, a factory, a family household, and numerous other social units could meet these criteria. The additional factors which make states a distinctive group of entities are size and sovereignty (Buzan, 1991: 66).

The Idea of the State

The questions concerning the idea of the state are: What does the state exist to do? Why is it there? What is its relation to the society it contains? (Buzan, 1991: 70).

The two main sources for the idea of the state could be found in the *nation* and in organizing *ideologies*. The importance of nation to the idea of the state is hinted at by the term *national* security itself. The term explicitly hints that the object of security is the nation, and raises questions about the links between nation and state. There are four links between nation and state: nation-state, state-nation, part nation-state, multination-state.

Organizing ideologies take the form of identification with some fairly general principle, like Islam, democracy, republicanism, or communism. In some cases, an organizing ideology is so deeply integrated into the state that change would have fatal implications.

Organizing ideologies can be penetrated, distorted, and undermined by contact with other ideas. They can be attacked through their supporting institutions, and they can be suppressed by force.

The Institutions of the State

It comprises its machinery of government: executive, legislative, and judicial bodies (Buzan, 1991: 82-83). Institutions can be threatened by force, or by political action based on ideas which have institutional implications. When institutions are threatened by force, the action taken is that they will be overpowered, and the solution they take is defence. When they are threatened by opposing ideas, the danger will be eroded. Could the armed force sustain them? Yes, but they would be more vulnerable without mass support.

The Physical Base of the State

It comprises its population and territory, including all of the natural resources and man-made wealth contained within its border (Buzan, 1991: 90-93). A state's territory can be threatened with seizure both by other states and by internal secessionist movements. The value of any given territory may rise or fall with changes in the technological, strategic or economic environment, or with discoveries about its resource potential.

A quite different and altogether more complex threat to population can arise from human migrations. This threat works primarily on the societal level, especially when the incoming population is of a different cultural or ethnic stock from those already resident.

The Size of population of the State

A population of 100,000 is considered dangerously small, but begins to approach the level of acceptability. Without sufficient size, the unit is too fragile in the company of its larger fellows, and lacks the capability to perform all the tasks of self -rule.

The Sovereignty of the State

Sovereignty, simply put, means self-government. It requires denial of any higher political authority. Sovereignty is the glue that binds the territorial-polity-social package together (Buzan, 1991: 67).

Weak and strong states

On the basis of the broader definition of state established above, when the idea and the institutions of a state are both weak,

then the state is in a very real sense less of a state than one in which the idea and institutions are strong. The distinction between weak and strong states is vital to security analysis. Weak or strong states will refer to the degree of socio-political cohesion; weak or strong powers will refer to the traditional distinction among states in respect of their military and economic capability in relation to each other (Buzan, 1991: 97).

Buzan argues that whatever the reasons for the existence of weak states, their principal distinguishing feature is their high level of concern with domestically generated threats to the security of the government; in other words, weak states either do not have, or have failed to create, a domestic political and societal consensus or sufficient strength to eliminate the large-scale use of force as major and continuing element in the domestic political life of the nation (Buzan, 1991: 99). This indicator connects back to the internal security dimension of the relationship between the state and its citizens.

Where the state is strong, national security can be viewed primarily in terms of protecting the components of the state from outside threat and interference. The idea of state, its institutions, and its territory will all be clearly defined and stable in their own right.

Where the state is weak, only its physical base, and sometimes not even that, may be sufficiently well defined to constitute a clear object of national security. Because *its idea and its institutions are internally contested* to the point of violence they are not properly national in scope, and do not offer clear referents as objects of national security.

Very weak states possess neither a widely accepted and coherent idea of the state among their populations, nor a governing power strong enough to impose unity in the absence of political consensus. Because of this, Buzan argues that it is more appropriate to view security in very weak states in terms of the contending groups, organizations, and individuals, as the prime objects of security (Buzan, 1991: 101).

Mass Organizations in Indonesia

Mass organization is a social organization that engaged in social (not-for-profit) activities and are not bound and / or not under state organs. It does not seek power as political party does. Mass organization is a social terminology, not a legal terminology. The majority of countries with Civil Law legal system recognizes two

forms of legal entities, namely Foundation (Yayasan/ Stichting) and Association (Perkumpulan/ Vereneging). NGO (Non Governmental Organization), NGOs (Non Governmental Organizations), CSO (Civil Society Organizations), etc. is a term practice.

The concept of having organized groups that strive for social and/or political purposes has been well-recognized in Indonesia since the colonial time as a part of the independence movement. The struggle for independence started with the establishment of organizations, based on regions, religions and labor unions. They were Budi Oetomo (1908), Serikat Dagang Islam (1911), Muhammadiyah (1912), Indiche Party (1912), Indische Social Democratiche Vereniging (1913), Trikoro Dharmo (1915), Jong Java (1918), Nahdlatoel 'Ulama (NU) in 1926, Jong Ambon, Jong Sumatera, Jong Selebes, and Indonesia Muda (1931). The importance of such organizations continued after the nation's declaration of independence on August 17, 1945.

In Indonesia, mass organization is not a legal entity, but only registered status by Registered Certificate issued by Directorate General of National and Political Unity, Ministry of Home Affairs. Mass organization (ormas) is a form that was born by Law No. 8 of 1985 on Societal Organization. Law No. 8 of 1985 regarding Societal Organizations (in Indonesian: *Organisasi Kemasyarakatan*, often shortened as "Ormas" and often loosely translated as "Mass Organizations") was set up by the Suharto administration to control civil society, together with other laws in a package known as the "Political Law Package of 1985." The concept of "societal organization" introduced by this law was designed to create one organizational status for all types of interests - activity, profession, function or religion - so that it would be easier for the regime to control them. Given its background, the Law on Societal Organizations has strong controlling aspects.

Mass Organizations Law created in 1985 as a manifestation of the doctrine of "single vessel" (wadah tunggal) owned by the New Order is trying to put all kinds of organizations with their own interests (in common activity, profession, function, or religion) into a single type of organizational format making it easier to control. One form of repression that appears when it happened in 1987, as Interior Minister Rustam Soepardjo disbanded the Indonesian Muslim Students (PII) and Marhaenis Youth Movement (GPM), as well as various other organizations on the ground that according to the Law No. 8 of 1985 on Societal Organization.

There is now Law No. 17 of 2013 on Societal Organizations (*Organisasi Kemasyarakatan*) replacing Law No. 8 of 1985 on Societal Organizations. Law No. 17 was enacted on July 22, 2013 and is intended to reinforce the role of the Ministry of Home Affairs to control CSOs, as this role was weakening after 1998. (www.icnl.org/research/monitor/indonesia).

According to Law No. 17 of 2013 on Societal Organizations (Organisasi Kemasyarakatan), -- hereinafter referred to as Ormas (*Mass Organization*), Ormas is any organization founded and established on a voluntary basis based on the similarity of will, desires, needs, interests, activities and goals, for participation in development in order to achieve the goal of a Unitary State of the Republic of Indonesia based on Pancasila.

According to the law, there are two types of CSOs, namely (1) the ones with legal entity, which consist of Foundations and Associations; and (2) societal organizations without legal entity status, which include any organizations set up by civil society. Indeed, the form of "mass organizations/ ormas" have an ambiguous position in the legal framework because it is a form that sought to control and repress freedom of association.

Since Suharto stepped down in May 1998, the freedoms of association and expression are now better protected. There are so many societal organizations since then.

Now we witness organizations such as Bina Kesadaran Hukum Indonesia, Rifka Annisa, LBH Apik, Walhi, Kalhi, FPUB, Institut Dialog Antar Iman Di Indonesia, Forum Betawi Rempug (FBR), Forum Komunikasi Anak Betawi (FORKABI), Jhon Kei group, Hercules group, Persatuan Pendekar Persilatan Seni Budaya Banten Indonesia (PPPSBBI), Badan Pembinaan Potensi Keluarga Besar Banten (BPPKB), FPI, Pemuda Pancasila, Himpunan mahasiswa Islam (HMI), Persatuan Mahasiswa Islam Indonesia (PMII), Perhimpunan Mahasiswa Katolik Republik Indonesia (PMKRI), Gerakan Mahasiswa Nasional Indonesia (GMNI); SOKSI; Kosgoro; AMPI, FK-PPI, Setara Institute, Majelis Ulama Indonesia (MUI), *Laskar Pembela Islam* (LPI - Defenders of Islam Army) operates as the paramilitary wing of the hardline vigilante organisation *Front Pembela Islam* (FPI - Islamic Defenders Front), *Forum Umat Islam* (FUI - the Islamic People's Forum), *Forum Komunikasi Muslim Indonesia* (Forkami - the Indonesian Muslim Communication Forum), *Hizb ut-Tahrir Indonesia* (HTI - Party of Liberation - Indonesia) and *Gerakan Islam Reformis* (Garis - the

Islamic Reformist Movement. There is *Laskar Jihad* (LJ - Army of Jihad) that operates as a militant offshoot of *Forum Komunikasi Ahlus Sunnah wal-Jama'ah* (FKAWJ - Forum for Followers of the Sunna and the Community of the Prophet). Similarly, the paramilitary *Laskar Mujahidin Indonesia* (LMI - Indonesian Mujahidin Militia) has ties to *Majelis Mujahidin Indonesia* (MMI - Indonesian Mujahidin Assembly).

The problem is, some of the societal organizations have done some troubles. For examples are FPI, MUI, FBR, and Forkabi. In its 15 years of existence, the FPI has received condemnation from institutions and political figures for its often violent attacks against those deemed by them to be acting contrary to Islamic ideology (www.thejakartaglobe.com/news/jakarta/fpi-leader-hints-at-armed-action-against-densus-88). In June 2008, the group was censured for its attack on members of the National Alliance for Freedom of Faith and Religion (AKKBB) who were holding a rally at the National Monument in Jakarta. Members of the FPI stormed into the crowd and brutally attacked campaigners. Dozens were injured during that incident. The group has launched similar attacks against nightclubs, bars and other sellers of alcoholic beverages, especially during the month of Ramadan. About 50 FPI supporters damaged businesses in the Kendal district in Central Java during a raid on an alleged brothel, resulting in a riot as local residents fought back and forced the group to leave. A woman was killed as a car carrying FPI members fleeing the scene crashed into the motorbike she was riding with her husband. In another raid in Makassar, South Sulawesi, members of the group were caught on camera vandalizing a shop said to be serving alcoholic beverages. The video later went viral on the Internet, attracting thousands of viewers from across the nation. The series of raids have caught the attention of legislators in the House of Representatives who have demanded the central government disband the organization. The FPI has not only attacked revered figures such as Abdurrahman "Gus Dur" Wahid, but verbally threatened to overthrow the government in 2011. For the result of all its own actions, Central Kalimantan administration rejected the presence of FPI (www.thejakartapost.com/news/2012/02/22/central-kalimantan-officially-rejects-fpi.html) and even Eva Kusuma Sundari, a legislator from the House Commission III demanded the central government disband the organization.

In what was widely seen as an apparent campaign against freedom of thought and religion, the state-sanctioned Indonesian Ulema Council (MUI) issued on Thursday a fatwa outlawing liberal

Islamic thoughts. Apart from liberalism, the council also declared secularism and pluralism forbidden under Islam, through one of the 11 decrees it issued during its four-day national congress that will officially end on Friday. With such an unpopular fatwa, the MUI could be headed for a showdown with progressive Islamic movements that have been growing in the predominantly Muslim nation. Fatwa Commission chairman Ma'ruf Amin said that although the edict did not specify any organization by name, it was issued apparently in reaction to the activities of two progressive groups -- the Liberal Islam Network (JIL) and the Muhammadiyah Youth Intellectuals Network (JIMM).

Majelis Ulama Indonesia (MUI) also renewed its 1980 fatwa against Ahmadiyah, an Islamic group that does not share the mainstream Muslim belief that Muhammad was the last prophet. The new fatwa contained stronger language than the previous one, calling for the government to ban and dismantle the organization as well as freeze all of its activities. The MUI also banned interfaith prayers, unless they are led by a Muslim. Other edicts issued included those forbidding women from leading prayers when men are in attendance. Commenting on the fatwas, particularly the one against liberal Islam, prominent Muslim scholar Azyumardi Azra dismissed it as "ineffective and even counterproductive". He said that he did not agree with such a fatwa. The state cannot enforce it for Muslims as it's not legally binding and Muslims can or will ignore it (http://www.thejakartapost.com/news/2005/07/29/mui-issues-11-fatwa.html).

Other groups are FBR and FORKABI. They are Jakarta-based groups. They attacked each other in Tambora, West Jakarta, in July 2012. FBR attacked FORKABI's guardhouse because FORKABI had attacked FBR's guardhouse the night before (www.merdeka.com/jakarta/ketika-fbr-dan-forkabi-saling-serang.html).

Other bad thing that the societal organization had done was undermining the symbol of state, such as the president. Rizieq had called the president a "mere loser" and "a disgrace" in response to the president's speech which condemned the group's violent Ramadan raids. Rizieq has gone too far.

Not only had a clash with societies, FPI also had a clash with police officers on June 2013.   A clash between the Tangerang police and members of the Islam Defenders Front (FPI) over a land dispute in Tangerang resulted in two police officers being

hospitalized. The clash broke out when the police tried to move FPI members from a land execution site on Thursday evening. Members of the FPI tried to forcefully take over the land, which belonged to housing developer PT Alam Sutra. The FPI claimed that it belonged to their client. (www.thejakartapost.com).

Besides that, there are some societal organizations that keep showing their anti-democratic system such as Hizbut Tahrir Indonesia (HTI). They constantly spread their extreme views and express their will to change the basic ideas of state of Indonesian. Indonesia is a country that based on democracy not a king or "ulama".

The State and the Organizations: Analysis

According to Barry Buzan , there are three components of a state; they are the idea of the state, the physical base of the state, and the institutional expression of the state (1991:65). They are obviously interlinked in myriad ways. The additional factors which make states a distinctive group of entities are size and sovereignty (Buzan, 1991: 66).

The societal organizations challenge the government. They constantly challenge the nation-state of Indonesia in terms of ideas of state and the institutions. They voice their disagreement about democracy as the state ideas. Some hard-liner organizations spread anti-democratic system to public by doing some demonstrations and indoctrination to pupils and students.

The violent activities have contributed bad images about Indonesia abroad. Indonesia has been known as an intolerant country for different religious views and a poor-managed country in handling violent activities. As a result, there are two contending images of Indonesia abroad, namely the positive images and the negative images (Sihite, 2013). Indonesian people are known as a religious nation but at the same time also known as an intolerant nation for other religions.

The will to change the base of the state (the idea of the state) could be classified as a threat to the security of state. The state is not only comprised of territory but is comprised of the idea of the state that binds the other components of state. Buzan says that organizing ideology can be penetrated, distorted, corrupted, and eventually undermined by contact with other ideas (1991: 81). They can be attacked through their supporting institutions, and they can be suppressed by force.

If the idea of the state is strong and widely held, then the state can endure periods of weak institutions without serious threat to its

overall integrity. If the idea of the state is weakly held, or strongly contested, however, then a lapse in institutional strength might well bring the whole structure crashing down in revolution, civil war, or the disintegration of the state as a political unit (Buzan, 1991:82).

The government must monitor the hard-liner organizations' activities in voicing publicly their ideas about a nation, a state, or a society. Government must act firmly if the organizations conducting demonstration to influence the society to at least agree with their stance. Indonesia has its own ideas of state, namely Pancasila and democracy based on Trias Politica (Rahimullah, 2008: 15). If the government always allows that kind of demonstration, other groups will try to copy the hard-liner organizations and they will conduct demonstrations to express their own ideas of state. The situation could lead to disintegration of the state as a political unit. The structure of state institutional will be totally changed. There will be no Check-and-Balances among state institutions. There will be the third revolution, not only the fifth amendment of the Constitution but a revolution that will change the base of the state. The first revolution happened in 1945 and the second revolution happened in 1998.

Another serious problem Indonesia facing as a pluralistic country is its apparatus' comprehension on a person's right in religious matter. Religious Affairs Minister Suryadharma Ali has again come under fire for allegedly supporting the forced conversion of Shia followers to Sunni Islam in a reconciliation program the government claimed was meant to end the conflict between the two Islamic denominations in Madura, East Java (www.thejakartapost.com/news/2013/08/12/minister-backs-shia-conversion.html). Human rights activists accused the minister of failing to put aside his personal beliefs in the reconciliation process and demanded that President Susilo Bambang Yudhoyono disengage him from the efforts to return the Shia refugees. Former vice president Jusuf Kalla warned that forced conversion imposed on members of the Shia community in Sampang, East Java during the reconciliation process was unconstitutional (www.thejakartapost.com/news/2013/08/09/jk-warns-forced-conversion-sampang-shiites-unconstitutional.html). President Susilo Bambang Yudhoyono must warn the minister to give more attention to the human rights issues.

Other way to help face the spread of the violent ideology of the societal organizations is to ask mass media to run its function, to create togetherness (De Vito, in Ardial, 2009: 177). Reuben Reynold Sihite suggests that media itself should support democracy by not

giving a place for social groups that tend to use force (Sihite, 2012: 199).

Conclusion

Democracy is indeed not the best system but at least it is the most comfort system to develop human creativity. Changing our ideas of state will make the third revolution. We cannot go back to dictatorship or authoritarian system. A religion-based political system will limit our choices in many things. The only choice is about how to fill in the democracy with good things for the people of Indonesia.

We must fix all weaknesses in our journey in our democracy path. We must strengthen our understanding of democracy. Society and state apparatus must have the same perception on the values of democracy and pluralism since the people of Indonesia is basically is a pluralistic nation. We also need to guard our institutions from attack of groups that fell threatened by the institutions. By strengthening the components of the state, we therefore strengthening our internal security.

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The Politics of Humanitarian Intervention in the International *Realpolitik*

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Abstract

Humanitarian intervention is a controversial action in the contemporary international politics. It has hardly questioned and challenged due to the notion of state sovereignty, and self-national interest. Since 2005, the new doctrine of Responsibility to Protect promise a new approach in humanitarian intervention includes the attempt to minimize self-national interest of the intervenors and the dilemma between sovereignty and human rights protection. In the international politics, state sovereignty become a problematic notion. States enables to hide from the human rights violations behind the wall of sovereignty. Meanwhile, the notion of sovereignty is likely to understood in a dual-standard manner for most of great states. For example, Russia refuse to intervene Syria due to the state sovereignty reason, while they intervened Georgia and ignore the sovereignty of the state. In addition, United States and France call for intervention to Syria, however, they are likely to ignore the Israeli intervention to Palestinians in Gaza. The international realpolitik encourage the humanitarian intervention seems likely to driven by whether the national interest or related to the range of political influence of great power. This article will examine premise of the doctrine of Responsibility to Protect as the new basis of humanitarian intervention practices in the international politics with arguing sovereignty as political notion and political instrument of states.

Keywords: Humanitarian Intervention, Responsibility to Protect, State Sovereignty, International Politics, International *Realpolitik*

Introduction

Since the Westphalia treaty in 1648, state sovereignty became a central concept in international politics. Robert Jackson defines sovereignty as 'a legal institution that authenticates a political order based on independent state whose governments are the principal authorities both domestically and internationally'.[1] The figure of modern international politics was shaped by this notion for centuries. Convincingly, sovereignty acknowledged as a universal value and broadly accepted as international norm with some basic principles of political independence, control over within the territorial, non-intervention, and self-determination. In the modern international system, the norm of state sovereignty was confirmed in the UN Charter[2] and UN Inadmissibility Declaration of Intervention and Interference in the Internal Affairs of States as stated in the article I that state is independent to determine himself.[3] The notion of state sovereignty indicates that "all states, no matter how small or weak, are equal and sovereign within their individual territories and has responsibility to protect its territorial integrity from external agression".[4] As the consequences, state hold a supreme and absolute authority to control their own territorial and everything within the borders includes political system, natural resources, and the citizens without interference from neither international institutions nor other states.

Nevertheless, the notion of state sovereignty has been questioning since the rising of human rights regime internationally. The primary of human rights over state sovereignty implies the possibility for humanitarian mission by international communities. However, this action hardly criticized due to some of controversial things such as the violation to the state sovereignty and self-national interest. Through the International Commission on Intervention and

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[1] Robert Jackson, Sovereignty in World Politics: A Glance at the Conceptual and Historical Landscape, *Political Studies*, XLVII 1999, p. 432.

[2] All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations, Article 2 Chapter I, Charter of the United Nations.

[3] The sovereign and inalienable right of a state freely to determine its own political, economic, cultural, and social system, to develop its international relations and to exercise permanent sovereignty over its natural resources, in intervention, interference, subversion, coercion or threat in any form whatsoever, United Nations General Assembly, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, A/RES36/103, 9 December 1981.

[4] A. O. Enabulele, 'Humanitarian Intervention and Territorial Sovereignty: The Dilemma of Two Strange Bedfellows', *The International Journal of Human Rights*, 14:3, p. 408.

State Sovereignty (ICISS), the Responsibility to Protect (R2P) was created as a new doctrine for international humanitarian mission. This doctrine suggest a distinguish concept and approach in the humanitarian intervention as stated in the *Responsibility to Protect: Core Principles.*[5]

This article argue that in the humanitarian intervention, the norm of state sovereignty is not only constrained by the human rights, but also the international *realpolitik*. State sovereignty is not a universal at all, but rather the reflections of state policy based on a particular interpretation of national interest.[6] In regard to this, all states enabled to use the notion of sovereignty as a political instrument in different ways. States are likely to puts the norm of sovereignty alongside with the national interest or in other words the state policy toward the notion of sovereignty is the reflection of the national interest. For instance, most of failed states who unable to protect their own population rights or the government who commit to human rights violations such as Iraq, Libya and Syria are likely to hide behind the wall of state sovereignty. Those states hardly reject the international interference in their domestic politics. In contrast, the notion of sovereignty is likely to understood in dual-standard for most of great states such as the five permanent members of UN Security Council in response to the mass atrocity crimes in a particular state. Russia has intervene Georgia, but fully reject for intervention in Syria even after the use of chamical weapon by the Syrian army.[7] In addition, United States call for intervention in Iraq, Libya and Syria while ignoring the mass atrocity crimes in Palestine and support the Israel colonization.[8]

'A Rights to do Wrong'

The creation of UN Charter is a reflection of the sorrow of the two world war among states. The confirmation of state sovereignty in the charter indicates an effort to avoid or to minimize conflict and war

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[5] International Comission on Intervention and State Sovereignty (ICISS) Report, 'The Responsibility to Protect', December 2001, pp. XI-XIII.

[6] E.H. Carr, *The Twenty Years Crisis, 1919-1939: An Introduction to the Study of International Relations*, Macmillan, London, 1939, p. 111.

[7] Will Englund, "Russia Says Western Attack on Syria would be Catastrophic'', *The Washington Post on the Web*, 26 August 2013, http://articles.washingtonpost.com/2013-08-26/world/41447031_1_chemical-weapons-sergei-lavrov-russia, consulted on 3 September 2013.

[8] Jeremy R. Hammond, "The U.S.'s Policy of Supporting Israel's Illegal Colonization of Palestinian Land", *Foreign Policy Journal on the Web*, 18 August 2013, http://www.foreignpolicyjournal.com/2013/08/18/the-u-s-s-policy-of-supporting-israels-illegal-colonization-of-palestinian-land/, Consulted on 3 September 2013.

among states. Therefore, the use of force and intervention to other domestic politics of state is highly prohibited. In general, the respect of state sovereignty seems in line with the presence of peace and order in international affairs. In the post charter period, the risk of great war among states are significantly decreased, but unfortunately the conflict and civil wars within the state are increased as commonly happen in Middle East and African states.

In one side, sovereignty principles are created for justice and to avoid human catastrophy because of war. However, the principles prohibit for international interference in the domestic politics problems and become a barrier for humanitarian mission in order to give assistance to the victims and civilians, on the other side. In regards to this, the norm of state sovereignty is likely to be a strong wall for state who commit to human rights violations or crime against humanity to their own civilians in order to defend the government power and interest as happen in many cases such as the abuses of human rights in Chile by the Pinochet regime or the recently human rights abuses by military junta dictatorship in Myanmar. The state's monopoly on the use of force encourage the government commit to human rights violations to their own population to maintain the power and political authority. In this case, the international community are unable to interference in the name of human rights protection. The Burma's military junta is not only reject for any foreign interference to the domestic problems in Burma, but also refuse the international charges that the armed forces had committed war crimes.[9]

These situation confirm what Frederich Kratochwil remarked, sovereignty as *"a right to do wrong"*, means states are freely and justified to do actions even morally wrong as long as within his territorial state borders.[10] States tends to justify all actions within the territorial borders as a domestic matter. Thus, politically, state sovereignty could prevent direct military conflict among states, but at the same time it become an instrument for state to justify any actions and policies even though morally wrong as long as occurs within the state territories.

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[9] RFA's Burmese Service, "Burma's Military Rejects Rights Abuse Charges", 27 March 2013, http://www.refworld.org/docid/5190dc9616.html, consulted on 7 September 2013.
[10] Friedrich Kratochwil,' Sovereignty as Dominium: Is There a Right of Humanitarian Intervention?', 1995 in Gene M. Lyons and Michael Mastanduno (eds), Beyond Wesphalia? State Sovereignty and International Intervention, John Hopkins University Press, Baltimore, p. 21-42 in Henry Shue, Limiting Sovereignty in Jennifer M. Welsh (ed), *Humanitarian Intervention and International Relations*, Oxford University Press, United Kingdom, 2004, p. 12.

From Humanitarian Intervention To Responsibility to Protect

In the post UN charter and the post cold war era, humanitarian intervention become a common feature in international politics.[11] The argument of the actions are justified based on the idea of universality of human rights as confirmed in the UN Universal Declaration of Human Rights.[12] This is indicates a possibility for international humanitarian mission to protect people from human rights violations. Human rights of people in a particular state in not only limited to the related government, instead the responsibility of all people and international societies. Since that, the notion of state sovereignty has questioned and challenged hardly by the universality of human rights idea and his supporters. Thus, humanitarian intervention either unilaterally or collectivelly in order to save people from grave human rights violation or civil wars is enabled and justified.

Humanitarian intervention practices that has been recorded in the international politics either unilaterally or collectively such as the intervention of Tanzania in Uganda and Vietnam intervention in Cambodia[13] or NATO intervention in Bosnia and Kosovo were left a controversial thing as confirmed in the ICISS report.[14] The practices of humanitarian intervention hardly challenged, at least, due to three things which are violating the state sovereignty, self-national interest of the intervenors and the outcome of the intervention. *First*, the universality of human rights implies the opportunity for humanitarian intervention to save population, meanwhile protecting human rights of people in particular state has to violate the norms of state sovereignty. For pluralists of the English School, humanitarian intervention is a violation of the basic concept of sovereignty, non-intervention and non-use of force as the common values and rules in the international society to manage the international order.[15] Consequently, the

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[11] Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, The Netherlands, 1999, pp. 102-220.

[12] Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 2 of The Universal Declaration of Human Rights, Adopted and Proclaimed by the General Assembly Resolution 217 A (III), 10 December 1948.

[13] Francis Kofi Abiew, 1999, pp. 120-131.

[14] International Comission on Intervention and State Sovereignty Report, 'The Responsibility to Protect', December 2001, p. VII.

[15] Nicholas, J. Wheeler, *Saving Stranger: Humanitarian Intervention in International Society*, Oxford University Press, Oxford, 2000, p. 11.

violation to the state sovereignty is similar to put the international order in a vulnerable and risk position.

  Second, humanitarian intervention practices considered is enabled for the intervenors to have other objectives in terms of the self-national interest in the mission. Based on the record of humanitarian intervention in the pre-1945 and post-1945, Thomas Franck and Nigel Rodley conclude that 'in very few, if any, instances has the right been asserted under circumstances that appear more humanitarian than self-interested and power seeking'.[16] One example was the Vietnam intervention in Cambodia with justification to protect people from starvation, torture, mass killing and deportations.[17] However, the intervention has other non-humititarian motivation which were the effort of Vietnamese to eliminate the Cambodian threat, territorial ambitions over Kampuchea, even to install a puppet government.[18] *Third,* mosts of the humanitarian intervention failed to guarantee the better outcomes for the people and the state. Some intervention has prolong civil wars and lead to greater humanitarian suffering and civilian casualties as happen in Somalia, Rwanda, the Democratic of the Congo, Bosnia before Srebrenica and Darfur.[19]

  Since the endorsement of World Summit in 2005, R2P widely recognized as a new international norm in the humanitarian intervention. R2P was created in order to produce broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty.[20] In the doctrine, state sovereignty understood in terms of responsibility rather than authority. The term of responsibility implies the duty of domestic government as the primary actors who responsible to fulfil and protect the human rights of their populations.[21] Thus, international humanitarian intervention is only allowed and justified if the domestic government unable or unwilling to protect the human rights of the population. In addition, the international action is prohibited until the

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[16] T. Franck and N. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', *American Journal of International Law*, 67, 1973 p. 290 in Nicholas, J. Wheeler, 2000, p. 29-30.

[17] Francis Kofi Abiew, 1999, p. 127.

[18] Micheal Bazyler, 'Reexamining the Doctrine of Humanitarian Intervention in Light of Atrocities in Kampuchea and Ethiopia' (1987) 23, *Standford Journal of International Law* 547 in Francis Kofi Abiew, 1999, pp. 129-130.

[19] Jon Western and Joshua S. Goldstein, 'Humanitarian Intervention Comes of Age: Lessons From Somalia and Libya', *Foreign Affairs* 90.6, 2011, p. 50.

[20] International Comission on Intervention and State Sovereignty Report, 'The Responsibility to Protect', December 2001, p. 2.

[21] International Comission on Intervention and State Sovereignty Report, December 2001, p. XI.

populations suffer the supreme humanitarian emergency condition such as the genocide, ethnic cleansing, war crimes and crimes against humanity.[22]

Conceptually, the R2P contribute to the new interpretation on state sovereignty away from authority to responsbility. This reinterperation is expected to change the states mind set in understanding the notion. Furthermore, the basic principles of the doctrine, in some point, has provide an adequate answers to the controversy of the previous humanitarian intervention practices such as the UN authorization in the intervention and the basic criteria that to be tested before the intervention conducted. Nevertheless, the states political justification is more likely to the criteria such as the seriousness of risk, purpose of the military action, the proportionality of measures and the legitimacy of balance consequences. States could justify an eminent risk is exist in Libya, but not in Syria, Egypt, Myanmar or other conflict zones. The different justification will lead to the different measures and policy toward the cases. This is not implies the R2P is irrelevant at all, but to say the enormous challenge of the doctrine is the realpolitik in the international affairs.

This challenge could be seen in the two cases: the paradox of Russian foreign policy and the United States foreign policy on humanitarian intervention. Russia is the most vocal state that refuse for international intervention into Syiria that proposed by United States, even after the massacre with the use of chemical weapon by the Syrian army. Russian government is not only refuse for any military options inside Syria, but also affirm the disagreement of Russian with the military intervention conducted by western states. In the press conference in Moscow, Russian foreign minister, Sergei Lavrov stated that:

> *It is hard for us to understand the true motivation of our western colleagues, when, having conducted destructive interventions in Iraq and then Libya, and having not solved other problems during the Arab springs to assist respective countries to become stable, establish interreligious and interethnic peace, they start to make statements at the summit level that strike us with the uncertainty of the course they propose to take.*[23]

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[22] Nicholas, J. Wheeler, 2000, p. 34.
[23] The Ministry of Foreign Affairs of the Russian Federation, "Speech and Answers to Questions From Mass Media by Russian Foreign Minister Sergey Lavrov During the Press Conference on the Topic of Chemical Weapons in Syria and the Situation around the Syirian Arab Republic",

In this case, the Russian foreign policy standing in position to respect state sovereignty and regional stability rather than military intervention with the reason of human rights protection. It is represent the Russian foreign policy doctrine that shows the strong commitment to international law.[24]

To defend this standing position, the Russian government reject the evidence of United States investigation on chemical weapon that used by the Syrian army and would continue to use its veto in the UN Security Council to block authorisation of military intervention against the Syrian government.[25] Moreover, the Russian government stated that the massacre is such an provocation by the opposition and its foreign backers.[26] This foreign policy respresent Russian national interest toward Syria.

Politically, Syiria is the closest Russian ally in the Middle East which is very important to balance other great power especially US political influence in the region. Related to this, Russia has been deployed of a naval base in the north-western city of Tartous.[27] Furthermore, the economy relationship among the two states is very close. Besides the conventional trade and investment such as agricultural products, manufactures, energy and infrastructure, Syria is the primary Russia's arms export in the region. Since 2005, Russia agreed to sell an advanced air defense missile system to Syiria.[28] In recent month, Syirian government has sign a contract with Russia for four s-300 anti-aircraft missile system with nearly $1billions and

Moscow, 26 August 2013, http://www.mid.ru/brp_4.nsf/0/7426DF843775ABD244257BD500611D38, consulted on 4 September 2013.

[24] Dmitry Medvedev, Kontseptsiya vneshnei politiki Rossiiskoi Federatsii (Concept of International Politics of the Russian Federation), MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION, July 12, 2008, http://www.mid.ru/nsosndoc.nsf/0e9272befa34209743256c630042dl aa/d48737161 a0bc944c32574870048d8f7?OpenDocument, in Nicolai N. Petro, Legal Case for Russian Intervention in Georgia, Fordham International Law Journal, vol. 32, issue 5 Article 4, 2008, p. 1525.

[25] David M. Herszenhorn, "Russia Rejects US Evidence on Syria Chemical Attacks", *The Sydney Morning Herald on the Web*, 3 September 2013, http://www.smh.com.au/world/russia-rejects-us-evidence-on-syrian-chemical-attack-20130903-2t1jc.html, consulted on 3 September 2013.

[26] The Australian, "Massacre Claim as 1300 Syirians Choke to Death on Toxic Gases", 22 August 2013, http://www.theaustralian.com.au/news/world/syrian-army-blamed-as-hundreds-die-in-chemical-weapons-attacks/story-e6frg6so-1226701675380, consulted on 1 September 2013.

[27] Michael Peel and Charles Clover, "Syria and Russia's Special Relationship", *The Financial Times on the Web*, 9 July 2012, http://www.ft.com/intl/cms/s/0/e64a3076-c9b2-11e1-a5e2-00144feabdc0.html#axzz2dtphn3KY, consulted on 4 September 2013.

[28] Mark N. Katz, "Putins's Foreign Policy Toward Syria", 2006.

another $550 millions order for 36 Yak-130 trainer fighter planes.[29] In this position, the strategic alliance between the two states has drive Russia to ignore the existence of mass atrocity crimes in Syria.

In contrast, Russian government has been intervene Georgia in 2008 with the similar argument of other intervention which was to protect populations from human rights violations. Russian government claims the intervention as a legal action in name of protection to the Russian peacekeeping and the citizens from the Georgian military action. In this situation, Russian government refers to the article 51 of UN Charter that allowed military action for self-defense from an armed attacks to justify its military operations.[30] The Russian government argued that the military operations in Georgia were justified by the doctrine of *Resposnsibility to Protect*. However, the military operation was an agression to the other sovereign territorial. Gareth Evans with refers to the R2P doctrine said that the doctrine of R2P is to protect populations within its own borders and the responsibility to other states to step in with appropriate action if the state is unable or unwilling to protect its own populations rather than taking direct action to protect national (the peacekeeping and the citizens) outside its borders.[31] Moreover, he argue that Russian intervention have other motives than to protect South Ossetian civilians which were to establish full Russian control over both South Ossetia and Abkhazia, to dismantle Georgia's military capability, to scuttle Georgia's NATO ambitions, and to signal aother ormer pats of Soviet Union what Moscow would and would not tolerate.[32]

The other example of the triumph of *realpolitik* over international legality or norms is the unwilling of United States to interference inside Palestine. The crisis in Palestine is an evidence of mass atrocity crimes by the Israel military forces. Widely acknowledge that Israel is occupy the Palestinian territories with establish settlement, military surveilance, and the construction of

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[29] Thomas Grove, Syiria Crisis: President Assad Keeps Russia Sweet by Ensuring All Arms Bills Are Paid Off, *The Independent*, 30 August 2013, http://www.independent.co.uk/news/world/middle-east/syria-crisis-president-assad-keeps-russia-sweet-by-ensuring-all-arms-bills-are-paid-off-8792349.html, consulted on 4 September 2013.

[30] Nicolai N. Petro, 2008, pp. 1525-1526.

[31] Gareth Evans, "Putin Twists UN Policy", *The Australian*, 2 September, 2008, http://www.theaustralian.com.au/news/putin-twists-un-policy/story-e6frg73o-1111117364722, consulted on 4 September 2013.

[32] Gareth Evans, *The Australian*, 2 September 2008.

massive borders-wall in the occupied territories.[33] Amnesty International report that:

> *Israeli authorities have continue to build and expand Israeli-only settelements on Palestinian land, in violation of international law and in contempt of resolutions by the UN Security Council and other bodies. Since its occupation of the West Bank, Israel has established more than 150 settlements in the West Bank (including East Jerusalem). The estalishment of these settlements violates the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which prohibits an occupying power from settling its civilian population in the territory it occupies.[34]*

In addition, the Israel blockade the Gaza Strip from any international access even for humanitarian aid. The most striking example was the attack of Israel military to the Turkish Shipment, Mavi Marmara, when lead the six vessel aid for humanitarian assistance to Gaza in the international waters.[35] The real situation in Palestine is not only an assymetric conflict, but more likely a colonization and war crimes. Lebanon's Daily Star write that about 1.5 million people in Gaza are being subjected to the murderous ministrations of one of the world's most technologically advanced but morally regressive military machines.[36] Israel justify the military offense to Gaza Strip is a part of retaliation of the Hamas attack on Israel territories. In the name of soverignty of their territories, Israel claim the military offense as a legal and justified action.

Unfortunately, the Israel continues to violate the international law when apply the white phosphorus in the Palestinian populated areas during the offensive in 2008/2009. Despite, the International Humanitarian Law does not prohibit use of this weapon, however the

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[33] Global Policy Forum, "Israel, Palestine and the Occupied Territories", http://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories.html, consulted on 5 September 2013.
[34] Amnesty International, "Stop the Transfer: Israel Abot to Expel Bedouin to Expand Settlements", Februari 2012, http://www.amnesty.org/en/library/asset/MDE15/001/2012/en/0b66dcc1-bb09-4a0d-8560-e10ac19f8f9e/mde150012012en.pdf, consulted on 5 September 2013.
[35] Robert ooth, "Israeli Attack on Gaza Flotilla Sparks International Outrage", *The Guardian on the Web*, 1 June 2010, http://www.theguardian.com/world/2010/may/31/israeli-attacks-gaza-flotilla-activists, consulted on 5 September 2013.
[36] Noam Chomsky, "Exterminate All the Brutes: Gaza 2009", *Z Net The Spirit of Resistance Lives*, 2009, http://www.ffipp.org/sites/default/files/u3/Chomsky1-20-09Z.pdf, consulted on 4 September 2013.

Third Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effect stated that this weapon may only be used against military object. When the military object is located within civilian area, the use of phosphorous is absolutely prohibited.[37] Refers to The Human Rights Watch, Israel deliberately used white phosporous shells in violation of the laws when attack the Palestinian populated area.[38]

In doing this kinds of offensive action and occupation, Israel enjoy an overwhelm support from the United States. Israel is the closest ally of the United States in the Middle East. Washington has provided Israel an enormous annual direct economic and military assistance with total direct US aid to Israel amounts to well over $140 billion in 2003 and also recieves about $3 billion in direct foreign assistance each year which is roughly one-fifth of America's foreign aid budget.[39] Moreover, on December 2008, Reuters report that Washington with hiring of a commercial ship carry a huge shipment of 3000 tons unidentified "ammunition" to Israel ahead of air strike in the Gaza Strip.[40] Besides that, to support Israel, United States reject the UN General Assembly vote for the Palestinians UN recognition as a non-member observer which was a confirmation of Palestinians statehood,[41] while fully recognized for Israel as a sovereign state.

In this case, the doctrine of R2P could not be enforced adequately by the United States due to the "unbreakable alliance" between the two states. Although the US realized that the Israel settlements in East Jerussalem and other part of Palestinian are an occupied territories[42], the US have no actual action to stop the occupation. The other powerful states like United Kingdom and France which are often involve in many humanitarian intervention, do not have a similar political will to protect Palestinian from the

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[37] B'Tselem, "Israel is using phosphorus illegally in Gaza Strip bombings", January 12, 2009,http://www.btselem.org/gaza_strip/20090112_use_of_white_phosphorus, consulted on 5 September 2013.
[38] BBC News, Israel to Stop Using White Phosphorus Shells, 26 April 2013, http://www.bbc.co.uk/news/world-middle-east-22310544, consulted on 5 September 2013.
[39] John J. Mearsheimer and Stephen M. Walt, 'The Israel Lobby and U.S. Foreign Policy', *Middle East Policy*, vol. 13, Issue 3, 2006, p. 31.
[40] Noam Chomsky, 2009.
[41] Ewen MacAskill and Chris McGreal, "UN General Assembly Makes Resounding Vote in Favour of Palestinian Statehood", *The Guardian on the Web*, 30 November 2012, http://www.theguardian.com/world/2012/nov/29/united-nations-vote-palestine-state, consulted on 5 September 2013.
[42] US Vetos at the UN Security Council: List of UN Security Council Resolutions Vetoed by the USA 1972-2002, October 2003, http://www.phon.ucl.ac.uk/home/geoff/UNresolutions.htm, consulted on 5 September 2013.

massacre. Those states have no adequate reason and interest to enforce the R2P while US give an enormous support to Israel.

Conclusion

The article has argued that the international community is commonly understand the notion of state sovereignty as a political term rather than simply international law or a moral values. States are likely to use the notion as a political instrument to justify the state international policy or the state behaviour. For centuries, the norm of state sovereignty became problematic in which the notion is aim to prevent war and interstate conflict, while the international interference is disabled even thouh in the name of human rights protection. State has absolute authority of anything within their own territory.

Nevertheless, the widespread of civil war and human rights violations makes the existence of the norm of state sovereignty is highly challenged by the recent human rights regime that allows a humanitarian intervention inside state domestic politics in the name of human rights protection.The foreigners either unilaterally or collective action are justified to intervene the state in particular situation which are the government unable and unwilling to protect the people human rights or the government become the perpetrator of the human rights violation to the citizens. Humanitarian intervention became the international instrument to respond the perpetrated of human rights violation. While, the interveners confirm that the humanitarian intervention is for humanity objectives, it seems likely to driven by the state national interest rather than moral justification. The self-help system of the international *realpolitik* encourages the states to act based on their national self interest rather than merely moral values as confirmed in the Vietnam intervention in Cambodia, US intervention in Iraq and Afghanistan or the NATO intervention in Bosnia and Kosovo.

The practical of humanitarian intervention under R2P is considered as a solution of the human rights and state sovereignty dilemma. The humanitarian intervention is only justified for the mass atrocity crimes with a supreme emergency situation. In addition, the intervention has to be predicted for better outcomes. However, the implementation of R2P is remain constrained by the international *realpolitik* in which the humanitarian intervention conducted due to the self-national interest. Moreover, in so far it only possible to be implemented to the weaker states or the state who has no adequate relationship or support from the great states.

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CLUSTER II

The Uprising Role of
Unprecedented Non-State Actors:
How Nation-State Dealt With?

When the Market Makes the State:
The Interaction between The State and The Neoliberal Regime
in Indonesia's Post New Order Era

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Abstract

This paper aims to explain the struggle between state and neoliberal regime in post-New Order Indonesia by focusing on two aspects. Firstly, It argues that the process of market transformation is not neutral in essence. It is far from the neoliberal and hyper-globalist scholars who believe that market can run harmoniously through the logic of invisible hand, this paperargues that behaviours and interests of the market have been defined and constructed by the structure of world's capitalists system designed by the dominant actors. The neoliberal regime has constructed not only the interaction of states in economic pattern but also in the state formation. Secondly, by using ideas of "steering" from Alexander Wendt, this article argues that state weakness in fostering democracy is partly a product of the construction of the state from outside. Neoliberal pressures have imposed to a depoliticization of the state, such that its main role no longer lies in actively managing the democratic space in response to the people, but in passively managing a corporate agenda in response to external institutions and donor agencies. Just as the New Order era created a depoliticized "floating mass", the neoliberal order, it will be argued, has created a depoliticized "floating state". If floating mass policy has produce political anomie in society during New Order era, floating state will bring state as a rootless entity in neoliberal circumstance.

Key words: neoliberalism, floating mass, floating state, Indonesia, post-colonial state, democracy, new order

Introduction

The dynamic and history of interaction between Indonesia and capitalist regime in Indonesia show that the construction of "state" is determined by external institutions than by domestic struggle. Through a process of "training capitalism" by the United States in the early years after Indonesia's independence, the construction of state and its characteristic simultaneously crafted. Simpson (2008) showed that the construction of the New Order and all aspects of development in this regime have a strong relationship with the United States world view about global politics. According to Simpson, after supporting the Indonesian independence, the United States provided some very intensive technical assistance. The intensive assistance was provided by Washington since 1950 aiming to create a representative state, pro-capitalist and pro-western government. The other preference of US assistance is for block of communist widespread in South East Asia region. The US always sees Indonesia as a strategic partner that has a pivotal role for maintain US foreign policy.

Since the fallof New Order in 1998, Indonesia has been in the very liberal democracy. Furthermore, it does not represent the *developmental-state* as a lens from some scholars when (or who?) try to construct the Asian state's formation. Today, penetration of neoliberal regime is also followed by political *euphoria* in the mass level. It is interesting to examine how deep is the relationship between Indonesia and the international regime has given birth to democratization on the one hand, but the emerging democracy have continually started some problems such as the re-emerge of political identity or –to borrow a very popular term from Clifford Geertz -- '*aliran*', at the domestic level. This article attempts to answer how deep (was/is ?)the construction of the state in the context of deepening relationship to neo-liberal regime.

Indonesia under Neoliberal Regime: From Floating Mass to Floating State

Important differences as can be seen from the nature of developmental state in the '80s and the regulatory state after the 90s up to now located in the interaction patterns and outcomes between global economic countries and regimes. In the developmental state model and the regulatory state, the state remain an instrument of mass control. Under the New Order, state become important agents for the process of capital accumulation. On the other hand, the regime of

contributor maintain the relationship without too much concentration on the domestic political agendas. In other words, there is a separation between economic and political aspects that the international economic regimes have at the time. In some aspects, it contributes to the process of macro-economic stability. But on the other aspect, this pattern makes the problems of political offenses such as human rights and democratization blocked.

Economic discipline is the attention of most major international economic institutions. While in the context of state and society relations at the domestic level, there are still ongoing pattern of political discipline by the state. Through corporatic political policy, state control of social-political movement grow at that time. Various organizations and associations grow in the New Order, but they must refer to a strict political discipline of the state. It also illustrates that the separatist policy of international economic institutions at that time, still give the space for sovereignty to the state.

The positions of countries as seemed to be a single entity have implications on the domestic political dynamics. Concentrating on pushing economic aspects of the New Order regime could creat a model of corporatic political institutionalization to control masses. The purpose of this corporation is very clear, namely how political identities are still maintained within the norms of society and the state ideology. Among constructivist point of views the identity is as something born from the inter-subjective relations between the actors. The interest will work on top of the identity.

The logic of constructivists help us understand that the state is formed in the outer identity. In the context of the New Ore regime is beyond the identity of the donor countries. While at the same time, the state also established the identity of its people in order to safeguard the interests of states and international regimes. Authoritarianism is essentially a representation of country that wants to establish the identity of people as units of production rather than as a political actor.

Political construction through corporatic state agencies grow the typical political identity during the New Order, which by some political observers called a *floating mass*. The floating mass is actually the mass whose identity is formed from the outside - in this case through the state and its agents like the military and bureaucracy. Furthermore, the state prevents the presence of other identities based on the experience and political ideology beyond the existing ideology. The genealogical of floating mass represent militaristic point of view

on the power. The concept comes from the influential military thinkers in the New Order, Ali Moertopo.

There is a kind of logic that economic growth can only take place in an orderly political situation. National development is understood in the context of no competing identities, and if necessary as the process of homogenization. Moertopo then pushed them to be the efficient actors, which facilitates the market to easily work, maintained the harmony between global investors and the state as the *compatriot.* Furthermore, Moertopo wrote in detail about the identity of people considered quite parallel with the goal of state capital accumulation.

For about three decades, the floating mass have become an identity giving the role of the state to function as agents of the global capitalist regime. To some extent, the floating mass would be effective to make the *depoliticization* of society. However, in terms of political identity, in fact the pattern is not really growing to muffle another identity outside of the state. As the *constructivists* beliefs, identity is not something fixed. The identity will be determined by changes in ideas and social structures. The floating mass is deemed necessary as the potential presence of resistance can be the reducer and the order can be maintained.

Along with the growth of neoliberal regime, change is also the construction for the state desired by the international structure. Construction of the agents of the capitalist world are changing. If capitalism is like the presence of the state as an agent of repressive, neoliberal regime try to construct a democratic state as an agent. Important to add that the neoliberal regimes also began by working directly with the political identity that they expect the level of domestic society. As Ian Bremmer stated, the neoliberal regime required the opened, efficient, transparent and market friendly. No wonder then when the topics of efficiency, transparency and accountability as a key discourse of neo-liberal regime.

In a conference organized by Organization for Economic Co-operation and Development (OECD) in Paris in 2005, under theme "Paris Declaration on Aid Effectiveness." The Declaration reflects the change in orientation and projects that try to expand the dimensions of the economic assistance to non-economic area.

According to Edward Asprinall (2010), Indonesianists from the Australian National University, the orientation of international donor agencies began to lead the agenda for "assessing democracy assistance" as an effort to build democracy at the level of harmonization of state and society. Asprinall revealed an interesting

description of link between the program of Indonesian democracy after New Order with the support of international institutions role. The contributing agencies on democracy programs in Indonesia have been coming either through multilateral institutions like the World Bank and IMF, the contributing agencies from the major countries such as AUSAID (Australia), USAID (United States), international NGOs from Europe such as Oxfam (UK), HIVOS and NOVIB (Netherlands). Besides, there are also affiliated with the help of political forces in Germany as from the liberal wing as Friedrich *Naumann Stiftung* (FNS) and of the social democratic path such as the *Friedrich Ebert Stiftung* (FES). The Open Society Institute, which established a stockbroker George Soros, is also an international NGO to distribute the relatively big aids for democracy programs in Indonesia.

The assistance from international agencies such as USAID, the Ford Foundation, Asia Foundation and some other assistance are affiliated with political parties in European countries like Germany, show a very drastic improvement. Such assistance is aimed at both civil society organizations (CSOs) as well as new institutions of government considered to be a new pillar of democracy such as the Election Commission, National Commision for Human Right, the House of Representatives (parliament) and Supreme Court. Even until now, Indonesia is the largest recipient of USAID's democratization program. Some attention to the process of democratic transition in Indonesia is reflected in the strategy that launched the USAID, "Making Deliver Democratic Governance." Countries and donor agencies provide an important concern on six key issues, namely: decentralization, development of electoral systems, electoral commission, security and law enforcement agencies, political parties and paremen, civil society and conflict resolution. This policy reaffirms much Simpson's review of Washington's efforts to construct the figure of the country at the beginning of Indonesian independence.

State as a Market Apparatus

After the fall of Suharto's regime, there are original assumptions of the circles believing in the thesis by Samuel Huntington on the waves of democratization. The normative-liberal also assumes that democracy will grow a strong civil society and will play an important role in the consolidation phase of democracy. Even, in hiperglobalist perspective, globalization and neoliberal era will bring state only for administrative function (Ohmae, 1997).

Such assumptions seem inadequate, at least until one decade since the reform project distributed. Civil society movement in Indonesia after New Order showed an interesting pattern, the hero of the reform began making noise (trouble makers) into democracy. Civil society presenting in Indonesia political constellation after the New Order show itself in two forms, namely good and bad civil society (Hadiwinata, 2003). Deepening neo-liberal regime has been going on systematically, especially when a number of regulations created to open the widest market for global corporate engagement for exploit a variety of natural resources. Countries must not only perform their function as the agents for the mainstream of neoliberal ideology but also become a floating entity which this paper called as a "floating state". Similar to floating mass that has happen in New Order period, there is still in an effort to keep the accumulation of capital. The difference lies in the surrounding structure. Floating mass is growing due to the loss of community identity in politics because they save a resistance to the regime. This is like a politic of identity for subjugating society in Suharto's regime. Furthermore, the floating state is at a similar logic: to build a public identity to the identity of the cosmopolitan democracy, the potential of the state as an agent of global resistance against the regime would easily be reduced, especially when working in an optimal privatization projects so the country really never have the strength anymore. This is sugjugation of state from external economic institutions. The floating state is not a consequence. It is a construction that has consistency with the wishes of the neoliberal regime in order to maintain the market working properly and become octopus economic system in the world.

When the state's relationship and deepening of neo-liberal regime happen, domestic politics is characterized by the presence of new political identities such as that brought by the social movements which brought radical ideas. Utilizing the democratic political circumstance, the presence of radical groups of Islamic political power during the New Order can be controlled by the state, get the very free articulation. In the conflict between the Ahmadis and hardline Islamic groups, for example, the state position is very weak. Economic demands in various areas such as in Papua, demanding justice, it gasps countries in dealing with corruption scandals and tax, as the examples of positioning a floating state. State only focus to serve and put red carpet for global corporations or investors but at the same time hand-off from regional political tension.

The concept of post-colonial state is understood as the construction of identity rather than a historical sequence. As a result of identity construction, the post-*coloniality* is not just a historical attribution, but a *structuration* attached to the ex-colonial countries though they have been formally independent. Hamza Alavi (1972) argued that post-colonial states are those have "handed over various rights of development that exaggerated the creations coming from outside. In Alavi's views, the state was "over-developed "due to its foreign creation. For the realists and neo-liberalism, the fact (in this case, the international politics), is something that can be explained by the same way as a natural fact. Likewise, the fact and value are two seperate things. This is a typical view of the positivist and rationalist.

By contrast, the constructivists such as Alexander Wendt, see the "objective facts" (including "international politics") as a socialy-contructed world and not a given fact or free from interest. The identity of actors such as state is always never fixed and changing. Alexander Wendt sees the problem arising in the international politics is the presence of steering power or some kinds of driving forces. Steering is what producing the norms and controls of the direction of international politics and also discourse and then construct various actors in international politics.

The constructivists believe that actors in the international political act - whether in the context of conflict or build the cooperation - is strongly influenced by the identity. Interaction among identities shape the international system, whether it's in the economic system, politics and trade. Ideally, international relations based on the spirit of emancipation to understand each other and establish norms share the identity. But in the fact, according to Wendt, the identity of actors involved in the agency and structure is the norm producing and constructing the identity outside of himself. Herewith then, Wendt seen any sorts of steering the global system. The steering then arranges a number of ideas through the involvement and control in which they have entered into the system and create. As Wendt writes: "... if the international steering system presupposes a driver, then perhaps the first problem .." *(Wendt, 2001)*.Actors controlling the neoliberal regime are the countries of the investors, their economic institutions influence the construction and the World Bank, IMF and UNDP as well as the presence of multi-national corporations. Washington Consensus reflects the idea of actors portraying themselves as political steering in the world. And developing or post-colonial countries are "participants" to be the of the "good state" continues to neoliberal were exposed by steering through their agents.

Finally, the steering become a global stage in which developing. countries like Indonesia contructed by its norms, laws and conditions. Therefore, the steering create state formation, including in democracy mainstreaming today.

Conclusion

While neoliberal scholars argue that the process of market transformation is neutral in essence, and liberal democracy can create civil society groups and run harmoniously, this paper try to give a counter discourse: whether the neoliberal regime has constructed a new political fragmentation in society, impeding the consolidation of democracy? This paper has investigated the depth of the state's relationship with the international regime, and how this relationship has given birth to democratization on the one hand, but continuing domestic tensions and legal battles on the other. Furthermore, this paper also has discuss how deep is the construction of the state in the context of its deepening relationship with the neo-liberal regime.

The state no longer presents itself as a comprador actor, in the way that dependency theory describes. Likewise, it does not represent the developmental-state any longer, as seen in the growth of freedom and political independence at the mass level. It is therefore important to examine the depth of the state's relationship with the international regime, and how this relationship has given birth to democratization on the one hand, but continuing domestic tensions and legal battles on the other. Furthermore, this article attempts to answer how deep is the construction of the state in the context of its deepening relationship with the neo-liberal regime.

Until this paper is written, the demands on various issues such as addressing corruption, human rights, regional autonomy and the scandals involving public policy still continues. Furthermore, the violence that make the religious sentiment can give an idea of the weak state on the liberal democracy in the middle of the space. When the actor is busy running the agendas designed by neoliberal institutions.

By proposing the concept of a floating state , this paper try to give new alternative and test a new interpretation of state contruction under new mode of production imposing -- a "market make state" periode -- of neoliberal regime. It explores the potential linkage between Indonesia's difficulties in consolidating democracy and the struggle between the state and the neoliberal regime in post New Order Indonesia. Floating state is the identity of the existing when the international politics was dominated by neo-liberal regime as the steering.

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ASEAN 2011-2013:
Bringing Non-State Actors Back In

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Abstract

Dynamics of ASEAN from the period of 2011-2013 show the reducing participation of non-state actors (NSAs) in formulating various regional agreements. In contrary, recent ASEAN's summits frequently indicated the strengthening role of the state in dealing with regional issues. Approaching the 2015 ASEAN Community, the important role of community or people or society must be taken into consideration. Consequently, promoting involvement of people, as part of NSAs, is of increasingly importance for showing the strong commitment of the 2015 ASEAN Community. As community regards people, instead of state or government officials, ASEAN should make sure people or society takes important role in discussing various issues which would influence their regional cooperation. Discussing domestic political structure of the 10 ASEAN's member states in influencing the state behavior, this paper seeks to scrutinize whether democratic political structure of each member states is of importance or not in demanding the increasing participation of people in various regional meetings in ASEAN. Finally, this paper concludes that ASEAN's member states should introduce the importance of ASEAN Community towards their people and take a coordinating position in involving people in many activities of ASEAN.

Keywords: ASEAN community, people, community, non-state actor, democracy

ASEAN needed to stay relevant, become people-oriented,
and be strengthened (Wanandi).[1]

Introduction

Approaching the 2015 ASEAN Community, the important role of community or people or society must be taken into consideration. The dynamics of ASEAN from the period of 2011-2013 show the reducing participation of non-state actors (NSAs) in formulating various regional agreements. In contrary, recent ASEAN's summits have frequently indicated the strengthening role of the state in dealing with regional issues. Since Indonesia hosted the 18th ASEAN's summit in 2011, a few initiatives of involving society in the summit has increased, including the meeting of regional business association and blogger community. Similar tendencies have also happened in the following ASEAN summits in Cambodia (2012) and Brunei Darusallam (2013).

At the same time, various conflicts between ASEAN member states have occurred. Border conflicts between Thailand-Cambodia and Indonesia-Malaysia, Sabah crisis, conflicted claims between between several ASEAN member states (Brunei, Malaysia, the Philippines, and Vietnam) against China, domestic conflicts between central governments and separatist groups (Thailand and the Philippines), haze conflict between Indonesia and Singapore-Malaysia are many examples of state's domination in the regional level. ASEAN's summits were also dominated by its member states positions toward China on the South China Dispute.

These facts revealed the on-going difficulties among ASEAN's member states in increasing the participation of people or community in this only regional organization in Southeast Asia. On its 41st anniversary, ASEAN shows its limitation on the institutional capacity to provide prosperity for all Southeast Asians. ASEAN still give more focus on Southeast Asia's political elites rather than on community relations between its member states. Moreover, ASEAN was popular only among such elites, rather than among the region's people. In 2007, ASEAN's leaders signed the ASEAN charter which gave institutional foundation for this regional organization to be more people-centric.[2] Approaching the ASEAN community in 2015, all

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[1] Jusuf Wanandi, "The ASEAN Charter: Its Importance and Content," in Jusuf Wanandi, *Global, Regional, and National: Strategic Issues and Linkages*, CSIS, Jakarta, 2006, pp. 278-80..

[2] Anak Agung Banyu Perwita, "ASEAN Charter and a more people-centric grouping", *the Jakarta Post*, 15 July 2008.

member states are believed to struggle hard in incorporating their society to others. Various regional events have been held with the aim of promoting public awareness of the upcoming implementation of the 2015 ASEAN Community.

This paper seeks to scrutinize the reason behind the minimal participation of society in welcoming the 2015 ASEAN Community. Discussion will focuss on democratic deficit among ASEAN member states as the main determinant of enhancing community participation. While economic cooperations seem to find open-mind and domestic feedback, this is not the case for political-related cooperations. Different domestic political structure seems to make each government difficult for providing more access to its respective society in involving to various regional cooperative initiatives. This paper also explain regional institutional efforts for promoting the important involvement of society in pursuing regional objectives in the framework of the 2015 ASEAN Community.

Democratic Deficit

ASEAN suffers from such a political environment which is generally coined as a 'democratic deficit'. With the exception of Indonesia and the Philippines, none of ASEAN's countries can be categorized as democratic-based ones, even on the minimum requirements of a formal democracy, such as a competitive election. ASEAN has a variety of political regime types, ranging from one-party states, a military junta, semi- and pseudo-democracies to a kingdom/sultanate. In economic realm, the management of economies is not conducted based on democratic and market-based principles. ASEAN's economies also show that the type of capitalism in this region is based on the strong role of the state, bureaucracy, and party apparatus, which contradicts the basic principles of market-led development.

Hence, the term "democratic deficit" -- without democracy, regimes are not accountable to any decision made involving the use and distribution of resources. The absence of democracy has enabled the elite to run their countries' economies as they wish as long as it does not endanger their unholy economic alliances.[3] Indonesia's chairmanship in 2011 gives the association a new sense of confidence and excitement. ASEAN also realizes that its achievements in 2011 can be undermined by the emergence of new strategic challenges in

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[3] M. Taufiqurahman, "Democracy vital to ASEAN", *the Jakarta Post*, 6 December 2007.

2012. On the positive side, ASEAN has every reason to be confident and excited. For example, ASEAN is trying to accelerate the implementation of the ASEAN Community 2015. The creation of the ASEAN Humanitarian Assistance (AHA) Centre and the Institute for Peace and Reconciliation (IPR) are only two small examples of that effort.

At the same time, the association also agreed to expand its role beyond East Asia. By issuing a new platform called the ASEAN Community in a Global Community of Nations (ACCN), ASEAN is preparing itself to play a bigger role on the world stage. Both efforts reflect ASEAN's awareness about the importance of consolidation. ASEAN's achievements in 2011, however, go beyond the usual rituals of issuing new platforms and new declarations. For example, ASEAN's credibility received a major boost when the UN Security Council agreed that the dispute between Thailand and Cambodia should be managed by ASEAN itself. Indonesia played an active role in reducing tensions between the two ASEAN member states, setting a good precedent for its ability to mediate in future disputes.

On the South China Sea issue, ASEAN and China not only agreed on a set of guidelines on the implementation of the Declaration of Conduct (DoC) in the South China Sea, but also agreed to start working on a more legally-binding Code of Conduct (CoC). On the most difficult issue, Myanmar, ASEAN watched dramatic developments in the country with a sense of excitement. After years of isolation, the country began to open up. After years of defying ASEAN's calls for change, Myanmar began to respond positively. Several political initiatives taken by the Myanmar's government suggest that the country is now more serious in implementing its own roadmap to democracy.[4] ASEAN made the right decision to support the process of change by giving Myanmar the chance to chair ASEAN in 2014.[5]

Domestic political structure does matter in determining the increasing role of public participation in ASEAN. A democratic deficit; a situation refers to a perceived lack of accessibility to the ordinary citizens, representation of the ordinary citizens and accountability of certain institution. In the ASEAN case, people know nothing about ASEAN Community 2015 but sooner or later they will be affected by it. However, this problem is not unique to ASEAN. The notion of democratic deficit is firstly popularized by the European social scientists in regard to the idea of the European Union

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[4] Ludiro Madu, "Myanmar: Tantangan Demokrasi," harian *Kedaulatan Rakyat*, 29 April 2012.
[5] Rizal Sukma, "Sustaining the Momentum," *the Jakarta Post*, 22 December 2011.

(EU). Having multi-layered, multi-centered, division-of-power governance, as the EU has right now, is a big puzzle for the ordinary Europeans on the accountability of the EU's policies.[6]

This scepticism shows ASEAN people's lack of awareness towards the variety of progress that ASEAN has made since its inception in 1967.[7] In their research, Abdullah and Benny reveals that only 42 percent of Indonesian respondents claim to have heard of, or read about the ASEAN Community. Even in Jakarta, 71 percent of the respondents say they have not heard or read about the regional agenda. The number of respondents who claim to have read or heard about the Bali Concord II is even lower at only 16 percent. Meanwhile, the majority of respondents say they have not yet heard about the ASEAN Charter. For ordinary people, the dynamics of ASEAN lacks relevance. ASEAN Community only exists in the ASEAN leaders' imagination.[8]

The problem of ASEAN's democratic deficit needs to be addressed in order to marketing ASEAN to its citizens. Donald A. Emmerson, a Stanford University's political scientist, asserted "if all of the members of AESAN were already democracies, their integration could help secure, strengthen, and deepen… Shared market could have proven conducive to shared prosperity, which could have reinforced the instrumental legitimacy of democracy."[9] Increasing ASEAN's community involvement and relevance will not be an easy task. We need to establish, within the ASEAN charter, concrete steps toward forming regional identity. To that end, it is time for ASEAN to consider changing its foreign policy decision making paradigm from a "state leads society" approach to a "society leads the state" approach. Under the latter, community plays a larger role in conceiving and conducting foreign policy, resulting in an overall expansion in community involvement and greater use of participatory decision-making. The result for ASEAN would be increased relevance in the lives of its communities.[10]

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[6] See Emmerson, "From State to Society? Democracy and Regionalism in Southeast Asia," paper written for a *Festchrift* planned by the CSIS Jakarta to honor CSIS Senior Fellow Jusuf Wanandi on his 70th birthday, p.p. 3-4.
[7] Yulius Purwadi Hermawan, "Building True ASEAN Community," *the Jakarta Post*, 31 March 2011.
[8] Verdinand Robertua, "ASEAN's democratic deficit," *the Jakarta Post*, 13 September 2013.
[9] Donald K. Emmerson, "Democratizing ASEAN?: A Topological View," presented at a *Forum on Regional Strategic and Political Developments*, Institute of Southeast Asian Studies (ISEAS), Singapore, 28 August 2007.
[10] Perwita, *op.cit*.

Dynamics of People's Participation

The idea that people should participate in ASEAN decision-making processes had already emerged in the 1980s among prominent figures within the elite ASEAN circle.[11] Former Indonesian Foreign Minister and one of the founding fathers of ASEAN Adam Malik once stated that "the shaping of a future of peace, friendship and cooperation is far too important to be left to government and government officials… [as such, there is a need for] ever-expanding involvement and participation of the people". Malik's idea, however, only became an issue of discussion between those involved in Track 1 and Track diplomacies. It was the ASEAN Institutes for Strategic and International Studies (ASEAN-ISIS), established in 1988, that submitted an idea to have "an assembly of the people of ASEAN" in 1995 which subsequently resulted in the launching of the first ASEAN People's Assembly (APA) in 2000. It was only then that the participation of the people was finally recognized by ASEAN and its member governments.[12]

By the late 1980s and early 1990s, academics from the leading Southeast Asian thinks tanks had evolved into epistemic communities which have been defined by Peter M. Haas as "a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area".[13] In the process, this academic community became the driver for an emerging track two diplomacy which gained increasing influence on the policy-making both in the economic as well in the security domain. The latter was designed by security thinkers in the region as an approach to discuss, analyze, and minimize the security risks of the post-bipolar era in the Asia-Pacific. If the official government diplomacy has become known as track one, track two brought together think tank experts, diplomats, military officers, and politicians – the three latter all in an unofficial capacity.

Track two was accorded the task to focus on issues too sensitive for official negotiations which, as a consequence, have been bracketed by track one. The nonofficial, informal, and to a certain degree confidential format of these meetings gives participants ample

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[11] Ruland, *op.cit.,* p. 86.

[12] Melly Caballero-Anthony, *Regional Security in Southeast Asia: Beyond the ASEAN Way*, Institute for Southeast Asian Studies, Singapore, 2005, p.232.

[13] Peter Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, 1992, 46(1), p.1.

opportunity to discuss these issues frankly and free from fears that any party would be embarrassed in the process.[14] So long will issues be discussed, until a solution takes shape. At this point the issue will be swiftly transferred back to track one for final resolution.[15]

In time for ASEAN's plan to introduce an ASEAN Charter and to establish an ASEAN Community, the Association has begun to realize that there is widespread criticism of ASEAN's closed and exclusive nature. There are now several forums through which civil society groups can find a voice in ASEAN, from the ASEAN People's Assembly (APA), which was convened in Batam, Indonesia in 2000, all the way up to the ASEAN Civil Society Conference, which was first held in Shah Alam, Malaysia in December 2005. Civil society groups have also been invited to provide input to the members of the Eminent Persons Group (EPG), which was tasked to prepare recommendations to the ASEAN Charter by the 1th ASEAN Summit in Cebu City in December 2006. These developments not only suggest that ASEAN should address its democracy deficit, but also that civil society groups are now ready to engage with ASEAN and its activities.[16]

On 8th August 2011, peoples and governments of ASEAN member states commemorated the 44th anniversary of the Southeast Asian regional grouping. One thing that is obvious about ASEAN today is that it has transformed. It has developed from a five-founding-member association into a regional cooperation that includes 10 countries from the Southeast Asia region in its membership. It has also been changing from a mere association into a community. One notable feature of the commemoration is the hoisting of ASEAN flag side by side with the national flags of ASEAN member states — conducted simultaneously by the diplomatic missions of ASEAN member states all over the world. Though symbolic in nature, this certainly signals a stronger determination of the ASEAN member states to become a community.[17]

The long-term future of civil society engagement with ASEAN depends entirely on the ability of regional CSOs to come up with a united stance vis-à-vis ASEAN. Currently, civil society groups in Southeast Asia are very much fragmented. As mentioned

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[14] Jusuf Wanandi, "ASEAN's Informal Networking", *the Indonesian Quarterly*, Vol. XXIII, No. 1, First Quarter, 1995, pp. 56-66
[15] Jurgen Rueland, "The Contribution of Track Two Dialogue towards Crisis Prevention," *ASIEN*, October 2002, No. 85, pp. 84-96.
[16] Caballero-Anthony, *op.cit*.
[17] Yayan GH. Mulyana, "After 44 years ASEAN moves closer to one community of nations", *the Jakarta Post*, 13 August 2011.

previously, members of the academic community and many NGO representatives hold divergent views on the way in which the ASEAN integration process should be pursued. Given ASEAN's limited experience in allowing civil society groups to participate in the agenda-setting, it might be difficult for the Association to deal directly with the numerous civil society groups in the region. Another key challenge to civil society engagement with ASEAN is the Association's lack of openness to civil society participation. Less democratic member- countries are still unsure about civil society engagement in the ASEAN process. Countries such as Burma, and even Singapore, would wish to stop civil society groups from participating in the Association's decision-making processes.[18]

Almost in the same time with ASEAN's plan to introduce an ASEAN Charter and an ASEAN Community, the ASEAN has begun to realise that there is increasing dissatisfaction amongst the intellectual elite and civil society groups regarding ASEAN's closed and exclusive nature. There are now several forums through which civil society groups can find a voice in ASEAN, from the ASEAN People's Assembly (APA), which was convened in Batam, Indonesia, in 2000, all the way up to the ASEAN Civil Society Conference, which was held in Shah Alam, Malaysia, in December 2005. Another civil society network, the Solidarity for Asian People's Advocacy (SAPA), was also established in early 2006 to accommodate discussion and debate amongst Southeast Asian civil society groups, particularly non-governmental organisations (NGOs) that have regional interests and concerns. In addition, civil society groups have been invited to provide input to the members of the Eminent Persons Group (EPG), who were tasked to prepare recommendations on the ASEAN Charter to the leaders of the member countries at the ASEAN Summit, in Cebu, in December 2006. These developments suggest that not only should ASEAN address its democratic deficit problem, but also that civil society groups are eager to engage with ASEAN and its activities.[19]

ASEAN is well-known for its elitist tendencies, and for how few of its policies correspond to the needs of Southeast Asian people.[20] It could also be argued that ASEAN has become this way due to the lack of pressure from civil society groups on the

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[18] Alexander C. Chandra, "Southeast Asian Civil Society and the ASEAN Charter: The Way Forward," 8 April 2007, http://www.thinkcentre.org/article.cfm?ArticleID=2849, accessed 1 October 2013.

[19] David Capie, "When does track two matter? Structure, agency and Asian regionalism," *Review of International Political Economy*, May 2010, 17:2, pp. 291–318.

[20] Wanandi, *op.cit.*

Association. Since its establishment in 1967, the Association of Southeast Asian Nations (ASEAN) has shown little interest in facilitating the participation of civil society in its decision-making processes. During its infancy, most ASEAN member countries were governed by authoritarian regimes which made it difficult for social pressure to emerge, not only at the national level, but also at the regional level. The problem of a democratic-deficit is not only caused by the Association itself, but also by the failure of civil society groups to put pressure on the Association on the importance of involving civil society into various ASEAN's topical meetings. In turn, the limitation of civil soviety's participation could question the term 'community' that ASEAN would establish in the upcoming 2015.

Building Community's Awareness

Asia has a problem of participatory regionalism. In the last ten years, ASEAN has been struggled in improving such a participatory regionalism among its community. Various concepts has been introduced by this regional institution, including people-centered community, people-driven community, and people-oriented community.[21] In a certain way, these concepts reflects ASEAN commitment regarding the perceived 'democratic deficit' of Asian regional regimes. In addition, Civil Society Organizations (CSOs) in Southeast Asia has been encouraged in policy formulation. This commitment means that government officials can turn to community-based specialists when designing and implementing policy.

At the same time, CSOs benefit from participation because they are recognized as relevant actors on the issue in question. This legitimacy helps them achieve their objectives. Widening participation in regional regimes also benefits the populace at large, because individuals affected by policy can petition CSOs to lobby on their behalf. While there are concerns regarding the legitimacy of CSOs themselves, legally imposed transparency mechanisms ensure that information regarding the funding, membership and objectives of CSOs are publicly available. Participatory regionalism offers substantial benefits. Asian regional regimes should take serious steps to institutionalize civil society relationships[22] through recent political development in the region, such as Indonesia's democratization. Indonesia has increasingly boosted the participation of CSOs as the

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[21] Hermawan, *op.cit.*
[22] Kelly Gerard, "Participatory regionalism in Asia", http://www.eastasiaforum.org/2010/08/12/ participatory-regionalism-in-asia-a-necessary-development/, accessed 1 October 2013.

representative of people or society in various ASEAN forums. This initiative has encouraged Indonesia to push the application of democratic values in ASEAN.

The assumption behind Indonesia's push for democracy in ASEAN in 2003 had been the belief that regional security would be better ensured when member states adhere to democratic developments. Indonesia, as the proponent of the idea, expected that democracy would serve as the foundation of regional security. Now, ten years after ASEAN agreed to include democracy in its regional cooperation agenda, it is time to reflect on the extent to which democracy has or has not served as the foundation of regional security in Southeast Asia.[23]

Epistemic community is of importance in encouraging the role of community in ASEAN. Citing the theory of political scientist Karl Deutsch, Makarim Wibisono, head of the ASEAN Foundation said government is only one factor, while community is motivated by many elements, such as lawyers, engineers and business people. the leaders and the governments of the 10-member organization have boosted their efforts to ensure the goal of creating the ASEAN Community, but they have not intensively engaged society in making the group a single community by 2015. "A community is shaped from intensive and quality communications among social, economic, cultural and political leaders, not only the interactions of government officials," said the former senior Foreign Ministry official. When problems arise between two countries in ASEAN, government officials must stay calm because they regularly interact and communicate with each other. They know what to do to solve problems. "But this is not the feeling of most people. So, it is important to intensify contact among the mass media, political parties, militaries and NGOs in ASEAN," he added.[24]

The academic community has been playing a key role in ASEAN. It has been known to articulate its own vision for an integrated ASEAN. The ASEAN-ISIS and the Institute for Southeast Asian Studies (ISEAS), for example, have provided much-needed input to ASEAN. Members of ASEAN-ISIS, which include the Brunei Minister of Foreign Affairs, the Cambodian Institute for Co-operation and Peace (CICP), the Indonesian Centre for Strategic and

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[23] Rizal Sukma, "Democracy in ASEAN: Foundation for Regional Security" presented at *An Asia-Pacific Democracy and Human Rights Seminar,* April 2013, http://www.eastwestcenter.org/events/democracy-in-asean-foundation-regional-security, accessed 8 August 2013.

[24] ASEAN is more 'a matter of officials', *the Jakarta Post*, 13 August 2011.

International Studies (CSIS), the Laos Institute for Foreign Affairs, the Malaysian Institute for Strategic and International Studies, the Philippines' Institute for Strategic and Development Studies (ISDS), the Singapore Institute of International Affairs (SIIA), Thailand's Institute for Security and International Studies (ISIS), and Vietnam's Institute for International Relations (IIR), are influential not only at the national level, but also at the regional level.[25] This influence allows ASEAN-ISIS to play a bridging role between ASEAN and wider civil society through its steering of the APA initiative. This bridging role reflects a close relationship between ASEAN and national and regional think-tank.

Currently, there are two formal forums for civil society engagement with ASEAN, namely the ASEAN People's Assembly (APA) and the ASEAN Civil Society Conference (ACSC). Compared to ACSC, the APA is the one more recognized by ASEAN; it is incorporated in the Vientiane Action Program (VAP) signed during the 10th ASEAN Summit in Laos on November 9, 2004. A formal network represents the academic community (the ASEAN-ISIS) while some groups that attended the first ACSC in Kuala Lumpur in December 2005 started the Solidarity for Asian People's Advocacy (SAPA) to promote broader civil society engagement with ASEAN. In essence, both ACSC and SAPA are considered an alternative forum and network for engaging ASEAN. The new way many civil society groups want to engage ASEAN produced the ACSC and subsequently SAPA. Currently, APA and the ASEAN-ISIS are seen in the VAP as initiatives to bring the people of the region closer to the Association, along with the ASEAN Business Advisory Council (ABAC), the ASEAN Parliamentary Organization (AIPO), and the ASEAN University Network.[26] There had been three additional APA meetings after the first one in Batam. The second APA was held in Bali, Indonesia in 2000, and the third and fourth in Manila, Philippines in 2004 and 2005 respectively. The fifth APA will again be held in Manila in December 2006.[27]

There is an agenda to make ASEAN a people-driven community. First, we want to bring ASEAN to the national level so Indonesians can directly feel the benefit of being part of the association. For example, under Indonesia's chairmanship, we are able to bring more than 300 officials to events hosted in Indonesia. This will boost local economies. Ministers come here for a retreat,

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[25] Ruland, *op.cit.*; Capie, *op.cit.*

[26] Wanandi, *op.cit.*; Emmerson, *op.cit.*

[27] Chandra, *op.cit.*

which can be a historical event for the regional government. We have also scheduled events in Manado and other cities in Indonesia. Along with that, we also want to promote events that are people-centered as mandated by President Susilo Bambang Yudhoyono. There will be events hosted by the Indonesian Chamber of Commerce and Industry (Kadin), events by NGOs on women's and children's issues and supported by friends from civil society movements. All this will increase public awareness. The Indonesian Young Entrepreneur Association will also stage the ASEAN Youth Entrepreneurship event. This is strongly in line with our programs to improve the competitiveness of small businesses and SMEs. If the people drive the activity, it becomes more sustainable.[28]

ASEAN, at its 44-years old, is both in excellent shape and is going in the right direction. It has a legal identity, a clear vision for its future, an increasing amount of structure for cooperation, more partners, and anticipates more members. However, it is not without challenges both internally and externally. Internally, greater understanding, knowledge and participation of peoples in the ASEAN processes will be needed. An ASEAN Community will have real meaning only when ASEAN peoples have a sense of ownership and a sense of being connected and accepted within ASEAN's family and community. It is time for the ASEAN peoples to become more of a driving force in the dynamism of the association. Indonesia's President Susilo Bambang Yudhoyono stressed many times on the importance of a people-centered ASEAN in his recent ASEAN anniversary lecture. One critical purpose of such a sense of we-ness would be achieving constant consciousness among the peoples of ASEAN member countries so that whenever disputes occur, using peaceful means to settle these disputes will be the only, primary and natural choice. A facet of nationalism that favors violent means would be overcome by a constructive macro-nationalism. Dialogue, amity, togetherness and cooperation would prevail. And while the ASEAN Community remains an imagined entity, its tangible fruits of cooperation would pervade all segments of ASEAN peoples in all corners of its member states.[29]

In Asia, by contrast, social activists cannot formally influence regional policy. It is true that some business interest groups and elite think tanks have been granted advisory roles. One example is the Council for Security Cooperation in the Asia-Pacific (CSCAP), a think-tank that advises the ASEAN Regional Forum. Another is the

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[28] "ASEAN: A people-driven community in the making", *the Jakarta Post*, 16 January 2011.
[29] Mulyana, *op.cit*.

Pacific Economic Cooperation Council (PECC), a business interest group that counsels APEC.[30] The problem is that grassroots social movement activists seem to have no official forum in regional level, such as ASEAN. Campaigners, including those for human rights, women's rights, labour rights and the environment, are forced to voice their opinions through rival mechanisms such as the ASEAN People's Forum, although ASEAN would not be take their voice into its consideration with respect to those of sensitive issues.

ASEAN has attempted to become more people-centered by establishing the ASEAN Civil Society Conference (ACSC) and formulating the ASEAN Charter. Unfortunately, both initiatives highlight the formidable task at hand. The ACSC provides a channel for dialogue between CSOs and state leaders, but this exchange does not genuinely pluralize decision-making processes because it is highly informal and depends on the wishes of the host government or the mood of ASEAN leaders.

In order to integrate political elites with the public, ASEAN must first accomplish several things. One is to accelerate the establishment of an ASEAN regional identity -- that is, a collective or supranational identity that, at the very least, makes reference to all ASEAN member states. Regional identity comprises two categories. First, symbolic or institutional identity, which will be the easier of the two to establish. Aside from the ASEAN logo, flag, secretariat and the SEA Games, several symbolic identities can still be exploited to promote an overall regional identity known among the people, such as an ASEAN theme song and, if possible, the celebration of ASEAN's founding as a common holiday in Southeast Asia. The establishment of ASEAN corners in many public places where computers, leaflets, posters, booklets and reports are of importance. From a screen, citizens can access real-time information on all current ASEAN legislations and know and understand them by having attractive and simple leaflets, posters or booklets.

The promotion and establishment of ASEAN or Southeast Asian studies centers could provide yet another symbolic identity. Despite being one of the most important points raised in the Bangkok declaration of 1967, promotion of Southeast Asian studies occurs in only a few universities within the ASEAN member states. In this context, increasing cooperation between Southeast Asia's universities should also be emphasized -- what we might call an "epistemic" or academic community. Even though a network exists between

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[30] Caballero-Anthony, *op.cit*.

universities in Southeast Asia (the ASEAN Universities Networks/AUN).

Second, there is value identity, which is based on common norms and values and therefore more difficult to establish, particularly given Southeast Asian's sociocultural diversity, including conflicting political ideologies and varying levels of economic development. Indeed, variation -- with respect to economic, political and cultural conditions -- has become ASEAN's defining characteristic. For this reason, it is rather difficult to create a common ASEAN identity. To encourage the establishment of an ASEAN regional identity, accelerate national integration and reverse national disintegration, the value of *bhinneka tunggal ika* or "unity in diversity" must be promoted. ASEAN can also take an institutional initiative on inviting college students, local non-governmental organizations (NGOs), or politicians to visit ASEAN institutions. Such a trip will allow them to feel the presence of ASEAN.[31]

Concluding Remarks

Although democratic deficit is still prevalent among ASEAN's member nations, recent development show that democratic values has been put into effect within the frameworks of ASEAN Charter. The establishment of several people-centered bodies within ASEAN and democratic development in Myanmar asserted the possibility of ASEAN's members in reducing tendencies of democratic deficit in the regional level. Various elements of society have involved in much topical regional cooperation with the purpose of increasing society participation, but these activities have not diminished criticism of the elitism of ASEAN. The period of 2011-2013 has been a critical time for ASEAN to prove itself as a community-oriented regional organization. ASEAN still has many activities to do in increasing people-participation. Therefore, ASEAN's member states should introduce the importance of ASEAN Community towards their people and take a coordinating position in involving people in many activities of ASEAN.

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[31] Robertua, *op.cit*.

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Centrality and Connections of the African International Relations

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Problem

States, most basic units of world politics, varying in areas, population, levels of economic development, military power, natural resources, and all other various elements determining their national power, some being as huge as spreading across continents, and others being as small as cities, are nonetheless seen in international law as being equal, due mainly to sovereignty all states are assumed to be given. The principle of sovereignty, the right to decide internally and externally, certainly keeps other states from violating national boundaries or interfering in internal affairs. This formality, however, seems to be under belated revision in the field of international law.[1] In terms of analysis of politics, sovereignty does not tell much about what system of states is to be created, except that each state is supposed to make its own decision in the issue areas where its national interest is at stake. Just as a person cannot ignore what other people may say about his decision, even though he can make his decision, a state cannot decide without considering in what group of states it exists.

This paper aims at asking a simple question, 'who is grouped with whom?' This is a question paid enough insufficient attention to in the field of international politics. Scholars seemed to have undervalued this problem, in the face of the problems of alliance, such as 'who is against whom?' or 'who is in favor of whom? But the question of friends and foes is different from the question of who is in and who is outside of the group. Lions and zebras in savannah can make a group of savannah animals. Each zebra has a right to determine his own life, but he cannot avoid the fact that he is likely to be eaten by lions. A man and a wife, if they are married, make a group. But if they are divorced and fight about alimony, they still make a group, because they may interact with one another, and because third parties may regard them as a mutually conflicting pair.

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[1] For example, Benedict Kinbsbury, Sovereignty and Inequality European Journal of International Law September 1998, pp.599-625

On the question of how states are grouped, geographical distance is one of the essential elements. One extreme model of international system is the air in the room, where any molecule of CO_2 or O_2 can bump into any other molecules at any time, all perpetually moving around. Each molecule probably has equal chance to meet any other molecule. A contrasting extreme is a forest, where tall trees are standing still for many years, without changing their distance with other trees, unless some of them die, which is why neighboring plants are far more important than distant plants.

Actual international relations must be something between the two extremes, or a kind of combination of the two. Some states are isolated from others, but many states group themselves, or are grouped by necessity or by accident. Geography is a factor, but other factors, such as the power of each state, or the nature of issues, may affect what countries can belong to the same group. And the lines separating the groups may be drawn in different ways as time passes.

To what groups a state belongs is a matter with much relevance to sovereignty, because the matter defines what problems a state has to face and what help a state can obtain. Just as a student's destiny is affected by what other students are in the same class, a state's destiny will be affected by what other states are in the same group. A state can be more sovereign if it can freely choose whom to associate with, but many states have to accept existing grouping as given conditions.

Students of power often discuss issue areas. Robert Dahl, who said that A has power over B to the extent that A can make B do something B does not necessarily intend to do[2], also argues that different people are powerful in different issue areas. Then the next questions, which Dahl does not necessarily asks, is how many issue there are, and one person has to deal with another person in how many issue areas.

Students of power also discuss agenda-setting, which is often mentioned as the second dimension of power[3]. A person who can influence what is to be decided has power. What kind of issues a state has to handle partly depends on with whom the state is grouped.

How do states group? How do groups evolve over time? These are some of the key questions that should supplement the concept of sovereignty, adding to the concept of sovereignty the elements of geographical proximity, diversity in size, and changing issue areas. The supposedly equal states are not isolated from one another but are grouped, sometimes according to their own will but at

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[2] Robert Dahl, Who Governs? (Yale University Press, 1961)
[3] Steven Lukes, Power: A Radical View (1974)
John Gaventa   Power and Powerlessness: Quiescence & Rebellion in an Appalachian Valley

other times without such intention to be grouped, just as a man taken away to the ocean by tidal waves.

The issue of sovereignty faces a possibly unusual situation in Africa, which is that what is really powerful is not in the region. When sovereign states are created but they are inequality in terms of power in Europe, both the strong and the weak are in the same region of Europe. But in the case of Africa, most states are weak and extremely strong states from different regions are often jump into African affairs. This was the case in the colonial period, and this may be the case in the present period and in the future, too.

Method

This paper tried to think of the above questions by looking at the international relations concerning the Sub-Saharan African states for the past 15 years.

In the field of social network analysis, it is customary to think of a certain type of relations, such as calling or dining together, in order to determine the mutual proximity of two persons. And then the analysis goes on to find out who is relatively close to another, who is central, and who is relatively isolated[4]. And of course the objects of study of network can be anything, including animals, plants, and states.

The paper selected many of the Sub Saharan states: Burundi, Djibouti, Eritria, Ethiopia, Kenya, Madagascar, Malawi, Mozambique, Rwanda, Somalia, Tanzania, Uganda, Zambia, Angola, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Gabon, Sudan, Botswana, Lesotho, Namibia, Swaziland, Benin, Burkina Faso, Gambia, Ghana, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo, and South Africa.

This paper added to the above some countries from other continent: the United States, Japan, Russia, China, Brazil, and France. There is not much meaning in the selection of these outsider states, except that this writer discussed in another paper[5] that the US-China connection is the strongest connection among all the bilateral relations of the international system since the late 1990s, and that some countries like Japan, Brazil, Russia, and France are useful for comparison.

The fundamental assumption of this paper is that, if two states are mentioned in one article, they are connected to that extent,

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[4] Social Network Analysis

[5] China and the Indo-Pacific Area as a Region   April, 2013 (submitted to the Indian Council of World Affairs)

which means that they are in the same group.   If the US and Japan are mentioned in an article, the two countries concern the same topic, which can be anything such as the negotiation on TPP or the security affairs of the Pacific region. The relations may be hostile or friendly, long or short, involving a third state or focusing on pure bilateral matters. The thing that matters is that the person who wrote the article regarded the two states as relevant to a certain topic. This paper also assumes that the more two states are frequently mentioned together, the more strongly they are connected and the more closely tied together as a group.

Here, the term article means not only newspaper or TV or radio articles but also speeches or statements, propaganda included, issued by anyone including states. If the president of A mentions B in his speech, for example, this means a connection between A and B.

Of course articles reflect not only the real world but the way the producers of the articles see the real world, including not only the positive or negative evaluation of other states but also what states or what issues the producer of the article is paying attention to. The perception of the world may be distorted or simply wrong, but this paper questions not the correctness of the perception but the content of bilateral relations included by the mass of articles at a certain period. In other words, what matters here is not the real issues but what the big data regard as issues and what the big data regard as relevant to the issues.

The source this paper depends is World News Connections (WNC), produced by the US Government, translating and compiling hundreds of articles of regional or local articles all over the world with major exception of the United States.

If A and B are mentioned in the same article, regardless of how many times the countries are mentioned in the same article, this paper counts that there is one connection between A and B.   If A, B, and C are mentioned in the same article, this paper regards that there is one connection between A and B, B and C, and C and A.

What matters for this paper is how many articles mention A and B together, not how often A and B are mentioned in one article. Here are results of the frequency of such articles concerning each of the possible bilateral relations concerning Sub-Saharan Africa.

Preview of the result

More access to the result of 1997, 2002, 2007, and 2012 matrix at http://bitly.com/icis2013-michimi, or http://drive.google.com/folderview?id=0B65j_Yf8WsaJUmZLbnVY Wm50Zmc

Observation

(Image source: http://www.vidiani.com/maps/maps_of_africa/large_detailed_contour _political_map_of_africa.jpg)

Africa Geography in Appendix I
Africa network 1997 in Appendix II
Africa network 2012 and reform in Appendix III

More access to the African Geography, and network (1997 and 2012) at http://bitly.com/icis2013-michimi, or http://drive.google.com/folderview?id=0B65j_Yf8WsaJUmZLbnVYWm50Zmc.

It should be reminded that connection in this paper means simply that how frequently two countries, a dyad of international relations, are mentioned in big data, without any connotation of harmony or contradiction. If A is attacks B, it can be a connection between A and B just as when A gave huge economic assistance to B. The connection can be intentional as well as unintentional. If A's citizen was kidnapped in B by its anti-government forces, then it can be connection between A and B, just as when A's prime minister visited B. The fact that A and B are strongly connected means only that they are so deeply involved with each other than they cannot be indifferent to or ignorant of each other.

The following scale is used

Scale	Level
0-49	0
50-99	1
100-199	2
201-399	3
400-799	4
800-1599	5
1600-3199	6
3200-6399	7
6499-12799	8
12800-25599	9

In the matrix of 2012, Sudan means both Sudan and a new country, South Sudan.

The numbers are quite unevenly distributed, both in terms of inter-African relations and African relations with states outside Africa. This may not be surprising,, but it is a bit counter-intuitive that a small state like Djibouti has stronger connections with the rest of Africa than a bigger state like Central African Republic.

There are some African countries that are more widely and relatively strongly connected with other African countries. Sudan (including Southern Sudan), South Africa, and Nigeria have been connected strongly and widely with many other African states since the 90s. Such states as Uganda, Rwanda, Burundi, DRC follow the three. Some states, such as Central African Republic and Madagascar, are relatively isolated from the rest of the African community, especially in the 1990s. Such states as Lethoto and Swaziland,

included entirely by South Africa, are obviously not much connected with the rest of the African community other than South Africa. In the 90s, East,

Obviously countries are more connected with other states as regional war intensifies, which were the cases in central Africa and West Africa.

With respect to the relations with countries outside the region, Russian connection with African countries can no longer compete with those of the US and China already in 1997. The US is most strongly connected with the region already in the 1990s France and China have been also strongly and widely connected.

The number of articles in WNC increases over time. This increase does not necessarily mean that there will be increasing degree of connections among states in proportion to the number of articles.

In some cases, connections are increasing but with much slower pace than other African countries.. The gap between the strong connection and weak connection seems to be widening. The increase of the connection between big distant states seems stronger than those of inter African relations.

It is not surprising that big states of the other geographical regions are connected with the states of the African continent.   It is a little surprising, however, that the strength of connection does not increase in proportion to the economic or military power of the distant states. Already in 2002, China and France were more strongly connected with most African states than Japan and Russia. Japan, which was a bigger economy than China in 1997-2007. was already behind China. , It is only as strongly connected to African states as Brazil is. In 2002, the US and France were central in international politics of Africa, but now China joins the central group, and China's centrality is developing fastest among the states discussed in this paper.

In some cases, such as Zimbabwe both in 2002 and 2012, an African state's relations with the US is stronger than any other relations, including those with its neighbors

In 2012, China connection with African states is as strong as that of the US or even stronger than that of the US.   The most radical example may be Chinese-Sudanese relations, which increased from 135 in 2002 to 1584 in 2012, while the US-Sudanese relations increased from 563 in 2002 to 1536 in 2012.   In this sense, China is probably surpassing the US as the center of the African community.

Japan was relatively inconsequential in Africa before, but it is losing more ground comparatively. In 2002, Japan's relations with Africa are not much behind Russia, but in 2012, Japan is much behind

Russia. Japan is in the process of relative decline, so far as its relations with Africa are concerned.

Nigeria and South African relations with the rest of Africa is relatively widespread in the region. But it is also true that Nigeria and South Africa have also strong connections with (a) China and the US, (b) China-South Africa-other African states, (c) China-African states, (d) US-China relations, (e) US-South Africa-other African states, (f) US-African states, and (g) French-African relations.

These connections seem to define the international characteristics of African politics, leaving considerable political space to some regional actors, such as Uganda, Rwanda, DRC in Central Africa, Sudan, Ethiopia in Northern Africa, Nigeria in Western Africa, and South Africa. One big question is whether the expansion of connection with China has reached a saturation point, when China attained equal or a little superior status to the US in Africa in 2012. And of course this problem is related to the future of China's growth.

The strongest connection among all the bilateral relations of the world is the US-China relations.

There is a trend that increasing number of African countries are more strongly and widely connected with countries with which they do not share borders. For example, South Africa tends to be more strongly connected with Northern Africa and Western African countries towards 2013. This may be called a kind of regional-globalization of Africa, making African states more similar to air models than plant models.

Conclusion

A state having strong connections with most other states of the same region can be called the center of the region, and there are cases fitting this intuitive view. Probably the US is the center of North America as well as South America. Probably the UK, France, and Germany are the centers of Europe. China and the US are the centers of the Asia Pacific region. But the unique characteristics of Sub Saharan Africa is that the geographical region does not have a very strong center, connected to other African states strongly, as shown by the frequency of articles mentioning the center and other African states together. In the sense that most strongly connected with states outside Africa than inside Africa, and that the outside actors are more active among themselves than African states, the international system concerns Africa may still contain legacies of colonial international relations.

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Appendix I. Africa Geography
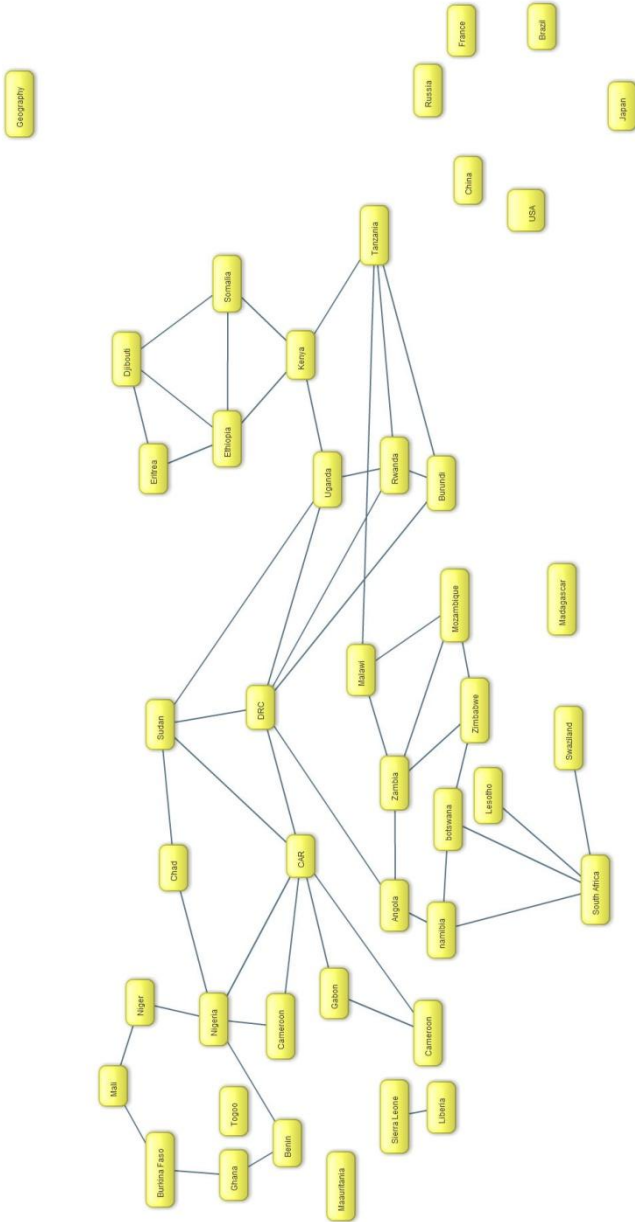
Appendix II. Africa Network 1997
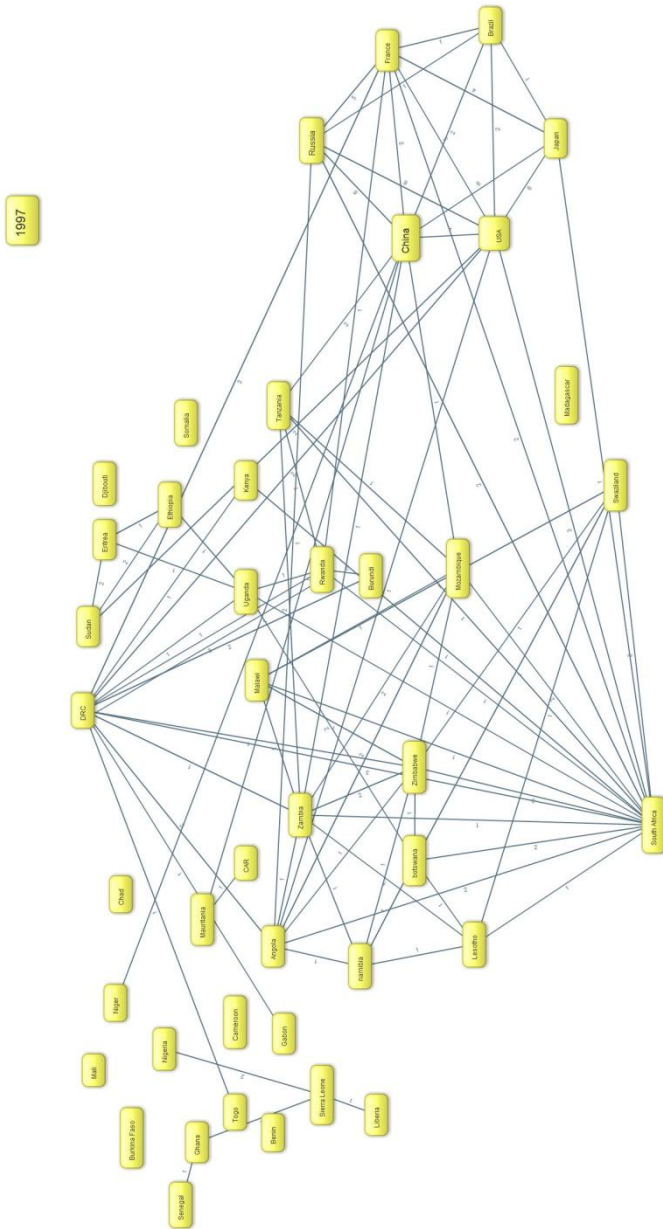
Appendix III. Africa Network 2012 (a), and Reform (b)

(a)
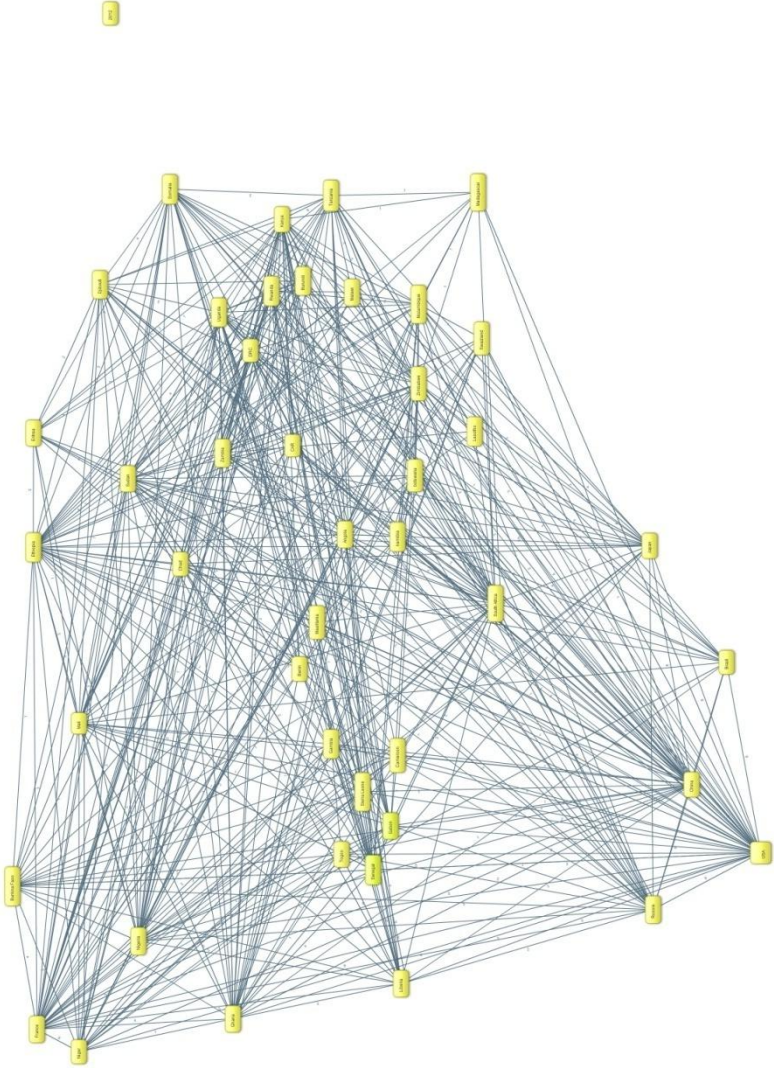
(b)
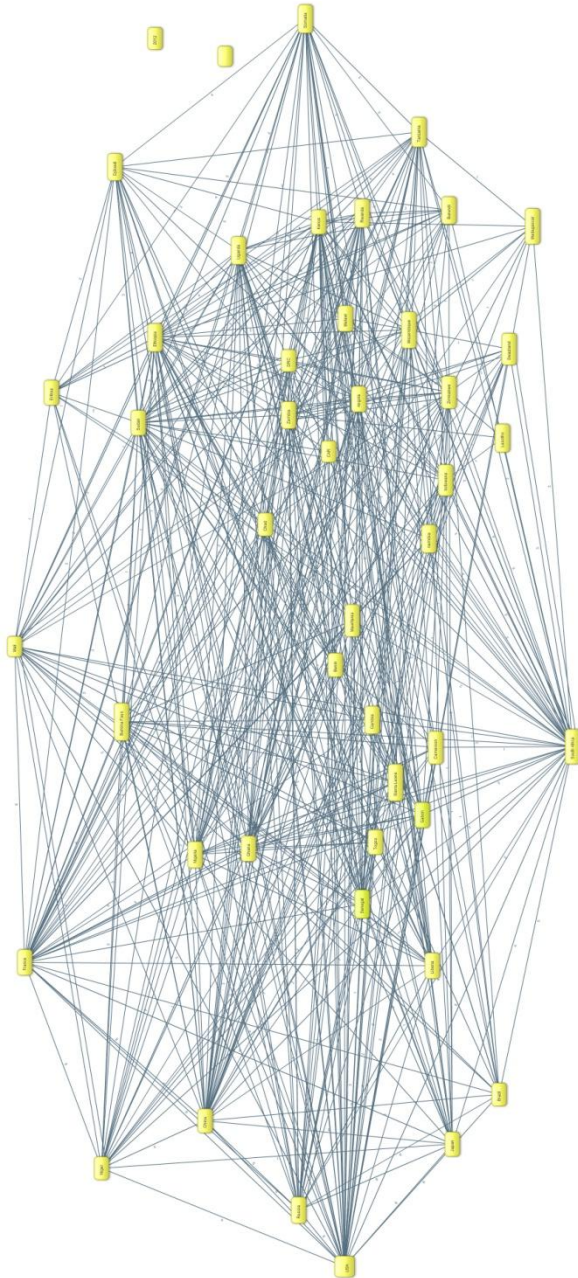
Beyond Westphalian Individual State-Centric Approach for Managing Natural Living Resources: Cooperative Management Regime for Shared Fish Stocks in Southeast Asia

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Abstract

*Marine fisheries resources in Southeast Asia are currently threatened by severe depletion and overexploitation. Such alarming trend is exacerbated by various factors, ranging from overcapacity, destruction of ecosystem, to the f*ailed national fisheries management *policies. Given that the littoral States bordering these waters are highly depended upon marine fisheries as the primary source of employment, revenue and food security, addressing the problems of regional fisheries becomes critical. This is especially the case in the management of commercially important shared fish stocks, particularly in the South China Sea and Celebes Sea. As the migratory range of these stocks cuts across several politically drawn maritime zones of littoral States, it is highly unlikely that one State, acting independently, would be able to manage these fisheries effectively within its own national jurisdiction. Perhaps one of the best approaches in dealing this problem is through collective management of fish stocks, an approach that departs from the traditional Westphalian individual State-centric way of managing natural living resources. This paper intends to examine regional cooperative measures for sustainable management of shared fishery resources in the Southeast Asia. It begins by providing definition, biological and migratory profile of transboundary shared stocks. This is followed by an overview of international legal and policy framework embracing the principle of interstate cooperation for managing these resources. Finally, it provides recommendations of how the regional littoral States can address the issues and challenges of managing shared fish stocks in a more holistic and coordinated manner within the framework of interstate cooperation.*

Keywords: Responsible Fisheries, Transboundary Shared Stocks, Southeast Asia, Institutional Framework, Regional Cooperation

Introduction

Over the last three decades, marine fisheries resources in some areas of coastal and offshore fishing grounds of Southeast Asia have been showing signs of severe depletion and overexploitation. Nowhere of these problems are more evident than in the Gulf of Thailand, Malacca Straits, and South China Sea.[1] A combination of factors have contributed to the diminishing of these aquatic resources, ranging from excessive fishing capacity, use of destructive fishing gears and methods, illegal, unreported and unregulated (IUU) fishing, degradation of marine ecosystems and habitats, to failed national fisheries management policies and systems.[2] This alarming trend has adverse repercussions, threatening not only the conservation and sustainable use of fisheries resources, but also the long-term viability of regional marine fisheries industry.

One must recognize that marine fisheries are of great importance to many littoral States in Southeast Asia. To the neighboring countries in the vicinity of the regional seas - Indonesia, the Philippines, and Thailand, fisheries resources remain a critical source of livelihood, revenue and food security.[3] All three countries

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[1]   The contributing factors to the declining state of regional fish stocks have been the subject of discussion since the 1980s. See, for example, Clotilde Bodiguel, Dominique Gréboval & Jean-Jacques Maguire, "Factors of Unsustainability and Overexploitation in Marine Fisheries: Views from the Southern Mediterranean, West Africa, Southeast Asia and the Caribbean," *FAO Fisheries and Aquaculture Circular No. 1037* (Rome: FAO, 2009); I.C. Stobutzki, G. T. Silvestre, A. Abu Talib, A. Krongprom, M. Supongpan, P. Khemakorn, N. Armada and L.R. Garces, "Decline of Demersal Coastal Fisheries Resources in Three Developing Asian Countries," *Fisheries Research* 78(2006), pp. 130-142; E.D. Gomez, "Is the Degradation of Resources in the South China Sea Reversible? Approaches to Sustainable Management," Paper presented at the International Symposium on Protection and Management of Coastal Marine Ecosystem, Bangkok, Thailand, 12-13 December 2000; and Daniel Pauly and Chua Thia-Eng, "The Overfishing of Marine Resources: Socioeconomic Background in Southeast Asia," *AMBIO: A Journal of Human Environment* 17(1988), p. 202.

[2]   For an excellent work on the studies of overfishing capacity and IUU fishing, see Gary Morgan, Derek Staples, & Simon Funge-Smith, "Fishing Capacity Management and IUU Fishing in Asia," *RAP Publication 2007/16* (Bangkok: FAO, 2007); see also G.R. Morgan, "Illegal, unreported and unregulated (IUU) fishing in the Asia-Pacific region," *Proceedings of the APFIC workshop on IUU fishing, Kuala Lumpur, August 2006*. Rome: FAO: 2006; Chua Thia-Eng, Ingrid R. L. Gorre, S. Adrian Ross, Stella Regina Bernad, Bresilda Gervacio and M. Corazon Ebarvia, "The Malacca Straits," *Marine Pollution Bulletin* 41(2000), pp. 160-178, for marine environmental pollution in the Straits of Malacca; and Clive Wilkinson, Anne Caillaud, Lyndon De Vantier, and Robin South, "Strategies to Reverse the Decline in Valuable and Diverse Coral Reefs, Mangroves and Fisheries: The Bottom of the J-Curve in Southeast Asia?," *Ocean & Coastal Management* 49(2006), pp. 764- 778, in referring to deterioration of marine habitats.

[3]   United Nations, "General facts regarding world fisheries," in *Resumed Review Conference on the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 24-28 May 2010*, available online at http://www.un.org/depts/los/convention_agreements/reviewconf/FishStocks_EN_A.pdf (Accessed on September 29, 2013)

are a major fishing nation and, for the last ten years, consistently ranked among the top ten fisheries producers in the world.[4] This trend can be seen in their national fisheries production. In 2011, the combined tonnage of inland and marine capture fish production from Indonesia alone was 8.7 million tonnes,[5] with the recorded landing of fish in the Philippines reached nearly 2.4 million tonnes in the same year.[6] In terms of employment, roughly 100 million people in the region are directly depended on fisheries, either involved as fishermen or engaged in supporting fisheries industries.[7]

Substantial social-economic gains generated from the already dwindling marine fish stocks necessitate the adoption of a more viable and sound cooperative fisheries management regime that transcends across political boundaries. Through joint management, the desirable common long-term goals of achieving sustainable, healthy fisheries and rebuilding depleting stocks can finally be attained. This is especially case with respect to the conservation of transboundary shared fish stocks. In view that the migratory range of these fisheries stocks typically spreads across politically drawn maritime jurisdictional zones of more than one State, a meaningful ways for the affected States to sustainably manage the stocks is probably through collaborative efforts. This suggestion clearly departs from the traditional Westphalian individual State-centric approach of managing natural living resources within the confine of State's own area of jurisdiction.

This paper intends to examine the nature and extent of interstate cooperative measures currently in place at regional level to manage transboundary shared fish stocks of Southeast Asia. In setting the stage for further discussion on this topic, the paper begins by providing an overview of definition, and the biological and

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[4] FAO, *The State of World Fisheries and Aquaculture 2010* (Rome: FAO, 2010), p. 13; and Pew Environment Group, "China tops world in catch and consumption of fish," *ScienceDaily* 23 September 2010, available online at http://www.sciencedaily.com /releases/2010/09/100922121947.htm (Accessed on August 4, 2013)

[5] FAO, "Indonesia, FAO to strengthen fisheries and aquaculture cooperation," available online at http:// www.fao.org/news/story/en/item/176776/icode/ (Accessed on September 18, 2013)

[6] Department of Agriculture, Bureau of Fisheries and Aquatic Resources, *Philippine Fisheries Profile 2011*, p. 19. available online at http://www.bfar.da.gov.ph/pages/aboutus/maintabs/publications/pdf%20files /2011% 20Fisheries%20Profile%20%28Final%29%20%284%29.pdf (Accessed on September 22, 2013)

[7] In the Celebes Sea alone, fisheries resources provide support to nearly 20 million people who live in the surrounding sea. M.A. Palma and M. Tsamenyi, C*ase Study on the Impacts of Illegal, Unreported and Unregulated (IUU) Fishing in the Sulawesi Sea*, April 2008, APEC#208-FS-01.1, p. 9.

distribution profile of shared fish stocks in the region. The paper also discusses international legal and policy framework embracing the principle of cooperative management for shared fishery stocks. It is, however, beyond the scope of this paper to explore the effectiveness of these cooperative management measures in terms of achieving their objectives. Finally, the paper offers recommendations of how regional littoral States can address the institutional and policy challenges of managing shared fisheries resources in a more effective, holistic and coordinated manner.

Transboundary Shared Fish Stocks in Southeast Asia: A Profile

Before one proceed with the detailed discussion on transboundary shared fish stocks, it is essential to understand first the terminology of "shared stocks," as well as biological and migratory profile of the stocks, particularly from the perspective of Southeast Asia.

Definition

Albeit there is no precise, universally accepted terminology and category of shared fish stocks, a number of writers do provide terminology of the stocks. Martosubroto (1998), for example, referred "shared stocks" in the context of South China Sea as of those transboundary stocks shared by countries on a bilateral or multilateral basis.[8] Caddy (1997), on the other hand, defines "shared stocks" as followed:

> *...a group of commercially exploitable organisms, distributed over, or migrating across, the maritime boundary between two or more national jurisdictions, or the maritime boundary of a national jurisdiction and the adjacent high seas, whose exploitation can only be managed effectively by cooperation between the States concerned...*[9]

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[8] Purwito Martosubroto, "Toward Management of Shared Stocks in the South Chian Sea region," in Anon. *Report of the Third Regional Workshop on Shared Stocks in the South China Sea Area, Kuala Terengganu, Malaysia, 6-8 October, 1997* (Kuala Terengganu: MFRDMD-SEAFDEC, 1998), p. 154; He, however, further elaborated that the term "shared stocks" can also be implied to two different types of fisheries utilizing different fishing gears/methods and exploiting similar stock of fish within a single national jurisdiction of a large country (e.g. Indonesia and China).

[9] J.F. Caddy, "Establishing a Consultative Mechanism or Arrangement for Managing Shared Stocks Within the Jurisdiction of Contiguous States," in D. Hancock (ed.), *Taking Stock: Defining and Managing Shared Resources,* Australian Society for Fish Biology and Aquatic Resource Management Association of Australasia Joint Workshop Proceedings, Darwin, NT,

Different categories of shared stocks can also be traced to several published reports and technical papers issued by the Food and Agriculture of the United Nations (FAO). One particular FAO fisheries technical paper provides such categorization:

(i)   fish resources crossing the exclusive economic zone (EEZ) boundary of one coastal State into the EEZ(s) of one, or more, other coastal States- transboundary stocks;

(ii)   highly migratory species, as set forth in Annex 1of the 1982 UN Convention on the Law of the Se (UN, 1982), consisting primarily of the major tuna species (being highly migratory in nature, the resources are to be found , both within the coastal State EEZ, and the adjacent high seas);

(iii)   all other fish stocks (with the exception of anadromous/catadromous stocks) that are to be found, both within the coastal State EEZ and the adjacent high seas - straddling stocks; and

(iv)   fish stocks to be found exclusively in the high seas- discrete high seas fish stocks.[10]

A further note of caution should be added that certain fish stocks can be interchangeably classified to different categories of stocks mentioned above.[11]   As such, the absent of precise categorization and definitive, universally accepted terminology of shared stocks has frequently created confusion.[12] For the purpose of this paper, it only deals with "transboundary shared fishery stocks" -

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15-16 June 1997 (Sydney: Australian Society for Fish Biology, 1997), pp. 81-123, as cited from Gordon Munro, Annick Van Houtte, and Rolf Willmann, "The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects," *FAO Fisheries Technical Paper No. 465* (Rome: FAO, 2004), p. 3.

[10] Quoted from Munro *et al*, "The Conservation and Management of Shared Fish Stocks," p. 3.
[11] *Ibid.*
[12] For further readings on this interpretation and classification problem, see Annick Van Houtte, "Legal Aspects in the Management of Shared Fish Stocks- A Review,' in FAO, Papers presented at the Norway- FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, *FAO Fisheries Report No. 695, Suppl.* (Rome: FAO, 2003), pp. 30-31.

similar stocks or stocks of associated species occurring within two or more territorial seas/EEZs of coastal States.[13]

Biological Feature and Spatial Distribution

Fisheries resources inhabiting the tropical waters of Southeast Asia are typically complex and highly diversified in terms of their species composition; with demersal and pelagic fishes represent the most dominant species of transboundary shared stocks in the region.[14] Although being less mobile than pelagic species and commonly found in relatively shallow coastal waters, demersal species can be categorized as "shared stocks" by virtue of their geographical distribution that extends across boundaries of several national jurisdictional waters. Specifically, FAO/SEAFDEC report implied that the stocks of demersal fishes should be categorized as transboundary shared stocks if their fishing grounds encompass the borders of two EEZs claimed by different littoral States.[15] Notable examples of such species or species group of demersal include snappers (*Lutjanus* spp.), threadfin breams (*Nemipterus* spp.), groupers (*Epinephalus* spp.), and croakers (*Pennahia* spp.). Trawl nets, stationary traps and lift nets are among the most frequently deployed fishing gears to capture these species.

Transboundary shared fish stocks can also be divided into a variety of pelagic species. Based on catch statistical data, they encompass sizable number of small pelagic species caught in the regional waters. Among the most common species include mackerels (*Rastrelliger* spp.), round scads (*Decapterus* spp.), anchovies (*Engraulidae* spp.), Spanish mackerels (*Scomberomarus* spp.), and hardtail scads (*Megalaspis cordyla* spp.). Other dominant pelagic species under the category of transboundary shared stocks are tuna species. These species are mostly comprised of neritic tunas that

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[13] This category of shared stocks is similar to the one stipulated in Article 63(1) of the 1982 LOSC. However, Annex 1 of the Convention provides a list of species categorised as "highly migratory", which includes, among others, marlins, swordfish, particular varieties of tuna, as well as cetacean and oceanic shark species. Based on scientific observation, the migratory range of these species is not merely confined within the EEZ of one State. They are either distributed across the EEZ of several States and the adjacent high seas (straddling stocks), or migrated throughout a vast distance of oceans and seas, within and beyond national jurisdictions (highly migratory stocks).

[14] For further discussion on multi-species fisheries in the region, see D. Pauly, *Theory and Management of Tropical* Multispecies *Stocks: A Review, with Emphasis on the Southeast Asian Demersal* Fisheries (Manila: ICLARM, 1979).

[15] FAO/SEAFDEC, "Report of the FAO/SEAFDEC Workshop on Shared Stocks in Southeast Asia, Bangkok, 18-22 February 1985," *FAO Fisheries Report No. 337* (Rome: FAO, 1985), p. 12.

include longtail tuna (*Thunnus tonggol* spp.), frigate tuna (*Auxis thazard* spp.), bullet tuna (*Auxis rochei* spp.), and kawakawa (*Euthynnus affinis* spp.).[16]   Depending on their locations and weathers, these shared pelagic species are predominantly caught by purse seines, hook and lines and gillnets.

As pointed out earlier, the geographical range of transboundary shared fish stocks of Southeast Asia extends across the boundaries between two or more maritime jurisdictional zones (e.g. exclusive economic zone (EEZ), archipelagic waters, and territorial sea).   Given their migratory characteristic, shared fish stocks, as rightly affirmed by Williams (2007), "show no regards for national borders."[17] The distribution corridors of demersal stocks in the region overlap several national maritime jurisdictional zones (e.g. territorial seas, EEZs) claimed by two or more States in the Gulf of Thailand, Andaman Sea, Northwest of Borneo, Gulf of Tonkin, and Sunda Shelf.   Shrimp stocks such as penaeid shrimps can be found in the coastal waters between the maritime boundaries of Thailand and Malaysia in the northern corridor of the Malacca Straits, and between Cambodia and Thailand in the northern Gulf of Thailand.[18]

For shared pelagic stocks, their distribution range in the regional waters can be divided into several corridors, with each corridor overlaps national maritime jurisdictional areas of more than one single State.[19]   Hardtail scads and round scads are found between the EEZ waters of Vietnam and Thailand in the Gulf of Tonkin. The migration route of these species also extends to the territorial seas of Malaysia and Thailand in the Malacca Straits, and Thailand and Vietnam EEZs in the Gulf of Thailand.   Mackerels are shared in the EEZ waters of the Malacca Straits (Malaysia, Indonesia and Thailand), Gulf of Thailand to Singapore (Thailand and Malaysia), Western and Northern corridor of Borneo Island (Malaysia and The Philippines), Gulf of Tonkin (Vietnam and Thailand), and Andaman Sea (Thailand and Malaysia).   The distribution range of round scads covers the Gulf of Tonkin, the Malacca Straits, Gulf of Thailand to Sunda Shelf, and eastern South China Sea.[20]

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[16] *Ibid.*

[17] Meryl J. Williams, *Enmeshed: Australia and Southeast Asia's Fisheries* (Double Bay, New South Wales: Lowy Institute for International Policy, 2007), p. 3.

[18] Martosubroto, "Toward Management of Shared Stocks," p. 156.

[19] Maps indicating the migratory pattern of selected shared pelagic stocks in Southeast Asian waters can be found in the work by Hiroyuki Yanagawa, "Status of Fisheries and Stocks of Small Pelagic Fishes in the South China Sea Area," in Anon, "Report of Third Regional Workshop," specifically, pp. 194-202.

[20] FAO/SEAFDEC, "FAO Fisheries Report No. 337," p. 6.

Collaborative Management of Shared Fishery Stocks: Beyond Westphalian Individual State-Centric Approach in Marine Resource Governance

The fundamental tenet of the Westphalian concept of State sovereignty lies on the spatial division of national jurisdiction defined by demarcation lines or boundaries. Dictated by the limits of its jurisdictions, rights and authorities, a State has the discretion (and flexibility) in determining how marine natural resources, living and non-living in the seas adjoining its coast are to be developed and managed. This Westphalian State-centric approach to marine resource governance is ostensibly evident in the modern time with the current partition of oceanic frontiers into distinct zones of national jurisdiction extending seaward up to a distance of 200-nautical miles (nm) from the territorial sea baseline.[21] Legally sanctioned by the 1982 United Nations Convention on the Law of the Sea (LOSC), States are accorded with the rights and duties within each maritime zone to protect and manage fisheries resources and their surrounding marine environment.[22] Accordingly, this jurisdictional delineation of maritime space dictates the manner in which coastal and fishing States formulate and implement their fisheries policies and regulations.

The expansion of national jurisdictional claims, in which Alexander (1983) referred to as the "ocean enclosure movement" and "creeping jurisdiction,"[23] could well serve the national interests of

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[21] S. M. Garcia and M. Hayashi, "Division of the Oceans and Ecosystem Management: A Contrastive Spatial Evolution of Marine Fisheries Governance," *Ocean & Coastal Management* 43(2000), p. 468.

[22] González-Laxe further elucidates this relationship between functional jurisdictional areas and the inherent rights and duties of States, especially when dealing with access to fish stocks. In his view,

…access to resources is regulated by exclusivity regimes, which define the rights and duties of people and producers and guarantee the resources (property) and the capacities (fishing rights), and it is also regulated by allocation mechanisms and the transferability of fishing rights, as well as by those structures responsible for the implementation of regulations.

Fernando González-Laxe, "Territorialisation Processes in Fisheries Management," *Ocean & Coastal Management* 51(2008), p. 265.

[23] Lewis M. Alexander, "The Ocean Enclosure Movement: Inventory and Prospect," *San Diego Law Review* 20(1983), p. 561; For a list of alternative expressions used to refer the movement of coastal States' extended maritime jurisdictional claims, *see* Niquole Ester, *Impact of Language: Creeping Jurisdiction and its Challenges to the Equal Implementation of the Law of the Sea Convention*, available online at http://www.gmat.unsw.edu.au/ablos/ABLOS08Folder/Session5-Paper1-Esters.pdf (Accessed January 18, 2011).

coastal States, allowing them to secure exclusive control over the access and management of fisheries resources. Undeniably, this proliferation of extended maritime claims in the post- Second World War period fulfilled their economic interest of securing the enormous wealth of ocean's resources for future development.[24] Not only it has undoubtedly transformed the extent of State to regulate the access of marine fishery resources worldwide, but also left a far-reaching influence on the contemporary legal regime for the conservation of these resources, including transboundary shared fish stocks in Southeast Asia.[25]

No other maritime jurisdictional zone recognised by the LOSC has changed international legal and policy framework for marine fisheries management more than the EEZ regime. The universal claim to this extended zone radically transformed the distribution pattern of global marine capture fisheries, with substantial portions of the world's exploitable marine fisheries resources now fall under the exclusive control of coastal States. By virtue of the EEZ regime, coastal States enjoy socio-economic gains entailed from the preferential rights and greater access to the fisheries resources created by the regime.[26] States also have the sovereign rights and considerable discretion in determining the manner in which fisheries resources are to be utilized and developed, but fell short of having the right to overexploit or deplete them.[27] Unless proper management and regulatory measures are implemented, fisheries resources are not immune from progressive depletion, overexploitation or even population collapse. Accordingly, regardless of whether the exploitation of marine living resources has already taken place within the EEZs, the considerable benefits obtained by coastal States from such exploitation are being balanced by their regulatory and enforcement responsibility to protect and conserve these resources.[28]

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[24] David W. Windley, "International Practice Regarding Traditional Fishing Privileges of Foreign Fishermen in Zones of Extended Maritime Jurisdiction," *American Journal of International Law* 63(1969), p. 490.

[25] Johnston asserts that the expansionistic movements of maritime claims, which preceded the convening of the Third United Nations Conference on the Law of the Sea (UNCLOS III) can be categorised into two kinds: (i) the extension of sovereignty claims; and (ii), specific claims to functional jurisdiction. The latter applies to the exclusive fisheries jurisdiction. Douglas M. Johnston, *The Theory and History of Ocean Boundary-Making* (Kingston: McGill-Queen's University Press, 1988), p. 287.

[26] See Part V, LOSC.

[27] *LOSC*, Art. 61(2).

[28] William R. Edeson, "A Brief Introduction to the Principal Provisions of the International Legal Regime Governing Fisheries in the EEZ," in Syma A. Ebbin, Alf Håkon Hoel and Are K. Sydnes (eds.), *A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources* (Dordrecht: Springer, 2005), p. 18; It appears that

To summarize, coastal States are not only direct beneficiaries but also regulators of fishing activities and marine living resources, including species of fish with a migratory range extending into the EEZs of other countries.[29]

In reality, however, the above fisheries management framework has not been able to fully achieve its objective due to the inherent weakness of the Convention's provisions, combined with the failure of States to effectively exercise their obligations of protecting fishery stocks effectively.[30] The extension of coastal States' EEZ jurisdiction in the vast offshore waters did not deliver the expected conservation benefits needed to address the problem of overfishing and environmental degradation.[31] Nor did the regime provide greater incentive for States to be more responsible in the way they utilized and managed fish stocks.[32]

Why Shared Fishery Stocks Need To Be Managed Through Collaborative Arrangement

The underlying weakness of LOSC's fisheries framework lies behind its emphasis on a zonal approach to manage marine fisheries.[33] As stated earlier, this particular approach failed to overcome the continuing deterioration of commercially important transboundary fisheries populations.[34] Its ineffectiveness is one that is intrinsically

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fisheries conservation objective of the LOSC not only extends to targeted fish species, but also the marine ecosystem and biological components supporting these species. See, for example, Article 61(4) of the Convention.

[29] Ellen Hey, "Global Fisheries Instruments Adopted in the Post-UNCLOS III Period," in Ellen Hey (ed.), *Developments in International Fisheries Law* (The Hague: Kluwer Law International, 1999), p. 22.

[30] According to Rayfuse, the jurisdictional framework embedded in the LOSC EEZ regime has proven to be an "inappropriate mechanism for the resolution of fisheries conservation and management issues." Rosemary Rayfuse, "The Interrelationship between the Global Instruments of International Fisheries Law," in Hey, "Developments in International Fisheries Law," p.111.

[31] John C. Matt, *Fishery and Resource Management in Southeast Asia* (Washington, D.C.: Resources for the Future, 1976), p. 49, cited in Phiphat Tangsubkul and Frances Lai Fung-Wai, "The New Law of the Sea and Development in Southeast Asia," *Asian Survey* 23(1983), p. 9.

[32] Even before the LOSC came into force in 1994, Pardo identified that the Convention's EEZ fisheries provisions had failed to encourage coastal States to adopt a more effective management and conservation approach of fisheries resources. Arvid Pardo, "The Convention on the Law of the Sea: A Preliminary Appraisal," *San Diego Law Review* 20(1983), p. 498.

[33] Yoshifumi Tanaka, *A Dual Approach to Ocean Governance: The Cases of Zonal and Integrated Management in International Law of the Sea*, Ashgate International Law Series (Surrey, England: Ashgate, 2008), p. 65.

[34] Lawrence Juda, "The 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks: A Critique," *Ocean Development & International Law* 28(1997), p. 148.

linked to the universal partition of oceans and seas under multiple, functional jurisdictional zones established under the Convention. The approach to manage fisheries resources within the spatial perimeter of States' jurisdictional zones disregards both the temporal and biological distribution of various species of fish, along with the ecological interaction between the fish stocks and their surrounding marine ecosystem.[35] Churchill and Lowe (1999) have observed that the Convention's EEZ regime on fisheries seems to "convey the impression that most of the fish stocks only confine themselves to the EEZ of a single State."[36] In reality, the boundary lines of EEZs in many parts of the world rarely coincide with the natural migratory boundaries of shared fish stocks.[37] Consequently, the poor institutional fit between the migratory nature of the stocks and the legal boundary set of maritime jurisdictional zones raises the question on the validity of the LOSC's zonal management approach as an effective regime for achieving the long-term conservation and sustainable utilization of transboundary shared fish stocks.[38] A new approach in resource management is needed, one which involved joint efforts of all the States sharing the stocks.

The migratory nature of these transboundary shared stocks has made it critical for the affected States bordering regional seas of Southeast Asia to equally assume and exercise responsibility of managing the stocks in a sustainable, holistic manner. As can be recalled, it is impossible for a single State alone to implement effective and holistic management measures for these fisheries within its own national waters. [39] In some cases, it is much desirable for these shared aquatic resources to be managed and conserve in a coherence and consistent manner throughout their entire distribution range.[40]

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[35] According to Kirk, the Convention's disregard of the natural distribution of fisheries resources has created a "mismatch" of maritime jurisdictional zones and fisheries ecosystem. Elizabeth A. Kirk, "Maritime Zone and Ecosystem Approach: Mismatch?," *Review of European Community & International Environmental Law* (RECEIL) 8(1999), p. 69; In spite of this, the LOSC does have provisions that clearly recognise the transboundary nature of marine living resources, and hence urges some forms of cooperation between States when harvesting these particular resources. See Articles 63 to 67 of the Convention.

[36] R.R. Churchill, and A. V. Lowe, *The Law of the Sea*, 3rd Edition (Manchester: Manchester University Press, 1999), p. 294.

[37] Alf Håkon Hoel and Ingrid Kvalvik, "The Allocation of Scarce Natural Resources: The Case of Fisheries," *Marine Policy* 30(2006), p. 349.

[38] *Ibid*.

[39] Mohammad Zaki Ahmad, "The Evolution of International Fisheries Law and Policy Framework: A Paradigm Shift towards Responsible Fisheries," *Journal of International Studies* 7(2011), p. 57.

[40] Several commentators, however, have refuted the suggestion that it is compulsory, or desirable, for all shared fishery stocks to be subjected to cooperative management measures

Even if an individual State has adopted and enforced stringent conservation and regulatory measures for these shared stocks under its jurisdiction, there is always the possibility that these national initiatives would be hampered by ineffective conservation effort and uncontrolled fishing in the EEZ of other States.[41]   If there is incompatibility of conservation regime for shared fish stocks in one side of jurisdictional areas and with those on the other side of borders, Xue (2005) asserted that the risk of mismanagement and/or inequality could deprive the involving States from   gaining the full benefits from exploiting such stocks.[42]   This situation can also detrimentally affect the quality and quantity of shared species in the region waters. Subsequently, affected State needs to foster closer cooperation either directly with the States sharing the stocks or through regional fisheries management bodies.

The task of protecting shared fisheries stocks becomes even more daunting and challenging in many areas of regional seas due to jurisdictional uncertainty arising from overlapping maritime boundary and sovereignty claims. Many semi-enclosed seas in the region, such as the Spratly archipelagos of the South China Sea and the Celebes Sea have long been known to be the hotbed of longstanding maritime territorial and boundary disputes, with some   involving multiple claimant States.[43]   Nonetheless, political barrier emanating from such

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between, among states sharing same stocks. *See* J.A. Gulland, "Some problems of the management of shared stocks," *FAO Fisheries Technical .Paper No. 206* (Rome: FAO, 1980) available   online   at   http://www.fao.org/docrep/003/   X6854E/X6854e02.htm#ch2.2.2 (Accessed on September 30, 2013); see also Munro *et al*, "The Conservation and Management of Shared Fish Stocks," p. 4, cited from G. Munro, "The Management of Shared Fishery Resources under Extended Jurisdiction," *Marine Resource Economics* 3(1987), pp. 271-296.

[41] See Tansubkul and Fung-wai, "The New Law of the Sea and Development in Southeast Asia," p. 875.

[42] Guifang Xue, *China and International Fisheries Law and Policy* (Leiden/Boston: Martinus Nijhoff Publishers, 2005), p. 24.

[43] South China Sea is perhaps one of the maritime areas that hosted the most numbers of interstate disputes over maritime territorial claims and overlapping maritime jurisdiction. See Clive Schofield, "Maritime Cooperation in Contested Waters: Addressing Legal Challenges in East and Southeast Asian Waters" in Clive Schofield (ed.), *Maritime energy resources in Asia: Legal regimes and cooperation,* NBR Special Report No 37, February 2012 (Seattle, Washington: The National Bureau of Asian Research, 2012), p. 2; *see also* Nguyen, Dong Manh. "Settlement of Disputes under the 1982 United Nations Convention on the Law of the Sea: The Case of the South China Sea Dispute," New York: UN-Nippon Foundation Fellowship on the Law of the Sea, 2005; Christopher Chung, *The Spratly Islands Dispute: Decision Units and Domestic Politics*, Unpublished PhD Thesis, University of New South Wales - Australian Defence Force Academy, School of Humanities and Social Science, 2004; and Scott Snyder, *The South China Sea Dispute: Prospects for Preventive Diplomacy* August, 1996,   available   online   at http://www.usip.org/pubs/specialreports/early/snyder/South_China_Sea1.html (Accessed on September 27, 2013).

disputes should not be an ultimate excuse for the involving States from engaging in some forms of cooperative measures directed at reversing the on-going deteriorating condition of fisheries resources and vulnerable marine habitats in the region.

International Legal and Policy Framework for the Management Shared Fish Stocks

The principle of interstate cooperation in the management and conservation of marine fisheries, either directly with other State(s) or through regional organization, represents one of the cornerstones of responsible fisheries management. This particular principle is embodied in different range of multilateral treaties, non-binding instruments and resolutions. Mostly adopted under the purview of the FAO or the United Nations, some of the notable instruments include the LOSC in 1982,[44] 1992 Declaration of the International Conference on Responsible Fishing,[45] and the FAO Code of Conduct for Responsible Fisheries.[46] Additional set of voluntary instruments that made indirect reference to cooperative measures in fisheries resource protection and law enforcement are found in the four non-binding International Plans of Actions (IPOAs).[47] These instruments individually deal with specific issues in fisheries management that explicitly cover seabird by-catch, fishing capacity, shark management, and illegal, unreported and unregulated (IUU) fishing. Of these four instruments, IPOA-IUU and IPOA-Capacity are of most

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[44] Other instruments that made direct reference to the concept of fisheries management cooperation include Chapter 17 of Agenda 21, the 1992 Convention on Biological Diversity (CBD), the 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem (2001 Reykjavik Declaration), and the 2002 Plan of Implementation adopted by the Work Summit of Sustainable Development (WSSD-POI). David D. Doulman, "Coping with the Extended Vulnerability of Marine Ecosystems: Implementing the 1995 FAO Code of Conduct for Responsible Fisheries," *Social Science Information* 46(2007), p. 191; see also Kevern L. Cochrane and David J. Doulman, "The Rising Tide of Fisheries Instruments and the Struggle to Keep Afloat," *Philosophical Transactions of the Royal Society: Biological Sciences* 360(2005), pp. 77-94.

[45] Declaration of the International Conference on Responsible Fishing Cancun, Mexico, 6-8 May 1992 (*hereinafter* Cancun Declaration).

[46] FAO, *Code of Conduct for Responsible Fisheries*, *hereafter referred to as* FAO Code of Conduct or the Code. This voluntary instrument was adopted by consensus during the 28th Session of the FAO Committee on Fisheries (COFI), in Resolution No. 4, on October 31st 1995.

[47] These instruments are: the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), the International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity) and the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).

relevance in promoting State's engagement in interstate cooperation applicable to the conservation of transboundary shared stocks.

LOSC

Perhaps the closest reference to global legally-binding framework requiring States to cooperate in the conservation and development of shared fish stocks is found in the LOSC. The Convention apparently affirms the requirement for coastal States to pursue cooperative arrangement when dealing with the conservation of transboundary fish stocks shared between their EEZs. This is evident in Article 63(1).

> *Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.*

Furthermore, States bordering an enclosed or semi-enclosed sea are duty bound under Articles 123 of LOSC to cooperate on various areas relating to fisheries conservation and management. Albeit the same article does not provide explicit reference to any specify category of fish stocks, it does applies to all marine fisheries. Hence, one can assume that this legal provision covers transboundary shared stocks. For this reason, this provision can be directly applied to many Southeast Asian States bordering the regional semi-enclosed seas, such as the South China Sea and Celebes Sea. Within these vast expanse seas, the national EEZs of these States abound with those stocks. According to Article 123(a) of the Convention, coastal States have the specific duty to coordinate the management, conservation, exploration and exploitation of fisheries resources. The areas of coordination also include the protection and preservation of marine environment,[48] and scientific research policies.[49]

However, the LOSC fisheries framework evoked criticism for the ambiguous duties and obligation imposed upon signatory States in relation to fisheries management and conservation, including the

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[48] *LOSC*, Art. 123(b).
[49] *LOSC*, Art. 123(c). Under the same article, the relevant States shall establish appropriate joint programs of scientific research in the area.

obligation to establish cooperative fisheries management measures. The absence of substantive guidelines or specific operational mechanism, specifically those in Part V, that are applicable in managing and regulating shared stocks inhabiting the EEZs, is arguably one the major shortcomings of LOSC fisheries regime. Additionally, Article 63(1) requires States to cooperate directly or through appropriate sub-regional or regional organization, but falls short of imposing obligation on States to reach an agreement.[50] In the absence of such agreement, States arguably have greater flexibility to manage shared stocks in their respective EEZ, but may well lead to disparity in management standards and inequality in the allocation of resources throughout their entire migratory range.[51]

Non-Binding Fisheries-Related Instruments

Besides the LOSC, several non-binding fisheries-related instruments promote and encourage interstate cooperation directed to the conservation and management of fisheries resources, including transboundary shared stocks. With the exception of the FAO Code of Conduct, the following instruments - the 1992 Declaration of Cancun, IPOA-IUU and IPOA-Capacity do not contain explicit reference of the need for States to cooperate in the conservation and management of transboundary shared fishery stocks. They do, however, contain provisions that encourage States to cooperate in fisheries-related matters, which one can assume to be applicable to the conservation and protection of shared fishery stocks.

According to 1992 Declaration of Cancun, one the central elements of promoting responsible fisheries is for States to cultivate cooperation at international level. The recommended scope and activities of these cooperative fisheries management arrangement are varied. It includes fostering international cooperation and collaboration on matters relating to joint research, and facilitating the transfer and exchange of technological information on matters relating to fisheries.[52] Other suggested areas of cooperative arrangement that State can undertake include eliminating illegal fishing,[53] and providing financial support required to improve

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[50] Houtte, "Legal Aspects in the Management of Shared Fish Stocks," p. 31.
[51] This could have implications to the affected fishery stocks, making them vulnerable not only to ineffective management, but also unsustainable resource exploitation- conditions resulting from the lack of coordination between relevant States.
[52] *Cancun Declaration*, Para. 16.
[53] *Ibid*., at Para. 18.

surveillance and enforcement capacity in exercising their sovereign rights.[54]

The non-binding requirement for the littoral States to undertake cooperative measures in fisheries has also found its way in the FAO Code of Conduct. Consistent with the objective of the Code, States are encouraged to foster and support cooperation, either directly or through regional organization, in all matters pertaining to fisheries (Art. 2(e)). Such cooperation may involve neighboring States to facilitate the sustainable use of coastal resources and the conservation of the environment (Art. 10.3.1). Unlike the UN Fish Stocks, the scope of the requirement for interstate cooperation established under the Code are much broader, encompassing not only different types of fisheries (including inland fisheries) but also all categories of migratory fish species, such as shared stocks, straddling stocks and highly migratory fish stocks, and high seas fish stocks.[55] In achieving this, the level of cooperation is not restricted to bilateral arrangement involving States sharing the same stocks but rather expanded to sub-regional or regional fisheries organization or arrangement.[56] As endorsed by the Code, another of form of cooperative arrangements relevant for the protection of transboundary shared fish stocks is for the concerned States to ensure the compatibility of fisheries conservation and management measures in the EEZs and beyond their national jurisdiction.[57]

The FAO Code of Conduct contains reference to specific areas and activities of cooperation or coordination and with the assumption that all of which can be applicable towards achieving responsible management and conservation of shared fish stocks. Among the noticeable areas or activities referred in the Code are: fisheries research and data collection (Arts. 6.4, 7.3.4, and 12.7); compilation and exchanging of fishery-related and other supporting scientific data (Art. 7.4.6); dispute resolution over access to and management of fishery resources (Art. 6.15); development and application of technologies, materials and operational methods that minimize the loss of fishing gear and ghost fishing (Art. 8.4.6), development of selective fishing gear and methods (Art. 8.5.10); and research programs for fishing gear selectivity, and fishing methods and strategies (Art. 8.5.4). Other areas/activities involving States

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[54] *Cancun Declaration*, Para. 17.
[55] *FAO Code of Conduct*, Art. 7.1.3
[56] *Ibid.*, and Art. 7.1.5.
[57] *FAO Code of Conduct*, Art. 6.12. See also Art. 7.3.2 with regard to compatibility of management and conservation measures throughout the entire distribution range of the stocks.

include the establishment of mechanisms for cooperation and coordination among national authorities involved in planning, development, conservation and management of coastal areas (Arts. 10.3.3 and 8.4.1). This can cooperative initiative can be done, either at sub-regional or regional level.

IPOA-IUU has been developed within the framework of the FAO Code of Conduct. The measures outlined in the former do not deal directly with transboundary fish shared fish stocks *per se*, but rather specifically address numerous issues of IUU fishing. Even one should realize that irresponsible, destructive practices and behaviors of fishermen and fishing operators engaged in IUU fishing, nonetheless, if occurred in the EEZs may cause harmful effect in terms of jeopardizing the biological population of transboundary shared stocks. A closer examination on the text of IPOA-IUU shows the considerable important of State to cooperate and coordinate directly or through regional fisheries organization in combating this irresponsible fishing practice. A list of suggested activities or areas of cooperation can be found under the title: Cooperation between States. One critical area involving interstate cooperation in combating IUU fishing is the exchange and sharing of information and data (para. 51.2). Specifically, States should exchange and share information on the detailed profile of authorized fishing vessels (para. 28.2); fishing-related activities (para. 28.2) and vessels engaging in IUU Fishing (para. 80.4). Other than exchanging and sharing information on matters above, States are encouraged to share information that deal with law enforcement activities, specifically control, monitoring and surveillance (MCS) matters (para. 28.7). This include allow and enable their respective MCS practitioners or enforcement personnel to cooperate in the investigation of IUU fishing, and to this end States should collect and maintain data and information relating to such fishing (para. 28.3); and develop cooperative mechanisms that allow, *inter alia*, rapid responses to IUU fishing (para. 28.6). In sum, it appears that the provisions under the IPOA-IUU that promote interstate cooperation in fisheries management, surveillance and law enforcement attest the instrument's relevancy in contributing the development of the international normative and policy framework with the aim of ensuring long-term sustainability of fish stocks, including transboundary fish stocks, through fisheries cooperative arrangement.

Cooperative Arrangement for Transboundary Shared Fish Stocks in Southeast Asia

Varying degrees of bilateral and regional cooperative mechanisms and programs on fisheries-related matters are currently in place in Southeast Asia. Such joint initiatives, however, continue to be inadequate and less meaningful in achieving the long term goals of effective conservation and sustainable development of fish stocks shared across various States. In terms of implementation, cooperative fisheries management regime in the region is still confronted with many institutional and policy challenges. For this reason, the following actions are recommended for the regional littoral States to undertake in strengthening the existing cooperative measures:

Exchanging and Disseminating Information and Data

There is a need for regional littoral States sharing the same fish stocks to foster cooperation and collaboration in various fields of research activities, especially on marine fisheries resources and oceanography, and their ecosystem components. This cooperative arrangement should be broadened to include analysis, transferring, dissemination and exchange of information and data acquired from research activities.

In recent years, most of the regional partnerships directed toward the conservation and protection of shared fishery resources are centred upon the pivotal role played by regional intergovernmental advisory bodies, such as the Southeast Asian Fisheries Development Center (SEAFDEC) and Asia-Pacific Fisheries Commission (APFC). Perhaps the most successful and concrete regional research initiatives directed toward the conservation of such stocks are of those instigated under the purview of SEAFDEC. Based in Kuala Terengganu, Malaysia, it has taken the function of initiating, coordinating and implementing joint research projects and programs toward the conservation of commercially important fish stocks and endangered marine ecosystem and its habitat in the South China Sea and Andaman Sea.[58] The research focus of the organization are mainly on the population assessments of fish stocks and endangered aquatic species (e.g. marine turtle and sharks), health status of marine ecosystem and its habitat, and migratory pattern of selected small

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[58] SEAFDEC members comprised of Brunei Darussalam, Laos, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam, and Japan.

pelagic species.[59] Recent examples of research projects funded by the Japanese Trust Funds (JTF) program include the "Tagging Program for Economically Important Pelagic Species in the South China Sea and Andaman Sea,"[60] and "Research for Stock Enhancement of Sea Turtles in the Southeast Asian Region."[61]

Another important field of research initiatives set up by SEAFDEC is the development of selective, environmentally safe fishing gears. SEADEC, often through the expertise sharing and cooperation with its member countries, has successfully and tested a number of suitable types of 'turtle excluding devices' (TEDs) that could minimize incidental catch of marine turtles.[62] At national level, Malaysia and Thailand have individually conducted experimental trial on these TEDs to test their suitability and efficiency for their respective shrimp fishing trawler fleet, without significantly reducing catch rate or increasing fuel consumption of fishing operation.[63]

Notwithstanding the existence of coordinated research programs in marine environment and fisheries, conspicuous missing is the available information on the latest knowledge and trend on the biological and ecological parameters of certain transboundary shared stocks. Reliable timely and accurate information on marine fisheries and biodiversity within the regional seas - fundamental for policy

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[59] Chee Phaik Ean, "Tuna Fisheries Interactions in Malaysia," in R.S. Shomura, J. Majkowski, and R.F. Harman (eds.), "Status of Interactions of Pacific Tuna Fisheries in 1995, Proceedings of the Second FAO Expert Consultation Interactions of Pacific Tuna Fisheries, Shimizu, Japan, 23-31 January 1995," *FAO Fisheries Technical Paper No. 365* (Rome: FAO, 1996), pp. 251-259.

[60] The "Tagging Program for Economically Important Pelagic Species in the South China Sea and Andaman Sea" was a research project initiated in 2007 under the Japanese Trust Funds II (JTF II) program in collaboration with SEAFDEC-TD. The principal objective of the project was to acquire ecological information on four commercially important pelagic fish species in the South China Sea and Andaman Sea - Indian mackerel, short mackerel, Japanese scads and short fin scads. Syed Abdullah Syed Abdul Kadir and Ku Kassim Ku Yaacob (eds.), *SEAFDEC-MFRDMD/DPPSPM Highlights 2007* (Chendering: MFRDMD, 2007), pp. 5-6.

[61] This program formed part of the Japanese Trust Fund IV (JTF IV) Program which was undertaken between 2004 and 2009. This program was composed of three major areas, namely, tagging and satellite tracking telemetry, DNA studies and the interaction between fisheries and sea turtles. Detailed discussion on the program is offered in the work by Syed Abdullah bin Syed Abdul Kadir and Osamu Abe (eds.), *Report of Regional Core Expert Group Meeting on Research for Stock Enhancement of Sea Turtles (Japanese Trust Fund IV Program)* (Chendering: SEAFDEC-MFRDMD, 2010).

[62] K.I. Matics, "Measures for Enhancing Marine Fisheries Stock in Southeast Asia," *Ocean & Coastal Management* 34(1997), pp. 243.

[63] Bundit Chokesanguan, "Implementation of Turtle Excluder Devices in Southeast Asia," in FAO, *SEAFDEC-FAO Workshop on Assessing the Relative Importance of Sea Turtle Mortality Due to Fisheries in Southeast Asia. 19-23 March 2007, Bangkok, Thailand* (Bangkok: FAO, 2007), available online at http://td.seafdec.org/knowledge/document/Fishery%20Technology/Workshop_IMPLEMENTATION%20OF%20THE%20TURTLE%20EXCLUDER%20DEVICES.pdf (Accessed on October 13, 2013).

deliberation and for the sustainable management and conservation of fish stocks and fisheries ecosystem- are largely inadequate, if not unavailable.[64]   And yet, the governments and stakeholder communities have no choice but to rely heavily on this questionable data as part of their policy planning and decision-making process. Of varied reasons attributing to this problem, marine scientific research is a difficult, time consuming and costly exercise.[65] Confronted with limited financial, technical or human capacity, it is indeed a daunting task for many developing littoral States in the region to individually conduct marine scientific research on tropical marine fisheries and ecosystems, as well as studies on oceanographic and climatic variations affecting regional fisheries.[66]

One of the key challenges hampering the attainment sustainable management of shared fish stocks in the region is the questionable catch statistical database in each individual State. A significant barrier in determining accurate sustainable harvesting limits for specific species groups of shared stocks in the regional water can be in part explained by the inefficient catch reporting and capacity assessment mechanism at national level.[67] This problem is aggravated by the lack of financial and human capacity which is a prerequisite to monitor and compile fishery landings effectively. Another obstacle is the unavailability of accurate information and data of the actual amount of shared fish stocks and species composition caught by both local and foreign fishing fleets in national waters. This deficiency includes the exact quantity of catches unloaded in the latter home countries.[68]   Compounding this problem is the difficulty of

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[64] See for example, David J. Doulman, "Coping with the Extended Vulnerability of Marine Ecosystems: Implementing the 1995 FAO Code of Conduct for Responsible Fisheries," *Social Science Information* 46(2007), p. 204.

[65] Williams, "Enmeshed: Australia and Southeast Asia's Fisheries," p. 50.

[66] Mohammad Ferdous Alam, Ishak Haji Omar and Dale Squires, "Sustainable Fisheries Development in the Tropics: Trawlers and Licence Limitation in Malaysia," *Applied Economics* 24 (2002), p. 336.

[67] In the context of Indonesia's dispersed multi-gear and multispecies fisheries, for example, statistics on catch rates are very difficult to collect given the sampling system for collecting fisheries statistics is outdated. See Peter J. Mous, J. S. Pet, Z. Arifin, R. Djohani, M. V. Erdmann, A. Halim, M. Knight, L. Pet-Soede, and G. Wiadnya, "Policy Needs to Improve Marine Capture Fisheries Management and to Define a Role for Marine Protected Areas in Indonesia," *Fisheries Management and Ecology* 12(2005), p. 262.

[68] The problem of underreported catches for statistical purposes is more acute on pelagic stocks of longtail tuna species, which are characterized by their migratory nature inhabiting several EEZs of countries bordering the South China Sea. See T. Yonemori, H. Yanagawa and Lui Yean Pong, "Interactions of Longtail Tuna Fisheries in the Western South China Sea," in Richard S. Shomura, JacekMajkowski, and Robert F. Harman (eds.), Status of Interactions of Pacific Tuna Fisheries in 1995, Proceedings of the Second FAO Expert Consultation Interactions of Pacific Tuna Fisheries, Shimizu, Japan, 23-31 January 1995, *FAO Fisheries Technical Paper No. 365* (Rome: FAO, 1996).

regional fisheries manager to trace the actual catch efforts by fishing vessels engaged in unauthorized fishing activities, namely IUU fishing, in the regional waters.[69]

Information collected independently by, and found in the national inventory of regional States are generally lacking in terms of their comprehensiveness.[70]   Even if the inventory exists, the challenge lies on the difficulty of other interested parties to access it.[71] This in turn has led to a state of affair where fisheries managers and policymakers unable to make informed decision in establishing a sound fisheries development policy and responsible fisheries management regime within their own national EEZ. Because of inadequacy, unreliability and inaccuracy of the biological/ecological information and fisheries statistical data, some coastal States have in the past delayed and even failed to establish effective and coordinated regional cooperation in fisheries management.[72]

To overcome the above problems, the concerned States need to consider of establishing   and strengthening cooperative mechanism designed to facilitate the exchange of information and data on fisheries among the interested parties, This approach should not only focus on integrated and systematic collection and dissemination of data relating to both shared and transboundary fish species, but also the analysis and interpretation the data. On the whole, the quality and quantity of scientific data and information on fisheries science and technology affecting transboundary shared stocks can only be enhanced through joint partnership with all parties sharing and harvesting these stocks.

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[69] See Divya A. Varkey, Cameron H. Ainsworth, Tony J. Pitcher, Yohanis Goram, and Rashid Sumaila, "Illegal, unreported and unregulated fisheries catch in Raja Ampat Regency, Eastern Indonesia," *Marine Policy* 34(2010), p. 228; and N. Willoughby, D. Monintja, M. Badrudin, "Do fisheries statistics give the full picture? Indonesia's non-recorded fish problems," in Anon., *Report of the regional workshop on the precautionary approach to fishery management. 25–28 February, 1997, Medan Indonesia*. BOPB/REP/82 (Chennai, India: BOBP, 1999), pp. 163–172.

[70] Pirochana Saikliang and Veera Boonragsa, "Pelagic Fisheries and Resources in Thai Waters," Annex 10, in *Report the Third Regional Workshop on Shared Stocks in the South China Sea Area*, Kuala Terengganu, Malaysia, 6-8 October 1997 (Kuala Terengganu: MFRDMD-SEAFDEC: 1998), p. 135.

[71] It is difficult for the interested parties to access the latest information pertaining to IUU fishing and fishing capacity due to two reason: (i). Much of the information is restricted by the country's Ministries; and (ii). Neither of the information has been often published in media nor widely available. Morgan *et. al*., "Fishing Capacity Management and IUU Fishing in Asia," p. 3.

[72] Williams, "Enmeshed: Australia and Southeast Asia's Fisheries," p. 50

Enhancing Stakeholders' Participation and Awareness

Another recommendation to promote sustainable development of transboundary shared fishery resources is through enhancing the active participation of stakeholder communities during the process of fisheries management planning and implementation. Public fisheries administrators, marine scientists, policy makers, vessel owners and fishermen exemplify these communities. Whilst centralized government intervention in the conservation and management process of tropical multi-fisheries and multi-gear fisheries is widely seen as a norm, community-based and collaborative fisheries management approaches offer an alternative strategy for the relevant littoral States in building and enhancing stewardship at local community level in fisheries resource management.

The importance of community-based and collaborative fisheries management regime to promote sustainable and ecological responsible management of fisheries is increasingly recognized among the littoral States of different fishing regions. This is evident in Southeast Asia, with a number of community-based fisheries management initiatives in Indonesia and the Philippines have been proven effective in achieving their intended objectives.[73] Indonesia, in particular, recognizes the important value of community-oriented and participatory fisheries management approaches in dealing with the complexity associated with the country's social, economic, ecological, local institutional and cultural diversity.[74]

Nonetheless, discrepancy in State practices regarding stakeholders' participation in marine fisheries resources management is still glaring in Southeast Asia region, a condition partly influenced by different government systems. The decentralization of government structure in Indonesia and the Philippines enables the establishment of a relatively a well-advance community-based fisheries management regime. In contrast, Malaysia, Vietnam and Brunei are among the

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[73] See, for example, the works by Arif Satria and Yoshiaki Matsuda, "Decentralization of fisheries management in Indonesia," *Marine Policy* 28(2004), pp. 437-450, in the context community-based fisheries management regime in Indonesia; and for the Philippines, *see* Robert S Pomeroy and Melvin B Carlos, "Community-Based Coastal Resource Management in the Philippines: A Review and Evaluation of Programs and Projects, 1984-1994," *Marine Policy* 21(1997), pp. 445-464; and David N. Brown and Robert S Pomeroy, "Co-Management of Caribbean Community (CARICOM) Fisheries," *Marine Policy* 23(1999), pp. 549-570; see also FAO, "Fisheries Country Profile- The Philippines," available online at http://www.fao.org/fi/oldsite/FCP/en/phl/profile.htm (Accessed on October 20, 2013).

[74] This argument is particularly relevance in the early years of the country's post-*Reformasi* era of the late 1990s. Hendra Yusran Siry, "Decentralized Coastal Zone Management in Malaysia and Indonesia: A Comparative Perspective," *Coastal Management* 34(2006), p. 277.

regional countries adopting top-down centralized form of governance in fisheries. Under this centralist administrative approach, the decision-making power is placed on the hand of state-based bureaucracies. There is, however, a noticeable trend whereby various selected stakeholders have been given an increased opportunity to hear and provide inputs prior a decision is made in relations to fisheries governance and ecosystem protection. Despite the different forms of governance system, coupled with consideration of benefit gains from community-based and collaborative fisheries management approach, all littoral States sharing the same fishery stocks should be committed to ensure their respective local stakeholder communities are to be fully integrated into decision-making and implementing functions of fisheries management.

There are several steps for coastal States to undertake in promoting community-based and management approach in local fisheries governance. Introducing transparent and cooperative arrangement which allows participation of relevant stakeholders when formulating fisheries management strategies is one of the ways. Sissenwine and Mace (2003) are of view that "stakeholders need to be given opportunity to participate in the decision-making process and they need to be able to understand the basis for [their] decisions."[75] This can be done if a State set up a coordinated framework to facilitate effective consultation among multiple stakeholders from various fields.[76] Through this consultative mechanism, a well-informed stakeholders and fishing communities will likely give their thrust and cooperation in implementing the agreed fisheries management and regulatory measures. This can be accomplished by explaining to them the basis and purpose of such measures in various platforms of public hearings and meetings. [77] This approach should not be confined solely to public hearing but should include follow up action by regularly informing the stakeholder communities of any development or progress of fisheries policy and regulation, which directly and indirectly could affect their livelihood.[78] Hence, it is

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[75] For detailed discussion on EAF, see Michael P. Sissenwine and Pamela M. Mace, "Governance for Responsible Fisheries: An Ecosystem Approach," in Michael Sinclair and Grimur Valdimarsson (eds.), *Responsible Fisheries in Marine Ecosystem* (Rome and Cambridge: FAO and Cabi Publishing, 2003), pp. 363-404.

[76] *Malaysia NPOA-Sharks*, p. 50.

[77] According to Article 62(4) of the LOSC, coastal State is obliged to give due notices of conservation and management laws and regulations in the EEZ.

[78] Gerd Winter, "Towards a Legal Clinic for Fisheries Management," in Gerd Winter (ed.), *Towards Sustainable Fisheries Law: A Comparative Analysis* (Gland, Switzerland: IUCN, 2009), p. 336, cited from D. Wilson, and S. Jentoft, "Structure, Agency and Embeddedness:

necessary for States to be transparent in the implementation of the above measures, giving due publicity of those measures and ensure that laws, regulations and other rules governing their implementation are effectively disseminated among the affected stakeholders of the fishery industry.

Moreover, littoral States should undertake measures to enhance the awareness of fishing communities and relevant stakeholders on the needs and benefits derived from conducting responsible fishing practices. In the context of protecting fragile marine ecosystem and fisheries habitats, local awareness and understanding of fishermen on the detrimental impacts of illegal, destructive fishing practices is essential. One of the key approaches is for State placing particular attention on the immediate and long-term impacts of socio-economic benefits that local fishing community would gain if they adopted certain fisheries conservation and regulatory measures.[79] Such measures, as noticeably critical in ensuring resources sustainability and marine ecosystem integrity in Southeast Asian seas, include the mandatory use of environmentally safe fishing gears (e.g. TEDs and maximum size nets). Accomplishing this would require States to embark on a wide array of government initiatives, ranging from community education and information campaign, seminars, workshops, to outreach programs.[80] Through these initiatives, regular exchange of information between the stakeholders and policy planners would expose and educate the former to the alternative environmentally safe fishing method, subsequently raises their awareness on the adverse impact of destructive fishing activities. More importantly, these initiatives would serve as an avenue for exchanging ideas and discussion between the government and stakeholders. And to a certain extent, it provides regional government a better understanding of problems and issues confronting the stakeholders. This exchange of information in turn affords fisheries management planners with the information necessary to make well-informed decisions in fisheries resource

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Sociological Approaches to Fisheries Management Institutions," D. Symes, (ed.) *Alternative Management Systems for Fisheries* (Oxford, UK: Blackwell,1999), pp. 63-72.

[79] This argument is reaffirmed by Capistrano: "Any management mechanism for fisheries resources needs to acknowledge the importance of incentives for cooperation and individual self-interest, as well as balancing the claims of multiple users." Robert Charles G. Capistrano, *Indigenous Peoples, Their Livelihoods and Fishery Rights in Canada and the Philippines: Paradoxes, Perspectives and Lesson Learned*, The United Nations-Nippon Foundation Fellowship Programme 2009 -2010, Division for Ocean Affairs and the Law of The Sea, Office of Legal Affairs, The United Nations, New York, 2010, p. 83.

[80] *FAO Code of Conduct*, Art. 6.16.

management, and importantly, formulating appropriate and cost-effective solution to the aforementioned problems.

Relevant agencies and ministries of regional littoral States can play a crucial role in enhancing human resource capacity among the multiple stakeholders of various fields. Attaining this objective would require littoral States to provide both general and technical advisory and consultancy services to relevant stakeholder, which in turn create a coordinated framework to facilitate effective consultation among the stakeholders. States, with the collaboration with other local and regional research centers, government agencies and universities, can organize seminars, workshops, lectures, and training programs targeting both local and foreign stakeholders. It is anticipated that through these activities, a larger pool of competent, and knowledgeable local administrative personnel can be developed, along with an increased number of qualified researchers and scientists with strong technical expertise in the areas of marine aquatic resources, fish stocks assessment, biodiversity, marine ecology, oceanography, and aquaculture technology.

Ecosystem Approach to Fisheries Management

One of the recommended measures to effectively manage transboundary shared fishery stocks is through the adoption of ecosystem approach to fisheries management (EAF) in regional cooperative measures.[81] It is desirable for transboundary shared fishery stock to be managed over their entire area of biological distribution, which in the context of Southeast Asia, covering not only different areas of national jurisdiction but also a myriad and unique marine ecosystem and habitats. Accordingly, given the close interactions and interdependency between shared fishery stocks and associated ecosystem, the destruction of fragile fisheries habitats and loss of biodiversity would likely have detrimental impact on the overall health of stocks concerned. For this reason, the principle of EAF entails cooperation among relevant governments, and regional fisheries and environment organizations to conserve, protect and restore the health and integrity of the regional ecosystem.[82] This

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[81] The fundamental objective of the EAF principle lies on accommodating and reconciling different demands and interests (or values) of stakeholders, such as fishing community, fisheries industry and NGOs. Its scope of objective also extends to maintaining, protecting and restoring the health and integrity of marine ecosystem and its habitats, ensuring their continued functions of providing services and goods for human beings. *See* N. Gopinath and S.S. Puvanesuri, "Marine Capture Fisheries," *Aquatic Ecosystem Health & Management* 9(2006), p. 216.

[82] Principle 7 of Rio Declaration entitled "State Cooperation to Protect Ecosystem".

collaborative approach is critical given that biological and physical components of ecosystems in the region, as previously pointed out, typically extend beyond the jurisdictional boundary of a single State. Moreover, EAF has generally been perceived to be more efficient and effective in addressing environmental problems of a transboundary nature than the initiatives taken by individual States alone. This signifies a departure from the traditional species-centric management approach.[83] Nevertheless, the EAF is not envisioned as a revolutionary approach deviating from the conventional fisheries management regime.[84] It is rather seen as an approach embracing a more integrated and holistic way of managing resources without disregarding fragile fisheries environment and its habitats.[85]

    In giving effect to the EAF, littoral States sharing the same fishery stocks need to implement a number of measures. States should adopt fisheries conservation and management measures with the aim of not only ensuring the long-term sustainability of fish stocks but also protecting and maintaining marine aquatic ecosystem within which the stocks live. The LOSC, in particular, accords special protection to marine ecosystem and its components, including different groups of fish species (i.e. target or non-target) and fragile habitats. In line with this obligation, coastal States must take into consideration the dynamic interaction and interdependence between fish stocks and marine ecosystem when deciding the appropriate conservation measures to prevent overfishing in the EEZ.[86]

    In addition, EAF entails coastal States to ensure the marine aquatic ecosystem and its habitats are subject to protection against the harmful impact of human activities.[87] In giving effect to this principle, it may be recalled that international fisheries instruments have made it clear that States must establish appropriate measures for prohibiting the use of poison (e.g. cyanide fishing), dynamite (e.g. fish bombing)

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[83] Mohammad Zaki Ahmad, "International Legal and Normative Framework for Responsible Fisheries, with Special Reference to Malaysia's Offshore EEZ Fisheries Management Regime," Unpublished PhD Thesis, Australian National Centre for Ocean Resources and Security (ANCORS), University of Wollongong, Australia, 2011, p. iii.

[84] M. Sinclair, R. Arnason, J. Csirke, Z. Karnicki, J. Sigurjonsson, H. Rune Skjoldal, G. Valdimarsson, "Responsible Fisheries in the Marine Ecosystem, Conference Report," *Fisheries Research* 58(2002), p. 264.

[85] FAO, "Putting into Practice the Ecosystem Approach to Fisheries" (Rome: FAO, 2005), p. 4.

[86] LOSC, Art. 61(3).

[87] This general principle emphasises the need for coastal States to protect and rehabilitate all critical fisheries habitats within marine ecosystems, including reefs, nursery and swamping areas, from the adverse impact of fishing activities. See *FAO Code of Conduct*, Art. 6.8; See also *LOSC*, Arts. 62 and 12.10 on the requirement for coastal States to reduce the adverse impact of fishing operations on target and non-target fish stocks, including related aquatic ecosystems.

and other destructive fishing practices (e.g. *muroami* fishing and towed-bottom fishing gear, including pair trawling, push nets and otter trawling).[88] The FAO Code of Conduct, for example, places stronger emphasis on regional collaborative arrangements and coordinated efforts to develop and implement environmentally friendly fishing gear, technology, materials and operational methods, which reduce the loss of fishing gear.[89]

Reducing the incidence of by-catch and discard mortality in fisheries population underpins one of the key management measures under the EAF framework.[90] Littoral States needs to cooperate and make a firm commitment towards protecting non-targeted species (i.e. juvenile and low-value species) against indiscriminate catching. A widespread practice of by-catch and a high rate of discard mortality of undesirable marine species are increasingly becoming a norm in tropical multi-species resources and multi-gear fisheries in the regional EEZs. An obvious example of this problem can be seen in the quantity of trash fish generated from by-catch of both coastal and offshore fishing activities, which constituting the highest percentage of species composition landed in Malaysia, Thailand and Indonesia. Thus, it is in the best interest of regional governments to conserve target fishery resources and protect non-target species from incidental capture by unselective fishing gears and methods. The overriding objective of this approach is to avoid wastage and minimize by-catch through the development and promotion of the use selective, environmentally friendly and cost effective fishing gear and techniques. Achieving this objective would necessitate the adoption of different technical management measures, and legislative and policy instruments. More specifically, these measures include inter-agency projects for developing technologically advanced selective fishing gear, community-outreach education programs, and regulatory restrictions on gear and mesh size.

Strengthening of Monitoring, Controlling and Surveillance (MCS) System

Interstate cooperative arrangement in monitoring, control and surveillance (MCS) activities for fisheries is broadly viewed as one of the integral elements of ensuring regional transboundary fish stocks are to be harvested in a sustainable manner. Wide spectrums of MCS

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[88] *FAO Code of Conduct*, Art. 8.4.2.
[89] *Ibid*., at Art. 8.4.6.
[90] *Ibid*., Arts. 6.6, 7.2.2(g) and 7.6.9; With respect to reducing by-catch of shark, see *IPOA-Shark*, para. 4.

measures have been commonly implemented at national level, with most of their implementation have been strengthened by legislative, policy and institutional reforms. These government initiatives focus on tightening of fishing and vessel licensing conditions, adopting stringent sanctions and effective prosecution against fisheries offenders, and enhancing fisheries law enforcement and monitoring capability. These national efforts may have improved the conservation of shared fishery resources at national fisheries jurisdictional waters,[91] but arguably fall shall short of protecting the overall population of the resources in question throughout their entire spatial migratory range. Exacerbating the problems of fisheries law enforcement in the region is the absence of formalized regional mechanism with command function to coordinate fisheries surveillance and enforcement operations, coupled by limited enforcement capability and capacity suffered by individual coastal States. Insofar as vessel boarding and inspections are concerned, there is gap in the standardized operational procedures at regional level. Consequently, the aforementioned challenges provide reasons why littoral States should take into consideration of institutionalizing a coordinated MCS system at regional level.

Joint surveillance and law enforcement exercise become even more critical due the enormous size of individual EEZ and fishing grounds to cover in the Southeast Asian region. The prohibitive operational costs of implementing MCS measures - a situation that placed heavy burden to many regional developing States - can be equally shared or even lessened through the coordinated use of maritime surveillance and enforcement assets.[92] Concerted action and cooperation in MCS becomes more acute when managing transboundary fish stocks. Because of varying socio-economic interests and different management approach among the States to regulate those stocks in their respective EEZs, there is an obvious need for coordinated MCS measures applicable throughout the entire migratory range of the concerned stocks. TO add, much more needs to be done on strengthening fisheries surveillance and enforcement

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[91] Palma and Tsamenyi. "Case Study on the Impacts of Illegal, Unreported and Unregulated (IUU) Fishing". p. 51.

[92] Where appropriate, and when possible, such organizations and arrangements should aim to recover the financial costs arising from fisheries conservation, management and research activities. See FAO Code of Conduct, Art. 7.7.4.

efforts given that IUU fishing incidents have long been pervasive in the regional waters.[93]

Institutionalized mechanism for joint fisheries law enforcement, as stated earlier, is currently non-existence in the regional water; with the cooperative programs on fisheries surveillance and law enforcement have been mostly focused on intelligence and information sharing on illegal fishing activities. Different cooperative arrangements involving the members of the Association of Southeast Asian Nations (ASEAN) are presently in place. There are already examples relating to such arrangements, such as coordinated maritime surface and aerial patrol initiative aimed at addressing non-traditional security challenges, including transnational crimes (e.g. piracy, sea robbery and human trafficking), and promoting navigational safety (e.g. search and rescue) in the Malacca Straits.[94] Other relevant example of maritime surveillance and law enforcement cooperation arrangement in the region is the agreement signed by four littoral States - Malaysia, the Philippines, Brunei and Indonesia, which have agreed to conduct regular joint patrol in border areas surrounding the Celebes Sea.[95] While the ultimate objective of these joint patrol exercises is to secure overall maritime security in the regional waters, subsidiary benefit generated from these collaborative efforts is likely to spill over towards the protection of fisheries resources from the threat of illicit activities, such as IUU fishing (e.g. foreign fishing encroachment, fish bombing, unauthorized transhipment of fish at sea).[96]

A number of joint actions relevant to strengthening the existing MCS system can be implemented by the regional littoral States. These include exchange of intelligent information on IUU fishing activities, formulate standardize procedure for catch documentation, vessel inspection and boarding, and establish coordinated port State control measure for fishing vessels. The fact that "no country can go alone" in fisheries enforcement and

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[93] For discussion on IUU fishing in the context of Indonesia, see Laode M. Syarif, "Promotion and Management of Marine Fisheries in Indonesia," in Winter (ed.), "Towards Sustainable Fisheries Law," pp.43-44.

[94] See, for example, Koh Swee Lean Collin, *Pan-ASEAN Maritime Security Cooperation: Prospects for Pooling Resources*, IDSS Commentary No. 096/2013, 17 May 2013, available online at http://www.rsis.edu.sg/publications/Perspective/RSIS0962013.pdf (Accessed on 23 October 2013).

[95] Anon., "Philippines, Malaysia, Indonesia and Brunei Agree to Joint Patrols in Border Areas," *The Jakarta Post*, 13 December 2005.

[96] FAO, "Implementation of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing," *FAO Technical Guidelines for Responsible Fisheries No. 9* (Rome: FAO, 2002), p. 30.

surveillance efforts reinforces the need to develop a stronger cooperation and coordination between/among neighbouring States sharing the said resources.

Conclusion

A prerequisite to any present and future policy direction at reaching a more meaningful cooperation for sustainable and equitable management of transboundary shared fishery stocks necessitates a close engagement and strong political will among the neighboring ASEAN States. While there are varying degrees of cooperative mechanisms and programs set up between these States, mostly through regional fisheries management bodies such as SEAFDED and AFFIC, these cooperative measures are still inadequate. Most of the scope and application of these measures strongly emphasize on marine scientific research, stocks assessment and survey, species identification, collection and compilation of data/information, technical training and capacity building, and conservation and rehabilitation of endangered species. Nevertheless, the main issue of overfishing affecting transboundary shared fishery stocks in the region waters remains unresolved.

Because the geographical distribution of these transboundary shared stocks typically spanning across multiples jurisdictional zones, interstate cooperation for the management of such stocks has become increasingly critical. Given this circumstance, even comprehensive conservation efforts of an individual State within its national jurisdictional waters might be rendered futile. Further reinforcing the need for an increased level of regional cooperation and coordination is the ongoing overlapping maritime boundary disputes and contested maritime features in large portions of national EEZs. Whilst the definite resolution of overlapping maritime boundary and features remains the subject of political and diplomatic negotiation, it is not an excuse for the affected States not to pursue some forms of cooperative measures to protect and regulate the access to these shared fishery resources.

Without the concerted effort of all the parties involved, it would be impossible for the regional littoral States to act alone in managing these shared fish stocks in their own EEZ if it intends to set up effective management regime and ensure rational utilization of the stocks for its own benefits. Hence, this warrants proactive and collective government intervention and participation aimed at securing a more equitable and responsible fisheries management and long-term utilization of resources in the region.

NGOs and Peace Building in the Philippines: Muhammadiyah's Reconstruction Plan for the Bangsamoro Post Peace Agreement

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Abstract

This paper aims to explain how Muhammadiyah, as the second largest Islamic movement in Indonesia, has significantly played peace-building role for the Bangsamoro, which is the minority Islam-based ethnicity living mostly in the southern Philippines. Series of peace talks and negotiations lead to peace agreement between the Bangsamoro and the government of the Philippines. However, reconstruction agenda remains major problem in the area. Therefore, the Bangsamoro invites overseas Islamic movement to immediately rebuild. Concerning studies on non-state actors in peace building, more people argue that the actors including NGOs have a hidden political, economic and ideological agenda behind humanitarian aid, while the rest believe that they are impartial. Although Muhammadiyah is an Islamic-based movement, it has not exclusively promoted to spreading the Islamic mission, but inclusively and comprehensively worked with another stakeholders and its international counterparts to build social integrity and infrastructures. This article focuses on implementing inclusive and comprehensive prescription in peace building process taking place in the Bangsamoro, which is located in the southern Philippines. Muhammadiyah recognizes that the religious identity is the underlying factor for long period of conflict. To maintain the peace, Muhammadiyah, then, cooperates with the Catholic NGO of Italy to manage peaceful behaviors among the members of government.

Introduction

For forty years, the armed conflict between the separatist of the Bangsamoro and central government of the Philippines has been a nightmare for Muslim citizens. There are many people killed, injured and driven out from their homes. The displaced ones, then, moved to live in the refugee camps with limited public facilities and clean water. Adult women in particular were threatened by sexual abuses because of less privacy space in the camps. At the same time, children lost their opportunities to have good education, nutrition and safe environment. Additionally, both social structures and infrastructures have no longer sustained in the conflict.

What ASEAN neighboring and the Islamic countries have shown to respond the conflict are different. First, several Islamic countries had sent military assistance to the separatist because of religious bond. In this regard, the military separatists had developed into three groups: the Moro Islamic Liberation Front (MILF), the Moro National Liberation Front (MNLF) and the Abu Sayaf, which is the most radical Islamic group. Second, neighbor countries, like Indonesia and Malaysia, prefer dialogue process and negotiation to resolve the conflict. They facilitate several meetings involving two conflicting parties to formulate the peace agreement.

Furthermore, the problem that more frequently emerges post conflict is the reconstruction of social integrity, public facilities, not to mention governmental institutions. International actors of both state and non-state are necessary to take part in rebuilding the areas where the conflict has been settled. The reason why those actors should involve in restoration is that the conflicting parties' budget constraint is minimum. Therefore, they need foreign direct investment to establish public facilities. This loan uses to require transparency and accountability, which are characteristics of clean governance. Having promoted democratization, clean governance and law enforcement becomes one package the international state actors offer.

Social integrity is the most difficult problem to deal with because of several reasons. First is psychological factor. The conflicting parties who fight each other have felt trauma that in turn construct their own perceptions to others. Second is ideological tension. The conflict of identity or the ideological conflict as clearly seen in the southern part of the Philippines is distributive type of resolution. It means that the solution could be a zero-sum game, which one party has to be a winner over the other. Third is cultural aspect in which peoples share common values. Cultural difference

between majority entity of Filipinos and minority group of Malay-ethnic people living in Moro has possibly triggered the manifest conflict. Indeed, managing social integrity should not only involve state actors but also more importantly invite international NGOs.

Concerning social integrity in the southern part of Philippines post peace agreement, the Bangsamoro believes in Muhammadiyah, the second largest Islamic movement of Indonesia, to lead mission of community development and empowerment, as well as reconstructing the identity. It introduces particular endeavors for the Bangsamoro and the central government in order to achieve peaceful coexistence. Then, in cooperation with its international counterparts, Muhammadiyah distributes the specific rebuilding agenda to develop the Bangsamoro. This paper discusses several following problems, i.e.: 1) historical background of Mindanao Conflict and its peace agreement, and 2) Muhammadiyah's reconstruction plan to overcome the problems post the Peace Agreement in Mindanao.

Conflict of Mindanao and Peace Agreement

Mindanao is archipelago region consisting of large and small islands. Since Islam spread in 12th century, it had two Islamic kingdoms namely Maguindanao and Sulu. In 13th century, both kingdoms fought each other to influence other thirteen ethnicities inhabiting around Mindanao. Therefore, the first conflict of Mindanao is ethnic conflict among Muslims (Ahmadi, 2011).

Migrating wave of Visayas ethnic or Filipino to Mindanao had varied ethnic conflict. The Philippines army supported the Christian Ilaga ethnic killing a number of Muslims in early 1970s. Unfortunately, Marcos administration did not halt immidiately to this genocide. Muslims of Mindanao believed that the conflict was Crusade-like religious conflict. This was a reason to which Nur Musuari invited the Middle East countries to intervene. The conflict, in turn, develops into separatism issue between the Bangsamoro and the central government of the Philippines.

Furthermore, this conflict has become more incresingly complicated because of actors diversity in Mindanao. First is the Islamic actors that are devided into three groups: 1) Moro National Liberation Front (MNLF), 2) Moro Islamic Liberation Front (MILF) and 3) the Abu Sayaf group. Second is an indigenous Mindanao ethnic namely Lumads. Third is the communist armed group namely National People Army (NPA), not to mention the central government of the Philippines (Ahmadi, 2011).

Concerning the Islamic separatist movements, those groups have spesific characteristcs. MNLF, led previously by Nur Misuari, who graduated from the University of the Philippines, is aimed at opposing both Ilaga ethnic and the central government that humiliate to Muslims. It is official Mindanao representative that negotiate to the government in 1976 and 1996. Its ideology is secular nationalism rather than Islamic ideology because Nur Misuari was an activist of the Islamic socialism movement during his study in college. Interestingly, more political elite and members of MNLF are from Tausug ethnic including Nur Misuari, who comes from royal family of the Sulu Kingdom.

On the other hand, MILF, founded by Salamat Hashim, who completed his study in the university of Al-Azhar, Egypt and was Nur Misuari's deputy in MNLF, is conservatively based on the Islamic ideological platform. Compared to MNFL, it maintains that having independency of Mindanao state is better than the special autonomous. Therefore, MILF prefers more confrontation to the government than accommodation as chosen by MNLF. Although MILF claims that its followers and combatants are higher population than MNLF, the government has never invited it as Mindanao representative in peace negotiation process. This movement is dominated by Maguindanao ethnic which has historical conflict with the Sulu. Meanwhile, the Abu Sayaf group is the most radical Islamic armed group that benefits the conflict for economic reason by terror.

Mindanao conflict has resulted three dynamic issues during the crisis: primordial, instrumental issues not to mention constructivist. As mentioned by Cesar Adib Majul and Che Man, primordialism is a primary factor of conflict in Mindanao (Majul, 1973; Majul, 1985; Man, 1985). Agustino (2001) argues that primordial conflict is natural due to clash of different ethnicity, religious believers and tribes. Instrumentalist maintains that conflict is mechanism to maximize economic interest of who are involved. However, constructivist critizes the previous prespective by defining ethnic diversity as an asset to interact and understand among communities.

From 1960 to 1980, Mindanao conflict had been classified in the primordial issues because of several reasons. First is coercive policy of the Philippines government towards Muslim of Mindanao. Most Mindanao peoples recognize that the policy reflects Chatolic political representative against the Islamic believers. Otherwise, for the government's view, Muslim Mindanao is ignorance, uncivilized people and primitive. They are also similar to the nation of Moors living in Africa, who had conflict with Catholic people of Spain.

Genocide to Muslim in Mindanao took place in 1970 and conducted by Ilaga ethnic and the government, was considered as primordial conflict.

After Tripoli Agreement in 1976, this conflict shifted to the instrumental type, which all elites use the conflict to boost both domestic and international support. MNLF has successfully attracted sympathy and recognition of international communities particularly the Islamic World. Indeed, Nur Misuari is more powerful than traditional power of the Mindanao kingdom. He also becomes part of elite along with MILF, which its withdrawal from MNFL is a way to reach strategic position. Nevertheless, the Islamic terror group of Abu Sayaf kidnaped people for some money. This conflict also increases the USA support for the government to counter terrorism, whom MILF and Abu Sayaf are proclaimed as the terrorist group, and elevates emphaty of local people living in Luzon island.

The conflict moves to the constructive type after the Final Agreement 1996. It means that international communities or particular construction drive preferences of whether conflicting parties should negotiate or fight continuesly. Peace construction of Islamic international community is quite dominant to encourage MNLF in accepting peace negotiation. By peace preference, The Organization of Islamic Conference shows that Islam is a peaceful religion. At the same time, economic construction is a pivotal reason why the government decides ceasefire and negotiate peacefully. During the conflict, the government has costly economic and social casualties (Ahmadi, 2011).

Peace resolution between the Bangsamoro represented by MNLF and central government of the Philippines resulted three agreements: Tripoli Agreement 1976, Jeddah Accord and Final Peace Agreement 1996. Tripoli Agreement 1976 is mainly sponsored by the Organization of Islamic Conference (OIC). This organization appointed four countrieas: Libya, Saudi Arabia, Senegal and Somalia to become member of special commission to investigating violation in Mindanao. Its membership was extended by Indonesia and Bangladesh, which were interested to join in. Hence, they were known as the Ministerial Committee of Six. Preparing peace negotiation is core duty of the committee.

Tripoli Agreement 1976 constitutes three fundamental articles. First is status of Mindanao autonomous. Mindanao peoples can autonomously govern themselves within political system of the Philippines. Second is dealing with independent territories. This agreement recognizes that Mindanao has thirteen independent

traditional areas: Basilan, Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao del Sur, South Catabato and Palawan. Third, the particular regulations of governance, managing natural resources as well as integrating ex-MNLF in the state military and police should consider the constitution of the Philippines.

In terms of implementing Tripoli Agreement 1976, the major problem is that the government of the Philippines has constitutional authority to determine whether articles of the agreement is in line with the state constitution or not. This contributes negative impacts for MNLF. First, the government has more opportunity to exclusively impose its model in conducting the articles. Second, it is advantage for the government to reconfirm peoples who have no intention to separate such as Palawan, Cotabo and Davao del Sur, which have huge oil deposit.

Due to shortcomings outcome, Nur Misuari leading MNLF asks the OIC for actively monitoring and taking serious actions against the government domination over MNLF. Marcos, for instance, seems to apply "the carrot and stick policy", which is less people attempt to rebel, more economic share they receive. Then, three Islamic oil producer countries: Iran, Arab Saudi and Libya condemn the government's commitment in the agreement and deliver the policy of oil embargo to the government. Also, those countries prohibit Nur Misuari to use armed forces in responding the government.

In response to unsuccessful Tripoli Agreement 1976, the government initiates to persuade Nur Misuari in renegotiating a new agreement. Sponsored by the OIC, both parties have approved to sign the Jeddah Accord in 1987, which definitely includes autonomous regions and their borders. This positive trend leads both parties to the Final Peace Agreement in 1996, which is facilitated by Indonesia and the OIC. The important point of the agreement is the government's acceptance to integrate ex-MNLF combatants to the national armed forces. The agreement creates a peace order and a regime those conflicting paries refer to.

However, after signing the agreement, Mindanao remains insecure due to intensity of conflict and the Muslims' welfare, who particularly live in five Islamic autonomous regions: Lanao del Sur, Maguindanao, Sulu, Tawi-Tawi and Basilan. Another actors such as MILF, Lumads and NPA appear to kill the Philippines' military personals, demolish public facilities and kidnap civilians (Reuters, 1996; Times, 1997; Ahmadi, 2011) . Therefore, Mindanao peoples have serious problems of social integrity (Kenneth, 1999), economic

recovery, traumatic healing and rebuilding infrastructure (Surwandono, 2011) . Involvement of international communities to solve those problems is necessary.

Muhammadiyah's Reconstruction Plan in Mindanao post Peace Agreement

In the Dutch colonial period, Ahmad Dahlan, who was the Islamic clergy and modernist, founded the first Islamic movement namely Muhammadiyah in Yogyakarta, 1912. It has focused on the idea of Islamic purification and humanity, which are health and education services. In addition, Alfian (1989) believes that Muhammadiyah has not only been Islamic reformist and the agent of social change, but also been the political force resisting global injustice.

As a political force, Muhammadiyah argues that Islam cannot be separated by political, economic and social problems (Alfian, 1989). Any colonialism and political abuse that threat to humanity should be eliminated. Therefore, Muhammadiyah also provoked its members to fight the Dutch colonialist and communism. It also was a prominent actor to overthrow the Soeharto presidency through the people power. Inspired by Amien Rais, who chaired Muhammadiyah from 1999 to 2004 and critized Soeharto's corruption, students rallied on streets to end the regime. This reform flourished along with the economic crisis in 1998.

In order to overcome Mindanao conflict that considerably influences Muslim civilians' walfare and security, international NGOs is welcomed to distribute their reliefs. Neisbitt (2003) maintains that providing basic needs, medical treatment, trauma healing not to mention facilitating peace dialogue are important roles the non-governmental organizations can play in conflict areas. Looking at level of actors in conflict resolution as perceived by Jhon Lederach, NGOs' leaders are the second level along with ethnic and religious leader who can arrange problem solving workshop, training in conflict resolution as well as peace commission. Meanwhile, the first level is military, political and elite religious leaders who engage negotiation, mediation and ceasefire. The lowest level is local leaders, indigenous NGOs and community developer (Neisbitt, 2003).

According to Kalyspso Nicolaïdis, NGOs has ability to prevent the conflict in three stages: 1) latent conflict, 2) hostile explosion and 3) post conflict through four possibilities of combining method and scope. Method consists of 1) hands-on: capacity building and evaluating roots of conflict, and 2) hands-off: signaling actions for

instance threats. Scope also is divided into two types: 1) ad hoc: short-term period and 2) systemic: proposed long-term period action. Combination of both method and scope could be four preventions: 1) coercive diplomacy (hands-off, ad hoc), 2) institutional inducement (hands-off, systemic), 3) cooperative management (hands-on, ad hoc) and 4) systemic transformation (hands-on, systemic) (Neisbitt, 2003).

In the 46th Muhammadiyah National Congress held in Malang, East Java, it issued the Muhammadiyah vision 2025, which it has to contribute proportionally for humanity and Islamic solidarity from national to international level (Agus Ulinnuha, 2013). In this regard, Muhammadiyah has been the only Islamic member in the International Contact Group (ICG), which involves both international NGOs and states to mediate peaceful meeting between the Bangsamoro and the government. Syamsuddin, who chairs Muhammadiyah between 2010 and 2015, argues that the following Muhammadiyah's responsibilities are 1) creating social integrity of two factions in the Bangsamoro namely MNLF and MILF and 2) promoting humanitarian works enhancing the Bangsamoro livelihoods, in the field of education, health and socio-economics (Syamsuddin,2013).

Based on Muhammadiyah's experience engaging series of peace talks for the Bangsamoro, in cooperation with the Indonesian Ministry of Foreign Affairs, Muhammadiyah has conducted informal talks between top leaders of the MILF and MNLF. The Informal Talks was part of agenda in the 4th World Peace Forum organized by Muhammadiyah, Center for Dialogue and Cooperation among Civilizations (CDCC) and Ceng Ho Multicultural and Trust in Bogor, West Java, Indonesia has been able to reduce the gap both groups. Syamsuddin believes that the Bogor meeting come up with an Agreement to develop a MILF-MNLF Joint Road Map for the pursuant of the two Agreement which had been respectively signed separately by MNLF and MILF with the Government of the Philippines. To enable the promotion of humanitarian works on the ground, Muhammadiyah has made a scoping mission to Mindanao on 12–21 June 2011, and a Muhammadiyah Road Map 2020 for Bangsamoro has been developed.

The Road Map 2020 of Muhammadiyah for the Bangsamoro has stated four theme: 1) Preparatory and Infrastructures Development, 2) Human Resources Development, 3) Institutional Development not to mention 4) Consolidation and Dissemination. It covers a number of fields: a) education focuses on lower, middle, higher education and research works, b) social development consists

of socio-economic potentialities, role of women and youth development, c) health emphasizes on health services and community health, d) civil society elevates interfaith network and civil society development and e) organizational arrangements prepares establishment and empowerment of local Muhammadiyah in Mindanao. Each the fields attempt to improve institutions and peoples who work in.

What Muhammadiyah demonstrates in its road map employs the notion of systemic transformation and cooperative management. It also illustrates completely comprehensive and inclusive by imposing interfaith networks. According to Amin Saikal, three Abrahamic religions: Islam, Christian and Judaism share common moral values and beliefs. They are monotheistic religion that respects God and His attributes (Saikal, 2003). However, in primordial perspective, those are root of conflict among believers as shown in Mindanao. Muhammadiyah, then, invites its international counterpart of Christian NGO in Italy to promote peace to the government. The peace in Mindanao cannot be successfully achieved without any mutual understanding between separatist groups, the government and stakeholders of international community.

Conclusion

Mindanao crisis is a 40-year conflict that mainly involves the Muslim ethnic and the central government of the Philippines. The separatist has two factions: national-based ideology group of MNLF and the Islamic-based ideology of MILF. After the Final Agreement 1996 signed by MNLF and the government, the violence increases because of MILF and the others (Lumads and NPA). Another impacts are economic, social and ideological problem.

Resolving those problems require the role of international community, which is accepted by both conflicting parties. Muhammadiyah is solely an Islamic and social movement of Indonesia having more opportunity to offer post-conflict programs because none conflicting parties are reluctant. Rebuilding programs of Muhammadiyah is comprehensively aimed at empowering society and building human capacity. It inclusively promotes interfaith dialogue to prevent the primordial conflict. All designed plans refer to the notion of cooperative management such as improving health services, public services and women empowerment. Another concept that Muhammadiyah refers to is systemic transformation, which the Bangsamoro should be more economically independent by developing their resources.

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Indonesia and The Global Gender Equality Regime

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Abstract

This article examines the strategies of women movement to construct the global gender equality regime, and Indonesia response toward the global gender equality regime. Women movement takes two strategies to fight for gender equality. Firstly, women advocate to change public policy at the national level. Second, women advocate to change public policy at the international level. It use constructivist perspective as a framework to analyze. Constructivism focus on the transmission of ideas/norms in this era of globalization which be done through women movement as a transnational civil society. It is demonstrating how gender norms and identities are constructed in Indonesia and global socio political contexts. Constructivism shows how gender equality become "global culture" and shape Indonesian national policies such as establishment of women empowerment ministry, domestic violence law and women quota in parliament,

Keywords: Gender, Regime, Indonesia, Constructivism.

A. Introduction

The implicit and explicit exclusion of women from political activities around the world encourage women to make demands on behalf of their sex. The women established their own organizations to overcome this problems. Since this problems happens all over the world, so the women organization flourish in all over the world also. They make a transnational women organization networks. These networks motivated by values rather than by material concern or professional norms. Despite their differences, these networks are similar in the most important respect, i. e the centrality of values or principled ideas. Their goal is to change the behavior of state and of international organizations to respect women's right. I found constructivism to be the most appropriate International Relations

theory to examine showing how the idea of gender equality become "global culture" and shaped national policies.

I will be exploring the applicability of constructivism to gender equality regime by examining non-state actors (and in many case grassroots NGOs – women organization) played critical roles in disseminating information, garnering public support, shaping policy and applying pressure to government entities to act. This research task will be to try and understand the political effects of global social structures on domestic politics. For example, how do global norms related to gender equality influence Indonesian domestic politics?

B. Constructivism : The Return to the Norms.

From the First World War until the end of the cold war, international relations always focus on the neorealist-neoliberal debate. After the cold war, constructivists come and critique of neorealists and neoliberals that they ignore norm as sources of state interests and the social fabric of world politics. Realists see norms as lacking causal force. Neoliberal see norms as a regulative function, helping actors with given interests maximize utility. Agents (states) create structures (norms and institutions).For neoliberal norms are superstructure which built on a material base. Neoliberal regime theory argues that norms play an influential rule in certain issue-areas. By contrast, constructivist see norms as collective understandings that make behavioral claims on actors. Norms constitute actor identities and interests and regulate behavior. For constructivist, norms are an explanatory variable. (Checkel, 1998)

Examples of such norms are diverse. They can encompass regulations associated mainly with domestic politics, like gender equality, gender quota, women's suffrage (Ramirez, Soysal, and Shanahan 1997), democracy (Harrison 2004), human rights (Clark 2001; Risse, Ropp, and Sikkink 1999), labour standards (Hertel 2006), prohibitions against slavery (Ray 1989) and apartheid (Klotz 1995), and the creation of new state bureaucratic structures (Finnemore 1993; True and Mintrom 2001). They can also include norms governing inter-state relations, like the expansion of cooperative security (Acharya 2004), humanitarian intervention (Finnemore 2003), and election monitoring (Kelley 2008), as well as the restriction of war time plunder (Sandholtz 2008), the use of particular types of warfare like landmines and nuclear and chemical weapons (Legro 1997; Price 1998), and the hunting of endangered species (Bailey 2008; Epstein 2008) (Krook & True, 2009)

I found constructivism to be the most appropriate IR theory to examine showing how the idea of gender equality become "global culture" and shaped national policies. It seeks to demonstrate how international relations are *socially constructed*, that is, they are given their form by ongoing processes of social practice and interaction.

There is not doubt that changes in norms, values, and beliefs on gender equality have spread of a culture of human rights and democracy. Equality and freedom from all forms of discrimination, including on the basis of gender, is a human right recognized universally in international law. (Checkel, 1998)

Constructivism is concerned with underlying conceptions of how the social and political world works. It is based on two assumptions: (1) the environment in which agents/states take action is social as well as material; and (2) this setting can provide agents/states with understandings of their interests (it can constitute" them).

The first assumption reflects a view that material structures are given meaning only by the social context through which they are interpreted. The second assumption addresses the basic nature of human agents and states, in particular, their relation to broader structural environments. Constructivists emphasize a process of interaction between agents and structures. State interests and state identity (agents) emerge from interaction with norms and
social structures (structures). (Checkel, 1998)

Constructivism has also emphasized the role of non-State actors and of international institutions such as United Nations. For example, scholars have noted the role of transnational actors such as women movement in altering State beliefs about issues like gender equality. Such 'norm entrepreneurs' are able to influence state behaviour through rhetoric or other forms of lobbying, persuasion, and shaming (Keck & Sikkink, 1998)

Constructivism recognizes that state interests are not fixed, so non-state actors have the ability to have mutually constitutive influence on states and their interests. Although not equipped with material sources of power like military might and policy-making ability, NGOs are able to use information as a commodity to spread awareness, to change societal norms and pressure actors with decision making capabilities to change polices. (Shah, 2012)

Constructivism has produced empirical studies showing how "global culture" shaped national policies. It has also emphasized the role of non-State actors, such as the role of transnational civil society actors like NGOs or transnational women movement in altering state

beliefs about issues like gender equality or women's right. The powerful pressure from both transnational and local NGOs has no doubt contributed to the changes of gender equality norm in domestic politics.

C. The Ideas and Norm of Gender Equality

Many scholars agree that gender is a social construct. According V Spike Peterson, gender is a systematic social construction that dichotomized identities, behaviors, and expectations as masculine or feminine. The ideas of gender equality began to appear since Enlightenment century. Gender issues were at the heart of contemporary debates known as the Enlightenment. The Age of Enlightenment was characterized by secular intellectual reasoning and a flowering of philosophical writings. Among these philosophical writings asked for equality between women and man including the rights to vote and to participate in government. The ferment of new ideas, political upheavals and economic change in late eighteenth-century Europe provided the perfect conditions for feminist ideas to develop.

The French Revolution of 1789 added a new dimension to these debates. It raised the question of what it meant to be an active citizen in the new republic and opened a space for women to take political action. In the Declaration of the Rights of Man and the Citizen it was declared that 'men are born free and equal in rights', and yet when the revolutionaries drew up
their first constitution a distinction was drawn between active citizens, who were property-owning males over the age of 21, and passive citizens, such as women and domestic servants. Political activists and commentators were quick to challenge this definition. The monarchist Olympe de Gouges, for example, in her book, Declaration of the Right of Woman and the Citizeness (1791), called for women to enjoy equality with men in the public sphere

The subordination of women toward men within marriage and the family was at the heart of the Napoleonic Code, introduced in France in 1804 and then widely adopted by other countries across Europe, including Italy, Belgium and the German states, either as a result of their being conquered by Napoleonic armies or through choice. Napoleonic Code (1804) is a Code gave a husband full legal powers over his wife, her property and her children and there were harsh penalties if she committed adultery. It was widely adopted in

countries other than France, including Italy, Belgium, Holland and the German States

The first work that can unambiguously be called feminist was Mary Wollstonecraft's book, *A Vindication of the Rights of Woman* (1792). In her book Wollstonecraft argued that women were just as capable as men of exercising reason and virtue but had been encouraged to see themselves as governed by their feelings and as existing only to please a man. In her view, women needed education to develop their character and to enable them to contribute to shaping the new social order. The idea of gender equality was not only flower among women, but also supported by other man prominent philosophers and politician such as Jeremy Bentham (British), John Stuart Mill and Marquis de Condorcet (French) who opposed the asymmetrical sexual moral standards between men and women.

The explicit exclusion of women from active citizenship during the French Revolution encouraged them to make demands on behalf of their sex. They established their own organizations to call for government support for educational and social work and also for women's complete equality with men. In the nineteenth century all European states were confronted by the challenges of economic, social, and political modernization. The European women's were an important part of this process of radical change**.** They begun to build movement as a key strategy to achieve change.

The *women's movement actors--* individuals, informal organizations and formal organizations which are inspired by movement thinkers to act to advance what they see as women's interests. *Women's movement* groups and associations using disruptive and conventional tactics to change women's position in society. This was accompanied by new forms of action. Instead of merely petitioning, women took to the streets. Mass demonstrations took place, leaflets were circulated, and occasional acts of civil disobedience were carried out**.** (McBride & Mazur, 2005)

Women began to organize for women's liberation in ways never seen before. They began to organize themselves in separate women's groups, women's caucuses, and women's wings. They began to built network, organized congress and demanded for women's suffrage (right to vote), female education rights, better working conditions, and abolition of gender double standards. This movement is known as first-wave feminism. Women members of the social movements of the time began to question their position of subordination, both within their social movements and within society. (Watkins, Rueda and Rodriguez 1992).

Involvement in the anti-slavery campaign also encouraged women to question aspects of their own social position. They drew an analogy between the position of slaves on plantations and their own sexual, legal, emotional and physical slavery to men within marriage. This could then inspire them to make demands on behalf of their sex, whether at home or in European colonies. Feminists continued to draw on the metaphor of slavery to describe their own position in the late nineteenth and early twentieth centuries. They felt able to identify, as women, with the sufferings of others, including those in countries subject to colonial rule, and used this in making a claim for political rights (Burton, 2002: 19).

Utopian socialists added a further dimension to the debates around women's emancipation in the 1820s and 30s. Charles Fourier and Henri de Saint-Simon, political theorists from France, both envisaged a new communal society that would be free from all inequalities, including sex inequality. They were committed to a general movement for 'human liberation' that would include changes in women's social position.

D. Feminism in Indonesia : how gender norms and identities are constructed in Indonesia

At the end of the nineteenth centuries we find in many parts of Indonesia outstanding women who stood up for gender equality. The most outstanding feminist women of that time is Kartini (1879-1904). She started a remarkable correspondence with a Dutch feminist woman, Stella Zeehandelaar. Stella and Kartini held a strong sense of crusading social awareness that produced a certain ideological symbiosis between them. Stella was a committed socialist and an activist on behalf of women, children, the poor, animals, and especially colonized peoples (Kartini,2005, p. 7). At the opening of the Netherlands Ethical Policy in the East Indies, Stella represented the quintessential modern girl, which Kartini aspired to know and emulate.

In Kartini's letters , which were often an outburst against all the conditions which restricted her freedom of movement and which prevented her from struggling to the full for the benefit and the emancipation of the Javanese people in general, and Javanese women in particular, Kartini formulated her ideas, of which the main elements are the following :

She considered education for women one of the most important conditions for the elevation of her people, as educated mothers were supposed to be better able to bring up their children, not only poor women, but women of the highest classes too should get the possibility to become independent wage-earners, and to take up jobs particularly suited to them, for instance as nurses, midwives and teachers. As polygamy is degrading to women, it should be abolished. (Wieringa)

Kartini's apprehension on Indonesian women condition was contained in her book *After the dark rise the light* which was published by her Dutch feminist pen friend Stella Abendanon. Kartini's struggle for women's freedom, autonomy and legal equality was part and partial of her wider movement on humanity and democracy.

Being born as a daughter of an aristocrat family with strong intellectual traditions (her father was the Regent of Jepara, Central Java and her brother was a linguist) in 1879, Kartini was a brilliant and rebellious girl who fought for women's right to education. Despite her father allowed her to get a primary education, but she was forced to leave school to be in seclusion *(dipingit)* at age 12. This was a common practice for the Javanese aristocrats during which period. Kartini should stay home to learn homemaking skills. She should be remained with her family (father) with limited contacts to the outside world until she marry. Despite of her strong criticism against polygamy, she failed to escape herself from what she referred to as against humanity, and thus, a sin. She accepted her arranged marriage with the Regent of Rembang, who already had some other wives. What was experienced by Kartini showed that tradition, as it has always been, was too strong to challenge. Kartini was actually the "victim" of this kind of gender construction. However, Kartini's vision and ideas have inspired contemporary Indonesian women movement to strive for better access on education and other opportunities in public domain.

Since Indonesia was colonized, so the Indonesian women movement couldn't be separated with the Indonesian independence movement. In 1908 some of Indonesian young leaders built " Budi Oetomo", the first Indonesian modern political organization. It inspired some Indonesian women young leader to build "Putri Mardika – Independent Girls" in 1917, the first Indonesian modern

organization. The other oldest Indonesian women organization is "Kartini Fonds" which built some women's school in Java.

"Aisyiah" was be built in 1917 as Muhammadiyah women's wing , "Muslimat NU" was be built in 1946 as a Nahdatul Ulama women's wing. These Indonesian Muslim women, through their direct work and engagement in local Muslim communities and through focusing on specific education, training and women empowerment successfully challenged predominant perceptions concerning women's social position. (Parvanova)

Indonesian women movement conducted the first Indonesian women's congress on Dec. 22-25, 1928 in Yogyakarta. According Susan Blackburn (2007), the congress was attended by approximately 1,000 participants from 30 women's organizations. This marked the beginning of a more organized women's movement in Indonesia. As reflected in the congresses' documents, the women's movement in the colonial era discussed issues of concern at that time, such as polygamy, discrimination against women at work places, women's limited access to education, child marriage and women trafficking.

This women congress was be held periodically. In the fifth congress which be held in Bandung at July 1938 the women asked to the colonial government, that they must have seats in parliament. This demand showed us that the women's demand already gone to the more strategic gender needs. The colonial government accommodated this demand. Some of prominent women leader such as Mrs. Emma Puradiredja, Mrs. Sri Umiyati, Mrs.Soenaryo Mangunpuspito and Mrs. Siti Sundari. were appointed as a district parliament members. (Azizah, 2012)

Indonesian women movement was through set back when Japan colonized Indonesia in 1942-1945. Under Japan military colonization women was encouraged to have more domestic role. Indonesian women was organized under *Fujinkai* which consist of housewife and officer's wife. *Fujinkai* mission is to support the logistic need for Japanese troops which had to fight against Alliance troops (Dutch, British and American). Japan limited Fujinkai activities on domestic activities such as cooking, collecting donation, and collecting livestock for Japanese troops food. Although Japan allowed Indonesian women to make organization but the goal was not to relieve women from backwardness but to support Japanese troops. Many Indonesian women had to become Jugun Ianfu as sexual entertainer for Japanese soldiers.

Indonesia got independence in 1945. The rights of women in Indonesia have been expressively stipulated in the 1945

constitution (article 27) which states that 'all citizens have equal status before the law'. However, gender equality still finds many obstacles. The new government allowed people to make political parties and planned to hold election in 1946, but the political stability was not suitable. The Alliance troops still occupied most of Indonesian region until December 1949.

The first election was be held in 1955 which was followed more than 80 political parties and many mass organizations. Many women candidates fight for parliamentary seats. They got 17 from 2 seats (6,3%). Among them, 4 elected candidates came from Gerwani and 5 elected candidates came from Fatayat NU. Gerwani was a women organization from left wing. Fatayat NU was a women organization from religious (Islam) wing.

E. Women Identity in Indonesia.

Although feminism already emerged in Indonesia since 19 century, but the women consciousness and the women identity are still a problem. Women consciousness can develop if women can develop their identity. Even so, to build women identity is not simple. As Betty Friedan was said that 'the problem that has no name'. Women have no identity of their own, tens to follow the husband. (Friedan, 1963)

Gender equality can develop if women realize that gender inequality exist in society. Women realize the fact that man and women not only play different roles in society, with distinct levels of control over resources, but that they therefore often have different needs. Women need to know about their gender problems. Women should conscious about their "needs". Gender equality can develop if women realize that they have strategic gender needs.

According Molyneux (1985), women have two kinds of interest, i.e. practical gender interest and strategic gender interest.

Strategic gender interests are derived from the analysis of women's subordination, such as the abolition of the sexual division of labor, the alleviation of the burden of domestic labor and childcare, the removal of institutionalized form of discrimination such as right to own land and property, the attainment of political equality, and the adoption of adequate measures against male violence and control over women (Molyneux, 1985: 232-233)

Practical gender interests are given inductively and arise from the concrete conditions of women's positioning within the gender division of labor. In contrast to strategic gender interests, these are formulated by women who are themselves within these positions rather than through external interventions. Practical gender interests are usually a response to an immediate perceived need and they do not generally entail a strategic goal such as women's emancipation or gender equality (Molyneux, 1985).

Strategic gender needs such as these are often identified as 'feminist', as is the level of consciousness required to struggle effectively for them. For feminist, strategic gender interests are the 'real' interest of women. Meeting strategic gender needs help women to achieve gender equality.

Historically Indonesia is a country which had been colonized by Dutch, British, Portuguese and Japan. Indonesia also an archipelago country which consist of more than 14.000 islands and hundreds ethnicity. This condition makes unity as a necessity, included the unity of men and women.

Men and women should be band together against colonial countries. Most of women's organizations are the wing of men's organization. So, division of labor between man and women in mass organizations are inevitable.

1945 Gender roles could return to 'normal', where normality meant that women should responsible on domestic area. The construction of womanhood in Indonesia is adapted by the State government from the cultural values of Javanese and the values of Islam fundamentalism. The conception of womanhood has been influenced from the central Javanese Royal Palace both in Yogyakarta and Surakarta. Indonesian woman is identified as women of the Royal family. The role and the status of woman in society are defined and derived mirror to the role of women in the Royal family in which women should loyal to the husband [man] and supposed to be an ideal housewife and mother for her children. (Ida, 2001).

This gender construction is reflected in Indonesian Marriage Law (Law No. 1/1974) which state that the role of the husband as the Head of the Family and the wife as the Housewife (Article 31 paragraph (3)). It is meant that the Indonesian government constructs women as housewife (istri - housewifization). According Maria Mies, *housewifization* is a process by which women are socially defined as housewives, dependent for their sustenance on the income of their husbands, irrespective of whether they are de facto housewives or not. The social definition of housewives is the social definition of

men as breadwinners, irrespective of their actual contribution to their families. (Mies, 1999).

The concept of '*housewifization*' describes the ways in which women depend on the income of their husband for their sustenance. Woman as a housewife (' *Istri*') has to take care of her husband and children, and is also busy with home duties.Women are not considered as wage earners in the family and are perceived as non-productive in society. As a housewife, a woman provides free domestic labor. Women are also viewed as isolated and lacking adequate political and economic power. Consequently, women are placed by the state in a subordinate position to men. (Ida, 2001)

This subordinate position can be seen on Law No. 1/1974 concerning marriage. The Marriage Law discriminates daughters because the minimum marrying age for women is 16 years old and 19 years old for men (Article 7 of Law No.1/1974). This stipulation is contrary to Law No.23/2002 on Child Protection. The Marriage Law also discriminates women because it standardizes the role of the husband as the Head of the Family and the wife as the Housewife (Article 31 paragraph (3).

F. The Global Gender Equality Regime.

In the 1970s, the CEDAW Convention was created based on the belief that an international treaty is an adequate tool to protect women's rights. At about the same time, regime analysis emerged as a new debate in IR theory. It reacted to the neo-realist underestimation of international agreements as results of states' interests. (Zwingel, 2005)

According Krasner, regime is sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions
or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice. (Krasner, 1983)

A global gender equality regime has emerged, identifiable by its principles, norms, legal instruments (rules), and compliance mechanisms (decision making procedures).

The principles on gender equality regime are the prohibition of discrimination against women and the active promotion of equality between the sexes.

The norms on gender equality regime define the rights and obligations of actors by establishing standards to overcome discrimination. This norms contained in *Beijing Declaration and Platform for Action* (1995) which define the rights and obligations of governments and of international and regional organizations based on principles of equality and discrimination. For instance, governments are urged to translate the platform for action into national strategies with time-bound targets and benchmarks to monitor progress.

The explicit rules on gender equality is the *Convention on the Elimination of Discrimination against Women* (CEDAW).

The last component of gender equality regime is the compliance mechanisms. It is a mechanisms to monitor and to supervise gender equality policies and practices in every country which had ratified CEDAW. The United Nation has some bodies such as The Committee on the Status of Women (CSW) , The Division for the Advancement of Women and Committee on CEDAW which served to monitor and review the progress of gender equality policies and practices in every country which had ratified CEDAW. On the other hand, these compliance mechanisms ask every country which had ratified CEDAW to give their progress report regularly. The report should tell about the gender equality policies and practices in their countries. (Kardam, 2011)

According constructivist, the idea of regimes create social order and consensus. Regimes operate as imperatives requiring states to behave in accordance with certain principles, norms and rules; on the other hand, they help create a common social world by fixing the meaning of behaviour."(Hasenclever et al. 1997: 163). Thus, contrary to the neo-liberal perspective on states' interests in regimes, constructivists perceive regimes as both embedded in and creating an international social order based on shared believes and norms. CEDAW is based on the norm that discrimination against women has to be eliminated and that equality between men and women is desirable.

G. Indonesia Response toward Global Gender Equality Regime

The rights of women in Indonesia have been expressively stipulated in the 1945 constitution (article 27) which states that 'all citizens have equal status before the law'.

In 1970's international women movement began to gain momentum. The United Nation General Assembly declared 1975 as the International Women's Year and organized the first World Conference on Women, held in Mexico City. At the urging of the Conference, it subsequently declared the years 1976-1985 as the UN Decade for Women.

As a member of United Nations, Indonesian government jointed the first World Conference on Women held in Mexico in 1975. That conference produces a resolution about Women in Development program. That program intended to incorporate women in development process. United Nations also built the United Nations Development Fund for Women (UNIFEM) as a particular institution to manage that program and allocated much money to support that programs.

As a response toward the first World Conference on Women, Indonesian government committed to recognize and to incorporate the women's role in development. This commitment was stated in the Indonesian Broad Outline of State Policy (Garis-Garis Besar Haluan Negara - GBHN). Since the 1970s the GBHN (Broad Outline of State's Policy) as the basic reference point in conducting planning and development in Indonesia has recognized the importance of women's role in development as wives and mothers by focusing on women's reproductive and income earning role in the family.

In 1978 - three years after the Mexico conference, Indonesia built The Women Issues Ministry which be held by Ms. Lasiyah Soetanto. This ministry was be in charge to incorporate women in Indonesian development programs, especially to increase women participation in education sector.

As Kartini predicted, after 4th generations, the traditional chains started to be (partially) elevated. Indonesia women nowadays enjoy the legal equality that Kartini was envisaged and long for. Indonesia has ratified major international conventions that uphold

equality principles for women and men such as CEDAW and some other important conventions.

In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW was the first international human rights instrument to explicitly define all forms of discrimination against women as fundamental human rights violations. In its 30 articles, the Convention explicitly defines discrimination against women and sets up an agenda for national action to end such discrimination. As of June 2005, CEDAW has been ratified by 180 of 191 UN member states and thus represents the most wide-ranging international commitment of governments to work for gender equality (Zwingel, 2005)

Indonesia has ratified major international conventions that uphold equality principles for women and men such as CEDAW and some other important conventions. Indonesia has also issued important legal measurements for women's political rights and other rights to participate in development.

During the late 1980s, the government of Indonesia established Pusat Studi Wanita('Centres for Women's Studies' or PSW) at prominent universities across the country as a way of supporting the government policy of women's empowerment and gender equality (Burhanudin & Fathurahman, 2004; Kementerian Pemberdayaan Perempuan Republik Indonesia, 2004).

In 2000, the Indonesian government led by Abdurrahman Wahid made an important contribution to the gender equality movement by issuing a Presidential Instruction (Inpres No. 9/2000) on 'Gender Mainstreaming into National Development'. This instruction obliges all government agencies to mainstream gender in their policies, programmes and budgets to eliminate gender discrimination. The Medium Term National Development Plan specifically identifies gender as a cross-cutting issue.7

Law no 23/2004 on the anti domestic violence is one of the excellent breakthroughs that Indonesia has accomplished for it successfully regulates a crime that used to be considered being a private matter of which law stopped in front of bedroom's door.(Zwingel, 2005)

The obligation of the state to make legislations and to do all the necessary steps/actions to eliminate discrimination against women and guarantee the basis of the equality of men and women was carried out by making a National Law and adopting international legal instruments in the national law through ratification that directly and indirectly influence this objective. Among others :

Laws

1) The 1945 Constitution, in particular, article 28 Undang-Undang Dasar 1945
2) Law No. 7/1984 concerning the Ratification of the Convention on the Elimination of all Forms of Discrimination against Women
3) Law No. 39/1999 concerning Human Rights
4) Law No. 20/2002 concerning the National Education System
5) Law No. 23/2002 concerning Child Protection
6) Law No. 32/2004 concerning Regional Government
7) Law No. 23/2004 concerning the Elimination of Domestic Violence
8) Law No. 11/2005 concerning the Ratification of the Convention on Economic, Social, and Cultural Rights
9) Law No. 12/2005 concerning the Ratification of the Convention on Civil and Political Rights
10) Law No. 23/2006 concerning Population Administration
11) Law No. 21/2007 concerning the Elimination of the Crime Human Trafficking
12) Law No. 24/2007 concerning Controlling Disaster
13) Law No. 25/2009 concerning Public Service
14) Law No. 11/2009 concerning Social Welfare
15) Law No. 36/2009 concerning Health
16) Law No. 24/2005 concerning the National Development Planning System

Regulations

Some of the regulations that are directly or indirectly related to the fulfillment of the Rights of Rural Women, according to the stipulations of Article 14 of CEDAW are:

1) Government Directive No. 72/2005 concerning Village
2) Presidential Instruction No. 9/2000 concerning the Mainstreaming of Gender in Development
3) Presidential Decree No. 59/2002 concerning the Elimination of the Worst Forms of Jobs for Children
4) Presidential Decree No. 87/2002 concerning the National Action Plan for the Elimination of the Commercial and Sexual Exploitation of Children
5) Presidential Decree No. 88/2002 concerning the Action Plan for the Elimination of Women and Child Trafficking

H. Conclusion

This article is demonstrating that gender is a social construct which can be changed. The changes in norms, values, and beliefs on gender equality have spread of a culture of human rights and democracy. Equality and freedom from all forms of discrimination, including on the basis of gender, is a human right recognized universally in international law. It is also demonstrating how gender norms and identities are constructed in Indonesia and global socio political contexts. Constructivism shows how gender equality become "global culture" and shape Indonesian national policies. It also shows the role of non-State actors and of international institutions such as United Nations. For example, scholars have noted the role of transnational actors such as women movement in altering state beliefs about issues like gender equality.

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CLUSTER III

The Westphalian
Nation-State System vs. the Rest:
Are there any Other Alternative?

Post-Westphalian Settlement in Southeast Asia: A Premature or Reasonable Solution?

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Abstract

This paper attempts to examine whether the claim of the end of the Westphalian Settlement has significant resonance in Southeast Asia. Given the emergence and development of ASEAN as a regional organization, people may argue that the role of states in Southeast Asia has considerably become weak. In addition, the emerging cross-border issues such as human trafficking, piracy, illegal immigrant and drug trades have put the position of the states in strain. The states have no control over many issues meaning that the sovereignty of these states over their own territories is also derogated. In this paper, however, we argue that the claim of the end of the Wesphalian Settlement is premature if not a wishful thinking. Although there is ASEAN organization, states in Southeast Asia remain important for now and for an uncertain future. As countries just gaining independent by confronting their colonial masters, nation states system is not diminished but strengthened. Recently, despite the rhetoric to achieve an ASEAN community, ASEAN states still have controls over many decisions made in this region. Many members of ASEAN always put the interests of their country first and ASEAN second. ASEAN has also not agreed on the scope and authority of institutions such as ASEAN Human Rights Commission that can protect their people from fear and harm.

Keywords: State system, post-Westphalian settlement, sovereignty, ASEAN, Southeast Asia

Introduction

The debates over the end of the Westphalian Settlement have become interesting and catchy issues when the World enters the 21st century. Because of globalization and the demise of state borders, academics start to talk about new forms of World system leaving the Wesphalian system behind. The growth of Trans National Corporation (TNCs), the emerging cross-border issues such as migrants, smuggling and human trafficking has blurred territorial borders and make state unable to solve those issues alone. Given this situation, Camilleri and Falk (1992) wrote about the end of sovereignty and Ohmae (1995) discussed the end of nation state. Globalization also changes the loyalty of citizens from state to broader authorities which are now emerging such as regional organizations (Linklater, 1996).

This paper does not aim at arguing against the above opinions since they reflect certain tendencies in certain part of the world and show new vision and aspiration for the future of the world. Rather it is to argue that despite these theoretical developments and arguments, in some regions such as in Southeast Asia, the above arguments may not reflect the practice. States in Southeast Asia, particularly those joining ASEAN (Association of Southeast Asia Nations) remain strong and will continue to be strong for an uncertain future. In other words, the Wesphalian system and its solution is still the order of the day reflected in the efforts to strengthen the state inside and outside.

Using Southeast Asia and particularly ASEAN as example, this paper attempts so show that the claim of the end of Westphalian settlement has no strong foundation if not a wishful thinking in this region. To discuss further this argument, this paper is divided in two main sections. Section I discusses the claim of the end of Westphalian settlement. The main problem here is with the concept itself since it is not clear what it is all about. Section II shows the problems with the post-Wesphalian settlement if it is implemented in ASEAN.

The End of Westphalian Settlement?

Wesphalian system is the foundation of world state system in the modern day till now. It started from Wesphalian agreement which ended 30 year war in Europe involving the Holy Roman Empire, Spain, France, Sweden and the Dutch Republic. In 1648, these states signed this agreement comprising principles to respect territorial integrity of individual states and ended efforts to create a

supranational authority such as Roman Empire. This state-system had been also expanded to the world by European colonial power to their colonies in Asia, Africa and Latin America. The idea of nation state became popular among leaders of the colonies and has inspired nationalist leaders to lead struggles for independence. However, before this expansion of nation state system is completed, we show the emerging discourses of post Wesphalian system that claim the end of nation state. Before discussing this issue further, I will discuss the ideas of Wesphalian settlement, its expansion and then the claim of post-Westphalian settlement.

Wesphalian settlement

State system based on Westphalian settlement has at least four components. According to Linklater (1996: 82-83), the first aspect is like in Weberian, that the state has the monopoly over violence and plays central role on state building, domestic pacification and war. Secondly, it has also monopoly to tax used to finance bureaucracy and army but later used for the prosperity, development, health, welfare and education for citizens. Thirdly, it also plays central role in building state political identity in front of other states, but the identity is also contested within the country because of different visions of culture and community. Fourthly, it has also a monopoly in making regulations and laws that can settle disputes among citizens. All these aspects, according to Linklater, related to 'the process of domestic pacification, strategies of normalization, and the creation of subjectivity in modern society'. The state has role in administration and in the formation of national laws, and in economy. By having all these, it can buy loyalty of the people by supplying political, economy and legal goods. (Linklater, 1996: 88).

Westphalian System is a system aimed at solving problem in Europe. It was to end continuing war of separation among small states against Empires. Traditional loyalty to god and tribe was replaced with new loyalty called nation state. This solution was then globalised as also solution to problems in other parts of the world, which to a certain degree has their own solution to their state problems. The ideas were welcomed and inspired the independence of states in Asia, Africa and Latin America although there have been difficulties to accept the concept of nation state and sovereignty fully. China and India as two big civilizations in Asia, for example, has their own conceptions on political authorities, state and sovereignty. States in

Asia and Middle East in general also have their own conceptions on state. The conception of border for example was not understood as legal borders as in the Western conception of border.

The introduction and expansion of the idea of state and international society (Bull and Watson 1985) found its fertile ground in Asia and Africa. Inspired by the idea of freedom and struggle against exploitation in the West, the colonies demanded independent and aspired for sovereign state solution like their colonial master. Countries in the colonial state were created in the image of their western master about the state. Country like Indonesia would not exist without the presence of the Dutch.

After gaining independent, the new states in Asia and Africa, struggled again to form a strong state that can fulfill state functions to create stability and security, to implement rule of law, and to develop economy and prosperity. The steps to be a real sovereign state are challenging tasks for many newly independent countries leaders. In building sovereignty, leaders of these states attempt to change the poor conditions of the Third World countries which could not able to develop and manage their state well and depend only in legal international status as sovereign state to exist. Jackson (1993) mentioned this kind of state quasi state as they are weak and could not fulfill the basic requirements of good states.

There has been assumption that state must be able to maintain legitimacy and stability on its own. It should be able to control the people and to bring about development, economic progress and industrialization. If a state cannot fulfill these functions well then it is only a quasi state (Jackson 1993). In Western states, state sovereignty exists but in the Third World, it is always expected for the state to strengthen the state sovereignty and legitimacy to a level like in Europe. In many Third World state, therefore, what we see is still the encouragement to strengthen sovereignty of the state rather than the demise of state system. This is also become the word of common people. Concepts such as developmental state have been offered as one idea that can overcome these quasi-state sovereignty critiques.

This phenomenon happens in many Third World countries. Countries that are successful economically such as Japan, China, Korea, Thailand, Malaysia and Singapore were considered as able to pass the quasi-state conditions. Countries such as Indonesia and Vietnam which got independence from revolution are eager to build their strong identity and nationalism. Nationalists in Indonesia, for example, argue that Indonesia is god-given state which has long root in history and has its Pancasila identity. Pancasila is seen as original

invention by Indonesian and they believe it as solution for all problems Indonesian have. In Vietnam, nationalism and communism are two ideas which seemed to contradict one and another but blended to support Vietnam state. All these states show the continuing importance of state and sovereignty for their leaders and for their people.

End of Wesphalian Settlement

The end of the Westphalian settlement is not a new thing. In general, it is about the crisis in nation state because of its inability to solve many issues particularly cross border issues. State is also lost its cultural identity which supposes to be based on one language, custom and culture (Appadurai, 1996). Globalization has also eroded state sovereignty and change loyalty of citizen. Linklater (1996) discussed new forms of citizenship and loyalty based on universal humanity principles.

The expansion of international society and also expansion of state system is not the end of globalization of Western specific ideas of world order. Despite witnessing the continuing relevance of the traditional state system, in current time, we also witness the discussion on the post-Wesphalian order. What is the western post Wesphalian world and settlement all about? One of the main proponents of this idea comes from critical theory thinkers such as Andrew Linklater (1996).

In his articles, Linklater (1996) continues the discourses of international society proposed by Hedley Bull. He departed from Bull post Medieval concept of European world order questioning the central role of the state. In particular, Linklater argues about the loyalty which has shifted from state to transnational loyalties which also require new forms of body and authority to make decisions. In what he termed as post Wesphalian, what needed are visions of the post-Wesphalian state.

Bull (1979: 114) started to talk about neo medieval order where there will be overlapping sovereignty and jurisdictions, and overlapping authority and multiple loyalties (Bull 1977: 254). There would be also diffusion of sovereign power and the dispersal of political loyalties to several centers of political authority. Boundaries of political communities expand and contract. Bull mentioned many state shared their authorities over their citizens with regional and international authorities. New forms of political organization will arise because of the diffusion sovereign power and the dispersal of

political loyalties to several centers of political authorities (Linklater 1977).

For this purpose, a kind of cosmopolitan democracy project as purported by Archibugi (1988: 216) is likely to take place. He proposed for this project to develop democracy in three levels: national level, among states and the global level. In each level according to him the procedures are different but they are interdependent and pursued simultaneously and oriented toward a kind of world citizenship. New institutions in international and regional levels are required to deal with humanity issues and with violations of principles of human rights in one state. The world citizenship according to Archibugi (1988: 216) did not mean to replace national citizenship altogether but it was to identify certain areas of international concerns that should also become rights and duties of the world citizen to deal and handle.

Problematic in Southeast Asia and in ASEAN

To what extent the above claims and developments of the post-Wesphalian world apply in Southeast Asia is debatable. Southeast Asia is a region where the roles of the state and its sovereignty are often questioned. Cross-border issues such as human trafficking, smuggling, haze and migrant workers require cross border authorities to overcome. This region also has a regional organization namely ASEAN that attempts to discuss these issues. ASEAN is seen as the most successful regional organization after the European Union and many people expect ASEAN to follow the European steps in bringing about its future.

Is spite of this development, however, there are several reasons to argue that the Post Westphalian settlement is a wishful thinking if not premature in Southeast Asia.

First, as the discourses of Wesphalian system, the discourses of the post Wesphalian system depart from Western experiences which were initially introduced and popularized in the context of those who promote them. The main problem with many of the Western discourses is that they departed from certain time and place in the West. Similarly, the claim of the end of the Wesphalian Settlement when applied to certain part of the world, it deals with different contexts and situations. The Wesphalian concepts, however, has been accepted and integrated as part of the solution to the Third World countries problems and remain so although there have been claims that this solution is not appropriate anymore to deal with

complex Southeast Asian issues. Instead of adopting post Westphalian settlement, the countries in this region are struggle to increase legitimacy of their state by strengthening state sovereignty over their own citizens.

Secondly, the Southeast Asia situation is in contrast to the discourse on globalization that questions the role of the state in the West. The Southeast Asian states are still struggling to find their identity as nation and to build sovereignty over their own territory. If we have the late capitalism after the end of the Cold War then we can also mention the late sovereignty situation in the Southeast Asia states, which just started to build their states and nations after gaining independence. We can see how sovereignty has been strengthened in many cases. Each countries attempt to strengthen national identities and cultures in campaigns such as in 'One Malaysia'. In Myanmar, Indochina, Thailand, Indonesia and the Philippines, struggle to have absolute sovereignty over their own territories is the main justification to demolish separatist movements. Despite their commitment to ASEAN, in practice each member of ASEAN maintains their exclusiveness in conducting foreign policy by prioritizing national interests over regional interests and ASEAN ready-made agreements such as AFTA.

Thirdly, ASEAN as a regional organization is supposed to be an organization where parts of sovereignty of members must theoretically be submitted to the regional body. In contrast to this principle, ASEAN is aimed to strengthen sovereignty principles by putting clearly non-intervention principle and the right of every state to pursue their visions and interests. ASEAN since the beginning is inter-governmental organization and remains to be like this as long as ASEAN leaders are happy and comfortable with this situation. As for the separatist movement within ASEAN members, they tacitly agree that the solution is not an independent for the separatist groups but peaceful solution within the countries involved in conflicts.

Fourthly, in Southeast Asia, ASEAN has been attempting to promote ASEAN community. Despite its massive campaigns, this promotion, however, is not clear what it is all about. It wants ASEAN people to be subject of ASEAN and have sense as being part of an ASEAN community but it is conducted without clear visions that can really bind people of ASEAN. One vision that may unite ASEAN people is principles of humanity, which can create solidarity related to humanity problems such as suffering, exploitation and oppression. However, if these humanity principles are promoted, then the discourses on the above humanism issues may become boomerang

that attacks back certain ASEAN states that often disregard and oppress their people.

In such late modernity problems, there has been confusion and contradiction if you will, regarding ASEAN community concept. It aims at creating a people oriented ASEAN but this principle if taken seriously require a certain degree of concern on humanity issues faced by ASEAN people such as human rights abuses, democracy, exploitation and equal treatment to migrant workers. This kind of humanist solidarity, however, is not something that ASEAN really eager to promote in its Community concept because it may become a backlash for certain ASEAN states, which has not implemented democracy and human rights properly. Perhaps this is probably not the main goal of ASEAN community projects since the solidarity to humanism issues among people of ASEAN would mean a threat to ASEAN states that do not protect and treat their people well. Therefore, it is not so clear whether it is a community of state or a community of people, that ASEAN leaders attempt to promote.

ASEAN community campaigns want to make people as subjects of ASEAN and have an ASEAN identity but what their rights and duties were not so well informed. Within ASEAN community, ASEAN set up programs such as ASEAN connectivity, but these programs and their projects have been set up for long time and been there without linking them with ASEAN connectivity projects. Imagining as one community requires same spirit such as same destiny and same problems faced. This does not happen in reality since each ASEAN state is busy to solve their own problems in the spirit of their own sovereignty. ASEAN leader talked of ASEAN solidarity but people may not know solidarity for what purposes and against what and whom the solidarity is required.

Fifthly, the post Wesphalian system introduces cosmopolitan democracy as one good example of how settlement can be made to solve cross-border problems faced by states. This assumes that problems that cannot be solved within national boundaries can be solved in higher level of authorities in a regional body. However, this is in contrast to the fact that each country of Southeast Asia still fight for the own democracy. For them democracy really require good, loyal and patriotic citizens whose respects to democracy are badly required to protect democracy. In other words, to make democracy stable and works, they need to have good citizen that can be made through civic and citizenship education. Their main concern on democracy, therefore, is on how to develop citizenship and democracy within their own state rather than on democracy in

regional level. Examples of big states such as America also show that democracy works and is useful only within their own territory and towards their own citizens. When it comes to other states in international relations there is no democracy.

Some ASEAN state like Indochina, Brunei and Myanmar are not really happy with the promotion of democracy and human rights in ASEAN. The formation of AICHR is an example how difficult it is to build a higher authority that can protect ASEAN people from harm and violence.

Conclusion

Post-Wesphalian settlement is a still long way to go if not a wishful thinking in ASEAN. Countries in this region are facing problems in the late modernity. They are struggling to manage national identity, building state and law that can lead to a good and patriotic citizenship and strong government. ASEAN was created particularly to smooth this domestic consolidation and only later attempted to functionalize its multilateral cooperation. It was designed to guarantee that each member can manage their own domestic problems without external intervention. For this purpose, ASEAN has relatively been able to create peaceful relations among its member and reduce potential conflicts which are inherent among states in an anarchical world. It was since the beginning not aimed at integrating region which make possible for the emergence of higher authorities to solve common problems they face.

In such a situation ASEAN is lacking of characteristic of post-Wesphalian system mentioned by Linklater. It has not yet developed any strong regional authorities in both economy and politics. It attempts to create ASEAN Intergovernmental Commission on Human Rights (AICHR) but the authority was subsumed to the permission of individual state to act. ASEAN proposed ASEAN Connectivity projects but people do not see why they should be connected. It also attempts to imagine a new ASEAN in concept such as people centered ASEAN and ASEAN community. But the imagined ASEAN community is an elite imagination only that is not really shared by people of ASEAN since every state has not fully transformed and people are firstly and mostly asked to imagine their state to be a modern and sovereign state. Every ASEAN state continues to give emphasis on the importance of state national identity, subjectivity and sovereignty.

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Philippine Policy and Responses to Arab Spring: The Case of Libya and Syria

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Abstract

The political upheaval being experienced by many Middle East and North African (MENA) countries, and known as the 'Arab Spring' since early 2011, has created a basket of fears and uncertainties for countries in South East Asia. For the people in countries at the heart of the Arab Spring, the resounding call has been for political change and greater economic opportunity. However, for countries outside the region, the concern is about the economic and geo-strategic impacts these events might have on them. The Republic of the Philippines is not an exempted on these fears. This paper will try to answer the following questions: what has the 'Arab Spring' phenomenon brought to the Philippines? More particularly, how has it impacted on the millions of Overseas Filipino Workers (OFWs) who were working in MENA countries? What has been the official Philippines response to the crisis, and what have been the international implications of the Philippine response. The paper will be based on a comparative study of OFWs repatriation operations conducted during the crises in Libya and Syria. It argues that the Philippines, as a source state for expatriate labor in the Middle East, is not in a position to influence events on the ground in the region. It has had to confine its response to events in Libya and Syria to prioritizing the security and interests of its vulnerable OFWs, rather than allying itself with other countries, which have called for and/or actively supported efforts to overthrow the Libyan and Syrian regimes. It is found that repatriation of OFWs in Libya was easier than the repatriation of OFWs in Syria.

Keywords: Overseas *Contract Workers (OFWs) Arab Spring, national interests, strategic silence, Labor Agreements, labor migration, Philippines, Libya, Syria*

I. Review of the RP's diplomatic thrust and Migration Policy

Labor migration in today's highly globalized world has become an important consideration in many developing countries' foreign policies. The last two decades have witnessed an extraordinary increase in cross-border labor market mobility.

Labor migration has many 'push' and 'pull' factors. Push factors at the **level of the individual** include lack of economic opportunity in the home country, resulting in high levels of unemployment and underemployment. In these circumstances, individuals may be forced to work long hours for a low salary that does not keep pace with inflation or is insufficient to lead a dignified life. Other reasons include lack of sufficient education or skills to succeed in their own country's competitive job market. An option for this group is to go abroad and work as unskilled labor. Drivers for educated professionals may include lack of satisfaction with their salaries at home, stimulating them to seek better paying jobs abroad. These socio-economic conditions are sometimes aggravated by government policies, which encourage people to work abroad instead of creating jobs and improving socio-economic service provision at home which may be politically or economically difficult.

The pull factors include the economic situation on the other side of the fence. In many countries – among them many Middle East countries until recently – where the economy is stable and where the cost of labor is high, demand for both professional and service workers from the developing world can also be high. Policies are tailored to attracting IT professionals, medical and construction workers, teachers, and household maids. A host county's ability to lure foreign workers is determined by the competitive benefits and higher salaries it can offer, relative to the benefits and salary a worker might receive in their own country. These push and pull factors at the individual level all boil down to the very human desire to seek a better life for oneself and/or one's family.

At the **national policy level**, especially in certain Asian, African and Latin American countries, outward labor migration is encouraged by the government as it generates significant volumes of foreign currency remittances from abroad. This is a way for otherwise resource-poor countries to balance their current account trade deficits. Also, when the government of a labor source country is unable to create enough new jobs to soak up a young and expanding population, it is motivated to find other safety valves which can relieve the resulting social pressure. In this situation, encouraging overseas labor

migration becomes an attractive policy option. However, this can sometimes be little more than a temporary solution and is often seen by the wider population as demeaning and even in some cases, as a source of national shame.

The **predictable damaging unintended consequences** of organized labor migration programs include a brain drain at home, under-cutting the economy's ability to produce and support high value-added and innovative sectors of the economy. The social effects of being a remittance-reliant economy can also be damaging, as bread winners are lured away from their dependents for years at a time. This places the family unit under severe stress, often leading to very negative social outcomes a generation down the track.

Unpredictable consequences include the destabilizing effects on the source country that a sudden influx of hundreds of thousands of OFWs, returning home from a host country that has been suddenly caught up in civil war and/or social collapse. This is the challenge and threat the Arab Spring has posed for the Philippines. Remittance volumes have shrunk while the country has been forced to reabsorb large numbers of OFWs fleeing the unrest. The Arab Spring has also forced the government to mount expensive evacuation operations to save its valuable overseas workers, something that will be discussed further in this paper.

II. The Philippines

The Philippines is a country where overseas labor migration has become an important, even essential foreign policy consideration. It is often talked about as a pillar of the country's economic strength. The dream of going abroad and making one's fortune has entered Philippine popular culture as the preferred way to improve financial status. The intention of many young Filipinos' to seek their fortunes overseas is evident in their enrollment in professional and tertiary courses of study in such numbers, that the domestic economy could not hope to absorb them. This is a situation captured by Filipino political scientist Jorge V. Tigno, when he said, "Overseas employment from the Philippines is a phenomenon that has captured the interests and imagination of many Filipinos".[1]

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[1] Jorge V. Tigno, 2006, "Overseas Employment from the Philippines: The Nexus between Development and Governance," *Philippine Politics and Governance: Challenges to Democratization and Development,* Teresa S. Encarnacion Tadem and Noel Morada (eds), Department of Political Science, University of the Philippines- Diliman, pp. 267

Although overseas labor migration in the Philippines is not a recent phenomenon, it was only in 1974 where the government of President Ferdinand Marcos signed *Presidential Decree 442 of the Labor Code* into law. This legislation recognized "overseas employment" as part of a "national development policy" for the first time, committing the Philippine government to initiating an official program of sending Filipino workers abroad. This policy was very much aligned to the push factors inside the Philippines at that time. The Marcos government was determined to ease or minimize the problem of unemployment in the Philippines. The original plan was for the "systemic labor export policy program" to be temporary and suspended once the domestic labor market became sufficiently robust to absorb new entrants.[2] The decision of the Marcos administration to send Filipino workers abroad was also a response to developments in the Middle East and North African region at the time. The Arab decision in OPEC to quadruple the price of the crude oil they sold on the world market in 1973, had led many states to amass huge amounts of money generated from petroleum exports. As petro-dollars flowed into Arab hands, their governments' demanded economic development and their populations' sought a higher quality, ever expanding range of social services and benefits. Arab populations did not have the expertise required to drive infrastructure, medical, educational and social development, and as a short cut to creating indigenous talent, these governments opted to recruit foreign workers to work in areas they need to improve most. From the mid-1970s onwards, waves of foreign workers from Africa and Asia migrated to the region. Considerable volumes of intra-regional labor migration also occurred as workers from poor Arab countries such as Palestine, Lebanon, Syria and Yemen migrated to the Persian Gulf region. Like Filipinos, they remitted some of their wages back home to help their families. In the case of Philippine OFWs, nearly four decades of dollar remittances have not only helped numerous families financially, but also contributed much to the resilience of the Philippine economy.

Despite the overall positive financial outcomes the work of Overseas Filipino Workers (OFWs) has for both individuals and for the Philippines economy as a whole, cases arising from illegal recruitment, maltreatment of workers, denial of workers' wages, rapes and tortures, and so on, are all too common. Government agencies

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[2] L.Lazo, T. Teodosio, and P. Santo Tomas, 1982, "Contract Migration Policies in the Philippines", *International Migration for Employment Working Paper* (International Labor Office, 1982.)

and NGOs dealing with OFW affairs receive daily reports from both verified and unverified sources regarding unsatisfactory conditions of Filipinos working abroad. The situation became so dire that the Philippine government was forced to act in the interests of the Filipino workers by revisiting the implementing policies that govern labor migration. With the active participation of many civil society groups both in the Philippines and abroad, the government has become better able to assess the real conditions of its people. The enactment of the *Policies on Migrant Workers and Overseas Filipino Act of 1995 (Republic Act No. 8042)* recognized the significant contribution Filipino overseas workers make to the Philippine national economy:

> *While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.*[3]

Under the amended *Migrant Workers Act*, otherwise known as the *Republic Act 10022*, the Philippine government through its agencies, is making more effort to standardize the protection afforded to OFWs, especially in countries that do not have specific laws which protect the "rights and welfare of migrant Filipinos."[4] Under this act, four criteria were drawn up to evaluate whether a country is safe for the Overseas Filipino Workers (OFWs). These are "1) if the receiving country has existing labor and social laws protecting the rights of migrant workers; 2) if the receiving country is a signatory to and/or ratifier of multilateral conventions, declaration or resolutions relations to the protection of migrant workers; 3) if the country has concluded a bilateral agreement or arrangement on the protection of the rights of

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[3] Section 2, Article C, Declaration of Policies on Migrant Workers and Overseas Filipino Act of 1995 (Republic Act no. 8042)

[4] Amended Migrant Workers Act to intensify protection of OFWs , 05 October 2010, http://dfa.gov.ph/main/index.php/newsroom/dfa-releases/1935-amended-migrant-workers-act-to-intensify-protection-of-ofws%29

Overseas Filipino workers and; 4) the receiving country is taking positive and concrete measures to implement the first three criteria."[5]

Under this amended law, the Philippines has strengthened its resolve to assist and safeguard the welfare of Filipino Overseas Workers prior to, during their contract period, and after the end of their contract. One of the important issues addressed by the amended law is that of illegal recruitment. The new law provides a clear mandate for 'reprocessing' of non-existing jobs being offered during recruitment. It includes a "penalty of imprisonment" of 12 to 20 years and a penalty of one million to two million pesos for violators. Under the amended law, "members of the Philippine Overseas Employment Administration (POEA) are now made accountable in the deployment of migrant workers."[6] In addition to this, the government of the Republic of the Philippines will redouble its efforts to constantly "monitor international conventions and ratify those that ensure protection of Filipino workers abroad as well as forge bilateral pacts with host countries."[7]

In November 2011, the PEOA released the names of countries that are currently banned under the act from receiving OFWs. These countries were identified and assessed by Philippine embassies and missions abroad as being " not compliant with the guarantees provided under the Republic Act 10022 or the Amended Migrant Workers and Overseas Filipino Act of 1995."[8] These countries are Afghanistan, Antigua and Barbuda, Barbados, Cambodia, Cayman Islands, Chad, Croatia, Cuba, Democratic People's Republic of Korea (North Korea), Dominica, East Timor/Timor Leste, Eritrea, Haiti, India, Iraq, Kyrgyzstan Republic , Lebanon, Lesotho, Libya, Mali, Mauritania, Montenegro, Mozambique, Nauru, Nepal, Niger, Pakistan, Palestine, Serbia, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sudan, Swaziland, Tajikistan, Tonga, Turks and Caicos, Tuvalu, US Virgin Islands, Vanuatu, and Zimbabwe.[9]

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[5] Ibid.

[6] Genalyn Kabiling, "New Law Helps Migrant Workers", 18 March 2010.
http://www.mb.com.ph/node/248291/new-law-help#.UIT_Z2fMvIU

[7] Ibid

[8] POEA Released List of 41 Countries with OFW Deployment Ban, November 2, 2011.
http://www.ofwguide.com/article_item-1628/POEA-Released-List-of-41-Countries-with-OFW-Deployment-Ban.html

[9] Ibid

III. Arab Spring and the Philippine Policy and Responses

The Arab Spring phenomenon experienced by several countries in the Middle East and North Africa (MENA) kicked off in December of 2010 and may be considered to be the biggest regional political crisis witnessed in generations. Although only directly affecting the Arab world, its implications for the rest of the world are considerable. The region's geostrategic position, resources and markets mean that most countries (if not all) maintain interests in the MENA region to some degree. These have been significantly affected, including those of the Philippines. Most significantly the ability of the Philippines to send OFWs and assure them a modicum of security and support has been diminished.

At the international level, the Arab Spring has exposed the vulnerability of many energy-poor countries due to their reliance on crude oil from the MENA region. The Arab Spring highlighted the many uncertainties around the production and management of this strategic resource. Even when the region has passed though its current political transition, it may be naïve to assume that peace and stability will immediately be reestablished in the region. The battle for a peaceful, democratic and transparent system of government for countries in the region has just started and given the multiplicity of state and non-state actors with various interests, the future of the region remains very uncertain.

At the regional level, the Arab Spring creates an opportunity for powerful regional countries to extend their influence over the newly installed governments such those in Tunisia, Egypt, and Libya. Regionally influential countries such as Turkey, Iran and Israel compete with each other and extra-regional powers for allies and proxies in the region. They endeavor to shape the future of the region in ways they would like to see it evolve. For instance, while Israel would like to see a region that is less threatening to its existence and interests; Turkey, would like other countries to emulate its political system, and pursue a liberal economic policy while retaining Islamic values at the heart of their emerging democracies. Iran on the other hand, would like see any western presence chased out of the region, and foreign military interventions prevented. Iran believes that the presence of extra-regional powers in the region has created an environment of fear, distrust and insecurity.

At the bilateral level, many countries may worry that the future priorities of the new Arab governments could be counterproductive to their bilateral interests. This assumption holds

true with Chinese bilateral relations with oil producing states in North Africa and Middle East. Given China's huge dependency on crude oil from the region, China may always feel concern about western powers imposing regime change in the region. This fear is manifested at the United Nations Security Council (UNSC) where China rejects Western proposals calling for Arab leaders to step down as a matter of course.

For the Philippines, understanding the three levels of uncertainty is crucial. The country's interests in the region can be summarized as ensuring free labor mobility across borders, the wellbeing of OFWs, security of oil and gas shipments and continued peaceful relations with Muslim countries. With this in mind, the Philippines carefully calculates its response to any events in the region affecting its interests. An example of this occurred when President Gloria Macapagal Arroyo decided to withdraw the Philippines compliment of the maligned US-led "Coalition of Willing," invasion force in Iraq. This was an example of the country's desire to put the lives of its nationals working in the Middle East before even its alliance commitments to the US and Australia. These countries later criticized the Philippine troop withdrawal. As the secretary of the Department of Foreign Affairs Delia Domingo said, "Our desire to protect the life of one of our nationals had a direct implication on our relations with other countries as well."[10] The commitment of the Philippine government to fight international terrorism side by side with its allies has been limited "within the capabilities" of the country. Noel Morada, a professor from the University of the Philippines observes that the decision to pull out "signaled the importance of giving priority to the safety and welfare of overseas Filipino workers in Iraq in defining the extent of support the Philippine government would give to the US in the fight against terrorism abroad."[11]

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[10] Excerpt from Foreign Secretary Delia Domingo Albert (august 12, 2004) Structure, Content, Form, and Substance of the Three Pillars of Philippine Foreign Policy," speech at the Manila Overseas Press Club (MOPC) Regular Breakfast Forum, La Dolce Fortana Restaurant. August 12, 2004. http://www.gfa.gov.ph/archeive/speech/albert/mopc2.htm (accessed 25 July 2025). Cited in Noel Morada. 'the Philippine foreign Relations after September 11 (2001-2005). Philippine Politics and Governance: An Introduction. Noel orada and Teresa S. Encarnacion Tadem.(eds). Department of Political Science. University of the Philippines Diliman. 2006. P538.

[11] Noel Morada. 'the Philippine foreign Relations after September 11 (2001-2005). Philippine Politics and Governance: An Introduction. Noel orada and Teresa S. Encarnacion Tadem.(eds). Department of Political Science. University of the Philippines Diliman. 2006. P552.

The Philippine government gives high priority to the protection of the Overseas Filipinos Workers working in Middle East and North African countries, especially those that are working in conflict areas. Although there have been efforts to strengthen bilateral labor relations between the Philippines and receiving countries, there is still considerable uncertainty about how the protection and wellbeing of Filipino workers far from home is secured.

Uncertainties and instability often arise from the socio-political and economic conditions in Arab countries where a rigid, though fragile authoritarian system of governance produced not only enemies within the state but also socio-economic time bombs ready to explode. Secondly, uncertainty about how to protect the welfare and wellbeing of Filipino workers is due to the limited capacity of the Philippine missions abroad to locate the whereabouts of the Filipino workers in times of crisis, a condition that is attributed to the increasing number of undocumented workers, working illegally in many countries in the MENA region. A very limited number of diplomatic staff in Philippine Embassies in the region are tasked with assisting millions of workers. This limited capacity to assist is due to the relatively small budget allocated by the national government for the legal assistance of Filipinos abroad.

The political crises in Libya and more recently in Syria has exposed the obstacles the government faced in its efforts to repatriate thousands of Filipinos residing and working in these countries. It also exposes the vulnerability of our workers are caught in civil conflicts. Lastly it put the Philippine government in the invidious position of trying to serve the interests of its many citizens in the conflict-hit states by acting diplomatically, while at the same time facing down the will of powerful international states to condemn an Arab government's violation of human rights. The decision made by the Philippine government of "turning a blind eye"[12] to rights abuses by President Bashar Assad was considered by some to be a "shameful"[13] act by a country where human rights are highly regarded. Cuba and China were voting against the resolution and the Philippine "chose to be absent from the vote."[14]

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[12] Philippe Dam, Philippine Turns a Blin Eye to Rights Abuses abroad.8 December 201. Accessed 20 November 2012. http://www.hrw.org/news/2011/12/08/ph-turns-blind-eye-rights-abuses-abroad

[13] Rodel Rodis, Shameful Philippine vote on Syria, 3 July 2012. (accessed 20 November 2012) Inquirer. http://globalnation.inquirer.net/42723/shameful-philippine-un-vote-on-syria

[14] Ibid

The Philippine decision not to cast its vote was controversial and led New York–based Human Rights Watch to ask whether the Philippines considers Syria to be a human rights violator. At the same time, it also led many to speculate as to why the Philippines become a member of the Human Rights Council at all.[15] The Philippines was the only member country that did not attend the United Nations Human Rights Council meeting held, "to discuss a resolution expressing condemnation of the massacre", according to the New York-based Human Rights Watch.[16] Human Rights Watch states that the Philippines' "empty chair" during the meeting was "worse than the previous Philippine votes on Syria".[17]

In explaining why the Philippines did not vote, the country's Foreign Affairs secretary Albert del Rosario says that decision was primarily based on the imperative to secure the "welfare of our people", and that this was the Philippine government's "primary concern."[18] Del Rosario explains that, "as must be known to all, our nationals in Syria who are highly vulnerable are urgently being repatriated, and we are receiving assistance from the Syrian government in this effort. As a result, the Philippines was unable to vote for the said resolution."[19] This "strategic silence" may not be desirable as the Philippines situated itself alongside the other members of the United Nations Human Rights Council meeting, but it was indeed an effective strategy for not antagonizing Syrian government forces. Moreover the Syrian government many have considered this a reason to allow the Philippines to repatriate its nationals safely.

Even before the repatriation, the Philippine government, through the Department of Foreign Affairs, had activated an alert level system to determine the security conditions in Libya and Syria and to guide whether and when compulsory repatriation of OFWs would be triggered. Alert level 1 is a warning; alert level 2 is restricted movement phase; alert level 3; with alert level 4 triggering compulsory repatriation of the OFWs, with all repatriation expenses paid by the Philippine government.

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[15] Ibid

[16] Editorial, Philippines Strategic Silence on Syria. Philippine Daily Inquirer, 7 June 2012. http://my.news.yahoo.com/editorial-philippines-strategic-silence-syria-041003431.html

[17] Ibid

[18] Ibid

[19] Rodel Rodis, Shameful Philippine vote on Syria, 3 July 2012. (accessed 20 November 2012) Inquirer. http://globalnation.inquirer.net/42723/shameful-philippine-un-vote-on-syria

In addition to this, a "Rapid Response Team (RRT)" was set up in the region to manage a speedy "extraction and repatriation"[20] process of Filipino nationals. This RRT was composed of Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE) and Department of Interior and Local Government (DILG) personnel. It remains in Syria and continues to help out in the repatriation of overseas Filipino workers (OFWs) caught up in this intractable conflict.[21]

During the crisis in Libya, the Philippine government, with the help of international bodies such as Migrant International and international companies that employed Filipinos in Libya, was able to efficiently repatriate hundreds of Filipino workers working inside Libya. During the crisis, over 10,000 Filipino workers were repatriated to the Philippines. On these, thousands decided to continue working abroad outside Libya, while others waited for the lifting of the ban on working in Libya so they can resume their jobs.[22] During the repatriation operation the International Organization for Migrants helped to contact a ship to evacuate 400 Filipinos from Tripoli to Alexandria in Egypt, while the Philippine government exerted efforts to "charter another aircraft for the safe return of Filipinos in Libya to the Philippines."[23] Records from the Department of Foreign Affairs (DFA) indicates there were about 30,000 Filipinos residing and working in Libya in 2010. In Tripoli alone, there were about 15,000 Filipinos, while in Benghazi and Al Bayda there were about 10,000 Filipino workers.[24] The successful repatriation of Filipinos in Libya was attributed to collaborative efforts of the Philippine government, the International Migrant Organization and the companies that employed Filipino workers.

By contrast with Libya, the situation in Syria was much more difficult. The repatriation of Filipino workers from that country was, as former Labor Undersecretary Susan Ople comments, "harder

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[20] DFA intensifies repatriation efforts in Syria. Philippine Information Agency, 5 of March 2012. (accessed 30 2012). http://www.pia.gov.ph/news/index.php?article=2101330928459
[21] Ibid
[22] Nicon Fameronag. 2012. Global Neigbor: Libya Ban on OFWs. Hong Kong News, 30 October. (accessed 30 October 2012). http://hongkongnews.com.hk/global-neighbor-libya-ban-on-ofws/
[23] Mandatory Evacuation of OFWs in Libya Ordered, August 23, 2011, http://www.ofwguide.com/article_item-1588/Mandatory-Evacuation-of-OFWs-in-Libya-Ordered.htm
[24] Governments Double Efforts to Help OFWs in Libya. Sun Star, 27 February 2011. (accessed 30 October 2012). http://www.sunstar.com.ph/manila/local-news/government-doubles-efforts-help-ofws-libya

compared to those that coming from Libya."[25] There were several factors contributing to these difficulties. The first was the fact that in Syria, only around 800 Filipino workers out of an estimated 17,000 OFWs were documented or officially registered with the Overseas Workers' Welfare Administration.[26] It was therefore very difficult for the staff of the Philippine mission in Damascus to locate the many undocumented Filipinos working in Syria.

First, the Philippine mission had to rely mainly on information provided by families of the workers in the Philippines or from information provided by other Filipinos in contact with the undocumented workers through informal networks. Ninety-five percent of these Filipino workers were women and vulnerable to possible increased levels of abuse during the conflict. Second, consular staff at the Philippine mission had to negotiate with the employers to secure their agreement to allow the Filipina workers leave the country.[27] There were numerous cases where the employer allowed their workers to go home only on condition that the workers refunded recruitment costs of about US$10,000 instead of the US$4000 paid at the time. Third, the civil conflict had already spread throughout the country by the time the evacuation operation was begun. This made locating and gathering Filipino workers in a safe place like the embassy not only difficult, but dangerous. The DFA reported that there were between 8000 and 9000 Filipino workers working in conflict-hit areas of Damascus, Homs, Daraa, Aleppo and Iblib at the time the crisis erupted.[28] The fourth problem was the difficulty of obtaining exit visas for Filipinos in Syria. Given the sheer number of Filipino workers seeking evacuation, and the chaotic conditions in Syria, immediate issuance of exit visas was often not possible. Obtaining exit visas in Syria is "usually a tedious process." The Philippine embassy had to exert all its efforts to negotiate a "blanket waiver of mandatory departure documents for all Filipinos exiting Syria."[29] Finally, and unbelievably, despite continued efforts to repatriate Filipino workers from Syria, cases of Filipinos being sent

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[25] Philip C. Tubeza. 2011. Repatriation of OFWs Harder in Syria than in Libya. Inquirer, 23 August. (accessed 30 October 2012). http://globalnation.inquirer.net/10015/repatriation-of-ofws-harder-in-syria-than-in-libya

[26] ibid

[27] Ibid

[28] Michaela del Calla. 1,300 More Filipinos want to Flee Strife-Torn Syria, DFA, 25 August 2012. (accessed 26 November 2012).
http://ptvnews.ph/index.php/bottom-news-life/12-12-world/3962-1-300-more-filipinos-want-to-flee-strife-torn-syria-dfa

[29] Ibid

to Syria from third countries continued to occur as a result of illegal recruitment either at home or in other countries. Philippine labor attaché to Syria, Angel Borja, observed that despite the ongoing repatriation of Filipinos from Syria, and Syrian Government Decision No. 500, which resolved to not issue visas to new Filipino workers, "an estimated 100 new OFWs who are victims of illegal recruitment and human trafficking still arrive in Syria every month."[30] A report provided by the Inter-Agency Council Against trafficking (IACAT) states that about 80 percent of the 1,800 OFWs repatriated from Syria were victims of human trafficking, with most recruited from the provinces of Maguindanao, Basilan, and Sulu in the Southern Philippines.[31] This contrasts with Philippine Start figures which estimate that there were "roughly 16,000 to 18,000 undocumented OFWs in Saudi Arabia", and in the entire Middle East, roughly 28,000 to 30,000 undocumented out of an estimated 2 million OFWs.[32] Article 6 of The Republic Act No. 10022 otherwise known as *the Migrant Workers and Overseas Filipino Act of 1995*, as amended, calls for the "improvement and standard of protection and promotion of the "welfare of migrant workers, their families and overseas Filipinos in distress, and for other purposes."[33] It defines illegal recruitment as:

> SEC. 6. *Definition.* - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises

[30] Despite Employment Ban, 100 OFws still enter Syria Every Month, 16 July 2012. http://www.gmanetwork.com/news/story/262153/pinoyabroad/news/despite-deployment-ban-100-ofws-still-enter-syria-every-month-mdash-dole

[31] *Ayan Mellejor and Judy Quiros.* Rampant trafficking of OFWs in Syria uncovered. Inquirer Mindanao. 9 September 2012. (accessed 1 Nov. 2012). http://globalnation.inquirer.net/49632/rampant-trafficking-of-ofws-in-syria-uncovered

[32] Undocumented OFWs can still register for OAV. Philippine star. 8 October 2012. http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=200&articleid=857272

[33] http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html

for a fee employment abroad to two or more persons shall be deemed so engage.[34]

Section 7 of the Amended Migrant Workers Act imposes a penalty of a term of imprisonment and a fine of not less than two million, and not more than five million pesos for illegal recruiters. The 'maximum penalty' will be sought by prosecutors if the victim(s) are less than 18 years old of age. Foreign nationals who are engaged in illegal recruitment of Filipino workers also face penalties as prescribed by the law and can face deportation "without further proceedings".[35]

IV. Conclusion

The repatriation of Overseas Filipino Workers in several prone-conflict countries in Middle East and North Africa has been one of the many difficult tasks that Philippine missions in those areas have had to carry out. Although coordination has improved a lot over the years on the practicalities of repatriating Filipino workers, several problems remain a challenge for the Philippine government. Often the government response continues to be criticized as merely reacting to a crisis when it has already emerged, rather than actively making contingency plans and preparations for when and if things turn bad. The reason for this may be that the Philippine government does not believe it can act alone or unilaterally in such situations. Domestic, regional and international factors all contribute to geopolitical uncertainties in Middle East and North Africa. With the multiplicity of actors involved in the recruitment process, and with compelling push and pull factors encouraging Filipinos to work abroad, the Philippine government becomes less and less able to control and manage challenges to the welfare and security of the OFWs working in crisis-prone countries.

The two case studies of the mass evacuation and repatriation of Filipino workers from Libya and Syria, represents two very different repatriation scenarios. The Libyan evacuation was a coordinated action involving Philippine government missions, international non-governmental bodies such as the Migrant

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[34] REPUBLIC ACT No. 10022. An Act Amending Republic Act No. 8042, Otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, further improving the standard of protection and promotion of the welfare of Mmigrant workers, their families and overseas Filipinos in distress, and for other purposes,
http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.htm
[35] Ibid

International and the companies and firms employing the Filipino workers. Whereas, the Syrian evacuation was far less organized, and carried out initially in a more *ad hoc* fashion resulting in greater uncertainties and dissatisfaction from many of our citizens who required urgent assistance to escape. Government missions encountered difficulty locating Filipino workers, many of whom were undocumented. The scenario in Libya represents the efficient, satisfactory face of the Philippine consular and diplomatic efforts to protect and repatriate OFWs from an approved host country.

However, the scenario that played out in Syria reflects the fact that Philippine efforts were hampered because Syria was on the list of countries to which recruitment of Filipinos is discouraged. Those working there had invariably been illegally recruited and were often employed as undocumented, unprotected household maids. The less than satisfactory Philippines performance shows there is a need for the government to continue to collaborate with recruiting agencies and host countries to ensure regulations are adhered to, providing maximum protection of the Filipino workers, while acknowledging that even in cases where the strictest interpretation of the law says they should not be working in a particular country, OFWs deserve the best efforts of officials when they require emergency repatriation.

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From Westphalia to Brussels:
The Rise and Demise of the Territorial State System in Europe

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Abstract

This article attempts to investigate the rise and demise of the "modern territorial state system" in Europe. It supports the conventional view that the Peace of Westphalia marked the emergence of a modern territorial state system in Europe. The modern state system—'Westphalian Order'—refers to the organization of the world politics into territorially exclusive, sovereign nation-states, each with an internal monopoly of legitimate violence. Then, it shows that Westphalian Order began to demise since the beginning of European integration project in aftermath of the Second World II and the establishment of the European Union (EU). In the EU, the meaning of Westphalian concepts of state sovereignty and territoriality significantly challenged. It is not yet clear where the evolution of the political community will lead to but a post Westphalian order has emerged.

Keywords: *Westphalian Order, sovereignty, territoriality, post Westphalian Order, the European Union.*

Introduction

This article attempts to investigate the rise and demise of the "modern territorial state system" in Europe. It supports the conventional view that the Peace of Westphalia marked the emergence of a modern territorial state system in Europe. The modern state system—'Westphalian Order'—refers to the organization of the world into territorially exclusive, sovereign nation-states, each with an internal monopoly of legitimate violence. However, Westphalian Order began to demise Europe since the beginning of integration project in aftermath of the Second World II and the establishment of the European Union (EU). In the EU, the meaning of Westphalian conception of state sovereignty and territory seriously challenged. The

EU is an economic and political union of 28 member states which operates through a system of supranational independent institutions and intergovernmental negotiated decisions by its member states. In the EU, the principles and practices of state sovereignty and state territoriality was challenged and revised.

The Rise of Westphalian Order

The Westphalian settlement was arguably a historic moment for the emergence of modern international relations. The peace settlement marked the end of the Thirty Years' War—a complex struggle that began in 1618 as a religious conflict within the Holy Roman Empire between the ruling Catholic Hapsburg dynasty and their Protestant subjects in Bohemia. Over the next three decades, the war evolved through a series of phases into a wider political conflict, pitting the Austrian and Spanish branches of the Hapsburgs together with their allies among the Catholic German princes against Denmark, Sweden, France and their allies among the Protestant German princes (Vaughan, 2011).

In the Peace of Westphalia, pragmatic decisions of the Catholic delegates at Muenster and the Protestant delegates at Osnabruck were designed to redraw the map of Europe so that a new balance of power could be established. Under the terms of the peace agreements, the power of the Hapsburgs was weakened, with the Holy Roman Empire limited in its sphere of influence to Austria and parts of Germany. France became the dominant power on the continent, and was now bordered by weak, fragmented states that posed no real threat to its security. Sweden received control of the north German coast, and the United Provinces of the Netherlands became independent of Spain. The philosophical decisions of the delegates centered upon rules of statecraft, designed to create a normative order that would support the new balance of power (Vaughan, 2011).

The Treaty of Westphalia had a profound impact on the practice of European international relations in several ways: *first,* it embraced the notion of sovereignty—that the sovereign enjoyed exclusive rights within a given territory. It also established that states could determine their own domestic policies in their own geographic space. *Second,* leaders sought to establish their own permanent national militaries. *Third,* since the state had to collect taxes to pay for these militaries and the leaders assumed absolute control over the troops. *Finally*, it established a core group of states that dominated the world until the beginning of the nineteenth century: Austria, Russia,

England, France, and the United Provinces of the Netherlands and Belgium (Vaughan, 2011).

The Peace of Westphalia arguably marks the birth of the nation-state and the rise of modern territorial state system in international politics. The peace settlement established the 'territorial state' as the basis of the modern state system and emphasized international boundaries as legal territorial boundaries between one country and the other and asserting their sovereignty as well. Over the past three and a half centuries, the principles and practices gradually spread from Europe to the rest of the world. Starting from European continent, it became a global norm of statecraft. All new states in Latin America, Asia and Africa that emerged in 19th and 20th century also adopted the principles and practices of state sovereignty and state territoriality as prescribed by the Westphalian Order.

The Characteristic of the Westphalian Order

According to Vaughan (2011), the Peace of Westphalia was important for three main reasons. *First,* it secularized international politics by divorcing it from any particular religious footing, anchoring it instead on the tenets of national interest and reasons of state. *Second,* it promoted sovereignty, the legal doctrine that "no higher authority stands above the state" except that to which the state voluntarily assents. *Third,* it accepted a conception of international society based on the legal equality of states. They had the right to manage matters within their boundaries without outside interference as well as the duty to abstain from intervening in the domestic affairs of other states.

The Westphalian Order overturned the medieval system of centralized religious authority and replaced it with a decentralized system of sovereign, territorial states. As Caporaso (1996: 34) clearly notes, the Westphalian Order refers to "the organization of the world into territorially exclusive, sovereign nation-states, each with an internal monopoly of legitimate violence." Even though such an idealized model has never been completely realized in practice, it continues to dominate our thinking about polity and institutional change in the beginning of this new millennium (Blater, 2001:76).

It is noteworthy that the difference between medieval sovereignty and Westphalian sovereignty was that the new sovereign state escaped from the medieval system of dispersed authority and successfully established and enforced its own centralized authority (Jackson, 1992). This centralized authority usually takes the form of a

government, monarchical or authoritarian figurehead, who has power over the state and sets laws which its citizens obey. Westphalian order has an absence of external agents, such as the Church. Prior to the Westphalian order, the Church played a very important role in politics. Now, there is greater separation between Church and state in many nations (Blater, 2001:76).

The Westphalian Order also attempted to quell the creation of another European empire (such as the Holy Roman Empire). In order to do so they made states in Europe relatively equal. Another element of Westphalian Order was war and security: in the middle ages there was an overarching authority that would sanction war, in the Westphalian order that authority was now replaced by individual states (Blater, 2001:76).

International relations theorists emphasize several key characteristics of Westphalian Order: *first,* the principle of the sovereignty of states and the fundamental right of political self determination; *second,* the principle of legal equality between states; *third,* the principle of non-intervention of one state in the internal affairs of another state (Andreas, 2001:251). The official recognition of each other's rule evoked the question how these states should now relate to one another which was solved by the principle of sovereignty. It was further determined that such sovereign states enjoyed a legal equality between them.

State sovereignty had external and internal dimensions: *The external dimension* defined that within its borders "the state or government has an entitlement to supreme, unqualified, and exclusive political and legal authority" (McGrew, 2011: 23), ultimately meaning that it is not righteous to challenge the rule of an (legitimated) authority in a state. *The internal dimension* aimed at the "principle of non-interference in the internal affairs of other states" (D'Anieri, 2010: 28).

Two other important characteristic of the Westphalian Order came: the principles of territoriality and autonomy. Regarding territoriality it was determined that humankind is organized "into exclusive territorial communities with fixed borders." The principle of autonomy aimed at the emerging notion of self-determination so that countries were regarded as autonomous "containers of political, social and economic activity" within fixed borders, separating the domestic from the international sphere (McGrew, 2011:23).

The European Union: the Demise of the Westphalian Order?

      Over the past three and a half centuries, the principles and practices of the Westphalian Order gradually spread from Europe to the rest of the world. Starting from Europe, it became a global norm of statecraft. All new states in Asia and Africa that emerged in the 20th century, for instance, also adopted the principles and practices of state sovereignty and state territoriality prescribed by the Westphalian Order. However, the order is gradually and significantly challenged by various phenomenons: globalization, the rise of economic interdependence, the phenomenon of religious movement, the rise of global environmental issues as well as regional integration, i.e, in Western Europe.

      In particular, the experience of the European integration will be elaborated here. During the last decade, there has been growing awareness among scholars that the European Union is one of important challenges to the Westphalian Order of sovereign nation-states. Two challenges to the Westphalian Order deserve elaboration. *First,* the EU member states have gradually "pooled" their sovereignty to European supranational institutions. *Second*, the phenomena so called "de-bordering" of the state in a European single market. Because of the challenges, there has recently been much debate about whether the "Westphalian Order" is about to end (Siander, 2001).

(1) Supranational Institutions and Pooling Sovereignty

      Sovereignty presupposes that the state is a territorially bounded unit with an inside and an outside. Internally, the sovereign state is conceived to be an entity that can exercise supreme authority within its own territorial boundary. Thus, a state is sovereign because it is acknowledged that there is no external organization that can exercise authority within the territorial boundaries of that state. Externally, a state must be recognized by the other sovereign states and identified as an equal member of the international society. Putting internal and external considerations together, it follows that sovereign states have an international obligation or duty to abide by the norm of non-intervention. Put differently, sovereignty requires all states to acknowledge that they have no right to intervene in each other's domestic affairs (Vaughan, 2011).

      Such interpretations are seriously challenged by the practice in the EU. In particular, the phenomena of deepening of European

integration seriously threaten and undermine the Westphalian concept of sovereign state at its point of origin (Vaughan, 2011). The EU member countries have "pooled their sovereignty" to supranational institutions. It means that EU member states delegate some of their decision-making powers to shared institutions they have created so that decisions on specific matters of joint interest can be made at European level. Consequently, the traditional view of sovereignty has especially been challenged in recent years. The EU has shown that states has come together and form a collective, in terms of sharing laws, currency, security, and other areas that are previously under the control of a singular nation state.

Since the EU is made of different member states, in order for the EU to have power and sovereignty, the EU member states have given up much of their sovereign power. The Member States of the European Union have agreed, as a result of their membership to the EU, to transfer some of their powers to the EU institutions in specified policy areas. Thus, EU institutions make supranational binding decisions in their legislative and executive procedures, the budgetary procedures, the appointment procedures and the quasi-constitutional procedures (European Parliament, 2013).

The EU has many other features that distinguish it from an international organization. There are no internal borders disappeared between the member states and the free flow of goods, persons, services and capital are guaranteed by the founding treaties. There is an EU citizenship. All citizens of the member states are citizens of the Union and they have rights transcending the framework of nation-states, among others the right to move and freely reside on the territory of the member state and to vote and stand as a candidate at municipal elections and elections to the European Parliament on the territory of a member state he is not a citizen of. All these features transform the traditional notion of nation-state sovereignty (Tokar, 2001: 6).

(2) The Single Market and De-bordering the World of States

The territorial practice was legitimized and also standardized by the Westphalia settlement. Christendom was divided into sovereign secular states with a thick line between them and the government was the absolute authority inside that line. This change brought a new image in every sovereign territorial limit, that is, all governments are the exclusive authority and their decisions and arguments are exclusively carried out within their territorial limit. According to

territorial sovereignty, within a territory there is only one absolute temporal power, the government of that territorial state (Daud Hassan, 2006:67).

However, it is safe to argue that the Single European Market has seriously undermined the concept of Westphalian concept of state territoriality. The Single European Market has liberalized the movement of goods, capital, services, and person within the EU member states. Because of the single market, trans-border flows of information, capital, services, goods and people in the EU has created 'spaces of flows' and the EU increasingly become borderless.

Single European market clearly marks a process of 'de-bordering the world of states' where the executives of national governments are voluntarily losing their gatekeeper role between international and domestic affairs (Blater, 2001:76). Single Market is intended to be conducive to increased competition, increased specialization, larger economies of scale, allowing goods and factors of production to move to the area where they are most valued, thus improving the efficiency of the allocation of resources. It is also intended to drive economic integration whereby the once separate economies of the member states become integrated within a single EU wide economy.

First, the free movement of goods. The EU has developed a single European market from which European citizens and businesses are now benefiting. Single market makes it easy for the EU citizen to buy and sell products in 28 Member States with a total population of more than 500 million. It gives consumers a wide choice of products and allows them to shop around for the best available offer. The single European marketplace that was created in past decades helps EU businesses to build a strong platform in an open, diverse, and competitive environment. All border controls within the EU on goods have *been abolished* together with customs controls on people (Fontaine, 2010: 39).

Second, the free movement of capital. The EU member states permits a free movement of investments such as property purchases and buying of shares between countries. Capital within the EU may be transferred in any amount from one country to another. All intra-EU transfers in euro are considered as domestic payments and bear the corresponding domestic transfer costs. This includes all member States of the EU, even those outside the eurozone providing the transactions are carried out in euro (European Commission Enterprise and Industry, 2010: 8).

Third, the free movement of services. The EU member states has liberalized a movement of services which allows self-employed persons to move between member states in order to provide services on a temporary or permanent basis. The freedom prohibits restrictions on free circulation of services within Member States (European Commission Enterprise and Industry, 2010: 8).

Finally, the free movement of people. The EU member states also guarantee the freedom of movement of its citizen. It means EU citizens can now move freely between member states to live, work, study or retire in another EU member country. This freedom enables citizens of one Member State to travel to another, to reside and to work there (permanently or temporarily). Through the *Schengen Agreement*, most EU member states (excluding Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom) and four non-members, i.e. Iceland, Liechtenstein, Norway, and Switzerland, have already abolished physical barriers across the single market by eliminating border controls (European Commission Enterprise and Industry, 2010: 9).

The Single European Market has liberalized the movement of goods, capital, services, and person within the EU member states and has led to a borderless European Union. In short, it has seriously undermined the concept of Westphalian concept of state territoriality.

The European Union: Beyond Wesphalian Order?

What is the future of the European Union beyond Westphalian Order? It is not enough space to discuss such important question. However, Zielonka (2000) argues for possibility of the EU by comparing two tentative model of Post Westphalian Order: "Neo-Medieval Model" in which the borders are soft and never fixed, authority is dispersed, and multiple cultural identities co-exist and "Westphalian Super-state Model." These two are the possible outcomes of the current political, economic developments in the EU (Zielonka, 2000).

Two Contrasting Models

WESTPHALIAN SUPER-STATE	NEO-MEDIEVAL EMPIRE
Hard & fixed external border lines	Soft border zones in flux
Relatively high socio-economic homogeneity	Socio-economic discrepancies persist without consistent patterns
A pan-European cultural identity prevails	Multiple cultural identities coexist
Overlap between legal,	Disassociation between authoritative

administrative, economic & military regimes	allocations, functional competencies and territorial constituencies
A clear hierarchical structure with one Centre of authority	Interpenetration of various types of political units and loyalties
Distinction between EU members & non-members is sharp & it is most crucial	Distinction between the European Centre and periphery is most crucial, but blurred
Redistribution centrally regulated within a closed EU system	Redistribution based on different types of solidarity between various transnational networks
One single type of citizenship	Diversified types of citizenship with different sets of rights and duties

Source, Jan Zielonka (2000)

Conclusion

This article has examined the rise and demise of the "modern territorial state system" in Europe. The Peace of Westphalia arguably marked the emergence of a modern territorial state system in Europe which then spread to the rest of the world. The Order began to demise since the beginning of European integration project in aftermath of the Second World II and the establishment of the European Union (EU). In the EU, the meaning of Westphalian concepts of state sovereignty and territoriality significantly challenged. It is not yet clear where the evolution of the political community will lead to but a post Westphalian order has emerged.

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Securing Indonesia's Sovereignty in the Sea: Focusing on Security Management in Malacca Strait

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Abstract

The security and sovereignty of maritime territory become a country's strategic interest in global dynamics. This strategic interest in political or military aspect includes such as power and military projection across the continent; while the economic interest covers in securing international trade through the oceans, or securing energy resources transportation. In Southeast Asia, Malacca Strait became one of an important international cruise lines. Some major countries such as Japan, India, China and the United States had strategic interest in the Malacca Strait. Indonesia, as one of the coastal states, has responsibility to maintain the security stability in the Southeast Asian region. It means, Indonesia as a sovereign state has security agendas to keep its territory from the influence of major countries, and also to securing it from non-traditional security threats. The principle of free and active foreign policy, the doctrine of dynamic equilibrium and the slogan "thousand friends zero enemy" became Indonesia's guideline to achieving its national interests through its foreign policy. This working paper will analyze to what extent, the spirit of nationality insight and sovereignty concept can shape the political projection of Indonesia in terms of securing its maritime area? this working paper will outlines some issues and barriers both external and internal ones toward an effort of integrating Indonesia's maritime security and sovereignty in the contemporary world order.

Keywords: Maritime Security, Malacca Strait, Indonesia, Sovereignty, National Interest

Introduction

After the admission of Indonesia as littoral state in UN Convention on Law of the Sea Convention/ UNCLOS in 1982, Indonesia's national interest in international politic has been referred to the concept of littoral state itself. This concept aimed to integrate sovereignty of land and islands as a whole; inland waters, littoral maritime, territorial seas including the space above it, underwater and the land below, as well as the resources contained in it.[1] International admission has given authority to Indonesia to maintain and preserve the maritime territory as well as in managing the natural resources under the Exclusive Economic Zone, in the frame of continental line, also according to particular International ocean border arrangement (excluding continental line) In the framework of sovereignty preservation, Indonesia should be able to accommodate both its national interest and user states interest in the usage of passing rights, either in freight or flight through Indonesia maritime territory.

Regarding to the defense and security preservation efforts, after the statement of Indonesia as and littoral state, there were adjustments made within decision making level. According to Article 3 (2) UU No. 3 Year 2002, "national defence constructed by considering Indonesia's geographical condition as a littoral state", thus the securing of Indonesia is no longer centered in securing the lands, but most important is to secure the maritime territory of Indonesia. In this case, it is mainly aimed to prevent variousnon-traditional threats toward maritime territory sovereignty, including the threats caused by pirates, smugglers, international terrorists, natural disasters, damages in natural resources and maritime envivornment, also including transportation and communication system security (Sea Lanes of Communication). Meanwhile, the securing function could be proceed by government through the synergy of government institutions such as Ministry of Transportation, Ministry of Coordinator in Political, Law and Security Affairs, TNI (Tentara Nasional Indonesia), and Indonesian Police (Polri).

As one of the coastal states directly bordering with Malacca Strait, Indonesian sovereignty as well as security and safety management in this region is being tested, for there are still disputes in proprietary claiming with Malaysia in some parts of Malacca Strait.

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[1] Article 2 and 49 (2) *United Nations Convention on Law Of the Sea* 1982 and Article 4 UU Number 6 Year 1996. This littoral states became new regime in international law defining duties and rights of littoral states and other states in the mentioned maritime zone. For example related to shipping rights and flight owned by foreign states and the usage of particular maritime territory.

It is essential to know that Malacca Strait is one of the economic and shipment most important and crowded way. Bronson Percival and Joyce Dela Pena stated that one third of the whole world trade and half of the oil freight as well as other energy security resources—especially those imported from Japan, Taiwan, South Korea, and China—use the access of Malacca Strait (Percival, 2005 & Pena, 2009). Along with the rise of economic development among the countries in East Asia, economic interdependence of East Asia region with other regions increased as well. It can be seen from massive liberalization level and increasing of export-import volume. Therefore countries in this region have become high consumer of energy and oil as the demand of economic development process, particularly China and Japan. As the most effective route in Sea Lines of Communication (SLOC) for security of energy freight and trade in Asia region with Western countries, several majorstates attempt to control and intrude Malacca Strait. Gerard and Webb in Inderjit Singh a/1 Tara Singh (2012) mentioned that bigger states have three primary interests in this strait such as: *warfare and the projection of military power across the globe, commercial interests and maritime trade, and economic exploitation of the sea.* For those undeniable assumptions, Malacca Strait had then been balance of power and battle media for states such as United States, China, Japan, and India within Southeast Asia region.

As written in Article 3 UNCLOS "*Breadth of The Territorial Sea*" on the sovereignty of sea territorial region for 12 mill from the coastal line, thus securing, burden sharing, and financial sharing related to Malacca Strait security basically had become juridictie authority of Indonesia, Malaysia and Singapore as *littoral states* (UNCLOS, 1982: article 3). However, in article 43 UNCLOS it is as well mentioned that for the sake of security and prevention in Malacca Strait, securing attempt should be assisted by the state users and or other stakeholders (Djalal, 2008: 3). This assistance is one of burden sharing efforts with the coastal owner states, particularly in navigation and water ecosystem security. Therefore, some interested majorstates such as United States. India, China and Japan attempt to help in the process of securing Malacca Strait route. In regional framework, ASEAN through its ASEAN Maritime Forum and ASEAN Regional Forum on Maritime Security had conducted a set of discussion and strategies to overcome piracy, smuggling (Goods, human, weapons and drugs trafficking), as well as efforts infacing threats toward maritime ecosystem and resources sustainability.

Concept of Maritime Security and its Threatening Challenges

Concept of maritime security had been included in state security concept especially within the issues discussing threats on maritime zones. In Indonesia, maritime security issue is highly related to national defense context, especially in defending nation soveregnty and unity (maritime defence). Maritime security has also been included in a framework of national defence system of a state. Maritime security consists of elements regarding global security and peace, soveregnty, security from maritime crimes, natural resources security, sea ecosystem security, as well as fishermen and sailors security (Ameri & Shewchuk, 2007). A conclusion derived from the definition is that maritime security of a state in globalization era underlining the needs of not only in geopolitical aspect but also in economic and environment. Regulation regarding sea ecosystem protection in Indonesia has been stated in UU No. 6 Year 1996 concerning utilization, management, preservation and protection of water ecosystem. Besides, there is also UU No. 32 Year 2009 concerning Ecosystem Protection and Management consisting regulation of the whole littoral area of Indonesia by taking into account regional automomy and global warming threats.

Maritime safety concept and inclusiveness is also tightly related to the scope of maritime security. Elements of maritime safety could be seen as ships building and guiding, crew and ship labors training, both goods and passengers transportation protection, routes and sea graphics building, also aids in occurrence of hardships or disasters (ibid). Importance of navigation security and Sea Lines of Communication (SLOC) as a part of maritime security related to transportation security and supervision toward activities on the sea. During nuclear proliferation and weapon of mass destruction era, as well as the high intensity of either legal or illegal weapon trade, sea has the potential—borrowing the term from Hamengku Buwono X—"dynamic nuclear reactor". Sea is potential to be used as widespreading weapon of mass destruction media whose movement security should be highly supervised and guaranteed. For instance, UN has regulated the law to obligate the ships loading nuclear materials of dangerous goods to bring along documents and obey special prevention code of conduct constituted by international law, for the sake of maritime security. This is also complemented with responsibilities bore by foreign ships or planes due to disadvantages suffered by passed through littoral states for violation of international rules (Buntoro, 2012: 122).

As one of international shipment routes, transportation volume in Malacca Strait is definitely high. Estimated more than 70,000 ships per year operated through Malacca Strait loading goods, oil, and energy. Ship mobility data in Malacca Strait according to the observation of Connie R. Bakrie showed that the type of ships going through this strain during one decade of 1999-2009 are 228,506 containers, 162,250 tanker, 78,706 bulk vessel, 76,273 cargo ships, followed by 38,411 ro-ro ships, 27,234 passenger ships, 11,133 navy ships, while the rests are fishermen ships. By the end of 2010, the ships passing through this strait had reached 71,359 ships. Meanwhile the mobility level in this strait is estimated to reach 316,700 ships by 2024 (C. R. Bakrie, Seputar Indonesia, November 30, 2010). According to US Energy Information Administration (EIA), about 15 million barrels of oil per day pass through Malacca Strait, which will still increase due to the higher demand of oil in Asian countries, predicted to reach annual increasing of 3 % until 2025 (Watkins, 2004).

Given the crowded route, occurrence of traffic jam and groundings in Malacca Strait has been empirically reported since 1970s between tanker ships or between local ships with tanker ships. It happened due to the increasing of transportation load and crowdness (either in frequency or ship sizes) in Malacca Strait despite of the lack in physical and hydrographycal condition of the strain whose routes are short and bordered with small islands, shallow, and twisted, altogether with some narrow parts especially in Singapore Strait (approzimately only 1.2 mile). Transportation accidents resulted in ship burns, leakings and or oil spillover to the seas not only threaten lives (most importantly local fishermen), but also the ecosystem and sea natural resources, as well as lifelong sustainability of seashore residents. Lack of infrastructure and ship transportation for local fishermen also contributes in fatale ship accidents after the absence of modern and strong transportation media support. These are basic problems for fishermen living from Malacca Strait to the Eastern Indonesia such as Sulawesi Sea.

Other most discussed issues concerning Malacca Strait security threats are the fact that Malacca Strait is one of the most dangerous choke points maritime zone in the world and the hotspot of various transnational crimes (arms robbery and hijacking, arms and drugs smuggling, human trafficking &human smuggling, illegal fishing) conducted by transnational organized crimes actors (Gerard&Webb, 2006). Studies about Malacca Strait maritime security from terrorism raised more after terrorist attack in WTC 11

September 2001 when International Maritime Bureau (IMB) reported that international terrorists are assumed to utilize and terrorize along maritime shippphing route in Malacca and Singapore Strait (Bateman, 2008: 78). The blueprint of maritime terrorists attacks possibly targeted to ships on the sea, gas pipes under the sea, and in addition threats of attack toward cyber security, especially computer navigation and communication. The heating terrorists threats— particularly post-9/11—had drawn United states' attention toward this region deeper, encouraging United States to build a set of cooperation mechanism in Proliferation Security Initiative (PSI) in the framework of Regional Maritime Security Proliferation (RMSI) under the command of USPACOM (US Pacific Command). Piracies existing in Aden Gulf, Somalia emerged the urgency of internationalization of sea route security which whould be projected in Malacca Strait as well.

Strait internationalization efforts referred to Article 100 UNCLOS 1982 described that piracy actions are all illegal violences directed at a ship occurred in high seas out of any state jurisdiction border. However, Malacca Strait internationalization and cooperation mechanism attempted by United States PSI was rejected by Indonesia. Both Indonesia and Malaysia rejected any activity of major states to further fight maritime terrorism acts. Referring to Article 3 UNCLOS 1982 and reflected in Jakarta Statement 2005, that Malacca Strait is registered as territorial sea and not high seas, for it is located under jurisdiction and sovereignty of Indonesia, Malaysia and Singapore. With the registration of Malacca Strait as a territorial sea instead of high seas, thus user states should keep on using Malacca Strait as innocent passage, obeying rules of coastal states, and not making Malacca Strait as a free transit and free access as what had been agreed by Singapore.

Article 43 UNCLOS 1982 indeed mentioned that user states are out to be involved in burden sharing[2] with the coastal states in improving navigation safety and protection against pollution threats toward sea ecosystem. The problem is, there is no clear underlining law regarding maritime management mechanism which eventually resulted in a weak implementation, and allowed foreign countries to do manuvers around Malacca Strait. It will be increasing along with

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[2] Article 43 of UNCLOS has regulated burden-sharing agreements between coastal states and user-states in: (1) Providing and maintaining navigation tools. (2) communication system. (3) Hydrographic and other navigation systems. (4) ER. (5) Coastal Security. (6) Basic ship rescue service. (7) sea pollution contingency regulation. (8) Related to burden-sharing, there are still grey areas concerning mechanism of recovery costs from user-states.

higher geopolitic tense among Western Asia region, where interest battle and balance of power in Malacca Strait will be intensified. Other problems is the approach in securing Malacca Strait has not reached ecological zone aspects, thus user states responsibility is far under expected condition (C. R. Bakrie, *Seputar Indonesia*, 30 November 2010).

Littoral State Sovereignty

Speaking about security and sovereignty of a state in this case could be viewed using two approaches, internal and external. Internally, state sovereignty in this case including the authority owned by a sovereign state government to do controlling, supervising, and authorizing function according to the law valid in that state for the sake of protecting state unity. In this case the citizens give full legitimacy toward the government to use the authority in proceeding area defence function projected in ruling regulations. While externally, a state could be said as sovereign when it is admitted by international world, protected by international law, and given the authority to manage its area security without any intervention from any party. In line with Kenneth Waltz in Lake (2003: 305), "between sovereign states, none is entitled to command; none is required to obey."

Nevertheless, in external scope of sovereignty, a sovereign state is ought to obey valid international law and has the rights to be accommodated by authorized international organization. The state also obligated to pay attention to the rights entitled to other states such as: accommodating shipping passage rights through littoral maritime territory, respecting agreement ratified with other countries before the validation of UNCLOS, admitting traditional fisheries rights[3], admitting other authorized activities according to Article 47 (6) and 51 (1) UNCLOS, as well as allowing instalment of undersea cables including the maintenance activities according to Article 51 (2) UNCLOS.

Passage rights for foreign user states of littoral maritime has become an important issue since the 3rd Conference on Sea Law from 1973 to 1982. Mechanism to balance interests of littoral states with user states could be viewed from how to define maritime zone which will divide authorities, duties and rights owned by each coastal states

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[3] Indonesia has two bilateral agreements which entitle foreign states to do *"traditional fishing right"* in Littoral Zone, which are agreement of RI-Malaysia 25 February 1982 and RI-PNG 13 December 1980.

and user states. While the defining of one maritime zone which is Littoral Sea Route, has been compromised together among coastal states and user states (Buntoro, 2012: 4-5). According to Law No. 6 Year 1996 about maritime zone of Indonesian Maritime Zone it is mentioned that Indonesia has the sovereignty in Indonesian Maritime Zone including inland waters, Littoral Maritime Zone and Territorial Seas. In both littoral seas and territorial seas, Indoensia should accommodate other states' interest in such forms as shipping and flight on the sea or on the air above (ibid. Pp 7-8). Government Law Number 37 Year 2002 also mentioned the duties and rights of foreign ships and planes of being entitled the Passage Rights in Indonesian Archipelago.

Duties and rights of both coastal state and user state will create problems when are not strictly states. It has been experienced by Indonesia in some cases for instance in Bawean incident, USS plane Carl Vinson (CVN-70) maneuver, the coming of US Navy in Java Sea during July 2003, Maneuver of warships and planes of Tentara Laut Diraja Malaysia in Sulawesi Sea on March 2005, or the jet passage with Deputy of Prime Minister of Papua New Guinea above Banjarmasin on November 2011, South Kalimantan shadowed by Indonesian Air Forces Sukhoi due to the absence of flight permit (*Suara Pembaruan*, April 17, 2009 & *Kolom DetikNews*, January 12, 2012).

Sea Law Convention of UN through UNCLOS Year 1982 has indeed become the regime international (binding regulations, reference, and guidance) comprehensively rulling maritime security issues. UNCLOS 1982 valid since 16 November 1994 after the ratifying countries member reach the amount of 60. With the validation of UNCLOS 1982, Indonesia has full sovereignty and the sovereign rights; such as area management under the 12 miles zone conception, as well as having sovereign rights over the natural resources and particular authorities in Nearby Zones of 24 miles (12 miles outer side of Maritime Zone), EEZ of 200 miles, Continental Lines under EEZ, and under sea nearby and outside EEZ until the natural prolongation of Indonesian land (UN, 1997: 23, 40 &51). UNCLOS 1982 also explained about concepts related innocent passage of maritime security, piracy and robbery definition, hot pursuit rights, navigation security, and also cooperation in in guaranteeing safey of shipping and strait route used for international shipping. Meanwhile, the free transit rules are not regulated under UNCLOS 1982, however it has become an international habitual mechanism where the maritime zone and strait is considered as high

seas, and foreign ships are allowed or permitted to pass the sovereign state zone or even have access to do international navigation.

Indonesia attempts to strive for its sovereign zone (land and water) to international forum could be traced indeed sine 1957. By using diplomatic means in the UN, Hasjim Djalal and Mochtar Kusumaatmadja, Indoenisa brought the ideas of "*Wawasan Nusantara*" (Nusantara Insight) in *Deklarasi Juanda* in 12 December 1957 concerning conception and maritime territorial sovereignty around 17 thousands islands in Indoensia. At first, the content of the declaration was rejected by international maritime countries (especially western countries) due to the classic reason of 3 miles sea territory limit. However Indonesian government proposed the objection due to the possibility of empty spaces or high seas between islands in Indonesia. Sovereignty conception over maritime territorial zone of 12 miles was finally accepted and broke the rules inherited from Dutch Colony about *Teritorial Zee en Maritime Kringen Ordonante* 1939 article 1 point (1), which stated 3 miles border measured from the lowest point of eeach coast in each island (Yusuf, 2010: 7).

Conception of *"Wawasan Nusantara"* about EEZ 200 miles which has been ratified by Indonesian government through Law No.17 1985 has also been the guide for government to define and maintain its maritime borders. Particularly the Sea Border defining with neighboring countries including Territorial Sea Border, EEZ maritime border, as well as Continental Lines. Indonesia had discussed about the Continental Lines borders with the neighboring countries. So far bilateral agreements have been ratified with Malaysia, Thailand, Australia, Indoa and Territorial Sea agreement with Malaysia, Singapora and Papua New Guinea (Yusuf, 2010: 13-14). Nonetheless, there are still problems regarding maritime zone borders since there are still no connection of both sea territorial lines of both countries which are Indonesia and Singapore or Indonesia and Malaysia. Not only those, but also unfinished problems also occurred regarding maritime territorial claim with Thailand, India, Vietnam, East Timor, and Palau Republic.

Challenges on Indonesia Maritime Sovereignty Enforcement

Indonesia is still facing many problems either in the scope of traditional security issues or non-traditional security issues in the field of maritime security. *First*, there is still no clear definition of some territorial sea border especially between Indoensia and Malaysia in

some parts of Malacca Strait, also between Indonesia and Singapore in some parts of Singapore Strait. The unfinished claims related to borders between Indonesia and Malaysia particularly in the sea territory in the west part of Nipah Island until the South end of Malacca Strait, between Indonesia and Singapore in eastern Batam Sea territory with Changi, Singapore. Other problems are the unclarity of continental lines between Indonesia and Vietnam in the North of Natuna, and between Indonesia and the Philippines in Sulawesi Sea and Pacific Ocean.

The inexistence of agreement on Indonesian maritime territory with several neighboring countries such as forementioned above emerged overlapping claims on territorial management, especially on utilization and management of fisheries resources, energy and maritime, sea tourism, off shores exploration, sovereignty and law enforcement on the sea, etc. Several cases existed between Indonesia and Malaysia refleceted the reluctancy of maritime territorial borders. For instance, when cases of fishermen arrests either by Indonesia or Malaysia, it will obstruct diplomatic relations of both states. This undefined maritime territorial border also caused dilemma in the case of sand exportation from Indonesia used in land reclamation attempts by Singapore.

Other maritime territorial problems occurred due to the undefined Littoral Sea Route Indonesia (ALKI) or Maritime Route of Indonesia in East-West part thorugh Java Sea. Although North-South ALKI has been defined by Indonesia which goes through South China Sea through Karimata Strait, Java Sea and Sunda Strait, ALKI II from Sulawesi Sea through Makassar Strait and Lombok Strait, and ALKI III from Pacicif Ocean through Maluku Sea, Seram Sea, Banda Sea and splitted in Sawu Sea, Timor Sea, and Arafuru Sea (Yusuf, 2011). Indonesia has not defined its Additional Zone out of the 12 Territoerial Sea and also Continental Lines. It is so important to define and regulate conditions in ALKI and maritime territorial borders to enable law enforcement and defence management of the maritime zone. Especially when this defining will balance the interests of Indonesa as and littoral states and other user states interests related to passage rights within Indonesian Maritime Territory.

Second, clash of interests in foreign policy implementation among coastal states in the mechanism of sub-regional cooperation to manage Malacca Strait. Singapore—as a minor state located strategically on the coastal line and dependent in its economy on export-based trade and industries—realizes that its security and

national interests depends highly on maritime security of Malacca Strait. Given the limited sub-regional securing mechanism plus its close diplomatic relations with United States, attempts to increase international cooperation mainly with United States in fighting against maritime terrorism in Southeast Asia.

Proliferation Security Initiative ideas under Regional Maritime Security Proliferation (RMSI) USPACOM US to conduct evaluation nd interdiction toward suspected ships loading Weapon of Mass Destruction, is fully supported by Singapore. In the other hand, this idea is rejected by Malaysia and Indonesia related to protecting coastal states and one user state. Given the unfinished differences in foreign policy implemementation in each coastal states it will be an obstacle in the sub-regional integration attempts and prevention of security internationalization attempt in Malacca Strait.

Meanwhile, until now Indonesia has not ratified Japan's suggestion in regional securing Malacca Strait against piracy and weapon smuggling under the *Regional Cooperation Agreement on Combating Anti Armed Robbery against Ships and Piracy in Asia* (ReCAAP) held in September 2006 in Kuala Lumpur, Malaysia. The Agreement attended by 16 countries including Japan, China, South Korea, India, Bangladesh, Sri Lanka, and 10 ASEAN member states.

Third, the weaknesses in aviation and primary weaponry system of defence as well as unavailability of infrastructures to support supervision and maritime security defence. The weakness and lack of providing primary weaponry system, lack of patrol ships amount and low technology had become basic problems in Indonesia. The urgency of two units of submarine on Eastern Indonesia, for example, is still not ideal in securing maritime territory of Indonesia. However the Head of Indonesian Navy Staffs said thought the opposite opinion, which stated that it already standardized referred to Minimum Essential Force (MEF) projected in 2014 (*Suara Karya,* November 19, 2010). The discrepancy of weaponry system in Indonesia compared to other neighboring countries is problematic for the cooperation mechanism to secure Malacca Strait, especially with Singapore. The ability of Singapore to modernize its military system and navy also monitoring system equipped with sophisticated high technology radar in maritime navigation creates security dilemma toward Indonesa and Malaysia without proper sub-regional integration.

Fourth, the weaknsess in law enforcement of Indonesia toward illegal ships passage in Malacca Strait. Easily bribed and weak law enforcement stafs is always a crucial problem for Indonesia. In

addition, lack of communication system and service as well as regional income and trade management toward foreign ships transitting in Indonesian harbours is also disadvantageous in both exconomical aspect and industrial development in maritime field. It is not only related to taxation, but also the development of business opportunities with foreign businesses to increase regional devisa, which undeniably demands creativity of local government.

Indonesia Efforts in the Cooperation Mechanism in Securing Malacca Strait

Some efforts demonstrated by Indonesia in doing cooperation with neighboring countries in Southeast Asia region aimed to deepen regional integration, particularly in sub-regional level. Regional integration in teh scope of economics, politics, and security is a necessary process to be held in globalization era to create regional space and regional dignity based on shared rules as being suggested by Best and Christiansen (2008:436)

This regional mechanism cooperation regarding maritime security and burden sharing among coastal states and user states have been discussed during ASEAN Maritime Forum and ASEAN Regional Forum on Maritime Security. But, cooperation and regional strengthening especially among littoral states such as Indonesia, Malaysia and Singapore is very important considering only these three coastal states bear the responsibility to manage the strait. Commitment of littoral states to create cooperation in sub-regional maritime security is shown by the regime building in Malacca Strait. For instance, by creating three countries patrol system under *Malacca Strait Sea Patrols* (MSSP) and Malsindo (Malaysia, Singapura, Indonesia); also coordinated eye in the sky monitoring system under *Malacca Straits Security Initiative* (MSSI). Joint and Combine Military Exercise, as well as Passing exercise which contributes in exchanges of data and information between countries through survey, trilateral coordinated patrol, and mapping. Indonesia conducted bilateral securing acts with Singapore and Malaysia in security patrol and joint Navy military exercise, i.e. Indonesia-Singapore Special Operation (Patkor Indosin), and Malaysia-Indonesia Special Operation (Patkor Malindo).

Besides using spying planes, monitoring in Malacca Strait also conducted thorugh satellite and land radar system such as marine electronic highway (MEH). It is used in distant identification and ship tracking, including automatic identification application. International

Maritime Organization (IMO) and the three coastal states have introduced territorial protection over the ships passing through Malacca Strait, known as Straitrep. It facilitates, identifies, and icreases communication between ships and coastal authority. It allows the authorities to inform user ships about traffic situation in Malacca Strait, facilitates ER and responds on maritime incidents (C. R. Bakrie, *Seputar Indonesia*, November 30, 2010).

Alike Singapore, Indonesia also conducts cooperation of one coastal stats-one user state with China. It is a part of defence cooperation referred more on coordinated military security operation, especially in maritime military technology system.

Other major countries such as United States and Japan have played significant rile in helping securing Malacca Strait. The US, helped in installing surveillance radars along Malacca Strait in the Integrated Maritime Surveillance System (IMMS) to increase security in the territory. Japan (Nippon Foundation) provided Japanese Coast Guards, some patrol ships in Malacca Strait and helped in funding one third of the fee in building *Sarana Bantu Navigasi dan Pelayaran (SNBP)* or Navigation and Shipping Assisting Media. However, those two major states' ambitions under extra-regional cooperation worried Indonesia. Especially after terrorists attacks in WTC, from which then terrorism has become keyword in the US's foreign policy in the world especially Middle-East and Southeast Asia, Indoensia government has been cornered by the accusations of being terrorist nest. IMB further reported that many piracy and robbery acts were conducted by terrorists in Malacca Strait, especiallu in Indonesian maritime territory which are unsolved. In my opinion, the weakness of providing primary weaponry system is also a crucial thing of why major states such as US and Japan insisted to securitize and internationalize Malacca Strait.

Conclusion

Major States such as US and Japan have been succeeded in constructing maritime security issues especially regarding terrorism issues (piracy and weapon smuggling). Thus those major states have attempted to create extra-regional regime for the sake of their oil and trade ships passage safety in Southeast Asia against terrorism. Aids from major countries such as china, India, Japan, US, Saudi Arabia, South Kore, and Russia in the process of securing Malacca Strait either in financial, technology or infrastructures are indeed sufficient to help coastal states. Nevertheless, it does not mean that the coastal

states should rely on those user states' aids onl, particularty in correlation with independence and sovereignty. In the first stage, Indonesia needs to construct its maritime security issues as a littoral state and maritime staten to be formulated in an ocean policy based on maritime security strategies and national interest maps. Tracing back the diplomatic attempts in striving "littoral state" status admission has indeed politically costly, therefore it is fair that full maritime sovereignty obtained by Indonesia as a form of maritime awareness and dignity, moreover considering maritime disputes with neighboring countries. This ocean policy formulation should become one of the Strategic Planning of National Defence and Security, especially when related to the providing of maritime primary weaponry system. The possibility of unreasonable providing and purchase of primary weaponry system without looking at real need of the state—with no clear blueprint in the field of defence and security—should not be allowed.

If the maritime territorial disputes between countries have been well settled, it will be easi for Indonesia to manage and empower abundant natural resource and maritime potential available as well as constructing maritime management and law enforcement toward violations occurred within the sovereign maritime territory. Gradually, government will be able to increase maritime military defence to fight against either transnational organized crime or free riders both from within or outside the neighboring countries, such as piracy, fish theft, ocean pollution, etc. Mass production of surveillance radars by Indonesian youth has been succeeded in LIPI (*Lembaga Ilmu Pengetahuan Indonesia*) called ISRA *(Indonesian Sea Radar)*, which would be a fresh air for Indonesia to increase qualified defence systems without having to depend on foreign countries.

Comprehensive approach in the cheme of maritime security also should be targeted to improving prosperity and empowering the citizens especially those living near the seashore, preserving ecosystem and environment, as well as managing natural resources potential. Security Sector Reform attempt in Indonesia should be highly effective and encouraged by massive integration among the authorized institutions. Maritime industries, in defence and security, economy, business and trades, etc should be profitable, and able to create prosperity for residents of the seashore along with disquising unemployment of the fishermen or traditional farmers. With a strong sovereignty oriented both inwards and outwards, it will increase Indonesia' bargaining position, and encourage major countries to respect the commitment of Indonesia government in securing and

managing Malacca Strait by littoral states.

Although South China Sea conflict is still geopolitically and geostrategically intensifying tenses and relations between countries in Southeast Asia, Indonesia's role as a neutral, major and (expected) powerful country--in both actual power and mobilize power—will be able to guarantee security and peace for all member states. Indonesia's commitment with its slogan "thousand friends zero enemy" and the principal of "dynamic equilibrium" should lead Indonesia's foreign policy to guarantee the stability in the region.

With a clear code of conduct and security management, the existence and aids of user-states in Malcca Strait will be able to be managed in a mutual cooperation framework. There is no need of Indonesia to be dubious in doing sub-regional integration with Malaysia and Singapore, moreover when it will be able to coping negative impacts or security threats in Malacca Strait come from non-national actors such as Transnational Organized Crime, including Private Military Companies, etc. Trustful partnership is very important because maritime security is important for the interest and sovereignty of three coastal states.

It should be remembered, that comprehensive security approach after Security Sector Reform wave in Indonesia involving elements such as Navi, Police Forces, PPNS (*Kepabeanan, Perhubungan Laut, Departemen Kelautan dan Perikanan, Imigrasi, Lingkungan Hidup, Departemen Kehutanan*), the role of all citizens is highly needed. The synergy is needed in cooperation for defence, security and safety in Malacca Strait as well as the whole Indonesia Maritime Territory. Said by the first President of Indonesia in the term of "universal society defence and security" strategy, it should be seen and strived again for the sake of Indonesia sovereignty, that " Indonesia National Defence should utilize and base the defence indeed on the whole constellation and characteristics of Indonesia *natie* itself". In short, the perception of Indonesia *natie* should be integrated, encouraged over small and pragmatic interests of the whole stakeholders if we really want to build a better Indonesia.

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Conflict Resolution of Indonesia-Malaysia Relations and Paradox of Westphalian Settlement

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Abstract

Indonesia-Malaysia relations have fluctuations conflict in globalized world.This is due to the increasing complexity of the problems faced by the two countries, both from the aspect of political, economic, social, and also cultural. Actors of globalization today are not only dominated by the nation-state but also by non-nation-state actors. Westphalian Settlement which at first appears as a form of conflict resolution efforts are now being challenged its existence. Even it experienced virtually paradox when placed in the analysis of conflicts between states, including the analyze conflict in Indonesia-Malaysia relations. If the force analysis using the Westphalian Settlement conflict resolution will be serious obstacles, because the two countries considered as emerging decades ago, such as Indonesia emerged in 1945 and Malaysia in 1957. At mean while globalism life of the two countries has been going on for hundreds of years, even as the Nusantara known as the home shared at that time. This paper would like to explain how conflict resolution using theWestphalian Settlement analysis contains many flaws. Therefore we need an alternative analysis that looked at the relationship between the two countries far beyond the Westphalian Settlement analysis. Not only as a consequence of globalization but also realize that the roots of the history of relations between the two countries is very long age, much older than the Westphalian Treaty proclaimed.

Keywords: Conflict Resolution, Westphalian Settlement, Indonesia, Malaysia

Introduction

Conflict between Indonesia and Malaysia has been going on long standing. The issues was surrounded almost evenly throughout aspects of life. Interestingly the conflict experienced ups and downs in a relatively short time. But once the conflict that appears able to win considerable public attention from both countries. Sometimes not only involve the society that feels it has a problem in the relations between the two countries but also often ruling elites also participated in provocation conflicts that arise. Especially in a globalized world it is only natural that if conflicts arise and touch all aspects.

Conflict that goes pretty quickly appears and disappear and be replaced with another conflict issues. As with previous years, the issue Tari Pendet eventually disappear in a few weeks and replaced with new issues that arise that make some people angry. The last issues are Tari Tor Tor and Gorda Sambilan community in Malaysia which are registered as part of the Malaysian culture, a recent issue of the heats. This issue is following the issue of an unexpected shooting criminals three citizens of Indonesia, in Negeri Sembilan by Malaysian Police. Not only the media reported how angry some communities in Indonesia, but also some political elites even as fighting shows patriotism and nationalism by getting involved in the conflict through the comments that sometimes seems silly because it is not an argument based on the socio - political culture adequate. For example, one of the comments the political elite in national parliaments as stated by Deputy Chairman of the People's Representative Council (DPR), Taufik Kurniawan, who proposed replacing Upin - Ipin movie with the Unyil movie (Detikcom, 2010). A statement denying the consumer intelligence Indonesian films and think of it as a dumb consumer tastes as if it can be exchanged and ignore the market and globalization variables. Conflicts are sharper statement delivered by the Vice Chairman of Commission I, which Hayono Isman, who is also a member of the Advisory Council of the Democratic Party, expressed the need for war with Malaysia that Ambalat issue still disputed sea border by the Malaysian side (Lensa Indonesia.com, 2012). This statement makes many people surprised and wonder, because it was made a day after the various parties questioned the urgency of an official visit to the commission of the German Parliament and the public spotlight on the many engagement Democratic Party cadres involved suspicion of corruption that are being investigated by the Corruption Eradication Commission (KPK) .

Conflicts between nation-states in the world like this particular neighbor is natural that frequently appear in life. That issue at hand cannot be separated from a common aspect of life that much rooted than the actual age of the nation state. Conflict resolution that could be put forward here should be given to alternative resolution that is not glued to the existence of the nation-state as Westphalian Settlement philosophy but also it is necessary to put the world into the new challenges of globalization as the main element of conflict resolution. This paper would like to try finding some answers to questions that guide: whether the Westphalian Settlement still appropriate and relevant as a conflict resolution framework for Indonesia - Malaysia? And is the real challenge of Westphalian Settlement thus require adequate alternative conflict resolution? To answer these questions it is necessary to propose a theoretical framework as the basis of adequate analysis

Conflict Resolution and Conceptualisations of Conflict

Often explain conflict resolution conflicts always collided with another concepts, namely conflict management, and conflict transformation. Hugh Miall (2004:3-4) provide in-depth understanding so that could explain how these three concepts are different though but has a close relationship with each other in the process. It is helpful to distinguish three separate schools within this overall while at the same time recognizing the significant areas of overlapbetween them. All three not only articulate varying approaches to conflict intervention, but also reflect different conceptualization's of conflict.

Conflict management theorists see violent conflicts as an ineradicable consequence of differences of values and interests within and between communities. The propensity to violence arises from existing institutions and historical relationships, as well as from the established distribution of power. Resolving such conflicts is viewed as unrealistic: the best that can be done is to manage and contain them, and occasionally to reach a historic compromise in which violence may be laid aside and normal politics resumed. Conflict management is the art of appropriate intervention to achieve political settlements, particularly by those powerful actors having the power and resources to bring pressure on the conflicting parties in order to induce them to settle. It is also the art of designing appropriate institutions to guide the inevitable conflict into appropriate channels (Bloomfield and Reilly, 1998:18).

Conflict resolution theorists, in contrast, reject this power political view of conflict, arguing instead that in communal and identity conflicts, people cannot compromise on their fundamental needs. However, they argue that it is possible to transcend conflicts if parties can be helped to explore analyses, question and reframe their positions and interests. Conflict resolution therefore emphasizes intervention by skilled but powerless third-parties working unofficially with the parties to foster new thinking and new relationships. They seek to explore what the roots of the conflict really are and to identify creative solutions that the parties may have missed in their commitment to entrenched positions. Conflict resolution is about how parties can move from zero-sum, destructive patterns of conflict to positive-sum constructive outcomes. The aim is to develop „processes of conflict resolution that appear to be acceptable to parties in dispute, and effective in resolving conflict" (Azar and Burton,1986: 1).

Conflict transformation theorists argue that contemporary conflicts require more than the reframing of positions and the identification of win-win outcomes. The very structure of parties and relationships may be embedded in a pattern of conflict relationships that extend beyond the particular site of conflict. Conflict transformation is therefore a process of engaging with and transforming the relationships, interests, discourses and, if necessary, the very constitution of society that supports the continuation of violent conflict. Constructive conflict is seen as a vital agent or catalyst for change. People within the conflict parties, within the society or region affected, and outsiders with relevant human and material resources all have complementary roles to play in the long-term process of peace building. This suggests a comprehensive and wide-ranging approach, emphasizing support for groups within the society in conflict rather than for the mediation of outsiders. It also recognizes that conflicts are transformed gradually, through a series of smaller or larger changes as well as specific steps by means of which a variety of actors may play important roles (Lederach, 1995).

Westphalian Paradoxes and Conflict Resolution of Indonesia-Malaysia

The Peace of Westphalia ended the Thirty Years' War, a complex struggle that began in 1618 as a religious conflict within the Holy Roman Empire between the ruling Catholic Hapsburg dynasty and their Protestant subjects in Bohemia. Over the next three decades,

the war evolved through a series of phases into a wider political conflict, pitting the Austrian and Spanish branches of the Hapsburgs together with their allies among the Catholic German princes against Denmark, Sweden, France and their allies among the Protestant German
princes. During the exhausting conflict, much of central Europe was devastated. At least Germany where most of the fighting occurred. Some writers estimate the loss of life at almost one quarter of Germany's population, with others numbering such losses as constituting as much as two thirds (Raymond, 2005:856).

Under the terms of peace settlement, a number of countries were confirmed in their sovereignty over territories. They were empowered to contract treaties with one another and with foreign powers. In a nutshell the central authority of the empire was replaced almost entirely y the sovereignty of about 300 princes. The peace treaty was a turning point in the mutual recognition of sovereignty rights. Although the signatories of the treaty had only the peace of Europe as their ultimate objective, the unintended consequence of their efforts was to create a global order based on a "State System." (Valaskaskis, 2000).

This Westphalian order assumed a vital importance for three main reasons. First, it secularised international politics by divorcing it from any particular religious footing, anchoring it instead on the tenets of national interest and reasons of state. Second, it promoted sovereignty, the legal doctrine that no higher authority stands above the state, except that to which the state voluntarily assents. Third, it accepted a conception of international society based on the legal equality of states. All sovereign states possessed the same rights and duties. They had the right to manage matters within their boundaries without outside interference, as well as the duty to abstain from intervening in the domestic affairs of authority and replaced it with a decentralised system of sovereign, territorial states. For some scholars, the Westphalian Treaty marks the birth of the nation-state, itself the primary subject of modern international law (Raymond, 2005:857).

For the time being Westphalian Settlement has been challenged by latest phenomenon, i.e globalization. The process of globalization, it can be argued, is now the most important development in world affairs. It marks the end of the world order dominated by nation states (or countries) and the beginning of an era in which national governments have to share their power with other

entities, most notably transnational corporations, intergovernmental organizations and non-governmental organizations (Suter, 2003:94-106).

An important feature of contemporary globalization has been its asymmetrical and uneven character. Had all sectors of human activity globalised at the same pace, the process itself would have been trivial. On the contrary what happened was that globalization proceeded at breakneck speeds in some sectors (finance, technology transfer, spread of epidemics, organized crime, international terrorism) and very slowly in others (government policies, social attitudes, international regulation, the fights against crime, terrorism or disease). These asymmetries have created winners and losers and have threatened the social fabric of many countries undergoing rapid and often unwanted social and economic change. They have also managed to challenge each one of the five pillars of the Westphalian System: (1) Legal sovereignty is now no longer the monopoly of national governments; (2) The control of physical territory is much less meaningful today both as a source and domain of power; (3) Non-state actors are emerging as the new stars of the global order; (4) International law is beginning to challenge the supremacy of state sovereignty; and (5) "Westphalian" wars are decline. Non-Westphalian conflicts are on the rise (Valaskakis, 2000).

According to argument above, it is clearly that Westphalian Settlement has been challenged by globalization. Nowadays it is difficult if insist using Westphalian System to capture or figure out the resolution of conflict among countries. Not only the non-state actors are emerging as new stars but also legal sovereignty is no longer the monopoly of national government. It implied toward conflict resolution also need to put beyond Westphalian Settlement as key solutions since the reason of argument above.

Conflict between Indonesia-Malaysia has long root in all aspects as basic problem coloring the relations so it also has impact in many sectors. In political aspect, the conflict shown that territory issues still dominated in this problem. Conflict of border and Ambalat issue still rise as problem. In social aspect, the problem of migrant worker has serious consequences to find best solution. In cultural aspect, the issues of cultural has the same historical root still coloring as obstacles of relations.

Conflict resolution for this problem will face some obstacles if still using Westphalian Settlement. The pillar of Westphalian nowadays be seriously challenged if it put in these conflict. Sovereignty between Indonesia and Malaysia perhaps as geographical

issues rather than the attack of globalization as main issues that beyond of their borders. Non-actors is new key player in these relations that have significantly effect to effort both countries in progress of life. Another reason is the same of history between them become pivotal aspect that must be used to resolute these problem. In particular in cultural issues among them, actually has deep root in historical context, since Indonesia – Malaysia before colonialism have same 'house' that it is called Nusantara. This is the reason why both countries have the same culture.

Using Westphalian Settlement as tool of conflict resolutions in Indonesia – Malaysia relations context, of course, have serious problem to get best solution. Not only globalization challenge Westphalian Settlement, but also both countries has the same important history. Conflict between them also was raised by the impact of globalization too. There are many non-actors as key player on these relations. NGO or Civil Society nowadays has important player to encourage both countries in many sectors to grow up, both problem and opportunities.

Conclusion

Finally, this paper would like argue that conflict resolution of Indonesia-Malaysia relations need beyond Westphalian Settlement paradigm. These problem that disturb both countries are also caused by globalization so if conflict resolution is used as important way so it need to figure out some deep root of problem not only to stuck in state actor or sovereignty as important basic issues but also furthermore to find out some aspect beyond these. Globalization make both countries in complex situation not only there are many problems that rises but also there are many opportunities that ready to use it.

Involving non-state actor in conflict resolution of Indonesia – Malaysia is also pivotal way since their existence is reality in current time. This is the reason why Westphalian Settlement not enough anymore to solve the problem alone. It needs beyond paradigm since Westphalian Settlement have been challenged by globalization so need comprehensive aspect to involve conflict resolution.

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Ethnonationalism:
Fragmenting The World, Against Globalization

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Abstract

It is a common that rapid globalization process has significantly created a parodoxical phenomena. On the one hand, 'the borderless world" has produced a global awareness and global solidarity which eventually turn into the idea of establishment "global village", regionalisation, and other forms of transnational identities and entities. On the contrary, it may create such kind of a global backlash in which many kind of radical, local, and other exclusive ideas & movement has strongly revivaled. This paper aims to examine on the second consequences of globalization. By focusing on the specific phenomenon called ethnonationalism, this paper shows how globalization has significantly resurgenced an old fashion-ethnicity based of state building rather than the westphalian-state building model.

Keywords: Ethnonationalism, Globalization, Borderless World, Global Village

Since the end of the second World War the number of nation-states as state-actors in global affairs have been increased, from about fifty two states in the fifties became more than 192 states in the recent year. The change of this number is so striking, that made some people reckon it as multiplying rather than just additional regular development. In the contrary, the process of globalization that has been initiated since the eighties seemed to simplify the pattern of international relations based on some big states or powerful economic actors as the setter of global political direction. Supported by the advance of transportation and communication technology, the globalization has been shrinking the world that makes the boundaries of nation state sound useless. Every person has the possibilities of doing interaction toward anyone else across the nation all over the

world anytime, including to exchange any goods, money or ideas, that made the earth feels narrow.

It means that the pattern of international relations has been fragmented in more number of state-actors in one side, and in the contrary it has also been integrated through the growth of regional and global organizations supported by the facilities of interaction through the technology of communications in social, economic and cultures.

Among the state-actors, most of them are founded through the basic understanding of Nation-State that constitute as a political unit consisting of an autonomous state inhabited predominantly by a people sharing a common culture, history, and language, while some of them based on ethno-nationalism.

Ethno-nationalism, or sometimes called as Ethnic nationalism (also ethnicism and racial nationalism) is a form of nationalism wherein the "nation" is defined in terms of ethnicity or race.

The central theme of ethnic nationalists is that "nations are defined by a shared heritage, which usually includes a common language, a common faith, and a common ethnic ancestry".[1] It also includes ideas of a culture shared between members of the group, and with their ancestors, and usually a shared language; however it is different from purely cultural definitions of "the nation" (which allow people to become members of a nation by cultural assimilation) and a purely linguistic definitions (which see "the nation" as all speakers of a specific language). Herodotus is the first who stated the main characteristics of ethnicity, with his famous account of what defines Greek identity, where he lists kinship (Greek: *homaimon*, "of the same blood"[2]), language (Greek:, *homoglōsson*, "speaking the same language"[3]), cults and customs (Greek: *homotropon*, "of the same habits or life").[4]

So far, ethnonationalism has not much different than of the Westphalian nationalism, which consider the national interests and goals of states (and later nation-states) were widely assumed to go beyond those of any citizen or any ruler. States become the primary institutional agents in an interstate system of relations. The Peace of Westphalia is said to have ended attempts to impose supranational

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[1] Muller, Jerry Z. "Us and Them." Current Issue 501 Mar/Apr 2008 9-14

[2] Henry George Liddell, Robert Scott, *A Greek-English Lexicon*, on Perseus

[3] *Ibid.*

[4] Henry George Liddell, Robert Scott, *A Greek-English Lexicon*, on Perseus), Herodotus, 8.144.2: "The kinship of all Greeks in blood and speech, and the shrines of gods and the sacrifices that we have in common, and the likeness of our way of life." Athena S. Leoussi, Steven Grosby, *Nationalism and Ethnosymbolism: History, Culture and Ethnicity in the Formation of Nations*, Edinburgh University Press, 2006, p. 115

authority on European states. The "Westphalian" doctrine of states as independent agents was bolstered by the rise in 19th century thought of nationalism, under which legitimate states were assumed to correspond to *nations*—groups of people united by language and culture.

"Nation" as groups of people united by language and culture could easily understood as ethnicity, as *homaimon*, *homoglōsson*, *homotropon.* But, in fact, modern concept of nationalism shows that a nation-state might be consisted by multi ethnics, not only a single ethnic. The case of the United States of America for example, they have been backed up by so many different ethnicity through out the continents. African Americans, Arab Americans, Asian Americans are part of American nationalism. What if the United States needs to be reckoned upon the ethno-nationalism? It would slice the states in to many small ethno-american states.

There are some major cases of nation division that might be recognized as ethno-nationalism and the like. First is the case of Yugoslavia, and the dissolution of Soviet Union will be another caase.

The Split of Yugoslavia

The Breakup of Yugoslavia (the Socialist Federal Republic of Yugoslavia, also known as "SFR Yugoslavia" or "SFRY") occurred as a result of a series of political upheavals and conflicts during the early 1990s.

The SFR Yugoslavia occupied a strip of land on the east coast of the Adriatic Sea, stretching southward from the Bay of Trieste in Central Europe to the Gates of Otran, and eastward as far as the Carpathian Mountains, thus including most of Southeast Europe, a region with a history of ethnic conflict. The country was a conglomeration of eight federated entities, roughly divided along ethnic lines, including six republics—Slovenia, Croatia, Bosnia and Herzegovina, the Republic of Macedonia, Montenegro and Serbia— and two autonomous provinces within Serbia, Vojvodina and Kosovo. As a result of the Yugoslav Wars in the 1990s, the region that had been the SFR Yugoslavia split into several independent countries.

With Bosnia's demographic structure comprising a mixed population of a majority of Bosniaks, Serbs and a minority of Croats, the ownership of large areas of Bosnia, Croatia and Serbia remained in dispute, causing the Yugoslav Wars.

History of ethnic animosity

The important elements that fostered the discord involved contemporary and historical factors, these included: the formation of the Kingdom of Yugoslavia, the first breakup and subsequent inter-ethnic and political wars and genocide during World War II, ideas of Greater Serbia, Greater Croatia, Greater Albania, and conflicting views about Pan-Slavism.

Before World War II, major tensions arose from the first, monarchist Yugoslavia's multi-ethnic make-up and relative political and demographic domination of the Serbs. Fundamental to the tensions were the different concepts of the new state. The Croats and Slovenes envisaged a federal model where they would enjoy greater autonomy than they had as a separate crown land under Austria-Hungary. Under Austria-Hungary, both Slovenes and Croats enjoyed autonomy with free hands only in education, law, religion, and 45% of taxes.[5] The Serbs tended to view the territories as a just reward for their support of the allies in World War I and the new state as an extension of the Kingdom of Serbia.

Tensions between the Croats and Serbs often erupted into open conflict, with the Serb-dominated security structure exercising oppression during elections and the assassination in federal parliament of Croat political leaders, including Stjepan Radić, who opposed the Serbian monarch's absolutism.[6] The assassination and human rights abuses were subject of concern for the Human Rights League and precipitated voices of protest from intellectuals, including Albert Einstein.[7] It was in this environment of oppression that the radical insurgent group (later fascist dictatorship), the Ustaše were formed.

Ethnic tensions in Croatia

In Croatia, the nationalist Croatian Democratic Union (HDZ) was elected to power, led by controversial nationalist Franjo Tuđman, under the promise of "protecting Croatia from Milošević". There was growing advocacy for "Croatian state and historical rights" which resulted in the status of ethnic Serbs of Croatia being changed from "constitutional nation" to "national minority".Croatian Serbs, for their

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[5] Constitution of Union between Croatia-Slavonia and Hungary.

[6] Elections, *TIME Magazine*, 23 February 1925.

[7] Appeal to the international league of human rights, Albert Einstein/Heinrich Mann.

part, were wary of Tuđman's nationalist government and in 1990, Serb nationalists in the southern Croatian town of Knin organized and formed a separatist entity known as the SAO Krajina, which demanded to remain in union with the rest of the Serb populations if Croatia decided to secede. The government of Serbia endorsed the Croatian Serbs' rebellion, claiming that for Serbs, rule under Tuđman's government would be equivalent to the World War II fascist Independent State of Croatia (NDH) which committed genocide against Serbs during World War II. Milošević used this to rally Serbs against the Croatian government and Serbian newspapers joined in the warmongering.[8] Serbia had by now printed $1.8 billion worth of new money without any backing of Yugoslav central bank.[9]

Croatian Serbs in Knin, under the leadership of local Knin police inspector Milan Martić, began to try to gain access to weapons so that the Croatian Serbs could mount a successful revolt against the Croatian government. Croatian Serb politicians including the Mayor of Knin met with Borisav Jović, the head of the Yugoslav Presidency in August 1990, and urged him to push the council to take action to prevent Croatia from separating from Yugoslavia, as they claimed that the Serb population would be in danger in Croatia led by Tuđman and his nationalist government.

At the meeting, army official Petar Gračanin told the Croatian Serb politicians how to organize their rebellion, telling them to put up barricades, as well as assemble weapons of any sort in which he said "If you can't get anything else, use hunting rifles". Initially the revolt became known as the "Log Revolution" as Serbs blockaded roadways to Knin with cut-down trees and prevented Croats from entering Knin or the Croatian coastal region of Dalmatia. The BBC documentary "Death of Yugoslavia" revealed that at the time, Croatian TV dismissed the "Log Revolution" as the work of drunken Serbs, trying to diminish the serious dispute. However the blockade was damaging to Croatian tourism. The Croatian government refused to negotiate with the Serb separatists and decided to stop the rebellion by force, and sent in armed special forces by helicopters to put down the rebellion.

The pilots claimed they were bringing "equipment" to Knin, but the federal Yugoslav Air Force intervened and sent fighter jets to intercept them and demanded that the helicopters return to their base

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[8] "Roads Sealed as Yugoslav Unrest Mounts". *The New York Times*. 19 August 1990. Retrieved 26 April 2010.

[9] Sudetic, Chuck (10 January 1991). "Financial Scandal Rocks Yugoslavia". *The New York Times*. Retrieved 26 April 2010.

or they would be fired upon, in which the Croatian forces obliged and returned to their base in Zagreb. To the Croatian government, this action by the Yugoslav Air Force revealed to them that the Yugoslav People's Army was increasingly under Serbian control. The SAO Krajina was officially declared as a separate entity on 21 December 1990, by the Serbian National Council headed by Milan Babić.

In August 1990 the Croatian Parliament replaced its representative Stipe Šuvar with Stjepan Mesić in the wake of the Log Revolution.[10] Mesić was only seated in October 1990 because of protests from the Serbian side, and then joined Macedonia's Vasil Tupurkovski, Slovenia's Janez Drnovšek and Bosnia and Herzegovina's Bogić Bogićević in opposing the demands to proclaim a general state of emergency, which would have allowed the Yugoslav People's Army to impose martial law.[11]

Following the first multi-party election results, the republics of Slovenia, Croatia and Macedonia proposed transforming Yugoslavia into a loose federation of six republics in the autumn of 1990, however Milošević rejected all such proposals, arguing that like Slovenians and Croats, the Serbs also had a right to self-determination.

The Case of Soviet Union

The dissolution of the Union of Soviet Socialist Republics (USSR) was formally finalized on 26 December 1991 by declaration no. 142-H of the Soviet of the Republics of the Supreme Soviet of the Soviet Union.[12] This declaration acknowledged the independence of the twelve republics of the Soviet Union that created the Commonwealth of Independent States. On the previous day, 25 December 1991, Soviet President Mikhail Gorbachev had resigned, declaring his office extinct, and handed over the Soviet nuclear missile launching codes to Russian President Boris Yeltsin. That same evening at 7:32 P.M. the Soviet flag was lowered from the Kremlin

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[10] "Svjedoci raspada – Stipe Šuvar: Moji obračuni s njima" (in Croatian). Radio Free Europe. 27 February 2008. Retrieved 2012-11-27.

[11] "Stjepan Mesić, svjedok kraja (I) – Ja sam inicirao sastanak na kojem je podijeljena Bosna". *BH Dani* (in Bosnian) (208). 1 June 2001. Retrieved 2012-11-27.

[12] Declaration № 142-H of the Soviet of the Republics of the Supreme Soviet of the Soviet Union, formally establishing the dissolution of the Soviet Union as a state and subject of international law.

for the last time and replaced with the Russian tricolor.[13] The dissolution of the state also marked an end to the Cold War.

In order to revive the stagnant Soviet economy, in 1985 new Soviet leader Mikhail Gorbachev began a process of increasing political liberalization (glasnost/perestroika) in the communist one-party state. However, this liberalization led to the emergence from 1986 onwards of nationalist movements and ethnic disputes within the diverse republics of the Soviet Union.[14] It also led to the revolutions of 1989 which saw the mainly peaceful (Romania excepted) toppling of the Soviet imposed Communist regimes of the Warsaw Pact,[15] which in turn increased pressure on Gorbachev to introduce greater democracy and autonomy for the Soviet Union's constituent republics. Under Gorbachev's leadership, the Communist Party of the Soviet Union in 1989 introduced limited competitive elections to a new central legislature, the Congress of People's Deputies,[16] although a ban on other political parties was not lifted until 1990.[17] A 17 March 1991 referendum showed 76.4% of Soviet citizens voting to retain the Union, however Estonia, Latvia, Lithuania, Moldavia, Georgia, and Armenia did not participate.[18]

The Baltic states, incorporated into the Soviet Union in 1940,[19] pressed their claims to the restoration of their independence, beginning with Estonia in November 1988 when the Estonian legislature passed laws resisting the control of the central government.[20] On 11 March 1990 Lithuania was the first of the Baltic

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[13] "Gorbachev, Last Soviet Leader, Resigns; U.S. Recognizes Republics' Independence". Nytimes.com. Retrieved 2013-03-30.

[14] "Origins Of Kazakhstan Rioting Are Described - New York Times". Nytimes.com. 1987-01-11. Retrieved 2013-03-30.

[15] "Europe | Gorbachev's role in 1989 turmoil". BBC News. 2009-04-01. Retrieved 2013-03-30.

[16] "The Gorbachev Plan: Restructuring Soviet Power - New York Times". Nytimes.com. 1988-06-30. Retrieved 2013-03-30.

[17] "The Third Russian Revolution; Transforming the Communist Party. - New York Times". Nytimes.com. 1990-02-08. Retrieved 2013-03-30.

[18] "Referendum on the preservation of the USSR | INFOgraphics | RIA Novosti". En.rian.ru. Retrieved 2013-03-30.

[19] Van Elsuwege, Peter (2008). *From Soviet Republics to Eu Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU*. Studies in EU External Relations. BRILL. p. xxii. ISBN 9789004169456.

[20] "Gorbachev Says Ethnic Unrest Could Destroy Restructuring Effort - New York Times". Nytimes.com. 1988-11-28. Retrieved 2013-03-30.

states to declare restoration of their independence,[21] on the basis of state continuity.[22]

The increasing political unrest led the authoritarian establishment of the Soviet military and the Communist Party to attempt a coup d'état to oust Gorbachev and re-establish strong central regime in August 1991.[23] Although foiled by popular resistance led by Boris Yeltsin,[24] then the president of the Russian SFSR, the coup attempt led to heightened fears that the reforms would be reversed, and most of the constituent republics began declaring outright independence.[25] On December 8, 1991 the presidents of the Soviet republics of Russia, Ukraine, and Belarus met secretly and signed the Belavezha Accords agreeing to dissolve the Soviet Union, and replace it with a loose, voluntary union, the Commonwealth of Independent States.

Two weeks later, 8 of the remaining 9 republics signed the Alma-Ata Protocol formally establishing the CIS and declaring that the Soviet Union had ceased to exist.[26] Increasingly powerless in the face of events, Gorbachev resigned from his office on December 25, and the Soviet Union formally ended its existence the next day. In international law Russia was recognized as the successor state of the Soviet Union, inheriting its permanent seat on The United Nations Security Council [27] and took complete possession of its arsenal of nuclear weapons after the signing of the Lisbon Protocol. The Revolutions of 1989 and the dissolution of the Soviet Union led to the end of decades-long hostility between NATO and the Warsaw Pact,

[21] "Upheaval in the East; Soviet Congress Rejects Lithuanian Secession Move - New York Times". Nytimes.com. 1990-03-16. Retrieved 2013-03-30.

[22] Van Elsuwege, Peter (2008). *From Soviet Republics to Eu Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU*. Studies in EU External Relations. BRILL. p. xxii. ISBN 9789004169456. And Smith, David James (2001). *Estonia*. Routledge. p. 20. ISBN 0-415-26728-5.

[23] Kendall, Bridget (2011-08-17). "BBC News - New light shed on 1991 anti-Gorbachev coup". Bbc.co.uk. Retrieved 2013-03-30.

[24] LYNN BERRY - Associated Press (2011-08-18). "How Boris Yeltsin defeated 1991 Communist coup - Yahoo! News". News.yahoo.com. Retrieved 2013-03-30.

[25] Greenhouse, Steven (1991-08-28). "Soviet Turmoil - Gorbachev Threatens To Quit Unless Republics Find A Way To Preserve A Modified Union - A Gain For Baltics - Nytimes.Com". Union Of Soviet Socialist Republics; Estonia (Ussr); Latvia (Ussr); Lithuania (Ussr); Ukrainian Soviet Socialist Republic; Byelorussian Soviet Socialist Republic; Georgian Soviet Socialist Republic ; Moldavian Soviet Socialist Republic (Ussr): New York Times. Retrieved 2013-03-30.

[26] "THE END OF THE SOVIET UNION; Text of Declaration: 'Mutual Recognition' and 'an Equal Basis' - New York Times". Nytimes.com. 1991-12-22. Retrieved 2013-03-30.

[27] "END OF THE SOVIET UNION; Soviet U.N. Seat Taken by Russia - New York Times". Nytimes.com. 1991-12-25. Retrieved 2013-03-30.

which had been the defining feature of the Cold War. In the countries of the former USSR, the outcomes of the dissolution were mixed. Only the Baltic states of Lithuania, Latvia, and Estonia established fully democratic systems of government.[28] Russia,[29] Ukraine, Georgia, Armenia, and Moldova have maintained some democratic freedoms, but Belarus, Azerbaijan, and the Central Asian republics have for many years had authoritarian rulers.[30]

Although the root of the split of the USSR was not merely about ethnic problem, but the basic foundation of the making of the division sounds heavily based on ethnicity.

As additional lesson, the dissolution of Czechoslovakia would be worthwhile to learn, which took effect on 1 January 1993. It was an event that saw the self-determined separation of the federal state of Czechoslovakia. The Czech Republic and Slovakia, entities which had arisen respectively as the *Czech Socialist Republic* and the *Slovak Socialist Republic* in 1969 within the framework of Czechoslovak federalization, became immediate subjects of international law in 1993.

It is sometimes known as the Velvet Divorce, a reference to the bloodless Velvet Revolution of 1989 that led to the end of the rule of the Communist Party of Czechoslovakia and the formation of a democratic government.

Ethnic Nationality vs Civic Nationality

The central political tenet of ethnic nationalism is that ethnic groups can be identified unambiguously, and that each such group is entitled to self-determination.

The outcome of this right to self-determination may vary, from calls for self-regulated administrative bodies within an already-established society, to an autonomous entity separate from that society, to a sovereign state removed from that society. In international relations, it also leads to policies and movements for irredentism, to claim a common nation based upon ethnicity.

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[28] Rice, Mark (2011-08-17). "End of the USSR: visualizing how the former Soviet countries are doing, 20 years on | News | guardian.co.uk". Guardian. Retrieved 2013-03-30.

[29] http://www.nytimes.com/2012/03/06/world/europe/observers-detail-flaws-in-russian-election.html?pagewanted=all&_r=0

[30] Krastev, Nikola. "Report Says Decline In Freedom Continues Across Former Soviet Union". Rferl.org. Retrieved 2013-03-30.

In scholarly literature, ethnic nationalism is usually contrasted with civic nationalism. Ethnic nationalism bases membership of the nation on descent or heredity—often articulated in terms of common blood or kinship—rather than on political membership. Hence, nation-states with strong traditions of ethnic nationalism tend to define nationality or citizenship by jus sanguinis (the law of blood, descent from a person of that nationality) while countries with strong traditions of civic nationalism tend to define nationality or citizenship by *jus soli* (the law of soil, birth within the nation-state). Ethnic nationalism is therefore seen as exclusive, while civic nationalism tends to be inclusive. Rather than allegiance to common civic ideals and cultural traditions, then, ethnic nationalism tends to emphasise narratives of common descent.

The theorist Anthony D. Smith uses the term "ethnic nationalism" for non-Western concepts of nationalism as opposed to Western views of a nation defined by its geographical territory. Diaspora studies scholars extend this non-geographically bound concept of "nation" among diasporic communities, at times using the term ethnonation or ethnonationalism to describe a conceptual collective of dispersed ethnics.[31]

Ethnic nationalism is also present in many states' immigration policies in the form of repatriation laws. States such as Armenia, Bulgaria, Croatia, Finland, Germany, Greece, Hungary, Ireland, Israel, Romania, Serbia, and Turkey provide automatic or rapid citizenship to members of diasporas of their own dominant ethnic group, if desired.[32] For example Israel's Law of Return, grants every Jew the right to settle in Israel and automatically acquire citizenship.[33] In Germany, citizenship is open to ethnic Germans. According to the Greek nationality law, Greeks born abroad may transmit citizenship to their children from generation to generation indefinitely. This is also true As of 2013 in the case of Philippine nationality law which, since 2010, has conferred Philippine citizenship on children born after October 15, 1986, having at birth at least one Philippine citizen parent.

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[31] Safran, William (January 2008). "Language, ethnicity and religion: a complex and persistent linkage." *Nations and Nationalism* 14(1) 171–190. doi:10.1111/j.1469-8129.2008.00323.x

[32] Muller, Jerry Z. "Us and Them." Current Issue 501 Mar/Apr 2008 9-14

[33] Hadary, Amnon. "Reclaiming Zionism". *Judaism* Vol. 48. Issue 1, Winter 1999 1-14.

On the other hand, civic nationalism defines membership as an individual's duty to observe given laws and in turn receive legal privileges.

A nation-state for the ethnic group derives political legitimacy from its status as homeland of that ethnic group, from its protective function against colonization, persecution, or racism, and from its claim to facilitate the shared cultural and social life, which may not have been possible under the ethnic group's previous status as an ethnic minority.

Conclusion

Both concepts of nationalism are relatively relevant to Westphalian Nationalism. If ethno-nationalism needs to be implemented in the world system of relation, it would multiply the number of state actor to more than one thousand subject of international law. It would disgracefully scramble the pattern of world community. In the other hand, allowing the world system based on conventional Westphalian nationalism serves no guarantee that the national government would act impartially to the ethnic minority in the domestic affairs. The process of globalization does also give no warranty that the world economic mechanism will provide an "ethnic free transaction".

Ethnic as an entity of people grouping would remain exist as a "unit of interest". It could take place as a political actor on the name of a particular people aspiration, or as an economic actor that bring a particular value of interest, value of competition. As the case of international relations problem, the quest of Ethno-nationalism is to whether we would allow the trends of world fragmentation trough giving permission or verifying the right of political independence as the basic national sovereignty, or to prefer promoting the simplification of number of state actors in world order that based on rationality and impartiality toward ethnicity, or to keep the world division remains like in the last five decades. The wave of technology in transportation and communication will keep on going. No part of the earth could be hidden and kept sterile from the influence of change. The world can always be fragmented for some reasons, but the power of integrating the global community has also been going on. We all are in that contending process of world order.

Degradation of Wespthalian Concept: Globalization of Knowledge and the Challenges of Epistemology Colonization (Case Study of Indonesia during New Order Era)

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Abstract

This study seeks to explore the challenges to the conception of the Westphalian State system from the menace of Epistemology colonization. Epistemology colonization means how knowledge is produced and maintained for the benefit of colonial order. Production of knowledge is based on the paradigm of Eurocentrism, which believes Europe (the West) as a model of the progress of world civilization. The impacts of the Epistemology colonization that generally occur in post- colonial countries undermine the assumption about independence of a state in determining the fate of the country after the departure of colonial power. In reality, an intellectual produced by the post-colonial state does not have the independence of thought, whereas design of science in a country will affect the policy or regulation made by the state. This study would like to explore how Epistemology colonization occurred in the context of social sciences in Indonesia, especially in the New Order era. New Order itself is characterized by the development in various fields, including the development of the field of science, including strengthening the role of the intellectual in determining the direction of development of the country, which one example can be found from the presence of Mafia Berkeley. This study will focus on the discussion of the transmission of Epistemology based on Eurocentrism in the field of social sciences, the institutionalization of Epistemology, and its impact on policy or state regulation in New Order Era.

Keywords: Postcolonial State, United States, Indonesian Studies, New Order

Exordium: **Understanding the phenomenon of Epistemology Colonization**

Images of the independence of a state to regulate its own territory are one of the most important points of the Westphalian conception of the State. This image can be traced to the emergence of the Westphalian treaty which became the cornerstone concept of Westphalian state. Prior to the signing of the treaty Westphalia, Europe experienced a long war that is often referred to as the Thirty Years 'War (Thirty Years ' War). The War which took many casualties occurred due to religious conflict, between Catholics and Protestants. Catholic leaders based in Rome felt threatened by the spread of Protestantism in Europe, so they decided to declare war in order to restore areas that have been embraced Protestants to return to the Catholic sovereignty (D' Anieri , 2011 : 28) . In the end the long war that harms the two sides, they signing of the treaty Wesphalia in 1648 to stop the war. Images of the independence of the region is clearly manifested in two important points of agreement Westphalia, first, admit the existence of a sovereign state, and second, define the rights of a sovereign state . One of the most important rights of a sovereign state is free from foreign intervention, or often called "*the principles of non-interference in the internal affairs of the states* "(Ibid). The principle of the independence of the country becomes the foundation for the country which the majority of the population embraces the Protestant religion, not to worry anymore; because there is a guarantee will not be contested by the Catholic authorities who want to abandon their faith –Protestantism-, and convert their faith to Catholicism.

Now, Globalization led to the concept of independence (sovereignty) of a country becoming increasingly degraded. For example in the field of Economics, the state was forced to follow the free market economic system with the actors of international institutions that have the ability to dictate to its member countries in the areas of economics such as the WTO (World Trade Organization). In addition to economics, concept of independence of the states also degraded in the field of culture, with the influx of foreign culture into the territory of a country that erode local cultures that have developed since long time.

One of the challenges to the independence of a country in the era of globalization - especially those of the Third World / postcolonial - that often escape the attention of many people is Epistemology colonization. Epistemology colonization is how

knowledge is produced and maintained for the benefit of colonial order. Using knowledge as a strategy in order to perpetuate colonial rule actually is a manifestation of Cultural Imperialism[1] , with the assumption that modern science is part of culture . This assumption is supported by the findings of Robert Nola and Gurol Irzik in his Philosophy, Science, Education and Culture (2005: 444), in which they stated that modern science is a cultural product that appeared in the West in the 16th and 17th centuries AD. Robert Nola and Irzik Gurol further stated that modern science is also influenced by politics, economics, and culture of the West (Ibid). Strong influence of Western culture attached to this knowledge is often defined as a Eurocentric paradigm.

Eurocentrism is a idea that believes the values and history of Europe as something that is " normal" and "superior" compared to other values (Franzki , 2012) . When knowledge is overshadowed by the paradigm of Eurocentrism certainly affect especially those for academics who have lost their post-colonial state independence of thought. When independence is lost either consciously or not , academics simply " parroting " the West. Academics who serve as think tanks to develop the country into a better direction , not able to give the right suggestion , instead it gives a " recipe " that Western bias . The implementation of "the recipes " that are essentially dominated by the Eurocentric often do not bring about an improvement to the country, but many times seriously harm the society . Even worse, " the recipe" which is applied in the post-colonial state was more favorable to the West than the national interests of their state.

This paper will explore how Epistemology colonization occurred in the context of Indonesia, especially in the New Order era. This study specifically looks at colonization epistemology in the field of social sciences, ranging from the transmission phase, institutionalization, and its impact on policy or state regulation in New Order Era.

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[1] Edward Said in his book Culture and Imperialism make interesting comparisons between colonialism and imperialism. Though both have connotations of possession / occupation of a country, but the term colonialism has images of physical mastery (the settlement [colonial] at a distance from the mother country), while imperialism as a strategy for maintaining an empire (the colonial power) but not in the form of mastery physical (can be done with the ideological, economic, and cultural) (In Ashcroft and Ahluwalia, 1999:87). Colonization Epistemology is a true manifestation of cultural strategies discussed by Said

Observing Indonesia Through A Magnifying Glass, Defining The Practice of Epistemology Colonization

As an impact of the massive decolonization, the political condition at the global stage faces the competition of ideology which has succeed in taking the world into the bipolar position of cold war. United States as one of the two world's superpowers, made a shift of international political policy from hard power to soft power. As the way of campaigning communism phobia, building the trans-national business imperium, as well as marketing American value, US played hegemony politic. A college was made as an entry point. United States thoroughly taken over the role of Dutch Indologists who have been rid after the anti-colonial virus appeared. This phenomenon did not only happen in Indonesia, but also in almost all over post-colonial countries. Academic supremacy, with the patronize efforts as the reference was conducted through constructing regional studies. One of them is the study of South East Asia. Why and how this can happen, the following is the exploration.

Examining the Origin of the American Hegemony: from Hard Power to Soft Power

American hegemony developed after the end World War II. To examine the post World War II international political constellation, the researcher will quote the worked of Shaumil Hadi (2008: 61-75). What means specifically in this case is the discipline of International relation as the part of political science. This explanation is quite interesting because the analysis that have appeared mostly dominated by the reality of political-economy and cannot be seen as the theoretical-academic discourse. The ascension of realism influences in international relation studies can be generally seen as the response of liberalism failure in explaining the anomaly of incident during 1930s, that eventually triggers the Word War II. Hadi evaluates that those liberalism idealists experience the misinterpretation on the ideal and essence of the politic in Europe back in that year. The prediction of the establishment of peace, democratization, modernization, after the end World War I is merely a utopia and a bias of winner understanding, not based on the perspective of the defeated countries (opposition).

In Carr's terminology, as quoted by Hadi, the liberalism idealists have neglected the political map and the balance of power in Europe which in fact existing in the obvious condition between "The

Have" and "The Have Not". England, France, and United States are "The Have", which can be defined as the big power oriented to the imperishable status quo. In the other side, Germany, Italy, Japan, are "The Have Not". So, according to the realists, it is natural if "The Have Not" will try to fix the international balance through the use of physical power (hard power). That's why, the politic of distribution of power post peace conference of Paris in 1919, in fact became the "boomerang" that eventually triggered the World War II.

It is clear that in the opinion of the realists, the worst mistake of the liberalism idealists is that they started with wishful thinking on the beauty of world's countries inter-relation, in fact international politic tends to be "political power" oriented to "national interest". Right at this point, the realism understanding is superior in terms of relevance and context. As an impact, realism soon became the mainstream approach that influences the point of view of the diplomats, decision makers, as well as political scholars. The following are the fundamental elements contained in realism:1) the main priority of national interest;2) power maximization; and 3) balance of power.

Related to the position and the role of the US, the political scholars (realists) generally suggest that the fair power distribution is absolutely required; that is why there should be a particular power (outside Europe). US which initially implemented isolationalism politic during World War I and World War II, due to the differences of geography, ideology, culture with the other countries in the world, was eventually dragged to the war. In short, the interference of US in the World War II in Europe, and then in the other parts of the world (due to the factor of the escalation of power of Japan in South Asia), can be examined in this point of view.

Graphic 1. Justifying Actions / Knowledge (Theory as Practice) in the U.S. state of Political Affairs after the 2nd World War (in Hadi, 2008: 74)
[Attached in Appendix I]

The scholars then initiated academic exploration to find a new format in fulfilling the ambition of US to become the new super power. It is Joseph Nye Jr, a Harvard scholar, a figure who plays significant role in popularizing the concept of soft power in

international relation discourse[2]. Soft power appeared as an offering to the foreign policy of US in preserving and developing the supremacy of global power. Soft power was considered relevant and contextual to the peace spirit, without force, anti-colonial, as well as bipolar situation of post World War II. Although this concept developed systematically during 1980s, in fact the embryo of this concept has appeared and has been applied in foreign politic policy after 1950, even in the other countries for the early period. In short, soft power can be defined as the power of persuasion through ideas, cultures, and policies (Nye, 2002). In more detail as follows:

Soft power is the ability to obtain what one wants through co-option and attraction. It can be contrasted with 'hard power', that is the use of coercion and payment. Soft power can be wielded not just by states, but by all actors in international politics, such as NGOs or international institutions. The idea of attraction as a form of power dates back to ancient Chinese philosophers such as Laozi in the 7th century BC. The primary currencies of soft power are an actor's values, culture, policies and institutions—and the extent to which these "primary currencies", as Nye calls them, are able to attract or repel other actors to "want what you want."

In any discussion of power, it is important to distinguish behavior (affecting others to obtain the preferred outcomes) from the resources that may (or may not) produce those outcomes. Sometimes people or countries with more power resources are not able to get the outcomes they wish. Power is a relationship between an agent and a subject of power, and that relationship will vary with different situations. Meaningful statements about power must always specify the context in which the resources may (or may not) be converted into behavior.

Soft power is not merely non-traditional forces such as cultural and commercial goods, as this confuses the resources that may produce behavior with the behavior itself – what Steven Lukes calls the "vehicle fallacy." Neither is it the case that all non-military actions are forms of soft power, as certain non-military actions, such as economic sanctions, are clearly intended to coerce and are thus a form of hard power.

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[2] This concept outlined in a number of his following: book Bound to Lead: The Changing Nature of American Power; book, Soft Power: The Means to Success in Politics Worlds; book, The Powers to Lead; paper, Notes for a Soft Power Research Agenda; paper, Soft Power, Hard Power, and Leadership; paper, The Information Revolution and American Soft Power, etc.

That said, military force can sometimes contribute to soft power. Dictators like Adolf Hitler and Joseph Stalin cultivated myths of invincibility and inevitability to structure expectations and attract others to join them. A well run military can be a source of attraction, and military to military cooperation and training programs, for example, can establish transnational networks that enhance a country's soft power. Napoleon I's image as a Great General and military hero arguably attracted much of the foreign aristocracy to him. The impressive job of the American military in providing humanitarian relief after the Indian Ocean tunami and the South Asian earthquake in 2005 helped restore the attractiveness of the United States. Of course, misuse of military resources can also undercut soft power. The Soviet Union had a great deal of soft power in the years after World War II, but they destroyed it by the way they used their hard power against Hungary and Czechoslovakia, just as American military actions in the Middle East undercut their Soft Power.

Table 1. *Soft* dan *Hard Power* (Jr Nye, 2006)

Type of Power	Behavior	Sources	Example
Soft	Attract and Co-Opt	Inherent Qualitiies Coomunication	Charisma Persuasion
Hard	Threaten and Induce	Threats, Intimidation, Payments, Rewards	Hire, Fire, Demote, Promotions, Compensation

In the application, this concept managed to give a dominant color to foreign international political policy of many countries of the world, not only US, without ignoring the strategy of hard power which full of interests. War industry of a country is well known as the most important financial sources. And in the industrial logic, profit can flow if the production process runs well due to high demand or at least being constant. At this point, war must be understood both as power strategy and a perspective of economy. Thus, the existence of soft power does not mean ignoring the existence of hard power, but rather as a compliment or an alternative strategy.

Decolonization and Cold War: The Riot of Global Politic and It's Influence to Indonesia

Indonesia has a population of 100 million people with a wealth of natural resources that may be larger than the other Asian countries. It makes no sense to exclude a large group of people sitting on top of these natural resources, unless there are very strong reasons (John F. Kennedy in Archer 2006: 225)

Indonesia is a country that was born in the post World War II era. Back in that era, the continuation of war between two winner countries happened. It is known as Cold War, represented by US with the ideology of liberal and the other side Soviet Union with the ideology of communist. Cold war then continued with the battle to gain influence and hegemony in the other countries. US and Soviet Union fought each other to seek allies in all over the worlds. Besides the difference of ideology between those to countries, the source of the competition is that the both had undefeatable economy-military power that could not be dealt by any other countries.

As a country that has just reached independence, Indonesia was also become the precious land to be occupied by US and Soviet Union. The position of Indonesia was considered to being strategic. First, demographically, Indonesia is one of the most populous countries of the world. Second, the abundance of the natural resources. Third, Indonesia is a post colonial country with the big influence. Indonesia is one of initiators of Asian-African Conference, Non Alignment Movement, and later ASEAN. Considering the victory of communist regime in China and the growth of communism in Korea, America started to issue the policy which is oriented to prevent the spread of communism in all over the world including Indonesia.

Like "Tweedledee" and "Tweedledum": Removing Communism, Business Investation, Military Supremacy and Marketing of American Value

As explained earlier that the end of World War II resulted in US as one of the most powerful country of the world. The economical power of US is undefeatable as well as its nuclear power. As a winner country after the cold war, US seem to seek a new position that is strategic in managing it's winning for the long term. If we clearly analyze, there is a chain relation of the similar foreign politic, that becomes the main character since the end of World War II. All of the presidents of US, from Truman, Eisenhower, Kenedy, Lyndon

Johnson, Nixon, Gerard Ford, Carter, Reagan, Bush Sr, Clinton, to Bush Jr, want to make US as the leader of the world, both in politic and economy. From during the cold war, the tension calm down moment (détente) to now, the presidents coming from "Republic" or "Democrat" share the similar essence of all foreign politic of US, which is to make an effort in holding hegemony and world supremacy. Those hegemony and supremacy are meant to be applied in the field of economy, politic, technology and military. When we consider the purpose of establishment, the international organization such as United Nations, World Bank, International Monetary Fund (IMF) and World Trade Organization (WTO) are initially designed to protect the long term economical interest of US and its allies.

Toward the end of World War II, the United States and its allies held talks in Bretton Woods, New Hampshire, United States. The series of agreements in late 1945 resulted in IBRD Bretton woods that later became the World Bank and the IMF (International Monetary Fund). While the WTO established in 1995, is the replacement of GATT (General Agreement on Tarrif and Trade) which was formed in 1947. During Clinton administration (1993-2001) New World Order that was rarely discussed, but that was a time when a cabal or conspiracy consisted a number of intellectuals, journalists, and politicians Americans develop a dream of Pax Americana. In academic and journalistic terms, they are referred to as the neocons or the neo-conservatism.

Basically, the Neocons believe in the necessity of military supremacy that will not be overtaken by any country. US "is destined "to guard international stability. The concept of balance of power / authority, the concept of détente (tension calm down), and the concept of the balance of terror as practiced during the Cold War is considered outdated. Defense Planning Guidance (DPG) as mentioned above essentially includes: U.S. defense spending should be enlarged ; should not be a competitor of US military forces in any region; preventive and preemptive attacks may be performed when it is considered to meet America's global interests. One proposal which tends to be over-ambitious is the U.S. right to intervene in any conflict anywhere in the world, although it is not related to American interests, possibly related to the interests of its allies or for the sake of "maintaining "international stability. DPG certainly does not state that the preventive / preemptive attack against a country or a region as well as US global interventions are in fact meant to protect, expand and ensure the interests of the US economy. Including for control of

oil and natural resources owned by developing countries. (Rais , 2008; 55-62).

Researching is (a Step) to Rule (?): Behind the Development of Regional Studies in US

An independent study of Indonesian politic is clearly a development of post - World War II. Indonesia is one of the new countries of post-World War II, and the study of politic to it is influenced by a range of factors that are typically associated with the post-World War era. In terms of international politic, Indonesia gained it's independence in the early days of the Cold War. Between the years of 1945-1975 most European empires in Africa and Asia have fallen. Newly independent states was also later became the arena of bipolarity competition between the U.S. and Soviet ideologies. In this context, the U.S Government invested in the important area of study programs in support of its new status as global hegemony. Military and non- military aids were rolled out by the U.S. government that is focused on the Third World. That's the era in which the study area began to grow and contribute in shaping the context and substance of American conceptions on various areas including "Indonesia ".

World War II has a huge impact on U.S. foreign policy. This event led history towards a period of the massive U.S involvement in international affairs, beyond the western world. More specifically, the U.S. realizes that the importance of social, economic, and political dynamic depends on the Third World as if they were part of the political dynamics in their own country. Instability in Third World countries is considered as the root of the international problems that can be an obstacle to the sustainability of US interests and the efforts to improve the welfare depeloment. This goes hand in hand with the efforts to influence Third World, as revealed by Girling (1980: 15, in Samuel, 2010: 100): Explosion-pop revolution and fears against him has mastered the American policy towards the Third World for more than a quarter of a century. Neither the facts nor fear mixed in the belief that the rebellion of 'indigenous' and mass action in the cities, and the revolution was clearly led by communists, can be triggered just by the first 'international communism'-rather than by Moscow or Peking-through a wave of revolution against another Third World countries. It is seen as a threat to 'universal' to American security itself; hence it requires a serious response.

The transition of Indology (the study of Indonesia by the Europeans, especially by the Dutch) to Indonesian Studies (Indonesian studies which is conducted by the United States) needs to be understood within the framework of the dynamics of U.S. international policy. Since the end of World War II, American universities began to take a massive role in the development of societies outside the U.S. (especially the countries in Asia, Africa, and the newly independent Latin America). The U.S. government provided political and financial support.

The administration of President Harry Truman, with the help of a series of programs outside of his country, is a marker of the era of U.S. engagement around the world. According to Beers, the Truman administration encouraged American universities to develop. College that initially only held small -scale international exchange program were encouraged to become perpetrators of international projects in large scale. Cooperation scheme was also used by American colleges and U.S government to obtain first-hand data on countries outside the U.S In this case, look at the similarities between the study areas in the U.S with European Oriental studies. In the second case, the State has a significant role. Significance of Indology centers in the Netherlands declined after the collapse of Dutch colonial rule, while the Cornell Indonesian Project and the similar study centers gained momentum as the focus of political change in the U.S to Indochina (in fact research funding was relocated to study political life in Indochina) and Southeast Asia.

Establishment of centers of area studies was a growing phenomenon among American colleges in 1950. Since the beginning, the U.S. military played a key role[3]. According to the U.S. military, the establishment of area study centers can accommodate U.S.

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[3] It should be emphasized that the collaboration between the American social scientist with the U.S. armed forces began during World War II, where there is a "nationalization" of social science. In later emerged resistance to this kind of collaboration. At first, many American scientists who do not reject cooperation between scientists and military. This continued in the pattern of collaboration that was completed in wartime. During World War II, many sociologists, anthropologists, political pundits, and other American social scientists recruited to work as a researcher role in the War Department. In addition, after returning to the academic world after the war, most of these researchers occupy key positions in the academic world. Harvard Social Relations Department, for example, was founded by Clyde Kluckhon, Henry Murray, Samuel Stouffer, and so plain. All three worked for the military during World War II. The same phenomenon is also evident from the involvement of the President of the American Sociological Association (ASA) in military research -In 1967, seven of the president of ASA, were actively involved in military research-. However, since the 1960s the idea of military cooperation and criticized academics seriously. Since then many scientists to be critical of U.S. foreign policy, while others chose to distance from the Department of Defense. (In Samuel, 2010: 103-104)

interests. Then through Specialized Training Programs, the U.S. military promoted the establishment of area study programs in American colleges to produce experts in a variety of languages and cultures in the world. As observed by Lambert (1989), the military funded study projects and helped to establish about 600 study areas and language centers in US colleges. Many of the specialists who have graduated from this program then recruited to become the espionage agents by the Office of Strategic Service (which is later known as the Central Intelligence Agency [CIA]). Establishment of study centers in Indonesia is also inseparable from the political framework. When Sukarno and Hatta proclaimed Indonesia's independence in 1945, the U.S. government barely had any experience or knowledge about Indonesia, or the other southern and Southeast Asian countries. The knowledge focused on Japan and it's U.S. Pan-Asian movement, and the decolonization in Asia. However, the situation soon changed. The U.S did not only try to understand parts of the East, South, and Southeast Asia, these areas were soon dragged into the hot battlefield of cold war. China, Korea, India, and the countries of Southeast Asia gained extraordinary attention in U.S. foreign policy. When Truman left the presidency in 1953, foreign policy had been an important priority in U.S politic. Pattern of policy isolationism was dead, and the U.S. in the eyes of the international field had the same meaning as the domestic field. The world has strung into a bipolar opposition between the western worlds which is "free" from vis-à-vis communism. Asia, specifically Southeast Asia became the main focus of American interests.

Southwood and Flanagan confirmed that Indonesia has become a central part in the strategic thinking of about America on Southeast Asia since the end of World War II and it is understood that Indonesia is a milestone of US dominance over the 'Asia-Pacific region'. Even President Richard Nixon himself said that Indonesia is the throne of pearls in Southeast Asia. As Mark Berger observation on the context of Latin American studies, radical groups only have the option to generate discourse 'as opposed to' by adopting the language and categories of discourse that they want to dismantle. Being in 'the network of institutions, organizations, and large and complex structures', discourses that are oppositional can be 'complementary to maintain American hegemony'.

Among the themes that most commonly taken in US Indonesian studies is democratization, Indonesia as a political entity, nationalism, pluralism, nation building, and communism. An example of interesting and appropriate to describe this situation is Hindley's

study entitled, "The Communist Party of Indonesia ". This was completed when Donald Hindley was in Brandeis University (Mass.) in 1963. This book analyzes the dynamics of the PKI in Indonesia for the period 1951-1063 based on detailed data on the relationship between the Communist Party and the government of Indonesia. Although Hindley study lies in the case of Indonesia, the analysis tends to look like a growing US suspicion at the time of the expansion of communism . Russia and China were considered to expand their influence in Asia, Africa, and Latin America . In this case Hindley also believes that the communist parties tend to emerge in the country which is being left behind rather than in the community with more established capitalist system.

        In the context of the U.S. involvement in the issue of Indonesia, the Indonesianists have often been very critical on the motives and policies of the US government. On the other hand, they rarely explore the relationship between US global hegemony along with the production of academic knowledge which supports it. While experimentation with liberal democratic politics continued in Southeast Asia during the 1950s, the US trained political scholars kept being loyal to the discourse and policies of economic development, progress, and democracy. Indonesian politic is more a study of the complexity of the discursive and institutional relationships rather than a series of autonomous text. Such studies require a regime of truth in which the weight of authority is also determined by the various rules, regulations, conventions and social sciences, in addition to personal experience academics are concerned. (in Samuel, 2010: 100-106; Philpott, 2003: 75-82).

Patronage-from and to Campus: How to Build U.S. Scientific Supremacy

Colonialism, racism, and cultural imperialism not only take place in the community, but also takes place in the university gate (Cherryl Smith in Smith, 2005: 34)

        The proclamation of Indonesian independence in 1945 marked a new era in the development of Indonesia. Positions in government that left vacant by the Dutch then filled by politicians and the armed forces of the Republic of Indonesia. Indonesia in 1949 then gained international recognition from the U.S, Australia, and other countries, especially Asia and Africa.   When   the   government nationalized the foreign companies, the Dutch role in the economy

was slowly fading. As an impact, the term Dutch "Indologist" gradually lost its popularity and was replaced by U.S "Indonesianist". This was particularly due to US involvement in the development of Indonesia. US scientists taken part in shaping the conception of Indonesia. Massachusetts Institute of Technology (MIT), Cornell University, and Yale University facilitated the involvement of U.S. scientists on a larger scale. These were the first three (among U.S universities) to establish study centers in Indonesia. At MIT, Indonesian studies were conducted in Masschusetts Institute of technology Centre for International Studies, which runs the Indonesia Project and Field Team of Indonesia, with financial assistance from the Ford Foundation. Benjamin Higgins led the Indonesian Project and Rufus Hendon became chairman of the Indonesian Field Team. However, both groups have the same thoughts about the economy and the political development in Indonesia.

Indonesian Study Center at Yale University also emerged from the same context. However, what they focus on was the general history of Indonesia. Other studies center is Cornell Modern Indonesian Project, founded by George McT Kahin in the 1950s. This decade was the era when the United States replaced the role of Europe as an area for study centers. Establishment of Cornell Modern Indonesian Project was very encouraged by the efforts to understand the newly independent countries in Asia, Africa, and Latin America. And similar to the study area, the program center, or other institution founded in the U.S at that time, Cornell Project, was funded by the U.S. government and other agencies that had an interest to block the influence of communism in the cold war bipolarity framework.

In practice, Indonesian study centers also generated non-US Indonesianist and helped to finalize similar centers overseas, such as in Australia. Indonesian study center at Monash was founded by John Legge as the Center for Southeast Asian Studies in 1964. Until the early 1970's, the study centers maintained close contact with Indonesian Cornell Project, so the study center at Cornell has often been regarded as a blueprint for the study center in Australia. Indonesian study centers at Monash and other universities in Australia have played an important role in exploring the concept on Indonesian. This is related to the fact that Australia and Indonesia are in the same geographic area, while the character of their economy, politic and culture look so different.

Another thing which is important in establishing study centers in Indonesia is the U.S. policy of educating a potential figure in Indonesia to become social scientists/scholars, such as Selo

Sumardjan , Mely G Tan , and Miriam Budiardjo . Indonesian scientists then built a network with foreign Indonesianists . While a number of American researchers grew during World War II until the mid-1970s , the number of Dutch Indologists degraded. The role of Hurgronje , Boeke , Beruger , and the other indologists was replaced by U.S. researchers such as George McT Kahin , Donald E Willmott , Clifford Gertz , Hidred Geertz , Robert Jay , and AC Dewey . The Australian Indonesianists also joined with the US Indonesianists, and the whole process was never being separated from three Indonesian study centers in the United States that has previously been described. Dutch researchers could not enjoy what was enjoyed by U.S. researchers at periode1950 - 1960s. This was mainly due to the hostile attitude of the government of Indonesia to the Netherlands , and the deterioration of tremendous interest to Indonesia in the Netherlands .

Other contexts that encouraged the funding of the project of "understanding Indonesia" which was conducted by the U.S, was the conflict in Korea, Malaysia , and Vietnam which was increasingly raging. Therefore, there was strong support for U.S scientists who were willing to participate directly in the process of economic development in Indonesia. Some of them even directly involved in the formulation of government policy in Indonesia. Benjamin Higgins, for example, was assigned to work at the Bureau of National Planning for Economic Development. Another example is the establishment of Kentucky Contract Team (the Kenteam) that examined Indonesia from late 1957 to early 1966. His job was to develop Bogor Institute of Agriculture (IPB) in the technical and social aspects of the application of agricultural science, such as agronomy, forestry, and rural sociology. This involvement was only a fraction of the involvement of the U.S scientific world in the 1950s in a variety of dimensions of the life of a newly independent country. (in Samuel , 2010: 81-88).

There is Money Behind Science: Analyzing the Role of Corporations in Indonesian Project

In the world of social science, the term "corporatocracy" has not been widely used and it is relatively new. It is John Perkins, in his book Confessions of an Economic Hit Man (2004), who used it to show that in order to build a global empire, the large corporate, banks, and government joined forces to bring together the financial and political power in order to force the world to follow the will of them.

A word came to my mind: corporatocracy. I was not sure whether I had heard it before or had just invented it, but it seemed to describe perfectly the new elite who had made up their minds to attempt to rule the planet.

In Indonesia, the term began to be known four years later after Amien Rais reviewing it in a book entitled "Agenda-Mendesak Bangsa: Selamatkan Indonesia!" Indeed the term "corporatocracy" can be used to show how a large corporation or a company in fact can dictate, sometimes even buy the government to grant their will. If the government is controlled by the aristocrat (noble), it is referred to as the aristocracy, by plutocrat (the rich): plutocracy, by kleptokrat (thieves, thugs): kleptocracy, then a government controlled by corporatocrat (owners of large corporations) may also be referred to as corporatocracy.

In his book, Rais (2008: 81-85) tried to describe corporatocracy further. It is regarded as a system or machine that aims to control the power and global political economy that has (at least) seven elements, namely: 1) large corporations; 2) certain government political forces, mainly American and his accomplices; 3) international banking and 4) military force; 5) mass media; 6) co-opted intellectuals, and lastly, 7) which is not less important is the national elites of developing countries that have a mental of "inlander", comprador or servant. The corporation is meant here is the "big" corporate, because small corporations generally do not have the ambition to deplete the Earth's resources and build a system or machine of power for then to create a global empire. David Korten (Ibid.) describe how terrifying steps to big corporate colonization of the planet:

As corporations (large) to obtain autonomous institutional power and increasingly alienated from the society and its place, the corporate interests and the interests of humanity increasingly gaping differently. Now we feel as if invaded by strange creatures who intend to occupy our planet earth, reduce us to a mere slave slaves, and isolate us as much as possible

In general, large corporations are infected by pathology of profit or greed disease in seeking for profit. The absolute corporate purpose is to seek maximum profits with minimal cost and time. All the way to profit may be made. What comes first is an profit, the

others come next. The process of recruitment, training, administration, advertisement, accommodation, production, storage, profit-sharing and other things can be true by all means, as long as the absolute goal can be achieved (Ibid.). Right at this point, we can try to understand the interests behind the "funding" in large quantities by a number of large corporations in education projects in Indonesia, whether it's an attempt to build Modern Indonesia, Scholarships, research development, and so on. Network of interests between developed countries and corporations have successfully made the developing countries as a target to be captured in the field of politic and economy.

Criticizing the Process of Building Design in Institutionalization of Social Sciences Development in Indonesia

One important essay in this regard is written by David Ransome, The Berkeley Mafia (1970), it was reviewed by Bruce Glassburner in his writing entitled, Political Economy and the New Order government, in Arndt [(ed), 1987]. According to Ransome, as quoted by Glassburner, Chief Representative of the Ford Foundation in Jakarta 1950, Michael Harris, was "accused" to has been trying to drive the economic lessons in Indonesian universities to orthodox Western thought, as an attempt to prevent "leftism", particularly "Soekarnoism". The medium is the form of assistance (grant) called Ford Foundation (, Rockerfeller Foundation, and Fulbright) in large numbers to Indonesia, which was regulated by American universities, for further studies in the United States in order to finance the American team which advise on the curriculum and related with it, or teach in Indonesia.

The main purpose of Ransome in his essay is to blame the involvement of University of California (Berkeley) and the Ford Foundation in an effort of bloody cleanup, and the removal of the Communist Party of Indonesia (PKI) , and the important thing is that this intellectual association is intended to apply comprador economy ideology, and economic policy that suitable with U.S. interests. Outside Berkeley, as recorded by Philpott in the article entitled "Money and Power: Foundations Funded by private capitalists" (2005), there is also a strong involvement of the Massachusetts Institute of Technology (MIT) and Cornell University. Even Cornell, Ford Foundation, also funded the establishment of Modern Indonesia Project, a program of Indonesia's most influential studies over the last forty years. In practice, the number of donors is getting bigger in

number and comes from the diverse geographical backgrounds, fields, interests, ideologies , and other characteristics (for example : from Western Europe, including Scandinavia, Eastern Europe, East Asia, Middle East, and Australia) .

Dilemma of "Scholarship Politic"

Concerning disclosure of interests behind the scholarships, researchers are interested to quote the writting of Agung Nugroho (a) which is entitled "Politic of Australian Scholarship/Politik Beasiswa Australia". In this writing, Nugroho said that at least there are three factors that should be assumed to be an incentive for a country in providing educational assistance in the form of scholarship. First, the ethical politic. Not only Van de Venter and van Abraham Kuyper who is a pastor in the Dutch parliament, many figures in the other "imperialist" countries also argue that the people in the colonial territories was naturally have right to get humanitarian aid as a form of ethical politic on their suffering for being colonized for years .

The second, familiarization. One of the treatment in facing a country that is considered potentially to pose a threat is apparently to make a psychological bond through friendship. Nugroho explains how to make this bond vary. From the natural[4] ways to the systematic ones. Scholarship recipients are positioned as cultural agents that will bridge the gap between the two countries. To implement it, then it is done prestige bestowal. No half-hearted, governments of scholarship provider prizes the recipients with the chance to study in the best universities in the country. according to Nugroho, In Japan, being a student of Tokyo Daigaku (Todai) University is a fundamental guarantee to the become a cabinet member, therefore, it cannot be denied that there are a lot of young Japanese who commit "harakiri" for failing to get in there.

Third, strategic contraprestation. Government of the host country has an interest to build networks. Of several hundred scholars who are funded to achieve a master's degree or doctorate in the country, certainly there are so many of them who will occupy the position and strategic positions. Therefore, the selection of candidates, or the qualification is needed in the recruitment process. Not only aims to ensure that the person concerned can get the satisfied

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[4] Through the interaction that exists between the scholarship recipients with citizens in the host country, allowing interwoven strands of friendship even love between them. Beyond that, the experience of living in the host country, will also lead to emotional intimacy even dual loyalty. It is common to happen, a grantee considers the host as a second homeland

academic results, but the main thing is as a screening mechanism in the potential actors.

Related to this, we can look into the U.S. which is still keen to give the USAID scholarship in the scheme of Fulbright or the Ford Foundation. ' Berkeley Mafia ' that we know consisted of JB Sumarlin and Ali Wardana, and friends, is the proof of U.S. investment in the form of well-educated human resources that the 'results' have been given back by Indonesia to US through a lot of economic and political access. this U.S. success is then allegedly followed by AusAID (Australia) , Monbusho (Japan) , Chevening (UK) , DAAD (Germany) , StuNed (Netherlands) , and many more .

The effects of this various scientific hegemony strategies can we track for example in the teaching of social science curriculum in higher leveled education; just how theories are positivistic America (systems theory, modernization theory, the theory of political behavior, the theory of comparative politics) have been, and still be mainstream until now.

Dismantle Western Epistemology and Interests Behind

If you want to invest in the short term, grow rice. If you want to invest in medium term, plant a tree. If you want to invest in the long run, educate people (Chinese proverb in Nugroho (a)]

The Western world is well aware that power without knowledge means nothing. Then they created the various instruments such as narrative history, theory, methods, schools of thought, etc, which are able to maintain and perpetuate its power. E.g., writing Alan J. Bishop, entitled " Western mathematics: The Secret Weapon of Cultural Imperialism " [in Ashcroft , Griffiths , et al (ed) , 2001], which questioned the Western Mathematics. For him, European mathematical methods will collide and give a major impact on indigenous culture. in this case Mathematics which is used directly in a variety of concepts and techniques of application, or indirectly through the science of objectification which is used as a core value of Western mathematics. It is also happens in the terms of the language. Through the medium of commerce, administration, education, symbol and structure of the West's language, this imposed on indigenous cultures. As a result we hardly knew any longer, a traditional-styled ancestral administration, such as the villages based administration called "Nagari"in West Sumatra (Tegalboto Magazine, Ibid : 11).

At the same time, powers are constructed and dominate to know. So as Foucault says, power generates knowledge, which in turn it cannot be carried out in the absence of knowledge. Application of power and knowledge gives birth to the discourse creating confidence, and determines everything that is considered 'natural ' and ' normal ', and remain upright in building the pillars of ' scientific ', reproduced by the Western world (Ibid. : 11). As a result, then a colonized country becomes the victims of colonial epistemology. Colonial culture does not even possess the slightest room for itself. it only represents a proletariat culture, classless, and considered uncivilized. What allows for the continuity of Western power is caused by the construction of discourses which are operated through the logic, following the term of Ferdinand de Saussure, the binary opposition. Namely, when the meaning emerges as a result of the linkage between the similarities and differences. Meaning is created by dividing the two, in some categories are mutually dependent: culture / nature, male / female, black / white, good / bad, us / them, West / East. Because the construction of binary logic is created by the West itself, it can not be avoided that bad stereotypes intended towards Non-Western Nations. For instance, if the colonized people were irrational, then the European People is rational[5]. As a result, when the system is included in the social rooms, so it forms a duality society that oppresses each other. so is colonialism, it should be understood, not just as a vehicle for the development of western technologies, but it also means "empowerment" effort of ideas, western interests against non- Western countries in order to fulfill the machines of it's power desires. (Ibid.)

'Berkeley Mafia ' can be a real example of how knowledge is exploited for political interest of a developed country (in this case the U.S). 'Berkeley Mafia ' led by Emil Salim, JB Sumarlin, and Ali Wardana, and friends, is scholars who received economics training in the U.S. They are of course studied economic education which particular school of thought, which is essentially in accordance with U.S. political conception. After studying in the U.S, the paradigm of economical development promoted by the ' Berkeley Mafia ' became obvious in Indonesia; it tends to favor the idea of capitalism, particularly the idea that foreign investment is useful for the development of the Indonesian economy.

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[5] Another parable, if the first is not civilized, sensual, and lazy, then Europe is civilization itself, with a sexual appetite that can be controlled, and the dominant ethic is hard work. And if, in the East it is static, Europe has developed and progressive. East or the feminine, while the masculine West. (Ibid.: 14)

The idea promoted by the ' Berkeley Mafia ' was finally able to affect Indonesia's economic policy after the holding of the Second Army Seminar in 1966, where Suharto was impressed by the presentation of the ' Berkeley Mafia ' about economic development, until finally they were appointed as economic expert advisor (Mallarangeng , 2008: 47). after the ideas of 'Berkeley Mafia' being approved by Suharto, ' Berkeley Mafia ' distributed more incentive ideas, to successfully influenced one of the key figures in the government of the New Order, Sri Sultan Hamengku Buwono IX, it is reflected in his support for foreign capital to the Indonesian economy[6] (Ibid , 49).

The success of ' Berkeley Mafia ' in convincing key figures in the current administration, with their economics ideas, ultimately resulted in creation of a number of pro-foreign investment policies, such as the opening of foreign investment to participate in exploring and exploiting the natural resources of Indonesia. Essentially, these foreign investments in accordance with the interests of the U.S, who was targeting Indonesia's natural resources. This statement is no exaggeration, as expressed by President Nixon that describes Indonesia's natural resources as "the greatest prize in the Southeast Asian area" (Klein , 2007: 84). it is clear that the transfer of knowledge to the Indonesian scholars is not value-free, it can not be separated from the political interests of Western countries.

Post Scriptum: Redefining Security Concept and Agenda of Epistemology Decolonization

Epistemology colonization that occurred in the context of Indonesia did not end with the fall of the New Order regime in 1998. the sustainability of epistemology colonization is caused by a variety of supporting institutions, as well as through the provision of scholarships, many university curricula, textbooks, the existence of various think-tanks, NGOs, research centers , and academics / scientists who think that Eurocentrism must keep alive and grow in the land of Indonesia after the New Order. One proof is the ongoing implementation of the idea of colonization Epistemology of Liberal Democracy in lieu of the New Order regime that tends to be authoritarian. The institutionalization of the idea of liberal democracy,

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[6] In one of his public speeches, the Sultan tried to negate the discourse on foreign capital, where foreign capital is considered a threat to Indonesia because it is essentially the weapon of capitalism-imperialism. Sultan instead argued that foreign capital are beneficial for development (Ibid).

one of which is reflected in the implementation of general election followed by various political parties following the reopening of the opportunity to establish political parties freely. In fact, until now experimental application of Liberal Democracy in Indonesia does not produce government envisioned by the community, in this case the government that is able to alleviate the problems of the nation. The more days that often appear in news stories is the case of official corruption, rampant money politics in the election, until the local election conflict which in some cases lead to violence.

It seems clear that the idea of liberal democracy which is a mainstream idea in Western scholarly discourse is digested and applied in Indonesia without adjustment by the scholars who are affected by the mainstream idea. The scholars have no criticism at all against the idea. For example in terms of considering the context in which the implementation of these ideas to be applied, of course, the application of liberal democracy would rather bring disastrous for Indonesia, because it does not bring solution to the government. In fact, it is potential to increase the skepticism of the citizens towards the administration

For example, a study conducted by Robison and Hadiz in a writing entitled "Reorganizing Power In Indonesia" (2004 : xiv). It contains conclusion about liberal democracy regime as envisioned by the neo-liberal perspective scholars through the implementation of the institutionalization of democracy in Indonesia after the New Order did not run well, due to the strength of Oligarchy, termed as the complex politico-business oligarch, which is able to "hijack" democracy. that study of Robison and Hadiz shows that the implementation of liberal democracy which is merely "copy and paste" of the practices carried out in Western countries, even supports power Oligarchy in Indonesia , which is certainly vulnerable to corrupt practices. This kind of power would certainly increase the sense of public hatred to the state, because the dream of change toward the better condition, which conceivably will be created in the Reformation did not finally come true.

The sustainability of Epistemology colonization in Indonesia, or in the other post-colonial countries, which spawned numerous negative impacts should be a serious concern, especially when it is faced with the Westphalian conception of the State which assumes the independence of the country has set its own territories. One action that must be taken to maintain the independence of the country is putting colonization Epistemology as one crucial issue in the study of security. So far, the study of traditional security more focuses on a

military threat from other countries that could potential to disturb the sovereignty of a country. However, as stated by Roland Paris (2001 : 97) that the study of the post-Cold War security tends to broaden and deepen. Where the identification of threats to security are becoming increasingly complex, both covering a potential military threats by non-state actors such as terrorism, or non-military threats that are just as dangerous as the plague or nuclear disaster. Development in identifying threats in security study must be the entry point in putting the issue of knowledge, also as security issues, where the knowledge which is affected by the paradigm of Eurocentrism is essentially a tool of power of the West world. study is increasingly important so the public will get more awareness to this issue, especially scholars in post-colonial countries, thus developing studies on security discussion especially in the post-colonial countries, not only related to the threat of another country's military, such as what is the most suitable warfare armament to be used in the context of a state, but also the necessity for increasingly wary and wise in observing the flow of knowledge globalization that is potential for a hidden threat to the sovereignty of a country.

Next steps to be taken after resuscitation efforts on hidden threats of Epistemology colonization is decolonization. It is one of the strategies that can be implemented to offset the effect of the ongoing Epistemology colonization. in fact, this effort has been initiated by various groups at international level, albeit in a limited level. One of the efforts that have been recorded and performed at international level through the involvement of cross-country scholar was an international conference held in Penang, Malaysia, entitled Decolonizing Our Universities. the conference were attended by a number of academics including Professor Tan Sri Dato Dzulkifli Abdul Razak (Malaysia) and Dr Asghar Zarei, (Iran). it was opened by Dato Saifuddin Abdullah, who was the deputy minister of Higher Education Malaysia (TV Multiversity , 2011). This kind of activity should be encouraged in order to bring forth the knowledge that is free from the influence of Eurocentrism, so that the independence of science can be developed, particularly in the post-colonial state. Epistemology decolonization efforts certainly not a strategy that the result can instantly be seen in a relatively short time, but with further intensify and sustain activities oriented on Epistemology decolonization efforts, then it becomes a concrete step to reduce the independence of a country's rate of degradation caused by Epistemology colonization.

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Appendix I

Justifying Actions / Knowledge (Theory as Practice) in the U.S. state
of Political Affairs after the 2nd World War
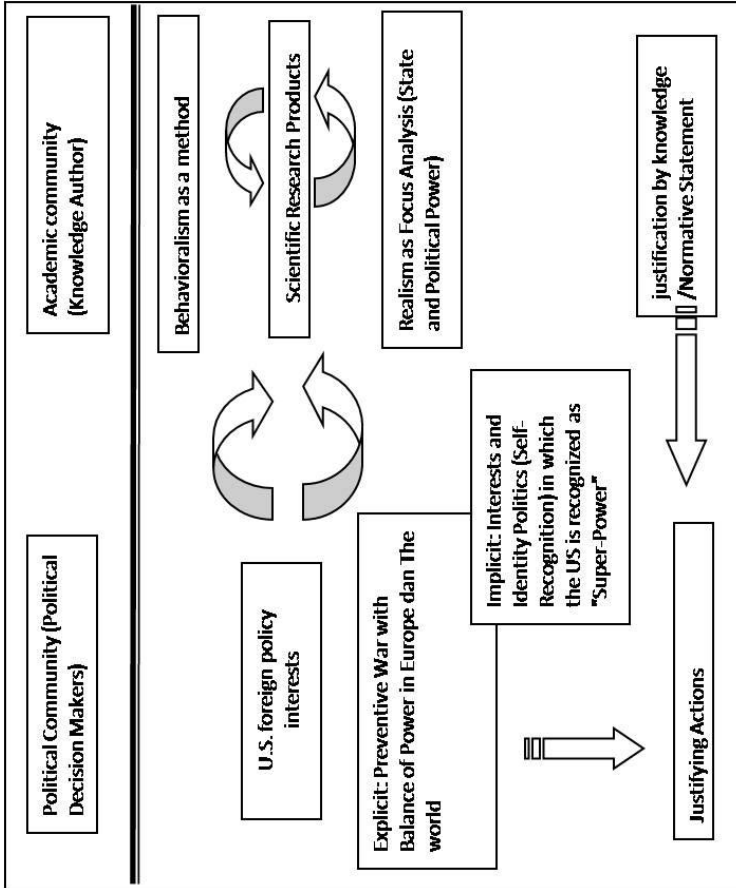
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