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Is the 'ASEAN Way' the Way to
ASEAN Security?

by Dr. Rizal G. Buendia



The European Court of Human Rights and the Armed Conflict: The
case of Nagorno-Karabakh

by Dr. Najiba Mustafayeva



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WORLD NEWS

By Furkan Sahin



Turkey's Election Board (YSK) declares Recep Tayyip Erdoğan as a winner

Earlier on Monday, Erdoğan declared his victory in both Turkey's presidential and parliamentary elections. He succeeded to surpass %50 of the vote in presidential election (%52'59) and his ruling Justice and Development Party (AK Party) obtained 42.4 percent of the vote counted.

This historical election is a beginning of new realm as it is the first time election following changing administrative system from parliamentarian to presidential system. Now he will be head of executive power but could not get majority of the seats in the national assembly. Therefore, he has to make concessions in case of need of crucial laws to make. **25.06.2018**



Assassination attempt to Zimbabwe's President Mnangagwa

Zimbabwe's government says an explosion on Saturday is an assassination attempt to President Emmerson Mnangagwa, who was holding a campaign at a stadium.

As the state-run Herald newspaper reported, the President escaped injuries, but at least eight people were injured in the explosion.

Emmerson Mnangagwa, the president of Zimbabwe, has called for peace, love and unity hours after this bomb attack.

23.06.2018



Historical meeting between Kim and Trump

Donald Trump and Kim Jong-un have become the first US president and North Korean leader to meet since the Second World War. It is reported that in exchange of removing all nuclear weapon projects, USA will economically support the North Korea.

North Korea has been a focal point of the power struggle between China-Russia and the USA. After signing a "comprehensive"

document, fate of this power struggle might change the direction towards the USA's favour. Possible re-integration of South and North Korea will consolidate the USA's position in the South Asia.

This agreement is also serving a national purpose for Trump Administration. Comparing with the nuclear agreement with Iran which Obama signed, this one bases on removal of all nuclear capacities rather than halting it for some time. **12.06.2018**



Greece and Macedonia sign agreement on a name change

Greece and Macedonia signed an historic agreement to rename the latter as the Republic of North Macedonia. With this agreement it is aimed to end a dispute that has affected relations between the two countries for decades. Although there are some protests in both countries, it might be a fundamental development for good bilateral relations and applying for EU Membership of Macedonia. **17.06.2018**



Trump refused to join G7 summit statement

The G7 summit has ended in acrimony, with US President Donald Trump abandoning the joint statement. This event cannot be explained with Trudeau's statements. There are plenty of global issues triggering challenges among developed states. Therefore, It has become a sort of G1 vs G6 because not only tariffs but also Iran Nuclear agreement, rising taxes taken from steel and steel-made productions, migration policy and NATO have discussed behind the scene. **10.06.2018**



Israeli Prime Minister Benjamin Netanyahu: Iran continued "secret nuclear programme"

Netanyahu gave a presentation which is claiming to have concrete evidence of the "secret programme".

He claimed that Iran persisted on continuing its nuclear programme after the nuclear deal. Also he blamed Iran on hiding files related to its nuclear programme. His speech came after efforts by the Trump administration to cancel, or at least renegotiate, the 2015 nuclear pact signed between Iran and the US, France, Russia, Germany, China, the UK and the European Union. **01.05.2018**



Israeli air strikes kill Palestinians at Gaza border

Tens of Palestinians have been killed and hundreds of them have been injured by Israeli forces since beginning of the Land Day protests.

The mass protests, called "the Great March of Return", were organised by civil society groups and supported by political factions to call for returning of Palestinian refugees. Israel must end "unlawful and cruel" attacks against Palestinian. This is not a defend it's a seventy years of ethnic cleansing.

05.04.2018

CHANGING DYNAMICS OF DEMOCRACY

By Dr. Rahman Dag

DEMOCRACY IS NOW CONSIDERED TO BE THE BEST administrative system in the world. This is principally because, with democratic regimes, there are systemic precautions to prevent rulers acting in an autocratic manner towards their people. Also, various aspects of democracy such as freedom of speech, human rights, individual liberties, freedom of the media, and minority rights have been embedded into current democratic systems and given utmost importance. The way democracy works actually depends on the axiom that people will invariably decide what is in their best interests via “free” elections. Allowing people to decide for themselves implies that they would always know what is good for them and so the

results of free elections would bring legitimate political and social order and prosperity. That is why democracy was characterised by Abraham Lincoln as a system “by the people for the people”.

The conceptual picture of democracy is the ultimate point where most of the human beings can and should aim to achieve. Therefore, most nations claim that they have a democratic regime despite their different institutions and practices. There is no need for comparisons between democratic regimes to determine which one is the most democratic but there is a general consensus on that western states are those in which democracy is embedded into their legislative and

governing systems, culture, and judiciary. Therefore, the democratic systems prevalent in those countries offer a fundamental basis from which to develop criteria that can be used to measure the levels of democracy elsewhere.

The European continent, which is thought to be the cradle of democracy, is in crisis because liberal democracy is now changing towards majoritarian democracy. The latter is still democracy but from a liberal perspective, the absolute authority of a certain identity, which of course consists of a majority, is not acceptable by definition and even challenges the essence of the concept of liberal democracy. Historical experiences in terms of the development of democracy indeed suggests the opposite because in certain periods in the past democracy meant simply extending the ruling circle and expanding the franchise or giving a greater number of individuals a voice in decision making processes. This short paper argues that the current migration flows from conflict areas to the western states forces liberal democracies to be replaced with majoritarian democracies. Up until now, the development of democracy might have been characterised as 'progressive' but it now appears to be reactionary (not democratic opposition but claiming re-dominancy of a certain identity) and backward-looking as has been seen historically.

The emergence of the concept of democracy dates back to the ancient Greek city-states and was formulated as the rule of the people. However, what is meant by 'the people' and identifying who they are is problematic because only notables, rich people, nobles and men were considered and so only they had to right to engage in politics or in decision making processes. If neglecting the rest of the society (women and slaves), it is a 'perfect' democracy because every people took responsibility for political issues. On the contrary, the history of democracy is full of the struggles of those who were excluded from the decision-

making process and this can be seen as a characteristic of the democratization process since ancient times.

After witnessing the dark and the middle ages, in the Enlightenment period, human beings were freed from dogmatic ideas and reactionary political systems and superseded them with "free will" which was based on rational thought. In such a long period of time, this struggle was focused against political structures identified as absolute sovereignty which was founded on on religion, tradition, royal families and feudal structures. By means of the French Revolution, political rights were expanded to encompass ordinary French

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citizens (mostly bourgeoisie) who fell into the majority profile of France and a political philosophy offering equality to every French citizen. In other words, the French Revolution was a victory of ordinary French citizens consisting of the majority against a French aristocracy, nobles and feudal lords who were a minority. In this sense, democracy was characterised as the people who were seen as 'the ruled' to have achieved the same status as the people who were considered as 'the rulers'. In short, it is the participation of all people the political process. Regardless of how one identifies 'the people', their preferences provided legitimacy to the democratic regimes and the system itself and the leaders who were elected

through this system were legitimate because people freely chose those whose power was limited by law so that they could not do harm to their people.

Following on from this, nationalist ideas suggest that people who have the same ethnic, cultural and linguistic characteristics grouped as collectives which led to a nation-state structure. This 'sameness' created a majoritarian democracy so major identities came to dominate the social fabric. Political parties representing ordinary citizens (French, German or American) obtained power and directly or indirectly disseminated their dominant ideas throughout their societies. In this

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regard, it is possible to say that until all people obtained the right to vote, democracy was characterised by majoritarian features and this was consolidated by people identifying themselves with particular nations. Under these

circumstances, a nation's interest that was believed to be shared by all people became a fundamental aspect of national and international politics.

When it comes to the changes in the components of nations, this majoritarian democracy had to concede its triumph to liberal democracy which ties people with legal citizenship rather than having a certain ethnic or cultural identity. This was in part as a consequence of the number of deaths caused by warfare and massive migrations between nations brought about new concepts in national and international politics, such as human rights and multi-culturalism. These changes elasticized the definitions of particular nations and their characteristics. This was especially evident in the international agreements on guaranteeing human rights and the cultural rights of minorities, indicating a changing understanding of the dominant national identities.

From a historical perspective, the concept of democracy appears to have progressively evolved from a minoritarian (Greek city-states) to a majoritarian character and then to liberal democracy. In the last phase, leaders are not merely elected and left alone to rule but checked and influenced by civil society, social groups and even individuals. In addition, the multi-lingual, multi-cultural, and multi-identity characteristics of liberal democracy have dominated the literature regarding the states, regimes, and democracy. Each of these characteristics are also allowed to



take part in both civil society, social groups and political parties, especially as minority groups which are expected to be naturally assimilated within or integrated into the dominant social culture of certain states.

Nevertheless, it is believed that multi-culturalism has failed because those who have distinctive identities apart from the dominant identity, culture, and even religion have neither successfully assimilated nor fully integrated. That might not have been an issue if the numbers of 'others' had not dramatically increased. Therefore, these distinctive identities, or 'others' are now perceived by many as a threat to the dominant identity and culture because, since early years of the 21st century, the numbers of people migrating from areas of conflict to liberal democratic western states have increased dramatically. This trend has encouraged many to think that majoritarian democracy might claim reinstate its former dominant position because immigrants are resisting the dominant identity and culture while citizenship is the only binding factor keeping people together despite their differences. That seems true in legal terms but it is not clear whether is true from a social and cultural perspectives.

The aspects of democracy, such as human rights, high prosperity and the rule of law convince

immigrants that European states are the best place to migrate to and settle for a new life. Yet, as long as immigration numbers are higher than that which the liberal democratic western states can tolerate, social, economic and cultural reactions of the natives (those who have major identity) will change the liberal democratic characteristics of the Western states for a majoritarian democracy which only focuses on the interests of the majority rather than providing certain rights to minorities. As mentioned before, in democracies people will decide who is going to lead or which political party will rule. It means that the liberal understanding embedded into the western culture and individuals will change first and consequently cause a change in power.

Given the history of democracy in the world, liberal democracy is a perfectly suitable means of ruling for prosperous countries which have adequate resources to allow them to tolerate differences. Otherwise, a majority of the people of any given state will focus on their own interest rather than willingly sharing their wealth with 'others' who are posing danger for them. There have been always some people who have altruistic view for minorities and their identities but this might not be adequate to prevent rising majoritarian claims.

Trump's economic and social policies, and the EU's migration crisis are practical examples of these historical changes because their established liberal order in economy, culture and politics demonstrate a massive change. The rising popularity of extreme left and right wing political parties in Europe and Trump's abandonment of established global economic relations via an increase in custom duties are examples of such social and economic changes, respectively. **PR**

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THE PROXY WARFARE IN SYRIA

By Dr I. Aytac Kadioglu

IT HAS BEEN SEVEN YEARS SINCE THE BEGINNING OF THE Syrian civil war. When the Arab uprisings spread throughout Syria, it was not thought that the peaceful protests would turn into one of the worst human-made disasters since World War II. After the Assad regime's security forces shot dead protesters in southern city of Daraa, the level of violence has been steadily increased nationwide. The situation has been even more complicated when the civil war turned a proxy warfare led by the most powerful countries in the world. This paper aims to draw a picture of why and how proxy warfare occurred in Syria.

The coalitions of powerful states caused to change the map of Syria again and again over the last few years. While the logic was to demolish a radical terrorist group at the beginning that helped the powerful states to battle under the same umbrella, the characteristics of the coalition rapidly changed due to the alteration in their conflict of interest. The rationale behind this can be the aim to play the leading role in the

formation of new Syria. An expected outcome of this was the emergence of different projects which resulted in backing different sub-state armed groups in Syria.

The distinction between the opposing forces stems from the two conflicting ideas on the future of Syria: countries who support President Assad's government, and countries who is against it and defend that peace can only be achieved if Assad is removed. These opposing ideas constituted two major forces: Syrian Arab Republic's allies and Syrian opposition forces.

Which states support which forces and armed groups in Syria determined the war in Syria entirely. On the one hand, the Syrian Arab Republic's forces are the security forces of the Syrian government whose allies are Russia, Iran, Iraq, China, Cuba and Belarus.¹ The Russia-led coalition mainly aim to keep the Assad regime, and so the influence of Russia on the Middle East. The biggest help to Russia comes from Iran which also

follows expansionist policy in the region. On the other hand, Syrian opposition rebel groups are consisting of the Syrian Democratic Forces (SDF), an alliance of Kurdish PYD and Arab forces. This group called the global coalition against ISIL which had different sects which later served the aim of powerful states to consolidate their influence on different regions of Syria. These groups are supported by the US, UK, UAE, France, Egypt, Libya, Saudi Arabia, Jordan, Qatar, Israel and Israel.² Turkey supports non-Kurdish factions in the SDF which are mainly Free Syrian Army (FSA).³

But, why did these states apply a proxy warfare strategy? Mumford suggests that proxy warfare occurs when states or non-state actors admit that direct intervention in a conflict is financially, materially or politically too costly, not unavoidable, unjustifiable, unfeasible or illegitimate.⁴ The situation on Syria is not different. The proxy war in Syria witnesses complicated relationships between powerful states and insurgencies in which the Baathist regime and insurgency groups are becoming increasingly dependent on powers of global actors.⁵

The involvement of four states in the Syrian civil war is critical as they changed the nature of the

conflict entirely: the US, Russia, Turkey and Iran. It is difficult to argue that there is a consensus within both sides with regards to strategies and future plans. The US initially supported the loyal groups to President Assad through military training and weapons. Then, the US stopped supporting these groups and began to provide air and heavy weapons support to the SDF.⁶ This means that the US then officially supported Kurdish terrorist group PYD to fight against another terrorist group; the ISIL.⁷ Since then, the main ally of the US in Syria have been the PYD. Although the President Trump ordered an air missile attack to Syria in response to a Syrian government's chemical weapon attack against civilians, this did not change the proxy war strategy of the US. In addition to this, the US aimed to establish a peace agreement through the UN Security Council. However, this peace initiative was broken by the Russia-China coalition. Therefore, the US plan to UN Security Council could not provide a peace resolution. While the peace plans are not the topic of this paper it is important to know that both the US and Russia aim to lead peace negotiations just like their proxy war strategies.

Russia is backing the Baathist regime since the beginning of the civil war. As an outcome of this, the Russian government have been accused that



Russian airstrikes directed against non-ISIL rebel forces –besides the ISIL- who fight against the Assad government. It is clear that the Russian government's objective is to keep Assad in charge. This in return will keep Russia's military influence in the Middle East. Hence, in addition to heavy weapon and training support, Russia keep defending to remain the Assad government in power in peace talks, namely the Geneva and Astana negotiations.⁸

Turkey has played key role since the beginning of the civil war and much before the beginning of the proxy warfare in Syria. Turkey has always defended that Assad should go for a peaceful resolution in Syria. Therefore, Turkey supported Syrian opposition forces, but not the PYD. Turkey's main ally against the ISIL is the FSA. Whilst Turkey conducted several airstrikes against ISIL targets, the Turkish government provided weapon support to the FSA. However, the Syrian civil war is more critical for Turkey as it shares the longest border with Syria. As the PKK used northern Syria for their camps to attack targets in Turkey for a long time, Turkey's experience on fighting against terrorism prioritises to destroy the PYD on northern Syria. This is in line with the hope of PYD to establish a federal Kurdistan in the north of Syria.⁹ Therefore, Turkey has to fight against both the ISIL and PYD to secure its borders against terrorism. Turkey's direct intervention in Afrin and Idlib were also part of the plan to end the existence of the PYD in the region.¹⁰ Turkey also play critical role in the Astana talks with Russia which negotiations excluded the US and PYD. It can be said that this is Turkey's counter-strategy against the US in order to defuse the PYD as a proxy in the region.

Iran is another supporter of the Baathist regime which emerged through extensive military aid through intelligence sharing, military training and weapon support. Similar with Russia, the Iranian authorities fight against both moderate and extremist factions of all opposition forces. As Syria

has been the biggest ally of Iran in the Middle East, the Iranian government's main strategy is to keep the Assad regime and stand with Syria against Israel and Saudi Arabia which are Iran's biggest rivals in the region. This aim also serves Russia's goal which result in these two countries take action against the US and western powers in Syria.

To sum up, the long-standing civil war has caused half-a-million people to lose their lives and almost half of the country lost their home and had to move to another country.¹¹ At the seventh year of the conflict, terrorist groups are even more deadly. The fall of the ISIL also did not de-escalate the conflict. This is mainly because of the fact that the external support to other insurgency groups has made them more powerful and resulted in their claims to establish federal governments in the areas under their control. It can be said that unless these conditions do not change, it is difficult to end the war in Syria and establish a peaceful resolution in the country. **PR**

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THE EUROPEAN COURT OF HUMAN RIGHTS AND THE ARMED CONFLICT: THE CASE OF NAGORNO-KARABAKH

By Dr. Najiba Mustafayeva

THE EUROPEAN COURT OF HUMAN RIGHTS, A Strasbourg-based international court established by the European Convention on Human Rights and Fundamental Freedoms (ECHR) deals with individual cases. In accordance with Article 34 of the ECHR, “the Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto”.¹ The general review of the almost 60-year-old activity of the Court allows concluding that this supranational body has been mostly examined individual appeals of violations of civil and political rights, afforded just satisfaction

to injured party in cases of violations of the ECHR or the additional protocols.

Unlike the International Court of Justice (ICJ), International Criminal Court (ICC) and ad hoc tribunals the European Court of Human Rights was not created to deal with mass violations of human rights often committed during armed conflicts. However, this provision does not mean that the Court jurisdiction does not cover this kind of human rights violations. Moreover, dealing with the cases from the Srebrenica massacre to the international military operation in Iraq, the Court examined events during military activities of state-parties of ECHR outside their sovereign territory.

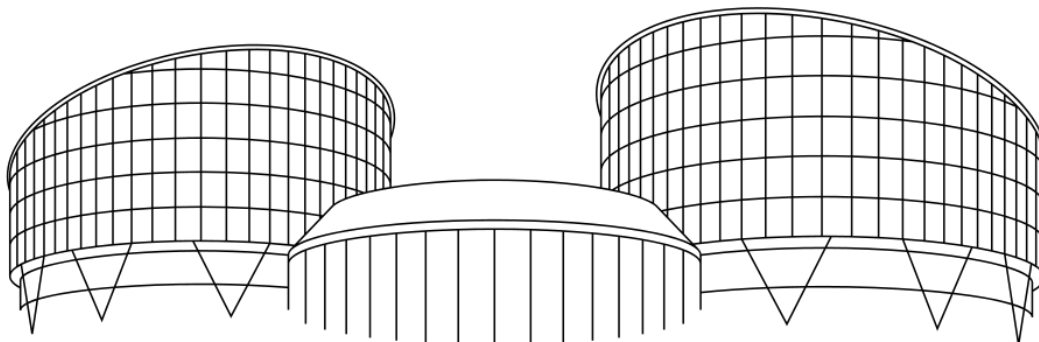
As Kirchner argues, “the decision whether or not the Court will have jurisdiction in such cases will to a large extent depend on the question, whether or not Article 1 ECHR is applicable, i.e. whether or not the acts which are claimed to constitute a violation of the Convention are included in the scope of the term “jurisdiction” as used in Article 1 ECHR”.²

This issue is of fundamental interest in the context of inter-state territorial conflicts, when one of a party to a conflict actually exercises effective control over a part of a territory of another sovereign state. This in turn allows the Court to conclude that the term “jurisdiction” extends to the territory of sovereign states under occupation and thereby generates the responsibility of the occupying country.

The article analyzes the cases of the European Court of Human Rights related to human rights violations during the Armenia-Azerbaijan Nagorno-Karabakh conflict. On the basis of a legal analysis of the Court's judgments, the author disposes that the Court is not only authorized to examine human rights violations during armed conflicts, and to hold a question of state accountability, but also recognize a fact of aggression of one state against another.

On 6 April 2005 six Azerbaijani IDPs brought the case against Armenia (“Chiragov and Others v. Armenia”) claimed that they were prevented from returning to the Azerbaijani district of Lachin, from where they had been forced to flee in 1992 after Armenian occupation, and thus they were unable to enjoy their properties located there and that they had not received any compensation for their wastages. The applicants submitted that “this amounted to continuing violations of Article 1 of Protocol No. 1 to the Convention and of Article 8 of the Convention”. Furthermore, “they alleged a violation of Article 13 of the Convention in that no effective remedy was available in respect to the above complaints”. Moreover, the group of IDPs claimed, “with a view to all complaints set out above, that they were subjected to discrimination

UNLIKE THE INTERNATIONAL COURT OF JUSTICE (ICJ), INTERNATIONAL CRIMINAL COURT (ICC) AND AD HOC TRIBUNALS THE EUROPEAN COURT OF HUMAN RIGHTS WAS NOT CREATED TO DEAL WITH MASS VIOLATIONS OF HUMAN RIGHTS OFTEN COMMITTED DURING ARMED CONFLICTS.



EUROPEAN COURT OF HUMAN RIGHTS

by virtue of ethnic origin and religious affiliation in violation of Article 14 of the Convention”.³

In a judgment delivered by the Grand Chamber of the ECHR on June 16, 2015, the Court made an assessment on the violations of Article 1 of Protocol No. 1 (protection of property) and Articles 8 (right to respect for home and private and family life) and 13 (right to an effective remedy) of the Convention “in the present case relate to a general situation which involves the flight of practically all Azerbaijani citizens from Nagorno-Karabakh and the surrounding territories and their inability to return to these territories”.⁴

The Court declared that “violation of the applicants’ rights occurred on the sovereign territory of the Republic of Azerbaijan” and found “the Republic of Armenia responsible for the breaches of the applicants’ rights”.⁵ The Court also established that “the Republic of Armenia pursues policy of ethnic cleansing against Azerbaijanis”, and held that “the Republic of Armenia is responsible for that situation persists to this day”.⁶

Moreover, dealing with the categories of “effective control” and “belligerent occupation”,

the supranational judicial institution provides a legal assessment of the issues mainly stem from the facts of military aggression. In this respect, the case of “Chiragov and Others v. Armenia” is indicative.⁷

Thus, the judgment of the Court indicated that “the Republic of Armenia exercises effective control over occupied territories of Azerbaijan, including Nagorno-Karabakh and seven surrounding districts”. Moreover, with reference to the 1907 Hague Convention on respecting the laws and customs of war on land and 1949 Geneva Convention relative to the protection of civilian persons in time of war, the Court noted that “notion of effective control in fact denotes belligerent occupation”.⁸

Furthermore, concerning the jurisdiction of Armenia in the framework of its effective control over Nagorno-Karabakh and the surroundings districts, the Court noted in particular that “numerous reports and public statements, including from members and former members of the Armenian government, demonstrated that Armenia, through its military presence and by providing military equipment and expertise, had



been significantly involved in the Nagorno-Karabakh conflict from an early date”.⁹

Thereby, returning to the question of the admissibility of the Article 1 of the ECHR in cases of human rights violations during military activities of state-parties of ECHR outside their sovereign territory, we can conclude that the state jurisdiction under this article is not limited to own territories of the ECHR state-parties, but extends to territories of other sovereign states where an occupant party exercises an effective control.

As Uriarte rightly notes, in order to deal with these types of breaches of applicants’ rights, “the Strasbourg Court relies almost exclusively on interpreting the European Convention on Human Rights and Fundamental Freedoms and it has therefore become the applicable legal instrument for those types of violent situation”.¹⁰ However, the author’s assertion that the Court “examines armed conflicts in the light of the ECHR, on the understanding that this remains applicable, and so avoids having to deal directly with IHL”¹¹ (international humanitarian law), seems controversial. The Court’s judgment on the case of

“Chiragov and Others v. Armenia” in which successfully interpreted IHL, particularly the landmark international documents – the 1907 Hague Convention on respecting the laws and customs of war on land and 1949 Geneva Convention relative to the protection of civilian persons in time of war, evinces that Court does not limit itself to international legal sources, widely using the norms and principles of IHL that regulates the conduct of war (*jus in bello*).

Moreover, this case also identifies that the European Court of Human Rights as the supranational judicial body recognizes the state-party of the ECHR as an aggressor-state. Thus, Armenia’s occupation of the Azerbaijani territories has been proved in the judgment of the international court, the decisions of which have legally binding nature.

Virtually, the legal inconsistency of the Armenian claims on “independence” of the separatist regime of the so-called “NKR” and “three-party negotiations” on the conflict was expressed in the fact that the state as the main, primary and universal person of international law should possess the qualifications



such as “permanent population, defined territory, government and capacity to enter into relations with the other states”.¹²

The internationally unrecognized puppet regime of the so-called “Nagorno-Karabakh Republic”, established in the occupied territories of Azerbaijan as a result of the Armenian aggression against Azerbaijan accompanied by ethnic cleansing of the Azerbaijani population on a massive scale, undoubtedly does not conform to these qualifications. The decisions of the European Court of Human Rights decisively put an end to the Armenian speculations on this issue. **PR**

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4. Ibid.
5. On 12 December 2017 Grand Chamber of the European Court of Human Rights made a decision on this case ruled on the question of just satisfaction (Article 41 of the ECHR). It held, unanimously, that “the Armenian government had to pay each of the applicants 5,000 euros (EUR) in respect of pecuniary and non-pecuniary damage to each of the applicants and a total amount of 28,642.87 pounds sterling for costs and expenses” (ECHR, “Chiragov and others v. Armenia”, Application no. 13216/05, Strasbourg, December 12, 2017, Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179554%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179554%22]})).
6. Ibid.
7. The fact of Armenian effective control over Nagorno-Karabakh and the surrounding territories is confirmed in the case of “Muradyan v. Armenia” which concerned the death of the Armenian military conscript, Suren Muradyan, based in the unrecognized “Nagorno-Karabakh Republic”. According to the Grand Chamber’s judgment, “Suren Muradyan’s death and the ensuing investigation therefore fell within the jurisdiction of Armenia, thus engaging Armenia’s responsibility under the European Convention” (ECHR, Case of “Muradyan v. Armenia”, Application no. 11275/07, Strasbourg, 24 November, 2016, Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-168852%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-168852%22]})).
8. Ibid.
9. Ibid.
10. Joana Abrisketa Uriarte, The Problems the European Court of Human Rights Faces in Applying International Humanitarian Law, (April, 2016), Available at: <https://lawexplores.com/the-problems-the-european-court-of-human-rights-faces-in-applying-international-humanitarian-law/>
11. Ibid.
12. This follows from the logic of the Montevideo Convention on the Rights and Duties of States which firstly codified the definition, rights and duties of statehood (Montevideo Convention on the Rights and Duties of States, 26 December, 1933, Available at: <http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>)

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THE ROLE OF PUBLIC OPINION IN FOREIGN POLICY

By Dr. Sharifullah Dorani

THE ISSUE OF PUBLIC OPINION AND ITS INFLUENCE IN foreign policy has been a matter of dispute between scholars of different schools of thought. The theoretical and empirical disagreement centres upon the 'nature' and the 'influence' of public opinion. This article examines both. Firstly, it looks at the opposing theoretical perspectives on public opinion. It then analyses the empirical evidence on the accuracy or otherwise of those conflicting (theoretical) viewpoints. Finally, the article throws light on an alternative position on the impact of public opinion on foreign policy, followed by some concluding remarks.

Theoretical Disagreement

Theoretically, the realism, or 'the elite-centric model', claims that public opinion is emotional (or 'moodish'), irrational, ill-informed, easily shiftable

(or volatile), lacks structure and coherence, and can be manipulated by leaders from the top.¹ As far as political scientist Gabriel A. Almond is concerned, 'public opinion is apathetic when it should be concerned, and panicky when it should be calm'.² For the classical realist Hans Morgenthau, neorealist John J. Mearsheimer, and diplomat-historian George F. Kennan, policymakers make foreign policy on the basis of 'national interest' and *ignore* the 'emotional' and 'subjective' views of the mass. Policymakers do so because they are responsible officials who usually know what is 'wise', 'necessary' and more 'expedient' for the country.³

For the realists, policymakers opt for the rational choice, a choice which most likely will achieve the best outcome. Their choices are influenced by external forces, such as survival and maximisation

of power in an uncertain international system, rather than internal forces, such as public opinion. The public can approve or disapprove of a government, but they cannot administer it; a mass cannot 'govern'. As far as realism is concerned, the government always leads; it does not follow. Leaders can also *lead* the public to hold certain views.⁴ Leaders take steps to convince the public to support their decisions that they have *already* made. They can do so by 'framing' an issue in a particular way and engaging in 'crafted talk'. They can do so since the American public has less knowledge about foreign affairs than about domestic policies.⁵ For example, the British and the American governments devoted significant time and resources to convince their electorates that Saddam Hussein possessed weapons of mass destruction and therefore his regime constituted a threat.⁶

The mass media are said to be hardly challenging the executive leadership and instead faithfully support the policy. If there was any correlation between public opinion and foreign policy, public opinion 'follows the leadership of the executive branch, as presidents have significant control over the dissemination of information and hence considerable latitude in policy selection'.⁷ In sum, the realist theories argue that policymakers either 'lead' the public to support their policies or 'ignore' public preferences altogether. Accordingly, there is little direct link between what the public thinks and what leaders do.

The pluralist model, notably the liberal theories, finds public opinion to be relatively stable, sensibly structured, consistent, and consequently impactful on foreign policy, as presidents take into consideration public opinion when making foreign policy decisions.⁸ Liberal theories, such as the democratic peace theory, claim that presidents take into account public preferences for a number of assumptions, which can be summarised as follows. Firstly, public support is essential because

it legitimises the government within democracies. Success in an election is usually essential to secure legitimacy, but it is not always sufficient.⁹ 'Were the public to have no say in policymaking, with all power centralised with the governments' implementers, then policymaking would be subjected to an "elected dictatorship".¹⁰

Secondly, rational politicians set aside their own beliefs and dutifully follow public preferences because they are *responsible* for the public's will.¹¹ Thirdly, presidents want to maintain or even increase their approval rating. Unpopular foreign policy decisions can reduce a president's chance of support for re-election, or for more important domestic policies, or even for the implementation

SUCCESS IN AN ELECTION IS USUALLY ESSENTIAL TO SECURE LEGITIMACY, BUT IT IS NOT ALWAYS SUFFICIENT.

of (unpopular) policies, and thus presidents are careful not to take risky decisions.¹² Finally, due to the fact that citizens bear the burden of war in 'blood, sweat, tears, and tax dollars', they would object to becoming involved in foreign wars.¹³ In sum, as political elites are ultimately accountable to the public, rational politicians attempt to gain an advantage at the polls by enacting policies favoured by the public. They avoid policies that alienate or offend the electorates.

In addition to liberal theories, approaches in the subfield of Foreign Policy Analysis, especially those that focus on the decision-making process, assume that public opinion is a crucial source of analysis and therefore plays a part in shaping foreign policy decisions. Those approaches analyse the role of public opinion in decision-making as part of domestic or 'internal factors', which include the impact of Congress, the media and area experts.¹⁴

Empirical Evidence

Empirically, each of the above claims is backed by a wealth of evidence. Early influential studies of diplomatic historian Thomas A. Bailey's *The Man in the Street: The Impact of American Public Opinion on Foreign Policy* (1948), Almond's *The American People and Foreign Policy* (1950), diplomat-historian George F. Kennan's *American Diplomacy, 1900-1950* (1951), and journalist Walter Lippmann's *Essays in the Public Philosophy* (1955), were of the opinion that the American people were poorly informed of world affairs, their opinions lacked coherence and structure, and

wars that become protracted and expensive in terms of US blood and tax dollars.¹⁶

Ole R. Holsti undertook another prominent study that challenged the earlier views. Writing about the role of public opinion in the US, his research showed that World War I changed the role of public participation from a theoretical one into a practical one. World War II and its aftermath further strengthened the role of public opinion. For Holsti, the end of the Cold War, especially the ending of bipartisan foreign policy consensus, facilitated the rise of partisan divides in the US, and consequently raised new questions regarding the role of public opinion in foreign policy decision-making.¹⁷

**... THE END OF THE COLD WAR,
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POLICY DECISION-MAKING.**

their views were volatile and irrational. Consequently, their opinions rarely influenced policymakers.¹⁵

In contrast, more and more studies in the past 40 years have found that early studies had not established their case to claim that public attitude had a potent role as far as foreign policymaking was concerned. The Vietnam War is said to have stimulated those studies, enabling political analysts to challenge the realist views on public opinion. One pioneering research was conducted by John E. Mueller, who – using the Vietnam and Korean Wars as a case study – convincingly demonstrated that public opinion mattered during

One vital question that many ask today is whether it is still appropriate to claim that the public is poorly informed, as in today's world, with advanced information technology, the mass is unquestionably better informed on matters concerning both domestic and foreign affairs.¹⁸ Holsti's research dealt with the same question by addressing the two important issues which were subject to disagreement: the public could not make informed judgments on foreign policy because their knowledge of foreign affairs was limited, and public opinion had no role in decision-making. Holsti used extensive data on public attitude and preferences on foreign events and concluded that, even though the American public was not well-informed on all details of foreign affairs, its opinion was generally stable and reasonable in reaction to real world events, was not lacking in structure, and, in many cases, had a crucial influence on foreign policy decisions.¹⁹

Studies after Holsti (and some before, such as Mueller's) found that the American public both cared for foreign affairs and held opinions that were 'rational', 'prudent' and 'stable'. Sobel's research is one of the relatively recent studies. In his crucial work, Sobel made a strong case for the

power of the people. By focusing on four cases of prominent US interventions in the second half of the 20th century – the Vietnam War, the US support for the Contras in Nicaragua, the Gulf War, and the Bosnian crisis – he concluded that in each case public opinion ‘constrained’, but did not set, American foreign intervention policy.²⁰

Sobel added that ‘[s]upport facilitates, while opposition limits’,²¹ that is, public opinion ‘set the parameters within which policymakers operated’.²² For example, due to the ‘no more Vietnams’ syndrome, the Reagan Administration would not intervene in Nicaragua but only assist the Contra rebels.²³ A great communicator like President Ronald Reagan found it difficult to persuade the American public to support overt interventionist policies in Nicaragua. The Bush Senior Administration would deploy a large force to the Gulf War in order to help the public feel secure, and thus gaining and maintaining American support.²⁴ The Clinton Administration refused to send ground forces to fight in Bosnia and was reluctant to intervene for the first three years for fear that the public would react negatively if the US became bogged down in an endless mission. When public attitude approved the Allied action, the Clinton Administration

eventually became involved in a multilateral mission.²⁵ (To make matters complicated, there are prominent recent examples which demonstrate that ‘foreign intervention policy’ cannot be constrained by public opinion, for instance, the British Government in 2003 ignored the British public opinion and involved the UK in the Iraq War.²⁶)

Contemporary studies, however, increasingly support the ‘Holsti-Sobel’ views. They are cited by Holsti, Sobel, Knecht and many others.²⁷ (Some even go further by implying that public opinion determines foreign policy.)²⁸ Page and Shapiro’s research found that public opinion remained remarkably stable (e.g. the American public consistently opposed isolationism and favoured multilateralism) and was driven by specific events (a rational process rather than irrational moodiness) in the past 50 years.²⁹ Bruce W.

**... THE AMERICAN PUBLIC CONSISTENTLY
OPPOSED ISOLATIONISM AND FAVOURED
MULTILATERALISM.**



Jentleson used data and figures to make the same points.³⁰ Samuel L. Popkin found that, even though American citizens were not very well informed about world affairs, they still managed to 'make reasonably coherent sense' of international development.³¹

A Conditional Theory of Political Responsiveness

Marcus Hobley gives an example of two contrasting views by two leaders: Winston Churchill was of the view that there 'is no such thing as public opinion. There is only published opinion.' But Abraham Lincoln took the view that '[p]ublic opinion in this country is everything.'³²

Those advocates who invoke the 'Conditional Theory of Political Responsiveness' would argue that the two contrasting quotes make clear that there is not a clear-cut answer. The 'Conditional Theory Political Responsiveness' claims that the

Americans are attentive to the issue, or when a significant majority of Americans hold the same preference on the issue, presidents seem to feel increased pressure and response to public opinion. But if the public is not focused or, even worse, divided on the issue, political responsiveness decreases accordingly. The theory also finds that crises such as war usually produce a highly attentive public. During crisis, the public remains attentive to how policies are implemented, and are interested in results.³⁴

The book by the author of this article has found the Conditional Theory of Political Responsiveness's arguments convincing. For example, President Barrack Obama was more sensitive to public attitude than was President George W. Bush. However, on a number of occasions Obama even had to ignore public opinion.³⁵

Conclusion

The debate between the liberalists and the realists has continued to date, and will most likely endure in the future. This article therefore will not be able to offer a final solution to such a theoretical dispute. However, as far as empirical evidence is concerned, this article has found the argument of the 'Conditional Theory of Political Responsiveness' more compelling. **PR**

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... WHEN A LARGE PERCENTAGE OF AMERICANS ARE ATTENTIVE TO THE ISSUE, OR WHEN A SIGNIFICANT MAJORITY OF AMERICANS HOLD THE SAME PREFERENCE ON THE ISSUE, PRESIDENTS SEEM TO FEEL INCREASED PRESSURE AND RESPONSE TO PUBLIC OPINION.

influence of public opinion on foreign policy varies from case to case and from president to president. Presidents do not always lead or follow.³³ Presidents could lead, follow or ignore public opinion, depending on the circumstances of the issue and on the president in question. The theory instead has identified factors that increase or decrease a president's sensitivity to public opinion. For instance, when a large percentage of

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5. Knecht, *Paying attention to foreign affairs*.
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 19. Holsti, *Public opinion and American foreign policy*, pp. 26-37, 40-62.
 20. Sobel, *The impact of public opinion on U.S. foreign policy since Vietnam*, pp. X, 5, 25.
 21. Ibid., p. 25.
 22. Ibid., p. x.
 23. Ibid., pp. 138-139.
 24. Ibid., pp. 173-174.
 25. Ibid., pp. 4-5, 229-230.
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 28. In their article, *Public Opinion and Foreign Policy*, Knecht and Weatherford name them as follows: SMALL, M. (1988). *Johnson, Nixon, and the Doves*. New Brunswick, Rutgers University Press; BARTELS, L. M. (1991). *Constituency Opinion and Congressional Policy Making: Regan Defence Building, American Politics Science Review*. 85: 457-474; HARTLEY, T., & RUSSETT, B. (1992). *Public Opinion and the Common Defense: Who Governs Military Spending in the United States? American Political Science Review*. 86, 905-915; PAGE, B. I., & SHAPIRO, R. Y. (1992). *The rational public: fifty years of trends in Americans' policy preferences*. Chicago, University of Chicago Press. <http://public.eblib.com/choice/publicfullrecord.aspx?p=557556>.
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UNDERSTANDING ITALY'S MIGRANT REBUTTAL: IS IT MORE THAN JUST XENOPHOBIC GRIEVANCES OR A BURGEONING ALT-RIGHT MOVEMENT

By Maria Tran

DUE TO ITS GEOGRAPHICAL POSITION, THE ITALIAN coast has consistently been considered the main arrival point for migrant boats fleeing violence and chaos from North Africa, resulting in an 'unfair burden of asylum claims' in the country. In June 2018, Italian authorities and its new alt-right government grabbed the world's attention and triggered a series of debates, as they denied the rescue ship Aquarius, containing 630 migrants, permission to dock on Italian ports. The following week, Italy also initially refused another migrant ship to dock with 226 migrants onboard, rescued by a Dutch Charity, Mission Lifeline. Both these controversial moves by the Italian authorities have been met with global criticism. The media have blamed the wave of hatred on Italian populist

ideals promoting a 'zero-landing' policy and the members of the public have labelled the alt-right government as inhumane. However, though using the lives of 630 people can be considered ruthless, the world has been distracted from the key underlining issue. It is more than a problem of displeasure and attitudes towards migrants but the lack of a European Union [EU] migrant policy and Italy's social and economic factors. The situation should be considered from Italy's position, as a country that has consistently requested help from the EU and has received little guidance.

Firstly, we must attempt to understand why the Italian government decided to refuse the safe

passage of 630 migrants, in a move which demonstrated more than just xenophobic grievances or a burgeoning alt-right movement. In the past 4 years, Italy has taken in over 600,000 migrants from Libya alone. In the first 6 months of 2018, 16,228 migrants have entered through Italian ports. That is comparable to the 12,155 that came through Spain and 12,514 through Greece and a mere 47 through Cyprus. Despite Italy's Deputy Prime Minister Matteo Salvini's vocal stance on anti-migration, Italy has continuously opened its ports. 10 days after the Aquarius incident, the Italian authorities silently accepted another 2,000 migrants. Additionally, after Malta firmly refused to dock 226 migrants from the Mission Life rescue ship, Danilo Toninelli, Italy's minister of infrastructure and transport, retracted their initial refusal and stated that Italy 'will once again save the migrants', transferring them onto Italian boats. This therefore suggests that the refusal of the Aquarius ship migrants was not an act intended to create political rifts but more a demonstration of the issues that Italy faces amidst record numbers of migrants. In a research paper conducted by United Nations High

Commissioner for Refugees 2015, it was proved that humanitarian themes were more common in Italian coverage than in British, German or Spanish press. Italy has been an active figure in rescuing refugees however, the sheer number of incoming migrants has started to take its toll on the country. It is not a mere case of whether Italy has the right to claim "enough is enough" but whether Italy has the means to continue accepting migrants without the aid of an EU migrant policy or aid from EU countries in the mobilization of these migrants.

Italy's plea for aid peaked during 2017 as 75% migrants arriving in Europe landed in Italy. The beginning half of that year Italy took in 94,802 refugees compared to Spain's 8,156 & Greece's 11280. Their European neighbours France, Switzerland and Austria had already begun to close its doors towards asylum seekers and abandoned Italy to deal with the humanitarian crisis alone. The city of Ventimiglia was a prime example of the typical life for migrants waiting in Italy to cross borders. From September 2016 – 2017 at least 12 migrants have died attempting to cross the Italian/French border, not counting those that may have

Matteo Salvini



died crossing the mountainous area on the French side. A 17 year old from Sudan was one such victim as he drowned in the Roia river and another migrant died after throwing himself into the path of a truck in what is believed to have been suicide. Furthermore, those who are attempting to help the migrant crisis are criminalised by European authorities. French farmer Cédric Herrou was given a suspended €3,000 fine in February 2017 for helping migrants to cross the border and sheltering them in his home in the mountain hamlet of Breil-sur-Roya. The Italians demanded that the EU act stricter on other states which failed to relocate migrants sufficiently. A year on and little has changed, if not worsened. At the beginning of July 2018 EU Members are set to meet and discuss a resolution to Italy's migrant crisis focusing on the flow of EU migrants, tightening border checks and providing aid to Italy as a priority. The agenda, a year later, remains the same with no solutions in sight. This year however there is a greater resistance towards helping Italy's migrant problem. The meeting will exclude the Visegrad group, Poland, Czech Republic, Slovakia & Hungary, who are boycotting as they refuse to take on any refugees from Italy or Greece. Additionally, negative attitudes towards migrants are growing strongly in their own respective countries resulting in reluctance to accept migrants who have initially found refuge in Italy. Whilst making a desperate plea for a more active European participation, Italy still continuously takes on migrants through its ports.

It is not just the initial acceptance of migrant ships into the country which is the main cause of concern. The real crux of the issue lies in the situation which comes after. Italy lacks a sufficient infrastructure and real economic stability that can withstand the influx of migrants. Without a working policy, migrants are unable to acquire sufficient documents to either travel to another country within Europe, maintain work or build a life. The Italian system has failed to provide any sort of social inclusion as migrants are not granted residential permits or access to public services. Approximately 200,000 migrants now live in asylum shelters however they are forced to depart once asylum is granted without further housing or aid. Of those who receive emergency accommodation, according to a report by Médecins Sans Frontières, 10,000 are currently living in inhuman conditions. Often at the end of the of the asylum process many migrants are left homeless, seeking illegal settlement in abandoned buildings and factories. The Olympic Village which housed 300 winter Olympic competitors in 2006 now acts as one of Europe's largest squats, sheltering over 1,000 migrants, from 28 different African countries. Another 1,000 live in the Palazzo Selam, which used to be a university building. Both these overcrowded large refugee ghettos display the lack of support that Italian authorities are able to provide. In addition to this, the crackdown on squatters in the past few years is creating a dire situation. In August 2017, 800 refugees who were squatting in abandoned office buildings were



evicted after living there for 4 years, leaving them abandoned on the streets. Instead of focusing on a long-term policy to manage the migration of refugees, we have begun to witness a steady process of criminalization. Italy also lacks the economic stability to provide an infrastructure or lay a foundation which migrants can rely on. Angela Merkel's open door policy has let more than a million refugees enter Germany from 2015 – 2016. However, it must be noted that Germany's infrastructure and economic situation is far more resilient than Italy's. Refugee status in Germany grants them access to the country's welfare system. In comparing the two countries we can see that Italy's migrant budget last year was €4.3 billion whereas Germany spent €13.6 billion. Despite being the world's 9th biggest economy, Italy suffers from economic stagnation due to high public debt, rise in unemployment and a weak banking sector. Political instability hinders the country's ability to implement any political or economic reforms. The geographic position of the Italian coast cannot be changed and will remain the safest location for migrants risking their lives crossing the sea. Whilst it is not humane to use 630 lives as a bargaining chip or a political statement, the issue will remain unless the EU reach a deal that satisfies the Italian Government.

The lack of a migrant policy in the EU leaves the frontier countries responsible for incoming migrants/refugees. Italy remains as the point for immediate emergencies, however there must be a long-term solution that can sufficiently deal with the European migrant crisis. The EU currently provides crucial economic and logistical support but providing funds becomes insufficient if the Italians have no structure. This means the EU must either develop a coherent migrant policy or tackle the cause of the crisis. The first solution is not a simple solution but requires a series of steps that needs to be taken. A lack of EU migrant policy results in migrants stuck in Italy as asylum status

only grants permission to seek work in the first European country they entered from. An EU migrant policy needs to combat the issue of free movement for migrants and rights to work. Many migrants, despite seeking safety in Europe, are situated just off the coast of Calais in France, in the hope of reaching Britain as it is easier to gain work as opposed to France or Italy. It is worth noting that migrants are willing contributors to the economy if given the chance. This has been proven when the Italian labour government in 2002 regularised migrants who immediately became tax payers. The latter solution, is seemingly more difficult to resolve than the former, as migrants come as result of poverty, climate change, political and ethnic strife that are beyond the EU control. This requires the EU to take on a greater hands-on approach with humanitarian missions involving the European Security and Defence Policy [ESDP] which currently is not on the agenda. We begin to see Italy's lone attempt as they have requested the European Union to focus its funds on the EU-Africa Trust Fund and begun to rebuild security in the country with economic and energy deals on an equal basis.

The EU has been applying a temporary band aid on the migrant problem leaving Italy to deal with the immediate problems alone. As it is difficult to immediately resolve the situation with any form of solidarity, the EU must do its part to offer Italy partial relief and avoid pressure on frontier countries. Is it inhumane for Italy to reject 630 migrants or inhumane for the remaining 27 countries in the EU to stand by, watch and merely criticise Italy for doing nothing whilst doing nothing themselves? Italy alternatively should continue to strive for a migrant policy that will better the lives of migrants as opposed to one that becomes infused with the recent hate fuelled agendas sweeping through Europe. **PR**

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IS THE 'ASEAN WAY' THE WAY TO ASEAN SECURITY?

By Rizal G. Buendia

ESTABLISHED IN 1967, THE EFFECTIVENESS OF THE Association of Southeast Asian Nations (ASEAN)¹ as a regional security institution in addressing traditional security issues has been subject to continuing debate among policy makers, academics and practitioners. The contestation on its significance has been heightened in the face of the emerging regional rivalry between the Peoples' Republic of China (PRC) and the United States (US) over the South China Sea (SCS) on the one hand, and sovereign and maritime rights dispute between the PRC five (5) ASEAN Member States (AMS) in the SCS on the other hand.

While some argue that ASEAN and its regional institutions are simply "talk shops" hence structurally ineffective in resolving inter-state conflict², others view ASEAN's founding norm and value of non-interference into the affairs of another country in the region, known as the ASEAN Way³, as the key salutary factor that contributes to the amiable relation between and

among states in Southeast Asia (SEA). They further argue that the ASEAN Way standardizes behavior of states through the doctrine of non-use of force or threat of force in dealing with disputes, and respects sovereignty and territorial integrity of nations.⁴ The ASEAN Way is claimed to have been responsible for thwarting inter-state armed conflict for nearly half-a-century.

The conflicting perspectives on the role of ASEAN in mitigating or resolving conflict in the region are fundamentally rooted on the contrasting value of the ASEAN Way as ASEAN's security framework. This commentary briefly reflects on the praxis of the ASEAN Way as a doctrine in dealing with a host of new challenges confronting the region, which were not present during the initial years of its existence. In as much as fortifying the region's security remains ASEAN's foremost concern, it is imperative to re-assess the relevance of the ASEAN Way as a doctrine and process of defusing intra- and extra-regional conflict, maintaining

peace, and advancing the neutrality of the AMS as provided in the ASEAN's Declaration of Zone of Peace, Freedom and Neutrality (ZOPFAN) and the Treaty of Amity and Cooperation in South East Asia (TAC) of 1971 and 1976 respectively.

Territorial conflict

The ASEAN Way's process of making decisions rests on unanimity. Rulings and judgments made in a collective and collegial manner take a long time with a no fixed time-table. Negotiations are conducted until all parties have reached an agreement. This process is rooted in the Asian culture where decisions are made on a consensual and consultative basis. As this process is ingrained in ASEAN, disputes between AMS are refereed by international adjudication bodies rather than being decided by the instrumentalities of ASEAN.

For instance, the Malaysia–Indonesia dispute over the Sipadan and Ligitan Islands in the Sulawesi Sea and the Singapore–Malaysia dispute over the Pedra Branca islands in the South China Sea were settled in 2002 and 2008 (in favour of Malaysia and Singapore respectively) through arbitration by the International Court of Justice (ICJ). The Thai–Cambodia dispute over the Preah Vihear temple (called Phra Viharn in Thailand), one of the worst intra-ASEAN conflicts on record, was likewise decided by the ICJ in 2013. Moreover, the Ambalat sea block in the Celebes sea continues to be contested by Indonesia and Malaysia and their case has been submitted to the ICJ. Similarly, Singapore and Malaysia's dispute over the Horsburg Lighthouse is before the ICJ.

In the case of the on-going territorial dispute in the SCS – contested between the PRC, the Republic of Taiwan, and five ASEAN countries (Brunei, Indonesia, Malaysia, the Philippines, and Vietnam) – the Philippines opted not to use the ASEAN Way as the route in addressing the dispute and claiming its maritime rights. Instead, it filed a

case and sought a ruling from the Permanent Court of Arbitration (PCA)⁵ in 2013 concerning the country's legal entitlements under the UN Convention on the Law of the Sea (UNCLOS). Contrary to what the ASEAN Way prescribes, this was done without prior consultation with other ASEAN members.

While Chapter 8 of the 2008 ASEAN Charter provides the mechanism on how to settle intra-regional disputes, and the 2009 ASEAN Political-Security Community (APSC) Blueprint defines ASEAN's centrality in regional security and reinforces SEA's regional autonomy in its relations with external powers, particularly the PRC and the US, no AMS has ever utilized them in sorting out disputes.

ASEAN's institutions and other mechanisms

Other institutions and processes designed to resolve intra-and extra-ASEAN conflicts through the ASEAN Way are multilateral in nature, which do not only necessarily share ASEAN's belief on managing conflict but subscribe to their own view in reconciling conflict. These include: the ASEAN Regional Forum⁶, the ASEAN Defense Ministers Meeting Plus (ADMM)⁷, and the Shangri-la Dialogue (SLD).⁸ Evidently, these institutions are composed of an assortment of highly-developed and less-developed countries, which have their respective interests to protect. Neither do these institutions possess the power to fairly adjudicate conflict nor authority to enforce whatever decisions that may collectively arrive at. They are simply venues where ideas are exchanged and debated, which, on a smaller scale, are not different from the United Nations.

The importance of multilateral institutions though lies in addressing transnational non-traditional security (NTS), or human security issues, which are non-military in nature, like environmental degradation, pandemics, terrorism, maritime

piracy, illegal migration, drug trafficking, people smuggling, money laundering and other forms of transnational crime that do not respect national boundaries. Tackling NTS issues however requires regional governance based on the framework of democracy, human rights and social justice. AMS do not possess a single, or uniform, framework where notions of democracy, human rights and social justice can be gauged or measured due to the diversity in culture, religion, ethnicity, economic development and political systems. In fact, there is little regional governance occurring in ASEAN, as all AMS are wary about surrendering their sovereignty and political autonomy to a supranational institution.

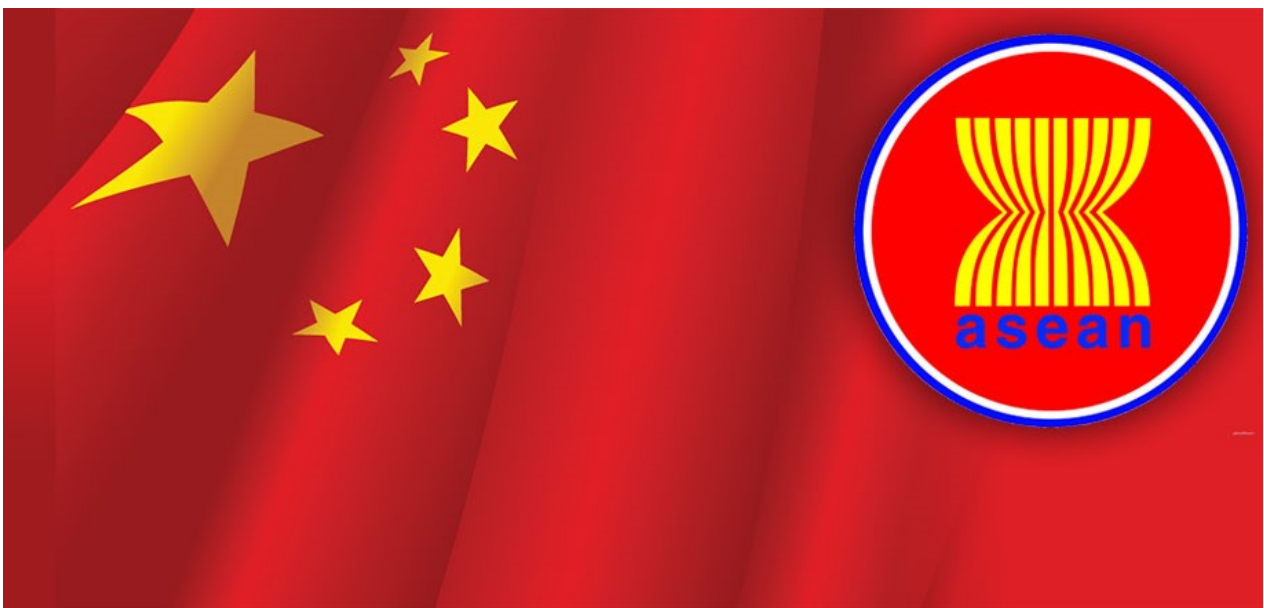
Conclusion

It appears that the ASEAN Way doctrine had not been critical in resolving brewing intra-regional territorial conflict. Its frailty as a framework of ASEAN security consequently increases insecurity in the region. The non-intervention of ASEAN over the Rohingya genocide committed by the Myanmar state or indiscriminate killings of Patani minorities in Southern Thailand led to massive

refugee crisis and greater instability in neighboring countries. This is similar to NTS issues – i.e., drug trafficking, maritime piracy, people smuggling, etc. – that affect all AMS and destabilize the region, yet ASEAN simply watches with a blind eye.

Equally important is the ability of the ASEAN Way to maintain regional unity in rallying behind AMS in the face of the PRC and US rivalry in the SCS. The ASEAN Way of non-interferences, conflict avoidance, face saving and an incremental approach to conflict resolution through consensus and dialogue makes it increasingly difficult to cope with the new contours of Sino-American contestation in SEA. While many like to see a strong US presence in Asia to provide an effective balance in the region, few want to be caught in the crossfire between Washington and Beijing.⁹

There is a need to rethink the doctrine of ASEAN Way as an approach and mode of securing and preserving peace in Southeast Asia. As a matter of practical necessity, the ASEAN Way has to make itself relevant in the face of real world changes and challenges without sacrificing and compromising the peculiarities and idiosyncrasies of people comprising the ASEAN member states. **PR**



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Notes:

1. An inter-governmental organization, composed of 10 Southeast Asian (SEA) countries, was founded on 8 August 1967 by five (5) countries, namely: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Other countries joined in 1984 (Brunei), 1995 (Vietnam), 1997 (Laos and Burma) and 1999 (Cambodia). It was organized to promote inter-state economic, political, security, military, educational, and socio-cultural cooperation.
2. See David Martin Jones and Michael Smith, 'Making Process, Not Progress: ASEAN and the Evolving East Asian Regional Order', *International Security*, Vol. 32, No. 1, pp. 148–184 (2007); Nick Bisley and Malcolm Cook, 'How the East Asia Summit can Achieve its Potential', *ISEAS Perspective*, No. 56 (2014); Masashi Nishihara, 'A Separate Group for the "Maritime" ASEAN Nations', *PacNet*, No. 63, 25 August, 2016.
3. The "ASEAN Way" is a concept of inter-state relation and regional cooperation that consists of avoidance of formal mechanisms and legalistic procedures for decision-making, and reliance on *musyawarah* (consultation) and *mufakat* (consensus) to achieve collective goals. See Amitav Acharya, 'Ideas, Identity and Institution-Building: From the ASEAN Way to the Asia-Pacific Way?' *The Pacific Review*, Vol 10, No. 3, pp. 319-346. (1997).
4. Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,' *International Organization*, Vol. 58, No. 2, pp. 239–75 (2004); Hiro Katsumata, 'Mimetic Adoption and Norm Diffusion: "Western" Security Cooperation in Southeast Asia?,' *Review of International Studies*, Vol. 37, No. 2, pp. 104–21. (2011).
5. The PCA is an intergovernmental which has a UN Observer status that provides services of arbitral tribunal to resolve disputes between member states, international organizations or private parties. Cases include a range of legal issues involving territorial and maritime boundaries, sovereignty, and human rights among others. See <https://pca-cpa.org/en/home/> for details.
6. A formal, official, and multilateral forum in the Asia Pacific region established to foster constructive dialogue and consultation on political and security issues. It consists of 27 countries of Australasia, North America, the EU, and Asia (SEA, NE Asia, and South Asia). See <http://aseanregionalforum.asean.org/> for details.
7. ADMM Plus is composed of 10 ASEAN Defense Ministers and other Defense Ministers of Australia, China, India, Japan, South Korea, New Zealand, Russia and the United States.
8. SLD is a "Track One" inter-governmental security forum held annually by the International Institute for Strategic Studies (IISS) participated by defense ministers, permanent heads of ministries and military chiefs of 28 Asia-Pacific states.
9. Carlye A. Thayer, 'The United States, China and Southeast Asia,' In: *Southeast Asian Affairs*, edited by D. Singh. Singapore: Institute of Southeast Asian, pp. 16-25. (2011).

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