OUTSIDERS' PERSPECTIVE ON CHINA'S POSSIBLE PARTICIPATION IN THE ASIA-PACIFIC REGIONAL MEDIATION ORGANIZATION—TOWARD PEACEFUL AND PROSPEROUS COEXISTENCE

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ABSTRACT

The proposed Asia-Pacific Regional Mediation Organization (hereinafter "ARMO") is to provide an alternative for Asia-Pacific countries to consider having their regional disputes being resolved within the regional in a friendly manner. China is the geographically and economically largest and politically most influential country in the region. The possible usage of ARMO facility by China should be a very important indicator to show the value of ARMO. This paper argues that the idea of resorting to mediation to settle regional disputes is in line with the tradition of Chinese society's preference of maintaining harmonious relations and with the Chinese foreign policy of Five Principles of Peaceful Coexistence. The mediation mechanism can even help achieve prosperous coexistence among Asian economies. There are many good reasons for China to be part of the ARMO operation.

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臺灣大學學術期刊資料庫

KEYWORDS: *Asia-Pacific Regional Mediation Organization (ARMO), Belt and Road, Confucianism, Five Principles of Peaceful Coexistence, State-to-State dispute settlement*

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I. INTRODUCTION

China has long been holding the Five Principles of Peaceful Co-Existence (hereinafter "Five Principles"), which include "mutual respect for each other's territorial integrity and sovereignty (changed to mutual respect for each other's sovereignty and territorial integrity at the Asian-African Conference), mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit (changed to equality and mutual benefit in the Sino-Indian joint Statement and Sino-Burmese Joint Statement), and peaceful co-existence."[1] These Principles serve as the basis for China's engagement in its external relations and are the backbones of the Chinese foreign policy.

An obvious connotation from the plain language is that States should refrain from interfering in other States' internal affairs. But the idea of these Principles can be elaborated and understood in a more active way to mean that States should take positive action to remove possible differences or disputes with others so as to achieve peaceful and even prosperous coexistence.

Hence, although the Five Principles do not explicitly include peaceful settlement of disputes, practically, settling disputes in a peaceful and amicable manner definitely is in line with and in support of the Five Principles. The highest achievement of peaceful co-existence is to avoid possible disputes between China and its neighboring or counterpart countries. However, if a dispute still occurs, a peaceful means of the dispute resolution should be a preferred method from China's perspective. Therefore, the authors of this paper argue that the proposed Asia-Pacific Regional Mediation Organization (hereinafter "ARMO")[2] should be a useful mechanism to achieve the goal of China's Five Principles.

In this paper, the authors will briefly review the general positive perception toward mediation in China so as to understand the practical and legal status of mediation in the Chinese society and in its legal system. The authors will explain that for China, mediation is not merely used to resolve disputes. In its legal structure, mediation is also expected to have the function of maintaining social stability. The authors will then review China's practice of international dispute settlement. In essence, China is quite skeptical in the use of adjudicative dispute settlement mechanisms,

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[1] MINISTRY FOREIGN AFF., CHINA, *China's Initiation of the Five Principles of Peaceful Co-Existence*, http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18053.shtml (last visited Mar. 12, 2018).

[2] The Asia-Pacific Regional Mediation Organization [hereinafter ARMO] is initiated by some members of the Asia World Trade Organization [hereinafter WTO] Research Network. *See* Draft "Agreement on the Establishment of the Asia-Pacific Regional Mediation Organization" [hereinafter ARMO Agreement], published in this same issue of the Asian Journal of WTO and International Health Law and Policy (AJWH).

臺灣大學學術期刊資料庫

especially for disputes which China considers to involve its core interests. But China is quite active in practicing an informal mediation/negotiation type of State-to-State dispute resolution. The authors will provide some reasons, based on these discussions, to argue that there is potential for China to positively rely on the mediation facilities provided by the ARMO.

II. MEDIATION'S ROLE IN THE CHINESE LEGAL SYSTEM—NOT MERELY RESOLVING DISPUTE, BUT ALSO MAINTAINING SOCIAL STABILITY

Mediation is not new to China. The traditional Chinese society was deeply influenced by Confucianism which emphasizes harmony and prioritizes the peaceful settlement of disputes. The earlier concept of meditation was mainly for the prevention of dispute and for the maintenance of harmonious relations among family members.[3] The idea of maintaining harmonious relations has affected the moral standard of Chinese society and the adoption of its legal structure.[4] Since mediation was used to resolve disputes and maintain the harmonious relations, it had been traditionally and constantly practiced in Chinese society prior to the modern age of China to resolve matters of daily frictions.

Mediation is not only practiced in the earlier age of Chinese society. It has also been firmly integrated into the Chinese legal system. Under Chinese law, mediation is a process conducted by a third party to reconcile or persuade the disputing parties to conclude a voluntary settlement agreement based on consultation of the parties on an equal footing so as to resolve dispute.[5]

According to the Organizational Act of the People's Mediation Commissions and its related laws and regulations, the functions of the People's Mediation Commissions include maintaining social and political governance, ensuring the moral and culture ethics, and settling disputes.[6] Hence, mediation is generally perceived and practiced in China as not merely a process in which a mediator or mediation organization only provides opportunity to the disputing parties to discuss or negotiate. A mediator or mediation organization is practically expected to play a somewhat active role in reconciling or persuading the parties to settle their disputes to help the governance of the society.

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[3] Jerome A. Cohen, *Chinese Mediation on the Eve of Modernization*, 54 CAL. L. REV. 1201, 1207-08 (1966).

[4] *Id.* at 1207.

[5] Zhonghua Renmin Gongheguo Renmin Tiaojie Fa [People's Mediation Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2010, effective Jan. 1, 2010), art. 2 [hereinafter Mediation Law].

[6] Yu Fan, *People's Mediation System in a Transactional Society*, 2004(10) JUST. CHINA 55-56 (2004).

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Such idea of social and political roles played by mediation is also reflected in China's official documents. In 2002, the Supreme People's Court and the Ministry of Justice of China jointly issued the "Opinion Concerning the Further Enhancement of Mediation in the New Era". It pointed out that, based on the concepts of the rule of law and the rule of virtue, the People's Mediation Commissions should play its function as the "first line of defense" to resolve private disputes, maintain social security, realize self-governance and build up grassroots democracy. It is also to prevent any possible single private dispute from becoming a collective and massive incident or from even becoming any criminal case that would affect the firm control of the political power, the stability of the society, or the development of the economy.[7]

The tasks of the People's Mediation Commissions include not only the mediation of private disputes, but also the dissemination of the mediation-related laws and policies adopted by the central government so as to achieve an educational purpose. There are three basic principles to be followed by the Commission: First, mediation should be conducted based on the voluntariness and the equal footing of the disputing parties. Second, mediation should still abide by the laws, regulations and policies of the State, except that when there is no clear legal provisions to be followed, mediation may be conducted based on social virtues or moral concepts.[8] However, a settlement agreement concluded under a mediation may not be in violation of any mandatory legal provision, nor be of harm to the interest of the State, the interest of any third party, or any social or public interest.[9] Third, the people's right to litigation should still be respected. Hence, when a mediation proceeding is unable to satisfy the need of the disputing parties to fully resolve their dispute, they should still be entitled to rely on arbitration or administrative or judicial proceedings to properly secure their rights.[10]

Since there is still a widespread acceptance of the idea that reconciliation and compromise through a certain kind of mediation can help resolve conflicts in a reasonable manner and maintain an amicable relationship after the resolution in modern Chinese society,[11] mediation is

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[7] Zhonggong Zhongyang Guowuyuan Guanyu Jinyibu Jiaqiang Shehui Zhian Zonhhe Zhili de Yijian [Opinions of the St. Council on Improving the Comprehensive Social Security Governance] (promulgated by the St. Council, Sept. 5, 2001).

[8] Renmin Tiaojie Weiyuanhui Zhuzi Tiaoli [Regulations on the Organization of the People's Mediation Committees] (promulgated by the St. Council, June 17, 1989, effective June 17, 1989), art. 6.

[9] Zhigao Renmin Fayuan Guanyu Shenli Sheji Renmin Tiaojie Xieyi de Minshi Anjian de Ruogan Guiding [Some Provisions of the Supreme People's Court on Trying Civil Cases Involving the People's Conciliation Agreements] (promulgated by the Sup. People's Ct, Nov. 1, 2002, effective Sept. 16, 2002), art. 5.

[10] Mediation Law, *supra* note 5, art. 3.

[11] *Id.*

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widely practiced in contemporary China. By 2017, China had around 4 million people's mediators and 800 thousand mediation organizations. Each year, more than 9 million mediation cases are conducted and the rate of successfully concluding settlement agreements in those cases has been over 97%.[12]

III. CHINA'S PRACTICE OF INTERNATIONAL DISPUTE SETTLEMENT—SKEPTICAL IN INTERNATIONAL ADJUDICATION AND ACTIVE IN MEDIATION

A. Skeptical of Adjudication for Certain Kinds of Disputes

The United Nations (hereinafter "U.N.") Charter requires States to settle disputes in a peaceful manner.[13] The peaceful settlement of dispute under Article 33 of the U.N. Charter has a wider concept to include "negotiation, enquiry, mediation conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means".[14] If we consider various kinds of international dispute settlement mechanisms as a whole, it can be said that international dispute settlement has played a key role in international affairs of different fields in the post-Second World War era.[15] China is a very important part in the trend of the increasing use of dispute settlement mechanisms.

In the past several decades, China has been active in engaging in international dispute settlements due to its increasing volume and intensity of interactions with its counterpart countries and also due to it being an emerging power and being keen in international rule making.[16] It is also due to the increasing confidence of China in its political and economic strength and in its external influence. Its active participation in international dispute settlement mechanism is particularly true for disputes involving international trade and investment. For example, since China's accession to the World Trade Organization (hereinafter "WTO"), it has rapidly increased the use of the WTO's dispute settlement system to protect its economic

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[12] Qiang Wang, *Ministry of Justice of Republic of China: The People's Mediation System Resolves the Disputes for Over 9 Million Cases per Year*, XINHUANET (Dec. 16, 2017, 19:03), http://big5.xinhuanet.com/gate/big5/www.xinhuanet.com/2017-12/16/c_1122121819.htm; Tzu-Yang Liu, *Mengianzhu: Promote the People's Mediation System for Better Services to the Publics*, LEGALDAILY (June 28, 2017, 08:44 AM), http://cpc.people.com.cn/BIG5/n1/2017/0628/c64094-29367956.html.

[13] U.N. Charter art. 33, ¶ 1.

[14] *Id.*

[15] HARRIET MOYNIHAN, CHINA'S EVOLVING APPROACH TO INTERNATIONAL DISPUTE SETTLEMENT 2 (2017).

[16] Cheng Qian, *The Culture of China's Mediation in Regional and International Affairs*, 28(1) CONFLICT RESOL. Q. 53, 53 (2010); *Id*.

臺灣大學學術期刊資料庫

interests.[17] China has also become friendlier to investor-State dispute settlements (mainly "investor-State arbitration") under bilateral investment treaties.[18] Note that the WTO dispute settlement mechanism is a quasi-adjudication process (which mainly involves a panel and the Appellate Body issuing their reports to be adopted by the WTO Members through the Dispute Settlement Body) and that the investor-State arbitration is of adjudication nature (which involves an arbitral tribunal rendering an arbitral award to bind the disputing parties).

Yet, China remains somewhat skeptical in adjudication (including judges or arbitrators) in other kinds of international disputes that may affect its "core interests", including its interests in sovereignty, security and territorial integrity.[19] This is because China generally perceives international adjudication to be dominated by western countries and lawyers, and engaging in international adjudication proceeding would put China in an unavoidably disadvantaged situation.[20] Further, submitting to those mechanisms requires or implies, to a certain extent, the relinquishment of control and sovereignty. This is what China would refuse to do.[21] Thus, for the kinds of disputes where China's "core interests" are involved, it tends to prefer dispute settlement mechanisms that do not involve adjudication, such as softer approaches of negotiation, consultation or mediation.[22]

This has been most evident in the maritime boundary dispute in the South China Sea between China, on the one hand, and the Philippines and Vietnam, on the other hand. In 2013, the Philippines submitted its dispute involving China's alleged territorial rights in the South China Sea to arbitration under the U.N. Convention on the Law of the Sea (UNCLOS).[23] However, China refused to participate in the arbitration. China argued that the tribunal had no jurisdiction to hear the case.[24] In the white paper on China's Policies on Asia-Pacific Security Cooperation published in 2017 (hereinafter "2017 white paper"), China called for disputes in the region to be resolved peacefully by "follow[ing] the tradition of mutual respect, seeking common ground while reserving differences, and peaceful coexistence, and . . . through direct negotiation and consultation" between the involved States.[25]

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[17] MOYNIHAN, *supra* note 15, at 6-7.
[18] *Id.* at 8.
[19] *Id.* at 2-3.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *China's Policies on Asia-Pacific Security Cooperation*, XINHUA (Jan. 11, 2017, 4:29 PM), http://www.xinhuanet.com/english/china/2017-01/11/c_135973695.htm. It has been suggested that the dispute may be resolved through the use of an outside organization or mediator, the role of

臺灣大學學術期刊資料庫

The 2017 white paper lays out China's approach to security matters in general. It states that "China is ready to pursue security through dialogue and cooperation in the spirit of working together for mutually beneficial results".[26]

The pursuit of harmony through dialogue is in line with the traditional concept of using mediation to harmoniously resolve disputes and is consistent with China's preference in using a diplomatic and informal type of mediation as the vehicle to resolve disputes involving issues of its core interests.

B. Relatively Active in Informal Mediation/Negotiation Type of State-to-State Dispute Resolution

There is a general understanding of mediation that there must be a mediator to facilitate the discussion or negotiation process between the disputing parties. But if we can broaden the concept to include not only a formal mediation (where an appointed mediator serves as a neutral third party to help the negotiation process), but also various forms of negotiation and conciliation (including the party-initiated negotiations and a non-appointed third-party helping the negotiations), we can definitely find that China is quite active in relying on such dispute settlement approach.

China has fourteen neighboring countries. Certain border disputes (in addition to the above mentioned China–Vietnam and China–Philippines disputes) have been longstanding issues for China.[27] Due to its geographical connection with many countries, China unavoidably has different interests than that of other countries and hence could have many disputes with its counterparts. The most obvious ones are territorial and territorial water disputes.

Although it is not always the case, China has been relying on the negotiation or mediation mode of dispute settlement mechanism quite frequently to resolve various types of State-to-State disputes, including territorial disputes. For instance, there are the traditional South China Sea disputes involving claims of many small islands and maritime boundaries among countries surrounding the South China Sea, as indicated above. In the above mentioned bilateral disputes over the respective maritime boundaries and territorial islands between China and the Philippines, the Permanent Court of Arbitration in The Hague had issued an award in July

which could be played by the U.S., Association of Southeast Asia Nations or a neutral actor in the region like Singapore. *China's Maritime Disputes*, COUNCIL ON FOREIGN RELATIONS, https://www.cfr.org/interactives/chinas-maritime-disputes#!/chinas-maritime-disputes (last visited Feb. 22, 2018).

[26] XINHUA, *supra* note 25.

[27] Yuwa Wei, *China and Its Neighbors: Exasperating Territorial Disputes*, 22 WILLAMETTE J. INT'L L. & DISP. RESOL. 105, 106-07 (2014).

臺灣大學學術期刊資料庫

2016 to support almost all of the Philippines' claims.[28] However, the Philippines under its new president decided to set aside the arbitral award. After bilateral negotiations, both countries agreed to avoid resolving their dispute over South China Sea issues through unfriendly means.[29] China and Vietnam have also had a long time dispute on the territorial claim of certain small islands in the South China Sea. But recently, they were able to reach an agreement to resolve their dispute through bilateral negotiations.[30]

These examples show that China is keen to settle and resolve territorial disputes through concluding bilateral agreements or having a certain kind of mutual understanding. This is quite positive from the perspective that the approach represents the core concept of mutual co-existence and prosperity for the relevant countries.

The following three examples also show China's preference of an informal diplomatic type of mediation or conciliation in other types of State-to-State disputes:

1. North Korea Nuclear Program — The Democratic People's Republic of Korea's (hereinafter "North Korea") desire to develop nuclear weapons began in the early period of the Cold War, when it believed that it was under tremendous threat from South Korea and the United States (hereinafter "U.S.") troops deployed there.[31] In 1959, North Korea established the Yong-byon Nuclear Scientific Research Center, and in the 1980s, it began constructing a uranium reactor capable of producing weapons-grade plutonium.[32] From that point, the U.S. began to pressure North Korea to give up its development of nuclear weapons.[33] Although the U.S. achieved some success at some point,[34] it was ultimately unable to get North Korea to completely give up its nuclear development.

In 2003, the U.S. requested China to facilitate talks with North Korea.[35] China agreed and was able to bring North Korea back to the

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[28] The South China Sea Arbitration (Phil. v. China), Case No. 2013-19, Award (Perm. Ct. Arb., July 12, 2016).

[29] *China, Philippines Agree to Avoid Force in South China Sea Dispute*, REUTERS (Nov. 16, 2017, 01:50 PM), https://www.reuters.com/article/us-southchinasea-china-philippines/china-philippines-agree-to-avoid-force-in-south-china-sea-dispute-idUSKBN1DG0HM.

[30] *Beijing Says It Peacefully Resolved a South China Sea Dispute with Vietnam*, REUTERS (Nov. 3, 2017, 01:43 AM), https://www.cnbc.com/2017/11/03/south-china-sea-china-says-it-resolved-dispute-with-vietnam.html.

[31] FU YING, THE KOREAN NUCLEAR ISSUE: PAST, PRESENT, AND FUTURE: A CHINESE PERSPECTIVE 4 (2017).

[32] *Id.*

[33] *Id.*

[34] *Id.* (including getting North Korea to join the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The two sides were also able to enter into agreement in the 1990s that would have North Korea give up its nuclear reactors in exchange for light water reactors, which would be financed by the U.S. However, North Korea never obligations under that agreement were for the most part never fulfilled.).

[35] *Id.* at 8.

臺灣大學學術期刊資料庫

negotiation table.[36] From 2003 to 2007, China played the main mediating role and facilitated one round of Three-Party Talks (with the U.S. and North Korea) and six rounds of Six-Party Talks (adding South Korea, Japan and Russia), which resulted in North Korea agreeing to suspend its nuclear facilities in exchange for energy aid.[37]

However, the negotiations broke down in 2008 when North Korea refused inspection. This led to new sanctions by the U.S.[38] The next year, North Korea officially exited the Six-Party Talk and resumed nuclear tests.[39] In 2015, North Korea announced that it was able to miniaturize nuclear weapons, and by 2017, it had successfully developed a medium-long range missile capable of carrying a nuclear warhead.[40] With the tensions between the U.S. and North Korea ramping up, China has been calling for a new round of Six-Party Talks.[41]

2. Iran Nuclear Program — In 2003, Iran was pressured into reporting its nuclear facilities to the International Atomic Energy Agency (hereinafter "IAEA").[42] Iran claimed that those facilities were meant to provide an alternative source of energy for public consumption and had nothing to do with developing nuclear weapons.[43] However, contradictory reports raised concerns among the international community.[44] As a result, Germany, France and the United Kingdom (hereinafter "EU-3") conditioned their trade with Iran on its cooperation with the IAEA.[45] While this approach saw some success initially, Iran resumed uranium enrichment in 2006, causing increased tension between Iran and the EU-3, the U.S. and Israel.[46]

China, by that time, had become Iran's largest trading partner and had a relatively good relationship with Iran.[47] At the same time, China also considered its relationship with the U.S. as extremely important.[48] Thus, it was uniquely suited to mediate the dispute between the two sides.[49]

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[36] *Id.*
[37] *Id.* at 9.
[38] *Id.* at 16.
[39] *Id.* at 17.
[40] *Id.* at 19; *North Korea Nuclear Timeline Fast Facts*, CNN (Sept. 4, 2017, 4:26 PM), https://edition.cnn.com/2013/10/29/world/asia/north-korea-nuclear-timeline---fast-facts/index.html.
[41] *China Sees Chance of Six-Party Talks with North Korea*, REUTERS (Feb. 18, 2017, 3:40 AM), https://www.reuters.com/article/us-northkorea-missiles-china/china-sees-chance-of-six-party-talks-with-north-korea-idUSKBN15W272.
[42] Frans-Paul V. D. Putten & Emma V. D. Meulen, *Europe and China in International Conflict Management: Rivals and Partners*, *in* CHALLENGES IN A CHANGING WORLD: CLINGENDAEL VIEWS ON GLOBAL AND REGIONAL ISSUES 99, 107 (Jaap de Zwaan et al. eds., 2009).
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.* at 108.
[48] *Id.*
[49] *See* Xiaohui Wu, *U.S. Counts on China as Mediator with Iran*, S.F. CHRON. (June 5, 2006), https://www.belfercenter.org/publication/us-counts-china-mediator-iran; Shannon Tiezzi, *What Did*

臺灣大學學術期刊資料庫

Here, China tried to strike a balance between upholding the Five Principles mentioned above and supporting efforts of nuclear non-proliferation.[50] China considered that Iran had the right to develop nuclear energy, as long as it is done within the contours of the IAEA framework.[51] China continually called for mediation and diplomatic settlements and only agreed to sanctions in order to bring Iran to the negotiating table.[52]

China is said to have played a key role in making Iran accept the nuclear deal with the U.S.[53] According to former Chinese ambassador to Iran, Hua Liming, "when the two parties came across irresolvable problems, they would come to China, which would 'lubricate' the negotiation and put things back on track".[54]

3. Darfur Crisis — In 2003, the resistance forces in Darfur carried out several attacks on military installations.[55] The Sudanese Government responded with a brutal counterinsurgency campaign, which drew condemnation from the international community.[56] Consequently, the U.N. Security Council voted on a number of sanctions (China abstained from voting) and also wanted to send peacekeepers into Darfur, to which the Sudanese resisted.[57]

As with the Iran situation, China was also a major trading partner with Sudan.[58] While China initially did not actively seek to intervene in the Darfur crisis, it later played an important mediating role between the western countries and Sudan.[59] In late 2006, President Hu Jintao told President al-Bashir in the African Summit in Beijing that China "hopes Sudan will strengthen dialogue with all parties, coordinate stances, and strive to reach an appropriate solution."[60] China also helped draft a resolution that contained no economic sanctions and ensured the

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China Bring to the Iran Talks?, DIPLOMAT (July 23, 2015), https://thediplomat.com/2015/07/what-did-china-bring-to-the-iran-talks/.

[50] Putten & Muelen, *supra* note 42, at 108.

[51] *Id.* at 108-09; Alan Cowell, *China Renews Opposition to Iran Sanctions*, N.Y. TIMES (Feb. 4, 2010), http://www.nytimes.com/2010/02/05/world/middleeast/05iran.html.

[52] Putten & Muelen, *supra* note 42, at 108-09.

[53] Daniel Johanson, *China and the "Rogues": How China Deals with Pariah States*, DIPLOMAT (June 30, 2017), https://thediplomat.com/2017/06/china-and-the-rogues-how-china-deals-with-pariah-states/.

[54] Peter Ford, *Iran Nuclear Talks: Can China Keep Negotiations on Track?*, CHRISTIAN SCI. MONITOR (Mar. 30, 2015), https://www.csmonitor.com/World/Asia-Pacific/2015/0330/Iran-nuclear-talks-Can-China-keep-negotiations-on-track.

[55] David H. Shinn, *China and the Conflict in Darfur*, 16(1) BROWN J. WORLD AFF. 85, 86 (2009); Putten & Muelen, *supra* note 42, at 103.

[56] Shinn, *supra* note 55, at 86; Putten & Muelen, *supra* note 42, at 103.

[57] Putten & Muelen, *supra* note 42, at 104.

[58] *Id.*; Shinn, *supra* note 55, at 87-90.

[59] Putten & Muelen, *supra* note 42, at 105; Shinn, *supra* note 55, at 91.

[60] Shinn, *supra* note 55, at 91, (quoting Chris Buckley, *China's Hu Says Understands Sudan's Darfur Concerns*, REUTERS (Nov. 2, 2006), http://www.sudantribune.com/spip.php?article18467).

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peacekeepers did not come from western countries.[61] In addition, Wang Guangya, China's Ambassador to the U.N., stated that China had sent a strong message that the Sudanese Government should accept the deal.[62] Subsequently, Khartoum consented to the deployment of the U.N. Darfur Mission.

It must be noted from the above three examples that China not only prefers mediation over adjudication for its own disputes with other countries, but in many instances, it also actively engages in playing some kind of mediator's or facilitators' role in helping other States to resolve their disputes. Such approach coincides with China's general attitude of considering mediation being not merely for settling disputes, but also for achieving a certain higher goal, being the harmonious status among disputing parties.

IV. THE POTENTIAL OF ARMO FOR CHINA TO RESOLVE ITS REGIONAL DISPUTES

Based on the above discussion, there are a number of reasons that can be identified for China to positively consider an active use of the mediation facilities provided by the ARMO.

First, as explained above, China is a geographically large country (hence it has many neighbors), is politically influential (hence it inevitably engages in many international affairs in an active manner), and is economically vibrant and active (hence it definitely needs a settlement mechanism which can be constantly relied on). In addition to the existing multilateral dispute settlement mechanism under the WTO and the informal diplomatic or negotiation approach (both of which are constantly used by China), it would not harm for China to have an additional option of a permanent mediation organization to resolve its external disputes.

Second, as argued in the outset of this paper, the use of the mediation mechanism under ARMO is closely in line with China's Five Principles, because the essence of mediation is to resolve disputes in a peaceful and friendly manner so as to achieve peaceful coexistence, which is a core concept of the Principles.

Third, China has recently been promoting some important economic initiatives, including the Belt and Road initiative, which is "a systematic project, which should be jointly built through consultation to meet the interests of all, and efforts should be made to integrate the development strategies of the countries along the Belt and Road."[63] There could be

[61] Putten & Muelen, *supra* note 42, at 105.
[62] Shinn, *supra* note 55, at 91.
[63] St. Council, China, *Action Plan on the Belt and Road Initiative* (Mar. 30, 2015, 7:31 PM), http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm.

臺灣大學學術期刊資料庫

issues or differences arising from the Initiative between China and the Belt and Road partner countries. According the statement in the Belt and Road Initiative, the idea of the Initiative upholds the Five Principles.[64] If a difference or dispute occurs in relation to this Initiative, the most persuasive manner to resolve it is through mediation, which is the friendliest method of dispute settlement. From this perspective, the reliance of a permanent mediation mechanism by China to resolve the Belt and Road related dispute is to show China's good will to its partner countries. It can also be said that mediation is a method not only to maintain peaceful coexistence, but even to achieve prosperous coexistence. Although it is reported that China wishes to establish an international court built upon Beijing's existing system to deal with issues arising from the Belt and Road Initiative, the concern of impartiality regarding such system is raised among the international community.[65] The ARMO mediation could be more objective and trustworthy to the disputing parties by removing possible bias and ensuring impartiality and neutrality.[66]

Fourth, as explained above, from the perspective of the Chinese legal system, mediation is used not only to resolve dispute, but also to achieve a higher purpose of maintaining social stability. This idea can be elaborated to suggest that the reliance of regional mediation mechanism under the ARMO can also achieve a higher purpose of maintaining regional friendliness and stability from China's perspective. The idea of using the ARMO mediation to achieve stability of the Asia-Pacific region should not be difficult for China to understand and accept.

Fifth, as indicated above, in the Chinese domestic legal system, mediation can be used to actively persuade the disputing parties to accept the settlement. On the other hand, the Chinese practice of international dispute settlement is more reliant on China' own diplomatic negotiations with its counterparts. From this perspective, the design of ARMO mediation should suit the need of China. It is because the ARMO mediation is flexible since the mediator's role is to be entrusted by the disputing parties. The disputing parties can expect the mediators to actively engage in the process by providing feasible and mutually acceptable suggestions. If the parties do not expect the mediator to provide suggestions, the mediator can merely help the parties to negotiate by themselves. In essence, mediation under the ARMO can be practically tailored to meet the

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[64] *Id.*

[65] Nyshka Chandran, *China's Plans for Creating New International Courts Are Raising Fears of Bias*, CNBC (Feb. 1, 2018, 9:17 PM), https://www.cnbc.com/2018/02/01/china-to-create-international-courts-for-belt-and-road-disputes.html.

[66] Draft "Rules of Procedure for Mediation Conducted Under the Asia-Pacific Regional Mediation Organization" art. 9.1. The text of this document is published at this same issue of Asian Journal of WTO & International Health Law and Policy (AJWH).

臺灣大學學術期刊資料庫

respective needs of the parties for the specific disputes.[67] The parties are entitled to decide how and by whom the mediation will be conducted.

Sixth, China seems to feel much more comfortable with and more frequently relies on non-adjudicative means (including informal diplomatic negotiations or a mediation mode of dispute settlement mechanism) to resolve various disputes with its counterparts. The above examples firmly show that when it comes to border conflicts, China prefers to rely on informal negotiations with other countries.[68] Mediation conducted under the ARMO could facilitate the dispute settlement process without intervening the disputing parties' decisions to efficiently resolve the disputes.[69] China should feel comfortable with the ARMO mediation.

Seventh, China's hesitation to use international adjudicative means to settle disputes which involve its core interest could also be because of its avoidance of "internationalizing" its regional dispute. The ARMO mediation should serve the interest of China in keeping its external disputes with its neighboring countries being settled within the region. The mediation conducted under the ARMO is in line with the implied idea of keeping regional disputes within the regional framework of dispute settlement mechanisms.

Eighth, China has a policy of encouraging most international commercial relationships (such as investment agreements and international licensing contracts) to be subject to mediation before resorting to arbitration or litigation.[70] It has also implemented a "Grand Mediation" ("da tiaojie") policy in recent years to resolve disputes, including commercial disputes.[71] This can be traced back to the deeply-rooted preference for mediation in China. Although these are policies for private/commercial relations and not for State-to-State (or Economy-to-Economy) relations, the same idea could still be applied to State-to-State (or Economy-to-Economy) disputes, because the essence of the policies is to maintain friendly and harmonious relations between the disputing parties. In this sense, the ARMO could serve the function for China's external regional disputes.

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[67] Rick Stockmann, *International Commercial Arbitration in China: Issues Surrounding the Resolution of International Commercial Disputes Through Chinese Arbitration*, 19 WILLIAMETTE J. INT'L L. & DISP. RESOL. 327, 336 (2011).

[68] *See, e.g.*, Ministry Foreign Aff., China, *China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea* (July 13, 2016), http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1380615.shtml.

[69] *See* ARMO Agreement, *supra* note 2, art. 21.

[70] Jerome A. Cohen, *Settling International Business Disputes with China: Then and Now*, 47 CORNELL INT'L L.J. 555, 558-59 (2014).

[71] Yun Zhao, *Mediation in Contemporary China: Thinking About Reform*, 10(2) J. COMP. L. 65, 68, 74 (2015).

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V. SOME CONCLUDING REMARKS

The ARMO is created to provide facilities for the Asia-Pacific economies to conduct friendly settlement of regional disputes. From the above explanation, it is clear that the idea of regional mediation is in line with the interest of Asia-Pacific members, including China. In particular, the mediation mechanism under the ARMO is in conformity with the core policy of the Five Principles of China. ARMO mediation can not only ensure regional stability, but also support regional prosperity. The authors see no reason that China would have hesitation to participate in the ARMO's operation and to use ARMO's mediation facility. China's participation should also be very positive for all other Asia-Pacific economies.

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