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**TRACK TWO DIPLOMACY:
AN APPROACH TO DISPUTES RESOLUTION
IN THE SOUTH CHINA SEA**

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THE SOUTH CHINA SEA**

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The disputed territorial claims in the South China Sea remain a dangerous source of potential conflict in the absence of preventive measures to forestall a military or political crisis. Three periods of heightened tension over the Spratly Islands within the past ten years offer a clear warning sign of the risk of future confrontation if the core issues remain unresolved. It is in the interest of all the claimants to actively seek solutions to the disputes through negotiations to avoid future military conflict. All the claimants have an interest in participating in a preventive diplomatic approach to the South China Sea.

Preventive diplomacy has reached the top of the agenda in the discourse on multilateral security cooperation in the Asia-Pacific region. It is at the stage where the first measures are being implemented by the ASEAN Regional Forum (ARF), the centrepiece of official security dialogue in the region, but the obstacles to progress remain formidable. Preventive Diplomacy is a natural follow-up of confidence building, to develop a set of guidelines for the peaceful settlement of disputes.

A range of preventive diplomatic mechanisms and approaches might be used to dampen tensions, forestall the outbreak of conflict in the South China Sea, and provide the basis for a settlement. The South China Sea Informal Working Group encourages confidence among South China Sea states through Track Two Diplomacy and also have provided important opportunities for cooperative action on technical issues. In the future, an effort might be made to upgrade these informal meetings to address such questions as sovereignty or mechanisms for joint exploration of resources.

Word Count excluding footnotes: 15,667

I. INTRODUCTION

The South China Sea's significance has been recently highlighted throughout the Asia-Pacific region, not just for its strategically important commercial and military sea-lanes. But, also for furnishing living and mineral resources to the littoral states. As a consequence, over the past two decades competing claims to island territories, maritime and seabed jurisdictions, and access to fisheries have cast governments into a tangled nexus of regional jurisdictional conflicts and rivalries.

Especially, East Asia's economic growth rates had been among the highest in the world. Despite, the current economic crisis, economic growth prospects in the long-term remain among the best in the world. This economic growth will be accompanied by an increasing demand for energy. Over the next 20 years, oil consumption among developing Asian countries is expected to rise by 4% annually on average, with about half of this increase coming from China.¹ If this growth rate is maintained, oil demand for these nations will reach 25 million barrels per day - more than double current consumption levels by 2020.

The matter of maritime boundary delimitation in the South China Sea is especially problematic, primarily because the present situation is defined in terms of a configuration of overlapping unilateral claims to sovereignty over an assortment of various semi-submerged natural formations scattered throughout the region. These hundreds of islands, islets, cays, reefs, rocks, shoals, and banks comprise four main archipelagoes in the South China Sea: the Pratas, Macclesfield Bank, Paracels, and Spratlys.²

¹ ICE Case "Studies Spratly Islands dispute" (Publications) (May 1997) 21

<<http://www.american.edu/projects/mandala/TED/ice/spratly.htm>> (last accessed 24 August 2002).

² Federation of American Scientists *the Spratly Islands*, Military Analysis Network.

<<http://www.fas.org/man/dod-101/ops/war/spratly.htm>> (last accessed 30 July 2002).

It may still be possible to find a political, "win-win" settlement. If the political will can be generated to reach a negotiated settlement, there is a window of opportunity to pursue progress. Military conflict would threaten the interests of all parties to the dispute, since the political costs of military escalation would be higher than any single party is currently willing to bear. No country in the region currently possesses the military capabilities needed to assert and maintain its claims. Relations in the region are generally cooperative and no claimant has yet discovered commercially viable quantities of oil or natural gas.³ However, all these factors are subject to change, especially as China and other claimants, acquire the military strength to impose their claims by threat or use of military force.

Given the nature and complexity of the various legal claims to the islands and concerns about the regional balance of power, no purely legal process is likely to be sufficient to achieve a settlement. Although the establishment and acceptance of international legal precedents, such as those contained in the UN Convention on the Law of the Sea, may provide a necessary foundation for the negotiation of key issues.

The situation highlights the need for sensible solutions to ease tensions between several countries that claim all or portions of the Spratlys group. This paper aims to view confidence-building measures (CBMs), focusing on the territorial dispute. A variety of supplementary approaches to the Indonesian workshops through track two diplomacy could be considered. For example, creation of an Eminent Persons Group, possibly composed of high-level representatives from the non-claimant members of the Association of Southeast Asian Nations (ASEAN), has been suggested to jump-start political talks and create new political channels for negotiation.

Another possibility is mediation by an ad hoc tribunal or non-official third party if the claimants themselves are willing to accept such a negotiation process

³ Federation of American Scientists, Above.

to facilitate resolution of territorial claims. If the parties can agree to an equitable approach by which to shelve sovereignty issues, it may be possible to create joint multilateral development authority to exploit resources in the disputed area. Alternatively, recent developments suggest that it might be possible to settle bilateral claims in the South China Sea area before tackling areas in which multiple claims overlap.

The critical question, however, is whether the disputants can find the political will to come to a lasting negotiated settlement. The purpose in this paper is to study how the conflict management process in the South China Sea (SCS) has been conducted in order to see which strategies have proved to be most successful in reaching a solution or in decreasing the intensity of the conflict and why. To do this, I have chosen to look into the different management styles that have been used in Asia, the so called *The ASEAN Way*, also referred to as the *informal* style and the *formal* management style that is proposed by the West.⁴

The Bangkok Declaration states that the aims and purposes of the ASEAN are:

- i. to accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations;
- ii. to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

Although the Bangkok Declaration did not mention political cooperation, it already contained important political principles regarding the members' responsibility for regional stability and security.

³ ASEAN/ASEAN, Centre ASEAN Overview

<http://www.asean.or.jp/asean/general/asean/overview.html> (last accessed 24 August 2002).

⁴ Kofi Annan, *United Nations University, Indonesia's motto: Start up 'Our Common Humanity'*, Says

⁴ Niklas Swanstrom & Ramses Amer *Conflicts and Cooperation in Pacific Asia* (International Studies No. 3, U.I. Stockholm, autumn 1996), 52.

II. ASEAN AND PREVENTIVE DIPLOMACY

A. Association of Southeast Asian Nations (ASEAN)

1. Overview

The Association of Southeast Asian Nations or ASEAN was established on 8 August 1967 in Bangkok by the five original Member Countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.⁵

[T]oday, ASEAN is not only a well-functioning, indispensable reality in the region. It is a real force to be reckoned with far beyond the region. It is also a trusted partner of the United Nations in the field of development.⁶

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⁵ ASEAN-Japan. Centre *ASEAN Overview*

<<http://www.asean.or.jp/eng/general/base/overview.html>> (last accessed 24 August 2002).

⁶ Kofi Annan 'Unity in Diversity, Indonesia's motto, Sums up 'Our Common Humanity', Says Secretary-General in Jakarta Address (Press Release SG/SM/7303, 16 February 2000).

⁷ ASEAN-Japan. Centre, Above.

The first such joint political action was the Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration, signed in Kuala Lumpur on 27 November 1971, during an extra-ordinary meeting of the foreign ministers. The ZOPFAN Declaration reiterated the members' commitment to the principles contained in the Bangkok Declaration, that the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability in the region.

It was only a matter of time before ASEAN's regular interaction on economic cooperation with states and multilateral agencies outside Southeast Asia would evolve to include other concerns—primarily regional security. At the 1992 Singapore Summit, the ASEAN leaders declared that “ASEAN shall move towards a higher plane of political and economic cooperation to secure regional peace and prosperity.”⁸

The end of the Cold War had altered the configuration of international relations in East Asia. The new environment presented historic opportunities for the relaxation of tensions in the region through multilateral consultations, confidence building, and eventually the prevention of conflict. In 1994, the ARF was established as a major venue for carrying out ASEAN's objectives of regional harmony and stability. The ARF is the first region-wide consultative body in Asia focused on security issues.⁹ The current participants in the ARF are as follows: Australia, Brunei Darussalam, Cambodia, Canada, China, India, Indonesia, Japan, European Union, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Thailand, United States, Vietnam.¹⁰

⁸ASEAN-Japan. Centre, Above.

⁹ ASEAN Secretariat *The Eighth ASEAN Regional Forum 2000-2001: ASEAN Regional Forum (ARF) Concept and Principles of Preventive Diplomacy* (ASEC, Jakarta, 2001).

¹⁰ Australian Department of Foreign Affairs and Trade *ARF (ASEAN Regional Forum)* (Australia, 2000) <http://www.dfat.gov.au/arf/arf_isg.html> (last accessed 24 August 2002).

ARF adopted two main objectives. First, to foster constructive dialogue and consultation on political and security issues of common interest and concern. Secondly, to contribute to efforts towards confidence building and preventive diplomacy in the Asia-Pacific region.¹¹ At the Twenty-seventh ASEAN Ministerial Meeting in 1994, the Foreign Ministers agreed that ARF could become an effective consultative Asia-Pacific Forum for promoting open dialogue on political and security cooperation in the region. In this context, ASEAN should work with its ARF partners to bring about a more predictable and constructive pattern of relations in the Asia Pacific region.¹²

Since July 1994, ARF has taken an evolutionary approach extended over three broad stages, which are, the promotion of confidence building among participants, the development of preventive diplomacy and the elaboration of approaches to conflicts.¹³ This approach enables ARF participants to deal constructively with political and security issues that bear on regional peace and stability. This approach also includes new issues that have emerged as a result of globalisation, such as, territorial and jurisdictional disputes in the South China Sea. Like many other parts of the world, Southeast Asia faces territorial disputes among its members and nearby states. In these disputes ASEAN has consistently pursued a policy of cooperation in seeking the peaceful settlement of differences.

2. *The ASEAN "Way"*.

ASEAN is in a sense a mature organisation. In 2002, it celebrated 35 years, since its establishment. It has evolved into an effective organisation and experienced a process of *The ASEAN Way*. Dato' Dr. Noordin Sopiee, Head of the Malaysian Institute of Strategic and International Studies (ISIS Malaysia) has proposed that The ASEAN Way has 12 basic core principles. These core principles are¹⁴:

¹¹ Australian Department of Foreign Affairs and Trade, Above.

¹² Australian Department of Foreign Affairs and Trade, Above.

¹³ Australian Department of Foreign Affairs and Trade, Above.

¹⁴ To list them, not necessarily in order of their importance.

1. Cooperative Peace.
2. Seeking Agreement and Harmony.
3. Respect for Territorial Integrity.
4. Non-Interference in the Domestic Affairs of Member States.
5. Egalitarianism.
6. Decisions-making by Consensus.
7. Sensitivity, Politeness, Non-Confrontation and Agreeability.
8. Mutual Caring.
9. Quiet, Private, and Elitist Diplomacy versus Public Washing of Dirty Linen and Diplomacy through the Media.
10. Solidarity.
11. Being Non-Cartesian, Non-Legalistic and concentrating on Process and Content.
12. Pragmatism.

Each of these principles may not be unique to ASEAN, but perhaps it is the combination of all these principles, which makes ASEAN what it is. These principles are not stated in ASEAN official documents and have not been formalised.

The ASEAN way has been criticized for being ineffective. A political demand for an increase in the formality and open criticism and break with the non-interventionist rule inside the Association of Southeast Asian Nations (ASEAN) developed. The debate is, between the Western belief that formal and multilateral management is the way to reach a successful resolution of a conflict and the Asian strategy that informal and bilateral management is more successful.¹⁵ Human Rights activists have criticized this form of management, especially since Burma joined ASEAN and is now protected by the ASEAN way.

Critics have questioned whether this type of a rather loosely structured organisation is the way of the future. Former Indonesian Foreign Minister, Ali

¹⁵ Peter King & Yoichi Kibata *Peace Building in the Asia Pacific Region* (Allen & Unwin, St. Leonards, 1996).

Alatas, defined ASEAN as an organisation with a secretariat and a codified set of rules and procedures that has developed in a gradual way.¹⁶ He suggested that APEC (Asia Pacific Economic Cooperation) might want to learn from ASEAN's experience.¹⁷

The *ASEAN way* supported the decision-making by consensus principle, providing reassurance to the weakest member that unwanted policies would not be imposed on it. To resolve any differences between members, ASEAN relied more on close personal ties at high-ranking officials rather than formal institutions and treaties. Ministers and head of governments, often-cemented agreements on the golf course or at post meeting entertainment sessions.¹⁸ This facilitated the resolution of differences among the elite, reducing the need to resort to various forms of pressure for achieving national goals.

B. Preventive Diplomacy

In January 1992, the first-ever meeting of heads of state and government of the UN Security Council concluded with a request from the council for "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peace making and for peace-keeping".¹⁹

In order to respond to this request, the Secretary-General, Boutros Boutros-Ghali presented a report "Agenda for Peace" with a chapter focusing on preventive diplomacy. This report received positive endorsements from the UN General Assembly in October 1992. High-level US officials have been among the most vocal supporters of preventive measures. Addressing the UN General

¹⁶ Hadi Soesanto *ASEAN in a Changed Regional and International Political Economy* (Centre for Strategic and International Studies, Jakarta, 1995), 1.

¹⁷ Hadi Soesanto, Above.

¹⁸ Hadi Soesanto, Above.

¹⁹ Boutros-Ghali Boutros *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping* (United Nations Department of Public Information, New York, 1995), 5.

Assembly in 1992, President Bush stated that monitoring and preventive peacekeeping, putting people on the ground before the fighting starts, may become especially critical in hostile regions.²⁰

The primary instruments containing a mandate applicable for conflict prevention are contained in the UN Charter, essentially in articles 1, 11(2), 24, Chapter VI and VII article 40 and especially 41, as well as in article 99.²¹ Article 1 stipulates that the purposes of the United Nations are:²²

[T]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and the removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustments or settlement of international disputes or situations which might lead to a breach of the peace.

It is evidently better to prevent conflicts through early warning, quiet diplomacy and in some cases, preventive deployment than to have to undertake major politico-military efforts to resolve them after they have broken out.²³ However, the most difficult aspect of conflict prevention is to know what approaches should be applied, with which actors and when exactly those approaches should be applied.

The United Nations has defined term for preventive diplomacy as “an action to prevent disputes from arising between parties, prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they

²⁰ Michael S Lund. *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy* (United States Institute of Peace Press, Washington D.C., 1996), 5.

²¹ Werner Bauwens and Luc Reyckler *The Art of Conflict Prevention: The United Nation in Conflict Prevention* (Brassey's, London and New York, 1994), 28.

²² See the UN Charter article 1

²³ Boutros, Above, 13.

occur.”²⁴ The Secretary-General may perform preventive diplomacy personally or through senior staff or specialised agencies and programs. Preventive diplomacy may also be conducted by the Security Council or the General Assembly, and by regional organisations in cooperation with the United Nations.²⁵

Preventive diplomacy requires measures to create mutual confidence and good faith that are essential to reducing the likelihood of conflict between States, known as Confidence Building Measures (CBMs). CBMs work to eliminate the elements of secrecy in military activity in order to help states distinguish between real and unfounded fears about the intent of or threat posed by a real or potential adversary. Examples of CBMs includes, systematic exchange of military missions, formation of regional or subregional risk reduction centres, arrangements for the free flow of information, including the monitoring of regional arms agreements.²⁶

The term preventive diplomacy suggests different things to different people. As to date, practitioners and scholars have not agreed on the meaning. To some, it conjures up efforts by high level officials such as UN Secretary-General or U.S. Secretary of State, to contain an erupting international crisis or stop a war. To others, it suggests unofficial, track-two diplomacy or informal contacts and dialogue among disputing parties, often conducted behind the scenes by NGOs. Some consider the word *diplomacy* to refer only to peaceful methods of discussion, such as negotiation and bargaining. However, others do not exclude the use of armed forces or other forms of coercion as a method for preventive diplomacy.²⁷

²⁴ Boutros, Above, 45.

²⁵ Boutros, Above, 46-47.

²⁶ Boutros-Ghali Boutros *An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping* (United Nations Department of Public Information, New York, 1995), 47.

²⁷ Michael S Lund. *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy* (United States Institute of Peace Press, Washington D.C., 1996), 31.

Since preventive diplomacy does not specify what is to be prevented, some assume it deals primarily or solely with wars - that is open, armed hostilities by two or more antagonists. However, others believe it also should address one-sided conflicts such as genocide, the repression of human rights and humanitarian disaster such as a massive exodus of refugees. Some associate the term with the amelioration of basic conditions that can breed violence, such as poverty, overpopulation and ignorance. According to Lund, as preventive diplomacy has come into vogue recently, it has been waved like a banner over almost any attempt to remedy one or another post-Cold War problem.²⁸

While the nature and intensity of tensions and conflicts vary from region to region, no area is free of these potential threats to peace and security. Since the early 1990s, other such preventive procedures have been formulated, adopted, and employed by the Association of Southeast Asian Nations (ASEAN) through its Regional Forum, ARF.²⁹

The great variety of actors, strains and conflicts has prompted the ASEAN Regional Forum (ARF) to provide the region with an institution to absorb multilateral dialogues on security.³⁰ ARF develops further the concepts of confidence building, preventive diplomacy and finding ways to resolve regional tensions and conflicts. It also marks towards developing instruments for conflict resolution in the region.

The definition, concept and principles of preventive diplomacy as agreed by the ARF members are not legal obligations.³¹ They are shared perspectives that would apply only to the ARF and should be understood as representing the current

²⁸ Lund, Above.

²⁹ Lund, Above, 7.

³⁰ Australian Department of Foreign Affairs and Trade *ARF (ASEAN Regional Forum) Report on the First 1999-2000 Meeting of the ARF ISG on CBMs* <http://www.dfat.gov.au/arf/arf_isg.html> (last accessed 24 August 2002).

³¹ ASEANWeb *Concept and Principles of Preventive Diplomacy* para 2 Seventh ARF Ministerial Meeting 27 July 2000 Bangkok Thailand <<http://www.aseansec.org/golek.html>> (last accessed 10 April 2002).

status of an evolving consensus in the ARF. These perspectives should be aimed at enhancing mutual understanding and trust among ARF members, taking into account the actual conditions of the region and be consistent with basic principles of international law and established ARF processes.³²

The ARF definition of preventive diplomacy is broad. However, there appears to be general consensus that preventive diplomacy is consensual, diplomatic and political action taken by sovereign states with the consent of all directly involved parties:³³

- To help prevent disputes and conflicts from arising between States that could potentially pose a threat to regional peace and stability;
- To help prevent such disputes and conflicts from escalating into armed confrontation; and
- To help minimise the impact of such disputes and conflicts on the region.

Preventive diplomacy measures within the ARF could include the following:³⁴

- a) *Confidence Building Efforts* i.e. efforts to build mutual trust and confidence between states. The successful application of preventive diplomacy has to be built upon continuous efforts to maintain and enhance trust and confidence. Without a high degree of trust among ARF participants, it is unlikely that preventive diplomacy in the later stages of any conflict can be carried out. While the ARF has succeeded in fostering dialogue among ARF members over the past few years, it is now timed to look into strengthening the habit of cooperation. Cooperation among ARF members can preempt disputes as well as prevent disputes from developing into conflicts by enhancing trust and understanding.
- b) *Norm building* i.e. nurturing of accepted codes or norms of behaviour guiding the relationships among states in the Asia-Pacific region. To the extent that the codes enhance predictability and strengthen cooperative behaviour in ensuring regional peace, norm building enhances trust between and among states in the

³²Australian Department of Foreign Affairs and Trade, Above.

³³ ASEANWeb, Above.

³⁴ ASEANWeb, Above.

region. The ARF could consider measures in this area, such as developing a code of conduct governing relations among ARF members which is consistent with existing codes such as the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the UN Charter.

c) Enhancing Channels of Communication; open, easy and direct communications or channels among ARF participants, which serve to promote transparency with a view to, avoid misperception or misunderstanding. Such channels would advance information sharing, provide early warning and facilitate dialogue.

d) Role of the ARF Chair. The ARF Chair could play a diplomatic role using peaceful methods as determined by ARF members, such as negotiation, enquiry, mediation, and conciliation.

From this broad definition of Preventive diplomacy, we can view Preventive diplomacy along a time-line in keeping with the objectives to prevent disputes and conflicts between states from emerging and escalating into armed confrontation, also to prevent such disputes and conflicts from spreading. Some measures could be taken even before a crisis has actually arisen.

CBMs are ideal tools for the 21st century, a time in which promising trends and troubling developments coexist uneasily in many parts of the world. Under these confusing circumstances, political leaders can employ CBMs to accentuate the positive and guard against the negative. Communication, constraint, transparency, and verification measures are the primary CBM "tools." These tools are designed to make the behaviour of states more predictable by facilitating communication among states and establishing rules or patterns of behaviour for states' military forces, as well as the means to discern and verify compliance with those patterns.

The Association of Southeast Asian Nations (ASEAN) has been preventing disputes from arising for the last thirty years through preventive diplomacy.³⁵

³⁵ Hasjim Djalal and Ian Townsend-Gault *Preventive Diplomacy: Managing potential Conflicts in the South China Sea* (United States Institute of Peace Press, 1999), 108.

Whenever disputes arise, they have been handled in the so-called *The ASEAN way*. This method of preventing disputes from escalating is characterized as Seeking agreement and harmony through dialogue and decisions making by consensus among parties involved in the disputes. This method is aimed to de-escalate conflict by reducing anger, fear, and tension and improve communication and mutual understanding.³⁶

Preventive diplomacy adopted the principles of ASEAN way to maintain peace and stability in the Southeast Asia region. This can be illustrated by developments over the past decade in Indochina, the South China Sea and the Southern Philippines. While the situation in the Southern Philippines has been regarded primarily as an internal matter, it has also caught the attention of the Organization of Islamic Countries (OIC).³⁷ Indonesia was invited and has been able to play a significant role as a mediator in the Southern Philippines based on Non-Interference in the Domestic Affairs of the ASEAN way principles.

In Indochina, ASEAN devoted more than ten years to prevent existing disputes from escalating into conflicts.³⁸ ASEAN dealt with a succession of issues, beginning with Vietnam's intervention to topple the Khmers Rouges regime in Cambodia in 1979 and then contributing to the Paris Peace Accords, which paved the way for elections. In the South China Sea, the informal Workshops on Managing Potential Conflicts have formulated various cooperative efforts to convert the potential conflicts into actual areas of cooperation.

³⁶ John W. McDonald *Further Exploration of Track Two Diplomacy in Timing the De-Escalation of International Conflicts* (Syracuse NY, Syracuse University Press, 1991), 201.
<<http://www.colorado.edu/conflict/peace/example/mcdo3682.htm>> (last accessed 26 August 2002).

³⁷ Moro National Liberation Front Home Page
<http://mnlf.net/OIC/25th_ICFM_Resolution.htm> (last Accessed 20 August 2002).

³⁸ Cambodian Ministry of Foreign Affairs and International Cooperation
<<http://www.mfaic.gov.kh/Region/ASEAN/>> (last accessed 20 August 2002).

III. TERRITORIAL DISPUTE IN THE SOUTH CHINA SEA

A. Nature and Status

The South China Sea region is the world's second busiest international sea-lane.³⁹ More than half of the world's supertanker traffic passes through the region's waters. Freedom of navigation through the South China Sea, particularly through the choke points of the Taiwan Strait in the north and the Straits of Malacca in the south, remains essential to the region's geostrategic role in linking northeast Asia's seaborne trade with the rest of the world.

Safety of navigation and overflight and the freedom of sea-lanes of communication are critical for the strategic interests of many countries. The United States uses the South China Sea as a transit point and operating area for the U.S. Navy and Air Force between military bases in Asia, the Indian Ocean and the Persian Gulf areas.⁴⁰ Any military conflict in the South China Sea that threatens the strategic interests of the United States or the security and economic interests of Japan, might be seen as sufficiently destabilizing to invite U.S. involvement to preserve navigational freedom in these critical sea lanes.

Claims over territory's sovereignty in the South China Sea are based on acts of discovery, occupation and certain inferred rights over continental shelf delimitation. The South China Sea, covering an area of 800,000 square kilometers (310,000 square miles) is semi-enclosed, with ninety percent of its circumference rimmed by land. Many of Asia's most influential states are among its littoral countries: the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Thailand;

³⁹ Federation of American Scientists *The Spratly Islands Military Analysis Network*, <<http://www.fas.org/man/dod-101/ops/war/spratly.htm>> (last accessed 30 July 2002).

⁴⁰ ICE Case "Studies Spratly Islands dispute" (May 1997) 21 <<http://www.american.edu/projects/mandala/TED/ice/spratly.htm>> (last accessed 24 August 2002).

the Indochinese countries of Cambodia and Vietnam; and the People's Republic of China (PRC, or China) and Taiwan (the Republic of China).⁴¹

Eight states claim title to these South China Sea islands. Singapore and Malaysia dispute claims over Pisang Island and Pulau Batu Puteh, strategically situated in the congested waters of Malacca and Singapore Straits.⁴² China, Taiwan, and Vietnam contest each other's claims to sovereignty over the Paracel Islands, a group of fifteen islets and several reefs and shoals scattered over a 200-kilometer area in the middle of the Gulf of Tonkin.⁴³ In January 1974, military hostilities broke out between China and the Republic of Vietnam over the Paracels, ending in a Chinese victory and that government's forceful consolidation of the entire atoll.⁴⁴ Taiwan also contests China's claims to Pratas Island and the Macclesfield Bank. As for the Spratlys, six states assert claims: China, Taiwan and Vietnam claim the entire archipelago, while the Philippines, Malaysia and Brunei claim sovereignty over portions of the Spratlys. Except for Brunei, all the others have established a military presence in the Spratlys.⁴⁵

The Spratly Island group, geographically located between 4° and 11° 3' North Latitude and 109° 30' and 117° 50' East Longitude, contains some 100-230 scattered islands, isles, shoals, banks, atolls, cays, and reefs.⁴⁶ With elevations ranging from two to six meters, the mapped islands of the Spratly archipelago, including shallow territorial waters, cover an area of approximately 180,000

⁴¹ J. R. Morgan and M. J. Valencia *Atlas for Marine Policy in South-East Asian Seas* (University of California Press, Berkeley, 1983), 3-4.

⁴² D.M. Johnston and M.J. Valencia *Pacific Ocean Boundary Problems: Status and Solutions* (Martinus Nijhoff, Boston, 1991), 128.

⁴³ The-Khang Chang "China's Claim of Sovereignty Over the Spratly and Paracel Islands: A Historical and Legal Perspective" (1991) 23 CWRJIL 399, 399.

⁴⁴ Marwyn S. Samuels, *Contest for the South China Sea* (Methuen, New York, 1982), 98.

⁴⁵ Mark J. Valencia *South-East Asian Seas, Oil under Troubled Waters: Hydrocarbon Potential, Jurisdictional Issues and International Relations* (Oxford University Press, Singapore, 1985), 87.

⁴⁶ ICE Cases, Above.

square kilometers (69,500 square miles).⁴⁷ The Spratlys are too small and barren to support permanent human settlement independently, and few have fresh water or any significant land-based resources.⁴⁸

B. Territorial Dispute and Overlapping Claims to Maritime Jurisdiction

The "potential conflicts" in the South China Sea arise from a complex series of overlapping or multiple claims to the islets and rocks with which the southern part of that sea is strewn, and also to jurisdiction in the sea areas around these features.⁴⁹ The UN Convention on the Law of the Sea created a number of guidelines concerning the status of islands, the continental shelf, enclosed seas, and territorial limits. Three of the most relevant to the South China Sea are:⁵⁰

- a) Article 3, which establishes that "every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles";
- b) Articles 55 - 75 define the concept of an Exclusive Economic Zone (EEZ), which is an area up to 200 nautical miles beyond and adjacent to the territorial sea. The EEZ gives coastal states "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to" (above) "the seabed and of the seabed and its subsoil...";
- c) Article 121 states that rock, which cannot sustain human habitation or economic life of their own, shall have no exclusive economic zone or continental shelf.

The establishment of the EEZ created the potential for overlapping claims in semi-enclosed seas such as the South China Sea. An ocean region legally

⁴⁷ Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig *Sharing the Resources of the South China Sea* (Martinus Nijhoff Publishers, The Hague, 1997), 225.

⁴⁸ Tao Cheng "The Dispute Over the South China Sea Islands" (1975) 10 TILJ 267, 267.

⁴⁹ Hasjim Djalal and Ian Townsend-Gault *Preventive Diplomacy: Managing potential Conflicts in the South China Sea* (United States Institute of Peace Press, 1999), 108.

⁵⁰ See UN Convention on the Law of the Sea.

comprised of high seas and international seabed would be rendered into a semi-enclosed sea.⁵¹ These claims could be extended by any nation, which could establish a settlement on the islands in the region. South China Sea claimants have clashed as they tried to establish outposts on the islands (mostly military) in order to be in conformity with Article 121 in pressing their claims.

Article 56 of the treaty outlines parameters for the establishment of a country's Exclusive Economic Zone (EEZ), which extends 200 nautical miles from the country's coastline. Article 56 gives sovereign rights for exploration, exploitation, conservation, and resource management of living and non-living natural resources of waters in the country's EEZ. The UNCLOS further attempts to exclude rocks incapable of sustaining human habitation. The problem, however, stems from the country's right to define the natural feature as a rock or an island.

Aside from defining an EEZ, the UNCLOS also contains parameters for a country's continental shelf in article 77. The continental shelf is defined as the underwater portion of the country's coastal landmass, including the seabed as well as the subsoil of the shelf. The deep ocean floor, however, is not considered part of a country's continental shelf.

The third important part of the UNCLOS is Part VI, which justifies claims by Brunei, Malaysia and the Philippines. Justification is based on proximity, not history; hence, China and Taiwan's historical claims would not likely win arbitrated cases. In May of 1996, China's parliament passed a resolution to approve the Law of the Sea UN Convention. Signing onto the Convention would enable China to extend its exclusive economic sea zone to 340 km.

C. Significance of the South China Sea

The maritime strategy of the PRC navy in the South China Sea has traditionally been guided by three principal missions: (1) to guard against Russian

⁵¹ Choon-Ho Park "The South China Sea Disputes: Who Owns the Islands and the Natural Resources?" (1973) 37 ODIL 1, 1.

invasion; (2) to counter nuclear attacks from sea-based sources; and (3) to protect sea lines of communication and Chinese claims to natural resources contiguous to archipelagoes in the Asia-Pacific region. As the Cold War has passed into history during the 1990s, the priority of these missions has shifted, with increasing importance now being placed on ensuring access to sea lanes and natural resources in the region.

In order to maintain in the South China Sea, China's navy must optimize its available to have military influence over Malaysia, Singapore and the Philippines. China has no aircraft carriers and only limited in-flight refueling capabilities.⁵² The acquisition of an aircraft carrier, estimated by the year 2010 and improvement of in-flight refueling capacity, however, could make securing this combat radius possible.⁵³

China extends its influence as a maritime power in Asia. The Chinese are developing a blue-water navy, especially longer-range aircraft and submarine strength.⁵⁴ The Chinese desire to preserve economic and political interests through a strategic doctrine of active defence offshore. This has made the Chinese navy to be prepared for maritime disputes to defend the claims of sovereign rights, fishing rights, and the perceived potential of offshore hydrocarbon resources in the South China Sea.

Developments affecting the Spratlys over the past decade have suggested that a regional arms build up might increase tensions in the South China Sea.⁵⁵ Not surprisingly, interstate regional relations became strained in the process. The first clash occurred on 8 February 1987, when Chinese and Vietnamese warships opened fire on each other in the area. On 14 March, a more serious confrontation

⁵² William J. Dobson and M. Taylor *Travel Red Herring Hegemon: China in the South China Sea* (Current History 96, September 1997), 261-62.

⁵³ John Caldwell *China's Conventional Naval Capabilities* (Center for Strategic and International Studies, Washington, D.C., 1994).

⁵⁴ Elisabeth Mann Borgese, Norton Ginsburg and Joseph R. Morgan *Ocean Yearbook 12* (Chicago University Press, Chicago, 1996), 279.

occurred off Union Reef, as each navy lost a vessel and 120 Vietnamese sailors drowned.⁵⁶

Even more serious was the violent clash between China and Vietnam in March 1988.⁵⁷ After a small contingent of Vietnamese opened fire on Chinese military and construction personnel working on Fiery Cross Reef (Chigua atoll), the Chinese dispatched warships to the area, further hostilities erupted, and three Vietnamese vessels were sunk, with the loss of seventy-four lives.⁵⁸ China emerged as the clear victor from this episode. Not only did the Fiery Cross Reef confrontation reaffirm the PRC's determination to assert sovereignty over the Spratlys, it also demonstrated the superiority of Chinese naval power over Vietnam. The incident touched off a naval build up between China and Vietnam in the islands, as well as a series of competing occupations of more islets by troops from both states.⁵⁹

The growing naval presence and construction by China and Vietnam of military installations on newly occupied islets unsettled other claimants as well. In April 1988, forty-nine Filipino fishermen were arrested by Malaysian authorities in the Permatang area of the Spratlys on charges of poaching in Malaysian continental shelf waters.⁶⁰

Events during the 1980s made armed conflict in the South China Sea seem more likely. Difficulties of demarcating ocean boundaries, uncertain bilateral negotiations, and obstacles impeding multilateral discussions all suggested that a negotiated settlement for the Spratly dispute was at most a distant aspiration, not a near-term expectation. Occupying vast areas of the archipelago became critical for

⁵⁵ Borgese, Ginsburg and Morgan, Above, 286.

⁵⁶ Borgese, Ginsburg and Morgan, Above, 302.

⁵⁷ Chang Pao-Min "A New Scramble for the South Sea Islands" (1 June 1990) 12

Contemporary Southeast Asia 17.

⁵⁸ Pao-Min, Above.

⁵⁹ Pao-Min, Above.

⁶⁰ Lee Yong Leng "The Malaysian-Philippine Maritime Dispute" (1 June 1989) 11

Contemporary Southeast Asia 17.

concerned governments to assert anything approaching legitimate claims of sovereignty. It is precisely for these reasons that China, Vietnam, Malaysia, and the Philippines were tempted during the 1980s to consolidate territorial gains in the Spratly archipelago, and they even sought to expand their respective areas of control throughout the South China Sea. Such attempts exacerbated tensions and generated armed clashes between China and Vietnam.

Events during the 1990s generated greater concern over Chinese intentions in the South China Sea. In 1992 China began installing sovereignty markers on various shoals and islets in Spratlys, but a strong "Declaration on the South China Sea" by ASEAN curbed Beijing's assertiveness and prompted the PRC to temper its South China Sea activities in 1993 and 1994.

Despite the PRC's rumblings in the South China Sea, the Cold War's passing has brought a general sense of rapprochement to East Asia. This new climate should render political costs of a large-scale military conflict in the Spratlys unacceptable to claimant governments. Once the current financial disturbances abate, the economic expansion of ASEAN countries will resume, and the need for maintaining open shipping lanes through the South China Sea will become all the more commercially vital. These prospects should dissuade blatant attempts by any state to dominate the region militarily. That the claimants' economies are becoming more interdependent with other states in Southeast Asia, including other Spratly claimants, might amplify that reluctance.

In the future, China will remain predominant throughout the South China Sea. Whether through naval force or diplomacy. Pressures for China to maintain claim to the Spratlys will come from increasing resource demands generated by its 1.2 billion plus people.⁶¹ China is being compelled to fuel its industrial base expansion, which supports the greater demands of goods and services for its burgeoning population growth. Therefore, more extensive efforts to explore and exploit offshore petroleum reserves are required and the Spratlys emerge as a key

⁶¹ China Facts and Figure 2001 Population.< <http://www.chinaguide.org/e-Internet/GQ/HTM/gqindex.htm>> (last accessed 1 August 2002).

consideration. China has demonstrated its willingness to use military force if necessary, to protect and support such operations.

A. Obstacles to Dispute Resolution

Anxiety surrounding the sovereignty issue and conflicting claims to the Spratlys is obviously aggravated by uncertainty over how many islands, cays, reefs, and atolls are actually present. Smaller formations are difficult to identify, since many remain submerged at high tide. For a government to allege claims is relatively easy. However, to substantiate the presence and exact location of varied land formations in the South China Sea is difficult.

Regional efforts to resolve sovereignty disputes in the South China Sea have not been successful. China traditionally has opposed multilateral talks on the Spratlys, principally because its sovereignty over the islands is held as non-negotiable.⁶² In Beijing's view, a plethora of historic records and artifacts exist to support Chinese claims to the Spratlys. That the South China Sea bears the proper name of China is in itself indicative of the paramount historical influence of that state in the region, and fosters the image of the region being a "Chinese lake".⁶³

Driven by strategic bargaining preferences, China isolates the disputants and deal with them one-on-one. No negotiations mean no compromise on Chinese sovereignty over the Spratly archipelago. The status quo serves Chinese national interests by allowing their historical claims to persist. This erodes the ability of ASEAN to organize around an issue and allows China the freedom to negotiate individually with governments in the region. However, in the future multilateral conference, if each government were allocated one vote at the negotiating table, China could be outvoted on important issues by a coalition of other claimants.⁶⁴

Another special delicate issue for the PRC is the place of Taiwan in any conference of multilateral discussions. The recent financial crisis throughout Asia

⁶² Harry L. Roque "China's Claim to the Spratly Islands Under International Law" (1997) 15 *JENRL* 189, 211.

⁶³ Roque, Above.

⁶⁴ Roque, Above.

IV. APPROACHES TO DISPUTE RESOLUTION

A. *Obstacles to Dispute Resolution*

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⁶² Harry L Roque "China's Claim to the Spratlys Islands Under International Law" (1997) 15 JENRL 189, 211.

⁶³ Roque, Above.

⁶⁴ Roque, Above.

in 1998 has given Taiwan the opportunity to break out of its isolation by greatly expanding commercial links throughout Southeast Asia via an investment strategy known as the "Go South" policy.⁶⁵ By purchasing corporate and banking assets at sale prices, Taiwanese businesses are integrating their investments Asia-wide, and in the process enhancing Taiwan's economic influence and political leverage against Beijing.⁶⁶

Moreover, if both governments were to agree in principle to participate, their respective positions must be reconciled on the format of such discussions. Both the PRC and the ROC claim all of the Spratlys as their sovereign territory and make the same claim to the Spratlys, in the name of "China," based on similar historical evidence.⁶⁷ If they were to enter into formal negotiations as two separate and contending parties, that would constitute *de facto* recognition of two Chinas, which neither government will accept.⁶⁸ For its part, the PRC has endorsed diplomatic negotiation in principle, but has preferred limited bilateral approaches in fact.⁶⁹

Consider the prospects for regional negotiations on the Spratlys situation. Given the multi-party character of the dispute, one might presume that only a multilateral conference could produce a meaningful and enforceable agreement. Multilateral discussions presume acceptance of the status quo as the basis for negotiations. Clearly, this premise lacks appeal to all claimant governments. While the Philippines and Malaysia might entertain such multilateral discussions quite readily, neither China, nor Vietnam, nor Taiwan could do so without putting at risk their longstanding comprehensive claims to the archipelago. Taiwan, controlling only one island, could hardly expect to gain much from such a

⁶⁵ Keith B. Richburg *Exploiting Asia's Crisis: Taiwan Buys Up Bargains And Widens Its Influence* (Washington Post, 2 January 1998), A23.

⁶⁶ Keith B. Richburg, Above.

⁶⁷ Harry L Roque "China's Claim to the Spratlys Islands Under International Law" (1997) 15 JENRL 189, 212.

⁶⁸ Roque, Above.

⁶⁹ Christopher C. Joyner "The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan?" (1998) 32 NELR 800, 819.

multilateral negotiation. For China, any decision to engage in multilateral talks would immediately undermine its longtime assertions over claims to the entire archipelago. China would prefer to engage in bilateral discussions with the Philippines or Malaysia, but would balk at jeopardizing any geostrategic advantage it holds over Vietnam by negotiating with Hanoi.

B. Traditional Diplomacy

For Vietnam and China, the Spratlys dispute seems cast as a zero-sum game. Both claim sovereignty over the entire Spratly archipelago, and if one claim is upheld, the other must be denied. Consequently, compromise or partial concession by either party would depreciate the legitimacy of their historical claims and thus enhance claims by Malaysia and the Philippines.

Even if all parties can agree to negotiate based on the status quo, the fundamental and intractable problem remains of how to apportion the contested islands and adjacent sea areas among the claimant states to the satisfaction of all. Serious difficulties no doubt complicate apportionment of the central area of the archipelago, where power configurations implicit in the present patterns of island occupation have established certain spheres of influence that must require significant trade-off. It is this same area, moreover, where Vietnam, the Philippines, and Taiwan have also constructed military fortifications and airstrips, and they will have problems surrendering these islands to each other, much less to China.

For the foreseeable future, China will remain predominant in the Spratlys archipelago and throughout the South China Sea. Technology has given the Chinese government motives for its policies in the region (namely, potential oil exploitation and expanded maritime rights) and the means to execute those policies (namely, on-site naval installations and enhanced military capabilities). Whether through naval force or diplomacy, pressures for China to maintain claim to the Spratlys will come from increasing resource demands generated by its 1.4 billion plus people. China is being compelled to expand its industrial base to support greater demands for more goods and services from its burgeoning population growth. To fuel this industrial expansion, new energy sources are required, which in turn will require more extensive efforts to explore and exploit

offshore petroleum reserves. The Spratlys emerge as a key consideration here, and China has demonstrated its willingness to use military force, if necessary, to protect and support such operations.

is being given to what has come to be known as "track two" diplomacy

B. Traditional Diplomacy

The term "diplomacy" refers to the interaction between nation-states. Traditionally, government officials or diplomats, who negotiated treaties, trade policies, and other international agreements, carried out diplomacy. The process of negotiations ranges from very formal to informal, but it tends to be fairly adversarial and competitive, relying on distributive or positional bargaining strategies that assume a win-lose situation.⁷⁰ The track one diplomacy is characterized as a power-based, formal, and often rigid form of official interaction between instructed representatives of sovereign nations. The goal is to maintain power over weaker nations and a balance of power with nations of equal status. Although conflict resolution theorists have developed a multi-faceted understanding of power, diplomacy still focuses on the "power over" approach, believing that power is a zero sum commodity. This encourages positional bargaining, rather than a more integrative or cooperative approach.⁷¹

Although several efforts have been made to alter the adversarial nature of traditional diplomacy, none has been very successful. The first was the League of Nations, which called for open diplomacy and collective security. Although the U.S. President Woodrow Wilson developed the plan, the United States failed to support the idea, and the League quickly failed.⁷² The United Nations was a second attempt at collective security and international cooperation. The UN has certainly been much more successful than the League of Nations, but it still has not been able to overcome power rivalries (especially during the Cold War, but, to

⁷⁰ Michael Lee *Multi-Track Diplomacy* Conflict Research Consortium University of Colorado USA <<http://www.colorado.edu/conflict/peace/treatment/track1.htm>> (last accessed 26 August 2002).

⁷¹ Lee, Above.

⁷² Lee, Above.

some extent, even now) and lacks the money to enable it to completely carry out its mandate. For this reason, and given the general ineffectiveness of traditional diplomacy, more and more attention is being given to what has come to be known as "track two" diplomacy.

In connection with that, the complexity and ambiguity of the conflicting claims in the South China Sea have been cited as factors that have frustrated previous attempts to arrive at a lasting solution, but the fact that not all positions are set in stone may allow flexibility in future negotiations. A wide variety of approaches have been presented for consideration if the parties can develop the political will to resolve the dispute through negotiations.⁷³

Suggestions have been made to resolve the South China sea dispute through traditional or "track one" diplomatic initiatives, such as the United Nations General Assembly, International Court of Justice (ICJ) or regional organisations in which official emissaries engage one another on behalf of their respective states.⁷⁴

Institutions such as the International Court of Justice (ICJ) and the ASEAN Regional Forum (ARF) are considered by some to provide organisational frameworks in which to address the claims and jurisdiction to the rocks and waters of the South China Sea.⁷⁵ In 1994, when the Spratly Islands were put on the ARF agenda for the first time, no progress was made.⁷⁶

⁷³United States Institute of Peace *The South China Sea Dispute: Prospects for Preventive Diplomacy* <http://www.usip.org/oc/sr/snyder/South_China_Sea1.html> (last accessed 15 August 2002).

⁷⁴ Ian Townsend-Gault *The Role of "Track-Two" Diplomacy in Ocean Affairs* University of British Columbia <<http://faculty.law.ubc.ca/scs/>> (last accessed 1 August 2002).

⁷⁵ William G. Stormont *Confidence Building for Cooperation in an Environment of Conflicting Claims to Jurisdiction* Centre for Asian Legal Studies The University of British Columbia <<http://faculty.law.ubc.ca/scs/>> (last accessed 1 August 2002).

⁷⁶ Stormont, Above.

Attempts to internationalise the dispute on the South China Sea have been consistently rejected by the China. China rejected Vietnam's offer to submit the bilateral dispute over the Crestone concession let by China to the Crestone Energy Corp. of Denver, Colorado to the ICJ for consideration. Vietnam has retained Covington and Burling, a prominent Washington-based law firm, to determine how the International Court of Justice would settle the dispute.⁷⁷

The ICJ administers decisions in cases where the parties are willing to submit to a judicial decision. However, in connection with the South China Sea dispute, it is difficult to predict how the ICJ might rule such a complex case and China is not likely to accept ICJ jurisdiction in the South China Sea. Since, such a process would "internationalize" the dispute and run counter to China's preferred strategy of dealing with each of the other claimants bilaterally. Asia's reluctance to involve Western institutions in helping arbitrate disputes also limits the potential role for the International Court of Justice (ICJ) in resolving the impasse in the South China Sea.⁷⁸

B. Informal Diplomacy

1. Current Dialogue Efforts

One of the options of preventing disputes from arising is the pursuit of preventive diplomacy in the South China Sea region. This process is through Confidence Building Measures (CBMs), functional cooperation and direct communication. The objective is to promote confidence and cohesion so that any problems arising can be solved peacefully and amicably in the so-called ASEAN way.

The process of confidence building among governments involved in the South China Sea region has already begun. A regional dialogue on disputes, hosted informally through a series of workshops by Indonesia. Although

⁷⁷ Barry Wain "Vietnam Fires New Weapon in Oil Dispute: the Law" (June 1995) 16

TAWSJ.

⁷⁸ Stormont, Above.

Indonesia is a South China Sea littoral state, it is usually viewed as a neutral party in the region, as it makes no claims to the Spratlys.⁷⁹ These informal dialogues adopted the ASEAN way principles,⁸⁰ such as, seeking agreement and harmony, respect for territorial integrity, sensitivity, Politeness, non-confrontation and mutual Caring, Quiet and private diplomacy, being non-legalistic and concentrating on process and content.

The Indonesian initiative or the South China Sea Informal Working Group encourages confidence among South China Sea states through track two diplomacy. Track two diplomacy is characterized as a non governmental, informal, and unofficial form of conflict resolution between citizen groups which is aimed at de-escalating conflict by reducing anger, fear, and tension and by improving communication and mutual understanding.⁸¹ International negotiations carried out by private citizens, rather than official diplomats. Most advocates of track two approaches argue that they are not a replacement for track one, but rather a supplement to them. Often track two approaches can precede official negotiations, laying the groundwork and establishing a certain level of trust between people, sometimes they occur simultaneously.⁸²

Ideally, track two diplomatic efforts should pave the way for track one negotiations and agreements by encouraging track one official diplomats to recognize and utilize crucial information and insights obtained by track two citizen diplomats. The concept of track two diplomacy has been growing rapidly over the past two decades, especially in the United States. Because of the diversity

⁷⁹ Hasjim Djalal and Ian Townsend-Gault *Preventive Diplomacy: Managing potential Conflicts in the South China Sea* (United States Institute of Peace Press, 1999), 108.

⁸⁰ Djalal and Townsend-Gault, Above.

⁸¹ John W. McDonald *Further Exploration of Track Two Diplomacy in Timing the De-Escalation of International Conflicts* (Syracuse, NY, Syracuse University Press, 1991), 201-220 <<http://www.colorado.edu/conflict/peace/example/mcdo3682.htm>> (last accessed 26 August 2002)

⁸² Michael Lee *Multi-Track Diplomacy* Conflict Research Consortium University of Colorado USA <<http://www.colorado.edu/conflict/peace/treatment/track1.htm>> (last accessed 26 August 2002),.

of track two diplomatic efforts, track two diplomacy has been further subdivided into four tracks called track two, track three, track four, and track five. Together, these five tracks are now commonly referred to as "Multi-Track Diplomacy".⁸³

Through track two diplomacy, persons from different states who may be parties to an international dispute will meet informally and discuss aspects and issues of the matter to create an atmosphere of open free discussion, without the restrictions imposed by having to maintain official government positions.⁸⁴

The University of British Columbia in Vancouver, Canada administrates the project of sovereignty and jurisdictional disputes over the Spratly and Paracel Islands, with its counterpart in Indonesia being the Centre for Southeast Asian Studies. Issue-areas for potential cooperation between South China Sea littoral governments are identified, and now include marine scientific research, marine environmental protection, safety and sea communications, fisheries assessment and development, defense and security issues, territorial and jurisdictional issues (other than claims to islands and ocean space), and creation of institutions for cooperation.⁸⁵

Workshop participants attend in their own private capacity and are drawn from governments (particularly the foreign affairs ministries), diplomatic corps and military services, academia and research organizations. Technical working groups have additionally convened to discuss issues affecting cooperation in marine scientific research, resource assessment and means of development, marine environmental protection, and navigational safety.⁸⁶ Issues raised at these meeting are then re-circulated back to the annual workshop plenary meeting and

⁸³Lee, Above.

⁸⁴Stormont, Above.

⁸⁵Ian Townsend-Gault *Brokering Cooperation in the South China Sea: Oceans Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives* (Kluwer Law International, 1996), 313.

⁸⁶Stormont, Above.

adoption.⁸⁷ The process is geared toward informal diplomacy, with the expectation that completed agreements on an issue can be returned to normal inter-governmental diplomatic channels for eventual negotiation.

2. Workshop on the South China Sea Dispute

The Indonesian initiative operates through an informal process, which offers participants the advantage of greater freedom to discuss ideas and an atmosphere of greater community. In so doing, there is no discussion of sovereignty over the Spratlys, or conflicting claims to jurisdiction over ocean space, or continental shelf drilling rights.⁸⁸ Such sensitive issues are not brought up. To do so would accomplish nothing constructive, and could seriously risk disrupt the entire cooperative process.⁸⁹

New developments from the 1998 workshop included agreements to convene special meetings by the Committee for the Co-ordination of Offshore Prospecting to compile data on non-hydrocarbon mineral resources in the South China Sea and by the Study Group on Zones of Co-operation to examine the prospects for joint cooperation and development. In addition, the Legal Matters Group would be charged with discussing the possible content of various codes of conduct that might be applied to activities in the region.⁹⁰

From this regional cooperative activities, a strategy of confidence-building is in progress, and while achieving few visible solid results, the workshop sessions and their spin-off committee discussions have provided opportunities for participants to air their views, thus compelling claimant governments to recognize

⁸⁷ Djalal and Townsend-Gault, Above.

⁸⁸ William G. Stormont *Confidence Building for Cooperation in an Environment of Conflicting Claims to Jurisdiction* Centre for Asian Legal Studies The University of British Columbia <<http://faculty.law.ubc.ca/scs/>> (last accessed 1 August 2002).

⁸⁹ Djalal and Townsend-Gault, Above.

⁹⁰ Statement of the Ninth "Workshop on Managing Potential Conflicts in the South China Sea" (Jakarta, 1-3 December 1998) paragraphs 10 and 11.

differences of opinion, rather than merely ignoring them.⁹¹ The workshops are not a quick fix for demilitarization of joint resource development in the South China Sea, but involve a process aimed toward regional cooperation.

China has supported the workshop process, although the government apparently feels that the process is going too far, too fast. For China, prolonged patience is a diplomatic virtue when it comes to formulating arrangements in the South China Sea.⁹² China acknowledges the need to develop confidence building among states in the region, but unwilling to discuss other CBMs, which it feels lie beyond the capacity of the workshop.⁹³ Perhaps most significant, China has intimated a willingness in principle to put aside territorial claims in favor of joint development.

The workshops represent the most serious regional effort thus far for promoting peace and cooperation in the South China Sea. Through track two diplomacy, these meetings serve as informal, private fora for confidence building among nationals from states involved in Spratly Islands jurisdictional disputes.⁹⁴ They have been purposefully designed to bring together representatives from concerned states in the region to discuss non-polemical issues affecting environment, navigation, pollution control, marine research, and possible means of cooperation.

The major contribution of the workshops is that they have moved away from political confrontation, military conflict, and diplomatic inertia toward a process of dialogue and cooperation on the long road to dispute settlement.⁹⁵ In that manner, these workshops have also fostered more salient appreciation of joint

⁹¹ Hasjim Djalal and Ian Townsend-Gault *Preventive Diplomacy: Managing potential Conflicts in the South China Sea* (United States Institute of Peace Press, 1999) 109.

⁹² Townsend-Gault, Above.

⁹³ Townsend-Gault, Above.

⁹⁴ Djalal and Townsend-Gault, Above, 110.

⁹⁵ William G. Stormont *Confidence Building for Cooperation in an Environment of Conflicting Claims to Jurisdiction* Centre for Asian Legal Studies The University of British Columbia <<http://faculty.law.ubc.ca/scs/>> (last accessed 1 August 2002)

development as a potentially useful regional approach towards eventual resolution of the Spratly Islands dispute.

3. *The Workshop Process*

After the Cambodian settlement through the Paris Peace Agreement in 1990, the attention for peace and cooperation in Southeast Asia were focussing on the next conflict agenda, the South China Sea. Confrontation in the South China Sea would be much more serious and would invite the involvement of non-regional states. It was therefore essential to seek ways and means of preventing potential conflicts from erupting into armed conflagration. Since the states concerned were unlikely to seek third-party settlement of their various disputes, a different approach was required. It was necessary to find a way of building confidence and trust in the South China Sea area.

In the late 1980s, the disputes concerning sovereignty over the Paracels and the Spratlys were becoming prominent issues, which might pose threats to Southeast Asian security. Dr. Djalal had been among those who foresaw the possible escalation of a dangerous situation, and had conceived of the possibility of convening informal meetings to discuss confidence building and co-operation, not sovereignty and jurisdiction.⁹⁶ He was drawing on experiences with the Fisheries Task force off the Pacific Economic Co-operation Council (PECC), of which he was a leading member, in facilitating co-operation between the states of Southeast Asia, the Pacific Islands, and Pacific Latin America, where formal inter-governmental initiatives had foundered.⁹⁷

Dr. Djalal and Prof. Ian Townsend-Gault developed a concept document on a workshop on petroleum joint development in Southeast Asia, which was submitted to the Canadian Department of Foreign Affairs. This led to sufficient

⁹⁶Hasjim Djalal "South China Sea Island Disputes" (2000) 8 TRBZ 9, 21.

⁹⁷ Djalal, Above.

financial support from the Canadian International Development Agency for the first phases of the initiative.⁹⁸

The concept of informal meetings on co-operation and confidence building had two basic objectives. First, to manage the potential conflicts by seeking an area in which everyone could cooperate and secondly, to develop confidence building measures or processes so that the various claimants would be comfortable with one another, thus providing a conducive atmosphere for the solution of their territorial or jurisdictional disputes.⁹⁹

The First Workshop on the South China Sea was organised in Bali in January 1990. ASEAN participants specifically and exclusively attended this Workshop so that they could lay down the groundwork. The topics of the meeting were territorial and sovereignty issues, political and security issues, marine scientific research and environmental protection, safety of navigation, resources management, and institutional mechanism for cooperation.¹⁰⁰ The Workshop also discussed the possibility to include other non-ASEAN countries in the next discussion on the South China Sea, particularly Vietnam, China, Taiwan, Laos and Cambodia.¹⁰¹ But it was not easy to bring in China into the discussion, primarily because China considered that the South China Sea issues should not be "internationalized" and be difficult for China to sit down with Taiwan in an international meeting like the South China Sea Workshop, if it were to be a "formal" meeting.

The Second Workshop was in Bandung in 1991. The meeting had become very "inclusive", Vietnam, China, Taiwan were invited. Even land-locked Laos were also invited. Cambodia was invited later after the domestic political situation

⁹⁸ Djalal, Above.

⁹⁹ Djalal, Above.

¹⁰⁰ Statement of the First "Workshop on Managing Potential Conflicts in the South China Sea" (Bali, Indonesia, 1990).

¹⁰¹ Statement of the First, Above.

became clearer.¹⁰² In Bandung the meeting went into more detail discussing the various topics of the first workshop, the roles of major non-South China Sea powers in the region, as well as confidence building measures.¹⁰³

More technical discussions took place on the issues of marine scientific research, marine environmental protection and safety of navigation as well as on resources management. Some ideas to establish a secretariat and to formalize the meeting were aired. More significantly, the participants attending the Bandung meeting agreed to issue a statement saying that the South China Sea disputes should be settled peacefully, that force shall not be used to settle the disputes and that parties to the disputes shall exercise restraint in order not to exacerbate the potential conflicts.¹⁰⁴ This statement was a precursor to a much more formal ASEAN Declaration on the South China Sea in Manila in 1992 and has become guiding principles for efforts to manage potential conflicts in the South China Sea through cooperation.¹⁰⁵ China also pledged to abide by the 1992 ASEAN statement, which had called for mutual restraint in South China Sea activities.

The Third Workshop was in Yogyakarta in 1992; more specific discussions took place on the cooperative projects by establishing specific technical working groups and experts groups.¹⁰⁶ The meeting agreed to establish two technical working groups (TWG), namely the TWG on Marine Scientific Research and the TWG on Resources Assessment.¹⁰⁷

The Fourth Workshop was in Surabaya in 1993; the issue of participation of non-South China Sea countries was already discussed. It was agreed that non-SCS participation would be allowed on a case by case basis to implement specific

¹⁰² Statement of the Second "Workshop on Managing Potential Conflicts in the South China Sea" (Bandung, Indonesia, 1991).

¹⁰³ Statement of the Second, Above.

¹⁰⁴ Statement of the Second, Above.

¹⁰⁵ "Manila, Beijing agree on Spratlys Code of Conduct" (10 August 1995) *Reuters*.

¹⁰⁶ Statement of the Third "Workshop on Managing Potential Conflicts in the South China Sea" (Yogyakarta, Indonesia, 29 June - 2 July 1992).

¹⁰⁷ Statement of the Third, Above.

agreed programmes of cooperation.¹⁰⁸ In the meantime, the TWG on Marine Scientific Research (TWG-MSR) had already begun discussions in Manila and the TWG on Resources Assessment (TWG-RA) had been convened in Jakarta.¹⁰⁹ The Surabaya meeting also discussed the results and recommendations of the two TWG meetings, and further agreed to convene follow-up meeting of the TWG-MS in Singapore. It also agreed to establish the TWG on Marine Environmental Protection (TWG-MEP) and the TWG on Legal Matters- (TWG-LM) and discussed the possibility of establishing the TWG on Safety of Navigation, Shipping and Communications (TWG-SNSC). Finally, the participants also indicated that the workshop series had "reached a stage where it would have to concretize programs or projects to realize cooperative efforts on the basis of a step-by-step approach . . .".¹¹⁰

The Fifth Workshop was in Bukittinggi in 1994. The meeting had already approved some specific projects for cooperation formulated by the Technical Working Groups, particularly a program for cooperation on the study and conservation of bio-diversity in the South China Sea.¹¹¹ The Bukittinggi Workshop further agreed, *inter alia*, to authorize Dr. Djalal to seek support and funding for the project proposal on bio-diversity; to convene another meeting of the TWG on Marine Scientific Research to finalise proposals on sea level and tide monitoring, and on database, information exchange and networking, and to convene the first meeting of the TWG on Legal Matters in Thailand.¹¹²

Until January 1, 1999, the Technical Working Group on Marine Scientific Research has met six times. Manila (June 1993), Surabaya (August 1993), Singapore (April 1994), Hanoi (June 1995), Cebu (July 1996), and Manila again

¹⁰⁸ Statement of the Fourth "Workshop on Managing Potential Conflicts in the South China Sea" (Surabaya, Indonesia, 23-25 August 1993).

¹⁰⁹ Statement of the Fourth, Above.

¹¹⁰ Statement of the Fourth, Above.

¹¹¹ Statement of the Fifth "Workshop on Managing Potential Conflicts in the South China Sea" (Bukittinggi, Indonesia, 26-28 October 1994).

¹¹² Statement of the Fifth, Above.

(November 1998).¹¹³ In addition to the proposed project on biodiversity protection, this TWG has developed two additional projects of co-operation, namely "Study on Tides and Sea level Change", and "Regional Co-operation in the field of Marine Science Data and Information Network in the South China Sea". These proposals were adopted by Sixth Workshop in Balikpapan in 1995.¹¹⁴ Contributions by the governments of Brunei Darussalam, Indonesia and Singapore has made it possible to commence implementation of the project on biodiversity protection, but full execution of this activity will require major funding and negotiation to obtain such support.

The TWG on Marine Environmental Protection has met three times. Hangzhou (China) in 1994, Hainan (China) in 1997, and Manila in 1998 (the joint meeting with Marine Scientific Research). This TWG has formulated a project of co-operation on training program for ecosystem monitoring in the South China Sea.¹¹⁵ The project was been approved in principle by the Eighth Workshop in Pacet, Puncak (Indonesia), and December 1997. At the Joint Meeting in Manila, 1998, it was agreed that an *ad hoc* group of five or so experts would meet to subject the proposal to thorough revision in light of comments, and the final version should be reconsidered and adopted in 1999.

The TWG on Resources Assessment has met in Jakarta, in 1993 and December 1998. The 1993 meeting agreed to appoint 3 co-ordinators. Indonesia for the study of geological basin with regard to hydrocarbon potentials, Vietnam to prepare a study on hard minerals in the South China Sea and Thailand to prepare study on living resources.¹¹⁶ The efforts of Indonesia and Vietnam stumbled on the difficulty in overcoming territorial and jurisdictional issues due to

¹¹³ Statement of the Sixth Meeting of the "Technical Working Group on Marine Scientific Research in the South China Sea" (Manila, 25-28 November 1998).

¹¹⁴ Statement of the Sixth "Workshop on Managing Potential Conflicts in the South China Sea" (Balikpapan, Indonesia, 9-13 October 1995).

¹¹⁵ Statement of the Second Meeting of "the Group of Experts on Marine Environmental Protection in the South China Sea" (Manila, the Philippines, 25-28 November 1998).

the sensitive nature of the subjects. The 1998 Meeting considered a proposal from Indonesian experts to compile a database on non-living non-hydrocarbon resources of the South China Sea, in which the Committee for the Co-ordination of Offshore Prospecting in Bangkok would be invited to collaborate. This proposal was adopted by the Meeting, and then by the 9th Workshop (Jakarta, 1998).¹¹⁷

The TWG on Legal Matters has met in Phuket in 1995, in Chiang Mai in 1997 and Pattaya in 1998. Numerous legal issues involved in developing the co-operative efforts have been discussed. It has agreed that legal officers of the South China Sea countries should exchange information and documentation as well as collect various legislation regarding the South China Sea, particularly on environmental matters. The Fourth Meeting in 1999, focussed on environmental legislation.¹¹⁸

A new activity, which falls loosely under the heading "legal matters", was commenced in 1998. The Study Group on Zones of Co-operation, which was convened in Vientiane, Laos, in May 1998. This idea arose from a proposal made at the 8th Workshop.¹¹⁹ The reasoning was that "joint development" was a much-used phrase, but not all participants were aware of the many different arrangements, which fell into this category. The title 'zones of co-operation' was adopted to allow coverage of the full range of co-operative jurisdictional arrangements at sea, including joint fishing zones and cross-boundary oilfields. Resource persons prepared a comprehensive set of materials, comprising the texts of relevant treaties, as well as academic writings, and presentations covered

¹¹⁶ Statement of the Eighth "Workshop on Managing Potential Conflicts in the South China Sea" (Puncak, Indonesia, 2-6 December 1997).

¹¹⁷ Statement of the Ninth "Workshop on Managing Potential Conflicts in the South China Sea" (Jakarta, Indonesia, 1-3 December 1998).

¹¹⁸ Statement Of the Fourth Meeting of "The Technical Working Group On Legal Matters in the South China Sea" (Koh Samui, Thailand, 27-28 September 1999).

¹¹⁹ Statement of the Third Meeting of "The Technical Working Group on Legal Matters in the South China Sea" (Pattaya, Thailand, 12-16 October 1998).

developments in all parts of the globe.¹²⁰ Some issues were discussed in detail, e.g. the application of civil and criminal law on installations within a joint development area. Its results discussed at the 9th Workshop.¹²¹

4. Confidence Building

The resolution of the Cambodia situation in 1991 has allowed Southeast Asian states to focus their attention on the South China Sea as a potential arena for regional conflict. Asian states do not formulate vacuum foreign policies for the South China Sea issue. Considerably overlapping jurisdictional claims, persistent military occupation of islands, aggravated military spending and the leasing of disputed areas to international petroleum companies have all combined to aggravate tensions among states in the region. The issue of sovereignty disputes in the South China Sea thus surfaced in the early 1990s as a serious regional concern.

The ingredient most necessary for resolving the South China Sea is sustained confidence and transparency between the governments of Southeast Asia and China. Confidence and trust among governments are critical for progress in successful negotiations. Mechanisms for enhancing CBMs among claimant states remains critical for launching negotiations, which aimed for cooperation in the South China Sea. Through CBMs, functional cooperation and direct communication could be fostered among the claimants as a means to preclude territorial disagreements from escalating into military confrontation.¹²² Measures for building confidence can lead to a better climate for negotiations and more positive results.

Confidence building aims at making the political climate more conducive to certainty. Confidence building engenders working relationships where the trust,

¹²⁰ Statement of the Third Meeting, Above.

¹²¹ Statement of the Ninth, Above.

¹²² Michael S Lund. *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy* (United States Institute of Peace Press, Washington D.C., 1996), 31.

understanding, and respect built up over time can make subsequent negotiations easier, more efficient, and more constructive.¹²³ This can only come about through increased transparency of national policies and capabilities. Transparency thus becomes key to confidence building. In the case of the South China Sea, several measures can contribute to transparency and thus build confidence among the concerned governments.

One of the focus areas of the workshop is the promotion of Confidence-Building Measures (CBM) or a Confidence-Building Process (CBP).¹²⁴ Statement was made on the need to resolve any territorial or jurisdictional disputes in the South China Sea by "peaceful means through dialogue and negotiation", that "force should not be used to settle territorial and jurisdictional disputes", and that "the parties involved in such disputes are urged to exercise self-restraint in order not to complicate the situation".¹²⁵ This statement also was adopted as the ASEAN Declaration on the South China Sea in Manila in July 1992. This illustrates of how accomplishments in "track two" can find their way to "track one" fora.

The situation in the South China Sea is also kept under review by various fora and officials. It is also much scrutinised by researchers and academics. It has made a contribution to the overall debate by identifying aspects of the whole picture, which are sometimes ignored or neglected because of insufficient (and accessible) data. The South China Sea issues now is also being discussed in other formal and informal fora, such as in the ASEAN-China Dialogue, in the Informal Talks within ARF as well as in ASEAN-ISIS. There is no direct link between the workshop and these activities, but there are clear signs of support for the Workshop Process, e.g. from the ASEAN-European Union Dialogue, the Non Aligned Movement and various governments and international organizations. It indicated that this support might assume tangible dimensions in the near future.

¹²³ Lund, Above.

¹²⁴ Statement of the Second "Workshop on Managing Potential Conflicts in the South China Sea" (Bandung, Indonesia, 1991).

¹²⁵ Statement of the Second, Above.

In the course of Workshop discussions over the years various confidence building measures or processes have been raised, such as, the need for "non-expansion of existing military presence."¹²⁶ This principle was supported by many but opposed by a few, arguing that this was not a matter for the Workshop to discuss. The possibility of "exchange of military commanders" who are responsible for the security of the multiple claims area in the Spratly Islands group was also supported by some and opposed by others.¹²⁷ Again, arguing that, was not a matter for the Workshop to discuss. It was suggested, however, that some transparency of the activities in the disputed area was needed.¹²⁸ In other words, the workshop tried to look for CBMs or CBPs that could secure the respect and participation of all.

The latest Confidence Building Processing as the result of the workshop is the Anambas expedition. Pursuant to the final Statement of the Eleventh Workshop on Managing Potential Conflicts in the South China Sea (Cengkareng, 26 - 29 March, 2001), the Research and Development Agency of the Department of Foreign Affairs of the Republic of Indonesia in cooperation with "Pusat Studi Kawasan Asia Tenggara", the National University of Singapore, and the Indonesian Science Institute (LIPI) carried out an expedition called the "Anambas Expedition" to explore and study the biodiversity of Anambas Islands.¹²⁹

The "Anambas Expedition" is a breakthrough in exercising confidence-building measures for managing potential conflict in the South China Sea, involving interested parties in the South China Sea region. It is the first expedition

¹²⁶ Statement of the Fifth "Wokshop on Managing Potential Conflicts in the South China Sea" (Bukittinggi, Indonesia, 26-28 October 1994).

¹²⁷ Statement of the "Sixth Wokshop on Managing Potential Conflicts in the South China Sea" (Balikpapan, Indonesia, 9-13 October 1995).

¹²⁸ Statement of the Sixth, Above.

¹²⁹ Indonesian Department of Foreign Affairs *Anambas Expedition a Confidence Building Measure for Managing Potential Conflict in the South China Sea* (9 - 23 March 2002)

<<http://www.dfa-deplu.go.id/policy/releases/2002/pr-14-120302.htm>> (last accessed 25 August 2002).

of its kind that involves scientists from the region. The expedition itself is regarded as a collective endeavor in conducting marine scientific research in the area and in the framework of developing concrete programs of cooperation in managing potential conflicts through second track diplomacy. It also symbolizes a synergy between the first and the second track diplomacies, to establish closer ties between scientists and governments in the region and to provide concrete results for the benefit of the peoples in the region.¹³⁰

The expedition explored the Islands of Anambas, a group of islands situated in the South China Sea, approximately 130 nautical miles Northeast of the Eastern entrance of the Singapore Strait, within the waters of the Republic of Indonesia. The Islands are located around 225 nautical miles from Batam Island and, at a moderate speed, can be reached in about 24 hours from the point of departure at Batu Ampar Port, Batam. Anambas Islands have been selected as a venue for the expedition essentially because they are a non-contentious area. In the spirit of cooperation and mutual understanding, the governments of the South China Sea region have contributed to the cost of the expedition. The expedition is followed by a three-day workshop at the National University of Singapore. The results of the biodiversity survey will be further studied in various fields and its report is discussed during the forthcoming 12th Workshop on Managing Potential Conflicts in the South China Sea, which is held in Bandung in May 2002.¹³¹

The workshop continues its efforts to identify such measures and its process of Confidence Building is informal. However it is a consensual process, where all participants feel free to exchange views for lasting solutions. This process also aims to temper distrust and to promote compromises that lead to mutual benefits and cooperation.

¹³⁰ Indonesian Department of Foreign Affairs, Above.

¹³¹ Indonesian Department of Foreign Affairs, Above.

V. PROSPECTS FOR JOINT RESOURCE DEVELOPMENT

A. Background.

The most salient shift of emphasis between the law of the sea in 1945 and after it developed in 1975, was the qualification of previously enjoyed unilateral rights by concepts which required different forms of collaboration or co-operation. States had to come to terms with the fact that their rights were qualified by obligations, often to neighboring states. Nowhere were these obligations more tangible than between the littoral states of a semi-enclosed sea. This concept, like that of single ecosystem management, which evolved by scientists, posed new challenges for lawyers and policymakers. The most pertinent provisions of the 1982 Convention addressing the need (or obligation) for different forms of co-operation are those dealing with the regimes of the EEZ (Articles 61- 67) and that of Enclosed or Semi Enclosed Seas (Article 123).

Creation of a joint authority dedicated to common development of resources within the Spratlys area may be the most appealing and logical solution for a territorial dispute as convoluted as this one. Establishing a "Spratly Resource Development Authority" would be consistent with statements by the Chinese government which aver that while sovereignty over the Spratly Islands is non-negotiable, joint ventures to exploit the natural resources of the South China Sea may be discussed.¹³²

Essential for establishing a cooperative joint development regime in the South China Sea is agreement by the parties to set aside, without prejudice, their claims to the Spratlys and jointly form a "Spratly Resource Development Authority" for managing resource exploitation, including fisheries, the environment, and safety of navigation. In this respect, defusing the Spratly Islands dispute would not require resolution of the protracted sovereignty question.

¹³² Chinese foreign minister Qian Qichen "Chinese Drilling Ship Leaves Disputed Waters" (4 November 1992) *Economic Newswire Japan*.

Rather, a kind of multilateral "Authority" analogous to that for mining the deep seabed in the 1982 LOS Convention might be established.¹³³

A Spratly Authority could well serve all the claimants' interests. Costs involved in unilateral exploration are enormous; military bases on the islands impede extraction of resources in the area; and so long as the dispute persists, the region will remain threatened with instability. A cooperative regime such as a joint resource development authority would offer a relatively quick solution and palatable compromise. Such an authority could freeze all claims for the indefinite future, ensure demilitarization of the zone, facilitate resource exploitation and provide acceptable mechanisms for dispute resolution.¹³⁴

B. Economic Development

The uncertainty over maritime boundaries has contributed to insecurity felt in many states. This insecurity is being felt in the manner in which hydrocarbon exploration and production is being conducted in the area. While hydrocarbon exploration and production operations are well established along the coastal areas of the littoral states little is known of the rest of the South China Sea and the Spratlys in particular.

In 1989, the Chinese government sent a survey vessel through the South China sea and estimated that the Spratlys held deposits of 25 billion cubic metres of natural gas, 370,000 tons of phosphorous and 105 billion barrels of oil with an additional 91 billion barrels of oil in the James Shoal area off the North Borneo coast.¹³⁵ In 1988, the US geologists estimated reserves of 2.1-15.8 billion barrels of oil while Russian estimates are 7.5 billion barrel of oil equivalents, 70 per cent

¹³³ Mark J. Valencia "A Spratly Solution" (31 March 1994) *Far Eastern Economic Review* 1.

¹³⁴ Mark J. Valencia and Masahiro "Southeast Asian States: Joint Development of Hydrocarbons in Overlapping Claim Areas?" (1986) 16 ODIL 211.

¹³⁵ John W. Garver "China's Push Through the South China Sea: The Interaction of Bureaucratic and National Interests" (September 1992) *The China Quarterly* 101.

of which are probably gas resources.¹³⁶ In addition to oil and gas deposits the area is also rich in tin, manganese, copper, cobalt, nickel and other materials.¹³⁷ The waters around the Spratly and Paracel islands are also rich in fish stocks.

Malaysia also has found gas fields in disputed waters, where as, its main oil production fields are much closer to shore. In the James Shoal area off the Sarawak coast, Malaysia has estimate reserves of 12 trillion cubic metres of gas. Brunei has also developed a large offshore capability but has restricted its activity to areas close to shore. The only production activity off the Philippine coast is also well within its archipelagic waters. Estimates of the reserves for these areas range between 60 and 300 billion barrels of oil.¹³⁸ Vietnam has also been more successful with the Bach Ho and Rong fields which are situated off the Southeast Vietnamese coast near Ho Chi Minh City total reserves for these fields are estimated at 400 billion barrels of oil with current production of 170,000 barrels of oil per day.

It is important to note that the majority of the exploration and almost all of the production in the South China Sea are being conducted well within the territorial seas of the littoral states. Except, China has begun exploration off Vanguard Bank, which is much closer to Vietnam and Natuna Island (Indonesia) than Mainland China.

C. Security Implications

The security implications of this rush for hydrocarbons are quite substantial. The discovery of the natural resources potential, if not actuality, of the area has increased the stake in the disputes. In addition to complicating the nature of the overlapping claims, unilateral exploration and development of oil and gas in

¹³⁶ Bruce Blanche and Jean Blanche "Oil and Regional Stability in the South China Sea" (November 1995) *Jane's Intelligence Review*, 511.

¹³⁷ Eoin H. MacDonald *Offshore Minerals Other than Hydrocarbons in Southeast Asia* in Chie Lin Sien and Colin MacAndrews eds. *Southeast Asian Seas: Frontiers of Development* (McGraw Hill, Singapore, 1981), 56.

¹³⁸ Blanche and Blanche, Above.

the disputed area can lead to military confrontations. Tensions over the territorial disputes in the South China Sea have recently spilled-over to impact on hydrocarbon exploration activities in the region.

In May 1993 a Chinese Ministry of Geology seismic survey vessel ventured into Block 5-2, under lease to British Petroleum (BP) and Norway's Statoil. BP has drilled two wells in this block but the results have been kept secret because of Vietnamese concern over China's reaction. The Chinese vessel refused to leave the block despite Vietnam's protests.¹³⁹

Tensions were further increased in April 1994. Following the announcement by Crestone Energy Corporation of Denver that it would begin a seismic survey of the Wan'an Bei-21 (WAB-21) block it had leased from China, Mobil Corporation announced that it had entered into a production sharing contract with Vietnam for the Blue Dragon area (Block 5-1B) which borders WAB-21.¹⁴⁰ Mobil began their surveys, the Vietnamese and Chinese Navies began to harass these efforts. In July 1994 China announced that it had sent two warships to the area to stop the Vietnamese operations and did blockade a Vietnamese rig operating within the WAB-21 area. The Chinese turned back at least one Vietnamese vessel that was ferrying supplies to the rig.¹⁴¹

In August the Vietnamese retaliated when one of their warships forced a Chinese research vessel to leave the Crestone area. Tensions were reduced, however, in November when the Chinese and Vietnamese leaders met in Hanoi and agreed to "refrain from all acts that make things more complicated or broaden conflicts".¹⁴² The most significant event in this standoff was the Chinese refusal to resist the Vietnamese expulsion of the Chinese Navy's research ship out of the Crestone concession. This is probably because the Chinese did not want to

¹³⁹ Yojana Sharma "Asia Shook Up Over Sino-Vietnamese Spratlys Handshake" (26 November 1994) *Inter Press Service*.

¹⁴⁰ Sharma, Above.

¹⁴¹ Sharma, Above.

¹⁴² Sharma, Above.

frighten the ASEAN states. Moreover as Westerners were on board the Chinese may be willing to show restraint in order not to frighten off investors.

While the immediate crises were resolved peacefully in 1994 the failure of the Vietnamese and Chinese leaders to agree on some form of code of conduct in the disputed area allows for future clashes to occur. Indeed Vietnam is defying China by going ahead with exploratory drilling in Block 135, which overlaps the southern portion of WAB-21. A drilling rig operated by VietPetro containing Russian technicians was deployed in the area in January 1995. In February 1995 Vietnam also opened tenures for blocks 122-130 all in waters claimed by China. There has been little interest in the area, however, as it would be in the deepest waters off the Vietnamese coast and little is known about the area.

There has also been a great deal of concern in Indonesia over the full extent of the Chinese claim. In July 1995, however, the foreign ministers of the two countries met in Beijing and according to Ali Alatas, the Indonesian foreign minister, and the Chinese assured him that China did not claim any of the waters around Natuna. China's increased reliance on external sources of oil and gas may be forcing it to modify its claim. China has begun negotiations with Indonesia and Malaysia for liquefied natural gas from the Indonesian Natuna fields and the Malaysian Central Luconia fields. Both of these areas are within the Chinese historic waters claim and if China agrees to purchase the gas from these two sites it will signal de facto acknowledgement of Malaysian and Indonesian sovereignty over the areas.

While China appears to be distancing itself from its claims over the Natuna gas fields, Indonesia continues to be watchful of Chinese actions. In October 1995 it announced that it would base a squadron of its newly acquired British-made Hawk-200 fighter jets in West Kalimantan on Borneo Island, at its closest base to the Natuna fields.

D. Joint Development Areas

The idea of setting aside claims to sovereignty in favor of joint resource development has been articulated on many occasions by Chinese representatives. However, the Chinese concept of "joint resource development" appears to be defined as bilateral cooperation in disputed areas, while ASEAN claimants appear to prefer a multilateral joint development scheme. A series of bilateral development agreements would in effect expand the Chinese claim to resources in contested areas that would most likely not be open to Chinese participation following a final settlement.

The idea of joint resource development has been proposed in various forms, including as part of the Indonesian-hosted workshops. University of Hawaii and East-West Center researchers Mark Valencia, Jon Van Dyke, and Noel Ludwig have developed a range of possible options for consideration as part of a multilateral joint resource development authority similar to the Antarctic Treaty, a multilateral agreement to share resources in Antarctica. The Timor Gap treaty between Australia and Indonesia, agreements in the Persian Gulf, and other bilateral resource development agreements provide ample precedent for considering this approach; however, a multilateral maritime development authority, if implemented, would be the first of its kind.

While there are numerous precedents for such an arrangement, it should be noted that such a mechanism is not a solution in and of itself but rather a demonstration of the political will of the various claimants to reach a working arrangement to manage the disputed territory. There are four main reasons states may be willing to enter into Joint Development Areas (JDAs). First, the desire, in each state, to produce hydrocarbon resources outweighs the desire to win a boundary dispute, or some other item on the national agenda of each of the states. Second, the states already have close relations or they see the opportunity, in the JDA, to demonstrate trust, amity and friendship which will lead to closer relations. Third, where one or more state does not possess the technological expertise for offshore development and the others see the opportunity to gain by selling such technology to the others. Finally, when all lack sufficient

management capacity, then by pooling resources in a JDA could allow all to effectively exploit their offshore resources.¹⁴³

In order for a JDA to be practical the states involved must accept that they are sharing the resources in the area with all. Should any consider the agreement to be an interim measure that can be revoked at any time the agreement is doomed to failure. In addition the terms and conditions of the agreement must be fully supported and accepted by all the participants. Finally, the member-states need to remember that the most important objective of the JDA is the search for and development of resources in the area.

There are also several questions that would have to be addressed in terms of a South China Sea JDA. Who would be included? Where would the agreement take place? How would revenues be divided? Finally, who would manage the exploitation that is would national governments or a supra-national committee retain granting rights?

The first two of these questions can be combined in raising the point of the second: that is, what area will fall under the agreement? The Spratlys are not a group of large islands that are easily identifiable as a group or chain. The majority of the named features in the Spratlys are not islands at all, but reefs, rocks and cays. A realistic assessment of the features, under international law would allow perhaps a dozen or so islets to generate 12 nautical mile territorial seas but not Exclusive Economic Zones (EEZs). Another solution would be to derive a joint development area based on overlapping territorial or historic water, EEZ and continental shelf claims. The problem with this approach is that the multiple claim area, which would become the JDA, rewards those with the most extravagant claims. This leads to the question of membership. Under these alternatives those with the most extravagant claims to the area would be granted full participation in

¹⁴³ William G. Stormont and Ian Townsend-Gault "Offshore Joint Development: Functional Instrument? Compromise? Obligation?" (1994 Conference of the International Boundaries Research Unit, University of Durham-England, July 1994), 24.

the JDA while those with partial claims to the multiple claim area would be granted only limited rights.

The division of revenues and the management of the development are also important questions that need to be addressed in any JDA. Again issues of membership are affected in determining the proportion of total revenues each member would receive. In the South China Sea the China-Taiwan dispute has added significance as they would either have to be allotted separate allotments or would have to agree to share a Chinese' portion. The development of a management structure for the JDA is also important. Would a supra-national management committee be struck and how would national governments be represented on the committee?

Would this committee be given authority to develop, implement and enforce policies on granting of exploration and production rights, civil and criminal jurisdiction, disposition of resources, reserves management environmental and safety issues, foreign investment limits and provisions regarding deposits located along the boundary of the zone.¹⁴⁴

Professors David Denoon and Steven Brams of New York University have proposed that a new mathematical technique called "fair division" be used to help facilitate the negotiations over sovereignty. They suggest a two-stage negotiation: first between ASEAN and China and then among ASEAN members. In fair division, each side is given an agreed-upon number of points to allocate over various assets they desire and a neutral umpire then calculates how to divide the assets in a way that gives each side the same percentage of its preferences. As an example, Denoon and Brams suggest that the South China Sea could be divided into five zones and the PRC and ASEAN could bid for the areas that were most important to them. Thus, the PRC and ASEAN might each get some of the islands and some of the deep-water hydrocarbon development areas. The advantage of

¹⁴⁴ William G. Stormont and Ian Townsend-Gault "Ocean Diplomacy, Joint Development and International Law" (the Ninth Asia Pacific Roundtable, Kuala Lumpur-Malaysia, June 1994).

this technique is that it would be fair and resolves sovereignty definitively, thus making it easier to get businesses to invest in the follow-on development needed.

A JDA is impractical in the South China Sea, as there is no agreement among the claimant's states over any of these points. There is no indication among any of the claimant's states, with the possible exception of the Philippines that the search and production of oil and gas outweighs their desire to gain sovereignty over their claim area. Malaysia is unwilling to allow any JDA to include the area that they claim. Vietnam will not allow any joint development that will include parts of its continental shelf. China and Taiwan do support joint development but insist the agreement cover the entire disputed area. Moreover this can only occur after the others recognise Chinese sovereignty in the area. This leaves only the Philippines and to a lesser extent Vietnam as the only supporters of a multilateral joint development agreement for the area.

E. Results of the Workshop on the Joint Cooperation.

The Workshop process has the scope and scale of ideas and proposals for co-operation, which have been advanced since its work began. They have succeeded in attracting the participation of a great number of the most senior experts in the region in a variety of fields, marine science, ecology, marine environmental protection, navigational safety, hydrography, geology, and law. Many of the participants in the Exchange of Hydrographic Data and Information are the Hydrographers for their respective countries. The fact that regional authorities facilitate their participation is further evidence of the degree to which the region is committed to the search for peace in the South China Sea.¹⁴⁵

The modalities of implementing the agreed project proposals were discussed and the most salient problems are financial support and the transformation of the perception of political obstacles into political will of

¹⁴⁵ Statement of the Second Meeting of "The Group of Experts on Hydrographic Data and Information Exchange in the South China Sea" (Singapore, 20 October 1998).

cooperation.¹⁴⁶ Practically all countries in the South China Sea have indicated willingness to participate in the implementation of the agreed programs either in providing expertise, facilities or even financial resources. But there is also a school of opinion which holds that implementation should be left to national institutions alone, due to the sensitive nature of the issues dealing with territorial and sovereignty claims.¹⁴⁷

In his Keynote Address, Indonesian foreign Minister Alatas recommended the Eighth workshop participants to approach this issue with a new sense of purpose, promoting joint implementation of the agreed programs for cooperation. Mr. Gary Smith, then Canadian Ambassador took up this theme to Jakarta.¹⁴⁸ Speaking on behalf of the Canadian International Development Agency, Ambassador Smith not only added his voice to those urging a focus on implementation, but also indicated that CIDA was willing to make available "modest support" in aid.¹⁴⁹

A start was made with the Study Group on Zones of Co-operation in 1998. With a quasi-lecture style supported by 400 pages set of materials, a framework was created whereby participants could absorb information from experts, ask questions and most importantly of all volunteer information. The meeting marked by such a high degree of collegiality and success. The cooperation activities have drawn the interest of a large number of organisations, governmental and non-governmental, domestic and international. Many have indicated willingness to pay a useful role in the Workshop process. This places the workshop participants to

¹⁴⁶ Statement of the Seventh "Workshop on Managing Potential Conflicts in the South China Sea" (Batam, Indonesia, 1996).

¹⁴⁷ Statement of the Seventh, Above.

¹⁴⁸ Statement of the Eighth "Workshop on Managing Potential Conflicts in the South China Sea" (Puncak, Indonesia, 2-6 December 1997).

¹⁴⁹ Statement of the Eighth, Above.

enter into discussions with them in an attempt to marry their priorities and claimants' interests.¹⁵⁰

The workshops focussed on encouraging discussion and dialogue among the parties to the territorial disputes with the aim of finding the basis for a solution that would be acceptable to all concerned. This brings to the subject of joint development. Joint development is one of those concepts which means different things to different people, and some of these ideas have little basis in reality. For this reason, the work of the Study Group on Zones of Co-operation could fill an important gap in the knowledge base of a number of participants. Joint development, through the First TWG on Resource Assessment and the Study Group on Zones of Co-operation agreed:¹⁵¹

1. That the joint development concept has excellent potential for application in the South China Sea, especially given the statement of Chinese Prime Minister Li Peng in Singapore in 1990, and repeated since, expressing China's willingness to shelve territorial or sovereignty claims in favour of joint development.
2. That we should study the various concepts or models of joint development around the world and to consider which aspects of these experiences could be applied to the South China Sea area.
3. That we should apply the joint development concept to a "zone to be defined". The problem is how to define the "zone" for the joint development or joint cooperation.

Sooner or later, agreement on the following four points will be required:¹⁵²

- a) The zone within which cooperative or joint activities is to take place;
- b) The nature or topics that will be the subject of the agreement (e.g. fisheries, minerals, gas, oil, environment, marine scientific research, marine parks, etc.);

¹⁵⁰ Statement of the Ninth "Workshop on Managing Potential Conflicts in the South China Sea" (Jakarta, Indonesia, 1-3 December 1998).

¹⁵¹ Statement Of the Second Meeting Of "The Study Group On Zones Of Co-Operation In The South China Sea" (Tabanan- Bali, Indonesia, 27 June-1 July 1999).

¹⁵² Statement Of the Second Meeting, Above.

- c) The mechanism for joint development, which could be an Authority or a loose coordinating organization or arrangement; and
- d) Countries that shall participate in Joint Development or Joint Cooperation activities.

Agreement on these four points would be the *sine qua non* for serious consideration of the possible role of joint development arrangements in the South China Sea. Following the First Meeting of the TWG on Resource Assessment, Dr. Djalal suggested a possible "zone". All claimants could cooperate on the basis of the Law of the Sea Convention of 1982.

According to the Convention on the Law of the Sea, co-operation is enjoined on all coastal states, especially those that are littorals of an enclosed or semi-enclosed sea.¹⁵³ Article 123 (d) of the Convention states that "States bordering on enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties. (And) to this end, they shall endeavour to invite, as appropriate, other interested states or international organizations to co-operate with them..." The workshop debate was on the question, whether or not the South China Sea constitutes an 'enclosed or semi-enclosed sea' within the meaning of this Article.¹⁵⁴ Much of the debate on these issues has been highly politicised, some countries wish to answer in the negative to escape the obligations. Others produce highly legalistic textual analyses in support of one contention or the other.

Surely, this Article attempts to put in legal language a concept, which derives from single ecosystem management, and hence the requirement to co-operate is functionally driven. The legal-political element arises from the natural state of the body of water in question, not the other way around. The participants agreed that, this workshop is not the place for a major analysis of Article 123, but to raise the issue and to illustrate the problem. At the end, the participants agreed, that the Workshop process and other initiatives focusing in policy, management,

¹⁵³ See *United Nations Convention on the Law of the Sea (UNCLOS)*.

¹⁵⁴ Statement of the Ninth, Above.

and law must assist the authorities of the region to come to a better understanding of the relationship between the norms of the law of the sea and the human security/food security imperatives in confronting the challenge of ocean management in the South China Sea.¹⁵⁵

The South China Sea issue has a long history of confrontation between the claimants with the sensitive nature of South China Sea issues precluded official discussions on the subject. Based on the negative prospects of convening a successful intergovernmental meeting, the South China Sea workshops were designed to bring together academics and government personnel in their private capacities. This Managing Potential Conflicts is the creation of Ambassador Hasjim Djalal, who envisioned a "two pronged" approach to the territorial and jurisdictional dispute. They are, to focus on areas where cooperation involving all the littoral states of the South China Sea could be developed and secondly, to seek ways to prevent tensions in the region developing into armed conflicts and to encourage confidence building measures that would contribute to the creation of an atmosphere conducive to the possible resolution of the conflict.

Links between governments and a clear identification of the issues become possible in a non-binding track two process. Rather than engage in the pointless posturing and fruitless debate over the justice of claims, which would occur in formal surroundings. These initiatives, such as the South China Sea workshops allow an entrée into the "real" issues. These issues are management of living and non-living resources, navigation and environmental protection and others. Taken as a whole, the challenge of integrating these separate yet intimately linked components may be considered as the objective of an effective ocean management scheme.

The South China Sea is a region with a long-standing history of antagonism between states. It is an extremely challenging arena to attempt and to fully develop the complicated mixture of rights and obligations in ocean management. The Managing Potential Conflicts in the South China Sea is one forum, which tries to develop an atmosphere of cooperation, whereby states acknowledge that they have not only rights when it comes to exploiting the wealth

¹⁵⁵ Statement of the Ninth, Above.

VI. CONCLUSIONS

Track two diplomatic initiatives in the South China Sea come into situations where more formal avenues for discussion are destined to fail or even get started. The South China Sea where a long history of confrontation between the claimants with the sensitive nature of South China Sea issues precluded official discussions on the subject. Based on the negative prospects of convening a successful intergovernmental meeting, the South China Sea workshops were designed to bring together academics and government personnel in their private capacities. This Managing Potential Conflicts is the creation of Ambassador Hasjim Djalal, who envisioned a "two pronged" approach to the territorial and jurisdictional dispute. They are, to focus on areas where cooperation involving all the littoral states of the South China Sea could be developed and secondly, to seek ways to prevent tensions in the region developing into armed conflicts and to encourage confidence building measures that would contribute to the creation of an atmosphere conducive to the possible resolution of the conflict.

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The South China Sea is a region with a long-standing history of antagonism between states. It is an extremely challenging arena to attempt and to fully develop the complicated mixture of rights and obligations in ocean management. The Managing Potential Conflicts in the South China sea is one forum, which tries to develop an atmosphere of cooperation, whereby states acknowledge that they have not only rights when it comes to exploiting the wealth of the South China Sea but also obligations.

Recommendations

1. Enhancing Dialogue and Mutual Understanding in the South China Sea.

Larger countries should be mindful of the views of their neighbours and take steps to ensure that they are not perceived to be domineering or bullying their smaller neighbours. Realization by the claimants to the disputes that the outbreak of armed conflict will not settle any disputes, nor will it bring benefits to either parties, and is in fact inimical to the interests of all. The claimants must develop the political will to settle their disputes peacefully and to take measures to prevent conflict and to focus on their responsibilities with respect to the South China Sea.

It is necessary to broaden participation in cooperative programs and to increase the areas of cooperation in a way, which is linked to economic development. If the benefits are seen to be mutual, the chance of success is all the greater. The approach should be inclusive rather than exclusive. The claimants should refrain from legislative acts and unhelpful or provocative acts, and should try to shift public opinion from support for a "hard line" to a more accommodating stance based on the need for co-operation e.g. through some form of joint development.

2. Enhancing Transparency in the South China Sea.

There is a need to increase "transparency" in national policy, legislation and documentation and to facilitate more frequent meetings between the legal officers of the various regional countries in order to exchange their documentation and information as well as their legislative planning.

Preventive diplomacy requires patience, tenacity and consistent efforts. There is still a lot to be done to increase "transparency". All parties who have an interest in the solution of the problems, either regionally or internationally should undertake preventive diplomacy. For instance, Regular military to military cooperation should be established in the area of search and rescue and Informal dialogue should be promoted among military representatives on standard operating procedures and rules of engagement, uniform international standards for vessel and aircraft transiting the region should be established, or promoting joint

accessed to commercially available satellite and other remote sensing data showing what happening on disputed featured.

Regional Forum (ARF) Concept and Principles of Preventive Diplomacy (ASAC,

3. Minimizing Conflict and Promoting Conflict Resolution in the South China Sea.

B Countries in the region should continue to develop various fora for dialogue, either bilateral or multilateral, either formal or informal. The various fora for dialogue should hopefully in the end be able to produce a set of agreed code of conduct for the region. Countries should pursue various avenues of peaceful settlement of disputes. Successful efforts often begin by informal efforts, either through track-two process or through informal track- one process. Only after those efforts indicate some possible success, a more formal approach of track-one could be attempted. This was the case with Cambodian (which started with informal cocktail parties), the Southern Philippines and the South China Sea Workshops.

C Third party mechanisms for disputes settlement should also be explored and utilized, such as good offices, mediation, arbitration, and even if necessary adjudication through the International Court of Justice or the Law of the Sea Tribunal. Drawing from the ASEAN Treaty on Amity and Co-operation, ASEAN had already formulated certain mechanism for dispute settlement among member countries, a new mechanism for the Asia Pacific region as a whole should also be considered.

The countries in the South China Sea should do everything possible to settle their land, maritime and jurisdictional boundaries as soon as possible and respect the agreed boundaries, the principles of International Law, particularly to the Law of the Sea Convention 1982 and their willingness to submit to adjudication if negotiations between the parties concerned do not bring solution within reasonable time. The various models of joint development should also be considered as interim measures adopted pending delimitation. Track Two processes should be inventive and imaginative in considering approaches to jurisdictional issues, which might be adopted by Track One.

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