

Conflict Management and Negotiations in the South China Sea: The ASEAN Way?

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1. Introduction

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 after 1949, i.e. the so called «ASEAN Way» also referred to as the «informal» style and the «formal» management style that is proposed by the West.¹ This division is especially interesting since the former Malaysian deputy Prime Minister Anwar Ibrahim argued in Newsweek «We need to *intervene* before simmering problems erupt into full-blown crises»(italics added).² After criticism from Thailand and Philippines concerning the Anwar incident in Malaysia, where Anwar was charged for misuse of power and sexual misconduct cleavages between the ASEAN emerged. 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 ASEAN Hanoi Summit that followed the declaration proved to be more open and for the first time members criticized each other openly in what priorly was considered internal affairs.³ We can see a split between Thailand and the Philippines, the more «democratic» states, and Singapore, Malaysia, and the other states in ASEAN regarding the question of intervention and openness. The Thai foreign minister Surin termed this new change as «constructive intervention» but had to change this to «flexible engagement» after stark criticism. The Singaporean Foreign Minister warned that this change to intervention in internal affairs would «imperil ASEAN's future»⁴ This change, if it had an effect, would be the breakdown of the traditional ASEAN way of handling disputes informally, but will the conflict

¹ For an evaluation of the «evolution» of conflict management styles in Pacific Asia see: Niklas Swanstrom & Ramses Amer, «Conflicts and Cooperation in Pacific Asia», *International Studies*, No. 3, autumn 1996, U.I. Stockholm, p. 52-71.

² Anwar Ibrahim, «Crisis Prevention», *Newsweek International*, July 21, 1997, p. 13.

³ Editorial, «Agreeing to Disagree», *Asiaweek*, January 8, 1999.

management process change? The ASEAN way has been criticized for being ineffective and more of a reason for the leaders to play golf and avoid regional criticism. Human Rights activists have criticized this form of management, especially since Burma joined ASEAN and is now 'protected' by the ASEAN way. Is then this form of conflict management impossible and has it been used in the SCS conflict at all? This study is closely related to the debate 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, although due to limited space I will not deal with this explicitly.⁵ There is a thriving debate about the informal way of dealing with disputes in ASEAN, but is this applicable to the SCS conflict in which China is an important actor?

There has also been a long debate about the possibility to *solve* the dispute in the South China Sea and most actors, including China, are well aware that the conflict needs a multilateral approach, even if China has been reluctant to accept this. It would be of interest to see how the conflict management in the South China Sea has been conducted and what conclusions we can draw from the experience of this specific dispute. My prime interest in this paper will be the impact of the conflict management process and how the negotiations between the actors are conducted.

The paper includes 2) definitions and selection of cases, 3) background and the issues of the SCS conflict. This is more of a service for the reader who feels that an update of the background is necessary. If however the reader feels comfortable with the dynamics behind the conflict, chapter three is not necessary to read since it has been discussed at length in other writings. Chapter four deals with the conflict management process, and chapter five wraps up the findings.

2. Definitions and selection of cases

My thought is to follow the negotiations concerning the delimitation of the SCS from the beginning of the conflict (1973 Vietnam-China) to the contemporary verbal conflict primarily between Thailand and Malaysia regarding openness, sovereignty, and non-intervention. Another limitation is that I will only look at those negotiations that China has been involved in, due to two factors:

1. China is the primary actor; many believe that if China could be convinced to settle the conflict we would soon see the light at the end of the tunnel.
2. China is involved in most of the conflicts, and there are few conflicts in the SCS proper that involve other bilateral actors.

⁴ Eng Peter, «Transforming ASEAN», *The Washington Quarterly*, Winter 1999, pp. 56, 60.

⁵ For a more developed discussion see: Haidi Soesastro, «ASEAN and the Political Economy of Pacific Cooperation», *Asian Survey*, No. 23 (12) December 1983. Peter King & Yoichi Kibata, *Peace Building in the Asia Pacific Region*, Allen & Unwin, St. Leonards, 1996. Askandar Kamarulzaman, *ASEAN as a Process of Conflict Management*, Ph.D. Dissertation, Bradford, Department of Peace Studies, University of Bradford, 1996. Ian Townsend-Gault, «Preventive Diplomacy and Pro-activity in the South China Sea», *Contemporary Southeast Asia*, Vol. 20 (2), August 1998.

After these limitations, the cases involved are:

China -Vietnam	China-Philippines
China-Malaysia	China-Indonesia (unclear case)
China-Brunei (unclear case)	China-Taiwan (the same claims)
China-multilateral conflicts (refusal to admit this from China)	

I will exclude two cases from this selection, Brunei and Taiwan. In the case of Brunei, no diplomatic or military claims have arisen between Brunei and China, even if the area Brunei controls today would come under China's claims. If no claims or negotiations have arisen from this potential dispute the case is of no interest for this study. It is a similar case between Indonesia and China where no open conflict has arisen. However, there have been diplomatic discussions over this potential conflict between the states officials, therefore will I include Indonesia in the study. The conflict between Taiwan and China is excluded since both parties see this as an internal conflict and not a conflict over maritime borders. The negotiations and the logic behind the conflict differ from the other conflicts in this paper. This could change, but until today Taiwan is, according to Beijing and Taipei, a part of China and there were no maritime conflicts between China and Taiwan. It is interesting to note that China and Taiwan have cooperated in several disputes in the SCS, where their claims are identical and both claim the South China Sea as being Chinese waters, not PRC (Peoples Republic of China) or Taiwanese waters.

What is included in the term negotiations? Negotiations is a rather inclusive term and the ASEAN way to look at negotiations is maybe more inclusive than the western form of negotiations. Druckman has developed four different strategies of negotiations: a) Puzzle Solving, b) Bargaining Game, c) Organizational Management and, d) Diplomatic Politics.⁶ Those are forms of conducting negotiations, but I strongly believe that any one of these definitions by its own is too exclusive and too oriented on solving the dispute to be suitable for this study. Rubin's definition of negotiation is:

«... a method of settling the dispute rather than resolving it. The focus of the negotiation is not attitude per se, but an agreement to change behavior in ways that make settlement possible.»⁷

This catches more of the essence in the negotiations in this region, settlement not public resolution in practical negotiations. Since negotiations are a very inclusive term, what then are negotiations *not*? I would argue that negotiations are the attempt to change the behavior of the

⁶ Daniel Druckman, «Negotiating in the International Context» in Zartman, I.W. and Rasmussen, J.H., *Peacemaking in International Conflict*. Washington, D.C.: U.S. Institute of Peace, 1997, pp. 81-123.

⁷ J. Rubin, «Some Wise and Mistaken assumptions about Conflict and Negotiation» in J.W. Breslin & J.Z. Rubin (Eds.) *Negotiation Theory and Practice*. Cambridge: PON Books, 1991. pp. 3-12

opponent/disputants. However, when the parties choose not to engage in negotiations, and instead try to resolve the dispute with other measures, it cannot be considered as a part of negotiations. This does not mean that the parties have to meet in person, negotiations could be conducted with the help of a third party who discusses with the parties, then they have to engage in some form of interaction.⁸ Taking the case to court or letting third party decide the outcome, arbitration, or adjudication is not considered negotiation. As for mediation, I will consider this a form of negotiation with involvement of a third party. I will also look at the Confidence Building Measures (CBM), which may have a great impact on both the degree of formality and the number of participants in the negotiations. CBM is a form of long-term negotiation, which is focusing on increasing the confidence between the actors and also on changing the behavior of the actors.

Why is it important to study the formality of negotiations in the SCS? Caballero-Anthony argues that the non-interference principle is paramount, maybe even a «primordial principle» among the ASEAN members.⁹ The ASEAN way of handling disputes informally arrives from the concepts of *musyawarah* and *muafakat* (consultation and consensus) and the practice to agree to disagree for latter settlement. If the principle of non-interference changes we could expect a great change of the regional structure and especially how the parties deal with the regional conflict structure and security issues. Any change in the decision-making would have an impact on future conflicts and bilateral relations between the members and other nations.

As I pointed out earlier, I will compare different combinations of formal and informal, multilateral and bilateral negotiations to see if we can talk about an ASEAN way of handle the dispute in the SCS. Bilateral defines itself, and to be a multilateral negotiation all parties of the conflict have to be included in the negotiations. As the distinction between informal and formal negotiations could be confusing it needs some clarification. In this study the formal negotiations have to fulfill three criteria to be classified as «open»: a) the parties do not try to hide the fact that the negotiations is under planning/underway, b) the agenda is not hidden, and most important, c) the results or failures are presented to the public.

Informal negotiations exclude, *with intent*, press and the public from agendas, the results of the negotiations, and often the fact that negotiations are underway at all. Informal negotiations often get «renamed» such as cultural exchanges, economic discussions, or other more neutral pretexts. However, most informal negotiations are «leaked» or get published in one form or the other, even if the intent with the negotiations or the actual result is never published. The «Informal Informals» are the negotiations that, in the best cases, never reach the public or the press. The definition of a «Informal Informal» would be an informal negotiation that is so delicate and problematic that the secrecy is strictly enforced. Those negotiations could be

⁸ J. Bercovitch, «Mediation in International Conflict: An Overview of theory, A Review of Practice» in Zartman, I.W. and Rasmussen, J.H., *Peacemaking in International Conflict*. Washington, D.C.: U.S. Institute of Peace, 1997, pp. 125-153.

⁹ Caballero-Anthony Mely, «Mechanisms of Dispute Settlement: The ASEAN experience», *Contemporary Southeast Asia*, Vol. 20, No. 1, April 1998, pp. 57-61

conducted under many circumstances but the interaction between the leaders in ASEAN would probably best characterize this.

After the limitations and definitions we reach four different combinations of negotiations in the SCS that will be looked at in this paper, those are:

Bilateral Negotiations Formal Negotiations	Multilateral Negotiations Formal Negotiations
Bilateral Negotiations Informal Negotiations	Multilateral Negotiations Informal Negotiations

3. Background to the South China Sea conflicts

This chapter should not only be seen as the background but also as the complex reasons behind the negotiations. The reader has to keep in mind the conflict issues in the dispute to understand the actions of the disputants. The conflict issues, by their importance, determine the form of negotiations to a very high extent. Even if I do not refer back to this section during chapter four, those questions were in the mind of the negotiators and should be in the mind of the reader.

3.1. The development of the conflicts

The main developments of the conflicts will be quickly described in this chapter. I would like to remind the reader that this is a very general description that includes the most significant events between China and the other parties in the conflicts.

3.1.1 China-Vietnam

Before 1974 the East Paracel islands were occupied by PRC (China), while the West Paracel islands were occupied by South Vietnam. When North Vietnam was weakened by the Vietnam War against the USA, China used the opportunity to occupy the western part of the Paracel's, including the territorial water as well.¹⁰ The conflict caused approximately 10 deaths and several military clashes.¹¹ After the Vietnamese reunion in 1975, Vietnam took effective possession of the parts of the Spratley archipelago with territorial water, which South Vietnam earlier had possession of. During 1974, Chinese campaigns against the Paracel's also included attacks against the North Vietnamese possessions in Spratley but the campaigns failed.¹² China articulated their ambition to control both the Spratley's and Paracel's in 1975 due to, in Chinese eyes, their effective control and jurisdiction over the territory. In the case of Paracel's this apparently was legally motivated but in the case of the Spratley islands both effective control and jurisdiction was disputed and the control over the territory was divided between the parties.

¹⁰ According to article 3 in the Law of the Sea conventions the territorial water is limited to 12 sea miles. *The Law of the Sea*, United Nations, 1983. One sea mile is 1.853 meters.

¹¹ Kessings/26388, March 4 1974.

¹² Kessing/26388-26389, March 4 1974. Kessings/27872, August 6 1976.

On May 12 1977, Vietnam declared their sovereignty over both Spratley and the newly Chinese occupied Paracel's with a 200 sea miles Exclusive Economic Zone (EEZ).¹³ As a reaction to Vietnams declaration, China's foreign minister Huang Hua abruptly declared that:

*«When the times comes, we (China) will retrieve those islands. There will be no need then to negotiate at all.»*¹⁴

Between 1979 and 1982 China and Vietnam had several military disputes with each other and during the worst dispute in 1979, 24 Vietnamese fishermen were arrested by the Chinese fleet and were kept in custody for over one year.¹⁵ During March 1988 direct military clashes between Vietnam and China took place, which none of the participants regarded themselves as having initiated.¹⁶ Vietnam reported 74 deaths; China reported a high number of wounded but no deaths. The conflict can both be seen as a reaction from Vietnam to China's military buildup in the area, or as a reaction from China to Vietnam's increased control of the area. After the confrontation in 1988, the relations between China and Vietnam have improved dramatically and there have been several attempts to regulate the maritime borders (See: Section 4). During a visit to Singapore in 1990, Li Peng, China's Premier, declared that the SCS conflict should be «frozen» and the exploitation of the natural resources should be managed by joint ventures until a peaceful solution can be reached.¹⁷ Li also explained that the territorial sovereignty of China could not be questioned but rather that the joint venture cooperation was a step towards regional cooperation taken on Chinese initiative and expense. The development from Huang's speech in 1977, to Li's speech in 1990, indicates a change from a confrontationist approach toward a cooperation approach, without giving up the claim on total control in the area.

3.1.2 China-Philippines

The conflict between China and the Philippines has been latent from 1971 until 1994, when the conflict spiral between both countries was initiated in September 1994. This was caused by the Philippine containment of 55 Chinese fishermen who had established living quarters on islands that Philippines claimed.¹⁸ China replied in January 1995, by arresting 35 Philippine fishermen who Beijing claimed had violated Chinese territorial water.¹⁹ During February 1995, the tension between China and the Philippines rose, when China increased its military presence in the Mischief Reef, which is inside the Philippines' 200 sea miles EEZ. Only 140 Sea miles away is Palawan, which is the mainland, and 90 sea miles away is Pagasa Island where the Philippines has its largest military station outside the mainland.²⁰ The Philippines accused China of having

¹³ Eric Hyer, «The South China Sea Dispute: Implications of China's Earlier Territorial Settlements», *Pacific Affairs*, Vol. 68 (1), Spring 1995, p. 37.

¹⁴ Eric Hyer, 1995, p. 52.

¹⁵ John Garver, «China's push trough the South China Sea: the interaction of bureaucratic and national interest», *The China Quarterly*, No. 132, 1992, pp. 1007-1008.

¹⁶ Kessing/26388-26389, March 4 1974. Pao-Min Chang, « A New Scramble for the South China Sea Islands», *Contemporary Southeast Asia*, Vol. 12 (1), June 1990, p. 25.

¹⁷ Hyer, 1995, p. 48. A joint venture is, for Li, a cooperation between *two* parties with an agreed purpose.

¹⁸ BBC/FE/2130/G5-8, October 19 1994.

¹⁹ BBC/FE/2202/B12, January 16 1995.

²⁰ Rigoberto Tigalo, «Remote Control», *Far Eastern Economic Review*, June 1 1995, p. 20.

broken both international law and the 1992 Manila Declaration, in which the parties agreed to solve the conflict with peaceful means and by cooperation in the development and exploration of the area.²¹ This was the first militarized dispute that China had with any party other than Vietnam in the SCS. Earlier China only initiated aggressive and hard military strategies towards Vietnam and deliberately left the other parties outside the conflict.²² These new developments gave ASEAN a reason to strengthen their military preparedness and initiate possible defense cooperation against China, which this far has been unsuccessful. In August 1998, 23 Chinese fishermen were detained for intrusion into Philippine territorial waters. In November 1998 China retaliating by increase building constructions on Philippine claimed islets.²³ The Philippine military retaliated by detaining another 20 Chinese fishermen and six fishing vessels.²⁴ The relation between China and Philippines has been sour since the Mischief incident and since China «upgraded the fishing shelters» in early 1999 when Manila reacted strongly.²⁵

3.1.3 China-Malaysia

Malaysia has continuously had stabile and bilateral negotiations with China and the result has been that China and Malaysia have agreed not to used violence to solve the conflict, and also that cooperation in economic, political and military matters should be intensified.²⁶ After the incident in Mischief Reef, Malaysia started to doubt that China would refrain from the use of force against Malaysia to occupy Southern Spratley. On March 23, 1995, the Malaysian navy opened fire against a Chinese vessel and wounded 4 crewmen.²⁷ This was the first military dispute between China and Malaysia since the conflict was recognized. The dispute has not created any further military actions but has been officially neglected by both parties, and new informal bilateral negotiations are planned.

3.1.4 China-Indonesia

Indonesia has not had any military conflict with China over the area. The potential for conflict comes from China's claims on the Natuna area, where Indonesia has rapidly developed its gas and tourist industry. The conflict has been more a potential than real threat against the Sino-Indonesia relations, and both parties have avoided discussing the conflict in both national and international media. The Mischief incident has made Indonesia, as well as the other nations, hesitate over China's promise to solve the conflict peacefully.

3.1.5 Regional implications

The confidence among China and the ASEAN states lessened significantly after the Mischief

²¹ BBC/FE/2229/B2-3, February 16 1995.

²² This could maybe be explained by that ASEAN and Vietnam had bad relations and ASEAN was not inclined to help Vietnam against China but a conflict with an ASEAN member could bring China into conflict with ASEAN as an organization.

²³ «Spratley Dispute Flares Again», *International Herald Tribune*, December 1, 1998.

²⁴ «Timing of China's Move on Spratleys Raises Asian Suspicions», *International Herald Tribune*, December 2, 1998.

²⁵ *South China Morning Post*, March 14, 1999.

²⁶ BBC/FE/1699/A1/1, May 27 1993.

²⁷ BBC/FE/2260/B2, March 24 1995.

Reef clash and after China's proposal for joint development of the region came into serious doubt by the other participants. The purpose of the intervention could be that China would like to point out its military superiority and that if the parties do not accept China's demands, Beijing would have to resort to violence to regain control over the area. To further show its regional power position, China has strengthened its military power position with Air and Naval forces. Beijing has, on the other hand, indicated that the Mischief incident was a real incident, in all aspects, and that Beijing was not informed of the naval activity in the area.²⁸ The other actors believe that China's purpose with the cooperation is a total economic development of the SCS, including the other states continental shelves (see: 3.2). An additional catch is that the cooperation, according to Chinese demands, can only be initiated after the other actors have recognized China's «unquestionable» sovereignty over the area.²⁹ It is impossible for the other actors to accept China's demand and more attention has been drawn to what the ASEAN members believe to be a more aggressive China.³⁰

The Southeast Asian states have started to meet the Chinese military buildup in the SCS with their own military buildup to be able to defend themselves against China.³¹ Russian MiG29, English frigates, and Swedish submarines are supposed to modernize the defense of the South East Asian nations. If the tension grows, there is a great potential that the ASEAN members will be forced into a closer military cooperation, which both ASEAN and China would like to avoid. There is great potential that if the conflict becomes militarized there could be several smaller wars or a major regional war in the area. This political development has an immediate impact on the negotiations. The focus has changed towards Confidence Building Measures (CBMs) and other strategies, such as joint development, to change the opponent's behavior in the region; i.e. China's perceived aggressive behavior.

3.2 Conflict issues

There is great potential that the fishery and delimitation problems in SCS between the ASEAN states and China will become acute in the near future. This is due to the fact that China had neither claimed a 200 sea miles EEZ nor formulated its demands in a coherent way up until May 1996, when China claimed an EEZ. The conflict was further accentuated when China declared its EEZ and the overlapping of claims was formalized and explicitly stated.³² Now when China has claimed its EEZ, or formulated its demands, some argue that more disputes are likely to arise with serious consequences.³³ There has however, not been any major change in China's behavior despite the formulation for an EEZ and the promised adherence to the Law of

²⁸ Some people have claimed that the local naval commander, without the consent of Beijing operated the incident. Interviews with the Beijing Foreign Ministry, Beijing University, and Academy of Social Science in Beijing between April-August 1997.

²⁹ Mark Valencia, *China and the South China Dispute*, Adelphi Paper 298, London, Oxford University Press, 1995, p. 12.

³⁰ Since the inclusion of Vietnam into ASEAN this have been an accentuated pattern, but even before the formal acceptance of Vietnam the ASEAN states and Vietnam started to cooperate over a strategy towards China.

³¹ BBC/FE/2301/G2, May 12 1995. Tai Ming Cheung, «Fangs of the Dragon», *Far Eastern Economic Review*, August 12 1992, p. 19.

³² BBC/FE, March 25, 1996

³³ Billy Yann-Huei Song, «China's Ocean Policy: EEZ and Maritime Fisheries», *Asian Survey*, Vol. XXIX (10), October, 1990, p. 992.

the Sea (LOS). Since all disputants in the conflict have the Gulf of Tonkin, Spratley, or the Paracel's as their point of departure for their EEZ, claims will overlap and create tension. For the moment it is important that the disputants establishes a permanent position regarding the islands to be able to expand their EEZ and to be able to add territorial water from those islands according to the LOS.³⁴ It should be pointed out that most of the islands and reefs are under water most of the time, and that few islands are large enough to place personnel on.³⁵ The interest for the islands increased dramatically after the oil crises in 1973 for primarily four reasons: a) the disputed regions' strategic importance, b) the increased importance of maritime resources for the regional states, c) the areas' potentially very large reserve of oil and gas, d) the nationalistic sentiments in the different nations demand those the countries should not lose more territory.³⁶

3.2.1 Strategic importance

This section looks at the economic and military importance the region has for the various parties.

- For the parties in the conflict
- For third parties (trade channels in the SCS)

The Spratley area has military, economic, and strategic importance for all the parties in the conflict. Paracel and the Gulf of Tonkin have the same strategic importance for Vietnam and China. Should one party gain exclusive control over the area, that state would gain total control over the economic development and the trade routes in the region, and moreover give the occupant military advantages in waging war against all other nations in the region.³⁷

China had a relatively weak political interest in the Spratley's before 1983, but due to the lessening of the Soviet threat and the decreased political importance of the Cambodia conflict, the possibility for China to influence regional security increased.³⁸ Jie and Shultz argue that before 1983, the Chinese interest was primarily directed towards how the relations between the Superpowers could affect China. After 1983, China has increasingly moved into the region to fill up the power vacuum that USA and the Soviet Union left behind.³⁹ Garver sees a change

³⁴ One of the major problems the negotiations face is how to interpret LOS. The Chinese has in 1998 claimed that they will adhere to LOS but only according to their interpretation. Beijing Ribao, 1998, August.

³⁵ I will refrain from further go into the legal aspects of the dispute, Townsend-Gault has, rightly, pointed out that laymen's opinions «has been not only lamentable, but also dangerously unhelpful.» Townsend-Gault Ian, «Preventive Diplomacy and Pro-Activity in the South China Sea», *Contemporary Southeast Asia*, Vol. 20, No. 2, August, 1998, p. 176.

³⁶ All nations in the conflict have been occupied by foreign powers and all fell that they can not accept to lose their sovereignty again, at any cost. Min-Pao Chang, 1990, p. 22.

³⁷ Japan used Spratley as a springboard during the Second World War when they occupied Malaysia, Philippines and Indonesia and there is a strong fear that China could establish a similar hegemony as Japan if they gain control over the Spratley's. Mark Valencia, «Spratley Islands: Dangerous ground in the South China Sea», *The Pacific Review*, Vol. 1 (4), 1988, p. 438.

³⁸ Niklas Swanstrom, *China's Foreign Policy Towards Southeast Asia in the 20 Century*, Conference on Southeast Asia in the 20th Century at the University of the Philippines at Diliman, Quezon City, January 1998.

³⁹ Chen Jie «China's Spratley Policy», *Asian Survey*, Vol. XXXIV (10), October 1994, pp. 895-896. Clifford Shultz & William Ardrey, «The Future Prospects of Sino-Vietnamese Relations: Are Trade and Commerce Critical Factors for Sustainable Peace», *Contemporary Southeast Asia*, Vol. 17 (2), September 1995, p. 127.

from more geo-strategic goals toward economic goals during the 1980's.⁴⁰ That the economic goal has increased significantly is apparent and several authors emphasize the economical reasons behind the conflict.⁴¹ Yuan argues in accordance with Garver that the national priorities had moved from a military buildup to economic development.⁴² This proposition seems only partially correct when one takes into account the large military buildup that has been going on in the region during the 1990's.⁴³ It is correct that the economic reasons have been stronger, but one should also take into account that the military build-up has increased. This has a negative impact on the negotiation process and its formality. All the parties fear that the negotiations could cause increased tension and possibly conflict since the military preparedness and seemingly willingness to use violence have increased.

If China controls the SCS she becomes, *ipso facto*, a state in Southeast Asia simultaneously, as China's importance in the region as a financial and military superpower would increase dramatically.⁴⁴ However, Beijing denies that it has a policy to fill the power vacuum that was created after the departure of the Superpowers.⁴⁵ All other nations, except China, would like to see the SCS as a divided sea in order to lessen the power of China in the region and to make sure that China's military power does not become too threatening.

The Parcel islands were initially occupied by Chinese troops under the reasoning that they moved in to secure the area against Soviet forces which were being stationed in the area, and that China subsequently would be surrounded by enemy troops if the USSR established a permanent military base.⁴⁶ Hence, to prevent dependence on other states, China argued that it needed this opening to the south. The trading channels in addition to the increased exports from each country also have an increased importance for China and the other states, and therefore the need to control the area can not be underestimated.

The Philippines has made claims to the area partially due to security reasons, as the Spratly's have an important strategic significance for the defense of the Philippines. Should China occupy Spratley they would gain a strategic superiority over the Philippines, and not only militarily. Moreover, if the Philippines loses the islands, there is a great risk that China restrict the Philippines' foreign trade.

Most states in the region are dependent on trade channels being clear and safe. At the same time there is a severe lack of confidence between the actors in the region, and no single nation can today guarantee the freedom of navigation. China, the only state that could in the long run control the whole SCS, has declared that it will not stop the freedom of navigation or trade in

⁴⁰ Garver, 1992, p. 1000.

⁴¹ Chen, 1994, Passim. Valencia, 1995, Passim. Mamdouh Salahem, «China, Oil and the Risk of Regional Conflict», *Survival*, Vol. 17 (1), Winter 1995, Passim. Garver, 1992, Passim.

⁴² Jingdong Yuan, «China's Defence Modernization: Implications for Asia-Pacific security», *Contemporary Southeast Asia*, Vol. 17 (1), June 1995, p. 68-71.

⁴³ Niklas Swanstrom, *China's Foreign Policy Towards Southeast Asia: Continuity or Change?* Report for a joint project between Uppsala University and University Sains Malaysia, August 1997. The Chinese military budget is almost as large as the ASEAN states combined (8162 Billion \$US v. 12 234 Billion \$US) and is focused on the southern defense (South China Sea). It is important to mention that China's military defense budget is only one third of Japans (31 028 \$US) in case of a regional war.

⁴⁴ Garver, 1992, p. 1028. Lijun Sheng, «China's Foreign Policy Under Status Discrepancy, Status Enhancement», *Contemporary Southeast Asia*, Vol. 17 (2), September 1995, pp. 112-114. Valencia, 1988, p. 438.

⁴⁵ BBC/FE/1440/A1/1-2, July 23 1992.

⁴⁶ Garver, 1992, pp. 1001-1002.

the area.⁴⁷ This assurance is doubted by the other nations in the region, and by Japan.

Japan has shown a strong interest for guaranteeing the freedom of trade. This is due to the fact that Japan's trade and an overwhelming part of the oil Japan imports is transported through the SCS. It is in Japan's interest that no one party gets strong enough to control the trade throughout the region, i.e. China.⁴⁸ Japan's recent history, after WWII, makes it hard to believe that Japan would interfere in the conflict with military resources. However, all states in the region, and especially China, are dependent on Japanese investment and trade. This gives Japan a strong negotiating position if they should choose to engage actively in the conflict.

3.2.2 *Natural resources*

- 1) Oil, gas, and minerals
- 2) Fisheries

Oil and gas findings are one of the most important motivations behind conflict in the region. The start of the Paracel conflict in 1974, was triggered when both China and Vietnam wanted to secure their borders to start oil development.⁴⁹ The disputants understand the economic importance of the maritime resources and the fact that most of these resources are limited. This creates an economic and political motive to be in control of a larger maritime area. This pattern has become more prominent through the increase of the trading channel's importance to the growing economic strength in the region. The sea has increasingly gained importance in food supply, and more goods are transported across the sea. Moreover the possibilities and importance of resource development from the sea have been more significant.⁵⁰

On 24 December 1989, China made public that it estimated the Spratley's contained 25 billion cubic meters natural gas, 105 billions barrels of oil, and 370,000 ton of phosphor. These resources should, according to Beijing, help China to become a developed country.⁵¹ If the estimates are correct, the financial benefits would be significant for all nations in the region. All the nations in the region are dependent on a fast and high growth, which demands cheap natural resources for energy. It would be a disaster for all parties to loose the economic possibilities that the SCS could contain. Salameh estimates a dramatic increase in Chinese oil-demand if it is going to keep its growth rate at a high level over and beyond the year 2000. This could, according to Salameh, only be done by finding new oilfields, such as in the SCS.⁵² I would agree that there is no reason to believe that China or any other nation in the region would or could, for political reasons, voluntarily decrease their development speed. The asian financial crisis has accentuated the need for cheap resources to keep up the development pace.

All states in the area have initiated oil development by using foreign knowledge and money. If another state were to occupy the areas where the foreign companies have an interest,

⁴⁷ BBC/FE/2308/G1. May 20 1995.

⁴⁸ Hyer, 1995, p. 48.

⁴⁹ Kessing/26388, March 4 1974.

⁵⁰ Chen, 1994, pp. 895-897. Marko Milivojevic, «The Spratley and Paracel Islands Conflict», *Survival*, Vol. XXXI (1), January/February 1989, p. 74. Hyer, 1995, p. 47.

⁵¹ *Renmin Ribao*, December 24 1989.

⁵² Salameh, 1995, p. 136-137.

it would bring unwanted international attention to the conflict. The Philippines has engaged the Swedish Salen Group and several US companies. Vietnam has cooperation agreements with four American companies. China has engaged Crestone. Indonesia has cooperation agreements with EXXON, and Malaysia with Shell.⁵³ The hopes are that the foreign companies' presence should deter the other nations from interfering in the regions where the foreign companies are drilling. The success of this strategy is apparent, since there have been no intermezzos in these areas.

China has 23 percent of the world's population but only 7 percent of the agricultural land of the world. The agricultural land is quickly diminishing through an increased desertification. The problem is severed by the fact that China has as little as a third of the world's average consumption of fish.⁵⁴ An increased fishery zone could give China and the other states in the region a major nutrition source and a possibility to lessen the starvation and the development problems that exist in the region. China's potential *Lebensraum* (Sheng cun keng jian) tends to decrease in proportion to the population increase and the loss of agricultural land that the development of the country creates. The Chinese government sees the SCS as the only solution to the food supply problem they face.

Along with China Vietnam has great interests in the SCS as Vietnam is a small country with few natural resources with a large population, which is growing fast. This makes the possibility to gain from fisheries, oil, and gas development important for the future.⁵⁵ All other nations in the region have similar problems where a rapid increase in the population cannot be supported without external or new resources being brought into the economy, or without an decreased economic development speed. A decreased development speed would create great problems when most regimes in the region base their political position on the grounds on rapid development. This is noted by all nations in the region and has been an argument for cooperation, rather than creating a snowball effect for liberalization of the economy and the political systems in the region.

3.2.3 Sovereignty and nationalism

China's, and the other states, strong feelings regarding Spratley are sprung out of the consciousness and sensitivity over the earlier Chinese concession to the «Western Imperialists» and the perceived humiliation that this brought on the Chinese people.⁵⁶ If China lost more territory to foreign states, the national honor would be under attack and the people and the army would question the legitimacy of the government. It is of the outmost importance that the government is not considered by the people or the army as internally or externally weak. This could create tension and possibly a political change in China or the other disputants with similar internal situation.⁵⁷ The focus on nationalism and sovereignty are major reasons why the conflict is hard to resolve without creating a loser, which in turn could have severe political

⁵³ Kessing/27872, August 6 1976. Salameh, 1995, p. 144. Valencia, 1995, pp. 10-11.

⁵⁴ Nayan Chanda, «Traacherous Shoals», *Far Eastern Economic Review*, April 12 1995, p. 28.

⁵⁵ BBC/FE/1670/1, April 23 1993.

⁵⁶ Chen, 1994, p. 894.

⁵⁷ Perry Wasserstrom, *Popular protests and political culture in modern China*, Boulder, Westview Press, 1992, Passim. Swanstrom, 1995 Passim.

consequences. The Chinese regime often and gladly uses a vocabulary that paints China as the victim and the other nations as the aggressors. A good example is how the communist party described the (re-) conquering of the Paracels in January 1974:

«The army and the people on the Xinsha Islands (Parcel) succeeded in defending China's sovereignty and the territorial integrity by repulsing the attacks by the puppet troops of South Viet Nam who had violated China's territorial waters and air space, occupied Chinese islets and killed and wounded Chinese fishermen.»⁵⁸

All parties in the conflict appeal to nationalism and the belief in the «mother country». China and Vietnam use the forces of nationalism most strongly in order to claim historical heritage and rights when seeking their people's support.⁵⁹ What has been said about China concerning nationalism and sovereignty, could also be applied to the other nations in the region. Newly established states such as Malaysia and Indonesia, maybe more than China, are concerned with not being seen as weak states. Many of the parties feel pressure from their people not to lose any territory, even if this internal pressure is not used in the propaganda. The internal problems and weaknesses of states caused by rebellions and secessionist movements could easily use any weakness in the government action to their advantage. This internal division makes compromises hard to reach.

3.2.4 Analysis of the different claims

The parties in the conflict base their claims on two different grounds:

-Historical demands (China, Taiwan, and Vietnam). China and Taiwan's demands are identical.
-«Modern» demands, such as sovereignty (all parties have those claims). Related to these demands there is an interest to use the islands and the archipelago in the area to further extend the territorial waters.

The conflicts in Paracel, Spratley, and the Gulf of Tonkin have roots in the beginning of the century, but it was not until the end of the Vietnam War that the states around the SCS started to take interest in the area primarily due to oil.⁶⁰

It is hard to understand how important the SCS is for the Chinese. Chen Jie writes about how the international community sees China's claims on Spratley, and the other areas, in accordance with international law. Historical demands and possessions can be questioned by international law, but the Chinese see the area as a natural part of China and are of the belief that they should not have to demand something that has been, under *de facto* and *de jura* Chinese rule since the 1300-century.⁶¹ According to Chinese sources, Spratley and Paracel were «discovered» by the Chinese, and there are Chinese texts that describe the area as Chinese

⁵⁸ *History of the Chinese Communist Party (1919-1990)*, Beijing, Foreign Languages Press, 1991, p. 363.

⁵⁹ BBC/FE/2065/G1, August 4 1994.

⁶⁰ Milivojevic, 1989, pp. 70-73. Nayan Chanda, «Traacherous Shoals», *Far Eastern Economic Review*, August 13 1992, p. 15.

⁶¹ Nayan Chanda, «The New Nationalism», *Far Eastern Economic Review*, November 9 1995, p. 22. Chen, 1994, p. 893. Chanda, 1992, p. 15.

since 300 AC. Harder to prove is that the area has been under *de facto* Chinese rule.⁶² However, it is apparent that China sees itself as a victim of the aggression of the imperialists/superpowers/regional states and will probably continue see itself this way until all Chinese territory is «once more» under Chinese rule.⁶³

What China calls their «historical waters» consists of the area in the SCS where the Chinese people consider themselves to have preferential rights and historical claims, i.e. the whole region.⁶⁴ The historical water is in the shape of a U and includes the Paracels, Tonkin, and the Spratleys from China to the border of the Philippines, down to Malaysia and Indonesia. China's demands are still unspecified to a large extent, and it is unclear if China will demand EEZ, continental shelves, and the formations above and under the sea. China has realized that it will be hard to defend its inclusive claims on the grounds of international law, and has refrained from the usage of legal terminology to specify their demands. The Chinese Congress has nevertheless passed a law about territorial water in which they claim the whole SCS, unspecified, according to the archipelagic principle in the Law of the Sea.⁶⁵ China's demands have, according to Wain, no relevance in modern international law, and are severely critiqued by experts on the Law of the Sea, who, among others, consider the claims of «Chinas' historical waters» as legally absurd.

Vietnam, in accordance with China, sees the region as a historical territory. Saigon claims that Vietnamese fishermen have used the region for centuries and that since then it has been under effective and continuous control by Vietnam.⁶⁶ In 1887, a border treaty was signed between China and French Indochina (Vietnam), which regulated the Gulf of Tonkin. Vietnam claims that this border is still valid, and hence should be respected by China.⁶⁷ Beijing has refused to do this, since it would give Vietnam two-thirds of the Gulf. The problem for Vietnam is that they have acknowledged Chinese sovereignty over all the three disputed regions during the wars against France and USA. It was not until 1973, when North Vietnam's relations with China became worse and North Vietnam gained an upper hand in the war against USA that Vietnam was strong enough to dispute China's claims.⁶⁸ On the 26 of November 1973, North Vietnam wanted to initiate negotiation on the disputed region with the motivation that Vietnam's acknowledgment of Chinese primacy could not be valid since Vietnam had been in war during that period and needed Chinese help.⁶⁹ In 1977, after the Vietnam War ended, Vietnam specified a 200 sea miles EEZ and a 12 sea-mile territorial water.

Malaysia, on the other hand, claims seven formations above sea level in southern Spratley, which all fall inside the border of Malaysia's continental shelf.⁷⁰ Malaysia's claim is primarily legal, and their historical claim to the area, although secondary, is especially strong and is

⁶² *Kessings Reference Publication*, Border and territorial disputes, Harlow, Longman Group Limited, 1982, p. 280. Kessing/31149, October 23 1981.

⁶³ Interviews and informal discussions with Chinese Scholars and diplomats from 1991-1998.

⁶⁴ BBC/FE/2376/G7/6-8, August 8 1995.

⁶⁵ BBC/FE/1316/C1/1-2, February 28 1992.

⁶⁶ Kessing/31149, October 23 1981.

⁶⁷ *Kessings Reference Publication*, 1982, pp. 280-281.

⁶⁸ Garver, 1992, pp. 1005-1006.

⁶⁹ Xue Mouhong (Ed.), *Dangdai Zhonguo Waijiao*, Beijing, Zhongguo Shehui Kexueyuan, 1987, pp. 271-273.

⁷⁰ BBC/FE/2319/B2-3, June 2 1995.

sometimes used against China's historical argument.

The Philippines claims Spratley with historical arguments, but the region also has relevance for the state, both for its economic development and security reasons. The main argument is that Spratley is of major importance for the defense of the Philippines.⁷¹ If a single aggressor would be in possession of Spratley, any invasion easily could be conducted. Spratley has, according to the Philippines, been under Filipino control and hence the claims from the other states are seen as legally without relevance. Manila has taken the position that the claims are so modern (1973) that they cannot be recognized as historical claims since the right to claim them on historical grounds has expired. The Philippines has never claimed the main island, which is approximately 320 km southwest of the largest group of the Spratley's, and subsequently the main island is outside the EEZ of the Philippines.⁷²

Indonesia has a conflict with China over the territory that China regards as a part of its historical waters. The Natuna field, the scene of the dispute, is a major gas reserve for Indonesia and is jointly developed by Exxon and Indonesia.⁷³ The choice to involve an American company is strategic, since USA tends to support its economic interests with military means. The conflict has been dormant, but as China moves south in Spratley it actualizes.

4. The conflict management process

4.1 Negotiations

4.1.1 *Formal negotiations between the parties*

There is a strong reluctance from China to internationalize the conflict management and/or let a regional organ interfere as a negotiator/mediator. This is due to the fact that a multilateral conflict management would lessen China's advantageous position in any bilateral negotiation with the other regional actors, who are much weaker.⁷⁴ During the Bandung Conference in Indonesia in July 1991, China explained that it did not support any conflict management process in the region by regional or external actors, i.e. China wanted all conflict to be resolved bilaterally between the involved countries.⁷⁵ China has pointed out that it supports a peaceful solution even if on a bilateral basis. The other states in the region prefer multilateral negotiations *with China* to lessen China's superiority. The ASEAN members still would like to handle the *intra-member* conflicts bilaterally and informally to avoid a split in the organization. All the parties in the conflict, except China, are today members of ASEAN, and would prefer a regional organ such as the ASEAN Regional Forum (ARF) to handle the conflicts that involve China.⁷⁶ Valencia argues that China has developed a «Three No» strategy: «No» to internationalization of the conflict, «No» to multilateral negotiations, and «No» to specification

⁷¹ Valencia, 1995, p. 8.

⁷² Kessings Reference Publication, 1982, pp. 329-332.

⁷³ Valencia, 1995, p. 43.

⁷⁴ Niklas Swanstrom, *China's Foreign Policy Towards Southeast Asia: Continuity or Change?* Report for a joint project between Uppsala University and University Sains Malaysia, August 1997.

⁷⁵ Nayan Chanda, «Fear of the Dragon», *Far Eastern Economic Review*, 1995, p. 28. Garver, 1992, p. 1016.

⁷⁶ Chen, 1994, pp. 895-898.

of China's territorial demands.⁷⁷ These strategies give China an advantage in the negotiations, and it is hard to break China's deadlock. The fact that the parties cannot agree whether the negotiations and the conflict management process should be bilateral or multilateral is a problem that should not be underestimated. In March 1999, China still refused to initiate *formal* multilateral negotiations on a SCS resolution.⁷⁸

Vietnam suggested in August 1974, that the Gulf of Tonkin should be divided according to the treaty between China and Vietnam (France) of 1887, which would give Vietnam two-thirds of the Tokin Gulf.⁷⁹ This proposal was dismissed by China, which led to Vietnam's declaration of a 200 sea-mile EEZ. China has refused to declare an EEZ, for several reasons. The primary of these is that Beijing wants extended sovereign rights in its own EEZ.⁸⁰ China demands more control over the maritime resources and imposes rather significant restrictions on foreign vessels inside its EEZ. Beijing feared that if China declared an EEZ this could have a negative impact on their claim to historical rights in areas outside EEZ. Moreover this could lead to a militarized conflict with several of the states in the dispute which, in combination with China's weak legal claims in some areas, could led to international involvement in favor of the smaller nations. China therefore refrained from declaring an EEZ but held a *de facto* EEZ in which they follow the international EEZ rights. This changed after China declared a 200 sea-mile EEZ in 1996.⁸¹ China and Vietnam conducted a few formal negotiations in the 1970's, but those were clear failures and created even more strained relations between the actors.⁸² The relations were ultimately cut off after the Chinese invasion of Vietnam in 1979. From 1980 to 1989, no negotiations at all were conducted between China and Vietnam, partly due to the Cambodian conflict, but also due to the SCS conflict. In 1985, the Sino-Vietnamese relations slowly improved until the war in 1988 again ruined all the improvements. In 1989, the relations between Vietnam and China rapidly improved with several official visits by statesmen. At the beginning, this was nothing lasting, but showed a willingness to restart negotiations, including those regarding the maritime questions.⁸³ It could be argued that, despite the mediocre successes, the improvements that were reached in 1989 worked as CBMs and created a new environment for negotiations.⁸⁴

After Li Peng's speech in Singapore 1990, China and Vietnam met several times. The single most important meeting was in Beijing 5-10 November 1991, when an economic cooperation treaty, and a loose treaty about the management of the border conflicts was signed.⁸⁵ These efforts established a normalization of the relations between the states. Additional important meetings were held in Beijing on 8 August 1992, and in Hanoi in

⁷⁷ Valencia, 1995, p. 12.

⁷⁸ *The Straits Times* (Singapore), March 14, 1999.

⁷⁹ Song, 1989, p. 993.

⁸⁰ *Ibid*, Passim.

⁸¹ Zou Keyuan, *The Future of China's U-Shaped Claim*, Centre of Maritime Security and Diplomacy, Kuala Lumpur, 1998, p. 16.

⁸² Ramses Amer, «Sino-Vietnamese Normalization in the Light of the Crises in the Late 1970's», *Pacific Affairs*, Vol. 67 (3), Fall 1994, pp. 358-365.

⁸³ Ramses Amer, *Vietnam's policy on territorial conflicts*, Department of Political science, Stockholm, 1995.

⁸⁴ Amer, 1994, p. 365.

⁸⁵ Kessing/38574, November 1991. BBC/FE/1519/A1/2, October 20 1992. BBC/FE/1557/A2/1-2, December 7 1992. BBC/FE/2311/B6, May 24 1995.

December 1992, concerning the maritime border conflicts. Those meetings were of utmost importance, as it was high officials who meet, which indicates the importance of the meetings. In April 1997, ASEAN and China meet at the deputy foreign minister level in Anhui, China to discuss the dispute.⁸⁶ The parties agreed to meet again but China's unwillingness to agree to any formal agenda at this and for coming meetings was apparent.

ASEAN and China met to discuss the SCS at a joint summit in December 1997. The results were that China reinforced their unwillingness to discuss a resolution to the conflict in a multilateral fora and stressed that any multilateral discussions should be limited to «regional peace and stability».⁸⁷

President Jiang Zemin and President Estrada meet in Kuala Lumpur in November 1998, to discuss the SCS and especially the increased tension at Mischief.⁸⁸ The meeting was considered positive and an agreement to leave the question to their respective Foreign Ministers was set. However, Estrada failed to convince Jiang to stop the construction on the Reefs.

The formal negotiations had a low impact on the conflict management process; this was due to the refusal of China to participate in formal negotiations.⁸⁹ China's weak legal standing in a adjudication or arbitration created a situation where China has to either forcefully occupy the region, or face a resolution that could be perceived as a failure by public opinion and the army in China. Rather than to face this possibility China has chosen to handle the conflict by other means, such as informal negotiations.

4.1.2 Informal negotiations

Vietnam and China have primarily used informal and bilateral negotiations, due to the fact that their relations have been severed from time to time. Vietnam and China held three informal meetings concerning the Cambodian conflict from 1989-1990, one in January 1989, one in May 1989, and one in February 1990.⁹⁰ During those meetings, the confidence between the parties increased, despite a close failure during the second meeting, due to personal conflicts between the delegates. In June 1990, the parties met in Hanoi to discuss border delimitation and border trade. This failed and the negotiations broke down. Moreover, the Chinese and quite a few Vietnamese delegates clashed with Vietnam's Foreign Minister, Thach, which made further negotiations impossible.⁹¹ A fifth and informal meeting was conducted in Chengdu, China with the condition from the Chinese that Thach would not attend. This meeting formed the groundwork that the later normalization was built upon, which was primarily arranged by solving the Cambodian conflict.⁹²

⁸⁶ BBC/FE, April 23, 1997.

⁸⁷ *The Straits Times* (Singapore), December 12, 1997.

⁸⁸ *Businessworld*, November 18, 1998.

⁸⁹ The reasons to China's refusal to participate in the formal negotiations are further evaluated under the conflict issues.

⁹⁰ Carlyle Thayer, «Sino-Vietnamese Relations: The Interplay of Ideology and National Interest», *Asian Survey*, Vol. XXXIV (6), June 1994, p. 515.

⁹¹ Thayer, 1994. pp. 515-516. Interviews with Chinese and Vietnamese Foreign Service personnel in 1997-1998.

⁹² Cambodia was the Gordian knot that China and Vietnam had to solve before normalization could be reached. During the «Beijing Summit» 1991 China and Vietnam agreed how the conflict in Cambodia could be resolved and through that several new negotiations of other questions could be initiated. Thayer, «Comrade Plus Brother: The new Sino-Vietnamese Relations», *The Pacific Review*, Vol. 5, No 4, 1992, pp. 405-406.

The informal negotiations created the opening and the confidence that the disputants needed, since China and Vietnam could not meet formally without creating high expectations on positive resolutions that were likely to be politically dangerous. Hence, the parties needed to come together and discuss the issues without media coverage; this was arranged through the informal negotiations. The result was that the confidence between the disputants was increased and the parties could at least agree that a resolution of the conflict would not be easy. The informal negotiations created a new round of formal and informal negotiations that were ongoing in 1995.

Between 1993 and 1994, China and Vietnam decided to establish permanent expert groups to solve the maritime conflicts. They have conducted several meetings, which have been positive and constructive. This has led to increased confidence between the parties and more detailed meetings.⁹³ The discussions concerning the Gulf of Tonkin achieved great progress between the 24-29 of August 1993 in Beijing, when the parties discussed the principles by which the conflict should be managed. The treaty was a direct result of the negotiations that were in progress in August. Both parties agreed not to do anything that would make the conflict management more difficult, and the expert groups would make a proposal of delimitation of the Gulf of Tonkin. If a solution could not be reached, the conflict would be «frozen», and a «joint venture» exploitation of the Gulf should be made a priority. Several turns of negotiation have followed this agreement and the discussions have been constructive and have increased the confidence between the actors.⁹⁴ It is easy to argue that both parties already realized that a solution would be very difficult, and the fact that the joint venture solution was already in progress when the discussions ended reinforces that conclusion (see section 4:3).

Both China and Vietnam have conducted several evaluations of the possible oil deposits in the region, and to a certain extent they have also started to drill for oil. This is a severe violation of the Treaty, but both parties argue that they have the right to drill and that it is the other party who is violating the Treaty.⁹⁵ The main problem seems to be that the territorial water and the EEZ are not clearly defined, and both parties claim that they have a legal right to use «their» territory, despite the Treaty.

A new informal negotiation round was initiated on Beijing May 17, 1995 and July 15 1995, in an attempt to create new CBMs, and to «freeze» the conflict until relations between the two improve.⁹⁶ This new attempt comes as a reaction to the earlier unsuccessful formal negotiations regarding the maritime border limitations. Vietnam and China held one official meeting in Hanoi between November 13-15, 1995, with the border conflicts on the agenda. Both sides agreed again that the conflict should be resolved peacefully and that the conflict should be «frozen» until a better moment came to solve it. This without mentioning any time-limit to the «freezing».⁹⁷ The result was also that the parties were obliged during the negotiations to consult

⁹³ BBC/FE/1620/A2/2, February 23 1993. BBC/FE/1780/G2-3, August 30 1993. BBC/FE/2085/B1, August 27 1994. BBC/FE/2140/B6, October 31 1994.

⁹⁴ BBC/FE/1957/B7, March 28 1994. BBC/FE/2160/B1-2, November 23 1994. BBC/FE/2273/G1, April 8 1995. BBC/FE/2340/B1 June 27 1995.

⁹⁵ BBC/FE/2130/B1-3, October 19 1994.

⁹⁶ BBC/FE/2307/G1, May 19 1995. BBC/FE/2356/G6, July 15 1995.

⁹⁷ BBC/FE/2463/B1/1, November 17 1995.

LOS, but that LOS will not determine the final resolution. Vietnam concluded a series of bilateral negotiations with China in July 1996 over the sea border where they established a code for handling the conflicts. It is unknown how much they relied on the LOS.⁹⁸

Malaysia and China have had very good relations, over the SCS, and bilateral and «Informal Informals» have been conducted for a long time. China has claimed its «indisputable right» over the region, but has offered Malaysia certain financial rights and cooperation Treaties concerning the gas and oil exploration.⁹⁹

China and the Philippines have intensified their bilateral negotiations since the Chinese occupation of the Mischief Reef. The result of the negotiations has been minor, but both parties agreed to restart the negotiations as soon as the time was ripe. The Philippines also claimed that the negotiations were a failure, although the Chinese claimed the negotiations were a success, since the two parties came to understand one another.¹⁰⁰ August 11, 1995, President Ramos and Mr. Wang from the Chinese Foreign Ministry met again and this time Ramos believed that the negotiations had been successful and also that future consultations were possible.¹⁰¹ November 21, 1995, the Philippines and China signed a bilateral «peace Treaty» which will be the ground for a peaceful solution on the Spratley conflict.¹⁰² There are also great hopes that this Treaty will be the background for a solution on the regional conflict over the SCS. The Treaty does not solve the conflict if it does not touch upon the delimitation of the region. The strength of the treaty is that it provides a framework for peaceful cooperation and continuous consultations over Spratley's on a bilateral basis, and through informal as well as formal channels. The informal channels have probably been the strongest forces leading toward a peaceful cooperation, compared to the official consultations, which have been weak and focused more on nationalist demands than on confidence-building between the actors. The Philippines and China held a series of bilateral and informal meetings concerning the increased tension over the disputed islands between 1996 to 1997.¹⁰³ The results were meager and the parties agreed on further meetings in the future. In August 1998, China and the Philippines agreed to initiate a bilateral workshop to study the legality of the implementation of the Chinese occupation of the Mischief reefs.¹⁰⁴ The workshop has been very low profile and nothing of substantial value has been published or stated.

China has claims on the Natuna archipelago, which is today controlled by Indonesia, but both parties deny that there is a conflict over the region.¹⁰⁵ The implication of this is unclear, as China has repeatedly refrained from defining its claims in the region, but still claims the whole «*Zhonguo Nan Hai*» (SCS). Indonesia does not recognize Chinese sovereignty over the region and has intensified its exploitation of the natural resources in the disputed area. One possibility is that the conflict that was between China and Indonesia has been reversed, and China no

⁹⁸ BBC/FE, July 16, 1996. Interviews with Chinese officials and military officers in Beijing 1997.

⁹⁹ BBC/FE/1968/B2, April 11 1994. BBC/FE/1997/G2, May 14 1994.

¹⁰⁰ BBC/FE/2260/B3, March 24 1995. BBC/FE/2260/G1, March 24 1995.

¹⁰¹ BBC/FE/2381/G9, August 14 1995.

¹⁰² BBC/FE/2466/G1, November 21 1995.

¹⁰³ BBC/FE, June 5, 1997. BBC/FE, June 3, 1997. BBC/FE, May 31 1997. BBC/FE, June 7 1996. BBC/FE, May 11, 1996. BBC/FE, March 16, 1996.

¹⁰⁴ *Businessworld* (Philippines), August 6, 1998.

¹⁰⁵ BBC/FE/2337/G1, June 23 1995

longer claims the disputed area as their «historical water». Hence, this would be the first conflict that had been resolved, since it is no longer claimed by both parties. There are no known formal or informal negotiations regarding the claimed area, but there have been a few meetings that could be counted as Informal Informals.

During these new negotiations we can see the importance of the dual process of informal negotiations and formal negotiations. The informal negotiations reinforce the formal negotiations when these loose in momentum. It can even be claimed that the only conflict that could be seen as «resolved» was resolved by Informal Informals, which could indicate the strength of this form of negotiations.

4.2 Discussions about «joint development».

«Joint development» of the financial resources would probably be the most successful confidence building measure, which in turn could lead to a demilitarization of the region. China has actively worked for the establishment of a joint usage of the resource; this when the national economy is heavily depending on the regional stability. During a «workshop» in Bandung in July 1991, China proposed several cooperation areas and in August 1992, China offered all states a proposal on joint development in all areas that have a *bilateral* conflict.¹⁰⁶ During a state visit to China by the President of Philippines in April 1993, the Philippine President was positive towards joint cooperation and as late as March 1999, Manila was positive towards a joint development.¹⁰⁷ It is politically difficult to establish support for the Chinese proposals inside the other states. When the Filipino government «in principle» agreed to China's proposal for joint use of a Chinese-built station on Mischief, the opposition reacted strongly and created an uproar against the government.¹⁰⁸ Nationalism and national pride plays a strong part in any joint development or usage of the disputed area. The smaller states are reluctant to agree when they think it is on China's terms rather than on equal terms, especially after the Mischief incident. Vietnam, the Philippines, and Malaysia have received formal offers to join bilateral joint venture operations in the region and they have agreed to let expert groups from all states study the possibilities for such a solution.¹⁰⁹ It is hard for the smaller states to accept this offer when the offer does not acknowledge any other sovereignty over the region than China's. Moreover, the operations are only concerned with the geology and exploitation of oil and gas. Nothing touches upon regional security, which is of greatest interest for the smaller states. During the ASEAN Ministerial Meeting in Brunei, July 1995, China's Foreign Minister declared that China was willing to solve the maritime border conflicts with international law and UNCLOS.¹¹⁰ China's «indisputable right» to sovereignty could, on the other hand, not be disputed by the court or any other nation, therefore making the legal procedure meaningless.

The joint venture operations have been a failure in practical matters, but as a confidence building attempt they have been far more successful. The disputants have been engaged in multilateral research projects over the maritime resources and the discussions over the conflict

¹⁰⁶ BBC/FE/1461/A1-1, August 17 1992

¹⁰⁷ BBC/FE/1674/A2-1, April 28 1993. *Financial Times* (London), March 11, 1999.

¹⁰⁸ *Businessworld* (Philippines), November 25, 1998.

¹⁰⁹ Chen, 1994, p. 899. Garver, 1992, pp. 1015-1016. BBC/FE/2463/B1/1, November 17 1995.

¹¹⁰ BBC/FE/2369/S2/2, July 31 1995.

issues have brought the actors closer together by creating a notion about the similarities between the problems all nations face.

4.3 Confidence building measures

There is a great need for CBMs in the SCS, and several researchers point out that progress has been made in that direction. However, more and deeper measures are needed to prevent the conflict from ending in a large-scale war. Jahwar has pointed out that the informality and the lack of institutionalization of CBMs suits Asia well and increases the level of fruitful conflict management. One of the reasons for this success is that most states are newly established or have internal legitimacy problems that make them sensitive to internal political pressure, causing them to shy away from formal agreement. Hence, a conflict is better than a bad agreement. The political system in Asia consists of a complex regime of negotiations where the primary goal is consensus. This prevents one party from losing face, thereby preventing the acceleration of the conflict.¹¹¹ Informal negotiations handle sensitive issues better than formal negotiations, since the parties can avoid concrete decisions and the discussion can continue with other questions if so needed. By using informals, the states have effectively avoided addressing the nationalist sentiments in all countries. China refuses to let the negotiations be done multilaterally, but is positive towards multilateral CBMs. This will hopefully lead to a more positive attitude towards multilateral negotiations.

China has been invited to participate in the ASEAN Regional Forum (ARF) and the ASEAN Ministerial Meeting (AMM). This has created a significantly more relaxed atmosphere between China and ASEAN. China, in the beginning, claimed that ASEAN was created against China and its interests. Pragmatism has directed Beijing's interaction against the ASEAN members since 1989. This is partially due to the support ASEAN gave China after the Tiananmen incident and the bad international relations China had after 1989. However, China has been reluctant to engage in CBMs when they believed that this would create a status quo, which would be in favor for the other regional actors.

There are a large number of CBMs and it is hard to control their amount and impact on the conflict management process. Some of the CBMs we could use, for example tourism, business, cultural exchanges, are perceived to increase official visits and the ordinary people's understanding of one another. These CBMs are of utmost importance, but due to the difficulty of monitoring them, they will be excluded in this paper.

The Zone of Peace, Freedom, and Neutrality (ZOPFAN) has been a basic structure in ASEAN's attempts to create regional security without the involvement of the Superpowers (USA and the former Soviet Union). The organization has not been engaged as a third party in the negotiations as the treaty of ZOPFAN prohibits member states from getting involved in engagement, which could threaten the security of a member nation in ASEAN. ZOPFAN has worked as a basic declaration without binding clauses, with the purpose to use CBMs by

¹¹¹ Niklas Swanstrom, *Tiananmen incident 1989: Bargaining and political theater*, Uppsala University, Department of Peace and Conflict Research, 1995, pp. 13-14.

showing the defensive and peaceful intent by the ASEAN states in the SCS.¹¹² China has declared its unreserved support for ZOPFAN, and a nuclear free Southeast Asia, even if, according to Chinese sources, these will not affect the part of the SCS that belongs to China.¹¹³

Despite China's refusal of multilateral solutions, they have supported two major treaties, apart from ZOPFAN, which has been initiated by ASEAN and which have worked as CBMs: the Treaty of Amity and Cooperation, and the Declaration of ASEAN Concord. Both were written in 1976, and have had a positive impact on the security situation in SCS. The confidence between the ASEAN members has increased due to these treaties, which has functioned as an indication of ASEAN's defensive intentions. ASEAN's involvement in the peaceful solution of the Cambodia conflict indicates that the intra-ASEAN conflicts could be resolved even if their goals and intentions are strongly diverse. If ASEAN had the intention to solve the SCS dispute multilaterally they would have to solve the intra-ASEAN conflicts multilaterally, in order to make China consider it as a serious proposal. China can not understand why certain conflicts should be resolved multilaterally and others not. A main strategy for China has been to point out the intra-ASEAN conflicts and demand that they be included in multilateral negotiations, which ASEAN has thus far refused. China has repeatedly reassured the ASEAN members that China does not have expansionist or hegemonic intentions with its military build-up and that its military force will only be used in self-defense.¹¹⁴ Between the ASEAN members there has developed a continuous CBMs process monitored through the organization of ASEAN. China and ASEAN have initiated several cooperation attempts concerning environmental protection, drug trafficking control, and anti-piracy activities, which have increased the confidence between the actors.¹¹⁵ It has been a common interest between the disputants to keep USA and Russia outside the regional security structure. After the Mischief incident in 1995, ASEAN has become divided regarding this question. Especially the Philippines argues that USA brings stability to the region. Vietnam and China exchanged high military officials in January 1997, as a part of a confidence building program they established. The exchange is considered by the parties to be positive and help to ease the conflict.¹¹⁶ The last week of March 1999 the Philippines and China held a meeting in Manila concerning further CBMs around the Spratley question. The purpose of the meeting was to lessen the recent tensions around the arrests of fishermen and the improved structures on the Mischief reef.¹¹⁷ The parties agreed to continue the bilateral meetings in Beijing later this year.

Trade has developed rapidly in the region and the resulting financial interaction has increased the interdependence among the Asian states. As a result China has shown a strong interest for both bilateral and multilateral financial cooperation, even in fields outside the SCS.¹¹⁸ Since the trade is dependent on a stable regional system, closer financial cooperation

¹¹² Nagara, *One South-East Asia, One Security Doctrine?* ISEAS Trends, The Business Times, Weekend Edition, 1995 November 25-26, p. 1.

¹¹³ BBC/FE/2152/G6-7, November 14 1994.

¹¹⁴ *Renmin Ribao* (People's, Daily), February 2 1992. *Renmin Ribao*, June 11 1993, *Renmin Ribao*, June 16 1993.

¹¹⁵ Sheldon, «East Asian Security: The Playing Field Has Changed», *Asian Survey*, Vol. XXXIV, No. 12, December 1994, p. 1063.

¹¹⁶ BBC/FE, January 1, 1997.

¹¹⁷ Los Angeles Times, April 1, 1999.

¹¹⁸ Shultz, 1995, p. 133.

between China and the other disputants would increase the confidence and hopefully strengthen the cooperation between the disputants regarding the security question.¹¹⁹

China has passed a proposal to the Vietnamese government that is based on general historical rights, and since Vietnam's historical rights are weaker than China's, Beijing would get access to most of the region. Vietnam would, on the other hand, get access to: a) fisheries b) trade navigation c) necessary naval forces for Vietnam's immediate security. Other states in the region would get rights to trade navigation based upon their historical rights in the region as trading nations.¹²⁰ Should Vietnam and the other disputants agree to this treaty, they would also have to agree to China's superior claims in the region and ultimately their sovereignty.

China has ended up with a dilemma. They could put military or political pressure on to the other disputants, but this could easily isolate China financially in the region. The other disputants are unable to use military means to secure their claims, but economic sanctions could be efficient, since 13 percent, and an increasing number, of all China's exports go to the disputants.¹²¹ China has realized that the financial factor makes it important to solve the conflict without military means in order to secure trade relations.

One of the single most important multilateral advancement that the regional states have reached in the SCS conflict is the increased transparency in military matters between the different states. It has become easier to control troop movements, and there are hopes to create a de-militarized zone.¹²² The bilateral negotiations and solutions have shown themselves to be more efficient, since China has repeatedly refused to participate in multilateral negotiations, even informal ones. The multilateral CBMs are, as Akashi points out, the only form that in the long run could create a deep and lasting resolution.¹²³ The multilateral negotiations have no quick solutions but as we have seen in the conflict process and regarding the dispute questions, they can not be resolved without multilateral solutions.

We can see that during the process so far the CBMs are of utmost importance for the conflict process. Trust is lacking between the disputants and even informal negotiations have been hard to initiate. A three way process is beginning to appear; informal and formal negotiations are reinforcing each other, but the CBMs are a third factor that comes in and strengthens the confidence between the actors.

4.4 Negotiations through regional actors

4.4.1 Negotiations through ASEAN?

Before the Cold War ended ASEAN was blocked as a negotiator or mediator, since to a high extent it followed the US interests in the region. When ASEAN was founded, it had an interest in regional security, but with the 1976 Concord Treaty, a common security policy was excluded. However, all states have indicated an interest in the common security problem.

¹¹⁹ Niklas Swanstrom, *Asia: A Future in Peace or Conflict*, Swedish Foreign Ministry, Stockholm, 1998.

¹²⁰ BBC/FE/2376/G8/6, August 8 1995.

¹²¹ Shultz, 1995, p.133.

¹²² Findlay, *South-east Asia and the new Asia-Pacific security dialogue*, SIPRI Yearbook 1994, Oxford, Oxford University Press, 1994. pp. 134-135.

Indonesia has shown the greatest interest, which is important as it has significant political weight in ASEAN.

Under the Bali Summit of 1976, ASEAN offered the Indo-Chinese states a framework for peaceful conflict resolution, but Vietnam was reluctant to accept the Treaty, which they believed was initiated by USA against Vietnam.¹²⁴

ASEAN started to view the security situation in the SCS as critical after the Cold War and primarily the perceived Chinese expansion southwards. The need to be able to solve the conflicts became alarming and ASEAN jointly proclaimed in Singapore, January 1992:

*«ASEAN could use established fora to promote external security dialogues on enhancing security as well as intra-ASEAN dialogues on ASEAN security cooperation.»*¹²⁵

This indicates that ASEAN sees for itself the new great ambition as a security creating body in the region. As a reaction to China's increased presence in the region, the Foreign Ministers met in Manila, June 1992. This led to the «ASEAN Declaration on the South China Sea» that points out the importance of peaceful cooperation.¹²⁶ The declaration spells out the fundamentals for resolving the maritime disputes with multilateral negotiations. This is the first formal declaration directed towards the SCS dispute, and primarily towards China. This Treaty is a formalization of the multilateral negotiation process, which China wanted to avoid, but even if the Treaty only formed the base for further negotiations, this is an important break from the bilateral and informal negotiations. The Hanoi plan of Action (HPA) adopted by the ASEAN leaders *called* for the drafting of rules and procedures for the operation of a proposed council to resolve the SCS dispute.¹²⁷ China has so far not responded to this proposal and any drafting, known to the author, is not done and will be useless without the participation of China.

China has expressed a wish to increase the negotiations with ASEAN, as a unit, regarding questions such as economic development and political stability.¹²⁸ ASEAN has, as earlier noted, problems mediating in a dispute where several members are involved, but Singapore, Indonesia, and Thailand have offered to mediate in the conflict, even if Singapore and Thailand have expressed concern over being involved in a possibly greater regional conflict.

The ASEAN Post-Ministerial Conference (ASEAN-PMC) has worked as an instrument for the ASEAN members to discuss the security in the region on ASEAN terms. ASEAN-PMC was also a driving force in the ASEAN Regional Forum (ARF) whose main goal was to use preventive diplomacy and strengthen the regional dialogue. China has shown a great interest in participating in the conferences and ASEAN has also shown a great interest in integrating

¹²³ Akashi, *Emerging security and Confidence-building Priorities*, Disarmament: Confidence and Security-building Measures, United Nations, New York, 1991. Akashi, *Summary of Debate*, Disarmament: Confidence and Security-building Measures, United Nations, New York, 1990.

¹²⁴ Kessing/27872, August 6 1976. Indo-China is here Vietnam, Laos and Cambodia.

¹²⁵ *Singapore Declaration of 1992*, ASEAN Heads of Government Meeting, Singapore January 27-28 1992, Press release.

¹²⁶ BBC/FE/1441/A1/1, July 24 1992. Valencia, «Spratley Solution Still at Sea», *The Pacific Review*, Vol. 6, No. 2, 1993, p. 156.

¹²⁷ *Businessworld* (Philippines), December 17, 1998.

¹²⁸ BBC/FE/2152/G1, November 14 1994.

China in the dialogue.¹²⁹

4.4.2 ARF as a forum?

ARF was created in July 1994, to function as a forum that included all regional actors as members and the most important external actors in order to handle conflicts, i.e. prevent tension and potential conflicts from becoming militarized.¹³⁰ After the resolution of the Cambodian conflict, there was a need for an informal forum to handle the regional disputes, since ASEAN proved unable to handle them.¹³¹ Many scholars have been skeptical of the effectiveness of ARF and some, such as Emmerson, have asked if ARF is «all bark and no bite».¹³² Lim even argues that the «ARF is doing little more than giving China opportunities to divide and rule».¹³³ This view was not shared by China, who was initially negative to ARF, since they were afraid that ARF would interfere in their «internal business», i.e. SCS. China underwent great change after 1995, and viewed the confidence building effect of ARF to be of utmost importance. China has partly accepted ARF as a forum for «discussions» and this has been possible when the decision, if taken, has been by consensus.¹³⁴ China's Foreign Minister Qian intends to use ARF as a CBM to «prove» that China does not have hegemonic and aggressive intentions. It has been hard for the other nations to believe China after the Mischief incident, when their rhetoric was far from their actions¹³⁵, even if this changed towards a much more active cooperation within ARF in 1996.¹³⁶ In 1996, there was a fundamental change in China's view of ARF and military officials became involved in the deliberations. By 1997 China co-chaired an ARF meeting on CBM's with the Philippines.¹³⁷

During ARF's first meeting in Bangkok in 1994, the primary issues on the agenda were security, CBMs, and a framework to handle conflicts.¹³⁸ The main purpose of ARF is to bring forward the different problems and to function as a forum for CBMs, which should have a long-term impact. Chuan has pointed out that the informality and comfortable level of integration of the forum is of utmost importance for China, and has increased the success of the negotiations. Leifer has even suggested that Singapore's Foreign Minister Jayakumar had China in mind

¹²⁹ BBC/FE/1401/A2/6, June 8 1992.

¹³⁰ The members in ARF (1999) were: ASEAN, EU, USA, Japan, Canada, Australia, New Zealand and South Korea. ARF has regularly had China, Russia, Laos, Papua New Guinea and Vietnam (now member) as guests during the ARF meetings. Hiebert, Treading Softly, Far Eastern Economic Review, August 3 1995, p. 5. Jusuf Wanandi, «ASEAN's China Strategy: Towards Deeper Engagement», *Survival*, Vol. 38, No. 3, Autumn, 1996, p. 120.

¹³¹ Acharya, 1993, p. 3. There has been a divide between the members whether ARF should be informal or formal. The division goes between the West and the East, Asia believes that formal negotiations would spoil more that it would help and that the region needs the «slack» informal negotiations creates. The West believes that we should do everything according to formal and established rules and minimize the «slack» in negotiations.

¹³² Emmerson Donald, «Indonesia, Malaysia, Singapore: A regional Security Core?», in Ellings Richard & Sheldon Simon (eds.), *Southeast Asian Security in the New Millennium*, New York, M.E.Sharpe, 1996, p. 34. ARF might be «toothless by design» when it was formed to create regional security norms through informal discussions that will deligitimize the use of military force. Sheldon Simon, «Alternative Visions of Security in the Asia-Pacific», *Pacific Affairs*, Vol. 69, No. 3, Fall 1996, p. 395.

¹³³ Lim Robyn, «The ASEAN Regional Forum: Building on Sand», *Contemporary Southeast Asia*, Vol. 20, No. 2, August 1998, p. 115.

¹³⁴ Sheldon, 1994, p. 1052.

¹³⁵ Chanda, *Gentle Giant*, Far Eastern Economic Review, August 4 1994, p. 15-16.

¹³⁶ *Beijing Review*, Foreign Minister Qian Qichen, August 12-18, 1996.

¹³⁷ Foot Rosemary, 1998, China in the ASEAN Regional Forum», *Asian Survey*, Vol. XXXVIII, No. 5, May, p. 427.

¹³⁸ Tasker, *Preventive Measures*, Far Eastern Economic Review, August 4 1994, p. 14-15.

when he argued that the creation of a multilateral security framework should be at a «pace comfortable to all».¹³⁹ Acharya claims that the ARF has the possibility to develop norms and principles for intra-state cooperation, preventive diplomacy, and CBMs. If Acharya is right, this could be of great importance for future negotiations and conflict management processes.¹⁴⁰ Before 1996, ARF was reluctant to engage China in a dialogue since they were afraid that China would turn its back on the organization. This changed after the maritime crises between China and the Philippines in 1995, when the SCS was discussed explicitly at a meeting in Brunei with the purpose to find a conflict management process that would fit the region.¹⁴¹ ARF analyzed the discrepancy between China's rhetoric and actual action. China once more declared itself as ready to solve the conflict according to international law, but that Beijing's «indisputable» right to the region must be respected.¹⁴² The value of China to once more declare its peaceful intentions was negligible, and in the end of 1995, the preparation for a military confrontation with China became predominant.¹⁴³ China was very reluctant to engage in ARF before mid-1996, and as late as July 1996, China refused to see ARF as an alternative to bilateral negotiations.¹⁴⁴

What caused the changes in 1996? There are signs pointing toward the fact that China grew more accustomed to ARF's political structure and decision-making structure. The fact that ASEAN controls the organization and that it has proved to respect the principles of sovereignty and non-intervention in internal affairs, has made China trust ARF. China has, moreover, tried to solve many of its border conflicts, such as the Sino-Russian border conflict, and indicated that Beijing is willing to solve all conflicts and possibly set the sovereignty question over the SCS aside if necessary.¹⁴⁵ Quickly thereafter, in April 1997, there was an agreement between ASEAN and China to put the SCS conflict on the Agenda. The change is basically from a bilateral to a multilateral approach, this became possible as a large part of the meetings were informal and based on consensus. Beijing has accepted that there are overlapping claims in the SCS conflict, which would most likely have been impossible without the positive effects of ARF. Manila raised the question of the Spratley's at the ARF-Intercessional Support Group on Confidence-Building Measures in Bangkok March 3-5.¹⁴⁶ The Philippines hoped to internationalize the question, but China refused to let it be discussed through ARF, and instead referred to the coming bilateral meeting with the Philippines in Manila on March 23, 1999. The internationalization of the SCS dispute is resisted, not only by China, but also by most members in ASEAN. The Philippines tried to expose the conflict at an Asia-Europe (Asem) meeting in Berlin, but getting the dispute on the agenda was vigorously opposed by the other states.¹⁴⁷

There is still, however, a reluctance to formalize the process, and any attempt to let a third

¹³⁹ Leifer Michael, *The ASEAN Regional Forum*, p. 36.

¹⁴⁰ Acharya, *An Asia Pacific concert of powers*, ISEAS Trends, The Business Times, Weekend Edition, No. 63, 1995 November 25-26, p.1.

¹⁴¹ BBC/FE/2370/S2/2, August 1 1995.

¹⁴² BBC/FE/2370/S2/3, August 1 1995.

¹⁴³ Swanstrom, 1997.

¹⁴⁴ BBC/FE, July 24, 1996. BBC/FE, January 17, 1996.

¹⁴⁵ BBC/FE/2597, April 27, 1996.

¹⁴⁶ *Businessworld* (Philippines), March 9, 1999.

¹⁴⁷ *Businessworld* (Philippines), March 4, 1999.

party mediate or arbitrate is refused. China refuses, moreover, to move beyond the current dialogue level in the SCS conflict. The ARF seem to have increased in importance for the conflict management process after 1996, and has great potential to become the structure that could solve the conflict, or at least create the normative framework the conflict management process can develop within. The success is due to the fact that ARF through ASEAN has consistently avoided a conflict resolution mechanism and relied on the ASEAN way of dealing with the conflicts.

4.4.3 Second Track Diplomacy¹⁴⁸

There have been several examples of «Second Track» diplomacy in the form of informal consultations, conferences, and research projects since the beginning of the 1990's. However, this informality, although a prerequisite for its success, makes it hard to find material and evaluate the success of the process. It is widely perceived in the region that second track diplomacy has been very successful. ASEAN-ISIS (The ASEAN Institute of Strategic and International Studies) has worked as an academic umbrella organization with strong contacts inside the governments in Asia. What been most successful are the «roundtable» discussions held in Kuala Lumpur by ISIS-Malaysia and the Council for Security and cooperation in the Asia-Pacific (CSCAP).¹⁴⁹

4.4.3.1 Informal «workshops»

The most successful negotiations inside the «second track» diplomacy are the informal workshops that have been arranged by Indonesia, but which have been non-governmental and informal in character.

In 1990, the first of nine «workshops» was arranged in Bali under the name «Workshop on Managing potential Conflicts in the South China Sea».¹⁵⁰ The Workshop was a direct response to Li Peng's speech in Singapore in 1990, regarding China's willingness to solve the conflict peacefully.¹⁵¹ This first meeting included only ASEAN members, as the task was to discuss a common strategy against China and the sincerity of China's proposal. The second workshop was held in Bandung, Indonesia in July 1991, and included China, Taiwan, Vietnam and Laos.¹⁵² The now extended conference decided to work for closer cooperation and increased informal meetings. The third workshop was arranged between June 21 and July 3, 1992, in Yogyakarta. All participants from the last meeting were involved, and spirits were high prior to the meeting.¹⁵³ During this meeting the participants focused on the Chinese «indisputable» claim to the whole SCS. China informally explained that they were unable to participate in formal negotiations due to internal reasons and any compromise was unthinkable at the time.

¹⁴⁸ «Track-two diplomacy is unofficial, informal interaction between members of adversary groups or nations that aims to develop strategies, influence public opinion, and organize human and material resources in ways that might help resolve their conflict.» Joseph Montville, «The Arrow and the Olive Branch; a Case for Track Two Diplomacy», in V. Volkan, J Montville, & O Julius (Eds.), *The Psychodynamics of International Relationships*, Vol. 2, Lexington, MA, Lexington Books, 1991, p. 162.

¹⁴⁹ Findlay, 1994, pp. 139-140.

¹⁵⁰ There have been 9 workshops between 1990-1999 and the number of meeting reaches 30 since 1990.

¹⁵¹ Kessing/38346, July 1991. Hyer, 1995, pp. 36-37.

¹⁵² Kessing/38346, July 1991.

¹⁵³ BBC/FE/1424/A1/2-3, July 4 1992.

The parties decided to work for cooperation on maritime resources, without taking the question of territoriality into question. All parties agree that the best option would be to keep the dispute out of the eyes of the public, and solve it in due time. In August 1993, the fourth formal workshop was held.¹⁵⁴ The results were mediocre and the disputants could barely agree to continue the informal negotiations at a later stage. The fifth informal meeting was held in Bukittinggi, Indonesia in October 1994, and was primarily between the Foreign Ministers and a few experts and academics.¹⁵⁵ The result was a formal agreement to lessen the military presence in the conflict area and to have closer cooperation in areas such as LOS, fisheries, oil, and the general exploitation of Spratley. The sixth workshop was held in Balikpapan between the 9-12 of October 1995, and focused on CBMs in the SCS. What was striking was that no form of consultations was excluded. All parties agreed on the importance of keeping an on-going dialogue at all levels and in all forms.¹⁵⁶ The seventh workshop in December 1996, was a formidable failure and there was no progress whatever in the workshop according to the participants.¹⁵⁷ Puncak was the location for the eight workshop that was held in December 1997. The question was the problem with implementation of management mechanisms. All parties agreed to push their governments to implement the results from the workshops.¹⁵⁸ The last workshop was held in Jakarta between December 1-3 1998, and the change from previous workshops was that it had a more formal setting, being in the capitol of Indonesia.¹⁵⁹ The workshops seemed to work better with a growing informal procedure and rules that regulated the interaction, but apart from that, there were few changes from previous workshops. The «invisible formalization» is interesting to note, since the workshops could be pre-process to a resolution of the disputes. If the workshops included more decision-makers and developed a formalized agenda it would be a important tool in resolving the conflict.

What is interesting with the workshops is that all the initiatives are from Indonesia solely. ASEAN has never been involved as an organization in the negotiation process. Indonesia has taken the role as an active negotiator in the conflict, since ASEAN would not be perceived as an impartial negotiator.

All disputants except China, which believes that Indonesia is partial, are positive toward continued negotiations via the Indonesian channel. When Indonesia planed the sixth workshop during 1995, the question of partiality also emerged. China was closing in on the Indonesian's claimed maritime border and this, in combination with the Mischief incident, made Indonesia act strongly against the Chinese military presence.¹⁶⁰ China reacted by closing down all the formal negotiations that were planned and insisted that it should only be an academic exchange. This has increased the importance of the informal exchange between officials. China is, however, increasingly financially dependent on the region's economic development and would not take this action too far. To prevent the conflict from spreading regionally, the discussions in

¹⁵⁴ Hyer, 1995, p. 42.

¹⁵⁵ BBC/FE/2140/B6, October 31 1994.

¹⁵⁶ BBC/FE/2435/B2, October 16 1995.

¹⁵⁷ BBC/FE, December 18, 1996

¹⁵⁸ *The Jakarta Post*, December 4, 1997

¹⁵⁹ *The Jakarta Post*, December 4, 1998.

¹⁶⁰ Chanda, *Territorial Imperative*, Far Eastern Economic Review, February 23 1995, p. 23.

the press have been limited, and informal and Informal Informals have increased in importance. The strength of informal negotiations is that all questions can be raised, but the weakness is that the disputants can refuse to follow the results of the negotiations. The results of the workshops are, however, substantial in the fields of confidence building and the development of a framework that has been used among the parties to engage in further conflict management.

4.5 External actors as negotiators?

Some ASEAN members, especially the Philippines, have actively tried to engage USA and Japan as mediators as late as March 1999, but China has consistently refused, and even ASEAN is divided over the necessity to engage other nations.¹⁶¹ It is debatable how much ASEAN actually would like to engage external actors in the conflict resolution process, since this would bring up the intra-ASEAN disputes. Malaysia's Prime Minister Mahathir said as late as January 16, 1999, that there was no need to engage USA in the dispute.¹⁶² This should be seen in relation to the Anwar trial and the reluctance from Mahathir's side to involve external actors in internal business which could make the trial problematic. The resistance against both external states, and organizations such as United Nations and Asia-Pacific Economic Cooperation (APEC) is far greater than the will to engage them, even if some parties tried to use the threat as a bargaining chip.¹⁶³ The ASEAN members have even been reluctant to engage themselves in APEC, partly due to the formality in the organization, which makes a mediating function far from probable. The UN has been kept outside the conflict, and since China has a veto in the Security Council, the chances that UN will engage in the conflict are minimal. The formality of UN and the weight of a decision by the General Assembly, Security Council, or the Secretary-general would be hard to ignore. The chances that the disputants would use the UN as an impartial way out are small, since there is so much at stake internally for many of the disputants. As late as March 22, 1999, China ruled out any UN role in solving the dispute.¹⁶⁴

5. The China Way: Strict control over a bilateral process

The results of the research indicate that the informal negotiation process works far better than the formal. The disputants, who want to avoid internal problems or intra-organizational disputes, do not want to formalize the conflict, or parts of it. Multilateral and formal negotiations have been negligible, while bilateral and formal negotiations have mostly acted upon the results that the informal and confidence-building negotiations have created. These negotiations also seem to be blocked by the fear of «failure» in the eyes of public opinion and the military forces. The informal channels have worked both bilaterally with the «joint venture» proposals, and multilaterally through the ARF and the Indonesian channel with a relatively high

¹⁶¹ *South China Morning Post*, March 14, 1999.

¹⁶² Saiful Azhar Abdullah, «No need for middlemen to resolve Spratley Issue», *New Straits Times* (Malaysia), January 16, 1999.

¹⁶³ Interviews in Beijing, Manila, Kuala Lumpur, Jakarta and Singapore from 1997-1998. BBC/FFE/1345/A3/1, April 2 1992. BBC/FFE/1369/A2/1, May 1 1992. BBC/FFE/1749/A2/2, July 24 1993. BBC/FFE/2284/G1, April 22 1995. BBC/FFE/2231/B4, February 18 1995.

degree of success. The formal negotiations have only been conducted bilaterally and with a low degree of success.

The trend has been that the number of negotiations has increased since the end of 1980's. The explanation to this could be found in two different factors. The first is the end of the Cold War and the normalization of relations between Vietnam and China. The second explanation is the «snowball» effects that the initial negotiations and CBM's have had on the parties in the region. The ending of the Cold War created a new atmosphere with new possibilities to break away from the traditional split in Southeast Asia and ASEAN. The ASEAN members used this opportunity to engage China in CBM's. This engagement has been successful and shows how important CBM's have been for the negotiations to progress. In the mid-1990's we saw a new trend with more joint-venture proposals, and an increased level of informal meetings and CBMs. The critique of this trend have been that most of the proposals has been on China's terms and the other parties have been forced to accept the Chinese view.

China could have used the weaknesses caused by ASEAN enlargement and the financial crisis, which hit Southeast Asia harder than China, to expand its territorial occupation. However, China has been reluctant to use too aggressive a policy in the region. One also has to keep in mind that the development of the conflict management process will be beneficial for other conflicts, such as those involving, for example, Japan, India, and Russia. The Chinese did not rush out in an attempt to create a process in an ad hoc manner, since they knew it would create a precedent, but rather, the Chinese created an informal bilateral process that will be able to manage conflicts with more powerful countries than the ASEAN members. Apart from the financial crisis, the major reason for ASEAN inaction and lack of cooperation after 1995, and especially during 1998, is the debate over human rights and interference in the internal affairs of other ASEAN members. The solidarity, especially, between Malaysia and the Philippines, has been weakened as an effect of the Anwar issue, which has given China great leeway to become influential and strengthen the Chinese presence in the region. Malaysia, especially, but also Singapore and Indonesia, are closer to China than they have been in a long time.

The conflict has definitely entered a new phase during the financial crisis in Asia and the possible breakdown of ASEAN solidarity. It seems that national interests have become more important than the intra-ASEAN stability. The maritime resources have increased in significance and the trade routes have become essential for any state to find their way out of the economic crises. Many ASEAN members see the possibility to secure some resources, even if it is at the cost of the other ASEAN states. China has indicated a greater willingness to negotiate multilaterally and formally, but to which extent and under what terms, is still unclear. This is in contradiction to what one would expect, since China could use the opportunity to secure as much of the region as possible during a critical situation when the other disputants were dependent on China's help. How China ultimately will behave is an open question, and could determine the region's economic future, and more importantly, the peaceful development of the region. The stability of the region is now even more unstable than it was earlier, and the track-two diplomacy and maybe also the track-three diplomacy becomes increasingly important.

¹⁶⁴ The Gazette (Montreal), March 22, 1999.

As China moves from Marx to the Market, the negotiations at large tend to be more successful, but also seem to focus more on avoidance than on resolution of the conflict. The relative lack of militarized conflicts is based both on the management process and the current economic situation, such as the increased economic integration and the CBMs that have followed economic interdependence. The Philippines could be seen as an exception, but also as a confirmation of the success of the informal management process. This, since the conflict could easily have escalated, but instead, through the help of the informal networking and the ongoing CBMs, avoided any larger escalation. Hence, the relations are seemingly good between Beijing and Manila. Furthermore, it seems that China and the other disputants are reluctant to risk their economic development for territorial expansion. The solution has been to bring the conflict into an informal discussion, away from the public eye. This would hopefully give the disputants time to develop the maritime area financially and create CBMs to improve the conflict management process. During the process of negotiations we can see how the conflict issues have effected the negotiations. The dilemma between national security, economy, nationalism, and an effective resolution of the dispute has caused the disputants to rely on negotiations that would effect the national and regional stability to the least possible extent. All the actors involved fear a resolution that could be perceived, or is, damaging for each country. Rather than upset national sentiments or regional states, the choice has been to avoid a process of negotiation that could create a loser. The changes inside ASEAN, with demands on a break with the non-intervention rule, seem not to have effected the SCS negotiations. Rather, the financial crisis seem to have increased the level of informals and Informal Informals, to avoid any further economic disruption.

The attempt by China to offer bilateral «joint venture» solutions could have a conflict defusing effect, but the problem is that none of the other actors have enough confidence in China to allow a joint venture to be established. The parties have conducted several CBMs between each other. The CBMs, which have included multilateral negotiations such as meetings in ARF, AMM, ASEAN-PMC, and the Second-Track diplomacy have been informal in their nature. The formal declarations that ASEAN has initiated, and China has supported, have been loose and have had no major importance for the conflict management. Second track diplomacy, on the other hand, has been successful by providing an informal arena for consultations and conferences. The workshops that Indonesia has arranged have functioned to increase confidence in the region. The informality makes it possible for the actors to discuss freely with each other without binding effect, which has strengthened the confidence and sincerity between the disputants. The possibility to reach compromises that is not an object to public scrutiny becomes an option, such as the attempt to «freeze» the conflict or second-track diplomacy. However, the lack of confidence is still crucial and effectively blocks many solutions to the SCS conflict.

ASEAN finds it difficult to act in the dispute due to the lack of impartiality the organization would have. Should ASEAN raise the question, there is a great risk that the organization could not handle the disputes between the member states due the overlapping intra-ASEAN claims. ASEAN has therefore chosen to act informally through other channels.

Despite the reluctance from ASEAN to deal with its intra-ASEAN conflicts multilaterally, and China's total refusal to do the same, there are regional organizations that could potentially handle this conflict. ARF is the regional organization with the highest level of formality that could act as a coordinating body for negotiations and conflict management. The success rate for the ARF is hard to evaluate since the organization has only been active for a short period of time and has faced many problems with legitimacy. However, in later analysis we can see that ARF did have a significant impact on the negotiations and especially since mid-1996, ARF has increased in importance. It is probably true, as many have claimed, that of ARFs functions the Informal Informals are the management form that have had the greatest effect on the process.¹⁶⁵ The external actors had no role in the conflict, except as contributors to ARF. Indonesia's role, which is discussed at great length in this paper, is probably one of the most important forums for multilateral negotiations during the period of time examined in this paper. The Indonesian Channel and the ARF are two of the few successful multilateral attempts to conflict management in the region.

China's position in the conflict is of such importance that they have been able, to a large degree to decide the form of negotiation, which is bilateral. This is grounded in the fact that China refuses to specify its claims or to recognize other parties' rights in the region. Moreover, China's bargaining position is greater relative to a much smaller state than toward ASEAN as a united actor, or as a part of an arbitration under International Law. The ASEAN members have demanded a multilateral negotiation process, to lessen the Chinese dominance, but refused to integrate the intra-ASEAN maritime disputes. China has, on the other hand, refused to initiate any formal multilateral negotiations regarding the SCS dispute and demanded increased informal negotiations. As China demanded, several bilateral treaties have been signed between the parties and the bilateral negotiations have increased.

The multilateral negotiation process has nevertheless not been insignificant, but *no* agreements in the SCS dispute have been signed in these negotiations, either formal or informal, as a consequence of China's attitude. However, the multilateral and informal negotiations have increased the level of confidence between the actors. It is also crucial to see the fundamental importance of the dual process between formal and informal negotiations. The informal negotiations can never reach a result without the formal negotiations with official representatives from the states. The informal negotiation's importance comes from their ability to bring the disputants together and discuss the issues and possible solutions. As we can see in chapter three, the disputes have a complex constitution and cannot easily be resolved without informal negotiations, such as the track-two diplomacy attempts. We could even see the CBMs and the track-two diplomacy as a third and fourth process that strengthens the negotiations or simply makes them possible. The complicated pattern of different levels of negotiations is apparent in this case, and the fundamental importance of the interaction between the different approaches is undeniable.

¹⁶⁵ Interviews in Beijing, Manila, Kuala Lumpur, Jakarta and Singapore from 1997-1998.

However, are there today and in the future any problems with the informal and bilateral negotiation processes? A major problem with the informal channels would be that they merely have a confidence building function, rather than finding a solution to the problem. Bilateral conflict management has been used overwhelmingly by the disputants, but whether bilateral negotiations should be more efficient than multilateral negotiations is hard to say. The SCS dispute is in many aspects a multilateral conflict that needs multilateral solutions. The multilateral conflict regarding the Spratley islands, would be extremely difficult to solve in a bilateral way. If the parties are willing to solve the conflict, they need to increase the multilateral negotiations and agreements. In 1995, bilateral negotiations were the realistic way to deal with conflicts and increase the confidence between actors, even if multilateral negotiations seem to create, as Akashi points out, a deeper and more lasting understanding for each other. There have been some changes in China's view on multilateral attempts to the SCS, but China still refuses to agree to a multilateral resolution of the SCS conflict and has limited the multilateral meetings to CBMs.

Could we then speak about an ASEAN way of handling the disputes? The changes in the ASEAN environment have changed the conflict management process to a low degree, primarily because ASEAN is not in control over the process. The conflict management has been informal, as the ASEAN way, but it has been China that directed the play. From the beginning of the conflict China has structured the negotiations towards its goals and in those cases the other disputants have refused to follow the guidance of China, Beijing has used political, military and financial leverage to redirect the other actors. Instead of calling this process the ASEAN way we have to come to the conclusion that it is the Chinese way directed by Beijing with tones from ASEAN.