

SOUTH CHINA SEA ISLAND DISPUTES

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The island disputes in the South China Sea (SCS) are either bilateral, trilateral or, when they involve more than three parties, multilateral. The most serious of these disputes, however, are those on the Paracels and the Spratlys, because they also involve non-Southeast Asians and, in the case of the Spratlys, they involve many parties.

According to the International Hydrographic Bureau, the South China Sea is defined as the body of water stretching from a southwesterly to a north-easterly direction, bordered on the South by 3° South latitude between South Sumatra and Kalimantan (Karimata Straits) and on the north by the Strait of Taiwan, from the northern tip of Taiwan to the Fukien coast of China. For the purpose of this paper, however, the southern perimeter of the South China Sea is deemed to be 1° North latitude, thus making it an area of about three million square kilometers of water.

The seabed area of the South China Sea consists of about one million square kilometers of continental shelf of less than 200 meters isobath and about two million square kilometers of seabed area deeper than 200 meters isobath. The continental shelf area is mainly located in the western and southern parts (Sunda Shelf), while the deeper part is located much more to the north-east. The deeper part, in some areas reaching more than 5000 meters (South China Sea Basin), is dotted by various shallow banks and coral reef islands.

There are more than 200 islets, rocks and reefs in this area of the South China Sea, most of them are not suitable for human habitation. But they are important for economic, strategic, political and legal reasons. Adjacent to the SCS proper, lie various seas of Indonesia and the Philippines which are now parts of their respective archipelagic waters (the Natuna, the Karimata, the Java and the Sulu Seas).

The SCS is rich in natural resources. Its fisheries are based upon large numbers of short-lived species. Unlike in the Banda Sea area in Indonesia (which is characterised by rich grounds for tuna, an important fish in the world market), the species in the SCS are numerous and this makes large-scale fishing industry of one type of species somewhat difficult. It is not uncommon that in a single trawl haul, 200 species would be caught, around 80% of which would be of no or little commercial value. There are more than 2500 fish species in the Indo-Malayan region alone.

Djalal: South China Sea Island disputes

The seabed of the SCS is also suspected, although not yet proven, to hold extensive deposits of hydrocarbon and fossil oil, including natural gas, especially in the shelf area on the western side and in shallow patches of the SCS Basin. The exploitation conducted by Malaysia and Indonesia in their own continental shelves as well as by the Philippines in the Reed Banks give weight to such speculations.

The SCS is surrounded by countries that are mostly independent but are vastly different from one another. Hong Kong only recently reverted to Chinese rule (although it is now treated as a special administrative region) and Macao is still under foreign rule. The land sizes of the countries surrounding the sea vary markedly - the smallest being Singapore (633 sq. km) and the largest China (9.5 million sq. km). Their population sizes also vary greatly, the smallest being that of Brunei Darussalam (about 0.3 million) and the largest China (around 1,200 million). Their Gross National Products (GNP) per capita also vary, with the lowest being that of Cambodia (US\$215) and the highest that of Singapore (US\$26,400). Brunei has the lowest employment in fisheries while China and Indonesia have the highest (there are more than two million fishermen in Indonesia). Brunei has the lowest fish catch while the highest are those of China (17.5 million tons in 1993) and Thailand (3.4 million tons in 1993). The consumption of fish per capita among the nations around the SCS also differs markedly, Indonesia having the lowest per capita consumption of fish of about 17 kg per year and Hong Kong the highest, at about 50 kg per year.

The political systems of the states surrounding the SCS are also markedly variegated - from the communist/socialist countries of the northern coastlines, the People's Republic of China (PRC) and Vietnam (although these countries are also undergoing changes) to the non-communist southern and eastern insular countries (Malaysia, Singapore, Indonesia, the Philippines. Taiwan is a special case in itself. An important geographical fact is that the insular countries control maritime approaches to and from the coastlines of the mainland SCS countries.

The SCS is one of the most strategic waterways in the world. The approaches to the SCS, especially the Malacca-Singapore, Sunda-Karimata, Balabac, Mindoro, Bashi and Taiwan Straits are located in the non-communist countries.

These approaches are important for the passage of military and commercial vessels including and especially tankers. In the past, the Soviet Union placed great importance to the right of "transit passage" through the Malacca and Singapore Straits as well as through the surrounding waters in the SCS area, primarily because these passages were important for the communication between western and eastern Russia through the warm waters of the South Seas. The Russian Federation may revive this interest in the future once it is in a position to do so.

For Japan, the SCS and its most important approaches, especially the Straits of Malacca and Singapore, are extremely important for its economic and strategic lifelines since more than 80% of its oil imports are transported through these waterways. At the same time, these waterways are also extremely important to Japanese shipping in its trade with Southeast Asia, South Asia, Africa, the Middle East and Europe. Japanese interest in the preservation of peace and co-operation in the SCS may also increase as a result of its new orientation and increasingly intensive relations with Association of Southeast Asian Nations (ASEAN)/ Southeast Asian countries.

The United States has always been interested in the area because it offers the shortest route from the Pacific to the Indian Ocean and because it is essential for the movement of U.S. fleets, either for its own global strategy or for the purpose of having to defend its allies in the region.

The PRC, although basically still a continental country, has also begun to pay increasing attention to the SCS and to a more assertive policy of promoting its interests in the area, either for economic, political or strategic reasons. Recently it has begun to develop its naval capabilities, perhaps in an attempt to strengthen its claim to some islands in the area.

Both China and Vietnam claim territorial sovereignty over the Paracel group of islands situated southeast of Hainan, China. It was occupied by the former regime of South Vietnam until the PRC took it by force in 1976. Vietnam still maintains claim over the group of islands in spite of its occupation by China. Both the PRC and Vietnam rely on historical records to support their respective territorial claims to the Paracel islands. Except for its possible impacts on the situation in the SCS as a whole should it lead to armed conflict, the Paracel issue is generally regarded as a bilateral matter between China and Vietnam.

The other territorial conflict with regard to islands is related to the Spratly islands group which are several hundred miles to the south of the Paracels. Some of the islands, rocks, and reefs are presently occupied by Vietnam, the Philippines, China, Malaysia, and Taiwan. Brunei Darussalam claims certain portions of the nearby sea as its Exclusive Economic Zone (EEZ) or continental shelf but does not occupy any island. The occupiers are exploiting fishery resources and conducting intensive and extensive exploration for oil and gas in the area.

China claims them for historical reasons. Recently it has also based its claim on a map produced in 1947 by the Republic of China, indicating nine undefined, discontinued and dotted lines. China claims all the islands encompassed by those lines, although it began to occupy some of them only recently. There was no definition of those dotted lines, nor were their co-ordinates stated. Therefore the legality and the precise locations indicated by those lines are not clear. It is presumed, however, that what China claims, at least originally, is limited to the islands, the rocks, and perhaps the reefs, but not the whole sea enclosed by those nine undefined dotted lines. It is inconceivable that in 1947, when general international law still recognised only a three mile territorial sea limit, that China would claim the entire South China Sea. A careful reading of its February 25, 1992 Law strengthens this assumption, despite the fact that some of the recent Chinese writers seem also to imply that China also claims the "adjacent sea" of the islands and rocks. Again, the concept of "adjacent sea" has not been clearly defined and therefore it is difficult to understand its legal meaning. In fact, this concept ("adjacent sea") does not occur in the Law of the Sea Convention of 1982 since the convention only stipulates internal waters, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones, continental shelves and high seas, and that the measurements of those waters or zones should start from base points on land, or appropriate baselines, connecting legitimate points, and not by arbitrarily drawing them at sea.

Taiwan's claim in the South China Sea is basically similar to that of China. In fact, the position of the participants from China and Taiwan in the South China Sea Workshops sometimes were very similar. Taiwan has occupied Itu Aba since a couple of decades ago but appears not to have expanded its occupation.

Vietnam's claim is also basically historical. It claims the whole Spratly Islands group together with all its continental shelf. Again, the boundary lines of the claim are not clearly identified by co-ordinates. The claim also covers quite an extensive area of the SCS, and Vietnam has also occupied a considerable number of those islands and rocks.

The Philippine claim is based on the so-called "proximity" principle and "discovery" of the islands concerned by a Philippine explorer in the 1950s. Unlike the Chinese claim, the Philippine claim clearly defines the co-ordinates and therefore it is quite identifiable. However, the co-ordinates are not measured from base points on land, but from fixed positions at sea which seems to have been chosen rather arbitrarily. It is therefore also not so clear whether the Philippine claim is limited to islands or rocks within those lines only, or whether it also includes the whole sea within those lines. The Philippines has also occupied a number of those islands and rocks.

The Malaysian claim is basically based on the continental shelf principle and it clearly defines the claim by co-ordinates. It occupies three of these islands, those that it considers to be situated on its continental shelf. Equally, Brunei's claim seems to have been based also on the principle of the continental shelf, although the boundary lines are simply drawn perpendicularly from two extreme points on the Brunei coastlines.

All or most of these claims overlap with one another and some of them with several of the other claims.

Indonesia is not a claimant to any of those islands or rocks in the Spratly group. But if the Chinese/Taiwanese unidentified and interrupted dotted lines of 1947 were to be taken into consideration and continuously connected, depending upon the nature and interpretation of the Chinese claim, then the Chinese/Taiwanese claims could also intrude upon the Indonesian EEZ and continental shelf as defined in the Law of the Sea Convention 1982 and as demarcated in the Indonesian-Malaysian Agreement of 1969. The Chinese, however, have assured Indonesia that they do not have maritime boundary problems with Indonesia in the South China Sea.

All the claimants, with the exception of Brunei, have occupied several of the rocks and reefs in a zig-zag pattern. There is no clear pattern of occupation. Some of the Chinese occupations have been quite far to the south. The significance of the various conflicting claims is very clear. It is basically a scramble for resources, either living or oil and gas, which are surmised to be abundant in the area. Exploration efforts are continuing and exploitation of fishery resources have also taken place. Conflicts have arisen in the past and their recurrence in the future is not impossible. In addition to the resources, the island groups also straddle navigation routes in the South China Sea. These routes are important not only to the South China Sea countries but also to non-South China Sea countries, particularly Japan, South Korea and the United States, since their interests, particularly in the safety of navigation, could easily be affected by the potential eruption of conflict in the area.

Indonesia has taken the initiative of trying to manage potential conflict in the area and to promote actual co-operation among the claimants since this is one of the possible flash-points in the region at this time. Indonesia has just embarked on a long term national development programme which requires peace, stability and co-operation in the region. Any conflagration in the area would almost certainly adversely impact on Indonesia and its national development programme. Of course, there are plenty of other conflicts of a territorial or

jurisdictional nature in the region but those are generally bilateral or trilateral in scope. The prospects of their becoming explosive are considered generally to be less threatening than the conflicts over the Spratly islands, particularly because armed conflicts have taken place there between Vietnam and China in the past.

Thus, at the end of the Indochina war in 1989-1990, the process of transforming bickering and confrontation into co-operation began in Indochina. When the solution of the Cambodian conflict was in sight in 1990, I felt that Southeast Asia, particularly ASEAN and Indochina, seemed ready for economic development and co-operative relations. Development efforts needed peace, stability co-operation. At that time I felt somewhat uneasy, however, with regard to the situation in the South China Sea area, primarily because of the existence of numerous maritime territorial claims and delimitation issues, particularly with regard to the Spratly and the Paracel groups of islands. I felt that it was essential to seek ways and means of preventing those potential conflicts from erupting into armed conflagration and promoting instead, as much as possible, co-operation among the claimants. A sense of "community" in the SCS area should be developed. There are enough bases for such co-operation in the Law of the Sea Convention 1982 in both the EEZ concept (Articles 61-67) and the "Enclosed or Semi Enclosed Seas" concept as stipulated in Article 123.

At that time it was difficult to say whether ASEAN had a perspective on the problem of the SCS. I felt, however, that there was a strong conviction in Indonesia and in ASEAN that we should concentrate on promoting our development, particularly economic, as well as ASEAN and Southeast Asian cohesiveness. We did not want to see a repeat of the disturbances that had occurred before in Southeast Asia and in the SCS area. The armed clash between Vietnam and China in the Spratlys in 1988 in which three Vietnamese boats were sunk and more than 70 people lost their lives, was a tragedy that should move us to prevent such an armed clash again in the future, not only between China and Vietnam but also between and among all the claimants.

I saw then that the Paracels and the Spratlys were becoming prominent issues that might turn out to be a threat to Southeast Asian security. Therefore, with the blessing and guidance of Indonesian Foreign Minister Ali Alatas, my first initiative at that time was to go around ASEAN capitals (1989), inquiring whether we should pay attention to these problems and whether we should do something to try to manage the potential conflicts.

I found out that:

- (1) Practically everybody thought that we should do something;
- (2) There was apprehension that territorial disputes could pose major difficulties in developing co-operative efforts;
- (3) In view of difficult and sensitive territorial issues, it would be better if the approach were informal, at least at the initial stage; and
- (4) There was a notion that ASEAN members should coordinate their views and positions first before they engage non-ASEAN states in such efforts.

Consequently, I felt that:

- (1) Regardless of the territorial disputes, we should always try to find out ways to manage potential conflict and to find an area or areas in which everyone could agree to co-operate, no matter how small or how insignificant it might seem to be.

- (2) We should be guided by the idea that in instance of conflict there was always an opportunity for co-operation. It was up to all of us to discover it and to develop it for the benefit of all.

Accordingly, the First Workshop in Bali in 1990 was specifically and exclusively attended by ASEAN participants so that they could lay down the groundwork. But in the Second Workshop in Bandung in 1991 it had become a very “inclusive” group; not only Vietnam and China were invited but also Taiwan. Even land-locked Laos was also invited. Cambodia was invited later after the political situation there became clearer.

At that time, I had two basic objectives:

- (1) To manage the potential conflicts by seeking an area in which everyone could co-operate.
- (2) To develop confidence building measures or processes so that the various claimants would be comfortable with one another, thus providing a conducive atmosphere for the solution of their territorial or jurisdictional disputes.

I thought it would be a major achievement for the region that we had decided to work together to transform the habit of confrontation into a habit of co-operation. This could be the sooner achieved if we had programmes designed to achieve it. Therefore, it was important to find a common denominator, no matter how slow the process may be or how small was the result at the beginning. Patience was important then as it still is today.

In the beginning, we were working in stages. We opened free discussion, we identified various areas of possible co-operation, we dissected every topic and problem and placed them under various categories, such as protection of the marine environment, political and strategic issues, safety of navigation, marine scientific research, territorial disputes-including the dispute over the Spratlys and Paracels, institutional mechanisms for co-operation, and so on. On the Spratlys and the Paracels, in view of the extremely sensitive nature of the disputes, we limited the forum to five minutes for each participant to express his views without entering into discussion. In the end, we found out that there were quite a lot of things that the participants would like to co-operate on.

After the Second Workshop in Bandung in 1991 and the Third Workshop in Yogyakarta in 1992, we decided that we needed to concretize and materialize ideas. By the Fourth Workshop in Surabaya in 1993 we had already identified a good number of topics that we could co-operate on. We then decided to convene various Technical Working Groups (TWG) to deal with the various topics in more detail. So far five TWGs have been established, namely:

- (1) The TWG on Marine Scientific Research (MSR) which has met five times, namely in Manila, Jakarta, Singapore, Hanoi, and Cebu;
- (2) The TWG on Resources Assessment which has met once in Jakarta;
- (3) The TWG on Protection of Marine Environment which has met once in Hangzhou, China;
- (4) The TWG on Legal Matters which has met once in Phuket, Thailand; and
- (5) The TWG on Safety of Navigation, Shipping and Communication which has met twice-in Jakarta and Brunei Darussalam.

In the end, the effort to look for areas of co-operation bore fruit. At the Fifth Workshop held in Bukittinggi in 1994, we approved the proposal of the TWG on MSR to carry out a co-

operative study on biodiversity in the SCS, and at the Sixth Workshop in Balikpapan in 1995, we approved two more project proposals by the TWG on MSR, namely:

- (1) Co-operation on the study of sea level and tide monitoring in the SCS within the context of global climatic change, and
- (2) Developing database, information exchange and networking arrangements among scientists.

Taking into account Article 123 (d) of the UNCLES 1982, which states that “States bordering on enclosed or semi- enclosed sea (such as the South China Sea) should co-operate with each other in the exercise of their rights and in the performance of their duties ... (and) to this end, they shall endeavor to invite, as appropriate, other interested states or international organizations to co-operate with them...”, we decided at the Fourth Workshop in 1993 in Surabaya that participation by non-SCS experts or countries in implementing any project proposal should be allowed on a case by case basis. As a result of the three agreed project proposals, I felt that we had made substantive progress in devising some co-operative efforts.

In the meantime, at the end of the Sixth Workshop in Balikpapan in 1995, we had also agreed to undertake various studies within the context of promoting safety of navigation and communication in the SCS. Specifically we agreed that:

- (1) Singapore look for and prepare a basic outline for ways of co-operating in improving and coordinating education and training programmes for our mariners and seafarers;
- (2) Malaysia draft a plan for a co-operative effort to fight illegal uses of the sea, including measures to fight against piracy and illicit traffic in drugs, and to promote co-operation in search and rescue operations in the SCS;
- (3) China serve as the leading participant in preparing and promoting co-operation to prevent and control marine pollution and in coordinating various contingency plans to prevent and abate marine pollution; and
- (4) Taiwan prepare a proposal for exchange of information on hydrographic data and mapping in the SCS.

Within the context of co-operation on legal matters, we had also agreed, among others, that “legal officers” of the various participants should exchange information on their legislation and their legal documentation in order to increase transparency in the development of their respective maritime legislation, thus preventing possible surprises and confrontation as much as possible.

I have been authorized by the Workshop to communicate with various interested countries all over the world and with various regional and international organizations to seek support and find out whether they are willing to co-operate with and assist us in implementing the three approved projects. Subsequently, I have obtained several responses on the biodiversity project. For instance, Australia has promised to make available an expert on biodiversity at its own expense and has kept in escrow some funds that we can use to help finance activities related to the project. The United States has sent us some data on biodiversity which are in its possession; it has also offered to us experts on project payment basis. Japan has submitted questions to us with regard to the biodiversity project and, after consulting the experts group meeting, we have sent our reply. Japan has indicated to us that it will support the project financially and through the provision of experts. Some countries of the European Community have responded to our approach with very supportive words. Even Russia has indicated that

it is quite willing to provide its experts for this study. Brunei Darussalam and Indonesia have provided us some seed money to start with. Canada continues to financially support the ongoing Workshop process through the University of British Columbia in Vancouver. The UNDP has already responded to us in a positive way and in fact has told us to coordinate the proposed biodiversity project with two other similar projects in Hong Kong and in Hainan respectively which are also asking support from the UNDP. We have carried out discussions with the proponents of the two other projects. We have found out that our co-operative project on biodiversity does not overlap with nor conflict with either the Hong Kong or Hainan project. These two other projects are basically local in character while ours is regional in character. In fact, the results of our joint project could serve as basis for the Hong Kong and Hainan projects. I feel that the UNDP response has been positive. The biodiversity project is also under consideration by the UNEP. At the same time, I have also contacted various littoral countries of the SCS area to assess their willingness to participate in the implementation of the projects approved by the Workshop. The governments of most littoral countries of the SCS, some at the level of Foreign Ministers, have written or indicated to us their willingness to support the co-operative efforts and project proposals, either by way of providing expertise, and or technical support and facilities, and/or financial contribution or a combination of the three.

The second set of the activities that we tried to carry out consisted of endeavours to promote Confidence-Building Measures (CBM) or Confidence-Building Process (CBP). Along this line, in the Second Workshop in Bandung in July 1991, we issued a Statement on the need to resolve any territorial or jurisdictional disputes in the SCS by “peaceful means through dialogue and negotiation”, that “force should not be used to settle territorial and jurisdictional disputes”, and that “the parties involved in such disputes are urged to exercise self restraint in order not to complicate the situation.” This statement was a precursor to the ASEAN Declaration on the South China Sea in Manila in July 1992. In the course of the Workshop discussions various measures of confidence buildings or processes were mentioned. Some regarded the Workshop process itself as already an important CBM. At the Fifth Workshop in Bukit Tinggi in 1994 we also took up the need for “non-expansion of existing military presence.” This principle was supported by many but opposed by a few, arguing that this was not a matter for the Workshop to discuss. This was before the Philippines “discovered” Chinese occupation of the Mischief Reef in February 1995. During the Sixth Workshop in Balikpapan in 1995 we talked about more contacts and the possible “exchange of military commanders” who are responsible for the security of the multiple claims area in the Spratly Islands Group. Again, this was supported by some but was also opposed by others, again arguing that this was not a matter for the Workshop to discuss. It was suggested, however, that some transparency of the activities in the disputed area was needed. In other words, we tried to look for CBMs or CBPs that could secure the respect and participation of all. We will continue to look for such measures.

In the process of organizing these activities, we have also moved on to a third objective, namely to encourage more discussion and dialogue among the parties to the territorial disputes so that, hopefully, they would find the basis for a solution that would be acceptable to all concerned. China’s position was that the settlement of the territorial disputes could only be made by the parties concerned bilaterally, not regionally or multilaterally or internationally. If that was what the directly concerned parties wanted, then all that we should do was to encourage the participants concerned to seek ways and means to solve their problems. Lately, we had noticed that the bilateral dialogue between China and the Philippines had produced an eight-point code of conduct between them. Similarly, bilateral dialogue between Vietnam

and the Philippines has also produced a nine-point code of conduct between them which was very similar to the eight-point code of conduct between China and the Philippines. I understand that there has also been dialogue between China and Vietnam and Malaysia, and between Malaysia and other claimants. It is my hope that the various bilateral codes of conduct would in end produce some common denominators that could be developed into an agreed regional code of conduct in the effort to solve multiple conflicting claims in the SCS.

One of the most important issues is the question of Joint Development (JD) or Joint Co-operation (JC). I personally support this approach in overcoming the territorial problems. We have even formed a Special Technical Working Group (TWO) on Resources Assessment and Ways of Development to deal with this topic and the TWG has met once in Jakarta in July, 1993. The TWG has agreed to ask Vietnam to co-ordinate activities dealing with the study of "non-living non-hydrocarbon" resources, Indonesia to coordinate the activities on the study of "non-living hydrocarbon" resources, and Thailand to coordinate the activities on the study of the "living resources," namely fisheries in the SCS. It appears that developing co-operation on resources study and management is so sensitive that it is difficult to make progress.

This TWG on Resources Assessment has also agreed on several points:

- (1) That the Joint Development Concept has excellent potential, being in line with the statement of Chinese Prime Minister Li Peng in Singapore, expressing China's willingness to shelve territorial or Sovereignty claims in favour of joint development.
- (2) That we should study the various concepts or models of joint development around the world and to learn from them what could be applied to the SCS area.
- (3) That we should apply the Joint Development Concept to a "zone to be defined". The problem is how to define the "zone" for the Joint Development or Joint Co-operation.

In my mind, the concept of Joint Development would not be very meaningful unless we are able to formulate and agree on at least four points:

- (1) The "zone" where we are going to co-operate or jointly develop;
- (2) The "nature," the "subject" or the "topics" that we are hoping to co-operate on (fisheries, minerals, gas, oil, environment, marine scientific research, marine parks, etc.);
- (3) The "mechanism" for such joint development, which could be an Authority or a loose coordinative organization or arrangement; and
- (4) Who" shall participate in such Joint Development or Joint co-operation activities.

The four points, it seems to me, are *sine qua non* for a JD concept. If one is missing, it does not make much sense. On the basis of the decision of the TWG on Resources Assessment I have attempted to find out and define the "zone" where every participant, at least those having overlapping claims, can co-operate on the basis of the Law of the Sea Convention 1982. For obvious reasons, I have never made public my suggestion on this subject. Some claimants were happy with my suggestion. Others said that they might have some reservations and amendments but they were willing to look into it and to discuss it. But one claimant did not even want to talk about the "zone" as I suggested although it expressed its willing to co-operate.

In the end, we have arrived at a situation where we realize that the concept of Joint Development, from an academic as well as a practical point of view, still needs a lot of

discussion and researching. Many people are talking about the concept, but many details still do not make much sense. In fact, the JD concept means different things to different people.

The whole process of managing potential conflicts in the SCS and transforming it into an area of actual co-operation has worldwide support. The 25th ASEAN Ministerial Meeting in Manila in July 1992 “noted that the workshop on managing potential conflicts in the South China Sea initiated and hosted by Indonesia had contributed to a better understanding of the issues involved”. Following the Workshop statement in Bandung in 1991 on the need to resolve territorial and jurisdictional disputes in the SCS by peaceful means through dialogue and negotiation and that force should not be used, the ASEAN Ministerial Meeting also issued the ASEAN Declaration on the SCS, emphasizing the “necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force.” This position has been repeated on a number of occasions, including at the ASEAN Summit Meeting in Bangkok in December 1995 in which the Summit stated that ASEAN should seek an early peaceful resolution on the SCS dispute and shall continue to explore ways and means to prevent conflicts and enhance co-operation in the SCS”. The European Community has also supported the initiative. In a statement issued after the ASEAN-EU Dialogue in October 1992, it was stated that the EC Ministers endorsed the ASEAN Declaration on the South China Sea issued in Manila in July, 1992 and called on the regional powers to work to this end. The Ministers “noted that the Workshop on the South China Sea held in Indonesia had contributed to a better understanding on the issues involved. They hoped that further talks among the concerned parties to explore the possibility for JC in the SCS could be held at an appropriate date”. This was repeated again in the ASEAN-EU Ministerial Meeting in 1994 in Karlsruhe, Germany. Even the Non-Aligned Movement (NAM) has also consistently supported the Workshop process since its tenth Summit in Jakarta in September 1992. The Summit welcomed the ASEAN Declaration on the SCS and all constructive proposals put forward by the countries in the region and China. The Ministerial meeting of the Coordinating Bureau of the NAM in Bandung in April 1995 also “welcome the Indonesian initiative in sponsoring the workshop”. This position was later reaffirmed by the 11th NAM Summit in Cartagena in October 1 1995. Various other countries have also indicated support for this initiative.

Finally, the Chinese position on the SCS issues and co-operation remains significant:

- (1) China has been supportive of the Workshop process. It has hosted one meeting and will be hosting another in 1997. Yet it seems to feel that the process has gone too far, too fast and has discussed too many topics; therefore it seems that it would like the Workshop process to slow down and reduce its meetings and activities.
- (2) China supports the efforts to promote co-operation on concrete technical issues as formulated by the TWG meetings in which China participated actively. Yet, to my knowledge, it has not yet decided whether to participate or not in the realization or implementation of the agreed collaborative projects.
- (3) China seems to acknowledge the need to develop CBM or CBP among the countries of the SCS region, but it seems to take the position that the workshop process itself is already a CBM, and that the workshop should not discuss other CBMs or CBPs which it considers to be beyond the competence of the Workshop.
- (4) China is willing to shelve territorial claims in favour of JD, but it is not clear to me where the “zone” is that China is willing to jointly explore or exploit. It appears that what China means by Joint Development is that China will jointly and bilaterally develop

with the other claimant concerned the resources of the SCS in the area claimed by the other.

- (5) While China wishes to develop co-operation with Southeast Asian countries, China continues to exercise a policy of assertiveness in the South China Sea and seems to be developing a habit that before a dialogue with ASEAN, China would take a unilateral decision that could upset ASEAN countries.

Before the ASEAN-PMC Meeting in Manila in July 1992, China published its law on Territorial Sea and Contiguous Zone in February 1992 that reaffirmed its claims over the Parcel and the Spratly islands and issued a license to Crestone Oil Company to explore for oil and gas in an area very far from China or from the Spratlys. These created consternation in Southeast Asia and led to the issuance of the ASEAN Declaration on the SCS in July 1992. Again, after the discovery by the Philippines of the Chinese occupation of Mischief Reef in February 1995, the ASEAN Foreign Ministers Meeting in Singapore issued another statement in March 1995.

Recently, before the ASEAN-China Dialogue in Bukittinggi on June 10-12, 1996, China announced on May 15, 1996 parts of its baselines for measuring its territorial sea adjacent to the mainland and around the Paracel Islands, stipulating further that China Will announce the remaining baselines of the territorial sea of the PRC "at another time". It is not clear what China means by the "remaining baselines". If it is going to be around the Spratlys, it will be a tremendously daring policy and perhaps "dangerous". Even drawing baselines around the Paracels would already be "problematic". If it does consider drawing baselines around the Spratlys, it would be arrogating unto itself a substantially large part of the sea as its "internal waters" and thus would not be in conformity with UNCLOS 1982, particularly Article 89 which states that "No state may validly purport to subject any part of the high seas to its sovereignty." The drawing of such straight baselines around the Spratlys, and possibly also around the Paracels, for the purpose of claiming internal waters, would neither be in line with UNCLOS 1982 which states that baselines must be "determined in accordance with the Conventions (Article 3), that "normal baseline is the low water line along the coast ..." (Article 5), that "in the case of islands situated on atolls or of islands having fringing reefs, the baseline ... is the seaward low water line of the reef ..." (Article 6). "Straight baselines" can only be employed "in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity ..." (Article 7(1)) or "where because of the presence of a delta and other natural conditions the coastline is highly unstable" (Article 7(2)), or if a river flows directly into the sea, "across the mouth of the river" (Article 9), or "where the distance between the low water marks of the natural entrance points of a bay exceeds 24 nautical miles", then "a straight baseline of 24 nautical miles" may be employed (Article 10(5)). There is no provision in UNCLOS 1982 allowing states to draw straight baselines around a widely scattered small and tiny islands or rocks in the middle of the sea or ocean, except in specific cases of "archipelagic states" which are allowed to draw straight archipelagic baselines "which chart archipelagic waters", not "straight baselines" which chart internal waters.

Despite these assertive practices of China, there has been some encouraging signs:

- (1) China has indicated that it is willing to resolve the issue of its territorial claim in the SCS on the basis of International Law, including the UNCLOS 1982;
- (2) China has also ratified the UNCLOS 1982. This means that China would have to observe the provisions of the UNCLOS 1982 on baselines (Articles 3-14), on status of islands

and rocks in its relation to EEZ and continental shelf (Article 121), and on enclosed and semi-enclosed seas (Articles 122 and 123), on high seas, particularly Articles 87, 88, 89 and 90. Perhaps more important is that China's willingness to abide by the UNCLOS provisions would also mean its acceptance of the obligation to "settle any dispute concerning the interpretation or application of the convention by peaceful means" (Article 279) and to abide by the "compulsory procedures entailing binding decision" as indicated in article 286 of UNCLOS, to the effect that if recourse to dispute settlement mechanism chosen by the parties has not resulted in a settlement, the dispute "shall be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction over the case.

- (3) Perhaps also significant is China's willingness to discuss informally the South China Sea issues with ASEAN and within the context of ASEAN Regional Forum (ARF), although China still refuses to discuss the issue formally or internationally. In fact, China has now indicated its willingness to discuss its recent legislation on the SCS with Indonesia at expert level. I hope that discussions could also be held on this matter later on between China and ASEAN.

On the basis of the above observations, at this stage in managing the potential conflict in the SCS it would be very helpful if China could clarify certain basic points, namely:

- (1) That what China is claiming in the South China Sea is limited to the islands and the rocks within its nine-dotted undefined lines of 1947 and that it does not claim the sea itself within those dotted lines;
- (2) That whatever maritime zone or zones are generated by those scattered tiny islands and rocks would be determined by the provisions of UNCLOS 1982;
- (3) That China's territorial claim over the islands and rocks in the SCS is not in the same nature or similar to the Chinese policy over Taiwan, and therefore a commitment by China not to use force in settling its claim to the SCS islands is necessary;
- (4) That pending resolution of the conflicting territorial claims, China and other claimants will not occupy new rocks or reefs in the disputed area; and
- (5) That China clarifies its willingness to shelve territorial disputes in favour of loins Development.

It would also be helpful if other claimants make similar clarifications, individually or collectively. If such clarifications could be made, then the process of building up confidence and co-operation in settling the disputes could be significantly improved.

To conclude, let me state that we are still very far from settling the multiple territorial disputes in and around the Spratlys area. In fact, the workshop process is not trying to solve those disputes. What it is trying to do is primarily to promote co-operation and confidence in areas where the parties to the disputes could and would co-operate, hoping that by this initiative we would be able to create a better climate for the parties concerned to promote dialogue so that, hopefully, they would be able to solve their disputes peacefully by themselves without resorting to force. We have devised a number of projected co-operative efforts and we hope this will advance the confidence building process which could be one effective way to manage the potential conflict in the South China Sea and transform it into an area of actual co-operation. Yet, there are a lot more issues that need to be clarified by the parties concerned, particularly with regard to their respective claims and their willingness to seek solution. Clarification through national legislation has not proven to be effective in settling disputes.

In fact, national legislation tends to consolidate and harden national position which make it more difficult to seek a solution or a compromise.

Looking into the future, the seventh Workshop held in Batam, Indonesia, last December 14-16, 1996, outlined the work programme for 1997 on managing the potential conflict by promoting co-operation in the SCS as follows:

- (1) A small meeting of experts to initiate activities under the Biodiversity Project to be hosted by Thailand;
- (2) A meeting of a Group of Experts on Training and Education of Mariners and Seafarers to be hosted by Singapore;
- (3) A meeting of a Group of Experts on Hydrography, Data and Mapping to be hosted by Malaysia;
- (4) A meeting of a Group of Experts on Marine Environmental Protection to be hosted by Cambodia;
- (5) The Second Technical Working Group Meeting on Legal Matters to be hosted by Thailand;
- (6) The Second Technical Working Group Meeting on Marine Environmental Protection to be hosted by China;
- (7) An eight day Training Programme on Biodiversity to be organized and hosted by Singapore; and
- (8) The Eighth Workshop on Managing Potential Conflict in the South China Sea to be hosted by Indonesia toward the end of 1997.

In short, the situation with regard to multiple territorial disputes in the South China Sea is still confusing. There are possibilities for promoting co-operation in various areas and developing confidence building measures and processes. The prognosis for the future could still be worse if the South China Sea countries would not do enough to manage the potential conflicts in the area and to transform them into actual co-operation.