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**The contradictions behind cooperation:
Southeast Asia-China relations under the South China
Sea Disputes**

合作背後的矛盾：南海爭議下的東協與中國關係之探討

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In memoriam of my beloved father

Adao Lopes de Souza (1938- 2010). We will be together again.

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ACRONYMS

ARF: ASEAN Regional Forum

ASEAN: Association of Southeast Asian Nations

CBM: Confidence Building Measure

PD: Preventive Diplomacy

SCS: South China Sea

SEA: Southeast Asia

SLOC: Sea Lanes of Communication

UNCLOS: United Nations Convention on the Law of the Sea

US: United States of America

PRC: People’s Republic of China

ROC: Republic of China – Taiwan



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ABSTRACT

This thesis aims to describe the two dynamics present in the maritime disputes of the South China Sea: the negotiation dynamic and the military dynamic. This thesis will focus on two aspects: first, the history of the confidence building measures in the South China Sea; and second, analysis of each relevant nations' motivation for the current stage of the Southeast Asian military dynamic. The role of ARF in this process and the characteristics of the Track I and Track II diplomatic tools are analyzed along with its difficulties in progressing from the CBMs to preventive diplomacy (PD). The effects of the CBMs' lack of progress on the current military power acquisitions of the South China Sea claimant states are objects of analysis as well. Within of the analysis of the confidence-building measures, this thesis also contemplates the role of China as the most important variable in the dispute. The second part of this thesis works with the connections between the developments of the South China Sea and the current military buildup in Southeast Asia. Aiming to identify the causes of the military dynamic, the thesis describe the current military capabilities of the main actors of the South China Sea disputes; namely China, Vietnam, Malaysia and the Philippines. Moreover, it provides a detailed description of the new equipment acquisitions and the impacts, in terms of the power capabilities, of these actors. A final analysis of the current panorama of the disputes is conducted, analyzing the key events between 2009 and 2010. This thesis concludes that the CBM's efforts suffer from structural bottlenecks as the adamant adherence to the concept of sovereignty impedes the bloc's advancement in the establishment of solutions for the maritime territorial disputes. The absence of diplomatic solutions has directly influenced the momentum of militarization in the Southeast Asia.

INTRODUCTION

This thesis aims to describe the two dynamics present in the South China Sea maritime disputes: the negotiating dynamic and the military dynamic. Since the 1940s, the states of China, Brunei, Malaysia, Philippines, Taiwan and Vietnam have, by different means, developed new negotiation tools in claiming either portions of or the entire area of the South China Sea. In parallel to these claims, there is an intensive program of military modernization taking place as well.

The process of island occupation in the South China Sea has been ongoing since 1950, when Taiwan occupied Itua Aba Island. Later, during the 1970s, the Philippines began to occupy several reefs and islands. South Vietnam also occupied several islands that later were replaced by the Hanoi forces. In 1974, China took over the Paracel Islands from the Vietnamese. During the 1980s, the path of occupation increased dramatically when Vietnam, China, Malaysia, and Philippines expanded their occupied holdings to the Spratly Islands and beyond.

In conjunction with this occupation process, were held with the United Nations Convention of the Law of the Sea (UNCLOS III). This event gave a new dimension to the disputes in the South China Sea. The disputant states decided to use their own interpretation of the UNCLOS articles to justify their occupations, sovereignty claims and extension of their exclusive economic zone.

The combination of these elements led to a successive series of clashes and skirmishes among the claimants, resulting in the development of intense and sophisticated diplomatic tools aimed to reach a peaceful solution to the conflict. From this was the birth of the negotiating dynamic, which has been in development since 1992,

with the establishment of official diplomatic relations between China and the Association of Southeast Asia Nations (ASEAN). Later, in order to create an appropriate coping mechanism with the regional security questions, the ASEAN Regional Forum (ARF) was created in 1994. Together with the ARF, The confidence building measures, a set of tools designed to improve the level of mutual trust among rival sides utilized since the Cold war, started to be used as a way to accommodate all demands and resistances of the claimant states. The negotiating dynamic gained strength.

Nevertheless, little by little the events showed that the national interests, strategic reasoning and historical mistrust between all claimants were becoming intensely consistent. For each diplomatic effort established, new conflicts erupted. This is the moment where China's assertiveness is shown more clearly. A combination of diplomatic ambiguity and an intensive growth of China's naval capabilities have shown the Southeast Asia the real dimension of the South China Sea issue. Moreover, the linkages of internal security imperatives with the scenario established in the South China Sea triggered the second regional dynamic, the military. Since then, the other claimant actors of Malaysia, Vietnam and the Philippines, have consistently been adding new air and naval capabilities establishing an military dynamic with power to undermine one of the most strategic and economic important regions of the world. This can potentially affect other surrounding countries in the South China Sea, such as Thailand, Indonesia and Singapore. Furthermore, the United States, Japan and South Korea also have been monitoring very carefully all developments in the South China Sea.

This thesis will work on these two dynamics. The intent is to show their structures, as well as their principal actors and bottlenecks. It is not the intention of this thesis to

propose solutions or policies to the conflict, better qualified efforts have been made towards its resolutions. However, comparing the variables that have been influencing both dynamics, identifying their correlations with each other and analyzing the recent developments, we can see new perspectives to the disputes. The link between the lack of transparency with the current regional military buildup and the hesitations among the ASEAN countries to develop and implement the preventive diplomacy in the region is an important example. The difficulties in progressing from the CBMs to preventive diplomacy, due to the fear of intervention in internal affairs promoting uncertainties that feed the current military dynamic in a classical question of perception and misperception.

The thesis is divided into the following parts: Introduction, literature review, and methodology. Chapter 1 will provide a general background of the South China Sea disputes, describing the national interests of each country and the consequences of the UNCLOS III in the disputes. Chapter 1 also provides basic theoretical support to the concepts of common interest and common aversion utilized in the formulation of ideas for the negotiating dynamic and military dynamic.

Chapter 2 will analyze the negotiating dynamic by describing the concept of confidence building measures (CBM). The chapter also brings to the light all regional efforts made to implement them, the role of ARF in this process and a description of the Track I and Track II diplomatic tools.

Chapter 3 aims to provide details about the current regional military dynamic. The chapter establishes differences between the military dynamic and the arms race, where it is necessary to understand the nature of the military phenomenon in Southeast Asia. Additionally, individual information is given about the current capabilities and recent

military acquisitions by China, Malaysia, the Philippines and Vietnam, being the main actors in the South China Sea. For reasons of practicality and concise analysis, Taiwan and Brunei will not be included in this examination.

Chapter 4 reviews the most symbolic events during 2009-2010. The events that have been used have direct and indirect relations with the debate concerning the negotiating dynamic and the military dynamic.

The thesis culminates with a conclusion about the perspectives of the negotiating and military dynamic.

RESEARCH PURPOSE

The purpose of this thesis is to analyze the effects of the lack of progress in the negotiation dynamic in the South China Sea disputes on the current military build-up in the Southeast Asia. To achieve this end, the thesis focuses on two basic aspects: 1) the history of the confidence building measures in the South China Sea and 2) analysis of the national motivations of the current stage of the Southeast Asian military dynamic. The conclusion intends to provide arguments to establish a linkage between both, the negotiation and military dynamics and its regional effects.

RESEARCH QUESTION

What are the causes that led the Southeast Asian claimant countries into several skirmishes and clashes after the signature of the Declaration on the Conduct of Parties in the South China Sea that was adopted in 2002? What are the reasons for the current military modernization process in Southeast Asia since 2002? Which are the connections between the current Southeast Asian military dynamic and the absence of progress in the negotiations of the South China Sea territorial disputes?

METHODOLOGY

To respond to the research question, the research method consisted in the primary and secondary data analysis. The primary data is conducted in one interview with an ASEAN and China specialist/scholar who intends to submit the subject to a more accurate perspective from the respectful academic researchers. As the thesis topic has been well documented by many different sources such as books, specialized academic journals and newspapers, these sources will be explored to support the research hypothesis. Moreover, analyses related to official documents utilized by the two actors will be conducted.

The research limitations are of multiple magnitudes. Undoubtedly, working under time constraints to conduct research was the principal impediment of a more accurate development of the research. The second was the financial limitations. The possibility to include submission by military officials and scholars could have given a broader scope for the formulation of conclusions.

LITERATURE REVIEW

Research on the South China Sea is as fascinating as it is challenging. There is no better way to understand the characteristics of Southeast Asian countries and the composition of its foreign policies than the South China Sea issue. The theme creates necessity to understand a range of interconnect mechanisms, as the ASEAN regional mechanisms. Linked to the ASEAN, we can look to ARF, with all its catalogue of events and services to improve the level of communication and mutual trust in the Southeast Asia. Consequently, in studying the ARF structure it is possible to understand the track I and track II diplomatic channels utilized in the region. Thus, the contact with the CBMs

efforts becomes natural and possible to handle without too many problems. However, these conveniences finish with the giant task of reviewing the vast literature available on these topics, those of which are linked with the research topic.

The literature review is based and connected with two main areas of this thesis: the development of confidence building measures and the current military buildup that the Southeast Asia has been experiencing in the last decades.

The debate about the South China Sea and its disputes over its sovereignty is a duel between (neo) realist approaches and constructivist. Furthermore, more than a theoretical debate, the issue interlaced different perspectives to better understand the international environment and principally the regional arrangements. Mely-Caballero¹ proposes the constructivist approach as a more adequate approach to analyze the regional mechanisms as ASEAN and the achievements of the Southeast Asian integration experience. Caballero argues that the limitation of (neo) realism is that it fails to explain the types of cooperative behavior among states that became extremely common after the post-Cold War era. The existence of CBMs' sophisticated apparatus that is trying to create a propitious environment to resolve the regional disputes cannot be explained by the (neo) realist approaches. Given that within the (neo) realist's mind the states were only concerned about relative gains, how would one explain the emergence of multilateral types of negotiations on issues like trade liberalization and the environment, where relative gains become extremely difficult to calculate? Caballero concludes that the (neo) realist approach grounded on the discourse of the national interest is extremely narrow,

¹ Mely Anthony-Caballero, *Regional Security in Southeast Asia: Beyond the ASEAN Way*, (Singapore: ISEAS Press, 2005)

since it does not take into consideration important variables such as the ideas, values, and identities when explaining states behavior.

The constructivism supported by Caballero, and further developed by Alexander Wendt; put the people actions toward subjects on a perceptual basis as Wendt explains “*on the distribution of knowledge, that constitute their conception of self and other*”².

The constructivism understands the different behaviors of the states on inter-subjective means. The distribution of power might always affect states’ calculations, but how it does it depends on the inter-subjective understandings and expectations. Basically, the constructivism approaches follow the idea that much of the world we live in is of our own making. Consequently, the world is a *social construction* of reality where people believe in shapes what they create. Or as Caballero asserts, *constructivism it is all about human consciousness and how it is applied to international relations*³. Therefore, even if the world has been operating under the concept of anarchy, it is always subject of different interpretations, and hence the term “anarchy” cannot be viewed as a solid and close term, but needs to take into consideration the multiple understandings about it. Finally, another basic element of the constructivism approach relies on the idea of identity. The states identities and interests are constructed by social structures which are endogenous within the system rather than exogenous by the world system.

Given its characteristics, Caballero argues that the advantages of the constructivism approach are their special attention on ideational factors, including norms and ideas on the study of states. In this context, examining ASEAN’s mechanisms of conflict

² Alexander Wendt, “*Anarchy is What States make of it: The Social Construction of Power Politics*” *International Organization*: Vol. 46, No. 2 (Spring, 1992),391-425.

³ Supra Note 1 at page 15.

resolution, or the so called *ASEAN Way*, is possible understand how this mechanisms were shaped. Even though, recognizing that the preference of constructivist approach does not invalidate other theoretical tools, Caballero assures the constructivism perspective of analysis as the most appropriate to examine the functioning of the Southeast Asian states interactions. Therefore, the constructivist approach could better explain the nature and bottlenecks of confidence-building measures in the Southeast Asia.

The constructivism theoretical assumptions match very much with the basic concepts of implementation of confidence-building measures.

According with Hasjim Djalal and Ian Townsend-Gault, the CBMs in Southeast Asia were developed to prevent disputes from arising, adopting means to manage potential conflicts by promoting cooperation among the states or authorities in the region in as many sectors as possible⁴. Generally speaking, the literature about the CBMs works with the imperative to maintain the current efforts and to improve them as soon as possible.

First, openness and transparency are to be encouraged at every opportunity. The most effective cure for the mutual suspicions that dominate thinking about the South China Sea is transparency. There should be established and mutually previously agreed procedures for state-sponsored activity in the area; from hydrographic research to military exercises. Prior notification is an essential part of this package. Information Sharing and inviting observers will go along the way to ease suspicions and increase trust

⁴ Hasjim Djalal and Ian Townsend-Gault, *Preventive Diplomacy: Managing Potential Conflicts In The South China Sea* in Hampson, and All editors, *Herding Cats: Multiparty Mediation in a Complex World*, Crocker (Washington: United States Institute of Peace Press, 1999), 107-133.

among the various claimants to the area⁵. Cossa, Snyder and Glosserman⁶ also work with the same CBMs assumptions, providing to the confidence building measure in the Southeast Asia inescapable constructivist characteristics.

The literature regarding the confidence-building measures is spread along different terms and types of bibliography. In a general sense, the Henry L. Stimson Center provides comprehensive material related to the CBMs, Track II, informal diplomacy and similar issues. Its “*Handbook of Confidence Measures for Regional Security*”, in several editions, provides a confidence-building historical data bank from around the world, namely the Middle-East and South Asia experiences. Another Institute with an important contribution of information is Intractability.org, a think-tank specialized in confidence-building measures initiatives.

The CBM’s literature regarding the South China Sea issue has also been collected from a variety of sources, specifically from the CBMs on the South China Sea, Scott Snyder, Brad Glosserman and Ralph A. Cossa⁷ from the Center for Strategic & International Studies – Pacific Forum, offers a useful analysis about the necessity of developing the CBMs in the South China Sea.

On the other hand Emmers has a different perspective about the nature of the Southeast Asia relations and its territorial disputes. He argues that the geographical questions are key factors for the Southeast Asian States behavior, characterized in three basic aspects: territory, natural resources and power distribution. This way, Emmers

⁵ *Ibid.* 4

⁶ Scott Snyder, Brad Gloseserman and Ralph A. Cossa, *Confidence Building Measure in the South China Sea*; Issues & Insights, N° 2 (2001).

⁷ *Ibid.* 6

assumes a perspective essentially realist of the Southeast Asia relations and disputes⁸.

With these three basic strategic variables, Emmers affirms that is possible to understand the nature of the South China Sea disputes and consequently the difficulties in achieving the goals established by the confidence- building measures supporters. Moreover, the combination of these variables clears out the reasons behind the current States' resistances in implementing the preventive diplomacy mechanisms and, in some extends the current military buildup. Emmers assures that the interpretation of territory, natural resource, and the distribution of power is based on a material and an ideational reading of their role in international security relations. Moreover, even though each variables itself is important to analyze the nature of Southeast Asia disputes, Emmers assumes that territory, natural resources and power distributions are linked, and hence not easily separable form one another⁹. Emmers' assumptions match very much with the concepts established by Mearsheimer about the nature of international systems.

Mearsheimer assumes that the States' behavior is guided by the fear of each other, what invariably leads to suspicions and therefore threaten of a war is always lurking¹⁰. Using the realists' assumptions as the anarchic nature of international systems, the necessity of power to posses military capabilities to use against each other, the condition of permanent uncertainties given one state can never know exactly about the intentions of another and its inescapable desire to survive, Mearsheimer understands the post Cold War operating under these assumptions. Regarding the last assumption of survival as States'

⁸ Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (New York: Routledge Press, 2010).

⁹ *Ibid.* 8.

¹⁰ John Mearsheimer, *Anarchy and the Struggle for Power* (New York: Norton Press, 2001),61.

primary goal, Mearsheimer emphasizes that States seek to maintain their territorial integrity and the autonomy of their domestic political order. Here the territorial integrity works as a cement of the national identity and therefore is a pre-condition of the States' survival within of the International System¹¹. Within of these perspectives, the South China Sea claimant countries are, even under a process of cooperation and negotiation, looking for maximizing their gains, employing a variety of economic, diplomatic, and military means to shift the balance of power in their favor.

With these concepts in mind, is possible to understand why military dynamics occurs in parallel with negotiating dynamics. Tan¹² even highlights the differences between an armed uprising and military dynamics or arms competition, utilizing the concepts elaborated by Gray¹³, he affirms that the domestic constrains are the main drivers of the current military dynamic in the Southeast Asia. With an incomplete nation-building process, internal menaces and the fear of external powers dominance are understood as the menaces for the existence of the Southeast Asia states, principally the small and weak ones. Bitzinger also agrees that the ongoing military phenomenon in the region does not fulfill the prerequisites to be characterized as an armed uprising.

However, he also highlights the need to complete the nation-building process and the fight against the domestic enemies as the principal reasons for the current arms acquisition path in the Southeast Asia. However, both agree that the South China Sea disputes work on the very sensitive aspects of the formation of national interests and composition of national identities that unavoidably are linked with the composition of the

¹¹ *Ibid.* 10.

¹² Andrew Tan, "Force Modernization Trends," *RSIS Working Paper*, No. 59 (2004).

¹³ Colin S. Gray, "The Arms Race Phenomenon," *World Politics*, Vol. 24, No. 1 (1971).

territory, as Emmers assumed previously. Therefore, the protection of the national interests on the South China Sea, more than a legal disputes or interpretation of international law, is part of the consolidation of the national elite's aspiration and thus has exacerbated nationalism that is reflected in both dynamics by different ways.

Aside from agreeing with Caballero's proposition in using the constructivist approach to understand the dynamic of the ASEAN's experience, this thesis also accepts that the compositions of strategic variables have been guiding the behavior of the South China Sea claimants' countries. The strategic way of thinking have influenced or blocked the progress from confidence-building measures to preventive diplomacy, at the same time that has been the principal factor for the modernization process of acquisition of new power capabilities.

In terms of additional readings on the South China Sea issue and all its developments in terms of strategic regional implications, the researchers from S. Rajaratnam School of International Studies have provided an abundant source of material. Their working papers have caught the essence of the events and are currently a necessary source of information about the economic and security in Southeast Asia and Asia Pacific.

Joyner¹⁴ (2002) highlights the necessity to enhance the transparency as an important step to the achieve success in the negotiations. However, he proposed a series of actions to implement them without making a connection to the current militarization process.

¹⁴ Christopher C. Joyner, *"The Spratly Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation"* in *Cooperative Monitoring in the South China Sea*, ed. John C. Baker and David G. Wiencek (London: Praeger Publishers,2002).

Buchholz¹⁵ (1987) and Gendreau¹⁶ (2000) conducted discussions on the essential legal aspects without taking into consideration any political or strategic facets.

As we can observe, all literature available only takes into consideration the topics of this thesis as separate entities, without establishing elements of comparison or connection. The contribution of this thesis will work with the South China Sea issue to establish linkages between the two dynamics triggered by its territorial disputes: negotiating dynamic and military dynamic. These two dynamics have been running parallel to one another, and use a high level and well prepared bureaucracy to undertake them. However, it seems that level of transference from the formal and informal diplomatic channels negotiations to the military circles is very limited or, at times, even nonexistent. Given the strategic variables that are permeating the debate about the South China territorial disputes, the possibilities of progressing of confidence building is very low.

¹⁵ Hanns J. Buchholz, *Law of the Sea Zones in the Pacific Ocean* (Singapore: Institute of Southeast Asian Studies, 1987).

¹⁶ Monique Chemillier Gendreau, *Sovereignty over the Paracel and Spratly Islands* (London; Kluwer Law Pressinternational, 2000).

CHAPTER 1 - THE SOUTH CHINA SEA: DEFINITIONS AND BACKGROUND

The South China Sea¹⁷ is one of the most complex diplomatic dilemmas of contemporary times. Within its problematic conceptualization are a myriad of interlaced strategic variables. The South China Sea is extremely rich in natural resources, possesses an immense energetic potential in gas and oil, and is a fishery sanctuary for people from different countries of Southeast Asia. Most importantly, it is an incalculable value from the military point-of-view¹⁸.

The South China Sea lies south-east of the Asian continent, bounded by China to the south and Hainan Island to the north, by Vietnam to the west, Malaysia and Brunei to the south and Philippines and Taiwan to the north and north east. It still encompasses a portion of Pacific Ocean stretching roughly from Singapore and the Strait of Malacca in the southwest¹⁹. Its area includes more than 200 small islands, rocks and reefs, with the majority located in the Paracel and Spratly Island chains. It is important to note that these islets, rocks, and reefs not offer conditions for human life habitation nor provide the space for shipping access.

Before starting the analysis of the questions regarding the negotiation dynamic and military dynamic, this chapter will provide the basic aspects of the South China Sea

¹⁷ Called by Eastern Sea by the Vietnamese.

¹⁸ John C. Baker and David G. Wiencek, *Cooperative Monitoring in the South China Sea: Satellite Imagery, Confidence Building Measures and the Spratly Islands Disputes* (London: Prager Publishers, 2002), 49.

¹⁹ Monique Chemillier Gendreau, *Sovereignty over the Paracel and Spratly Islands* (London: Kluwer Law Press international, 2000), 65-78.

disputes. It will highlight a set of main variables that have been influencing the disputes as the strategic, legal, the motivations of each country and its respective territorial claims.

A) The Spratlys Island

They are a vast underwater platform in the middle of the South China Sea. The specialists say that is not easy to identify the archipelago clearly because the region the region includes widely scattered islands, islets, banks and rocks²⁰. There are over one hundred of them, and the total surface area encompasses around 160,000 square kilometres, which is over ten times bigger than the Paracels. The majority of islands are small, barely maintaining vegetation but rather covered by sand and guano. There are indications of important reserves of phosphorus estimated at 370,000 tonnes²¹. Some of these islets and islands are occupied by the Philippines, Malaysia, Taiwan, China and Vietnam

B) The Paracel Islands

The Paracel islands consist basically of two main groups: the Amphitrite and the Crescent group, which lie some 70 kilometres apart from one another. The largest of them, known as Woody Island is no more than 4 kilometres long and 2 to 3 kilometres wide²². Apart from these two groups of islands already mentioned above, the archipelago as whole consists of over 30 islets, sandbanks or reefs and occupies some 1,500 square kilometres in the ocean surface. There is also evidence of existing of offshore oil deposits. The area is potentially rich in phosphate deposits as well. The Paracel is disputed by Vietnam. China

²⁰ *Ibid* 19.

²¹ *Ibid*.

²² Baker and Wiencek , *supra* note 18 at 50.

occupied Woody Island in 1974 that now is equipped with an airstrip and enlarged harbour. Other harbours also have been built on Triton islands in 1982.

1.1 – Strategic Aspects of South China Sea Disputes

The Spratly Island has a total territory of less than 3 square miles from which it is impossible to develop any sort of structural capabilities; nevertheless the strategic and political values of these islands cannot be ignored. Essentially, the legal status of these two archipelagos, the Paracel in the north and Spratlys in the south, are under sovereignty disputes among China, Malaysia, Philippines, Brunei, Taiwan and Vietnam²³.

The Sea Lanes of Communication (SLOC) in the SCS connect Northeast Asia and the western Pacific to the Indian Ocean and the Middle East. Moreover, the South China Sea possesses one of the most important sea transportation routes in the world. For instance, statistics say that more than 41,000 ships – over half the world’s shipping tonnage – sail through these waters every year. This accounts for more than 80% of the oil from Japan, South Korea and Taiwan that flows through the harbours in that area²⁴. These key sea lanes includes the Strait of Malacca and Singapore, Sunda Strait, and the Strait of Lombok and Makasar that are among the most important transportation route straits in the world with more than 50% of world’s merchant fleet tonnage crossing them annually. An eventual single-State control over some of those Spratly and Paracel islands “*presents the*

²³ Li Mingjiang, “*China’s South China Sea Dilemma: balancing sovereignty, development, and security*” in ed. Sam Bateman and Ralf Emmers, *Security and International Politics in the South China Sea: Toward a Cooperative Management Regime* (New York; Routledge Press, 2009), 141.

²⁴ Scott Snyder, Brad Gloseserman and Ralph A. Cossa, *Confidence Building Measure in the South China Sea; Issues & Insights*, N° 2-OI (2001).

opportunity for gaining a central and commanding position in the region”²⁵. From the Western Pacific to the Indian Ocean and Persian Gulf²⁶, the “chokepoints” are strategically imperative in terms of movement for maritime powers as United States.

The critical location of the South China Sea has been identified since the World War II. The Japanese, who since 1918 had been using the many Islands in Spratly and Parcel to excavate guano, were the first to use it with strategic purposes using them in its operations in the Southeast Asia, mainly against the Philippines²⁷. In addition, the islands scattered all South China Sea provide potential areas for surveillance, sea-lane of interdiction and other naval operations, that according with Song “*could disrupt maritime traffic from Singapore to southern China and Taiwan*”²⁸. Making clear the strategic importance, Emmers assert:

“...the control of the heart of the sub-region would be threatening for Vietnam, the Philippines, Malaysia, Brunei and Indonesia. Control over the sea lines of communication (SLOCS) would also endanger the interests of the United States, Japan and other naval powers”

These set of variables have been used, in part, as drivers of the current military dynamic in Southeast Asia. The enhancement of military capabilities as a means of maintaining

²⁵ Kuan-Hsiung Wang, “*Bridge Over Troubled Waters: Fisheries Cooperation as a Resolution to the South China Sea Conflicts.*” *The Pacific Review*, Vol. 14 No. 4(2001), 532.

²⁶ Yann-huei Song, “*United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics.*” Maryland Series in Contemporary Studies N.1 (2002), 21.

²⁷ Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (New York: Routledge Press, 2010), 67.

²⁸ *Ibid* 27.

control of strategic points is considered a national priority for many states in the region; such as Vietnam, Malaysia and China.

1.2 –The importance of sea lanes of communication (SLOCS)

Assuring the safety of specific deep sea areas has been one of the most important concerns to military strategists in modern times. According to strategists, the forces that hold the land framing the Sea Lines of Communication (SLOCs) control movement between oceans, and thus are the lifeblood of modern war²⁹. The strategic importance of SLOCs, and sea control itself, has been appreciated since war first moved to deep water and the control of straits has been a key feature of significant maritime actions since ancient times³⁰. Despite changes in weapons and the ships that carry them, the fundamentals of naval war remain the same: the force that holds the SLOCS controls the seas and the force that controls the seas will control the outcome of the war. In the South China Sea, this perspective is no different. As previously noted, the strategic value of controlling SLOCs is formidably high. In addition, the sea lanes of communication in Southeast Asia have everything to do with its passage ways through the Malacca, Lombok and Sunda Straits. Together, these straits compose one of the most important

²⁹ Forrest R. Lindsey, “*Sea Lines of Communication Control: A Marine Mission*”, War in the Modern Era Seminar. Marine Corps Command and Staff College Quantico, Virginia 9 May, 1988. Available: <http://www.globalsecurity.org/military/library/report/1988/LFR.htm> Access: August, 26 2010.

³⁰ *Ibid.* 29.

economic and strategic gateways of the worlds, and it is the reason that actors as United States, China and Japan follow very closely all events in those areas³¹.

The major sea lanes in Southeast Asia are primarily comprised of the Malacca and Singapore Straits, the Sunda Strait and the Lombok Strait. The Strait of Malacca, located between Indonesia, Malaysia, and Singapore, links the Indian Ocean to the South China Sea and Pacific Ocean. The Strait of Malacca is the shortest sea route between Persian Gulf suppliers and the Asian markets –notably China, Japan, South Korea, and the Pacific Rim. Likely the most important of the Southeast Asian sea lanes, the Strait of Malacca is 600 mile long and is considered the principal corridor between the Indian Ocean and the South China Sea. It is also the primary lane utilized by tankers from the middle-East. Around 25 tankers, including three fully supertankers heading for Asian ports, pass through the strait daily³². In terms of total volume, more than 200 boats pass through the Strait of Malacca on a daily basis, totalling more than 63,000 on annually and which

³¹ Specifically about China the importance of the SLOCs in the South China are dramatic. Currently 78 % of China's oil transportation has to go through narrow ocean straits in the Indian Ocean Region- IOR-, (that include the gateways to Malacca Strait) which it has no control over SLOC safety. This presents Beijing with a long-term security challenge, prompting Chinese president Hu Jintao to remark on the "Malacca Strait Dilemma" in 2004. The dilemma reveals the difficulties of finding any effective solution to the challenge. First, according to Chinese researchers, land-based transportation lines are neither practical nor cost-effective. Second, protecting SLOCs through naval forward presence in the IOR is basically a non-option. This is due to not only China's lack of necessary military capabilities to so, at same time that Beijing feel vulnerable to any US blockade action that could put it economy on the knees. See You Ji, "Dealing with the Malacca Strait Dilemma: China's efforts to Enhance Energy Transportation Security". EAI Background Brief No. 329, April (2007). Available: <http://www.eai.nus.edu.sg/BB329.pdf> Access: August, 26 2010.

³² Joshua Ho, "The importance and Security of Regional Sea Lanes" in *Maritime Security in Southeast Asia*, ed. Kwa Chong Guan and John K. Skogan (New York: Routledge Press,2007),22.

carry 80% of the oil transported to Northeast Asia. In economic terms, the total tonnage carried by the Malacca Strait amounts to 525 million metric tones, worth a total US\$ 390 billion³³. With these numbers, the Strait of Malacca is currently considered the second busiest strait in the world and, according to forecasts, the Malacca Strait will become even busier in the future as result of trade flows and rising oil and gas demands in Asia³⁴.

The Lombok Strait is another important point of transit which connects Southeast Asian and Northeast Asian countries. The Lombok Strait is less congested than the Strait of Malacca, due to its greater width and depth relative to the Malacca Strait, and is considered the safest route for super tankers and the largest of the eastbound ships. About 418 ships transit annually and the total annual tonnage carried through the Lombok Strait amounts to 36 million metric tones. Ships carrying iron from Australia to China also enter the Indonesian archipelago through the Lombok Strait³⁵. Finally the last of the three straits is the Sunda Strait. It is 50 miles long and provides another alternative to the

³³ *Ibid.*32

³⁴ The most important oil chokepoint in the world is located between Oman and Iran. The Strait of Hormuz connects the Persian Gulf with the Gulf of Oman and the Arabian Sea. Hormuz is the world's most important oil chokepoint due to its daily oil flow of 16.5-17 million barrels (first half 2008E), which is roughly 40% of all seaborne traded oil (or 20 % oil traded worldwide). Oil flows averaged over 16.5 million barrels per day in 2006, dropped in 2007 to a little over 16 million barrels per day after OPEC cut production, but rose again in 2008 with rising Persian Gulf supplies. On the average, an oil tanker sails through the Strait of Hormuz every 21 minutes. Source: "World Oil Transit Chokepoints"- US Energy Information Administration (EIA). Available: http://www.eia.doe.gov/cabs/World_Oil_Transit_Chokepoints/Hormuz.html Access: August, 26 2010.

³⁵ *Ibid.*34.

Malacca Strait. About 2.300 ships transit the Sunda Strait annually and the total annual tonnage carried through the Sunda Strait is 111 million metric tones³⁶.

It is certainly possible to denote the economic importance of the Southeast Asian sea lanes of communication to both established and emerging Asian states. Being conscious of this strategic and economic variable is fundamental to a thorough understanding of the importance of the South China Sea maritime disputes and their effects on the regional and global economies. Even though these sensitivities were felt in all states claimants, it is also of great importance to those non-state territorial claimants. Thus, the involvement of United States and, to a lesser extent, Japan is understandable. With these concepts in mind, the next section will analyse the impacts of other fundamental aspects of maritime sovereignty in the South China Sea: the United Nations Conference of the Law of the Sea (UNCLOS).

1.3 - The UNCLOS III and the impacts on the Southeast Asia

After World War II, there was an increasing demand for “territorialization” of the specifics areas of the seas and continental shelf³⁷ around the globe³⁸. Consequently, with

³⁶ Supra Note 29.

³⁷ The Article 76 of UNCLOS define continental shelf as: “the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance”. United Nations Convention on the Law of the Sea (UNCLOS) - Part VI.

the increase of demands for maritime areas, there also grew the possibilities for conflicts. In this context was established the first United Nations Conference of the Law of the Sea as established in Geneva in 1958. The UNCLOS III in 1973 was a consequence of these conferences; though, the previous conferences did not find any consensus among the members of the United Nations³⁹.

Between a series of regulations approved by UNCLOS III the most important were those regarding navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and a binding procedure for settlement of disputes between states⁴⁰. In addition, the resolutions related to internal waters, territorial waters, archipelagic waters, contiguous zone, exclusive economic zone (EEZ), and Continental shelf had a fulminate impact on the coastal countries, namely in the Southeast Asia region.

The reason of this impact in the SEA relies on the complex regionalization conditions vis-à-vis its geographical positions. All Pacific States situated in Southeast Asia are grouped around the South China Sea and its bays⁴¹ in a relatively circular pattern making

³⁸ Essentially the first wave were composed by the Latin American countries such as Mexico (1945), Panama (1946), Chile (1947), Peru (1947), Nicaragua (1948), and Costa Rica (1948). See Hanns J. Buchholz, *Law of the Sea Zones in the Pacific Ocean* (Singapore: Institute of Southeast Asian Studies, 1987), 5.

³⁹ *Ibid.* 38.

⁴⁰ *Ibid.*

⁴¹ The Gulf of Thailand and Gulf of Tonking.

that all territorial claims have a common centre⁴². In conjunction with the legal disputes triggered by UNCLOS's resolutions, there are a number of historic claims that gain more complexities due to the large number of islands and reefs⁴³.

1.4 - The claimants and demands

Competing territorial claims over the South China Sea and consequently its resources for various areas and almost all countries demand partial or total sovereign under that area. For the purposes of this thesis already mentioned, the research will concentrate the analysis just on the China, Philippines, Malaysia and Vietnam propositions⁴⁴.

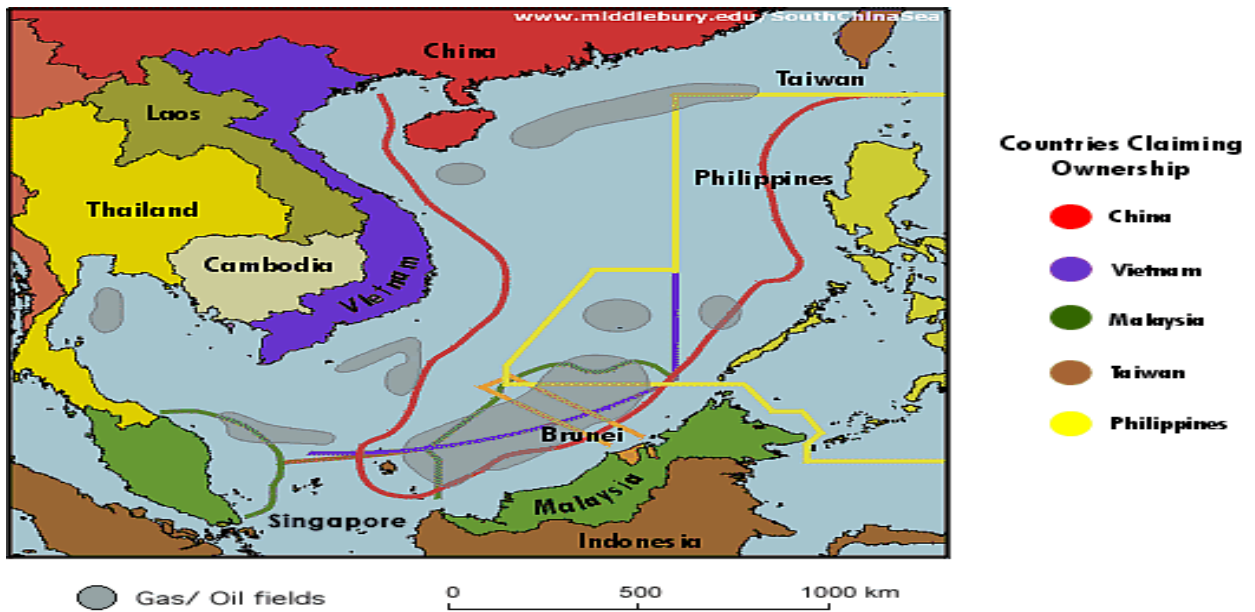
⁴² The UNCLOS the article 123 defined the duties and rights for these kinds of coastal states. Essentially they urge to cooperation in all issues regarding to the maritime and sovereignty rights as well scientific cooperation aspects as well. "Cooperation of States bordering enclosed or semi-enclosed seas States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article". See United Nations Convention on the Law of the Sea (UNCLOS) Part IX. Enclosed or Semi-Enclosed Areas: http://www.un.org/Depts/los/convention_agreements/texts/unclos/part9.htm

⁴³ Gendreau, supra note 19 at page 23.

⁴⁴ The complete list of countries that demand some measure sovereignty or interests on the South China Sea are Brunei, Cambodia, China, Indonesia, Malaysia, The Philippines and Taiwan.

In general sense the claims can be separated into two basic categories: historical and legal basis⁴⁵. China and Vietnam relies its claims under the historical aspects while Philippines using a mix of historical and legal and Malaysia essentially legal. Basically, there is an overlapping claim in the South China Sea.

Figure 1 - Maritime Claims



Source: The South China Sea Virtual Library. Available: http://www.southchinasea.org/maps_images.html

Access: August, 06 2010

A) *Brunei's claims*

Brunei Darussalam only has one claim in the South China Sea, the Louise Reef. The sultanate use legal basis derivate from its interpretations about the UNCLOS III

⁴⁵ Ralf Emmers, "Maritime Disputes in the South China Sea: Strategic and Diplomatic Status Quo" in *Maritime Security in Southeast Asia* ed. Kwa Chong Guan and John K. Skogan (New York: Routledge Press, 2007).

regarding to continental shelf provisions. The Louise Reef is part of the seabed and technically a legal extension of a continental shelf. The question about the Brunei's claims is whether the continental shelf can be considered as a natural prolongation seaward from the territory of Brunei.

B) China's claims

The PRC perspectives the South China Sea as an exclusive Chinese sea and claims almost the entire territory. The PRC refers to the Spratly Islands as the Nansha islands, claiming all of the islands and most of the South China Sea for historical reasons. China also claims the Paracel Islands (referred to as the Xisha Islands), and includes them as part of its Hainan Island province. Chinese claims are based on a number of historical events, including the naval expeditions to the Spratly Islands by the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD. In the 19th and early 20th century, China asserted claims to the Spratly and Paracel islands. According to specialists, notable problems of authenticity and accuracy exist despite all descriptions implied by China in reference to the Spratly islands.

Officially, the Chinese claims were defined during the Nationalist rule (KMT) in 1947 by Chiang Kai-shek⁴⁶. Later Premier Zhou En-Lai formalized the claims in 1951⁴⁷.

⁴⁶ It is important to highlight that at that time the Chinese Nationalist government's assertiveness pertaining to the South China Sea was in response to French actions in the area. With fear of Japanese expansion in the region, France claimed the Spratly Islands for itself and occupied some of the islands. Later, in 1938, the French forces also occupied the Paracel Islands. At the time, China was immersed in its civil war and could not to respond to these occupations. Following the end of the World War II, the Nationalist government of Chiang Kai-shek sent naval expeditions in to both areas to establish sovereignty

However, from legal point-of-view, that the mere discovery of some territory is not sufficient enough to promote the discoverer rights of ownership to the territory⁴⁸. According with Emmers, Beijing has not provided a legal explanation for its territorial claims. In May 1996, the PRC applied the archipelagic principle when drawing maritime baselines in the Paracel islands, although the Philippines and Indonesia are the only archipelagic states in the region⁴⁹.

During World War II, the islands were claimed by the Japanese. After years of clashes and rhetorical challenges, in 1992, Chinese law restated its claims in the region⁵⁰. China has occupied 8 of those islands to enforce its claims. In 1974, China seized the Paracel Islands from Vietnam. Moreover, Beijing since 1988 has deployed around 260 marines in garrisons on seven islets in Spratly area⁵¹. Additionally, Beijing also have using legal

markers and established a permanent presence in the region. In 1947, Chiang Kai-shek's government published a map showing the region with a U-shaped dotted line incorporating virtually all of the South China Sea into Chinese territory, citing historical arguments this action. With the victory of the Communists and the consequent establishment of the nationalist government in Taiwan, the same map and claims were adopted by both countries. Thus, the PRC essentially inherited the claims made by the Kuomintang, which in turn, became the Taiwan's maritime claims as well. See Timo Kivimaki, *War or Peace in the South China Sea* (Denmark: NIAS Press, 2002), 9-11.

⁴⁷ Supra Note 19 at page 23.

⁴⁸ Christopher C. Joyner, "The Spratly Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation" in *Cooperative Monitoring in the South China Sea*, ed. John C. Baker and David G. Wiencek (London: Praeger Publishers, 2002), 48-56.

⁴⁹ Emmers, supra note 45.

⁵⁰ Peoples Republic of China, Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone. Adopted at the 24th Meeting of the Standing Committee of the Seventh National People's Congress on February 25, 1992

⁵¹ Emmers, supra note 45 at 28-32.

elements to justify its claims utilizing the economic exclusive zone rights and continental shelf principles established in the Law of Sea (LOF) of United Nations. The scope of Chinese claims in the South China Sea, make the implementation of CBMs and diplomatic negotiations highly difficult and extremely dependent of Beijing's interests⁵².

C) Vietnam's claims

Until reunification, Vietnam had recognized Chinese sovereignty over Paracels and Spratlys. Since 1975, Vietnam has claimed both groups based on historical claims of discovery and occupation. Basically, the Vietnamese claims are based on history and the continental shelf principle. Vietnam claims the entire Spratly Islands (Truong Sa in Vietnamese) as an offshore district of the province of Khanh Hoa. Vietnamese claims also cover an extensive area of the South China Sea; however they are not clearly defined. In addition, Vietnam claims the Paracel Islands (the Hoang Sa in Vietnamese), although they were seized by the Chinese in 1974. Hanoi has followed the Chinese example of using archaeological evidence to bolster sovereignty claims. In the 1930's, France claimed the Spratly and Paracel Islands on behalf of its then-colony Vietnam. Vietnam has since occupied 27 of the Spratly Islands to enforce its claims. In 1977 Vietnam also established a 200-nautical mile EEZ.⁵³

D) Malaysia's claims

⁵² *Ibid.* 51.

⁵³ Monique Chemillier Gendreau, *Sovereignty over the Paracel and Spratly Islands* (London; Kluwer Law Press international, 2000), 19.

Malaysia extended its continental shelf in 1979 and included features of the Spratly in its territory. Since then, it has occupied 6 islands to be considered within its continental shelf⁵⁴. Its Spratly claim's are based upon the continental shelf principle, and have clearly defined coordinates. Malaysia has tried to build up one atoll by bringing soil from the mainland and has built a hotel.

E) Philippines's claims

Among the ASEAN members, The Philippines claims are the largest in the Spratly Islands – a region the Philippines refer to as Kalayaan. Its claims have clearly defined coordinates, based both upon the proximity principle as well as on the explorations of a Philippine explorer in 1956. In 1971, the Philippines officially claimed 8 islands, partly on the basis of this exploration, arguing that the islands: 1) were not part of the Spratly Islands; and 2) had not belonged to anyone and were open to being claimed. In 1972, they were designated as part of Palawan Province, and have been occupied. Later, in 1978 a presidential decree finally declared Kalayaan as part of the national territory⁵⁵.

F) Taiwan's claims

Various authors assert that the Taiwanese argument for its legal basis to claim sovereignty over the Spratly and Paracel Islands are the same as that of China. The maps which have been published by both PRC and Taiwan demonstrate a common border

⁵⁴ *Ibid.*53.

⁵⁵ Christopher C. Joyner, "The Spratly Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation" in *Cooperative Monitoring in the South China Sea*, ed. John C. Baker and David G. Wiencek (London: Praeger Publishers,2002) ,19.

which runs to the south, past the western coast of the Philippines and up to the coast of Sarawak (Malaysia). The map also claims Zengmu Reef, which lies 130 kilometers off Sarawak, as “being Chinese territory”⁵⁶. Though the maps published in Taiwan and China show identical information, the Taiwanese map includes what is referred to as the “nine-dotted line” to distinguish it from the “U-shaped Line” printed on maps published by the PRC.

Map 1 – Nine- dotted line (Taiwan)

Map 2 – U-Shaped Line (China)



Source: South China Sea Virtual Library – Maps: Available:

http://community.middlebury.edu/~scs/maps_images.html Access. September, 07 2010.

⁵⁶ Hanns J. Buchholz, *Law of the Sea Zones in the Pacific Ocean* (Singapore: Institute of Southeast Asian Studies, 1987), 43. See also Junwu Pan, *Toward a New Framework for Peaceful Settlement of China’s Territorial and Boundary Disputes* (Netherlands: Martinus Nihoff Publishers, 2009), 171.

In addition, both countries support their claims historical arguments⁵⁷. These similarities lead different specialist to consider the Taiwanese and Chinese claims as identical and “*therefore understood as one*”⁵⁸. However, in contrast to the Chinese claim, Taipei’s claims also are further supported by its persistent occupation of Itu Aba island⁵⁹. Taiwan was the first claimant to establish a presence on the Spratly islands, on the largest island in the region Itu Aba (Taiping Dao). From the legal standpoint, the Taiwanese claims are rather paradoxical. Taiwan has had a continuous presence in the area for more than four decades without facing any strong resistance or objection from the other claimants. Taiwan’s essential claim to sovereignty is by arguing that it has provided continuous peace to the tumultuous region. On the other hand, Taiwan’s arguments to claim sovereignty suffers from the same deficiencies as China, “*as that discovery of, and consistent contact with, scattered islet formations in ocean space are insufficient cause to establish legal title of sovereignty*”⁶⁰.

⁵⁷ *Ibid.*56.

⁵⁸ Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (New York: Routledge Press, 2010), 66. See also John C. Baker and David G. Wiencek, *Cooperative Monitoring in the South China Sea* (London: Praeger Publishers, 2002), 55.

⁵⁹ Yann-huei Song, “United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics.” *Maryland Series in Contemporary Studies* N.1 (2002): 75.

⁶⁰ *Supra* Note 54.

Table 1 – Summary of Territorial, claims basis and occupation in South China Sea

<i>Parties</i>	<i>Basis</i>	<i>South China Sea Claims</i>	<i>Spratly Islands claims</i>	<i>Paracel Islands claims</i>	<i>Islands occupied and some key features</i>	<i>Estimated Number of troops</i>
CHINA	<i>Historical</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>7 islands and reefs; several helicopter pads</i>	<i>325</i>
BRUNEI	<i>Legal</i>	<i>Portion</i>	<i>1 Island</i>	<i>No claims</i>	<i>No occupation</i>	<i>No military presence</i>
MALAYSIA	<i>Legal</i>	<i>Portions</i>	<i>12 islands</i>	<i>No claims</i>	<i>6 Islands; one with 600 meter runway.</i>	<i>70</i>
PHILIPPINES	<i>Legal/Hist.</i>	<i>Portions</i>	<i>8 islands</i>	<i>No claims</i>	<i>8 islands' one with a 1.300-meter runway</i>	<i>480</i>
VIETNAM	<i>Historical</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>27 Islands and reefs; one with 600 meter runway.</i>	<i>600</i>
TAIWAN	<i>Historical</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>1 Island with Helicopter pads; plans for runway</i>	<i>100</i>

Source: Adapted from John C. Baker and David G. Wiencek Cooperative Monitoring in the South China Sea: Satellite Imagery, Confidence-Building Measures, and the Spratly Islands Disputes. (London: Prager Publishers, 2002) and other variety of sources.

However, the contradiction behind o this trend is characterized by the pattern between Beijing and the withal disputants countries in the economic aspects. The economic relations between the disputants skyrocketed since the re-establishing of diplomatic ties in 1992. As ASEAN members, Malaysia, Philippines and Vietnam have had a completely new experience in terms of economic exchange with Beijing from the historical perspective the same can be said about the pattern of relationship between Taiwan and China. The immediate outcomes of these movements can be verified in the level of trade exchanges between Chinese and Southeast Asia countries since the complete reestablishment of diplomatic ties in 1992.

Even the economic exchange was not able to meliorate the historical mistrust between the actors, principally regarding about the Beijing ambiguous behavior. The trade between China and ASEAN countries, which therefore includes all South China Sea

disputant states, expanded at an annual growth rate of about 15% since 1995, and it jumped by 31.7% in 2002 to US\$ 54.77 billion. According to the Institute of Asia-Pacific Studies (CASS) utilizing China's statistical data, China's trade with ASEAN increased rapidly over the period of 1990 to 2007⁶¹. Though from a low baseline of 7 billion US\$ in 1990, the trade volume exceeded 100 billion U.S. \$ as a mark in 2004, and amounted to 202.6 billion US\$ in 2007 as a new record, reaching the goal of 200 billion US\$ that was planned for the year 2010 three years in advance⁶².

This economic flow leads the both sides to an intensification process of trade integration that resulted in the Free Trade Area. During the China-ASEAN Comprehensive Economic Cooperation at the Sixth China-ASEAN Summit held in Cambodia, The PRC formalized an agreement on trading in Goods in the Framework Agreement and on Economic Cooperation with ASEAN in November 2004⁶³. The scheduled stipulation was not until January, 2010. Due to the different economic profiles among the ASEAN members, the agreement was divided in two stages. Finally, the Chinese Ministry of Commerce reinforced the aspects related to size and potential market consumer that ACFTA would create and its “amazing picture for our

⁶¹ Zhao Jianglin, “Recent Development of China-ASEAN Trade and Economic Relations: From Regional Perspective”. Institute of Asia-Pacific Studies, CASS, Available: <http://iaps.cass.cn/english/Articles/showcontent.asp?id=1131>

⁶² *Ibid.* 61.

⁶³ Tang Yohong and Wang Weiwei, “An Analysis of Trade Potential between China and ASEAN within China-ASEAN FTA”, University of International Business and Economics [2005]. Available: <http://faculty.washington.edu/karyiu/confer/beijing06/papers/tang.pdf> access: March, 19, 2010.

future co-operation” when it is fully established⁶⁴.

However, since 1992, the recent the clashes and quarrels in the South China Sea multiplied simultaneously with the trade exchange.

At the same time that economic relations enhanced with enthusiasm, the security questions rose and resulted in contentions that many times put Southeast Asia on alert (source). Between 1992 and 2002, sixteen disagreements occurred between claimant countries, its majority involving the People’s Republic of China. The significance and intensity of these conflicts led a series of diplomatic efforts to avoid or even prevent the escalate of tension in the region. Despite nationalistic and intense domestic pressure, there was a consensus in Southeast Asia and China that an eventual generalized conflict could put their economies on their knees, which, given the current flow, would be a complete disaster for all ⁶⁵. Among these efforts, The ASEAN Declaration on the South China Sea in 1992 and The Declaration on the Conduct of Parties in the South China adopted in 2002 are emblematic.

1.5 The United States interests

Recently at the Asian Regional Security Meeting, U.S. Secretary of State Hillary Rodham Clinton, broke one of the most consistent US foreign policy principles towards

⁶⁴ The first step to implement the ACFTA was given in January, 2010 that included the five original members: Indonesia, Malaysia, Philippines, Singapore and Thailand. The withal countries of Laos, Cambodia, and Myanmar (Burma) would have to comply until 2015. The dimensions of the new agreement are impressive. The ACFTA between China and ASEAN created an economic giant with 1.7 billion consumers, with a regional Gross Domestic Product (GDP) of about US\$2 trillion and total trade estimated at US\$1.23 trillion. This became the biggest FTA in the world in terms of population size. See Raul L. Cordenillo, “*The Economic Benefits to ASEAN of the ASEAN-China Free Trade Area – ACFTA*”. ASEAN Available: <http://www.aseansec.org/17310.htm>. Access: March, 19, 2010

⁶⁵ Joyner, supra note 48 at page 35.

Southeast Asia; the non-involvement in the South China Sea maritime disputes. Secretary Clinton stressed that though the United States remains neutral with regards to the dispute itself, the preservation of free shipping in the area is part of US National interests and that the U.S. would be willing to facilitate multilateral talks on the issue⁶⁶. Clinton's assertiveness is in complete contrast to the United States' usual approach to the South China Sea issue. In a 1996 statement related to US presence and interests, it was made very clear that the US is commitment to non-involvement in the territorial disputes in the South China Sea:

“The United States takes no position on the legal merits of the competing claims to sovereignty over various islands, reefs, atolls and cays in the South China Sea. The United States would, however, view with serious concern any maritime claim, or restriction on maritime activity in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.”⁶⁷

The US interests in the South China Sea obey a series of national and global variables. Ultimately, the amalgamation of these multiple interests is characterized in the concept of freedom of navigation; initiated in 18th century but particularly intensified since World War II. During the war, the US made certain to eliminate the Japanese SLOC's in the South China Sea that linked all Southeast Asia to China and Japan. Since then, the navigational freedom in the region has been permanent and definite part of US

⁶⁶ Mark Lander, “Offering to Aid Talks, U.S. Challenges China on Disputed Islands”. The New York Times. Available: <http://www.nytimes.com/2010/07/24/world/asia/24diplo.html> . Access: August, 02 2010.

⁶⁷ Song, supra note 26 at page 26.

strategic interests⁶⁸. However, Chinese official stance that the status of the South China Sea is one of China's "core interests," puts in peril this freedom of navigation that has guided US actions in the region.

This concept of free access in any maritime domain was reinforced several times by various US officials. For example, in 2001 the US Department of Defense released a report stating the key elements where the US armed forces should undertake all efforts to protect, among them the access to key strategic-areas is emphasized⁶⁹:

- ❖ Ensuring US security and freedom of action, including:
 - US sovereignty, territorial integrity, and freedom;
 - Safety of US citizens at home and abroad;
 - Protection of critical US infrastructure;
- ❖ Honoring international commitments, including:
 - Security and well-being of all allies and friends;
 - Precluding hostile domination of critical areas, particularly Europe, Northeast Asia, the East Asian littoral, the Middle East and Southeast Asia;
 - Peace and stability in the Western Hemisphere;
- ❖ Contributing to Economic well-being, including:
 - Vitality and productivity of the global economy

⁶⁸ Zhang Mingliang and Yang Fang, "South China Sea: Reconciling Chinese-US Interests". RSIS Commentaries. July, 22 (2010). Available:

<http://www.rsis.edu.sg/publications/Perspective/RSIS0802010.pdf>. Access: August, 05 2010.

⁶⁹ US Department of Defense - Quadrennial Defense Review Report, September, 30 2001. Available: <http://www.defense.gov/pubs/pdfs/qdr2001.pdf>. Access: August, 05 2010. See Also Buchholz, supra note at 34.

- Security of international sea, air, space, and information lines of communication;

❖ Access to key markets and strategic resources

According to Song, the Asia-Pacific region and SCS area are inextricably linked with the US national interests listed above. In fact, the region encompasses some these US priorities as: trade, oil business, security interests, security and strategy and freedom of navigation⁷⁰.

With regard to freedom of navigation it is clear that a conflict could result in serious restrictions. Therefore, when the US claimed its intention to take a more assertive role in solving the SCS disputes, it was in fact defending its immediate economic and strategic interests. In her speech at the ASEAN Regional Forum in Hanoi 2010, Secretary of State Hilary Rodham Clinton again highlighted the issue of freedom of navigation as crucial for the US' interests in the region:

"...The United States, like every nation, has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea. We share these interests not only with ASEAN members or ASEAN Regional Forum participants, but with other maritime nations and the broader international community."⁷¹

Therefore for United States, the issue of freedom of navigation as a national interest necessitates the maintenance of peace in the region. The questions of freedom of navigation and

⁷⁰ Supra Note 31 and 32 at 28.

⁷¹ US Department of State: Comments by Secretary Clinton in Hanoi, Vietnam. Discusses US-Vietnam relations, ASEAN Forum and North Korea. Available:

<http://www.america.gov/st/texttrans-english/2010/July/20100723164658su0.4912989.html> Access: August, 25 2010.

SLOCs could suffer unimaginable damages in a hypothetical conflict between China and US or between China and with all Southeast Asian countries. This is the reason for which the United States supports repeatedly calling for “a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion”⁷². Moreover, with some of the world’s most critical sea lanes in the region, through which pass almost 6% of total US trade and a large percentage of the world’s total trade, the Obama administration has very pragmatic reasons to justify the shift of US approach in Southeast Asia. In addition, the accession to the Treaty of Amity and Cooperation (TAC) celebrated by Secretary Hillary Clinton in July, has placed the US strategically together with non-regional countries that are already signatories as Japan, South Korea, and Australia, as well as China, Russia, and India. It is important to highlight the existence of US internal objections towards joining the TAC, which argue that some non-interference clauses present in the ASEAN Treaty of Amity and Cooperation could undermine “US freedom of action”. Critics argue that the accession to the TAC would create barriers in other regional diplomatic fronts, such as in Burma and other U.S. security commitments with strategic allies such as Japan, South Korea, and Australia⁷³. Nonetheless, the Secretary of State reaffirmed the US commitments with ASEAN in areas such as climate change, trading, economic integration, democracy and human rights⁷⁴.

⁷² *Ibid.* 71

⁷³ “U.S. Accession to ASEAN’s Treaty of Amity and Cooperation (TAC)”. Report for Congress, Congressional Research Service (CRS). United States of America. Available: <http://www.usembassy.it/pdf/other/R40583.pdf> Access: October, 10 2010.

⁷⁴ The articles 2, 10 and 13 make clear reference to respect of territorial integrity, non-interference in internal affair of state-members and peaceful resolution of any controversy. See Treaty of Amity and Cooperation Southeast Asia Indonesia, 24 February 1976. Available: <http://www.aseansec.org/1217.htm> Access: October, 10 2010.

Even conscious of these eventual constraints, the Obama administration seems to be prone to challenge the Chinese proposal to settle the disputes bilaterally without external intervention and thus maintaining the course of events in the South China Sea under its control. To this end, Secretary Clinton assertively said that the “*US urge that the claimants should pursue their territorial claims and the company and rights to maritime space in accordance with the UN convention on the law of the sea*”⁷⁵. The Chinese power asymmetry in relation to the other claimants tends to change completely with the involvement of the United States, which consequently will have an immense influence on the nature and intensity of the current Chinese assertiveness in the region. However, this change in US position could lead to a new perspective in the disputes only if ASEAN-claimant states consider US interference a positive change. Two events have indicated that ASEAN welcomes US presence.

The first element to support this affirmation relies upon the “*U.S. Accession to ASEAN’s Treaty of Amity and Cooperation*” (TAC), a report that elaborated the US Congressional Research Service (CRS) to US congressmen with regard to Obama’s foreign policy guidelines in Southeast Asia. According to the CRS Report, the US’ newest approach is in response to appeals by the countries in the region that have previously accused the US of neglecting Southeast Asia, and more specifically neglecting ASEAN. The CRS Report clearly affirms that “*some U.S. and Southeast Asian officials and analysts*

⁷⁵ Supra Note 71 at page 45.

say that expanding U.S. engagement with ASEAN will help boost Southeast Asia's political stature, particularly as China seeks to continue expanding its influence in the region⁷⁶.

Secondly, the 2nd U.S. - ASEAN Leaders Meeting held on September, 24 2010 released a comprehensive statement reinforcing important points of cooperation between Washington and ASEAN. The statement caused concern in Beijing before even being disclosed,⁷⁷ and elevated the current relationship between two sides to "strategic level".

Moreover, the statement recognized the partnership as part of the fundamental maintenance of "*peace, stability and prosperity in Southeast Asia and the broader East Asia region*"⁷⁸. The statement states that cooperation will be strengthened in intensity and scope and is expected to be further developed over the new five-year Plan of Action for 2011-2015. The partnership will consider different issues such as human rights, trade and investment, energy efficiency, agriculture, educational, cultural and people-to-people exchanges, interfaith dialogue, science and technology, disaster risk management and emergency response, health and pandemic diseases, environment, biodiversity conservation, climate change, combating illicit trafficking in persons, arms and drugs and

⁷⁶ Supra note 73 at 46.

⁷⁷ "China "concerned" about possible U.S.-ASEAN statement on South China Sea issue". Available: http://news.xinhuanet.com/english2010/china/2010-09/21/c_13523621.htm Access: October, 10 2010

⁷⁸ Joint Statement of the 2ND U.S. - ASEAN Leaders Meeting, New York, NY, September 24th, 2010. Available: <http://www.whitehouse.gov/the-press-office/2010/09/24/joint-statement-2nd-us-asean-leaders-meeting> Access: October, 10 2010.

other forms of transnational crimes⁷⁹. Finally the cooperation also will address efforts against international terrorism under the framework of the *ASEAN-U.S. Joint Declaration for Cooperation to Combat International Terrorism*⁸⁰.

1.6- Japan's interests

In contrast to the US, Japan is not in a position to intervene directly in the South China Sea maritime territorial claims. However, Tokyo has engaged in important actions at regional multilateral forums such as the ASEAN Regional Forum (Track I) and the Workshop on Managing Potential Disputes in the South China Sea (Track II), which is hosted annually by Indonesia⁸¹. The Japanese government has important reasons to be concerned about potential negative developments in the South China Sea.

About 70% of Japanese tankers use the South China Sea routes to supply Japan's oil demand. In addition, 40% of Japanese exports and imports also transit daily through the South China Sea. Much like the US' situation, the remote possibility of disruption in these sea lanes would stall one of the most important world economies⁸².

Aside from economic matters, there are some strategic matters that Tokyo has taken into consideration with regards to the South China Sea scenario. Tokyo's active

⁷⁹ *Ibid.* 78.

⁸⁰ ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, was celebrated in Bandar Seri Begawan, 1 August 2002. The declaration aims to improve the cooperation *to prevent, disrupt and combat international terrorism through the exchange and flow of information, intelligence and capacity-building*. See ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, available: <http://www.aseansec.org/7424.htm> Access: October, 10 2010.

⁸¹ Joshua P. Rowan, "The US.-Japan Security Alliance, ASEAN, and the South China Sea Dispute". *Asian Survey*, Vol. 45, Issue 3, (2005): 431.

⁸² *Supra* note 74 at page 46.

participation in the discussions on North Korea's nuclear weapons program has not reproduced Japan's performance in the South China Sea disputes. The territorial disputes in the South China Sea should be seen as an opportunity for Japan to use its diplomatic weight and economic power to influence positively the territorial negotiations in the Southeast Asia. Even though, historically the nations in Southeast Asia are very skeptical about any Japanese diplomatic involvement in the region, an active participation of Japan would provide positive results for both sides, improving the perception states in the region has toward Japan. More than desirable, the participation of Japan in important regional questions has been a strategic imperative. Since the Gulf War, Washington has placed pressure on Tokyo to accept greater responsibilities in regional security matters; the South China Sea strategic disputes would be an opportune occasion to begin⁸³.

Moreover, Japan is concerned about China's growing influence in Asia. As the Chinese economy grows, so too does the confidence that Beijing exert towards securing China's interests, particularly with regard to territorial matters. Consequently, the frequency of incidents occurring between Chinese vessels and Japanese patrols in the East China Sea has gradually increased. Tokyo assumes that if China succeeds in its South China Sea pretensions, the issue of the Senkaku (Dyaouiutay) Islands would shift very quickly against Japan's interests.⁸⁴

1.7 -Diplomacy and Clashes (1992-2010)

⁸³ Michael Finnegan, "Managing Unmet Expectations in the U.S.-Japan Alliance". NBR Special Report, November (2009).

⁸⁴ Supra note 81 at page 49.

The first document regarding to the disputes on the South China Sea was the ASEAN Declaration on the South China Sea, celebrated in Manila, Philippines in July of 1992. This declaration was a non-bind treaty that “invites” the ASEAN members to exercise restraint in order “to create a positive climate for the eventual resolution of all disputes.” Signatories of the Declaration, Philippines and Vietnam promoted collisions with each other in three opportunities: 1998, 1999 and 2002⁸⁵. China was not a signatory of that Declaration but was aware of all negotiation processes and gave political support for the celebration of the document. Technically, Beijing was not obligated to respect the declaration due to it only including the ASEAN. Hence, China had passed the Law of the People’s Republic of China on the Territorial Waters and Contiguous Areas in February of the same year under the protests of all Southeast Asian countries⁸⁶. However, the Chinese diplomats followed the process closely and were very well informed about all implications related to the declaration for stability of the region⁸⁷. Nevertheless, China’s resolution in defending its concept of sovereignty over the South China Sea was emphasized several times on different occasions. To illustrate their firmness about it, Beijing was the principal actor in several arguments. Taking into consideration the period from 1992 to 2010 alone, of 21 incidents registered in the region, China had a central role in 18. The majority of these conflicts consisted of quarrels between National Patrols and fishery boats that were accused of operating in the national water of some claimant

⁸⁵ See table 2 at page 55.

⁸⁶ Ralf Emmers, “Maritime Disputes in the South China Sea: Strategic and diplomatic status quo” In *Maritime Security in Southeast Asia* ed. Kwa Chong Guan and John K. Skogan (New York: Routledge, 2007), 52.

⁸⁷ Scott Snyder, Brad Gloserman and Ralph A. Cossa, “Confidence Building Measure in the South China Sea, *Issues & Insights*, N° 2 (2001).

countries. Among these conflicts, the discovery by the Philippines officials of Chinese occupation of Mischief Island in 1995 was one of the most serious. This episode elevated the level of tensions, causing the other claimant countries to distrust the real intentions of the PRC and its expansionism plans⁸⁸. Or as the words of the former Philippine President Joseph Estrada better described “*Frankly, I think China wants to take over Asia region*”⁸⁹. The Declaration on the Conduct of Parties in the South China Sea was another important document adopted by the Foreign Ministers of ASEAN and China at the 8th ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002. Regarding this event, the Philippine Secretary of Foreign Affairs, Blas F. Ople, called the Declaration “a major leap for peace”. A code of conduct arose among the signatories almost immediately after signing the ASEAN Declaration on the South China Sea which took 10 years of negotiations to reach a consensus about its format and content. Finally, in 2002, after years of negotiation, China’s Vice Foreign Minister Wang Yi signed an agreement derived from the 1992 Declaration entitled “Declaration on the Conduct of Parties in the South China Sea.” This document is highlighted by Alyssa Greenwald:

*“If ACFTA is considered the economic pillar of Sino-ASEAN relations, this non-binding declaration is considered the security pillar of this relationship. The Declaration calls on all parties to resolve all territorial and jurisdictional disputes by peaceful means.”*⁹⁰

⁸⁸ David G. Wiencek and John C. Baker, “Security Risks of a South China Sea Conflict” in *Cooperative Monitoring in the South China Sea*, ed. John C. Baker and David G. Wiencek (London: Praeger Publishers, 2002), 50-51.

⁸⁹ Carlyle A. Thayer, “The impact of a conflict on China’s relations with Southeast Asia and Australia”, in *The Costs of Conflict: The Impact of a Future War*, ed. Andrew Scobell (Honolulu: University Press of the Pacific, 2005), 79.

⁹⁰ Alyssa Greenwald, “The ASEAN-China Free Trade Area (ACFTA): A Legal Response to China’s Economic

The declaration contains the same basic purposes and principles as the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia⁹¹, and the Five Principles of Peaceful coexistence⁹². The parties reaffirm their commitment to exploring ways for building trust and confidence on the basis of equality and mutual respect⁹³.

The Declaration of 2002 appears to have avoided the main obstacle among the claimants in establishing a code of conduct in the South China Sea. This was the question of the scope of application. Would a code of conduct apply to the whole of the South China Sea or only to the disputed areas? According to Prof. Nguyen Hong Thao from Faculty of Law University of Hanoi:

Rise?" *Duke Journal of Comparative & International Law* (Volume 16:193), 202.

⁹¹ The Treaty of Amity and Cooperation (TAC) in Southeast Asia was celebrated in Indonesia, 24 February 1976. It's considered the cornerstone of the ASEAN, it the ASEAN states assumed the compromise to solve all disputes by peaceful means, "to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia consistent with the spirit and principles of the Charter of the United Nations". TREATY OF AMITY AND COOPERATION IN SOUTHEAST ASIA. ASEAN. Available: <http://www.aseansec.org/1217.htm>. Access: 6 April 2010.

⁹² The Five Principles of Peaceful Coexistence, which are mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. They were first set forth by Premier Zhou Enlai in his talk to then delegation at the start of the negotiations that took place in Beijing from December 1953 to April 1954 between representatives of the Chinese and Indian governments on relations between the two countries in Tibet. Since then, China has guided his actions by these and it considers it the cornerstone of it foreign policies over time. See Wen Jiabao, "Carrying Forward the Five Principles of Peaceful Coexistence in the Promotion of Peace and Development," *Chinese Journal of International Law* (Vol. 3, No. 2, 2004).

⁹³ Nguyen Hong Thao, "The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note," *Ocean Development & International Law* (34:2003), 279–285.

“The DOC is silent regarding its geographic scope, but its title (“Declaration of the Conduct of Parties in the South China Sea”) permits the understanding that the provisions of the DOC are to apply not only for the Spratlys area but also for the Paracel Islands and Scarborough Shoal. The scope of application of the DOC would be interpreted narrowly or widely according to the interests of the signatories”⁹⁴.

However, the area still keeps explosive elements for potential hostility between the ASEAN members, especially for China, even with the intensification of economic exchange. First strategic point is considered in the South China Sea discussions of the SLOCs (sea lanes of communications). The South China Sea’s SLOCs link Northeast Asia and western Pacific to the Indian Ocean and the Middle East via the South China Sea. Moreover, more than 41,000 ships – over half the world’s shipping tonnage – sail through the waters every year. This accounts for more than 80% of the oil for Japan, South Korea and Taiwan that flows through its harbors for that area⁹⁵.

⁹⁴ *Ibid.* 93.

⁹⁵ Scott Snyder, Brad Glosserman and Ralph A. Cossa, *“Confidence Building Measure in the South China Sea”*. Issues & Insights N° 2-OI (2001); Honolulu, Hawaii: Pacific Forum CSIS.

Table 2 - Incidents in the South China Sea (1992-2010)

Year	Countries	Incident
1992	<i>China and Vietnam</i>	<i>Vietnam accused China of landing troops on Da Luc Reef. China seized almost 20 Vietnamese cargo ships transporting goods from Hong Kong from June - September</i>
1994	<i>China and Vietnam</i>	<i>China and Vietnam had naval confrontations within Vietnam's internationally recognized territorial waters over Vietnam's Tu Chinh oil exploration blocks 133, 134, and 135. Chinese claim the area as part of their Wan' Bei-21 (WAB-21) block.</i>
1995	<i>China and Philippines</i>	<i>China occupied Philippine-claimed Mischief Reef. Philippine military evicted the Chinese in March and destroyed the Chinese marker</i>
1995	<i>Taiwan and Vietnam</i>	<i>Taiwanese artillery fired on a Vietnamese supply ship.</i>
1996	<i>China and Philippines</i>	<i>In January, Chinese vessels engaged in a 90-minute gun battle with a Philippine navy gunboat near Capones Island.</i>
1997	<i>China and Philippines</i>	<i>The Philippine navy ordered a Chinese speedboat and two fishing boats to leave Scarborough Shoal in April; the Philippine navy later removed Chinese markers and raised its flag. China sent three warships to survey Philippine-occupied Panata and Kota Islands</i>
1998	<i>Philippines and Vietnam</i>	<i>In January, Vietnamese soldiers fired on a Philippine fishing boat near Tennent (Pigeon) Reef.</i>
1999	<i>China and Philippines</i>	<i>In May, a Chinese fishing boat was sunk in a collision with Philippine warship. In July, another Chinese fishing boat was sunk in a collision with a Philippine warship.</i>

1999	<i>Philippines and Vietnam</i>	<i>In October, Vietnamese troops fired upon a Philippine air force plane on reconnaissance in the Spratly Islands.</i>
2000	<i>China and Philippines</i>	<i>In May, Philippine troops opened fire on Chinese fishermen, killing one and arresting 7.</i>
2001	<i>China and Philippines</i>	<i>During the first three months, the Filipino navy boarded 14 Chinese flagged boats, confiscated their catches, and ejected vessels out of the contested portions of the Spratlys.</i>
2001	<i>China and Philippines</i>	<i>In March, the Philippines sent a gunboat to Scarborough Shoal "to ward off any attempt by China to erect structures on the rock."</i>
2002	<i>Philippines and Vietnam</i>	<i>In August, Vietnamese troops fired warning shots at Filipino military reconnaissance planes circling over the Spratlys</i>
2004	<i>Vietnam and China</i>	<i>Vietnam started rebuilding on the disputed island of Truong Sa Lon (Big Spratly) with the purpose of sending small groups of Vietnamese tourists. China strongly criticized Vietnam's actions and accused it of violation of the 2002 Declaration on the Conduct of Parties in the South China Sea.</i>
2005	<i>Vietnam and Taiwan</i>	<i>On December 29, 2005, the Vietnamese foreign ministry protested against Taiwan's construction of a runway on the biggest island, Itu Aba, in the disputed South China Sea.</i>
2005	<i>Vietnam and Taiwan</i>	<i>On December 29, 2005, the Vietnamese foreign ministry accused Taiwan of being involved in the construction of a runway in the biggest of all of the islands, Itu Aba. Vietnam accused Taiwan that its actions constitute "a severe violation of Vietnam's sovereignty.</i>
2006	<i>China</i>	<i>In April 27, four Chinese</i>

		<i>fishermen were shot and killed, and another three were wounded near the Spratly Islands. The nationality of the attackers is unknown.</i>
2007	<i>Taiwan</i>	<i>In February 2007, Taiwan's President Chen Shui-bian's visit to Taiping Dao (Itu Aba) after the construction of airstrip. With protests from China, Malaysia, the Philippines, and Vietnam.</i>
2009	<i>China and US</i>	<i>On June 11, 2009 a Chinese Navy submarine reportedly collided with the towed sonar array of the U.S. Navy destroyer U.S.S. John S. McCain, about 144 miles from Subic Bay in the Philippines. Previously on March 8, 2009 Chinese Maritime Militia ships harassed the U.S.S. Impeccable on a surveillance mission about 75 miles from Hainan Island</i>
2010	<i>Vietnam and China</i>	<i>In May, China announced a unilateral three-month moratorium on fishing in the South China Sea (above the 12th parallel) from 16th May to 1st August in order to preserve Fish stocks, to prevent illegal fishing and to protect Chinese fishermen. This was during the height of the Vietnamese fishing season. Vietnam and other countries protested saying that was a "unilateral act that comes amid unprecedented tensions in the disputed area".</i>
2010	<i>Philippines and China</i>	<i>In June, nine fishermen were picked up around Half Moon Bay in the South China Sea. The Philippine's Coast Guard accused them of illegally hunting sea turtles, but the incident is still pending final investigation.</i>

Source: Sources: U.S Energy Information Administration. Country Analysis Briefs available: http://www.eia.doe.gov/cabs/South_China_Sea/TablesMaps.html and variety of newspapers and author's sources.

1.8 – The Living and Non-Living Resources: Oil, Gas and Fishery in the South China Sea.

Among non-living natural resources, oil and gas have a critical role in the South China Sea disputes.

In June 2006, the Canadian company Husky Energy released information from the first appraisal of its Linhua 29-1 section in the South China Sea. According to the company, the gas deposit could be capable of delivering 60-70 MMcdf of gas⁹⁶. In September 2009, the China National Offshore Oil Company Limited (CNOOC) announced the start of production at another gas deposit that was also discovered in 2006. The CNOOC's initial estimations were for a daily production of 30,000 cubic feet. This estimate jumped to a peak of production of 150 million cubic feet a day, once other gas deposits in the area reached full production⁹⁷. In December 2009, in a partnership operation with Husky Energy, the CNOOC announced this significant deepwater gas discovery, with reserves estimated at 55 million cubic feet of natural gas per day during

⁹⁶ "Husky South China Sea appraisal well flows gas". Available:

http://www.ogj.com/ogj/en-us/index/article-tools-template.articles.oil-gas-journal.exploration-development-2.2010.06.husky-south_china..html Access: August, 02 2010.

⁹⁷ "CNOOC gas field starts production in South China Sea". Available:

http://www.china.org.cn/business/2009-09/08/content_18483589.htm access: August, 02 2010.

the first test drilling⁹⁸. These discoveries have resulted in the South China Sea now being considered “the new frontier area for deepwater drilling”⁹⁹.

However, the energy supply within the South China Sea goes beyond these gas discoveries. Considered by the Chinese as “the second Persian Gulf”, the energy providing potential of the South China Sea remains unclear. In 1987 a geophysical study conducted by Chinese specialists provided “strong evidence” of commercial oilfields¹⁰⁰. In 1989, China conducted additional surveys and estimated the Spratly oil deposits to be 25 billion cubic metres in volume, with 370,000 tons of phosphorus and 105 billion barrels of oil with additional 91 billion barrels of oil in the area around Borneo coast¹⁰¹. However, in 2000 the US Geological Survey claimed this deposit contained no more than 29 billion of barrels. Around this same time, China released a new estimative saying that the deposits of oil just around Paracel area would amount to 105 billion of barrels¹⁰².

⁹⁸ “South China Sea gas find to fuel CNOOC dreams”. Available:

http://www.chinadaily.com.cn/bizchina/2009-12/10/content_9151969.htm Access: August, 02 2010.

⁹⁹ “Oil Majors Eye South China Sea” Available:

<http://finance.yahoo.com/news/Oil-Majors-Eye-South-China-zacks-3079721386.html?x=0&v=1> August, 02 2010.

¹⁰⁰ Craig Snyder, “*The Implications of Hydrocarbon Development in the South China Sea*”. Centre for International and Strategic Studies. Available: <http://faculty.law.ubc.ca/scs/hyd.htm> Access: August, 02 2010.

¹⁰¹ *Ibid.* 100.

¹⁰² Peter Mellgard, “*Trouble Brews in the South China Sea*”. Foreign Policy Blog, available:

<http://currentconflicts.foreignpolicyblogs.com/2010/06/22/trouble-brews-in-the-south-china-sea/> access: August, 02 2010.

Putting aside the hypothetical numbers, the proven oil reserves are about 8 billion of barrels with a current production of 1.8 million barrels per day¹⁰³.

There are basically two important aspects about the hydrocarbon reserves in the South China that are necessary to take into consideration in our discussion about the military dynamic and negotiating dynamic. First, in terms of the military dynamic, the energy issue puts the claimants at a high level of sensitivity, which works as another aggravating point. For instance, in May 1992, China signed a partnership with the American company Creston to explore oil in the region of Spratly Island, an area that Vietnam considers within its continental shelf. In September 1992, Hanoi accused Beijing of drilling oil in the Vietnamese waters of Gulf of Tonkin. Later, in 1994, the Creston Co. joined with a Chinese company to explore China's Wan'Bei (WAB-21 block) in the Spratly Islands.

Again, the level of sensibility and tones increased with Vietnam accusing China of conducting exploration in Vietnamese waters blocks 133,134 and 135¹⁰⁴. In a more recent episode, in November 2004, Hanoi requested that China halt oil exploration in the Gulf of Beibu, close to the Paracel Islands of the South China Sea¹⁰⁵. This, along with skirmishes noted previously, contributed to the feelings of insecurity that led national plans to increase the acquisition of weapons which consequently skyrocket the military dynamic process.

Another example of the paradoxical dynamic present in the region, was the episode of

¹⁰³ Erik Kreil, "Energy Issues in the South China Sea Region" in *Cooperative Monitoring in the South China Sea: Satellite Imagery, Confidence building Measures, and the Spratly Islands Dispute*, ed. John C. Baker and David G. Wincek (Westport: PraegerPublishers,2002),39-42.

¹⁰⁴ Yann-Huei Song, "Potential Marine pollution Threat from Oil and Gas Development Activities in the Disputed South China/Spratly Area: A role for Taiwan," *ASIA-Pacific Forum* N.36 (2007),70-79.

¹⁰⁵ *Ibid.*104.

China-Philippines proposal of joint exploration and development of oil and gas reserves located in the Spratly Islands on September 2003. In November 2003, the state owned companies PNOC (Philippines) and CNOOC announced an agreement to operate together in the Spratly area. Later, in 2004, the two companies agreed to conduct a three year plan to study the oil and gas potential in the Spratly islands. Initially, Vietnam was against the Sino-Philippine joint operation, claiming that the agreement damaged its sovereignty rights. However, after mutual consultations during Wen Chia Bao's visit in Hanoi in 2004 and during the Vietnamese Prime Minister Phan Van Khai's visit in China in July 2005, Vietnam signed the Tripartite Agreement and became an active partner in the joint explorations¹⁰⁶. However, the agreement has not been extended due to domestic political controversy in the Philippines¹⁰⁷. Even though the mechanisms of the Joint Development Agreement (JDA) tried by China, Philippines and Vietnam did not show significant progress and many territorial disputes broke out in the South China Sea, its negotiation process showed that the Southeast Asia states and China could work together¹⁰⁸. Doing so, they have demonstrated for themselves alternatives to solve the question in regards to

¹⁰⁶ *Ibid.*

¹⁰⁷ The President Gloria Macapal Arroyo has suffered an intense pressure since the signature of joint venture. According with specialists the joint surveys between China, Vietnam and the Philippines were only made possible by what some would say was a "sell out" on the part of the Philippines. The Philippines presumably agreed to these joint surveys on parts of its legal continental shelf that China and Vietnam do not even claim for higher political purposes. The opposition and academics argue that in so doing it, Philippines gave legitimacy to China and Vietnam's legally dubious claims to that part of the South China Sea. See Mark J. Valencia, "*Whither the South China Sea Disputes?*" Institute of Southeast Asia Studies. Available: <http://www.iseas.edu.sg/aseanstudiescentre/ascd2a.pdf> access: August, 03 2010.

¹⁰⁸ Craig Snyder, "*The Implications of Hydrocarbon Development in the South China Sea*". Centre for International and Strategic Studies. Available: <http://faculty.law.ubc.ca/scs/hyd.htm> Access: August, 02 2010.

their sovereignty. If nothing else, they are providing alternatives to the CBM's developers to determine new ways of create a trusting environment. Along with oil and gas reserves were reserves of phosphorus of an estimated 370,000 tons¹⁰⁹.

Regarding living organic resources, the most sensitive is the fisheries resources. The question of fishing resources develops a triple role in the South China Sea question: Economic, Strategic and last, but not least in importance, Cultural.

A Chinese study estimated a fish stock of 140,000 tons in the Spratly Islands area, 80,000 tons of which are allowable catch¹¹⁰. In economic terms, another study estimated the annual income value of harvestable tuna in the region of the Spratly Islands at US\$ 50 million¹¹¹, besides being an extremely important source of employment to the Southeast Asian population. Countries, such as the Philippines and Malaysia employ more than 5 million people in their fishing industries. Smaller countries, such as Taiwan, employ more than 300,000 people in connection with the fishing industry¹¹². From a cultural perspective, the fishery is a remarkable influence on the lifestyles of Southeast Asian people. It is primary source of food, being the most important source animal protein for the people in all Southeast Asia¹¹³. Consequently, countries in the region, China,

¹⁰⁹ Supra note 101 at page 59.

¹¹⁰ Yann-huei Song, "United States and Territorial Disputes in the South China Sea: A Study of Ocean Law and Politics". *Maryland Series in Contemporary Studies* N.1 (2002), 22-24.

¹¹¹ *Ibid.* 110.

¹¹² Source: World Resources Institute – Earth Trends Environmental Information Portal. Section Fisheries: People employed in fishing and aquaculture, number. Available:

http://earthtrends.wri.org/searchable_db/index.php?action=select_countries&theme=1&variable_ID=54

Access: August, 04 2010

¹¹³ See Kuan-Hsiung Wang, "Bridge Over Troubled Waters: Fisheries Cooperation as a Resolution to the South China Sea Conflicts," *The Pacific Review*, Vol. 14 No. 4(2001), 534–536.

Indonesia, Thailand, the Philippines, Malaysia, Taiwan, and Vietnam, are among the major fishing nations in terms of consumption and catch¹¹⁴. Therefore, it is no surprise that, among the several clashes described previously, many of them were, in some extent, involving fishermen and their boats. Given its economic and strategic importance as well as its cultural value, the fishery stocks in the South China Sea should be well managed due its impact on millions of people in the region.

1.9 - The Dilemma of Common interests and Dilemma Common aversion: the two dynamics in the South China Sea.

The background has shown us that, since the 1990s, there have been two basic trends in the South China Sea territorial claims: conflicts and diplomacy. Therefore, it is possible to affirm that all developments in SCS since the beginning have been triggered by two basic dynamics: the negotiating dynamic and military dynamic¹¹⁵. The next task of this thesis is to analyze these two trends in the next chapters.

After the end of the UNCLOS III in 1982, two spheres of negotiating dynamics were established. First, a global or multilateral sphere which took place at the UN auspices in regards to legal claims. Second, a negotiating dynamic was established bilaterally, or much more regionally, at the ARF patronage regarding the creation of a peaceful negotiation environment. The latter will be the topic of discussion in this work.

¹¹⁴ See The Global Education Project – Aquaculture & Fishing. Available:

<http://www.theglobaleducationproject.org/earth/fisheries-and-aquaculture.php> Access: August,4 2010.

¹¹⁵ It is important that these dynamics just were possible at that specific time due the reestablishment of official relations between China and ASEAN in 1992. See Lijun Sheng, “China-ASEAN Free Trade Area: Origins, Developments and Strategic Motivations,” *ISEAS Working Paper, International Politics & Security Issues*, Series No. 1 (2003).

Another dynamic is the military. The disputes have put SEA directly against Beijing interests. Moreover, there is a consensus that all countries in the region have been increasing its military capabilities systematically within the last two decades. Even though these arms acquisitions do not characterize an arms race in a strict sense, its path is becoming a worrisome trend. To better understand the framework of these two dynamics I utilized the theoretical conceptualizations as the dilemma of common interests and the dilemma of common aversion.

The concepts of the dilemma of common interests and the dilemma of common aversion are presented by Arthur A. Stein as interlaced with the eternal debate between the liberals and realists about the nature of international regimes. In simple terms, the dilemma of common interest arises as *states want to pursue a particular outcome but cannot do by acting independently of each other, prompting them to collaborate with each other in order to attain the outcome desire*¹¹⁶. Moreover, as Stein asserts, it is for this reason that *individuals came together to form the state by agreeing to coerce one another and thus ensure the optimal outcome of mutual cooperation*¹¹⁷. Thus, the individuals (or states) agree to coerce one another in order to guarantee that *no individual would take advantage of another's cooperation by defecting from the pact and refusing to cooperate*¹¹⁸.

The author assumes the common interests in the South China Sea negotiations the desire

¹¹⁶ Raymund Jose G. Quilop, *Institution Building in the Asia-Pacific: The ARF Experience*, (Manila: Office of Strategic and Special Studies, 2002), 10.

¹¹⁷ Arthur A. Stein, *Why Nations Cooperate: Circumstances and Choice in International Relations* (New York: Cornell University Press, 1990),32.

¹¹⁸ *Ibid.*117.

avoiding open conflict. Even though the profound divergences still exist with regards to the overlapping territorial claims (therefore, about the sovereignty itself), nobody in the region want to be responsible for the first shot. This mutual desire to avoid a military escalate that could put their economies on the knees, triggered the regional negotiating dynamic that started in 1992 with the Declaration on the South China Sea that later, was transferred to the responsibility of the ARF coordination.

Regard to the dilemma of common aversion, it arises when states involved fundamentally want to avoid a particular outcome, and in doing so, push them to organize their policies and actions in order to escape the particular outcome they commonly want to avoid.

Stein highlights that these situations occur *when actors with contingent strategies do not most prefer the same outcome but do agree that there is at least one outcome that all want to avoid*. These criterion define a set of situations with multiple equilibriums in which coordination is required if the actors are to avoid that least preferred outcome¹¹⁹.

This thesis assumes China's eventual dominance in the South China Sea as Southeast Asia's common aversion. Although the states' disputants in the South China Sea and other states in the region as whole are not organizing *their policies and actions in order to escape of particular outcome they commonly want to avoid*, there is a consensus regarding Beijing's assertiveness in the region as something extremely dangerous for the regional stability. Consequently, the result of this common aversion has been resulting, or at least strongly influencing, in the current military buildup or military dynamic.

1.10 – Summary of Chapter: Analysis.

¹¹⁹ *Ibid.*

This chapter provided information about the most important variables that are presents in the South China Sea question. The diplomatic complexity that involves the South China Sea territorial disputes show it as one of the most difficult political tasks of contemporary times. The myriad of interlaced strategic variables in the maritime territorial disputes lead to this assumption. The South China Sea's natural resources , richness, energetic potential, value (from a military point-of-view), and its condition of the fishery sanctuary for people from different countries of Southeast Asia, make it extremely attractive to the disputing countries which see it as an important tool to achieve their national interests. Thus, is no surprise that China, Malaysia, Philippines, Brunei, Taiwan, and Vietnam have undertaken a fierce competition to exert sovereignty over the Paracel and Spratly Islands.

The UNCLOS III in 1982 had a fulminate impact in the actions of the South China Sea claimants, given that it regulated all aspects relating to internal waters, territorial waters, archipelagic waters, contiguous zone, exclusive economic zone (EEZ), and Continental shelf. To fulfill their claims, the states' claimants have adapted their domestic legislation and made different interpretations about the UNCLOS III. These UNCLOS' readjustments made by the claimants had essentially a national character or in other words were made just taking into consideration basically the individual national interests. The immediate consequence was the aggravation of the competitive claims. Moreover, these opportunistic mentalities clearly led to exaggerate the state's claims, even those based on the UNCLOS' assumptions.

In addition to aspects related to the Sea Lanes of Communication (SLOC), its strategic location of exit to the Straits of Malacca, Sunda and Lombok made the South

China Sea possess one of the most important sea transport routes in the world. As a result, due to this importance, additional players have followed very closely the events in the region. Any disruption in these sea lines has the power to affect the Japanese and South Korea economies. For the US, more so than free navigation aspects, an eventual single dominance of the South China Sea would undermine its condition as naval superpower in the Asia Pacific scenario. The question of freedom of navigation is what links external players such as the US and Japan to the South China Sea question. The shift of the US position from neutrality to a more active role in the resolution of the disputes has brought even greater international attention to the South China Sea issue. After five visits from Secretary Clinton to the region, the Southeast Asia states are now facing the challenge to accommodate their interests with the interest of these two major economic, political, and military powers. Given their common aversion and common interests with the US, the ASEAN-claimant states took decisive steps to integrate United States presence into the debate of the territorial disputes, resulting in one more very important variable added to the South China Sea issue. The South China Sea is searching for a solution that will cover the territorial and energy needs of each state and deal with a reaffirmation of US hegemonic naval power in the region. All of these variables are themselves, incompatible. From a territorial standpoint, the victory of one imposes losses to the others. From a strategic perspective, the South China Sea is too small to accommodate both Chinese and US interests, leaving these great powers to face a zero-sum game and a greater need for preventive diplomacy in the region.

The chapter also offered the foundation to the author's theoretical background. Using the concepts and the dilemmas of common aversion developed by Arthur Stein, it

was possible develop two basic assumptions. First, the author assumes that the common interest in the South China Sea negotiations is the desire to avoid open conflict. Second is that China will eventually dominate the South China Sea and that this is a common aversion amongst the Southeast Asian nations.

The next chapter discusses the current regional dynamics in detail, negotiating and military dynamics. The negotiating dynamic here is understood as all measures and actions undertaken to promote the confidence building measures (CBM) in all its spheres. Discussion about the track I and track II also will be also contemplated. The difficulties to transpose the CBM to preventive diplomacy (PD) will be discussed as a principal bottleneck of this negotiating dynamic. These difficulties, in some sense, have contributed to the increasing of the military dynamic. Given how the magnitude of interests involved in the South China Sea are many and are extremely sensitive, the diplomatic apparatus designed to ameliorate the situation is proportionally complex and extremely sophisticated. Academics, diplomats, military officials, and politicians have developed different approaches to deal with each nation's demand.

CHAPTER 2 – THE NEGOTIATING DYNAMIC: CONFIDENCE BUILDING MEASURES IN THE SOUTH CHINA SEA.

This chapter aims to provide a general perspective about the confidence building measures in the Southeast Asia. As mentioned in the previous chapter, the questions regarding sovereignty concepts have played a key role in the development of negotiation tools. Regardless of intense efforts promoted by different actors, the confidence building measures seems to have reached its ceiling and now is facing the challenge of the next step, the preventive diplomacy (PD). However, the preventive diplomacy has been considered an element of interference of the internal affairs for the states disputants. That, again, is linked with the conception of state development from the end of the previous chapter.

This chapter contains a brief introduction of some elements regarding the concept of sovereignty and its significance to understand the ASEAN mechanisms of resolution of conflicts. The role of the ASEAN is merged with the demands and behaviours of the disputant countries in the South China Sea issue. As all countries have some maritime territorial demand are ASEAN members (with exception of China) their concepts of sovereignty are directly linked with the limitations and characteristics of the so-called “ASEAN Way”, having permeated the running of ASEAN and of its affiliate branches as the ARF and the non-governmental organizations as CSCAP. The non-intervention in internal affairs and the necessity into operate only under consensus at the same time represent the great challenge to reach a solution within the ASEAN Regional Forum.

These required elements have hindered the CBMs efforts being made towards preventive diplomacy (PD).

Following this, the chapter will describe the formation, structure and the role of the ASEAN Regional Forum in conjunction with its importance in the developments of a mutual trust environment among the disputants. Through the ARF occur almost all actions to promote a peaceful resolution of conflicts in the region. The ARF added more importance in the measure by choosing an operation using Track I and Track II diplomacy tools to make regional security demands.

The final part of the chapter is composed of an analysis concerning the outcomes and perceptions of these CBMs efforts in both Track One (ARF) and Track Two (CSCAP) and the Workshop on South China Sea Management Conflicts mechanisms. It will also discuss the possible effects of the current militarization process in Southeast Asia.

Before developing all conceptualizations of the CBMs on the South China Sea issue, it is necessary to highlight two variables for a better understanding of complexities involving the negotiations. The first variable is the concept of sovereignty that shapes Southeast Asian countries. The concept of state adopted by the Southeast Asia nations very much determine the *ASEAN Way* to negotiate and conduct its relationships with the rest of the world. Later, we will discuss how this concept has been an obstacle for the advance of negotiations and has transposed the CBMs efforts to a preventive diplomacy (PD) that in some extension could contribute to the current military modernization process in the region.

Another aspect is the called the *China factor*. The People's Republic of China is the principal actor in the South China Sea maritime disputes. The asymmetrical proportions in economic and military senses put Beijing in a privileged negotiation position. Combining the diplomacy approach and military assertiveness, China's reluctance in concern to multilateral negotiations and suspicions about the ASEAN Regional Forum has been decisive for the current scenario.

2.1 – Confidence Building Measures (CBM): Definition of term.

Glosserman define confidence building measures as the “*both formal and informal measures, whether unilateral, bilateral, or multilateral, that address, prevent, or resolve uncertainties among states, including both military and political elements*”¹²⁰. These confidence measures contribute to a reduction of uncertainty, misperception, and suspicion and thus help to reduce the possibility of incidental or accidental war. The key devising of the CBMs “*is devising “win-win” approaches that respond to the security concerns of both sides*”¹²¹.

The Confidence Building Measures (CBM) also can be understood is a set of mechanisms developed by two sides in the conflict in order to improve the peace building environment. These mechanisms have the format of agreements between two or more parties regarding exchanges of information and verification, typically with respect to the use of military forces and armaments¹²². Also known as Confidence Building Procedures

¹²⁰ Brad Glosserman, “Cross-Strait Confidence Building Measures,” *Issues & Insights*, Vol. 5 – No. 2 (2005), 4.

¹²¹ *Ibid.* 120.

¹²² Michele Maieseb, “Confidence-Building Measures”, Beyond intractability Org. [2003]. Available: www.beyondintractability.org/essay/confidence_buiding_measures/

(CBP), the CBMs are the first of three stages of security cooperation: confidence-building (CB), preventive diplomacy (PD) and conflict resolution mechanisms¹²³. The main concern of the first steps of the CBMs are principally found in the conflict avoidance (CAM) that can be taken even when the states have no established diplomatic relations as exemplified by the Israeli-Syrian aerial monitoring agreements along the Golan Heights¹²⁴. In the second step, the CBMs progress to the concrete confidence-measures described above, promoting a more intensive and qualitative communication between the sides in conflict. In general, this passage from the conflict avoidance to confidence-building requires more political capital will given the intensity of steps that can provoke contrary reactions from strategic groups within governments. For Michael Krepon from the Henry L. Stimson Center, the South Asia and Middle East disputes are stuck exactly at this point¹²⁵.

Within this perspective, the CBMs played a crucial role during the Cold War period, principally in Europe. According to analysts, the CBMs were used for the first time during the negotiations which culminated in the publication of the Helsinki Final Act in

¹²³ Ralf Emmers and See Seng Tan, "The ASEAN Regional Forum and Preventive Diplomacy: A failure in Practice." *RSIS Working Paper* No.189 (2009). Also the CBMs can be taken from different perspectives and approaches. However, the purpose remains the same: 1) to prevent disputes from arising between parties; 2) to prevent existing disputes from escalating into conflicts; and 3) to limit the spread of the conflicts when they occur. See also Hasjim Djalal and Ian Townsend-Gault, "Preventive Diplomacy: Managing Potential Conflicts in the South China Sea" in *Herding Cats: Multiparty Mediation in a Complex World* ed. Crocker and Hampson. United States Institute of Peace. Available: <http://faculty.law.ubc.ca/scs/cats.htm> - access: 4 April 2010.

¹²⁴ Michael Krepon, "Conflict Avoidance, Confidence-Building, and Peacemaking" in *Handbook of Confidence-Building Measures for Regional Security*, The Henry L. Stimson Center, 3rd. edition (New York: Stimson Press, 1998).

¹²⁵ *Ibid.*124.

1975¹²⁶. In 1983, the Conference on Security and Co-operation in Europe (CSCE) states met in Madrid as a follow-up to the Helsinki negotiation process to discuss convening a Conference on Disarmament in Europe (CDE) that conference provided a document with its conclusion and the term confidence and security building measures were first used¹²⁷.

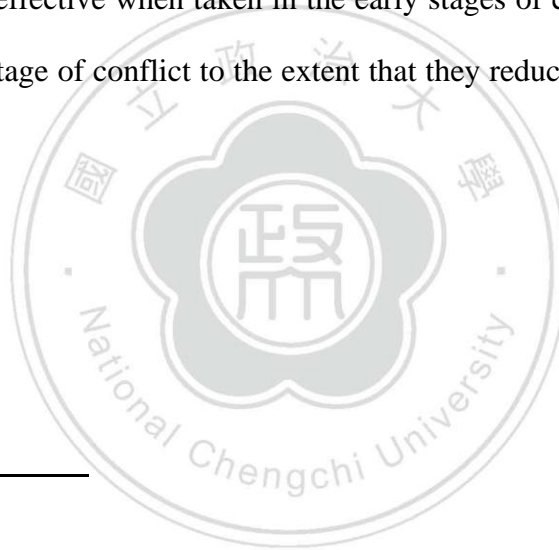
Therefore, the origin of the term confidence building measures has European roots. Another example of CBM was seen later during the bipolar period which was characterized by the agreement between the United States and the Soviet Union in Stockholm, 1986. With that accord, both sides accepted \mandatory on-site nuclear inspections. This was considered one of the key-moments of thaw during the Cold War process. The measures related to alternative diplomacy initiatives can also be considered within military, political and cultural realms. The CBMs normally utilize such tools for maintaining a direct and quick communication, providing mutual monitoring mechanisms among the governments and military forces. Among the diverse alternatives to improve the communication via the CBMs, the usual means are via hotlines, regional

¹²⁶ "In order to strengthen confidence and to increase stability and security, the Committee/Sub-Committee shall submit to the Conference appropriate proposals on confidence-building measures such as the prior notification of major military manoeuvres on a basis to be specified by the Conference, and the exchange of observers by invitation at military manoeuvres under mutually acceptable conditions. The Committee/Sub-Committee will also study the question of prior notification of major military movements and submit its conclusions" The OSCE Final Recommendations of Helsinki Consultations, 1973.paragraph 23, p. 7. See also David Capie and Paul Evans, *The Asia-Pacific Security Lexicon*, (Singapore: ISEAS Publishers, 2002), 89.

¹²⁷ According to Victor-Yves Ghebali, the genesis of the term lies in a Yugoslav proposal suggested that "security-building measures could be added (as separate concept) alongside "confidence building measures. As Evans and Capie argue, this "dichotomy" was refused had as unacceptable to the West side, and it was finally decided to use *the consolidated term confidence- and security-building measures to describe the new measures set out in Madrid process*. See Ibid. at .90.

communication centers (to assist parties in crisis management), and regularly scheduled consultations among officials of armed forces¹²⁸.

Despite the responsibility to develop these measures relying on the government's actions, they are not the only actors that can carry out these initiatives. Individuals, non-state actors or third parties such as the United Nations, regional organizations, or other states are eligible to implement them¹²⁹. According to Michele Maiese from University of Colorado, the CBMs are useful in both interstate and intrastate conflict, and are shown to be more effective when taken in the early stages of conflict. However, they can be helpful at any stage of conflict to the extent that they reduce tension and limit any further escalation¹³⁰.



¹²⁸ *Ibid.* 127.

¹²⁹ Here is necessary highlight the concepts of track one and track two diplomacy channels. While the Track One diplomacy is conduct exclusively by the officials channels namely governments through Ministry of Foreign Affairs, the Track Two is the space for also known informal diplomacy (ID). The track two is interactions among individuals or groups that take place outside an official negotiation process. According to Dalia Dassa Kaye *“Thus, while the track one refers to all official, governmental diplomacy (bilateral or multilateral), track two describes all other activities that occur outside official government channels.... track two refers to non-governmental, informal and unofficial contacts and activities between private citizens or groups of individuals, sometimes called ‘non-state actors’.* Dalia Kaye Dassa, *Talking to the Enemy: Track Two Diplomacy in the Middle East and South Asia.* (Pittsburgh: Rand Corporation, 2007), 33.

¹³⁰ Michele Maiese, “Confidence-Building Measures”, Beyond Intractability Org. [University of Colorado] Available: www.beyondintractability.org/essay/confidence_buiding_measures/. Access: July, 24 2010.

TABLE 3 – TYPES OF CONFIDENCE-BUILDING MEASURES (CBMS)

Principles/Declaratory measures	<ul style="list-style-type: none"> ➤ Generalized statements of interests, norms and belief ➤ Statements can be either explicit/formal (e.g., declarations, treaties) and implicit/informal (e.g., communiqués) ➤ Common to other approaches to security cooperation, e.g., preventive diplomacy (PD) or conflict resolution (CR)
Transparency Measures	<ul style="list-style-type: none"> ➤ Defense White Papers publications ➤ Calendar of military activities ➤ Exchange of military information ➤ Military-to-military contacts ➤ Arms registry ➤ Military personnel/student exchanges ➤ Mandatory consultation on unusual/dangerous activities ➤ Prior notification of military exercises ➤ Invitation of observers ➤ Surveillance and controls zones ➤ Open skies ➤ Troop separation and monitoring
Constraining measures	<ul style="list-style-type: none"> ➤ Prevention of dangerous military activities ➤ Incidents of sea agreements ➤ Demilitarized zones ➤ Disengagement zones ➤ Air / maritime keep-out zones ➤ Weapons of mass destruction (WMD) – free zones ➤ Limits on personnel numbers, categories and deployments (by geographical area or numbers), category and storage ➤ Limits on troop and equipment movements/ maneuvers by size and geographical

- Limits on readiness
- Limits on number of military exercises per year
- Bans on simultaneous exercises/alerts and/or certain force/unit types

Source: ARCHAYA, Amitav. *"The ASEAN Regional Forum: Confidence-Building Ottawa: Department of Foreign Affairs and International Trade"* in CABALLERO-ANTHONY, Mely. *Regional Security in Southeast Asia: Beyond the ASEAN Way*. (Singapore: ISEAS Publications,(2005).

However, these CBMS conceptualizations are not isolated from the variables that permeate the environment. They are connected with regional and global circumstances, and work together and simultaneously with such aspects as national interests, nationalism episodes, radicalisms, and civil society expectations. It is no different with the South China Sea. All efforts to resolve the South China Sea disputes have faced national sovereignty as a great obstacle in the advancement of the dialogues. Furthermore, together with the sensitive sovereignty issue, the ASEAN developed a set of formal and informal rules known as the *ASEAN Way*. These two variables have been constant in any analytical perspective in the South China Sea. What was the solution to carry on the process of regional integration, so far, have been utilized as a way to avoid the progress from the CBMs to the diplomacy preventive diplomacy (PD).

2.2 - The CBM's efforts in the South China Sea

Although, the disputes under the sovereignty in the South China Sea may be considered as a bilateral problems Malaysia, Philippines and Vietnam have taken advantage and many times have utilizing the structure of ASEAN or more specifically, the ASEAN Regional Forum to develop a spirit of confidence among them. These

countries use the multilateral structure to reach a solution or even to avoid entering in a wide regional armed conflict.

Despite being a regional integration organ, the ASEAN structure still provides space to the national interest demands and protection of the state members from any form of intervention. These conveniences have been used by the countries involved in the South China Sea territorial disputes; however the other members are also able to manage their demands, sometimes bilaterally or multilaterally according with their conveniences.

Before, we verify the developments of the Confidence Building Measures between PRC and Southeast Asian countries, it's important to point out some aspects considered relevant by some analysts regarding CBMs in Asia Pacific region in general. The actions to create a mutual trust environment have demonstrated itself to be intense and have been happening in different directions, magnitudes and interpretations¹³¹. Viewing Asia Pacific CBMs in particular, it should be remembered that¹³²:

- The Asia Pacific is not itself a homogeneous region
- There is preference for informal structures and a tendency to place greater emphasis on personal relationships
- Consensus building is a key prerequisite
- There is general distrust of outside “solutions”
- There is genuine commitment to the principle of non-interference in one another’s internal affairs

¹³¹ Supra note 103 at page 59.

¹³² Ralph A. Cossa, *Asia Pacific and Security Building Measures* (Washington: Center for Strategic Studies, 1995).

Officially, the efforts in develop these measures started in 1992 with the ASEAN Declaration on the South China Sea that urged to the claimants to solve the problems via peaceful means. In 1999, China and Vietnam signed a joint-statement in that both sides agreed to settle territorial disputes. One year after, China signed a joint statement on comprehensive co-operation with Indonesia, Philippines and Vietnam respectively. All those statements shared a common objective to enhance the Beijing-ASEAN relations¹³³.

Later in 2002, after years of negotiation, China's Vice Foreign Minister Wang Yi signed an agreement derived from the 1992 Declaration entitled "Declaration on the Conduct of Parties in the South China Sea." Simultaneously, a series of important documents were signed as well¹³⁴:

1. The Framework Agreement on ASEAN-China Comprehensive Economic Cooperation
2. The Memorandum of Understanding on Agricultural Cooperation between the Chinese Ministry of agriculture and ASEAN Secretariat

¹³³ Within this conceptualization even the ACFTA despite of its character essentially economic can be consider a plus element in the construction of mutual trust environment between China-ASEAN. It took almost 10 years to be developed and promoted an intense exchange of information and imposes a new sophisticated level of communications during the negotiations process The China's State Counselor Dai Bingguo reaffirmed these aspects saying that "China will support the development of ASEAN-China free trade agreement (ACFTA) steadily and elaborately through close communication and negotiation with ASEAN, so as to seek mutual benefits and win-win result". *"China seeks mutual benefits in ACFTA"* http://www.chinadaily.com.cn/china/2010-01/23/content_9366948.htm

¹³⁴ The SCSCOP Declaration contain a sort of CBMs as: holding dialogues and exchange of views between and military officials; ensuring just and humane treatment of all persons who are either in danger of in distress; and notifying on a voluntary basis other parties concerned of any impeding joint/combined military exercises in the Spratly/SCS region. Yann-Huei Song, "Cross-strait Interactions on the South China Sea Issues: A need for CBMs," *Marine Policy*, Vol. 29, Issue 3, (May 2005), 273.

3. The Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues
4. The Joint Declaration of the Leaders of ASEAN and Japan on the Comprehensive Economic Partnership

Hence, a range of non-governmental initiatives were developed in attempt to enhance the understandings among the disputants. The ASEAN Regional Forum (ARF) by the official side (or Track I) and the Workshop on Managing Potential Disputes in the South China Sea (the Track Two concept) are the best examples of these efforts.

2.3 - The Role of ASEAN Regional Forum (ARF).

The ARF was initially proposed by Australian Foreign Minister Gareth Evans and by Joe Clark, the then Canadian Secretary of State for External affairs. Despite, being very well received, a sum of factors influenced to not prosper, but essentially three reasons were the most important. First, because the proposals made by a Canadian and Australian were considered as copy or based on the model of the Conference for Security Cooperation in Europe (CSCE)¹³⁵. Second, as highlighted by Cossa in the beginning of

¹³⁵ The OSCE traces its origins to the détente phase of the early 1970s, when the Conference on Security and Co-operation in Europe (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West. Meeting over two years in Helsinki and Geneva, the CSCE reached agreement on the Helsinki Final Act, which was signed on 1 August 1975. This document contained a number of key commitments on politico-military, economic and environmental and human rights issues that became central to the so-called 'Helsinki process'. It also established ten fundamental principles (the 'Decalogue') governing the behaviour of States towards their citizens, as well as towards each other. Until 1990, the CSCE functioned mainly as a series of meetings and conferences that built on and extended the participating States' commitments, while periodically reviewing their implementation. However, with the end of the Cold War, the Paris Summit of November 1990 set the CSCE on a new course. In the Charter of Paris for a New Europe, the CSCE was called upon to play its part in managing the historic change taking

this chapter, the multidimensional strategic aspects and cultural characteristics of Asia Pacific proved difficult to transport these models to the Southeast Asia realities. Third, as Quilop argued, at the time the CSCE' model was far from being used as a model for any regional security arrangement given the circumstances under which the former Yugoslavia was experiencing¹³⁶. In, addition these European models were understood as being “too formal and elaborated for Asian reality”¹³⁷.

Later, the then Japanese Foreign Minister Taro Nakayama suggested during the ASEAN-Post Ministerial Conference (PMC) in Kuala Lumpur in 1991 that the PMC could be made a venue for addressing regional peace and security.¹³⁸ Nakayama's proposition was implicitly refused without any official reason. There is no clear motive for the refusal of maintaining a place to address the regional peace and thus security discussions *fell in deaf ears*. However, as an official said at that time, “*having come from a ranking official of a major regional power whose foreign policy remain suspect in the*

place in Europe and responding to the new challenges of the post-Cold War period, which led to its acquiring permanent institutions and operational capabilities. As part of this institutionalization process, the name was changed from the CSCE to the OSCE by a decision of the Budapest Summit of Heads of State or Government in December 1994. Organization for Security Cooperation in Europe (OSCE) – available: <http://www.osce.org/about/19298.html> . Access: June, 21 2010.

¹³⁶ Quilop, *supra* note 116 at 16.

¹³⁷ *Ibid.* 136.

¹³⁸ The ASEAN Post-Ministerial Conference (PMC) usually follows the Annual ASEAN Ministerial Meetings (AMM) among ASEAN Foreign Ministers. These meetings provide to ASEAN Foreign Ministers the opportunity to meet their counterparts from dialogue partners' countries. During the early 1990s, the PMCs provided the venue for ASEAN states to discuss security concerns until the establishment of the ASEAN Regional Forum in 1994. See Mely Anthony-Caballero, *Regional Security in Southeast Asia* (Singapore: ISEAS Press, 2005), 56.

minds of many neighbors” it is possible to catch up to the environment of the ARF formation process between the members of ASEAN and other countries.¹³⁹

The invasion of Vietnam in Kampuchea in December of 1978 has been considered a watershed in Southeast Asia security concepts. The conflict was deemed a flagrant violation of ASEAN non-interference in domestic affairs, placing the regional security balance on risk. More than limitations of actions experienced by the ASEAN, the conflict showed that the region suffered a lack of capacity to intervene before or after the deflagration of any conflict in its backyard¹⁴⁰. During and immediately after the conflict end, the seeds of space to develop mechanisms of conflict management and to enhance the level of confidence among the Southeast Asian began to develop¹⁴¹. Following this path, the ASEAN Regional Forum¹⁴² was established in 1994 with the goal of sustaining and enhancing the peace and prosperity in the Asia-Pacific by improving dialogue on political and security cooperation¹⁴³. During its second annual ministerial meeting in 1995, the ARF developed a Concept Paper that outlined the path of the future attributions of the forum. Essentially, the Paper emphasized that the forum should concentrate on

¹³⁹ Supra note 116 at 64.

¹⁴⁰ Caballero, supra note 138 at 120-124.

¹⁴¹ *Ibid.* 140.

¹⁴² It is interesting notice that the acronym “ASEAN” was used rather “Asian”, that according Caballero-Anthony, to reflect the leadership and prominence that the ASEAN wanted to develop within of nascent forum. See *ibid* at 126.

¹⁴³ Composed by Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, East Timor, United States, and Vietnam. ASEAN Regional Forum, Available: <http://www.aseanregionalforum.org/AboutUs/tabid/57/Default.aspx> Access: July, 21 2010.

enhancing the trust and confidence amongst members and, in doing so, foster a regional environment conducive to maintain the peace and prosperity of the region¹⁴⁴.

Specifically, the goals explicated were¹⁴⁵:

- Stage 1: Promotion of Confidence-building measures (CBMs)
- Stage 2: Development of preventive diplomacy mechanisms (PD)
- Stage 3: Development of conflict-resolution mechanisms

Since its establishment, the ARF has an assiduously developing and sophisticating approach. Many of these improvements are the fruits of a long “learn-by-doing” process that has been tailoring the scope and approaches of the forum. This learning process has also resulted in an extensive list of activities that has been composed of more than 203 track I meetings¹⁴⁶ and 62 track II meetings since 1994 until 2009.

¹⁴⁴ “ASEAN has a pivotal role to play in the ARF. It has a demonstrable record of enhancing regional cooperation in the most diverse sub-region of the Asia-Pacific. It has also fostered habits of cooperation and provided the catalyst for encouraging regional cooperation in the wider Asia-Pacific region. The annual ASEAN Ministerial Meetings have contributed significantly to the positive regional environment today. There would be great hope for the Asia-Pacific if the whole region could emulate ASEAN's record of enhancing the peace and prosperity of its participants”. The ASEAN Regional Forum: A Concept Paper. Introduction, paragraph 3. Available: <http://www.aseansec.org/3635.htm>. Access: / Julho, 04 2010.

¹⁴⁵ “The ARF participants shall continue to work closely to ensure and preserve the current environment of peace, prosperity and stability in the Asia Pacific; The ARF shall continue to be a forum for open dialogue and consultation on regional political and security issues, to discuss and reconcile the differing views between ARF participants in order to reduce the risk to security; and The ARF recognises that the concept of comprehensive security includes not only military aspects but also political, economic, social and other issues”. Chairman's Statement the Second ASEAN Regional Forum Brunei Darussalam, 1 august 1995.

¹⁴⁶ ASEAN Regional Forum ASEAN Regional Forum List of Track I and Track II Activities from 1994 to 2009. Available:

<http://www.aseanregionalforum.org/PublicLibrary/ARFActivities/ListofARFTrackIActivities/tabid/93/Default.aspx>. Access: June, 08 2010.

Moreover, the ARF definitely crystallized an approach that became a brand of ASEAN's interpretation of multilateralism that is characterized by the preference for dialogues and consultations towards consensus, avoidance of conflict, allowing parties involved to save face, inclination towards informality, focus on the process and development in an evolutionary manner¹⁴⁷.

a) Track II – The CSCAP and Workshop on Managing Potential Disputes in the South China Sea

Experts in the regions have established their own think tanks and other non-governmental organizations as networks of these research institutes. A notable example is the Council for Security Cooperation in Asia Pacific (CSCAP). The CSCAP was an arrangement made by different strategic study centres from different countries during the meeting in Seoul, 1992. Those representatives from ten countries of Australia, Canada, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand and the USA decided that “*there was a need to provide a more structural regional process of a non-governmental nature ... to contribute to the efforts towards regional confidence building and enhancing regional security through dialogues, consultation and cooperation*”¹⁴⁸.

¹⁴⁷ Cossa, supra note 132 at page 77.

¹⁴⁸ The Kuala Lumpur Statement 8 June 1993 Establishment Of The Council For Security Cooperation In The Asia Pacific (CSCAP). Available: <http://www.cscap.org/index.php?page=the-kuala-lumpur-statement> . Access, June , 21 2010

Later, more institutions were added at the CSCAP structure that made the CSCAP to be described as *'the most ambitious proposal to date for a regularised, focused and inclusive non-governmental process on Asia Pacific security matters'*¹⁴⁹. Based in Kuala Lumpur, at the Institute of Strategic and International Studies (ISIS) Malaysia, the CSCAP has progressively increased new membership within its structure. As an example, institutes from New Zealand, Russia, North Korea, Mongolia and a Western European consortium have joined as Full Members of the Council and the Indian Institute of Defence Studies and Analyses (IDSA) has become an Associate Member. China and Vietnam joined as full members in December 1996. Later, the European Union (EU) joined as an Associate Member in June 1994 and was granted Full Membership in December 1998. In 1994, India became an Associate Member and was elevated to Full Membership six years later in June 2000. To guarantee a wide spectre in its composition, institutes from Cambodia and Papua New Guinea were also granted Full Membership in June 2000¹⁵⁰.

The CSCAP function, among others, is to supplement the ARF with its gatherings of specialists on different topics such as transnational crimes and maritime security in the Asia Pacific. The CSCAP has been running on parallel dialogues to the ARF, and although being a non-governmental organization, the CSCAP employs the so-called

¹⁴⁹ Paul M. Evans, "Building Security: The Council for Security Cooperation in Asia-Pacific (CSCAP)," *The Pacific Review*, vol.7, No. 2 (1994), 125.

¹⁵⁰ See Council for Security Cooperation Asia-Pacific, available: <http://www.cscap.org/index.php?page=about-us> access: June, 21, 2010.

“ASEA Way” in its deliberations, i.e., based on consensus and votes¹⁵¹. The CSCAP currently has seven working groups:

- a) Transnational Crimes Responsibility to Protect, Co-Chairs: CSCAP Australia, CSCAP Canada, CSCAP-Indonesia and CSCAP-Philippines
- b) Study Group on Naval Enhancement in the Asia Pacific, Co-Chairs: CSCAP China, CSCAP India and CSCAP Japan.
- c) Study Group on Safety and Security of Offshore Oil and Gas Installations, Co-Chairs: Aus CSCAP, CSCAP Malaysia and CSCAP Singapore
- d) Study Group on the Establishment of Regional Transnational Organised Crime Hubs in the Asia Pacific Co-Chairs: Aus CSCAP, CSCAP New Zealand, CSCAP Philippines and CSCAP Thailand.
- e) Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific Co-Chairs: US CSCAP and CSCAP Vietnam.
- f) *Export Controls Experts Group (XCXG) a sub group of the Study Group on WMD*
Chair: US CSCAP.
- g) *Study Group on Multilateral Security Governance in Northeast Asia/North Pacific*
Co-Chairs: CSCAP Japan, CSCAP Korea and CSCAP China.

However, the great challenge of the CSCSP has been to consolidate its links to the track I ASEAN Regional Forum (ARF).

In contrast, within the Track Two perspective was formed the Workshop on Managing

¹⁵¹ Sheldon W. Simon, “The ASEAN Regional Forum” In *The Routledge Handbook of Asian Security Studies*, ed. Sumit Ganguly, Andrew Scobelli and Joseph Liow Chinyong (London: Routledge, 2010) , 302.

Potential Disputes in the South China Sea, also known as the Indonesia Workshop, in 1990. This group had the intention to be an informal channel on technical, rather than political, issues through which individuals representing respective authorities with outstanding claims can take part of the discussions on an individual basis. The discussions are conducted by consensus and the participants make recommendations to their respective authorities based on the dialogues developed during the workshop¹⁵². As regional dialogue disputes, these workshops developed a valuable venue for informal discussions with an importance that cannot be dismissed. Conversely, the Indonesia initiative was convened through its Department of Foreign Affairs and supported by the Canadian Government.

The first meeting in 1990 was arranged in Bali. This first had a presence of only ASEAN members with the task to discuss a common strategy against China and the “sincerity” of China’s proposals at the time.¹⁵³ During the 1990s, the meetings were focused on China’s actions and proposition. In general, the discussions tried to find out possibilities for negotiations under the Chinese concept of “indisputable rights”.

The main characteristic of the Indonesia Workshop was avoiding sensitive issues, which principally included sovereignty. However, even the efforts to proceed with technical cooperation in scientific research, environment, resources, safety of navigation, and legal matters have suffered constrains due to concerns that eventually could hurt feelings in

¹⁵² Scott Snyder, Brad Glosserman and Ralph A. Cossa, Confidence Building Measure in the South China Sea, *Issues & Insights*, N° 2 (2001).

¹⁵³ Niklas Sawastron, “Conflict Management and Negotiations in the South China Sea: The ASEAN Way?” Workshop on the Conflict in the South China Sea, Oslo, (April, 1999). Available: www.southchinasea.org/docs/Swanstrom.pdf. Access: July, 22 2010.

regards to sovereignty. Another important characteristic of these workshops was the sole role of Indonesia in promoting them. Neither ASEAN nor ARF has ever been involved as an organization in the negotiation process. Despite of all the difficulties, the workshops have been established periodically. Between 1990 and 2007, 17 workshops were held with different scopes¹⁵⁴. In parallel, between 1990 and 2007, around 10 meetings were organized by universities and other institutions promoting one more way to build a mutual trust environment in Southeast Asia regarding the South China Sea disputes¹⁵⁵.

The highest point reached by the Indonesia workshops was during the Mischief Reef's crisis in 1995. Recognizing the important role of mediation and building a mutual trust channel, the ASEAN, in March 1995, released a note that demonstrated its concerns about the escalate in the Spratly region, requesting all countries involved in the dispute to exercise self restrain and use the channel for pacific negotiations. The same note suggested the Indonesia Workshop as one venue for that¹⁵⁶:

"We encourage all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea".

¹⁵⁴ These workshops were held in different places as Bali, Bandung, Manila, Hanoi and Hainan. They were composed by several thematic working groups as Technical Working Group (TWG), Group of Experts Meeting (GEM), Marine Scientific Research (MSR), Marine Environmental Protection (MEP), Legal Matters (LM), Education and Training of Mariners (ETM), Safety of Navigation, Shipping and Communications (SNSC), and others. See Song supra note 134 at 265-280.

¹⁵⁵ Yann-huei Song, *United States and Territorial Disputes in The South China Sea: A Study of Ocean Law and Politics*, Maryland Series in Contemporary Asian Studies (Maryland: School of Law University of Maryland, 2002).

¹⁵⁶ *"Recent Developments in the South China Sea"*, [18 March 1995]. ASEAN. Available <http://www.aseansec.org/5232.htm> . Access: June, 22 2010.

2.4- The Preventive Diplomacy and the states' resistances

Amongst the diverse approaches that characterize the negotiating dynamic, the concept of preventive diplomacy (PD) is the most controversial. Policy-makers and analysts have disagreed about its nature and scope since at least the end of Cold War¹⁵⁷. In the *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping*¹⁵⁸ written by Secretary General Boutros Boutros Ghali in 1992, the terms of preventive diplomacy were used as “integrally related” with other terms less controversial or universally accepted as peacemaking and peace-keeping. According to it, the preventive diplomacy is defined as:

“The preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.”

Ghali also highlighted the preventive diplomacy as a personal tool of Secretary General in order to avoid the escalation in any circumstances:

“The most desirable and efficient employment of diplomacy is to ease tensions before they result in conflict - or, if conflict breaks out, to act swiftly to contain it and resolve its underlying causes.

¹⁵⁷A good example of this controversy, was the Michael Lund's article response *“Underrating Preventive Diplomacy”* of the Professor Stephen Stedman's article *“Alchemy for a New World order: Overselling Preventive Diplomacy”*, both written in 1995. See first *“Alchemy for a New World order: Overselling Preventive Diplomacy”*, Council of Foreign Relations, May/June 1995 available: <http://www.foreignaffairs.com/articles/50968/stephen-john-stedman/alchemy-for-a-new-world-order-over-selling-preventive-diplomacy> . And *“Underrating Preventive Diplomacy”*, Council of Foreign Relations, July/August 1995, available: <http://www.foreignaffairs.com/articles/51214/michael-s-lund/underrating-preventive-diplomacy>

¹⁵⁸*“An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping”* Report of the UN Secretary-General, Summit Meeting of the Security Council on 31 January 1992.part.II.

*Preventive diplomacy may be performed by the Secretary-General personally or through senior staff or specialized agencies and programmes, by the Security Council or the General Assembly, and by regional organizations in cooperation with the United Nations. Preventive diplomacy requires measures to create confidence; it needs early warning based on information gathering and informal or formal fact-finding; it may also involve preventive deployment and, in some situations, demilitarized zones*¹⁵⁹.

According to Amitav Acharya, preventive diplomacy is “*diplomatic, political, military, economic, and humanitarian action undertaken by governments, multilateral organizations and international agencies*”¹⁶⁰. Acharya also asserts that the aim of the PD shall be¹⁶¹:

- 1) Preventing severe disputes and conflicts from arising between and within states
- 2) Preventing such disputes from escalating into armed confrontation
- 3) Limiting the intensity of violence resulting from such conflict and preventing them from spreading geographically
- 4) Preventing and managing acute humanitarian crises associated with (either as the cause or the effect of) such conflicts
- 5) As part of the immediate response to a crisis or pre-crisis situation, initiating measures that might contribute to the eventual resolution of the dispute.

¹⁵⁹ *Ibid.* 158.

¹⁶⁰ Capie and Paul Evans, *The Asia-Pacific Security Lexicon*. (Singapore: ISEAS Press 2002), 186.

¹⁶¹ Amitav Archarya, “*The ASEAN Regional Forum: Confidence-Building*” in *Regional Security in Southeast Asia: Beyond the ASEAN Way*, in Mely Anthony-Caballero (Singapore: ISEAS Publications, 2005).

2.5 - Sovereignty Concepts and ASEAN Way: independent variables

It is important for the purpose of this thesis to contemplate what the author considers a permanent variable in the South China Sea issue. If the South China Sea represents an immense obstacle in the road in the cooperation process reached by the China and its neighbours in Southeast Asia, the sovereignty concept has played a key role for this scenario. The state, despite all effects of current globalization process and the intensification of economic interdependence between the ASEAN members and Beijing, still remains as a defining element in Southeast Asia's international interactions.

Aspects in regards to sovereignty and non-interference in internal affairs are the cornerstones and engine of ASEAN¹⁶². The traditional role of the state within the ASEAN structure remains untouched. Although the classic approach of regional integration consider some level of relaxation in the conventional concept of sovereignty¹⁶³, the principal concern of the Southeast Asian elites has been safeguarding “their freedom of action autonomy within of regional framework”¹⁶⁴. Bronson Percival argues that to recognize Southeast Asia as a single state is a basic misunderstanding that can lead to and

¹⁶² As argue Ralf Emmers, the countries claimants have been inflexible in their sovereignty positions about the South China Sea. Any movement, as retracting the territorial claims or eventual concessions on the question of sovereignty jurisdiction “*would be costly domestically and perceived as regionally as sign of weakness*”. Ralf Emmers, “Maritime disputes in the South China Sea” in *Maritime Security in Southeast Asia*, ed. Kwa Chong Guan and John K. Skogan, (London: Routledge Press,2007), 49.

¹⁶³ Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (UK: Cambridge University Press, 1999).

¹⁶⁴ David Capie, “Globalization, Norms, and Sovereignty: ASEAN's changing identity and its implications for development” in *Development and Security in Southeast Asia*, ed. David B. Dewitt and Carolina G. Hernandez, (Washington: Ashgate Publishing, 2003), 89.

an oversimplification of the Southeast Asia reality. In addition he affirms:

*“This misunderstanding of the nature and role of a regional organization, the Association of Southeast Asian Nations (ASEAN), is reinforced by Southeast Asian’.... however, is a regional organization designed primarily to reinforce the individual sovereignty of each of ASEAN’s ten member states.”*¹⁶⁵

The solution for this apparent paradoxical approach was the development of a set of informal and formal mechanisms, which highlight the importance of the concept of sovereignty that prevents any possibility of the integration process “outpacing the desires of any individual member”. The usual name for this set of norms is known as the “ASEAN Way”. The *ASEAN Way* also is known as the “APEC Way”, “Asia Pacific Way” and even as the “Asian Way” in a strict sense, represents a clear rejection by the Southeast Asia and policy-makers in what they understand to be “imported Western notions of diplomacy and multilateralism¹⁶⁶”. The *ASEAN Way* searches for a negotiation process that can express the regional, cultural and political realities of Southeast Asia.

These elements contrast with “Cartesian” style of diplomacy which Asia considers to be quite “formalistic” and focused on “legalistic” procedures and solutions. According to them, the *Way* utilized in Southeast Asia, and in Asia as whole, stresses patience, evolution, informality, pragmatism, and consensus¹⁶⁷. Therefore, the maritime disputes between China and Malaysia, Vietnam, Philippines and Brunei shall be analyzed via the sovereignty, national interests and consequently by using the Southeast Asia *modus*

¹⁶⁵ Bronson Percival, *The Dragon Looks South: China and Southeast Asia in the New Century* (Singapore: Praeger Security International, 2007), 20

¹⁶⁶ Capie and Evans, *supra* note 126 at 89.

¹⁶⁷ *Ibid.* 166.

operandi and visions of the ASEAN Way to better access the level of complexity and magnitude of the strategic challenges in the region.

Although the disputes have been developed under the ASEAN Regional Forum, their structures still remain under rigid individual agenda control according to each national interest involved in the negotiation process. As we can verify in this chapter, the activities developed by the ARF via track I and track II (Indonesia Workshop) have invariably foundered great obstacles regarding this Asia sovereignty concept.

2.6 - The China Factor

In addition, among of several motivations, ARF was also created to be a diplomatic instrument to “socializing China into habits of good international behavior”¹⁶⁸. The China factor cannot be ignored in the discerning ARF’s creation. The disputes in the South China Sea have already been pegged as one of the most worrisome issues among the Southeast Asian states at this time¹⁶⁹. Underlying this vision, Sheldon argues that “of a larger security order was the hope that the treaty’s peaceful resolution commitment could be extended to the other states. This practice would constitute a kind of minimal diffuse

¹⁶⁸ Supra note 136.

¹⁶⁹ Given that creation of ARF happened in 1994, the Southeast Asia already had experience a series of clashes and quarrels as demonstrated in the table 1. However, it is important highlight that the conflicts are registered since 1976. In that year China and Vietnam entered in conflict that resulted in the Chinese seizure of Paracel Islands from Vietnam. Later in 1988, again the two countries had another clash. Chinese and Vietnamese navies clashed at Johnson Reef in the Spratly Islands. Several Vietnamese boats are sunk and over 70 sailors killed. Therefore the element of China Threat was concretely real for all states in the region. See Global Security Organization website for complete profile of these episodes: <http://www.globalsecurity.org/military/world/war/spratly-clash.htm> . Access: June, 08 2010.

reciprocity”¹⁷⁰. That is, while ASEAN would not expect outsiders to automatically come to members’ aid in time of crisis or to their defense if attacked, at least outside countries could be asked to renounce the use of force in settling any conflicts they might have with the Association’s members. The unstated object of these concerns, of course, was China – the only “extra-regional” state with territorial claims in Southeast Asia. Eventually, if successful, it would encourage the PRC to explain and clarify its security policy and planning. China’s neighbors, whom include the South China Sea claimants as Malaysia, Philippines and Vietnam, through the ARF, could then respond with their concerns about the PRC’s policies in hopes of modifying them and enhancing regional stability.¹⁷¹

Furthermore, the rapid economic development of China gave confidence to intensify its military modernization. The significance of this binomial becomes evident when the elevation of skirmishes between Southeast Asia and the other claimants becomes more usual. The necessity to engage China became clearer when Beijing, little by little, started to take on an ambitious plan to develop its naval capabilities with a speed that, even if they wanted to, the Southeast Asian states could never follow nor ignore. By the year 1999, in consequence of these mutual suspicion perceptions, nearly 1650 troops of five state claimants had occupied about of 45 of 51 islands land formations in the Spratly archipelago¹⁷².

2.7 - *Perceptions and outcomes*

¹⁷⁰ Simon, supra note 151 at 300.

¹⁷¹ Stein, supra note 117.

¹⁷² Christopher C. Joyner, “The Spratly Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation” in *Cooperative Monitoring in the South China Sea*, ed. John C. Baker and David G. Wiencek (London: Praeger Publishers,2002).

During the ASEAN Regional Forum, which met in Phnom Penh on June 18, 2003, the ministerial statement declared that *"despite the great diversity of its membership, the forum had attained a record of achievements that have contributed to the maintenance of peace, security and cooperation in the region"*¹⁷³. To reinforce these achievements, the ARF Ministers cited in particular¹⁷⁴:

- The transparency promoted by such ARF measures as the exchange of information relating to defense policy and the publication of defense white papers
- The networking developed among national security, defense and military officials of ARF participants.

However, both the ARF and Indonesia Workshop groups have failed in their propositions. Coincidentally, the two groups have been called “talk shops” due to the fact they have been unable to respond to security developments in the Asia-Pacific and the latest development in the South China Sea. The accusations about the ARF performance are that the forum has become merely a confidence building exercise without any capacity to interfere effectively to any questions in the region. The necessary step forward into preventive diplomacy (PD) has been undermined by the usual disagreements over the preventive diplomacy scope given that it can touch the sensitive point of the non-intervention in the state internal affairs. In addition, the limitations imposed by the scope and ‘ASEAN way’ transformed the ARF to being extremely ineffective despite of the intensification of its activities. However, the binomial quantitative vs. qualitative have

¹⁷³ ASEAN Regional Forum. Available: <http://www.aseanregionalforum.org/AboutUs/tabid/57/Default.aspx>. Access: June, 14 2010.

¹⁷⁴ *Ibid.*173.

been skeptically analyzed for some scholars. As Swanstrom points, “*the ARF bark without bite*”, according to him, its inefficiency of only have worked in favor of Beijing, who uses the ARF bottlenecks for *divide and rule*¹⁷⁵.

There are two relevant aspects for the eventual inefficiency of ARF efforts to establish PD mechanisms in the South China Sea.

First, as already mentioned, it has to do with the sovereignty understandings among the ASEAN members, which naturally includes Malaysia, Vietnam and Philippines as the main Southeast Asian states’ claimants in the South China Sea.

Second, the engagement of Beijing proved ambiguous and extremely slow. After the Cambodian conflict, it was clear for all in Southeast Asia that the necessity of development in conflict prevention could cope effectively with the disagreements between the countries in the region. However, Beijing did not understand that so easily.

China was negative about the ARF project, as it understands ARF as a tool for an eventual interference in its internal affairs. Slowly, the PRC became more open to the Forum propositions and started to use them, in conjunction with the CBMs, as proof of Beijing’s good intentions and absence of hegemonic and aggressive intentions.¹⁷⁶

Focusing on the Workshop in Managing Potential Disputes in the South China Sea, the problems persist in the lack of consensus, even on the technical cooperation discussions.

The workshop’s founder Hasjim Djalal has argued that it is extremely difficult

¹⁷⁵ Niklas Swanstrom, “*Conflict Management and Negotiations in the South China Sea: The ASEAN Way?*”, in *Perspective on the Conflict in the South China Sea: Workshops Proceedings*. ed. Knut Snidal Workshop on the Conflict in the South China Sea, 24-26 April,(1999), Oslo, Norway, University of Oslo. Available: www.southchinasea.org/docs/Swanstrom.pdf . Access: July, 22 2010.

¹⁷⁶ *Ibid.* 175.

convincing the Southeast Asia states to adopt habits of cooperation on the South China Sea issues¹⁷⁷. However, in spite of the very prolific activities since its establishment in 1990, these workshops have foundered the same obstacles regarding the sovereignty and China's interest on that. The result was that Indonesian-organized and Canadian-sponsored South China Sea failed to reach the goal in coordinating all claimants countries to work together meaningfully. Symbolically, the diffuse interest of each Southeast Asia state essentially made the workshop a *walk to nowhere*. In this regard, Malaysia consistently accused of bad will for being satisfied with the current status quo in the South China Sea and for working effectively to avoid abrupt changes in the status of negotiations. Clearly this posture led the Philippines and Vietnam to be very disappointed repeatedly¹⁷⁸.

Moreover, since the beginning of the Workshops, the critics doubted if it could provide a basis for high levels of political negotiations. The format of these workshops, according to them, just reinforced the status quo and usually did not progress to promote the political *momentum necessary to achieve a negotiated settlement*¹⁷⁹. In addition, the

¹⁷⁷ Djalal and Townsend-Gault, *supra* note 123 at 109.

¹⁷⁸ During the workshops, the relations between China and Malaysia had improved significantly from the bilateral point-of-view. Despite the refusal by the Malaysian authorities, Beijing has offered Malaysia certain financial rights and cooperation Treaties concerning the gas and oil exploration. See Niklas Swanstrom, "Conflict Management and Negotiations in the South China Sea: The ASEAN Way?" in *Perspective on the Conflict in the South China Sea: Workshops Proceedings*. ed. Knut Snidal Workshop on the Conflict in the South China Sea, 24-26 April, (1999), Oslo, Norway, University of Oslo. Available: www.southchinasea.org/docs/Swanstrom.pdf . Access: July, 22 2010.

¹⁷⁹ Scott Snyder, "The South China Sea dispute: Prospects for Preventive Diplomacy". United States Institute of Peace Special Report, [August, 1996], Available: <http://www.usip.org/files/resources/SR18.pdf> . Access: June, 14 2010.

meeting failed to forestall confrontations the escalation of bilateral tensions between some claimants such as the Mischief reef in 1995 and others¹⁸⁰. Snyder argues that the eventual presence of oil and gas reserves assured by geological tests during the 1990s made it so that some claimants, namely Malaysia and China, intentionally act out to delay a political resolution as they wait for more conclusive information regarding the area's economic potential.

After the overview on all dialogue efforts, the question is what are the perceptions about the outcomes so far?

As pointed out, the sovereignty concept has been a crucial factor in the negotiations in Southeast Asia. The negotiations Tracks, the non-interference in internal affairs and the respect to the sovereignty claims made by the some disputants have imposed a ceiling very difficult to breakthrough. This element has been a negative determinant creating obstacles preventing the negotiation process from jumping forward from the CBM to the preventive diplomacy as the ARF Concept Paper established as the goal of the forum in 1995¹⁸¹. These limitations lead both forums to spend too much focus on dialogues and consultation, which could also mean that the states “can simply keep talking forever without getting anywhere and never doing anything”¹⁸².

Moreover, in the measure that the process does not reach its objectives or retain its phase of dialogue without concrete results, the tendency is to create mistrust and discouragement as side effects among the actors.

¹⁸⁰ *Ibid.* 179.

¹⁸¹ Ralf Emmers and Seng Tang, “The ASEAN Regional Forum and Preventive Diplomacy: A Failure in Practice,” *RSIS Working Paper*, No. 189 (2009).

¹⁸² Quilop, *supra* note 116 at 19.

Another important aspect is the consensual decision-making. First of all, the decision to use this approach is itself a voluntary decision to move “at the speed of the lowest common denominator¹⁸³”. In spite of this, the approach obeys the necessities, cultural values and political characteristic present in the Asian negotiators. It also imposes a type of straightjacket given that it is attached to the “imperatives of national interest”. This seems to undermine the ARF capabilities, particularly because, regarding the South China Sea, the national interests do not necessarily coincide with those of other states. Highlighting this perspective, Quilop argues that¹⁸⁴:

“For example, China has consistently opposed the possibility of China of the ARF moving on to the promotion of preventive diplomacy measures. It argues that ARF should proceed at pace comfortable to all participants, that it should focus instead on promoting confidence building measures, and that preventive diplomacy may constitute an interference in the internal affairs of states. It appears that China is not comfortable with the idea of the ARF moving on to a preventive diplomacy mode”.

These difficulties to accomplish the task that the ARF imposed on itself experience a continuum mistrust process. The process of consensus is grounded in the belief that not confronting the problem head-on and instead diverting it so that it does stand in the way of broader cooperation, and by allowing time to pass, the intensity of a conflict/problem diminishes and its importance is reduce¹⁸⁵”. However, non-discussion of sensitive issues

¹⁸³ *Ibid.*182.

¹⁸⁴ *Ibid.*

¹⁸⁵ In fact, the Southeast Asian states are adherents to “*musyawarah dan mufakat*”. *Musyawarah* is an Indonesian term, which means “arriving at decisions through a process of discussion and consultation”.

can also keep the process from moving forward and can be perceived as excuses for doing nothing. Nonetheless, there is a general perception that ARF lost its momentum and became unable to respond to security developments in Asia-Pacific as whole. Due to all political-diplomatic constraints to move beyond the promotion of confidence building measures, the Forum has been considered unproductive in providing concrete actions.

The same perspective can be applied to the Indonesia Workshops, which had its sponsorship terminated due its lack of concrete results since its establishment in 1990.

The Asian Regional Forum has so far suffered from the side effect of its own medicine. The progress to the second stage of negotiations development has been undermined by disagreements over the definition and scope of the preventive diplomacy (PD). Like China, other participants regard preventive diplomacy as a more “threatening form of cooperative security, as it might in some instances impinge on national sovereignty¹⁸⁶”. The propositions to implement PD eventually could lead to some type of pressure on the Southeast Asian governments. However, the scope of the PD within the ARF structure has obeyed the *ASEAN Way* and hardly goes beyond the classical regional *modus operandi*. Therefore, while some ARF participants, notably China, may think it is sill premature for the ARF to move forward in the direction of preventive diplomacy mode, the ARF see itself as an intersection that puts its existence in risk. The Forum is between the security imperative that forces it to move forward in promoting a more

While *mufakat* refers to consensus reached through process of *musyawarah*. It is important say that consensus here does not means “unanimity” but “an amalgamation of the most acceptable views of each and every members”. See Quilop, *supra* note 116 at 12.

¹⁸⁶ *Ibid.*185.

constructive dialogue and the necessities to accommodate, again, the national interests that feel threatened by these initiatives as the PDs. These initiatives include: (1) enhancement of the ARF Chair's role, (2) the creation of a register of Experts/Eminent Persons Group, (3) publication of annual Security Outlook, and (4) provision of voluntary background briefing and others¹⁸⁷.

Could the hesitance of ARF possibly influence the regional military dynamic? There is common sense among many analysts about the current militarization process in the Southeast Asia and all agreed that the reasons for that are vary¹⁸⁸. Between motives for a militarization process in the Southeast Asia, there is a persistent lack of trust while absence of transparency in the military reports and arms acquisitions are among the other reasons. Hence, it is important to understand here the transparency as one imperative of the CBMs efforts and natural prerequisite to the establishment of preventive diplomacy. Moreover, if there are indicatives of a lack of mutual trust, it is then evident that the CBMs efforts have found its ceiling.

2.8 - Chapter Summary: Analysis

The chapter 2 detailed the concepts of confidence-building measures and the contradictions existing within the negotiation apparatus of the South China Sea disputes. It showed the internal constraints and the nature of the problems that progressed from CBMs to preventive diplomacy (PD) and the role of the ARF and other forums that mediated the disputes. In fact, the negotiating dynamic was experiencing a duel among those that were searching for a solution to accommodate all interests and those states that

¹⁸⁷ *Ibid.*

¹⁸⁸ Ashley J. Tellis and Michael Wills, "Military Modernization: in an Era of Uncertainty, " *Strategic Asia Report 2005-2006* (Washington: National Bureau of Asian Research, 2005).

were searching only to maximize their individual gains. Basically, the first group is formed by ARF and all elements that compose the Track II (Indonesia Workshop and CSCAP) and the second are the states that have demonstrated more assertive behavior, such as China.

This measuring force has clearly tilted to the Chinese side. As there is no coordination amongst the ASEAN members, the asymmetrical relation has been reinforced. This way, the negotiations have been only reactive to the Chinese unilateralism actions rather than offer multilateral solutions. Thus, the CBMs efforts in the South China Sea disputes have clearly met their ceiling and have, without doubt, depended heavily of Beijing's willingness to discuss issues. Even when sensitive issues are discussed, the likelihood of transference of the outcomes to the highest levels of Beijing and other country's upper echelons of administration is minimal. The CBMs, therefore have suffered from "China's dependence".

In some extent, what is happening is the confrontation of world views. If the CBMs are born with the belief that it is possible built a consensus towards undisputable issues such as sovereignty, China and all disputants will have shown it in the limitations of this approach. The Chinese realism so far, has dictated the path and possible results of the negotiation dynamic in the Southeast Asia. This affirmation is grounded in the resistance of Beijing to change the current negotiation stage, blocking it from moving forward toward the preventive diplomacy. The fact is that, without the active participation of PRC, no solution to the Spratlys will be permanent on a practical and political level¹⁸⁹.

¹⁸⁹ Junwu Pan, *Toward a New Framework for Peaceful Settlement of China's Territorial and Boundary Disputes* (Netherlands: Martinus Nihoff Publishers, 2009), 185.

Without progress, negotiations have been slowly stagnating and losing significance. Consequently, the absence of progress feeds the national need to defend their interests in other fields. The lack of progress in the negotiation dynamic increases the intensity of the military dynamic. Again, if the common interest to avoid an open conflict is an incentive to maintain open negotiation, the possibility of Chinese dominance was, to other South China Sea players, a common aversion.

However, with the latest decision of the United States to get involved in the South China Sea, it is possible to predict important shifts in this scenario. The presence of the US tends to reinforce the role of mediation, to balance the asymmetrical distribution of power and therefore give to the negotiation dynamic a completely different perspective. Even though Beijing repudiates this new episode of American assertiveness in the Southeast Asia¹⁹⁰, the fact is, if Washington is able to coordinate a bloc with other states claimants, the South China Sea will enter in a new phase. Nonetheless, it is still necessary to know the nature and the level of the involvement that the US will propose and consequently the reaction of the Southeast Asian nations.

However, whether or not the American intention becomes a reality, the concrete perspective is that the CBMs are not responding adequately to assure the security in the region. However, it is important to highlight that in her speech at the ASEAN Regional Forum in Hanoui in July 2010, Secretary Clinton proved to be attuned with the cultural and political constraints in regard to the CBMs and preventive diplomacy in the Southeast Asia. She carefully choose terms and words to not hurt or exacerbate feelings

¹⁹⁰ *"The US involvement will only complicate the South China Sea Issue"* – Available: http://www.chinadaily.com.cn/opinion/2010-07/28/content_11060596.htm access: August, 02 2010.

regarding an eventual shift of the approach in the negotiations in the South China Sea disputes. This way, the US Secretary of State emphasized that the *US supports the 2002 ASEAN-China declaration on the conduct of parties in the South China Sea, and is prepared to facilitate initiatives and confidence building measures consistent with the declaration*. Nevertheless, it is still necessary to wait to see how American efforts will be crystallized and the eventual outcome¹⁹¹.

Meanwhile, another dynamic has been gradually solidifying in Southeast Asia. As the next chapter will discuss, the latest developments in the South China Sea has been characterized by a crescent feeling of failure about the CBMs efforts in the region. The crescent military modernization of People's Liberation Army Navy's (PLAN) recent disclosure about the Chinese nuclear submarine harbor construction and consistent weapons acquisitions and the Southeast Asian investment in new power projections capabilities are symbolic of this aspect and are clear indicators of the military dynamic that is an undeniable reality.

¹⁹¹ US Department of State: Comments by Secretary Clinton in Hanoi, Vietnam. Discusses US-Vietnam relations, ASEAN Forum and North Korea. Available: <http://www.america.gov/st/texttrans-english/2010/July/20100723164658su0.4912989.html> Access: August, 25 2010.

CHAPTER 3 - THE MILITARY DYNAMIC: THE ARMS BUILD UP IN SOUTHEAST ASIA

The South China Sea maritime disputes triggered two different dynamics that this thesis has defended. Both dynamics have existed and worked in parallel of each other. The first, as previously noted, is the negotiation dynamic, the second, the military dynamic. This chapter aims to explore the characteristics of the military dynamic in Southeast Asia and its connections with the South China Sea disputes. Additionally, the chapter aims to show the intimate relation between the lack of concrete results of negotiation dynamic and the military dynamic as well.

In order to achieve these tasks, the chapter will provide an overview in the military expenditure of Southeast Asia and its path in the last decade. Hence, the current military capabilities of each claimant and their current modernization process will be detailed. The chapter also aims to identify the source of the military dynamic and its relation with the negotiation dynamic. This relation is made with the analysis, opinion, and perspective of the claimant state's military officials and official documents such as Chinese White Papers and military reports.

Two recent events have called attention to the current military scenario in Southeast Asia. First was the discovery of a Chinese submarine nuclear harbor in Hainan province as an added element to shake the fragile cooperation process in Southeast Asia. The sequence of images obtained by Jane's Intelligence Review in April, 2010, showed vast tunnel entrances that are thought to lead to huge caverns capable of hiding up to 20 nuclear submarines from spy satellites. According to the same magazine, the base has implications "for China's control of the South China Sea and the strategically vital straits

in the area, and underlines Beijing's desire to assert tighter control over this region"¹⁹².

Although the news about it reinforces the idea of the “China Threat” as has always been ventilated in Southeast Asia, the disclosure of this information follows a path already identified in the last years of the region. The military modernization of Southeast Asia has happened despite of China’s behavior. Moreover, a series of domestic factors have been heavily influencing this movement¹⁹³. Particularly, Indonesia, Malaysia, Singapore and Thailand are in the process of purchasing capacities for surveillance force projection, precision strike and command and control that they did not possess a decade ago¹⁹⁴.

The second event, is Vietnam’s accentuated thirst into modernize its military capabilities. Since 2007, Vietnam has been signing a series of cooperation agreements with Russia that have resulted in intense increments of its military capabilities. Vietnam has agreed to order six Russian Kilo-class submarines at an estimated cost of \$2 billion, an acquisition which could, in the long term, shift the balance of power in the disputed South

¹⁹² “Satellite pictures reveal massive Chinese nuclear submarine base, says Pentagon”. Daily Mail – Available:

<http://www.dailymail.co.uk/news/article-563405/Satellite-pictures-reveal-massive-Chinese-nuclear-submarine-base-says-Pentagon.html> . Access: June, 20 2010. See also: “Chinese nuclear submarine base” – Daily Telegraph – Available:

<http://www.telegraph.co.uk/news/worldnews/asia/china/1917167/Chinese-nuclear-submarine-base.html> . Access: June, 20 2010. And “China Builds Secret Nuclear Submarine Base in South China Sea” – Fox News – Available: <http://www.foxnews.com/story/0,2933,353961,00.html> . Access: June, 20 2010.

¹⁹³Richard Bitzinger, “*The China syndrome: Chinese Military Modernization and the Rearming of Southeast Asia,*” *RSIS Working Papers*, No. 126 (2007).

¹⁹⁴ *Ibid.* 193.

China Sea in their favor¹⁹⁵. Currently, Vietnam disputes the ownership of several potential oil and gas-rich archipelagos in the region with China, Malaysia and several other South-East Asian states and strengthening their naval power will strengthen their negotiating position in the future¹⁹⁶. Moreover, Russia will supply Vietnam with 12 SU-30MK2 fighter jets and aviation equipment worth a total of about one billion dollars.

By this agreement, these 12 SU-30MK2 fighter planes will be delivered gradually between 2010 and 2012. The contract also contemplates various aviation arms, equipment and parts.

These two developments cannot be interpreted singly. Rather, they are, among others, evidences of the intensification of military build-up in the Southeast Asia that have been identified for different sources¹⁹⁷. Among the different reasons for this phenomenon, three variables are constant. First, the need, or perception, for protection on Exclusive Economic Zones (EEZ) as a result of the Law of the Seas promulgated by UNCLOS III in 1982. Second, the profound mistrust between the Southeast Asian countries in relation to China's military capabilities and intentions in the region. Third, and most important, are the internal challenges regarding insurgences driven by nationalistic, ethnic or

¹⁹⁵ "Vietnam signs major Russian arms deal".

Available:http://vietnam.suite101.com/article.cfm/vietnam_signs_major_russian_arms_deal. Access: June, 20 2010.

¹⁹⁶ "Vietnam receive 8 Sukhoi Su-30KM2 fighters in 2010". Available: <http://www.armybase.us/2009/08/vietnam-to-recieve-8-sukhoi-su-30km2-fighters-in-2010/>. Access: June, 20 2010.

¹⁹⁷ See "*The Asian Conventional Military Balance in 2006: overview of major Asian Powers*" Centre for Strategic and International Studies. ISS Military Balance (2009) pp.109:1,363 — 424.

religious movements within their borders.¹⁹⁸

Table 4 - Military Expenditure of SCS's state disputants

Country	<i>People's Republic of China</i>								
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	38.400	44.400	48.500	53,100	59,000	68.800	77,900	86.200	98.800
% GDP	2	2.1	2.1	2.1	2	2	2	2	2
Country	<i>Malaysia</i>								
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	2,640	2,999	3,824	3,691	3,948	3,864	4,314,	4,412	4,078
% GDP	2.1	2.2	2.6	2.3	2.3	2.3	2.1	2.1	2
Country	<i>Philippines</i>								
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	1,181	1,240	1,369	1,275	1,287	1,310	1,538	1,402	1,424
% GDP	1.1	1	1	0.9	0.9	0.9	0.9	0.8	-
Country	<i>Vietnam</i>								
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	-	-	1,338	1,370	1,430	1,683	2,170	2,138	2,73
% GDP	-	-	2.1	2	1.9	2.1	2.5	2.4	-
<i>Republic of China - Taiwan</i>									
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	8,618	7,851	8,317	8,715	8,325	7,848	8,406	8,319	9,866
% GDP	2.5	2.2	2.3	2.3	2.2	2.0	2.	2	2.1
<i>Brunei Darussalam</i>									
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Value US\$	284	302	215	248	301	339	353	342	336
% GDP	5.2	5.3	5.1	3.6	3.9	3.8	3.9	3.9	3.9

Source: Data collected from Stockholm International Peace Research Institute (SIPRI). Available:

<http://milexdata.sipri.org/> access. June, 21 2010.

In 2008, the National Australia Military Strategy and the Defense White Paper was

¹⁹⁸ Ashley J. Tellis and Michael Wills, *Military Modernization: in an Era of Uncertainty*. Strategic Asia report 2005-2006 (Washington: National Bureau of Asian Research, 2005). See also Andrew Tan, "Force Modernization Trends," *RSIS Working Paper*, No. 59 (2004).

assertive in considering the current militarism phenomenon in Southeast Asia. According to this paper, what it describes as “military modernization” is a simplistic interpretation of the reality in the region. The term *modernization* is “uncritically” accepted as no more than the natural evolutionary process of replacing obsolete equipment with new equipment¹⁹⁹.

In consonance with the Australian officials’ view, what has happened in many parts of Asia has been proven to be very popular “but it is at the most fundamental level, deeply misleading”. The reason, according to them, is because obsolete equipment is mostly being replaced with new equipment of fundamentally different capability. Frequently, they observe, that “*equipment designed for local area defensive operations being replaced with equipment built to project power and the associated destructive effect over a much greater range. This has been observed both in naval fleets and air forces across Asia*”²⁰⁰.

In the same path, Beijing agreed with the perspective that some “factors of uncertainty” remain in the region. The Chinese White Paper highlights that the drastic fluctuations in the world economy impact heavily on regional economic development and political turbulence persists in some countries undergoing economic and social transition. China defined that “*the ethnic and religious discords and conflicting claims over territorial and maritime rights and interests remain serious, regional hotspots are complex*”. Furthermore, Beijing also recognizes that “*the issue of maritime security*

¹⁹⁹ The National Australia Military Strategy and the Defense White Paper 2008. Available: <http://www.ausairpower.net/APA-2008-07.html> . Access: June, 23 2010.

²⁰⁰ *Ibid.*199.

*involves complex factors related to historical background and immediate interests*²⁰¹.

The Vietnamese follow the same perspective. In its Vietnam National Defense White Paper released in December 2009, Hanoi affirmed that *“in spite of the basically stable security situation in Southeast Asia, potential risks of conflicts still remain”*²⁰². Again, as the Chinese counterpart, the Vietnamese officials highlight the role of economy as essential for the stability in region. The paper argues that *“the global economic recession has heavily affected the regional economy, worsening the domestic unstable situation in some countries”*. However, Hanoi highlights that the territorial disputes in the South China Sea are the object of their main concern. The White paper states that *“the territorial disputes over land and sea have been more complicated, in particular those relating to sovereignty and national interests in the East Sea have been on the rise”*²⁰³.

Singapore accentuates that there are also many unresolved territorial and boundary issues in the Asia-Pacific region that could lead to conflict. They define the situation in the Korean Peninsula as a continuum source of concern and see the South China Sea as a *“source of concern and permanent insecurity that could lead to conflict”* given that the Spratly Islands are claimed wholly or in part by six parties²⁰⁴. Following the same reasoning, the US Secretary of Defense Robert Gates openly said that *“The South China*

²⁰¹ ASEAN Regional Forum Annual Security Outlook (2009),39.

²⁰² *“Vietnam National Defense 2009”*. Ministry of Defense Vietnam - [December 2009]. Available: <http://admm.org.vn/sites/eng/Pages/vietnamnationaldefence%28vietnamwhitepapers-nd-14440.html?cid=236> . Access: June, 23 2010.

²⁰³ *Ibid.*202

²⁰⁴ *“Defending Singapore in the 21th Century”*. Ministry of Defense of Singapore. Available: http://www.mindef.gov.sg/imindef/about_us/defence_policy.html access: June, 23 2010.

Sea is an area of growing concern."²⁰⁵ In all of these mentioned documents, the “enhancement of capabilities” appear as a national imperative. But, given these security concerns, is the Southeast Asia facing an arms race?

For some analysts, it is still not possible to affirm that an arms race could take place in Southeast Asia. Rather, they characterize the current scenario as an “arms dynamic” or “arms competition”. According to the classic criteria established by Colin Gray, an arms race is defined by the following factors:

- 1) There must be two or more parties, conscious of their antagonism.
- 2) They must structure their armed forces with attention to the probable effectiveness of the forces in combat with, or as a deterrent to, the other arms race participants.
- 3) They must compete in terms of quantity (men, weapons) and/ or quality (men, weapons, organization, doctrine, deployment).
- 4) There must be rapid increases in quantity and/or improvements in quality

Gray emphasizes that “*all four of these factors must be present for there to be any valid assertion that a particular relationship is an arms race*”²⁰⁶. Nonetheless, Grant Hammond’s requirements for an arms race are even more precise than Gray²⁰⁷. For

²⁰⁵ “*Gates on China: Speaking the truth makes the Pacific a safer place*”. International Institute of Strategic Studies. Available: <http://www.iiss.org/whats-new/iiss-in-the-press/june-2010/gates-on-china/> Access: August, 29 2010.

²⁰⁶ Colin S. Gray, “The Arms Race Phenomenon,” *World Politics*, Vol. 24, No. 1 (1971), 41.

²⁰⁷ Richard A. Bitzinger, “A new Arms Race? Explaining Recent Southeast Asia Military Acquisitions”, *Contemporary Southeast Asia*, vol.32, No. 1 (2010) ,61.

Hammond, the prerequisites to a genuine arms race include²⁰⁸:

- a) Primarily bilateral relationship
- b) Where each party specifically designates the other to be an adversary
- c) Where the high degree of public animosity and antagonism exists between the two parties
- d) Where each party's military/political planning is directly based on the capabilities and intentions of the other party
- e) Entailing "extraordinary and consistent increases" in military spending and arms acquisitions
- f) With the intention of seeking dominance over one's rival through intimidation

Working within the parameters, the analysts agree that what is happening currently in the Southeast Asia does not match to what has been outlined²⁰⁹. In spite of this, the historical background of rivalry is not in an open state of a high degree of animosity and antagonism. Moreover, what better defines the current military increment of the Southeast Asia arsenal is more related to an "arms dynamic"²¹⁰ or an "arms

²⁰⁸ Grant Hammond, *The Plowshares into Swords: Arms Race in International Politics* (Columbus: University of South Carolina Press, 1993), 31. See also Richard A. Bitzinger, "A new Arms Race? Explaining Recent Southeast Asia Military Acquisitions," *Contemporary Southeast Asia*, vol.32, No. 1 (2010).

²⁰⁹ *Ibid.* 201.

²¹⁰ Defined by Buzan and Herring as "the state of reciprocal arms acquisitions that, opposed to attempting to gain hegemony or superiority over a rival, are dedicated mainly to maintenance of the status quo". See Barry Buzan and Eric Herring, *The Arms Dynamics in World Politics* (New York: Lynne Rienner Publishers, 1998), 80.

competition”²¹¹ rather than an arms race in the classical definition of the term.

Independent of the term, the truth is that the current military modernization of the Southeast Asian states cause concerns and increase the level of unpredictability that are of the exact opposing requisite of the confidence building efforts²¹². Hence, the current pattern of arms acquisitions and military expenditure in the last decade could result in the classic security dilemma, leading to rhetorical spirals, heightened tensions, and eventually lead to conflict²¹³.

3.1 - The source of Military Dynamic in the Southeast Asia and its connections with lack of progress of the CBMs.

The sources of current arms dynamics are diverse and vary in importance for each regional actor in Southeast Asia. Essentially, there is a consensus that the main drivers of these phenomenon are of domestic nature²¹⁴. According to some analysts, reasons of desire of prestige, corruption, economic growth, inter-state tensions in the region, internal

²¹¹ According to Tan, the arms competition within region is reflect with the type and volume of countries acquisitions. As example, Malaysia reactions to the Indonesia and Thailand acquisitions of F-16 and Singapore plans acquiring the advance multi-role Tornado, made her to acquire similar capabilities. See Andrew Tan, “Force Modernization Trends” *RSIS Working Paper*, No. 59 (2004).

²¹² It is Gray has pointed out that is possible for arms races to eventually develop even in the absence of any serious antagonisms. The author believed that same assumption can be applied to the arms dynamic or arms competition as well.

²¹³ However, the ISS Military Balance 2009 categorically assume that the scale of national-defense efforts in Southeast Asia has remained minor compared to the levels of defense spending, military procurement and capability upgrading verified in the Northeast Asia. See ISS Military Balance 2009 Chapter Eight: East Asia and Australasia', p.424.

²¹⁴ Tan, supra note 211, and Bitzinger, supra note 207. Also Sheldon W. Simon, “Southeast Asia’s Defense Needs: Change or Continuity?” in *Military Modernization: in an Era of Uncertainty. Strategic Asia Report 2005-2006*, ed. Ashley J. Tellis and Michael Wills (Washington: National Bureau of Asian Research, 2005).

security, buyer market, domestic political rival factions using their clout or the “lion’s share” of procurement funding, and the highly competitive state of the current global arms market, among others, are the possible explanations for this arms dynamic trend²¹⁵.

For the purpose of this study, I will concentrate on three specific reasons: the requirement for Exclusive Economic Zone surveillance, China’s presence and the lack of mutual trust between the SCS’s disputant states in Southeast Asia.

a) The Requirement for EEZ Surveillance

As previous described in the first chapter, the resolutions originated from UNCLOS III in 1982 triggered new needs for the littoral states of the South China Sea²¹⁶. This is especially particularly in regards to the delimitation of 200 nautical miles of the exclusive economic zone (EEZ). In attempt to respond to this new demand, the Southeast Asian states have been introducing new air and maritime capabilities. This EEZ imperative directly reflects the level of military enhancement on maritime and air capabilities evident in the recent weapons and equipment acquisitions. Moreover, the excuses made to protect and defend their EEZ, the SEA’s states seem to encourage countries to exaggerate jurisdictional claims. According to specialists²¹⁷:

“..the UN Convention of the law seems have encouraged the countries of East and Southeast Asia to make extravagant maritime jurisdictional claims, which inevitably overlap, and this creates a new set of potential disputes that did not exist before.”

Andrew Tan agrees with this in saying that “*the promulgation of 200-mile EEZs under*

²¹⁵ *Ibid.*214.

²¹⁶ For more details see the first chapter.

²¹⁷ A comment made by Barry Wain, Writer-in-Residence, Institute of Southeast Asian Studies during The 9th IISS Asia Security Summit, the Shangri-La Dialogue, in Singapore. June 2010.

UNCLOS III has generated requirements for surveillance and power-projection capabilities over resource-rich areas²¹⁸”

This power-projection capability is essentially happening with the enhancement of the Southeast Asian Navies. If the specialists agree that there is no “arms race” in the region, at same time they are reinforcing that a clear “military dynamic” seems to be a permanent factor in waters of the South China Sea and in strategic straits within Southeast Asia²¹⁹. Among all the claimants (including Indonesia that has indirect interests in the disputes), with exception of Philippines, there have been investments and purchases made toward submarines, vessels and jetfighters with the intent to boost the capacity to operate in an eventual naval conflict.

Adjacent to EEZ surveillance, it is important to highlight the factor China into this dynamic. The process of modernizing the PLA Navy, undertaken by Beijing, has the intention to enhance the Chinese capabilities in defending their claims in the South China Sea. Consequently, the EEZ as well is a determinant factor. In other words, beyond the EEZ protection, the Southeast Asian states are responding to China’s movements and preparing themselves for an eventual episode of Chinese assertiveness, similar to happened during the 1990s.

Reinforcing these fears, on April 10, 2010, Tokyo officially released news that the Japan Maritime Self Defense Force had monitored ten Chinese warships passing 140km south of Okinawa through the Miyako Strait. This marked a new stage in China’s naval

²¹⁸ Tan, *supra* note 211 at 30.

²¹⁹ Keith Jacobs “*ASEAN Navies: facing the South China Sea Challenge*”. Naval Forces, No. II, 2010, Vol. XXI.

development²²⁰. According with specialists, “the deployment was of unprecedented size and scope for the Chinese navy”. This type of exercise demonstrates the “flexibility of China’s naval forces and their greater prominence in Beijing’s strategic calculations”²²¹.

These movements reinforce the conceptual dilemma of common aversion in the Southeast Asia as discussed in the first chapter, and show us that the concerns regarding China’s assertiveness is immediate and patent.

Figure 4 - China’s Naval Exercises (2010)



Source: “Chinese navy’s new strategy in action”. Institute of Strategic Studies. Available: <http://www.iiss.org/publications/strategic-comments/past-issues/volume-16-2010/may/chinese-navys-new-strategy-in-action/>

²²⁰ The ISS Report also emphasize that the Chinese flotilla contained some of its most advanced warships, including two Kilo-class diesel-powered attack submarines and at least two Russian-built Sovremenny-class destroyers. The March and April missions were the first of any size beyond the ‘First Island. See “Chinese navy’s new strategy in action, ISS Strategic Comment. Available: <http://www.iiss.org/publications/strategic-comments/past-issues/volume-16-2010/may/chinese-navys-new-strategy-in-action/> Access: June, 08 2010.

²²¹ *Ibid.*220.

a) *The Mutual mistrust and transparency: CBMs deficiencies*

In a recent web edition, The Xinhua News affirmed that many analysts have misunderstood the current Chinese military development. According to the Xinhua, specialists have focused on a four-character phrase used by the late Chinese leader, Deng Xiaoping. It says that the phrase, *tao guang yang hui*, is translated by many English speakers as "*hide our brightness and bide our time*," or "*bide our time and build up capabilities*".

The Chinese journal said that "*this interpretation leaves the impression that China is carefully hiding its true potential and is simply playing a waiting game. It will not show its strength until it's ready, economically and militarily*". Nevertheless, it argues that the English translation is not entirely correct. The second part of the phrase, *yang hui*, means "*to maintain obscurity*" or "*to avoid attention*." It has nothing to do with "biding time."²²²

Although the semantic explanation can be convincing, these "misread" or "misunderstood" phrases are a pattern of grounded and reinforced perceptions or misperceptions that there are in the relations among China and its neighbors in Southeast Asia and among the Southeast Asian countries themselves. A good example is the Malaysia military modernization that, among its myriad of security challenges, still has Singapore as a measure for its arms purchase. In the circumstance that Singapore acquires new equipment. Some analysts identify a proportion of Malaysia's movement in acquisition similar to the capabilities that Singapore possesses²²³.

In regards to the lack of transparency, Teo Che Hean, the Deputy Prime Minister and

²²² "Foreign analysts misread China's strategic golden rule". Xinhua News, June, 08 2010.

²²³ Tan supra note 211 at 10.

Minister for Defense of Singapore argued that:

“The region is ‘in a state of flux. Which brings with it a degree strategic uncertainty. Transparency played ‘a crucial role to avoid misunderstandings and to increase trust and confidence’²²⁴”

These concerns of Singapore can be identified by the resistance of the Malaysian minister of defense (MINDEF) to release periodically white papers. In spite of having *“acknowledged that its lack of publicity, leading people to have less confidence of the armed forces”*, the MINDEF still refuses to agree with the method of releasing the Defence White Paper, which would increase people's, and consequently other countries', awareness about Malaysia's national defense²²⁵.

Reinforcing the perception of fragility in security matters and the lack of transparency in the region, Purnomo Yusgiantoro, Minister of Defense for Indonesia, was positive in affirming that just the absence of open war in the region *“should not be enough to ensure genuine peace and sustained stability”*. From here, the Indonesian Minister of defense argued that *“In fact if we look more deeply beyond the facade of the relative calm, we can still see clearly security challenges such as non-traditional threats and internal disturbances including separatism and communal conflicts, as well as border disputes and overlapping territorial claims. Hence the common perception of a weak and inadequate regional security architecture.”²²⁶*

These elements could be indicatives that after eighteen years of intense CBMs

²²⁴ *“The Military transparency and defense cooperation in the Asia-Pacific”*. Plenary session 4. The 9th IISS Asia Security Summit, the Shangri-La Dialogue, in Singapore. June 2010.

²²⁵ *“MINDEF acknowledged that people don't have confidence on Armed Forces”*. KL Security Review. Available: http://www.klsreview.com/HTML/2009Jul_Dec/20090721_02.html . Access. July, 03 2010.

²²⁶ *“Renewing the Regional Security Architecture”*. Sixth Plenary Session, The 9th IISS Asia Security Summit The Shangri-La Dialogue, Singapore, June, 06 2010.

efforts to enhance the mutual understanding and cooperation, there has been no accomplishment of its basic task to create a reliable mutual trust environment between China and the Southeast Asian' states. Moreover, the basic concepts of transparency seem not to be clear after all efforts to improve the level of dialogue among them.

It is important remember that during the ASEAN Regional Forum in Phnom Penh, June of 2003, the ministerial statement declared that *the transparency promoted by such ARF measures as the exchange of information relating to defense policy and the publication of defense white papers*. However, according with the Singaporean Minister of Defense, the necessity to improve this mechanism of transparency would be through *“providing information about one’s military programmes, military expenditure, arms exports and imports, could reduce the likelihood that such programs would be destabilizing”*²²⁷. The minister does recognize some progress made by ARF²²⁸, although he argues that still there is a some lack of consistency in the region, should be *“encouraged to do so, making such transparency a norm in the region”*²²⁹” Emphasizing this unmatched of perspectives, Major General Zhu Chenghu said that military transparency has different connotations for each country and it is associated with culture, history and national strategies²³⁰.

²²⁷ *Ibid.*226.

²²⁸ the ARF ISG on Confidence Building Measures Beijing, 6-8 March, 1997, in the agenda item 6, ARF participants including defense officials, were encourage to enhance the adoption of UN Register of Conventional Arms (UNRCA). Summary Report of the ARF Inter-Sessional Support Group (ISG) on Confidence Building Measures, Beijing, 6-8 March, 1997. Available: <http://www.aseansec.org/arf4xc.htm> access: 07/03/2010.

²²⁹ *Ibid.*228.

²³⁰ Supra note 224 at page 117.

These developments are clear indicatives of the fragilities in the concept common interest that avoids an open regional conflict. In comparison with a solid and systematic military dynamic that has been occurring with intensity in the last decades, it is possible to identify a bifurcation in these two dynamics. Even with low intensity, the frustrations revealed by the difficulties to forward the CMBs to PD are in some extent influencing the military dynamic in the region. Although this is not within the scope of this study, it is a good example of the classical perception and misperception phenomenon²³¹.

3.2 – *The SCS' claimants' military modernization and capabilities*

Even if the current military buildup cannot be considered a classic arms race, the situation does not become less worrisome. As already mentioned, the current arms acquisition process provides the SCS' disputants new capabilities, which were previously nonexistent²³². Furthermore, the movements in terms of accession of new military capabilities have obeyed action and counter-actions among the states in the region.

Countries such as Indonesia, Thailand, and Singapore that are not directly involved in maritime disputes in the South China Sea, have taken intensive steps to increase their power capabilities. Indonesia has just accepted the delivery of the last of six Russian fighter jets, while Bangkok has received the first of 96 Ukrainian armored personnel

²³¹ According to Jervis, perception consists of images, beliefs and intentions. Decision-making is a process of inference in which actors interact based on expectations of what others will do in a given set of circumstances. See Robert Jervis, *Perception and Misperception in International Politics* (New Jersey: Princeton University Press, 1976) Chapters 1 – 4. Stein also dedicated a special attention to the role of perceptions and misperception in international relations. See Arthur A. Stein, *Why Nations Cooperate: Circumstances and Choice in International Relations* (New York: Cornell University Press (1990), 55.

²³² *Ibid.*231.

carriers (APC). The first of six Swedish Grippen fighter jets and two other aircraft are already ordered to arrive in early 2011. Singapore, which suffers extreme vulnerabilities due its geographical location, has invested heavily in new technologies and principally in the acquisition of its second Swedish attack submarine. While Malaysia, a South China Sea claimant with great sensitivity to Singapore's military plans, has already spent \$1 billion on two Franco-Spanish *Scorpene* submarines. Another South China Sea claimant state, Vietnam, who is, among the claimants is the most clear oppose of China's ambitions, ordered six Russian submarines in a deal worth \$2 billion and are waiting for its 12 Russian fighter jets²³³. Similar dynamics have been identified in Philippines and very much in China, in this case for such long time.

To better understand the context of military dynamic in Southeast Asia, this section will provide more detailed information about the current military capabilities of the South China Sea claimant' states. However, it is necessary clarify beforehand the author's analytical approach to not include Taiwan and Brunei.

Taiwan's military spending can be obtained from ISS Military 2009, The National Defense Report the Republic of China 2006, The Republic of China Year Book 2009²³⁴

²³³ See Time Magazine Website., "Military Maneuvers" – Available:
<http://www.time.com/time/magazine/article/0,9171,2019534,00.html?artId=2019534?contType=article?c hn=world> Access: October 10, 2010.

²³⁴ The Republic of China Year Book 2009. Chapter 8. Available:
<http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/ch08.html> . Access: July, 22, 2010. See also "Taiwan keeping on the defense". Available:
<http://www.taipeitimes.com/News/front/archives/2008/03/05/2003404060> . Access: July, 22, 2010.

and Quadrennial Defense Review 2009²³⁵. All these documents do not show any strategic concerns of Taipei over the South China Sea issue. On the other hand, the great motivating factor of Taiwan's military buildup remains the cross-strait relations. All documents mentioned above highlight the current positive level of economic relationship with Beijing, while emphasizing that the PRC never renounced the use of force against the Island. Even though the Ma Ying-jeou administration plans to transform the Taiwanese armed forces into an all-volunteer service by 2013 which could potentially reduce manpower from the 290,000 personnel to something between 40,000 and 70,000. Taipei still is aware of the necessity to bolster its defensive capabilities against an eventual surprise attack from the PRC²³⁶. Thus an eventual detailed analysis of Taiwan's armed forces could lead to a misconception about the current military dynamics in the region and its relations with the other South China Sea disputants. Hence there is an open arms race between Beijing and Taipei, and the power acquisitions of one will lead to the counter-acquisition of another, what is not the case of with the Southeast Asian nations, as detailed in the first section of this chapter²³⁷.

Regarding to Brunei, the reasons to not include it varies. Due to factors such as its size, military expenditure and the most important condition as the only claimant that does not have military presence on any of the self-claimed islands. For example, Brunei's Military expenditure in 2009 was less than the half of Philippines's military expenditure in the same year (see table 5).

²³⁵ Quadrennial Defense Review 2009– Republic of China. Available: http://merln.ndu.edu/whitepapers/Taiwan_EnglishQDR2009.pdf . Access: July, 22.2010.

²³⁶ The Military Balance 2009 , Chapter Eight: East Asia and Australasia; 365.

²³⁷ Bitzinger, supra note 207 at 61.

a) *China's capabilities*

Given its importance and asymmetric capabilities, the PRC has to be analyzed separately from the other regional actors. China's military modernization efforts have been well documented by many different sources within the last few years²³⁸. All of them highlight the PLA's robust and continuous modernization path since the 1990s. The same reasoning used by other countries (as shown in table 4) in the region can be applied to China. China's current arms acquisitions and military modernization process are directly linked with its economic performance during the last 25 years. The size of the 2008 defense budget was substantially greater than the previous year and *represented one of the biggest year on-year increases over the past decade, proportionally to the economy growth*²³⁹.

In the last "Military Power of the People's Republic of China 2009" – an Annual Report to Congress – the Department of Defense of United States delineated what it called "*The People's Liberation Army (PLA) transformation from a mass army designed for protracted wars of attrition on its territory to one capable of fighting and winning*

²³⁸ As suggestions Department of Defense of United States of America, *Military Power of the People's Republic of China 2009 - Annual Report to Congress*" and Richard D. Fischer JR., *The China's Military Modernization: Building for Regional and Global Reach* (Washington: Praeger Security International, 2008).

²³⁹ The Chinese Military officials argue that major reasons for this sharp jump include rising salaries, cost-of-living subsidies and pensions. According with ISS Military balance the PRC's military expenditures for 2007 broke down into 33.8% for personnel costs, 34% for training and maintenance and 32.2% for procurement. See ISS Military Balance 2009 Chapter Eight: East Asia and Australasia, 365.

short-duration...”²⁴⁰ According to the report, the high-intensity conflicts along its periphery against high-tech adversaries are an approach which China refers to as preparing for “local wars under conditions of informatization”.

China’s military modernization transformation has increased in recent years, boosted by the acquisition of advanced foreign weapons and continued high rates of investment in its domestic defense, science and technology industries, as well as far-reaching organizational and doctrinal reforms within the armed forces. In reference to the naval capabilities, some PLA Navy thinkers have staked an “Offshore Active Defense,” which highlights the Chinese coastline defense operations “*within the first island chain and a focus on Taiwan contingencies*”. This new concept, called the “Far Sea Defense,” is assertive in regards to the improvement of multi-dimensional precision attacks “*beyond the first island chain and operations outside of China’s claimed 200 nautical mile EEZ to defend PRC national interests, adding a layer of strategic depth within which to defend China’s coastline*”²⁴¹. To achieve these goals, the PLA Navy has considered building multiple aircraft carriers and associated ships by 2020²⁴².

Table 5 – China’s Naval Force

	Total	East and South China Sea
Destroyers	27	17
Frigates	48	39
Tank Landing Ships/ Amphibious Transport Dock	27	25
Medium Landing Ships	28	23

²⁴⁰ Department of Defense of United States of America, “*Military Power of the People’s Republic of China 2009 - Annual Report to Congress*”. Available: http://www.defense.gov/pubs/pdfs/China_Military_Power_Report_2009.pdf p.18

²⁴¹ *Ibid.*240.

²⁴² *Ibid.*

Diesel Attacks Submarines	54	32
Nuclear Submarines	6	1
Coastal Patrol	70	55

Source: Adapted from “*Military Power of the People’s Republic of China 2009*” - Annual Report to Congress – Department of Defense of United States of America. p .64.

In addition, the PRC has projected acquire a new class of nuclear-powered ballistic missile submarine (SSBN)/ submarine-launched ballistic missile (SLBM) by 2010, enabling them a huge dominance in all of the South China Sea and beyond. The US Department of Defense of United States’ report asserts that China’s current military modernization program could give Beijing the ability to²⁴³:

- 1) Hold large surface ships, including aircraft carriers, at risk (via quiet submarines, advanced anti-ship cruise missiles (ASCMs), wire-guided and wake-homing torpedoes, or anti-ship ballistic missiles);
- 2) Deny use of shore-based airfields, secure bastions and regional logistics hubs (via conventional ballistic missiles with greater ranges and accuracy, and land attack cruise missiles); and,
- 3) Hold aircraft at risk over or near Chinese territory or forces (via imported and domestic fourth generation aircraft, advanced long-range surface-to-air missile systems, air surveillance systems, and ship-borne air defenses). Advances in China’s space-based reconnaissance and positioning, navigation, timing, as well as survivable terrestrial over-the-horizon targeting, are closing gaps in the creation of a precision-strike capability.

²⁴³ *Ibid.*

Table 6 : The flotillas deployed by China from its North, East and South Sea Fleets

<i>South Sea Fleet Gulf of Aden Flotilla (DDG= destroyer / FFG= frigate)</i>		
Pennant Number	Vessel Class	Vessel Name
525 FFG	Type 054 (Jiangkai)	Ma'anshan
526 FFG	Type 054 (Jiangkai)	Wenzhou
886 Tanker	Fuchi-class replenishment oiler	Quiandaohu
<i>North Sea Flotilla (DDG= destroyer / FFG= frigate)</i>		
Pennant Number	Vessel Class	Vessel Name
115 DDG	Type 051C Luzhou	Shenyang
527 FFG	Type 053H3 (Jiangwei II)	Luoyang
528 FFG	Type 053H3 (Jiangwei II)	Mianyang
535 FFG	Type 053H2 (Jianghulll)	Huongshi
881 Tanker	Fuqing-class replenishment oiler	Huongzhehu
721 Salvage Vessel	Heavy Tug	Beituo

Source: Adapted from "Chinese Navy's strategy in Action". ISS Strategic Comments. Available:

<http://www.iiss.org/publications/strategic-comments/past-issues/volume-16-2010/may/chinese-navys-new-strategy-in-action/> access: June, 08 2010.

b) *Malaysia's capabilities*

The financial crisis that struck Southeast Asia put the Malaysian plans to acquire air refueling aircraft, helicopter gunships, AEW aircraft, submarines, Main Battle Tanks (MBTs), new Armored Personnel Carriers (APC), modern artillery and requirement for 27 offshore Patrol Vessels (OPVs) on hold²⁴⁴. According to some specialists, these armaments are either back on schedule or have already been acquired within the last decade.

In May 2003, Malaysia placed order for 18 Sukhoi SU-30 jet-fighters and 11 Augusta 109M surveillance. In the same year, Malaysia announced spending US\$ 1 billion to acquire at least 4 airborne Warning control (AWAC) aircraft²⁴⁵. Since 2002, Malaysia has also taken to revamping their naval status. French Scorpene submarines and Agosta training submarines were ordered or acquired. A series of agreements and

²⁴⁴ Andrew Tan, "Force Modernization Trends in Southeast Asia". RSIS Working Paper N. 59 (2004).

²⁴⁵ *Ibid.* 244.

purchases during the modernization program of the 2000s clearly suggests a “*strong determination to develop an all-around modern conventional capability*”.

Table 7 - The Malaysian Air and Maritime Military Arms Acquisitions and Defense Capabilities (2003-2004)	
Malaysia	<p>Ordered in 2003 18 Su-30 MKM combat aircraft for delivery by the end of 2008.</p> <p>According the Military Balance in 2009, the Malaysian Navy continues to train submarines crews in France with intention to bringing its two Scorpene boats back to the new base at Sepanggar Bay in Sabah during 2009-2010, and four more locally built Meko-100 type large patrol vessels should be commissioned by 2010.</p> <p>The Malaysian government has already sign a letter of intent for two British built <i>Jebat</i>-Class frigates, which are intended to enter service by 2015</p> <p>Recently, Malaysia has kick-started the development of an indigenous 8x8 armored fighting vehicle (AFV) know as AV8 for the Malaysian Army. The Royal Malaysian Navy requires additional surface ships to sustain its current operational tempo of having six ships deployed at sea at any given time.</p>
	<p>Navy</p> <p>Two Missile-equipped naval vessels: Leiku Frigates (Exocet SSM and Seawolf SAM)</p> <p>02 - FS150 Frigates (Exocet SSM)</p> <p>04 - Lakasamana (Assad)</p> <p>Missile corvets (OTO Melara SSM)</p> <p>08 – Spica/Combattante II missile boats (Exocet SSM)</p> <p>On order:</p> <p>Meko A-100 OPVs</p> <p>01 Agosta (trinining) submarine</p> <p>02 Scorpene Submarines</p> <p>06 Super Lynx</p> <p>06 Fennec Helicopters</p> <p>04 Meko A-100</p> <p>Air Force</p> <p>17 MiG29 jetfighters</p> <p>08 F18D Hornet jetfighters</p> <p>13 F5E jetfighters</p> <p>25 Hawk jet trainers/ground attack</p> <p>02 RF-5E reconnaissance jetfighters</p> <p>On order</p> <p>12 Eurocopter EC725 Cougars</p>

Sources: TAN, “*Andrew, Force Modernization Trends in Southeast Asia*”. RSIS Working Paper N. 59.(2004), ISS Military Balance 2009 Chapter Eight: East Asia and Australasia, Jane’s Defense Weekly, vol.47, issue 18 may,05,2010, Jane’s Defense Weekly, vol.47, issue 17april,28,2010, and others.

c) *Vietnam’s Capabilities*

In consonance with specialists, Vietnam did not engage in a major military modernization or expansion program in the 1990s on the same scale as Singapore and Malaysia. However, Hanoi is aware of its deficiencies and has been trying, in the measure of its economic capacity, to redress them. Above all, Vietnam is aware of the necessity to defend its maritime claims and the resources of its coastal borders. The naval clashes with China during all 1990s and an annual production of 17 million tonnes of oil per year from its offshore platforms put the maritime defense capability enhancements to top a priority for Hanoi²⁴⁶. In spite of the poverty of the country and the relatively modest modernization process currently undertaken, Vietnam has replaced its obsolete arsenal little-by-little. Its Petya-class corvettes have recently been refitted. There are plans to purchase new frigates, patrol craft and fast missile boats, all to be delivered during the year 2010. Moreover, KBO2000 corvettes armed with SSN-25 missiles have been ordered from Russia. Vietnam's air force consists mostly of the 124 MiG21 which being replaced or upgraded by Russian Su-27jetfighters.

Table 8 – The Vietnamese Air and Maritime military arms acquisitions and defense Capabilities (2003-2004)

Vietnam	<p>Increasingly concern with deterring Chinese pressure on its claims in the South China Sea.</p> <p>With the rapid economic growth during the 2000s decade has allowed to increase its defending spending significantly.</p> <p>In April the French company Arianespace</p>	<p>Navy</p> <p>13 -Missile-equipped naval vessels: (1 type 124A corvette,8 Osa II and 4 Tarantul Missile boats)</p> <p>15 - OPVs: 5 Petya corvettes,10 torpedo craft</p> <p>10 Minehunters/Sweepers (Soviet and PRC)</p> <p>06 - LSTs: 6</p>
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²⁴⁶ Andrew Tan, "Force Modernization Trends in Southeast Asia". *RSIS Working Paper* N. 59. (2004), 20.

launched Vietnam's first satellite, *Vinasat-1*. According with specialists, the *Vinasat-1* will play important role in boosting the independence and security of Vietnam's as well as civilian satellite communications.

02 - Submarines: DPRY Yugo (midget submarines)

On order;

BPS 500 missile boats (With SSN-25 anti-ship missiles)

Air Force

53 Su-22 fighter-bombers

36 Su 27-fighter bomber

124 – MiG-21 jetfighters

26 Mi-24 Helicopters gunships

04 Be-12 MR aircraft

15 Ka-25/28/32 ASW helicopters

SAM: SA-2/-3/-6/-7/-16

Sources: TAN, "Andrew. Force Modernization Trends in Southeast Asia". RSIS Working Paper N. 59. 2004, ISS Military Balance 2009 Chapter Eight: East Asia and Australasia, Jane's Defense Weekly, vol.47, issue 18 may,05,2010, , Jane's Defense Weekly, vol.47, issue 17april,28,2010, and others.

However, Hanoi intentions to expand its defense go beyond its consistent, albeit tiny (in comparison with China), military investments. Vietnam has increased its ties with Washington in order to counterbalance the asymmetrical relation in terms of military power with Beijing. In a demonstration of this new momentum, Vietnam and the United States undertook an exercise of their military ties. In August 2010, the destroyer USS John S. McCain, docked at the central port city of Danang with a crew of about 270 sailors for a four-day program with the Vietnamese navy. Later, the aircraft carrier USS George Washington, which previously took part in joint military exercises with South Korea, hosted a delegation of Vietnamese military in the waters of the South China Sea off Danang. Jeffrey Kim, the ship's commanding officer argues that

the *"training that we are conducting is a non-combat, non-combat nature,"*²⁴⁷.

However, the rapprochement between Hanoi and Washington has been consistent through the time. After the reestablishment of diplomatic relations in 1995, both countries have proceeded with a gradual process of developing mutual understanding and trust. The period of 1995-2000 was a time of "initial contacts" that started with the formal military-military relations act in November 1996. The second phase of the rapprochement process from 2000-2005, gave new contours to Vietnamese-Americans relations. Referred to by both parties as *"expand scope and pace of defense engagement"*, this phase saw the visit of President Bill Clinton in November 2000 as the most symbolic act.

By a series of agreements, the cooperation increased primarily in the medical sector. With this agreement, Vietnam's Military Medical Department expanded its capacity for HIV diagnostic, laboratory, training and blood safety at military medical facilities. Since 2005, the average annual budget for these kinds of programs has been about two million USD²⁴⁸. The period of 2000-2005, was characterized by *"incorporating new activities into existing plans"*. Within this period, there occurred two visits from American officials. The first visit was from the Secretary of State Donald Rumsfeld in July 2006 and, in December of that same year, the President George Walker Bush also visited. The previous year, in July 2005, both countries expanded the practical bilateral cooperation, including meteorological and hydrographic studies and Humanitarian Assistance and Disaster Relief

²⁴⁷ *"US put on display of military ties with Vietnam"* – China Daily – Available:

http://www.chinadaily.com.cn/world/2010-08/11/content_11134190.htm Access: August, 11 2010.

²⁴⁸ Defense Cooperation in Vietnam – America. Gov. Available:

<http://photos.state.gov/libraries/vietnam/8621/pdf-forms/15anniv-DAO-Factsheet.pdf> Access: August, 25 2010.

(HADR) capacity building. The International Traffic in Arms Regulations enabled some constrained arms sales was also the subject of some agreements²⁴⁹. The current stage has been called the “*Bilateral Defense Relationship Focus on Building capabilities and new Skills in Specialized areas: Peacekeeping, Environmental Security, Multilateral Search and Rescue Coordination, and Regional Disaster Response – 2008-2010*”. The visit of senior Vietnamese military officials to the USS Stennis in April 2009 marked the first-ever tour of a U.S. nuclear-powered aircraft carrier and demonstrated the positive momentum of the US-Vietnam relations. The U.S. Army conducted *Medical Readiness Exercise and Combat Lifesaver* training in July 2009. In December 2009, the Vietnam's Minister of Defense visited the U.S. and held key meetings with senior U.S. foreign policy and defense officials²⁵⁰. According to both parties the goal for 2010 is to grow to new levels, encouraging the Vietnam to participate more actively in peacekeeping through the Global Peace Operations Initiative (GPOI) program²⁵¹.

The level of involvement between the US and Vietnam has been subject of concern in Beijing. In the words of an Chinese academic, the heavy US surrounding China, from the Republic of Korea and Japan to Vietnam and other ASEAN countries, seems that even with “*the declaration of a peaceful rise China made in 2005 was widely seen as a commitment to the US that Beijing would not challenge it, but it seems now the White House is not quite sure about that*”²⁵².

D) *Philippines's capabilities*

²⁴⁹ *Ibid.* 248.

²⁵⁰ *Ibid.*

²⁵¹ Supra note 248.

²⁵² Supra Note 240.

While the rest of the Southeast countries, to some extent, have made efforts to enhance their military capabilities, the Armed Forces of the Philippines sole concern is with its own internal problems.

The Philippines relied upon the US presence in its territory for its security strategy. With the withdrawal of American troops of the region in 1992, Filipino officials were left to face an immense challenge²⁵³. In addition, the Philippines claim in the South China Sea puts it on a collision route with China, Malaysia, Vietnam and Taiwan, countries that possess naval capabilities beyond that of Manila possess.

The Philippines signed the Armed Forces Modernization Bill in February, 1995. According to the bill, the air force and navy would get priority. The costs were estimated at US\$ 2 billion in the first five years and roughly US\$ 10 billion throughout the first decade of the new millennium²⁵⁴.

Table 9 – The Philippines’s Air and Maritime military arms acquisitions and current defense Capabilities (2003-2004)

<p>Philippines</p>	<p>It is attempting to implement an ambitious Capability Upgrade Program (UCP) for the armed forces.</p> <p>According with the ISS Military Balance 2009, the CUOP priority since 2009 has been on renewing the capabilities of the Philippines Air Force, which plays a key supporting in the internal counter-insurgency efforts as well.</p>	<p>Navy</p> <p>01 frigate</p> <p>13 offshore patrol boats (OPV)</p> <p>07 LSTs</p> <p>Air Force</p> <p>14 F5A/F5B</p> <p>55 Bell UH1H Helicopters</p> <p>12 AUH-76 helicopter gunships</p> <p>20 MD 520MG Light Helicopters</p> <p>01 F27 MR aircraft</p> <p>20 OV: 10 Bronco COIN/recce</p> <p>RPV: 2 Blue Horizon II</p>
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²⁵³ ISS Military Balance 2009 Chapter Eight: East Asia and Australasia, p.370.

²⁵⁴ *Ibid.*253.

Sources: TAN, "Andrew. Force Modernization Trends in Southeast Asia". RSIS Working Paper N. 59. 2004, ISS Military Balance 2009 Chapter Eight: East Asia and Australasia, Jane's Defense Weekly, vol.47, issue 18 may,05,2010, Jane's Defense Weekly, vol.47, issue 17april,28,2010, and others.

But what are the withal sources of current military modernization of Southeast Asia and what is the possible relation to the CBMs efforts in the region?

3.3 – Chapter Summary: Analysis

The third chapter focused in describing the details of the current path of the military dynamic in the Southeast Asia and its sources. The chapter chose two symbolic events to underwrite this phenomenon: the discovery of a Chinese submarine nuclear harbor in Hainan and Vietnam's modernization of its military capabilities using a closer partnership with US and Russia. The discovery of a Chinese submarine nuclear harbor in Hainan province served as an additional element to shake the fragile cooperation process between Southeast Asia and Beijing. The series of images showed a vast tunnel entrance that is thought to lead to huge caverns capable of hiding several nuclear submarines from spy satellites. According to specialists, the base has implications for China's control of the South China Sea and the strategically vital straits in the area, and underlines Beijing's desire to assert tighter control over this region.

On the other hand, since 2007, Vietnam has been signing a series of cooperation agreements with Russia that have resulted in intense increase of its military capabilities. Even considered the most powerful state in the Southeast Asia, Vietnam does not have the military capacity to compete with China and consequently does not possess sufficient naval power over its interests in the South China Sea²⁵⁵. Hanoi, however, has lately been

²⁵⁵Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia* (New York: Routledge Press, 2010), 83.

working to update its capabilities. Vietnam has agreed to order six Russian Kilo-class submarines at an estimated cost of \$2 billion, an acquisition which could, in the long term, shift the balance of power in the disputed South China Sea in their favor. Moreover, Russia will supply Vietnam with 12 SU-30MK2 fighter jets and aviation equipment worth a total of about one billion dollars. By this agreement, these 12 SU-30MK2 fighter planes will be delivered gradually between 2010 and 2012.

Other Southeast Asian states are also improving their arsenal at varying speeds. Indonesia, Malaysia, Singapore, the Philippines and Thailand are in the process of purchasing the capacities for surveillance force projection, precision strike and command and control that they did not possess a decade ago. The Southeast Asian states involved in the current military buildup dynamic were using the argument of obsolescence of their equipment as the response to this arms acquisition phenomenon. However, as the chapter highlighted, military strategists have pointed out a mismatch between these affirmations and the characteristics of the weapons and equipments purchased. Essentially, the obsolete equipment is mostly being replaced with new equipment of fundamentally different capability. It seemed to become common practice to frequently observe in the equipment designed for local area defensive operations being replaced with equipment built to project power and the associated destructive effect over a much greater range. Moreover, this phenomenon has been identified in both in naval fleets and air forces across Asia.

The chapter also analyzed the motivations to this militarism moment in the region. Among the diverse variables that could influence the weapons acquisition decision making process, analysts have indicated that desire for prestige, corruption, economic

growth, inter-state tensions in the region, internal security, buyer market, domestic political rival factions using their clout or the “lion’s share” of procurement funding, and the highly competitive state of the current global arms market, among others, are the possible explanations for this arms dynamic trend. The thesis added three more variables to the composition of this power decision making process, the requirement for Exclusive Economic Zone surveillance, China’s presence and the lack of mutual trust between the SCS’s disputant states in Southeast Asia.

As the chapter well described, the level of consistency between the two dynamics are completely different. While the negotiation has requires a second wind of sorts to progress, the military dynamic has maintained its path and speed consistently throughout the last decade. Taking into consideration only Malaysia, Philippines and Vietnam, the average military expenditure is about US\$ 5, 7 billion in the last three years. With regards to these 3 states, the main motivator resulted from the domestic challenges, religious and nationalist insurgences principally in Malaysia and Philippines. However, even though the Malay and Philippine land forces had been receiving some improvements recently, the last military reports also identify an intense enhancement in the level of Navy modernization of these two countries, particularly Malaysia. These gains of naval capabilities are directly connected with the matter of EEZ protection and incessant assertiveness of the Chinese Navy in the South China Sea waters.

Vietnam, in contrast to the others state’s claimants, has directed its military capabilities envisaging a possible deteriorating scenario in the Paracel Islands. Aspects such as the unilateral Chinese decision to stipulate a three-month moratorium on fishing in the South China Sea (above the 12th parallel) from 16th May to 1st August 2010 *in*

*order to preserve Fish stocks, to prevent illegal fishing and to protect Chinese fishermen*²⁵⁶, touched a sensitive Hanoi nationalist nerve. The Vietnamese response was a combination of acquisition of new weapons and equipments by a strategic agreement with Russia and reinforcement of its close military partnership with US.

Another aspect is regarding the perception of politicians, diplomats, and military commanders in the region. All of them, from different perspectives, reinforced how fragile the regional peace was so far. More than the maritime territorial disputes, the regional leaders highlight the high level of mistrust and the lack of transparency as the great obstacles to achieve success in create a reliable stability in the Southeast Asia. The opinions of military commanders and politicians reinforce the limitations of the confidence-building measures approach. If the CBMs have achieved success in creating a mutual understanding among the academics, the same cannot be said of middle-level politicians and military commanders in regards to the political and military high echelons. The South China Sea is tied to high politics concepts, that, in other words, means that the South China Sea issue is connected with all matters that are vital to the very survival of the State, namely national and international security. Therefore, the only way CBMs can survive is take decisive steps towards preventive diplomacy or it will become completely useless from a pragmatic point of view.

Reinforcing the approach of high politics, the next chapter will provide concrete examples. In parallel with negotiation dynamics and arms acquisitions, some players in

²⁵⁶ Carlyle A. Thayer, *Recent Developments in the South China Sea: Implications for Peace, Stability and Cooperation in the Region*. Available: http://www.viet-studies.info/kinhte/Thayer_South_%20China_%20Sea_%20Workshop.pdf Access: August, 11 2010.

South China have been assertive in their defense of its national interests. Vietnamese and Malaysians organized a joint-submission at the United Nations Commission on the Limits of the Continental Shelf in a rare demonstration of efforts coordination. The Philippines reinforced its claims of Kalayaan Islands passing its Baseline Law. China, once more, showed its intentions to ensure its sovereignty and future control of the South China. The discovery of the Chinese nuclear submarine base, along with the knowledge of the number and scope of naval exercises in various parts of Southeast Asia, has increased suspicions in the region regarding Beijing's real intentions. In response, Vietnam has gradually been gaining new power capabilities envisaging an eventual Chinese unilateral act.



CHAPTER 4 – LATEST DEVELOPMENTS (2009-2010): AN ANALYSIS

The recent developments in the region have only reinforced the perception that the negotiating dynamic have found their ceiling, while the military dynamic has been consolidated as an undeniable reality. The chapter aims to provide examples to sustain these affirmations. Regarding the negotiation dynamic, the Malaysia-Vietnam joint submission at the Commission on the Limits of the Continental Shelf (CLCS) and the Philippine's baseline laws are used to measure confidence and the level of predictability in the South China Sea, which serve as a basic requirement to the CBMs efforts. From the military dynamic standpoint, the region offers different levels of consistency of militarization of Southeast Asia. The significant Vietnamese-Russian arms deal is an example of the current pattern of the military dynamic path. Moreover, the new momentum of Vietnam-US relations is, to Hanoi, an additional element to counterbalance the Chinese hegemony in the negotiation field. The recent episodes of Chinese assertiveness, its massive naval maneuver exercises and the discovery of the Hainan nuclear submarine base, again placed Beijing as the most important player in the South China Sea.

Beijing's reactions to the joint-submission made by Vietnam and Malaysia are very symbolic in terms of CBMs. More than that, the submission in itself, as difficult to imagine after many years of attempts to increase the level of predictability via CBM and diplomatic dialogue channels on all tracks, seems not enough to restrain the Chinese tone in response to something previously scheduled by the UN to happen.

Moreover, these diplomatic steps should be subject to discussion among the claimants to

avoid agitating the nationalist minds on all sides of the dispute. The same reasoning can be applied to the Philippines baselines law, given that the environment of mutual trust cannot survive with surprises. These events lead us to a chronic problem in lack of transparency that, so far, still becomes the main problem in discussions about the South China Sea questions.

Regarding the military dynamic, the lack of transparency is consolidated as a cultural practice and there are no indicatives of changes in the near future. The discovery of a Chinese nuclear submarine harbor in Hainan definitely leads us to this conclusion. After years of taking part in the discussions on how to improve the stability in the region via exchange of information and signing declaration as the Code of Conduct of South China Sea, Beijing maintains its ambiguous behavior. The natural outcome of China is the current increment of the military capabilities on all actors involved directly or indirectly involved in the territorial dispute with Beijing. In this context, Vietnam's efforts call attention to the magnitude of its agreements in purchasing Russian arms and equipments.

a) The Malaysia-Vietnam joint-submission at the United Nations Commission on the Limits of the Continental Shelf.

As declared by the United Nation Convention on the Law of the Sea (UNCLOS), every coastal state is entitled to an exclusive economic zone out to a maximum of 200 nautical miles from its baseline. Article 76 of UNCLOS stipulates the criteria upon which a coastal state may claim an extended continental shelf beyond 200 nautical miles²⁵⁷. The

²⁵⁷ United Nations Convention on The Law Of The Sea – Article 76 – Definition of the Continental Shelf.

Available : http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

outer limits of this claim have to be submitted to the United Nations' Commission on the Limits of the Continental Shelf, or CLCS, for validation. For the majority of coastal states, the deadline for submission was on May 13th, 2009²⁵⁸.

The joint-submission conducted by Malaysia and Vietnam reveal the disparities on the South China Sea discussions between the partners of the ASEAN²⁵⁹. Before the Vietnamese government invited Malaysia to a combined movement at the UN-Commission on the Limits of the Continental Shelf, they had invited Brunei to do so as well, which Brunei accepted. However, Brunei made neither a submission, nor protested about Malaysia and Vietnam's joint submission²⁶⁰. The Philippines, like Brunei, did not make a submission for any area, claiming arguments to avoid the increase the level of conflict in the South China Sea. The Philippines officials did not protest against the Vietnam and Malaysia joint submission either²⁶¹.

Although the CLCS has an intrinsically technical nature without any power to

²⁵⁸ Submissions, through the Secretary-General of The United Nations to The Commission on the Limits of the Continental Shelf, pursuant to the article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, 10 December 1982. Available:

http://www.un.org/Depts/los/clcs_new/commission_submissions.htm Access: July, 08 2010.

²⁵⁹ One day after the joint submission, Vietnam posted a separate submission regard to parts of northern central South China Sea. See: http://www.un.org/Depts/los/clcs_new/commission_submissions.htm

²⁶⁰ Ministry of Natural Resources and Environment of Vietnam - "China claims 80 percent of South China Sea unacceptable" available:

<http://www.monre.gov.vn/monrenet/Default.aspx?tabid=211&idmid=&ItemID=71941> . Access: June, 25 2010.

²⁶¹ In March 2009 Philippines revised its baselines law where it's reasserted sovereignty over the island in the SCS. This was followed by its extended submission in April 2009. Brunei presented preliminary information; its complete submission will follow in the future. See Sam Bateman and Clive Schofield, "Outer Shelf Claims in the South China Sea: Dimension to Old Disputes". *RSIS Commentaries, N.65, (2009)*.

interfere in disputed areas, yet China reacted violently. Beijing alleged that the joint submission “infringed China’s sovereignty, sovereign rights and jurisdiction in the South China Sea” and requested the CLCS not to consider the submission²⁶².

In short, the actions taken by the different states relating to the CLCS submissions have highlighted the splits within the Sino-ASEAN cooperation. Five Southeast Asian countries approached opted to put aside the differences and submit jointly or separate their claims at the UNCLOS. Working with each other towards delimitating the maritime boundaries or using mutual consultations is very symbolic in comparison to Beijing’s approach.

In contrast, China has undertaken a neglecting attitude regarding UNCLOS propositions and, according to the perspective of some analysts, has progressively worked towards seizing 80% of the South China Sea. Consequently, due to these fundamental differences between ASEAN and Beijing, it is still uncertain if the South China Sea dispute, even under an impressive ACFTA, could be solved via peaceful means in the foreseeable future.²⁶³

All these movements by the CLCS increase the temperature and rhetoric between the ASEAN and China. Again, it is important to note that all of these actions and counter reactions were made directly against the spirit of the official and informal efforts to enhance the mutual trust environment among the same countries in the last 28 years. Moreover, there is clearly disrespect on the Declaration of Conduct parties in the South

²⁶² “China urges UN commission not to review Malaysia-Vietnam submission” - People’s Daily Online 08:15, May 08, 2009. <http://english.peopledaily.com.cn/90001/90776/90883/6653317.html>

²⁶³ Du Tran, ““Maritime Boundaries and the Spratlys: China causes concern”. Opinion Asia – Global Views. Available: <http://opinionasia.com/Chinamaritimeboundaries> access. July, 07 2010.

China Sea by ASEAN and China since 2002 and therefore, it is a visible demonstration of the limitations of the CBMs efforts in all levels.

b) New Philippine Border Law: the baselines question.

The Philippine President, Gloria Arroyo, signed the Law Republic Act 9522, or Baselines Law, on March 10, 2009, without a trumpet blast²⁶⁴. The law reaffirmed the country's claim over the more than 7,100 islands in its archipelago, including outlying territories in the disputed Spratlys. The law emphasizes that Kalayaan Group of Islands (KIG) and Scarborough is within of "regime of islands" under the "Republic of the Philippines"²⁶⁵. In addition, the law defines the extent of what the Philippines considers its exclusive economic zone and reaffirmed claims to the disputed Spratly Islands, off its western seaboard.

Analysts say that the law was a predictable imperative for the Philippines interests in the South China Sea. According with the United Nations Convention on the Law of the Sea, all proponents of the baseline law needed to define its baseline in order to determine its extended continental shelf as mandated by the United Nations. The UN had set May 13, 2009, as deadline for countries to define the boundaries of its continental shelf under

²⁶⁴ "New Philippine Border Law Re-ignites Territorial Disputes in South China Sea". The Voice of America, 07, July 2009. Available: <http://www1.voanews.com/english/news/a-13-2009-03-17-voa15-68812417.html> access: July, 07 2010.

²⁶⁵ Regime of Islands 1). An island is a naturally formed area of land, surrounded by water, which is above water at high tide.2) Except as provided for in paragraph 3) the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.4) Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. The United Nations Convention on the Law of the Sea - Part VIII , Article 121 Regime of islands.

the UN Convention on the Law of the Sea²⁶⁶.

The reactions from the country's neighbors were quick and contemptuous. In a statement, Vietnam Foreign Ministry spokesman, Le Dung, said that Vietnam has "*sufficient legal basis and historical evidence*" of ownership over the Spratlys and Scarborough Shoal. He added: "*All actions of stakeholders in the area without the consent of Vietnam are in violation of the sovereignty of Vietnam and have no legal value*²⁶⁷". China's ambassador to Manila, Liu Jianchiao, expressed Beijing's reaction to his counterpart Foreign Affairs Secretary, Alberto Romulo. The Chinese ambassador affirmed "*China's firm stance that Huangyan Island and Nansha Islands, referring to KIG and Scarborough in the Spratlys chain of islands in the South China Sea, have always been parts of their territory*". In addition, Liu stressed out that "*China has indisputable sovereignty over these islands and their adjacent waters*²⁶⁸".

c) *The Chinese submarine harbor building*

Additionally, the recent discovery of a Chinese submarine nuclear harbor in Hainan province was one more element that shakes the fragile cooperation process in Southeast Asia. The sequence of images obtained by Jane's Intelligence Review in April, 2010, showed vast tunnel entrances that are thought to lead to huge caverns capable of hiding

²⁶⁶ "The Philippine Baseline Bill and our Continental shelf: UNCLOS deadline". Available

<http://filipinovoices.com/the-philippine-baseline-bill-and-our-continental-shelf-unclos-deadline-may-13-2009> Access: July, 7 2010.

²⁶⁷ "Vietnam Protests Philippine Territorial Law". Available:

http://www.irrawaddy.com/article.php?art_id=15304 Access: July 7, 2010.

²⁶⁸ "Envoy conveys to DFA China's displeasure with RP baseline law". Available:

<http://www.gmanews.tv/story/152704/Envoy-conveys-to-DFA-Chinas-displeasure-with-RP-baseline-law> access: July, 07 2010.

up to 20 nuclear submarines from spy satellites. According to the same magazine, the base has implications "for China's control of the South China Sea and the strategically vital straits in the area, and underlines Beijing's desire to assert tighter control over this region"²⁶⁹.

Together, with the naval exercises undertaken in the last year, this discovery only reinforces the idea of the "China Threat" as has always been ventilated in Southeast Asia. Consequently, these events add new evidences that clearly work against everything that has been discussed and deliberated in the track I and II diplomatic channels.

d) China's naval exercises in the South China Sea.

"The time when dominant powers enjoyed unshared "spheres of influence" around the world is over". This was the affirmation made by the state-owned newspaper, the Global Times, regarding China's recent naval exercises in the South China Sea.

The PRC's demonstration of strength happened almost immediately after the movements made by the Southeast Asia states in the diplomatic field regarding the continental shelf and their growing maritime enforcement capabilities. Some specialists argue that the naval maneuver exercises included some of China's most modern warships

²⁶⁹ "Satellite pictures reveal massive Chinese nuclear submarine base, says Pentagon". Daily Mail <http://www.dailymail.co.uk/news/article-563405/Satellite-pictures-reveal-massive-Chinese-nuclear-submarine-base-says-Pentagon.html> Access July, 07 2010. See also: "Chinese nuclear submarine base" – Daily Telegraph. Available : <http://www.telegraph.co.uk/news/worldnews/asia/china/1917167/Chinese-nuclear-submarine-base.html> July, 07 2010. And additionally "China Builds Secret Nuclear Submarine Base in South China Sea" – Fox News – Available: <http://www.foxnews.com/story/0,2933,353961,00.html> Access: July, 07 2010.

and lasted nearly three weeks, with Beijing utilizing its flotilla located in the North Sea²⁷⁰. Combat aircrafts from several different airfields on the mainland *were holding exercises that tested their stealth and night-flying skills, mid-air refueling, radar jamming and simulated bombing raids out into the South China Sea*²⁷¹.

It is expected that the transformation of the Chinese navy will bring changes to the strategic pattern in East Asia and the west Pacific Ocean. The question of these changes being positive or not to the regional stability and principally to the maritime territorial in the SCS is still debatable. According to the Global times, *China does not hold an intention to challenge the US in the central Pacific or engage in a military clash with Japan in close waters, though it is willing to protect its core interests at any cost*²⁷².

However, this is not the feeling in the region due to the uncertainties about Beijing's real intentions. In response, Denny Roy has said:

*"The Southeast Asian analysts have seen this dispute as a litmus test for a newly-strong China's relations with its smaller neighbors--whether China would use its formidable military power to attempt to intimidate the other claimants, or settle the matter peacefully through good-faith negotiations"*²⁷³.

²⁷⁰ See the table 5 at page 124 for more details about the Chinese flotillas in the South China Sea.

²⁷¹ Michael Richardson, "South China Sea dispute: Chinese exercises a show of assertiveness" *ISEAS Viewpoints*, N. 3(May, 2010).

²⁷² "Growing Chinese Navy no cause for fear". *Global Times*, [April, 27.2010]. Available: <http://opinion.globaltimes.cn/editorial/2010-04/526192.html> access: July, 07 2010.

²⁷³ Denny Roy, "Southeast Asia and China: Balancing or Bandwagoning?," *Contemporary Southeast Asia*, vol.27, (2005),309.

Attention also needs to be paid to China's assertiveness reflecting in other aspects of the South China Sea region. Recognizing that the west Pacific region *is critical to world peace and stability*, Beijing ascertains that any country can have *a monopoly over the future of the west Pacific*²⁷⁴. An example of this assertion was the most recent, six-day People's Liberation Army Navy (PLAN) live ammunition drill in the East China Sea. A move that analysts said is in response to a joint exercise between the United States and Republic of Korea (ROK) navies in the Yellow Sea regarding to the recent Korean peninsula crisis in reason of the Cheonan's episode²⁷⁵. The PLAN, held as a six-day naval drill in the South China Sea, included a nuclear-powered aircraft carrier. The apparent justification according to the press releases was that some *Chinese defense officials are reportedly unhappy with that, since some of China's naval bases are situated near where the U.S.-South Korea drill will take place*²⁷⁶.

²⁷⁴ Supra note 272.

²⁷⁵ The South Korean warship *Cheonan* sinking occurred on March 26, 2010. According with official reports, the *Cheonan* carrying 104 personnel sank off the country's west coast near Baengnyeong Island in the Yellow Sea. The report of an investigation carried out by a team of international experts was released on May 20, 2010, concluding that the warship had been sunk by a North Korean torpedo, fired by a midget submarine. For more detail see "Investigation Result on the Sinking of ROKS Cheonan". The Human Security Report Project. Available:

<http://www.humansecuritygateway.com/showRecord.php?RecordId=33170> . Access: July, 08 2010.

²⁷⁶ "China Plans Naval Drill in South China Sea": Available:

<http://www.worldpoliticsreview.com/leading-indicators/5923/china-plans-naval-drill-in-south-china-sea> .

Access: July, 08 2010

e) *The Vietnam-Russia Arms deal and Military Cooperation with US.*

Reinforcing the current militarism path in Southeast Asia, Vietnam has, since 2007, been signing a series of cooperation agreements with Russia that have resulted in an intense growth of its military capabilities. Additionally, the current level of partnership with the United States is a major motivator of Vietnamese moral.

Vietnam has agreed to order six Russian Kilo-class submarines at an estimated cost of \$2 billion, an acquisition which could, in the long term, shift the balance of power in the disputed South China Sea in their favor²⁷⁷. Specialist says that with the new acquisitions, Vietnam will strengthen its negotiating position in the future²⁷⁸. Moreover, Russia will supply Vietnam with 12 SU-30MK2 fighter jets and aviation equipment worth a total of about one billion US dollars. Through this agreement, these 12 SU-30MK2 fighter planes will be delivered gradually between 2010 and 2012. The contract also contemplates various aviation arms, equipment and parts.

In addition Vietnam has experienced an unprecedented level of cooperation with the United States. In June 2010, the Assistant Secretary of State for Political-Military Affairs Andrew J. Shapiro and Standing Foreign Minister Pham Binh Minh met in Hanoi to adjust the military cooperation and discuss the regional security directives going into the

²⁷⁷ "Vietnam sings major Russian arms deal"

http://vietnam.suite101.com/article.cfm/vietnam_signs_major_russian_arms_deal . Access: July, 08 2010.

²⁷⁸ "Vietnam receive 8 Sukhoi Su-30KM2 fighters in 2010"

<http://www.armybase.us/2009/08/vietnam-to-recieve-8-sukhoi-su-30km2-fighters-in-2010/> . Access: July, 08 2010.

next decade²⁷⁹. At that meeting, both governments reaffirmed strategic partnerships to ensuring a *peaceful, stable and secure Asia-Pacific region*²⁸⁰. However, it is important to highlight that this new momentum has been slowly built over several decades. It began with initial contacts in 1995 and reached the discussing a bilateral defense relationship in 2010²⁸¹.

Specifically regarding the South China disputes, the Admiral Robert Willard, head of the US Pacific Command that accompanied Assistant Secretary of State Affairs Andrew J. Shapiro during his visit, reiterated comments made by US Defense Secretary Robert Gates at the Shangri-La Dialogue cautioning China against asserting sovereignty over disputed areas in the South China Sea. This, again, reinforced the American perspective to resolve the disputes peacefully. However, at same time, he emphasized the type of role that the US want to develop in the region:

²⁷⁹ "Third U.S.-Vietnam Political, Security, and Defense Dialogue Yields Progress in Political-Military Cooperation" – U.S. Department of State. Available:

<http://www.state.gov/r/pa/prs/ps/2010/06/142906.htm> Access: August, 12 2010.

²⁸⁰ *Ibid.* 279.

²⁸¹ US-Vietnam Military Cooperation phases: Initial Contacts (1995-2000); Expand Scope and Pace of Defense Engagement (2000-2005); Incorporating New activities in Existing Plans (2005-2008); Bilateral Defense Relationship Focus on Building capabilities and new Skills in Specialized areas: Peacekeeping, Environmental Security, Multilateral Search and Rescue Coordination, and Regional Disaster Response (2008-2010). See Defense Cooperation in Vietnam. Available: <http://photos.state.gov/libraries/vietnam/8621/pdf-forms/15anniv-DAO-Factsheet.pdf> Access: August, 12 2010.

“...the US Navy would continue to play a role in the security of the region. We has sailed this region for many decades and we intend to remain here.”²⁸²

4.1 – Chapter summary: Analysis

The discussed events between 2009 and 2010 were chosen as examples to defend the arguments of this thesis and allow us to conclude three aspects. First, the players in the South China Sea are using all the power’s resources available in the system try to balance its asymmetrical relation to Beijing. Second, despite of domestic threats or internal demands, the protection of EEZ, and consequently the defense of sovereignty, claims in the South China Sea remains on the top of agenda of the South China Sea claimants states. And third, the level of sensitivity of any episode of assertiveness regard to the sovereignty remains extremely high.

Regarding the first conclusion, we can highlight the joint-submission conducted by Malaysia and Vietnam, the Vietnam arms purchase and its partnership with the United States. These two movements denote an adamant Vietnamese predisposition to defend its territorial claims in the South China Sea. As declared by the United Nation Convention on the Law of the Sea (UNCLOS), every coastal state is entitled to an exclusive economic zone to a maximum of 200 nautical miles from its baseline. Even though predictable and simultaneously innocuous in practical terms, both Vietnamese submissions (individual and with Malaysia), carry with them an extremely important political message to Beijing.

²⁸² Institute of Strategic Studies in the Press. Available:

<http://www.iiss.org/whats-new/iiss-in-the-press/june-2010/us-and-vietnam-discuss-security-cooperation/>

Access: August, 12 2010.

The first is that Vietnam will not give up its claims and will use all resources to try to balance the game. The Vietnamese strategies operate via three means: arms purchase, strategic relationship with US, and actions in juridical field as the CLCS. No any other claimant has worked so consistently to face the Chinese territorial claims in the South China Sea.

In reference to the Philippines, the baseline law was a predictable imperative for the Philippine interest in the South China Sea. According to the United Nations Convention on the Law of the Sea, all proponents of the baseline law needed to define its territorial baseline in their domestic juridical system in order to determine its demands of extension to the continental shelf at the United Nations. The law reaffirmed the country's claim over the more than 7,100 islands in its archipelago, including outlying territories in the disputed Spratlys. However, despite President Gloria Arroyo's signing of the Law Republic Act in 2009, the Philippines still have a far road to make its claims a reality: Firstly, Manila's lack of resources and political endurance to conduct the defense of its interests, secondly, due its constrained military budget it is far behind any the other claimants, principally China²⁸³. The Philippines government failed even when trying to drag the US to its side, as in the case of a new Chinese assertive episode as 1995²⁸⁴.

²⁸³ Recently, the Philippine military chief Lt. Gen. Ricardo David lamented his country's *military weakness* which he said "could not adequately patrol the Spratly Islands that it claims. With antiquated planes and ships, the Philippine military capability in the disputed areas is "almost negligible". See "US opposes use of force in South China Sea disputes." Available:

<http://www.google.com/hostednews/ap/article/ALeqM5ig7Ju23z9fBrSvPUrZK77jINOL2QD9HLTU981>

Access: August 26, 2010.

Recently the Chinese state-owned newspaper, the Global Times, said “*The time when dominant powers enjoyed unshared "spheres of influence" around the world is over*”. This affirmation references China’s recent naval exercises in the South China Sea. The PRC’s demonstration of strength happened almost immediately after the movements made by other Southeast Asian states, in the diplomatic field, regarding the continental shelf and their growing maritime enforcement capabilities. Some specialists argue that the naval maneuver exercises included some of China’s most modern warships and lasted nearly three weeks, with Beijing utilizing its flotilla located in the North Sea²⁸⁵. Combat aircrafts from several different airfields on the mainland *were holding exercises that tested their stealth and night-flying skills, mid-air refueling, radar jamming and simulated bombing raids out into the South China Sea*. Moreover, the discovery of the Hainan submarine harbor drags the South China Sea to the high politics field. Together with the naval exercises, the power projection that the Hainan harbor possesses is very hard to be ignored. Principally, by Vietnam, who suddenly see a nuclear submarine harbor extremely close to its own territory. In this fashion, the Hanoi movement to modernize its air and naval forces gained dramatic strength. Conscious of its asymmetric

²⁸⁴ The “Mutual Defense Treaty Between The Republic Of The Philippines And The United States Of America” signed in 1951 and ratified in 1952 has been differently interpreted by both sides. The article IV refers superficially that “... *an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes*. Forward, the treaty is a little more specific saying that “*any such armed attack and armed attack on the metropolitan territory of either of the Parties, or the island territories under its jurisdiction in the Pacific Ocean, its armed forces, public vessels or aircraft in the Pacific*”. The two countries held a meeting in August 10 2010 to reevaluate the treaty face the new strategic landscape in the Southeast Asia.

²⁸⁵ See the table 5 at page 124 for more details about the Chinese flotillas in the South China Sea.

military capabilities in relation to China, Vietnam opened its arms to the presence of US Navy in the region. Vietnam has more to lose in an eventual Chinese Dominance of the South China Sea because of its geographical proximity to China. This makes Vietnam's position differ from any other claimant that possesses some hesitations in regard to US presence in Southeast Asia. Consequently, the shift of the US' proposal into getting involved directly in the South China Sea disputes can open windows of opportunity for Hanoi to defend its interests.

On the other hand, the Malaysia-Vietnam joint-submission is also symbolic in terms of the growth possibility of continued partnerships among the Southeast Asian states in defense of their interests. Also, the joint-submission of claims can shed some light on CBM supports, in attempt to bolster the construction of the single ASEAN's claimant bloc on the South China Sea disputes. Additionally, the experience of China, Philippine and Vietnamese joint-cooperation on oil exploration could be a plus in this aspect as well.

CONCLUSION

The intention of this thesis was to respond to the question, if the lack of progress in the negotiation field could be an influential factor in the Southeast Asian military expansion. The response to this question is yes, but not in absolute terms.

The absence of progress in the negotiation dynamic cannot be interpreted as something new. The perception that CBMs are not responding for regional security demands has been understood for different perspectives and circumstances. These different perspectives are results of national interests of each player and how they interpret what is the disadvantage or advantage in the negotiations. This is clear when we examine the geographical condition and demands of each state claimant. For Vietnam and China, the maritime disputes in the South China Sea have two scenarios: first is a bilateral concern to the Paracel Islands that are disputed by both. The second is a multilateral or regional dispute regarding the Spratly islands with other Southeast Asian states claimants. The same cannot be applied to further claimants that only have a single diplomatic front concentrating on the Spratly Islands. Other perspectives rely on the nature of the claims. China, Vietnam and Taiwan have utilized historical arguments to support their claims, while Brunei, Malaysia and the Philippines are concentrating their arguments on the UNCLOS III treaty. Although, while overlapping each other, the claims pose different structures. Therefore, the interests and interpretations on the results of the CBMs efforts will vary accordingly with a set of variables and demands of each claimant.

Nevertheless, the lack of progress is evident. In the measure of CBM, it cannot respond the demand to build a reliable environment that provides different perspectives to

resolve the disputes. In fact, the CBMs in the South China Sea possess stronger limitations on transferring its achievements to the high degrees of Southeast Asia's disputing states. The wall that impedes the transference from the CBMs efforts to the official channels of negotiations is composed by sovereignty, national interests, and the limitations of ASEAN Way. These filters only permit the transference of those elements that do not hurt these two concepts, that given the nature of the territorial disputes means that nothing or very few of what discussed is absorbed by the governments.

The lack of progress is also a variable that influences the reading that states do regarding the possibilities to resolve disputes peacefully. When the negotiations are not moving, the tendency is to trigger or, at least bolster, a military dynamic by using new power capabilities. Thus, even the absence of an open conflict is not enough to sustain the propositions of confidence building measures. After sixteen years of working on improving, Southeast Asia needs a new path, a new perspective to keep the power to conduct the resolution of disputes within its domain. This responsibility relies on the ARF. The ARF's inhibition is working against its mission to be the central space to discuss the security matters in the region. Failing in its task, the ARF is risking becoming irrelevant.

This new breath could be found in preventive diplomacy. Though, to implementation of preventive diplomacy is only possible on solid grounds. This solid ground must be formed by mutual trust and a desire of productive engagement and dialogue. Nonetheless, there is a consensus that current level of cooperation in Southeast Asia does not match with these exigencies. Elements such as *dogmatic adherence* to the

principle of non-interference in internal affairs, lower level of trust and concerns about the sovereignty are too high to permit the ARF's evolution from confidence building measures to preventive diplomacy. Without progress on these points, the confidence building measure is ineffective, and becomes merely a diplomatic facade. This diplomatic façade can either be completely dismissed or taken very seriously and its structure will never permit it go through with its objectives.

Amongst the suggestions of preventive diplomacy measures is the enhancement role of the ARF's chair, the Experts and Eminent Persons Group (EEPG), and the friends of the Chair. But the nature of these suggestions would implicate structural changes in the renewal of the scope and the role of the ARF in itself. This is very unlikely to happen. Again, it is necessary wait to see the effects of the US involvement in the negotiation process. Following its diplomatic tradition of pragmatism, the tendency is that the US' diplomats use the track one as the venue to conduct their demands and mediation actions. In so doing, the ARF will suffer its litmus test to reaffirm its condition as East Asian main security forum. Therefore, the future of preventive diplomacy in the Southeast Asia remains uncertain.

With the military dynamic, we have take into consideration some aspects. The naval and air modernization in the South China Sea states cannot be attributed to any single motivation. Whereas each state may have its own priorities and political interests described, the domestic factors can trigger external responses. The current path of military modernization with addition of new power range is clear and completely consolidated within the region. Even with countries using the domestic constrains as

reasons for these improvements, the characteristics of armaments purchased and the nature of the domestic problems do not match. The South China Sea, with the EEZ protections and its potential energetic reserves, are important factors in the military investments in China, Vietnam and Malaysia and, to some extent, in the Philippines.

However, though officially all states deny, there is no clear explanation about the necessity to acquire submarines and modern powerful aircrafts to patrol the coast against pirates or to control internal insurgences. Another important factor is the historic rivalry between the claimants, its neighbors, and other disputes that indirectly can influence the developments in the South China Sea. Malaysia-Singapore are always never walking on completely solid grounds, the disputes of Senkaku Islands between China and Japan and the Taiwan-China issue are other regional factors that could influence the disputes to some extent.

The presence of the United States, in a more assertive way, is another important shift in the balance of power in the region. Many countries in the region want the United States to remain as the impartial party and trust the United States as an honest broker on issues related to the South China Sea far more than they trust China. Furthermore, the presence of the US in the region has been consolidated since the end of the World War II, even after the statement made by the Secretary Hilary Rodham Clinton in Hanoi. The United States has maintained a sizable military presence in the South China Sea via the Seventh Fleet, based in Japan, and regularly patrolling the region. Moreover, the South China Sea's states claimants as the Philippines, Malaysia, and Vietnam, all have implicitly or explicitly pushed the United States to weigh in much more heavily on the South China Sea disputes. In this aspect, Vietnam in particular has sought a closer secure

relationship with the United States as a balance to China. The current level of the military partnership between United States and Vietnam, after fifteen years of establishment of official diplomatic relations between the two countries, is impressive. As described in detail previously, Hanoi and Washington have launched an annual defense dialogue that include a series of agreements since medical research and natural disaster relief to visit and training of Vietnamese officials in US. To counterbalance the rising of China, the United States and Vietnam are willing to forget their historic 21 years of war that killed more than 67,000 American soldiers and more than 1 million on the Vietnamese side. In addition, the assertiveness demonstrated by Obama's diplomats in the last ASEAN Summit in Hanoi in order to counterbalance China, will show the world the first real test of whether the United States and China can manage China's rise and how much that will cost both countries and in some extent, Southeast Asia as well. It is important to highlight that both countries put the South China Sea as the top diplomatic issue in their agenda. China repeatedly says that the South China is a "core" of its regional policy, while US refers to the freedom of navigation in the South China Sea as a national interest of the Obama administration.

Additionally, it is important to monitor the role of Japan within this context. Without power resources to intervene directly in the South China Sea maritime territorial claims, but with huge interests involved, Tokyo can add more tension in the disputes. The fall of the Prime Minister Hatoyama and the freezing process of the discussion about the removal of the US bases shall be read under additional influential variables presented in the region. For instance, the results of the South China Sea maritime disputes can heavily influence the already assertive and sometimes provocative behavior of China regarding

the Senkaku/Diaotay Islands disputes, and eventually Chinese regional dominance could put at same time the three largest economies in the world in a direct confrontation. Furthermore, it could provide to the Japanese rightist parties and the nationalistic factions in the Japanese society reasons to review the constitution that so far impede the Japanese rearmament. Thus far, however, Japan has been an enthusiastic supporter of the mechanisms of peaceful resolution. Tokyo has conducted important actions at regional multilateral forums such as the ASEAN Regional Forum (Track I) and the Workshop on Managing Potential Disputes in the South China Sea.

However, what are the alternatives on the table for the South China Sea states? Not so many, to be exact, only two. The first alternative is for the claimants to keep their individual approaches against each other, primarily against China. From different dimensions, the South China Sea claimants perceive that facing the UNCLOS III elements their claims are weak and too difficult to sustain from a legal standpoint. According to UNCLOS specialists, the sovereignty on the demanding areas is likely to be awarded to those who can demonstrate the longest continuous effective control, occupation and administration of particular islands. Thus, it is possible we will witness a mix of approaches that would supplement the number of occupations for foresee future, which, as a result, always happens under unilateral actions what necessarily also would increase the tensions amongst the claimants. Within this option, only acting unitarily, the claimants' state could undertake the purchase of new features, pushing the discussion to the legal field under UNCLOS III. It is interesting to notice that only Taiwan matches these exigencies of continuous effective control, occupation and administration of particular islands, which can be eventually an additional point in favor of China's claims.

The second option is for the Southeast Asia states to act as a block unifying its claims to counterbalance the asymmetry in relation to China. The Southeast Asian countries achieved immense advances in their relation with China only after the official establishment of diplomatic relations between Beijing and ASEAN in 1992. As a block, the ASEAN was able to make it by itself economically and politically attractive. Moreover, as block, the ASEAN was able to push China to sign the binding Treaty of Amity and Cooperation (TAC) that, so far, is the only document that maintains the power to force Beijing to exercise self-constraint and conduct negotiations via non-aggressive means. Although a non-binding treaty, the Declaration on the Conduct of Parties in the South China Sea of 2002 is the political standpoint that is also a very symbolic achievement. Finally, the ASEAN-China Free Trade Area level of economic cooperation is an astonishing example of the ASEAN position as an important place on the Chinese agenda.

In sum, the resolution of the South China Sea maritime territorial disputes is only possible with the shift of mentality of the ASEAN countries. This new mentality should contemplate the reform of ARF structure, the relaxation of the principles of *ASEAN Way* and the development of an *ASEAN claims*. The ASEAN claims would unify the member's claims in one solid claim, which would provide for the ASEAN claiming members sharing rights via partnerships as Joint Development Agreements (JDA) and other partnership mechanisms. These changes would result in immediate shift of the conformity that reigns between the South China Sea claimants and China, acting as a block to the countries that are having to share part of their sovereignty rights and would result in more gains than an eventual Chinese maritime dominance. The motivation to

operate these changes could be two: the dilemma of common interest and the dilemma of common aversion. By the dilemma of common interest, Southeast Asia would work together with the desire to avoid an open military conflict that would destroy their dynamic economies, especially currently since these respective economies are in a clear recovering state since the extremely severe economic crises of 2008-2009. On the other hand, in terms of the dilemma of common aversion, the ASEAN states would exercise the common contempt of an eventual control of the South China Sea by Beijing. Given its strategic, economic and political importance, the control of South China Sea SLOCs by Beijing would shift the balance of power irreversibly to China, putting the entire region in a sensitive and vulnerable condition facing the already growing Chinese majority.

Alternatively, acting as unitary claim block, ASEAN would avoid the current Beijing approach of *divide and rule*, where it offers economic advantages in exchange for relaxation of sovereignty. Therefore, the solution of the South China Sea implies political will and courage to do the changes and mentalities. Otherwise the region will be, as it historically has been in last centuries, subject to external powers. Southeast Asia needs to look to the past to design its future. Beijing and Washington are waiting for their decision.

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