

# THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS AND THE MANAGEMENT OF TERRITORIAL DISPUTES

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**INTRODUCTION** Territorial disputes among the member-states of ASEAN can be studied from various perspectives, but in this study the focus is on the current status of the disputes, whether they are settled or not, and how they have been, and are being, handled. The article is divided into three sections, the first dealing with territorial disputes that have been formally settled through agreements or through joint-development arrangements. These settled disputes are outlined in chronological order based on the year when they were settled. The second section outlines the unresolved territorial disputes, and the third section provides an analysis of the achievements to date in managing territorial disputes and the challenges that remain.

## SETTLED TERRITORIAL DISPUTES

The following territorial disputes between ASEAN members have been settled since 1969:

- On 27 October 1969 Indonesia and Malaysia reached an agreement on the delimitation of the continental shelf boundary between the two countries in the central and southern parts of the Strait of Malacca and in areas to the west and east of the Natuna Islands in the South China Sea. On 17 March 1970 they signed an agreement delimiting their territorial sea boundary in the Strait of Malacca. Finally, on 21 December 1971 an agreement was reached relating to the continental shelf boundary in the northern part of the Strait of Malacca.<sup>1</sup>
- On 17 December 1971 Indonesia and Thailand signed an agreement delimiting a part of their continental shelf boundary in the northern part of the Malacca Strait and in the Andaman Sea. On 17 December 1975 they agreed on a continuation of the boundary in the Andaman Sea.<sup>2</sup>
- On 21 December 1971 an agreement was also signed between Indonesia, Malaysia and Thailand relating to the establishment of a “*Common point*” (Tri-junction point) on the continental shelf in the Straits of Malacca.<sup>3</sup>
- On 25 May 1973 Indonesia reached an agreement with Singapore on delimiting their territorial sea boundary in the Strait of Singapore.<sup>4</sup>
- On 18 July 1977 Laos and Vietnam signed a treaty delimiting the land boundary. A complementary treaty was signed on 26 January 1986. On 1 March 1990 a final agreement on the status of the border was signed.<sup>5</sup>
- On 22 June 1978 an agreement was signed between Indonesia, Thailand and India relating to the Tri-junction point and the delimitation of the “*related*” boundaries of the three countries in the Andaman Sea.<sup>6</sup>
- On 21 February 1979 Malaysia and Thailand signed a Memorandum of Understanding on the delimitation of their continental shelf boundary in the Gulf of Thailand. The Memorandum did not specify the exact location of the boundary but it stipulated that negotiations would continue to complete the delimitation of the boundary. On the same day the two countries also signed a Memorandum of Understanding on the establishment of a joint authority for the exploitation of the seabed in a “*defined*” area of the continental shelf in the Gulf of Thailand. This Memorandum recognised that there was an area of overlapping claims on the adjacent continental shelves and that negotiations would continue to

complete the delimitation of the continental shelf boundary. The two countries agreed to exploit the resources of the seabed in the disputed area through mutual co-operation. It was also decided to establish a Joint Authority to be known as *Malaysia-Thailand Joint Authority*.<sup>7</sup> On 24 October 1979 Malaysia and Thailand signed a Treaty relating to the delimitation of the territorial seas between the two countries in the Strait of Malacca and in the Gulf of Thailand.<sup>8</sup> Finally, on 13 May 1990 the two countries reached an agreement on the constitution and other matters relating to the establishment of the *Malaysia-Thailand Joint Authority*.<sup>9</sup>

- On 25 July 1980 Myanmar (then Burma) reached an agreement with Thailand relating to the delimitation of the maritime boundary between the two countries in the Andaman Sea.<sup>10</sup>
- On 7 July 1982 Vietnam and the then People's Republic of Kampuchea (PRK) signed an agreement on "*historic waters*" located between the coast of Kien Giang Province, Phu Quoc Island and the Tho Chu islands on the Vietnamese side and the coast of Kampot Province and the Pulo Wai islands on the Cambodian side. The agreement stipulated that the two countries would hold negotiations "*at a suitable time*" to determine the maritime frontier in the "*historic waters*." Pending such a settlement the two sides would continue to regard the Brévié Line drawn in 1939 as the diving line for the islands within the "*historic waters*" and the exploitation of the zone would be decided by "*common agreement*."<sup>11</sup> On 20 July 1983 the two countries signed a Treaty on the settlement of border problems and an Agreement on border regulations.<sup>12</sup> Finally, on 27 December 1985 the *Treaty on the Delimitation of the Vietnam-Kampuchea Frontier* was signed by the two countries.<sup>13</sup>
- On 5 June 1992 an agreement was reached between Malaysia and Vietnam to engage in joint development in areas of overlapping claims to continental shelf areas to the south-west of Vietnam and to the east-north-east off the east coast of Peninsular Malaysia.<sup>14</sup>
- On 27 October 1993 an agreement was signed between Myanmar, Thailand and India relating to the Tri-junction point between the three countries in the Andaman Sea.<sup>15</sup>
- On 8 April 1994 Laos, Myanmar and China signed a 'Convention' relating to the delimitation of a Tri-junction point where the borders between the three countries meet.<sup>16</sup>
- On 11 June 1994 Laos and Myanmar reached an agreement related to their land boundary along the Mekong river. The 'Convention' relates to the "*fixation*" of the international boundary between the two countries.<sup>17</sup>
- On 9 August 1997 Thailand and Vietnam reached an agreement delimiting their continental shelf and Exclusive Economic Zone (EEZ) boundaries in a disputed area in the Gulf of Thailand to the south-west of Vietnam and to the north-east of Thailand.<sup>18</sup>

## UNSETTLED TERRITORIAL DISPUTES

There are a range of outstanding, unsettled territorial disputes in the region<sup>19</sup>:

- Between Laos and Thailand there are disputed areas along the land border, part of which follows the Mekong river.<sup>20</sup>
- Between Myanmar and Thailand the 2,400 kilometre land border is not demarcated for the most part and the area of dispute that has caused most tension in recent years is along the Moei river. Furthermore, despite the 1980 agreement (see above) there are still two disputed maritime areas. One relates to overlapping claims to some small features and the other to the delimitation of the territorial seas in a limited area of the Andaman Sea.<sup>21</sup>

- Between Cambodia and Thailand there are disputes relating to both the land border and to the maritime boundaries in the Gulf of Thailand where the claims of the two countries to maritime zones overlap.<sup>22</sup>
- Between Cambodia and Laos there are disputes relating to the land border.<sup>23</sup>
- Between Cambodia and Vietnam territorial disputes encompass areas along the land border and overlapping claims to maritime areas in the Gulf of Thailand.<sup>24</sup>
- Between Malaysia and Thailand disputed areas along the land border remain to be settled.<sup>25</sup>
- Malaysia, Thailand and Vietnam have a multilateral dispute relating to an area of overlapping claims in the Gulf of Thailand.<sup>26</sup>
- Between Malaysia and the Philippines the maritime boundaries in the Sulu Sea, Celebes Sea and in the South China Sea proper have not been delimited. The two countries are pursuing overlapping sovereignty claims to parts of the Spratly Archipelago in the South China Sea,<sup>27</sup> which are also claimed by Vietnam. Furthermore, Malaysia and the Philippines have not yet formally settled the dispute over Sabah which is still claimed by the Philippines.<sup>28</sup>
- Between Malaysia and Vietnam the major dispute relates to Vietnam's sovereignty claim to the whole Spratly archipelago which overlaps the Malaysian claim to the southern part of the archipelago.<sup>29</sup> These parts of the Archipelago are also partly claimed by the Philippines. Furthermore, Louisa Reef is also claimed by Brunei Darussalam.
- Between the Philippines and Vietnam there is a dispute in the South China Sea where Vietnam's sovereignty claim to the whole Spratly archipelago overlaps the Filipino claim to the major part of it.<sup>30</sup> These parts of the Archipelago are also partly claimed by Malaysia.
- Brunei Darussalam has territorial disputes with Malaysia. Their unsettled maritime boundaries in the South China Sea are due to overlapping claims to continental shelf and EEZ areas. There are also the overlapping claims to Louisa Reef which is under Malaysian control.<sup>31</sup> There is also a dispute relating to the land boundary between Brunei and Malaysia over the Limbang valley which is currently part of the Malaysian state of Sarawak.<sup>32</sup>
- Brunei's claim to Louisa Reef also overlaps with a Vietnamese claim through its sovereignty claim to the whole of the Spratly archipelago.<sup>33</sup>
- Between Indonesia and Malaysia the continental shelf boundary in the western Celebes Sea has not been delimited. The two countries also have overlapping sovereignty claims to Pulau Sipadan and Pulau Ligitan off the eastern coast of Borneo. Furthermore, they have overlapping claims to EEZ in the Strait of Malacca, parts of the South China Sea located north of Tanjong Datu and in the western Celebes Sea.<sup>34</sup> In recent years tension along the border between the Malaysian States of Sabah and Sarawak and the Indonesian part of the Island of Borneo (Kalimantan) has highlighted that the border is poorly demarcated.<sup>35</sup>
- Between Indonesia and the Philippines maritime boundaries have not been delimited in the Celebes Sea in the area between Miangas Island on the Indonesian side and Mindanao on the Filipino side in the north-eastern part of the Celebes Sea.<sup>36</sup>
- Between Malaysia and Singapore there are two territorial disputes to resolve. First, there is the question of ownership of Pedra Branca/Pulau Batu Puteh and the boundaries relating to jurisdictional zones in the area. Second, the two sides have to agree on the offshore boundary in the Strait of Johor and the Singapore Strait to the south of Singapore.<sup>37</sup>

- Between Indonesia and Vietnam the territorial dispute relates to overlapping claims to continental shelf areas in the South China Sea to the north of the Natuna Islands.<sup>38</sup>

## OBSERVATIONS

There is no clear-cut trend relating to the success or lack thereof in settling the various territorial disputes among the ASEAN members. Some countries have settled more territorial disputes than others but none of the member-states has settled all of its territorial disputes. This is exemplified by Indonesia, which has settled some territorial disputes with Malaysia, while maritime boundaries in other areas have yet to be agreed by the two countries. Indonesia's dispute with Vietnam has not been resolved despite long-standing good bilateral relations and negotiations on the matter.<sup>39</sup> Thailand has agreed boundary delimitations with Vietnam and Malaysia, respectively, as well as a Joint Development Agreement (JDA) with Malaysia. On a less positive note Thailand and Laos have yet to resolve their territorial dispute despite negotiations and the initiation of a demarcation process.<sup>40</sup> Furthermore, tension and clashes between Thailand and Myanmar over their territorial disputes illustrate that some disputes are in urgent need of a settlement, or at least conflict management, to defuse these periods of acute tension.<sup>41</sup> It can also be noted that Cambodia is encountering problems in handling its territorial disputes with its three neighbours – Laos, Thailand and Vietnam – particularly with the latter.<sup>42</sup> In this case talks have been initiated on the territorial issues and the leadership in both countries have stated their commitment to find a settlement to the territorial disputes.<sup>43</sup>

**...overlapping sovereignty claims to the whole or part of the Spratly archipelago... presents the claimants with the additional problems of dealing with a multilateral conflict situation.**

In the South China Sea four ASEAN member-states are parties to the Spratly conflict situation through their overlapping sovereignty claims to the whole or parts of the Spratly archipelago. This presents the claimants with the additional problem of dealing with a multilateral conflict situation. Among the ASEAN claimants it can be noted that efforts initiated by the Philippines and Vietnam in the mid-1990s resulted in an agreement on a 'code of conduct' in November 1995.<sup>44</sup> This agreement, seemingly implemented by the two countries, resulted in a period without tension in the area. However, in October 1999 the Philippines protested against the shooting at one of its military aircraft by Vietnamese soldiers based on Tennesse Reef in the Spratly archipelago.<sup>45</sup> Then in March 2000 the Philippine navy arrested Vietnamese fishermen and coastguards of the Philippines on Fearless Shoal near the southern tip of Palawan.<sup>46</sup> In May it was reported that the Philippines was closely monitoring the activities of Vietnamese vessels in the Spratlys.<sup>47</sup>

The same year (1999) was also notable for tension between the Philippines and Malaysia, when the Philippines protested against Malaysia's assumption of control of two features in the Spratlys in June.<sup>48</sup> This led to a situation in October in which Philippine and Malaysian military aircraft "nearly engaged" over the Malaysian controlled Investigator Shoal in the Spratlys.<sup>49</sup> On a brighter note however, the trilateral dispute between Vietnam, Malaysia and Thailand relating to overlapping claims in the Gulf of Thailand is currently the subject of talks between the claimants.<sup>50</sup>

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Overall, it can be observed that the Southeast Asian region is witnessing a trend towards resolving territorial disputes, albeit that some agreements are temporary in nature, such as those between Malaysia and Thailand and Malaysia and Vietnam. A number of the unresolved disputes are subject to negotiations and in some cases demarcation processes have been initiated. The preferred approach to conflict management would seem to be a combination of discussion, consultation and formal talks. The territorial disputes are addressed either as issues in their own right, in bilateral contacts, or are incorporated into wider discussions

between the countries involved. The frequency of these exchanges depends on a variety of factors including the perceived urgency of the issues at stake, which in turn depends upon political, economic and broader security perspectives.

## INTERNATIONAL ARBITRATION

An interesting development that began in the mid-1990s is the willingness of some ASEAN members to take their disputes to international arbitration. Malaysia and Singapore and Malaysia and Indonesia, have decided to bring their respective disputes over islands to the International Court of Justice (ICJ) in The Hague. Malaysia and Singapore agreed on the principle of deferring the case of Pedra Branca/Pulau Batu Puteh to the ICJ in 1994 although the Special Agreement to initiate this has yet to be signed and ratified by the two governments.<sup>51</sup> Similarly Indonesia and Malaysia agreed on the principle of deferring the issue of Pulau Sipadan and Pulau Ligitan to the ICJ in 1996. In this case however, the two countries have proceeded to<sup>52</sup> jointly notify the ICJ of their dispute.<sup>53</sup> In the meantime the two sides have decided to postpone bilateral talks on the Sipadan-Ligitan issue and maintain the *status quo* pending a ruling from the ICJ.<sup>54</sup>

### ***Taking territorial disputes to the ICJ is a novel pattern of behaviour in the management of such disputes among the ASEAN members.***

Interestingly enough, the Philippines recently moved to safeguard its claim to North Borneo (i.e. Sabah) by seeking to intervene in the Indonesia/Malaysia case before the ICJ. The Philippines explicitly stated that it did not seek to become a party to the dispute over the two islands when it filed its application for permission to intervene in the case in March 2001. However, the ICJ decided in October 2001 not to grant the application.<sup>55</sup>

Taking territorial disputes to the ICJ is a novel pattern of behaviour in the management of such disputes among ASEAN members. Such moves can be seen as positive in situations when the parties to the disputes cannot reach a compromise. However, the need to turn to the ICJ can also be seen as a shortcoming of the ASEAN framework for conflict management, or at least an indication that there is scope for further co-operation between the ASEAN states in the field of conflict management. Before assessing if this is the case it is necessary to examine this framework and its mechanisms in greater detail.

## MECHANISMS FOR CONFLICT MANAGEMENT

The *ASEAN Declaration (Bangkok Declaration)*, adopted on 8 August 1967 when the association was established, spelled out the overall goals and aims of ASEAN<sup>56</sup> and set the stage for a process aiming at defining the way in which the Association should function and the mechanisms by which its goals and aims would be achieved. In the Declaration more attention is devoted to the promotion of social and economic co-operation among members than to conflict management. The references to conflict management in the Preamble of the Declaration are general in character, and in the part relating to aims and purposes, references to the promotion of “*regional peace*” are general rather than specific.<sup>57</sup>

The evolution that followed during the so-called ‘formative years’ from 1967 to 1976, which led to the signing of the *Declaration of ASEAN Concord* and the *Treaty of Amity and Co-operation (TAC) (Bali Treaty)*<sup>58</sup> on 24 February 1976, can be seen as operationalising the overall goals and aims expressed in the ASEAN Declaration. *The Declaration of ASEAN Concord* only relates to the member-states of ASEAN whereas the *Bali Treaty* was open for accession to non-members in the Southeast Asian region. The Declaration contains both general principles relating to the overall goals of the Association and principles relating to the specific goals of managing disputes and expanding co-operation among the member-states. One of the overall objectives is the establishment of a

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*Zone of Peace, Freedom and Neutrality (ZOPFAN)*<sup>59</sup> in Southeast Asia. Emphasis is also put on respect for the principles of “*self-determination, sovereign equality and non-interference in the internal affairs of nations.*”<sup>60</sup>

The *Bali Treaty* provides specific guidelines for conflict management particularly in relation to the peaceful settlement of disputes.<sup>61 62</sup> In Chapter I, dealing with “*Purpose and Principles*”, Article 2 outlines the fundamental principles which should guide relations between signatories:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;*
- b. The right of every State to lead its national existence free from external interference, subversion of coercion;*
- c. Non-interference in the internal affairs of one another;*
- d. Settlement of differences or disputes by peaceful means;*
- e. Renunciation of the threat or use of force;*
- f. Effective co-operation among themselves.*<sup>63</sup>

These principles include three main factors for managing inter-state relations: non-interference in the internal affairs of other countries; peaceful settlement of disputes; and, overall co-operation.

In Chapter III, dealing with “*Co-operation*”, the areas in which mutual co-operation can be established and expanded are outlined and the linkages between co-operation, peaceful relations and non-interference are displayed. The latter is most evidently shown in Article 12, which states that the signatories:

*...in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, co-operation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia.*<sup>64</sup>

In Chapter IV, devoted to “*Pacific Settlement of Disputes*”, the first Article (13) outlines the way in which the signatories should behave in situations in which there is a risk that disputes may arise or have arisen. The Article stipulates that the signatories:

*...shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.*<sup>65</sup>

Article 14 is devoted to the creation and envisaged role of a High Council made up of a representative at the ministerial-level from each of the signatories and its role should be to take “*cognizance*” of existing disputes or situation which could potentially threaten regional “*peace and harmony.*” The High Council is envisaged as a permanent feature.<sup>66</sup>

Article 15 deals with the Council’s mediating role which can be assumed in the event that direct negotiation between the parties to a dispute fails to produce a solution. Mediation in this instance can take the form of recommending appropriate means of settling a dispute: good offices, mediation, inquiry, or conciliation. The Council can also “*constitute itself into a committee*” of mediation, inquiry or conciliation.<sup>67</sup> While Article 16 implies that only the High Council can decide to mediate in a dispute if the parties agree to the

“application” of the provisions in Articles 14 and 15, some officials and researchers interpret the article as implying that the High Council can only assume the role of mediator in a dispute if the parties involved agree to bringing it to the Council.<sup>68</sup> Article 16 also states that signatories who are not parties to such a dispute can offer assistance to settle it and the parties to the dispute should be “well disposed towards such offers.”<sup>69</sup>

## **CONFLICT MANAGEMENT IN ASEAN’S NEGOTIATION AND DECISION MAKING PROCESSES**

Since the establishment of ASEAN the member-states have been building confidence, familiarity and understanding of each other’s positions on different issues through a system of informal and formal meetings between the leaders, ministers and senior officials of the member-states. Achieving a high degree of interaction, co-operation and understanding between the original member-states of ASEAN has been a gradual process.

ASEAN is also noted for its consensual decision-making process. Particular emphasis is put on promoting and achieving regional resilience based on the internal resilience of each member-state through economic development, which should result in greater political support for governments and lead to enhanced political stability.

ASEAN’s approach to conflict management has primarily taken the form of conflict avoidance and not allowing existing conflicts to disrupt inter-state relations. A central element in this approach is the consultation process called *musyawarah* which is informal in character and aims at settling differences by preventing them from arising. *Musyawarah* also aims to achieve unanimous decisions, that is, by consensus, a process known as *mufakat*. This is an important mechanism in the conflict management process since it aims at preserving peaceful relations between member-state by such measures as avoiding, defusing and containing issues which could otherwise lead to open conflict and hostility.<sup>70</sup>

## **ASEAN’S CONFLICT MANAGEMENT MECHANISMS AND TERRITORIAL DISPUTES BETWEEN MEMBER- STATES**

If the achievement of conflict management among the member-states of ASEAN<sup>71</sup> is examined from the perspective of the prevention of military conflicts, the track record of ASEAN is impressive, since no dispute has led to a military confrontation between the original member-states since 1967. However, this does not imply that all the territorial disputes have been resolved or that disputes in general do not occur. Some territorial disputes have been resolved while others remain unresolved, but the latter have been contained and defused through the various conflict management mechanisms. This despite the fact that the expansion of ASEAN membership in the 1990s brought additional territorial disputes into the Association, complicating further the task of their management.

While the majority of ASEAN members display a preference for bilateral talks and dialogue as a means of settling disputes, in recent years territorial disputes – between Malaysia and Singapore and Indonesia and Malaysia, respectively – have been brought to the ICJ. This displays a willingness among some ASEAN members to seek international arbitration when bilateral efforts to resolve disputes have proved insufficient to bring about a solution.

But bilateral efforts to manage and settle disputes can be facilitated by the conflict management mechanisms created by ASEAN and by enhancing their effectiveness. This relates to ASEAN’s role as facilitator rather than as an active third-party mediator in the disputes. However, that role is not precluded as long as it is within the limits set by the ASEAN framework for conflict management and there is political consensus among the parties concerned that ASEAN should play such a role.

In this context it is important to assess the possible role that the ASEAN framework for conflict management could play in the context of territorial disputes among member-states. The question is how to adjust it to meet the challenges of disputes in the 21<sup>st</sup> century? The first step could be to establish the High Council, a seemingly difficult task to judge from its non-appearance to date, 25 years after the signing of the *Bali Treaty*. However, in July 2001 an important step towards the possible establishment of the High Council was taken when ASEAN adopted the “*Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia.*”<sup>72</sup>

The long period needed in order to reach an agreement on such rules indicates that the informal and formal political co-operation among the ASEAN-members could be enhanced in order to remove the lingering feelings of suspicion about the intentions of fellow member-states. Another factor that has to be taken into consideration is that a High Council created on the basis of the provisions of the *Bali Treaty* could have considerable power through decisions and judgements it could make relating to the disputes in which the Council decides to mediate, or in a dispute which might be brought to it by the parties to such disputes, depending on the interpretations made of the relevant provisions of the *Bali Treaty*. This would also imply that bilateral disputes could become multi-lateralised. Making the High Council a decision making body would increase the degree of institutionalisation within ASEAN and this would be a step away from the more informal approach preferred within the Association. The multi-lateralisation impact of establishing the High Council would not be an attractive scenario for member-states that are involved in disputes with other ASEAN-members. Or for states which would fear that the opposing party to a dispute has a higher degree of diplomatic influence or leverage within the ASEAN grouping.

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Nevertheless the adoption of the rules of procedure for the High Council does indicate that ASEAN members are committed to the establishment of the Council and to strengthening regional conflict management mechanisms.<sup>73</sup> Furthermore, by agreeing on the rules of procedure the member-states display an enhanced level of trust towards each other or at least a diminishing level of mistrust.

Despite initial fears as to the role and powers of the High Council, it is clear from the wording of the rules of procedure that the Council will act in line with the existing consensual approach of ASEAN. In Paragraph 2 of Rule 6 it is stipulated that: “*The dispute settlement procedure of the High Council shall be invoked only by a High Contracting Party, which is directly involved in the dispute in question.*” The pre-eminence of the parties to a dispute is further reinforced in Rule 9 which stipulates that: “*Unless written confirmation has been received from all parties to the dispute in accordance with Rule 8, the High Council may not proceed any further on the matter.*” The reference to Rule 8 relates to the principle that the Chairperson of the Council: “*shall seek written confirmation from all parties to the dispute...that they agree to the application of the High Council’s procedure as provided for in Article 16 of the Treaty.*” Thus, we have a situation in which the High Council can only initiate dispute settlement procedure if all parties to a dispute agree to it. Furthermore, at least one party to a dispute must bring the matter to the High Council. If the parties do not agree the Council is limited to taking “*cognisance*” over a dispute. Another important aspect of the rules of procedure can be found in Part VII, devoted to “*Decision-Making.*” In Rule 19 it is stipulated that: “*All decisions of the High Council shall be taken by consensus at a duly convened meeting.*” Since all the member-states of ASEAN are entitled to one representative in the High no decisions can be made against the will of any party to a dispute.<sup>74</sup>



By adopting such rules ASEAN has mitigated earlier fears with regard to the potentially considerable powers of the High Council and about the possible negative impact of the multi-lateralisation of a dispute. *De facto* all parties to a dispute have to agree that the High Council can initiate dispute settlement procedures and they then have to give their approval if any decision is to be taken. In short the High Council cannot be used against an ASEAN member-state unless it consents to it.

Through the adoption of these rules of procedure ASEAN has brought about conditions conducive to the establishment and activation of the High Council. A Council to which the member-states could turn for assistance in resolving territorial disputes if negotiations between the parties to the disputes fail. Such a High Council, if established, may be an attractive alternative to the ICJ, although the latter is available as a resort if bilateral and regional efforts fail.

## **ASEAN AND THE MANAGEMENT OF THE SPRATLY CONFLICT SITUATION**

Since the early 1990s ASEAN has sought to pursue a proactive role in response to developments in the South China Sea.<sup>75</sup> It has done so through statements on developments in the area; dialogue with China; and, through the ASEAN Regional Forum (ARF) which held its first working meeting in 1994.

Among the statements the most important is the “*ASEAN Declaration on the South China Sea*” of 1992 which placed emphasis on the necessity to resolve disputes by peaceful means without resort to the use of force. It further urged all parties concerned to exercise restraint in order to create a positive climate for the eventual resolution of all disputes in the area.<sup>76</sup>

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The ASEAN-China dialogue relates to the overall relationship between the Association and China, both the political and economic dimensions. The two sides have agreed to bring the developments in the South China Sea on to the agenda of the dialogue process. It should be noted however, that the Spratly issue as such is not discussed in the dialogue processes, instead the references, statements and declarations relate to the situation in the South China Sea. The reason for this is China’s expressed preference to handle the Spratly dispute bilaterally with each of the other claimants, although it is amenable to multilateral discussions on the overall situation in the South China Sea and ways in which the stability in the area can be maintained.<sup>77</sup> Furthermore, as the driving force behind and within the ARF, ASEAN has sought to bring the South China Sea developments on to the agenda and eventually succeeded in this after China withdrew its earlier opposition to discussions on the South China Sea in the multilateral setting of the ARF.

The role that ASEAN can play in relation to the Spratly conflict situation is a rather complex one since four of its member-states have sovereignty claims to all or parts of the Spratly archipelago. Therefore ASEAN cannot play the role of third-party mediator between China and the other claimants. Of particular interest is the way in which the situation in the South China Sea has been brought on to the agenda in the context of the ASEAN-China dialogue. One core issue is the search for a mutually agreeable ‘code of conduct’ for the South China Sea. The difficulties of reaching an understanding and an agreement on the content and scope of such a code has focused on how to reconcile an ASEAN proposal and a Chinese proposal.<sup>78 79</sup>

In order to formulate an ASEAN policy towards the South China Sea the views and interest of the five member-states with territorial claims in the South China Sea have to be reconciled, as well as those of the member-states with no claims there. Another relevant dimension is how the member-states perceive China and

its potential threat to the region. This is exemplified by the fact that Myanmar and Thailand have good and close relations with China – extending to the military field – and no territorial disputes, whereas Vietnam together with Brunei Darussalam, Indonesia, Malaysia and the Philippines have territorial disputes with China in the South China Sea. Different perceptions complicate the process of formulating a clear-cut ASEAN policy towards China on the South China Sea. This also affects the formulation of a common ASEAN policy on other issues such as the benefits of economic co-operation and the merits of the policy of ‘constructive engagement’ towards China.

In the current circumstances of the Spratly conflict situation, the multilateral dialogue processes initiated by ASEAN do positively contribute to enhanced confidence building and to a better understanding among the claimants to the Spratly archipelago about the position and attitude of each other. This creates better conditions for efficient conflict management and eventually for a possible formal resolution to the conflict.

### **ASSESSING ASEAN’S POSSIBILITIES TO INFLUENCE DEVELOPS IN THE SOUTH CHINA SEA**

The Spratly conflict and the overall situation in the South China Sea are challenges to ASEAN both internally and to its foreign relations. Its latitude for action is constrained by the fact that ASEAN is not intended to formally act as a third-part mediator in disputes involving its member-states unless it is ascribed to or asked to do so by the member-states. Instead the Association is intended to serve as a vehicle to promote better relations among its members, by creating conditions conducive to increased interaction and co-operation. Another role that ASEAN can play is through the formulation and adoption of mechanisms which can be utilised by the member-states to manage their disputes, and the establishment of principles for interaction among member-states, as has been done through the *Declaration of ASEAN Concord* and the *Bali Treaty*.

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Thus in order to achieve peace and stability in Southeast Asia the member-states of ASEAN must act in such a way as to peacefully manage existing and potential disputes, including territorial disputes in the South China Sea. Failure in this area should be attributed to the states involved in the disputes and not to the Association as such, ASEAN can urge its member-states to seek peaceful solutions but cannot force them nor directly intervene unless invited.

The ASEAN approach to conflict management through the negotiation and decision-making processes as well as the mechanisms and provisions provided by the *Declaration of ASEAN Concord* and the *Bali Treaty* testify to the importance placed by member-states on the need to manage inter-state disputes through peaceful means. Resolving such disputes is a high priority issue for the Association. However, achieving formal resolution of inter-state disputes within ASEAN should not be carried out in such a way as to disrupt the relations between the parties to the disputes. This implies that conflict resolution is both desirable and a goal for the ASEAN members-states, but not at the expense of maintaining stable inter-state relations within the Association.

The adoption of the rules of procedure of the High Council by ASEAN opens the way for the possible establishment of the Council. If it is established it could lead to a situation in which the ASEAN members-states with claims in the South China Sea will bring their territorial disputes with other members to it. Furthermore, disputes involving Southeast Asian countries and China might be brought to the High Council, although this would require not only a political willingness on the part of all parties to a dispute to do so, but also that China accedes to the *Bali Treaty*. In fact ASEAN called on “*extra-regional states*” to accede to the *Bali Treaty* in connection with the 34<sup>th</sup> AMM in Hanoi in July

2001.<sup>80</sup> This may become a reality in the case of China, but in the current situation it is highly unlikely that China would agree to bring its territorial disputes with ASEAN member-states to the High Council.

The on-going multilateral discussions including ASEAN and China relating to the situation in South China Sea do provide a boost for confidence building measures and avenues for the parties to the conflicts to get together and discuss the situation. They aim at defusing tension and promoting the use of peaceful means to handle the situation and the respect of the *status quo*. From ASEAN's perspective the aim of its policy towards the South China Sea is to promote confidence building and contribute to the non-escalation of the conflict situations.

**One of the major problems from an ASEAN perspective is how to respond to the periods of tension between ASEAN-members and China in the South China Sea.**

One of the major problems from an ASEAN perspective is how to respond to the periods of tension between ASEAN-members and China in the South China Sea. Chinese actions leading to tension raise fears in the region about its long-term ambitions in the South China Sea. They also raise questions about China's commitment to handling these disputes through peaceful means. Complicating matters further, from the ASEAN perspective, is the inconsistent Chinese policy with regard to the territorial disputes in the South China Sea. China's stated commitment is to solve these disputes by peaceful means: to shelve the disputes and move ahead with joint development and/or exploration while at the same time resorting to actions aiming at expanding the area under Chinese control. On the other hand the Chinese policy of engaging in oil exploration in disputed areas and its legislation affecting such areas seem at odds with this stated aim. The 1990s were marked by a number of such actions by China in relation to Vietnam and the Philippines, which resulted in periods of tension in the South China Sea.<sup>81</sup>

**In short the latitude for ASEAN to act effectively in response to developments in the South China Sea is limited both by intra-organisational factors and by China's policies and actions in the area.**

In such situations ASEAN solidarity calls for members to support the so-called 'front-line state', but at the same time they do not want to jeopardise their overall relationships with China, which are of great importance to them both economically and geo-strategically. This dilemma also affects the response and policy of the Association as a whole in such situations.

In short the latitude for ASEAN to act effectively in response to developments in the South China Sea is limited both by intra-organisational factors and by China's policies and actions in the area. The former can best be understood by the fact that five member-states have sovereignty claims in the South China Sea, and that their interests must be taken into consideration when the Association responds to developments in the South China Sea. Furthermore, in order to formulate a common policy there is a need to reconcile the views and interests of all ten member-states with diverging relationships and perceptions of China. As for the external relation dimension, ASEAN's task is hardly facilitated by China's inconsistent behaviour and the Chinese actions causing tension in the South China Sea.

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\* The author acknowledges economic support from the Sasakawa Young Leaders Fellowship Fund, the Swedish Foundation for International Cooperation in Research and Higher Education (STINT) and the Wenner-Gren Foundations and the Helge Axelson Johnson Foundation and STINT. The author also wishes to thank David Hughes for his comments on draft versions of parts of this study.

<sup>1</sup> Forbes, V. L. (1995) *Indonesia's Maritime Boundaries*, A Malaysian Institute of Maritime Affairs Monograph, Kuala Lumpur: Malaysian Institute of

Maritime Affairs (MIMA):18-19, 21-24, 40-41, 46, Annexes E1 and E2; See also: “Indonesia-Malaysia (Continental Shelf) (1969)” and “Indonesia-Malaysia (Territorial Sea) (1970)” in Charney, J. I. and Alexander, L. M. (1993) *International Maritime Boundaries Volume I*, Dordrecht, Boston and London: Martinus Nijhoff Publishers and the American Society of International Law: 1019-1037 (hereafter Charney & Alexander, “Maritime Boundaries Vol. I”).

2 Forbes, (1995):18-19, 35-36, 39, Annexes H1,H2; See also: “Indonesia-Thailand (Malacca Strait and Andaman Sea) (1971)” and “Indonesia-Thailand (Andaman Sea) (1975)” in Charney, J. I. and Alexander, L. M. (1993) *International Maritime Boundaries Volume II*, Dordrecht, Boston and London: Martinus Nijhoff Publishers and the American Society of International Law (hereafter Charney & Alexander, “Maritime Boundaries Vol. II”): 1455-1463, 1465-1472.

3 “Indonesia-Malaysia-Thailand (1971)”, Ibid.: 1443-1454; and, Forbes, (1995):18-19, 35-36,44, Annex I.

4 Ibid.: 18-19, 24-25,41,Annex G; and, “Indonesia-Singapore (1973)” in Charney & Alexander, *Maritime Boundaries Vol. I*: 1049-1056.

5 For details on the settlement and demarcation of the land border between Laos and Vietnam see Bernard Gay, *La nouvelle frontière lao-vietnamienne. Les accords de 1977-1990*. Histoire des frontières de la péninsule indochinoise – 2, Travaux du Centre d’histoire et civilisations de la péninsule indochinoise publiés sous la direction de P. B. Lafont (Paris: L’Harmattan, 1995). See also a report carried by VNA News Agency reproduced in *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, FarEast, 2975 B/6-7* (19 July 1997) (hereafter “BBC/FE”).

6 Forbes, V. L. (2001) *Conflict and Cooperation in Managing Maritime Space in Semi-enclosed Seas* Singapore: Singapore University Press: 313.

7 Kittichaisaree, K. (1987) *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia* Oxford: Oxford University Press: 100-103, 189-194; “Malaysia-Thailand (Gulf of Thailand Continental Shelf) (1979)” in Charney & Alexander, *Maritime Boundaries Vol. I*: 1099-1110.

8 The text of the agreement has been reproduced in “Malaysia-Thailand (Territorial Sea) (1979)” in Ibid.: 1091-1098; and, as “Appendix 5” in Kittichaisaree, (1987): 186-188. It seems that the delimitation of the territorial sea boundary in the northern part of the Strait of Malacca between Malaysia and Thailand is identical to the continental shelf and EEZ boundaries “Figure 16. Maritime Boundaries in the Andaman Sea”: 98.

9 “Malaysia-Thailand (Gulf of Thailand Continental Shelf) (1979)” in Charney & Alexander, *Maritime Boundaries Vol. I*:1111-1123. In this source this Agreement is presented as Annex III to the Memorandum on the delimitation of the continental shelf. See also Ong, D (1991) “Thailand/Malaysia”, *International Journal of Estuarine and Coastal Law*, Vol. 6, No. 1: 57-60, 64-72; Ong, D. M. (1999) “The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?”, Ibid., Vol. 14, No. 2: 207-246.

10 Kittichaisaree (1987): 47-48, 52, 74-75. The text of the agreement has been reproduced as “Appendix 4”:184-185. See also “Burma (Myanmar)-Thailand (1980)” in Charney & Alexander, *Maritime Boundaries Vol. II*: 1341-1352.

11 For the full text of the Agreement of 7 July 1982 see *BBC/FE/7074 A3/7-8* (10 July 1982). The text of the Agreement has also been re-produced in an English language version as “Appendix 2” in Kittichaisaree (1987): 180-181. Interestingly enough the “full text” of the Agreement transmitted by the official Cambodian news agency (SPK) on July 8 omitted the sentence: “Patrolling and surveillance in these historical waters will be jointly conducted by the two sides”, which was included in Article 3 of the version published by the Vietnamese News Agency and reproduced in Kittichaisaree’s study (*BBC/FE/7074 A3/8, 7076/A3/7* (13 July 1982); and, Kittichaisaree (1987): 180-181.

12 *BBC/FE/7393 A3/1* (23 July 1983). See also Quang, N. (1986) ‘Vietnam-Kampuchea Border Issue Settled’, *Vietnam Courier*, No. 4: 8-9.

- <sup>13</sup> For reports from Vietnam and the PRK announcing the signing of the Treaty and for details see *BBC/FE/8143 A3/1-3* (30 December 1985). See also Quang (1986): 8-9.
- <sup>14</sup> Information derived from the web site of the Ministry of Foreign Affairs of Malaysia (<http://www.kln.gov.my/>). See also Amer, R. (1995) 'Vietnam and Its Neighbours: The Border Dispute Dimension', *Contemporary Southeast Asia*, Vol. 17, No. 3: 306.
- <sup>15</sup> Forbes (1995): 315.
- <sup>16</sup> Gay, B. and Phommachack, O. (eds.) (1999) *La nouvelle frontière Lao-Myanmar (Les Accords de 1993-1995)*. Histoire des frontières de la péninsule indochinoise – 3, Travaux du Centre d'histoire et civilisations de la péninsule indochinoise publiés sous la direction de P. B. Lafont, Paris: L'Harmattan: 14-15.
- <sup>17</sup> For details on the settlement and demarcation of the boundary between Laos and Myanmar see *Ibid.*: 7-18.
- <sup>18</sup> *BBC/FE/2996 B/4-5* (13 August 1997). See also Thao, N. H. (1997) "Vietnam's First Maritime Boundary Agreement", *Boundary and Security Bulletin*, Vol. 5, No. 3: 74-79; and, Thao, N. H. (1998) "Vietnam and Thailand Settle Maritime Disputes in the Gulf of Thailand", *The MIMA Bulletin*, Vol. 2/98: 7-10.
- <sup>19</sup> The agreements between Vietnam and Cambodia reached in the 1980s were not recognised by all parties within Cambodia for most of the 1990s. New bilateral talks on the status of their borders between the countries have been initiated to reach a solution to remaining disputed issues. Therefore, in the context of this study the territorial disputes between Vietnam and Cambodia are not considered as resolved and they are listed among the unsettled disputes.
- <sup>20</sup> Author's discussions with Officials in Bangkok in December 1998, in April 1999 and in November 2000.
- <sup>21</sup> Author's discussions with Officials in Bangkok in December 1998, in April 1999 and in November 2000.
- <sup>22</sup> Author's discussions with Officials in Bangkok December 1998, in April 1999 and in November 2000. See also Prescott, V. (1998) *The Gulf of Thailand*, Kuala Lumpur: Maritime Institute of Malaysia (MIMA).
- <sup>23</sup> This was acknowledged by the then Cambodian First Prime Minister Ung Huot in early June 1998 (*BBC/FE/3250 B/1* (11 June 1998)).
- <sup>24</sup> For details on the disputes between Cambodia and Vietnam relating to the land and sea borders see Amer, R. (1997) "The Border Conflicts Between Cambodia and Vietnam", *Boundary and Security Bulletin*, Vol. 5, No. 2: 80-91; and, Amer (1995): 299-301.
- <sup>25</sup> Author's discussions with researchers in Kuala Lumpur in December 1996 and in August 1998. It can be noted that following talks between the Malaysian and Thai Prime Ministers in late February 1997 it was reported that they had agreed to resolve the "demarcation problem" relating to the land border see *BBC/FE/2856 B/4-5* (1 March 1997).
- <sup>26</sup> For an overview of the maritime conflicts and co-operative agreements in the Gulf of Thailand see Prescott (1998). The area is currently included in the JDA between Malaysia and Thailand but is recognised by the two countries as claimed by Vietnam (Author's discussions with officials in Bangkok December 1998, in April 1999 and in November 2000).
- <sup>27</sup> Prescott, J. R. V. (1985) *The Maritime Boundaries of the World*, London and New York: Methuen: 218-221,230; Valencia, M. J. (1991) *Malaysia and the Law of the Sea. The foreign policy issues, the options and their implications* Kuala Lumpur: Institute of Strategic and International Studies (ISIS Malaysia): 54-66, 80-85, 136-137.
- <sup>28</sup> For studies on the Sabah dispute see: Ariff, M. O. (1970) *The Philippines' Claim to Sabah: Its Historical, Legal and Political Implications*, London: Oxford University Press; and, Leifer, M. (1968) *The Philippine Claim to Sabah*, Hull Monographs on South-East Asia, No. 1, Zug: Inter doc.
- <sup>29</sup> Amer (1995): 305-306; Prescott (1985): 218-222; and, Valencia (1991): 54-66.
- <sup>30</sup> *Ibid.*: 54-66; Amer (1995): 306-308; and, Prescott (1985): 218-222.
- <sup>31</sup> *Ibid.*: 227-228; and, Valencia (1991): 48-54, 66.
- <sup>32</sup> For more details see Clearly, M. and Francis, S. (1994) 'Brunei: The Search for a Sustainable Economy' in *Southeast Asian Affairs 1994*, Singapore: Institute of Southeast Asian Studies: 67-68; Huxley, T. (1987) 'Brunei: Defending a

Mini-State' in Chin Kin Wah (ed.), *Defence Spending in Southeast Asia*, Issues in Southeast Asian Security, Singapore: Regional Strategic Studies Programme, Institute of Southeast Asian Studies: 240; and, Thambipillai, P. and Sulaiman, H. (1995) 'Brunei Darussalam: After a Decade of Independence' in *Southeast Asian Affairs*, Singapore: Institute of Southeast Asian Studies: 121.

33 A conflict over overlapping claims to 200-mile EEZ could emerge if Brunei and Vietnam would begin to assert such claims from islands and reefs which they claim in the area (Valencia (1991): 48-50, 66-67).

34 *Ibid.*: 46-48, 80-84, 135; and, Prescott (1985): 226-230. For details pertaining to the dispute over the islands see Ong, D. M. (1999) 'International Court of Justice – Case between Indonesia and Malaysia Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan', *International Journal of Marine and Coastal Law*, Vol. 14, No. 3: 400-414. Official documents relating to the case can be found on the web site of the Department of Foreign Affairs of Indonesia (<http://www.deplu.go.id/>) and on the web site of the Ministry of Foreign Affairs of Malaysia (<http://www.kln.gov.my/>).

35 Information derived from Ganesan, N. (1999) *Bilateral Tensions in Post-Cold War ASEAN*, Pacific Strategic Papers 9, Singapore: Regional Strategic and Political Studies Programme, Institute of Southeast Asian Studies: 30.

36 Forbes (1995): 37, 45, 47; and, Prescott (1985): 230.

37 Valencia (1991): 31-35, 37, 136.

38 Amer (1995): 304-305; and, Forbes (1995): 20, 37-38.

39 Author's discussions with officials in Hanoi in December 1998, in May 1999 and in November 2000. See also Amer (1995): 304-305.

40 For a more detailed analysis of the developments relating to the territorial disputes between Thailand and Laos see Amer, R. (Forthcoming) 'Managing Border Disputes in Southeast Asia', *Kajian Malaysia, Journal of Malaysian Studies*, Special Issue on Conflict Management in Southeast Asia, Vol. XVIII, Nos. 1-2.

41 For a more detailed analysis of the developments relating to the territorial disputes between Thailand and Myanmar see *Ibid.*

42 For a more detailed analysis of the developments relating to the territorial disputes between Cambodia and its three neighbours, Laos, Thailand and Vietnam, see *Ibid.*

43 For more detailed analysis of the developments relating to territorial disputes between Cambodia and Vietnam see *Ibid.* See also note 18.

44 For details relating to the negotiations and agreement see *BBC/FE/2456 B/4* (9 November 1995); and, 2459 B/2 (13 November 1995).

45 *Ibid.*, 3678 B/5-6 (29 October 1999); and, 3679 B/8 (30 October 1999).

46 *Ibid.*, 3788 B/5 (14 March 2000).

47 *Ibid.*, 3842 B/5 (17 May 2000).

48 *Ibid.*, 3565 B/5 (19 June 1999).

49 *Ibid.*, 3681 B/4 (2 November 1999).

50 Author's discussions with Officials in Hanoi in December 1998, in May 1999 and in November 2000 as well as with officials in Bangkok, in December 1998, in April 1999 and in November 2000. See also note 26.

51 Author's discussions with officials in Kuala Lumpur in August 1998. See also *BBC/FE/2098 B/2* (12 September 1994); and, *Joint Press Statement. The Third Malaysia-Singapore Meeting to Submit the Case of Pedra Branca/Pulau Batu Puteh to the International Court of Justice, Kuala Lumpur, 14 April 1988* (Kuala Lumpur: Press Release, Ministry of Foreign Affairs Malaysia, 14 April 1998). (Obtained by author from the Ministry of Foreign Affairs of Malaysia, Kuala Lumpur, in August 1998). The statement can also be found on the web site of the Ministry of Foreign Affairs of Malaysia (<http://www.kln.gov.my/>).

52 Author's discussions with officials in Jakarta in December 1996. Author's discussions with researchers in Kuala Lumpur in December 1996 and with officials and researchers in Kuala Lumpur in August 1998. See also *BBC/FE/2738 B/3* (9 October 1996).

53 The information is derived from the web site of the Ministry of Foreign Affairs of Malaysia (<http://www.kln.gov.my/>). Through the web site there are direct links to all relevant documents relating to the application of the Philippines and to the decision by the ICJ.

- 54 The text of the Joint Press Statement issued after the sixth meeting of the Joint Commission can be found on the web site of the Department of Foreign Affairs of Indonesia (<http://www.deplu.go.id/>). See also *BBC/FE/2998 B72* (15 August 1997); and, 3001 B/4-5 (19 August 1997).
- 55 The information is derived from the web site of the Ministry of Foreign Affairs of Malaysia (<http://www.kln.gov.my/>). Through the web site there are direct links to all relevant documents from the ICJ relating to the case.
- 56 For a more extensive presentation of these mechanisms see Amer, R. (1998) 'Expanding ASEAN's Conflict Management Framework in Southeast Asia: The Border Dispute Dimension', *Asian Journal of Political Science*, Vol. 6, No. 2: 34-40.
- 57 The text of the "ASEAN Declaration" can be found on the web site of ASEAN (<http://www.asean.or.id/>).
- 58 The terms TAC and Bali Treaty will be used inter-changeably throughout the study.
- 59 On 27 November 1971 ASEAN adopted the *Kuala Lumpur Declaration* which called for the creation of a ZOPFAN in Southeast Asia. The Declaration of ZOPFAN states ASEAN's peaceful intentions and its commitment to build regional resilience free from interference from external powers. The full text of the 'Zone of Peace, Freedom and Neutrality Declaration. Kuala Lumpur Declaration' can be found on the web site of ASEAN (<http://www.asean.or.id/>).
- 60 The text of the 'Declaration of ASEAN Concord' can be found on the web site of ASEAN (<http://www.asean.or.id/>).
- 61 The text of the 'Treaty of Amity and Co-operation in Southeast Asia' can be found on the web site of ASEAN (<http://www.asean.or.id/>).
- 62 See note 61.
- 63 See note 61.
- 64 See note 61.
- 65 See note 61.
- 66 See note 61.
- 67 See note 61.
- 68 This can be exemplified by the fact that this interpretation was prevalent in the author's discussions with officials and researchers in Malaysia in August 1998.
- 69 See note 61.
- 70 Kamarulzaman, A. (1994) 'ASEAN and Conflict Management: The Formative Years of 1967-1976', *Pacifica Review*, Vol. 6, No. 2: 63-65; and, Caballero-Anthony, M. (1998) 'Mechanisms of Dispute Settlement: The ASEAN Experience', *Contemporary Southeast Asia*, Vol. 20, No. 1: 51-5, 57-62. Caballero-Anthony also discusses third-party mediation and she notes that it was not until "quite" recently that third-party mediation was officially adopted by ASEAN as a form of dispute management (see *Ibid.*: 61). On intra-ASEAN negotiations see also Thambipillai, P. and Saravanamuttu, J. *ASEAN Negotiations: Two Insights*, Singapore: Institute of Southeast Asian Studies.
- 71 This part of the study is partly derived from a paper by the author entitled 'The Association of South-East Asian Nations and the South China Sea Disputes: Intra-Mural Implications and Foreign Relations Challenges', prepared for the Panel on the South China Sea in honour of Professor Michael Leifer at the Third International Conference of the European Association for South-East Asian Studies (EUROSEAS) London 2001, 6-8 September 2001, Organised by the School of Oriental and African Studies (SOAS), London University.
- 72 The text of the 'Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia' can be found on the web site of ASEAN (<http://www.asean.or.id/>).
- 73 In the context of this study the High Council is not regarded as activated. However, in the author's discussion with officials in Hanoi in October 2001 it was said that the High Council held its first meeting among the Foreign Ministers of the ASEAN member-states in Hanoi in July 2001. According to this information the de facto activation of the High Council took place in connection with the 34<sup>th</sup> AMM in Hanoi in July 2001. Information on the web site of ASEAN does not state that the High Council has been activated (<http://www.asean.or.id/>).
- 74 See note 72.
- 75 See note 71.

<sup>76</sup> The text of the 'ASEAN Declaration on the South China Sea' from 1992 can be found on the web site of ASEAN (<http://www.asean.or.id/>).

<sup>77</sup> For a detailed analysis of China policies and behaviour in the multilateral and bilateral dialogues relating to the situation in the South China Sea see Lee Lai To, (1999) *China and the South China Sea Dialogues*, Westport, Connecticut and London: Praeger. Other studies on China and the South China Sea include Austin, G. (1998) *China's Ocean Frontier. International Law, Military Force and National Development*, St Leonards: Allen & Unwin and Canberra: Department of International Relations and the Northeast Asia Program, Research School of Pacific and Asian Studies, Australian National University; Lasserre, F. (1996) *Le Dragon et la Mer. Stratégies géopolitiques chinoises en mer de Chine du Sud*, Montréal: L'Harmattan Inc. Lo Chi-kin, (1989) *China's Policy Towards Territorial Disputes. The Case of the South China Sea Islands*, London and New York: Routledge; Sheng Lijun; (1995) *China's Policy Towards the Spratly Islands in the 1990s*, Working Paper, No. 287, Canberra: Strategic and Defence Studies Centre, The Australian National University; and, Valencia, M. J. (1995) *China and the South China Sea Disputes*, Adelphi Paper, No. 298, Oxford: Oxford University Press and the International Institute for Strategic Studies (IISS).

<sup>78</sup> Discussions between ASEAN and China relating to a possible 'code of conduct' for the South China Sea took place in connection with the ARF meeting in Singapore in late July 1999; in connection with discussions following the Third ASEAN Informal Summit in Manila in late November 1999, at the '1<sup>st</sup> Meeting of the ASEAN-China Working Group on the Regional Code of Conduct on the South China Sea' held in Hua Hin, Thailand on 15 March 2000, in connection with the 6<sup>th</sup> ASEAN-China Senior Officials Consultations held in Kuching, Malaysia on 25-26 April 2000; at the 2<sup>nd</sup> meeting of the joint working group on the regional code of conduct held in Kuala Lumpur, Malaysia on 26 May 2000, and, at the 3<sup>rd</sup> meeting of the joint working group held in Hanoi on 11 October 2000. The meetings up to May 2000 are listed in accordance with information carried by the web site of ASEAN (<http://www.asean.or.id/>). Information about the October meeting in Hanoi is derived from 'ASEAN-China working group on the Code of Conduct meets', *News Bulletin*, No. 325 (13 October 2000). From the web site of *Nhan Dan* (<http://www.nhandan.org.vn/>). It is highly likely that further discussions have been held in connection with meetings between Senior Officials from China and ASEAN in 2001 but this has not been publicised. In this context it can be noted that in the overview of 'Political and Security Cooperation' on the web site of ASEAN (<http://www.asean.or.id/>) it is stated that the "ASEAN-China Senior Official's Consultation Working Group on the Code of Conduct in the South China Sea" met four times "this year". The year in question is not mentioned and thus it is not clear if this refers to 2000, when four meetings were held (see above), or if four additional meetings were held during 2001.

<sup>79</sup> Differences in opinion between Malaysia and Vietnam relating to the 'scope of application' of a possible 'code-of-conduct' was brought up in discussions between the author and scholars and officials in Bangkok and Manila in November 2000.

<sup>80</sup> The importance placed on the *Bali Treaty* as a framework governing not only inter-state relation within ASEAN but also the Association's relations with other countries was emphasised in the Joint Communiqué issued at the 34<sup>th</sup> AMM held in Hanoi on 23-24 July 2001. The text of the Joint Communiqué of the 34<sup>th</sup> ASEAN Ministerial Meeting, Hanoi, 23-24 July" can be found on the web site of ASEAN (<http://www.asean.or.id/>).

<sup>81</sup> For details relating to the developments between China and Vietnam see Amer, R. (Forthcoming) *The Sino-Vietnamese Approach to Managing Border Disputes*, Durham: International Boundaries Research Unit, University of Durham. For details relating to the developments in recent years between China and the Philippines in the South China Sea see Amer, R. (Forthcoming) 'On-Going Efforts of Conflict Management', in Kivimäki, T. (ed) *War or Peace in the South China Sea?* Copenhagen: Nordic Institute of Asian Studies; and, Storey, I. J. (1999) 'Creeping Assertiveness: China, the Philippines and the South China Sea Dispute', *Contemporary Southeast Asia*, Vol. 21, No. 1: 95-118.