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Dispute Management in the South China Sea

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Abbreviations

APEC	Asia-Pacific Cooperation
ASEAN	Association of Southeast Asian Nations
ASEAN-China JWG	ASEAN-China Joint Working Group on the Implementation of the DOC
ASEM	Asia-Europe Meeting
CLCS	Commission on the Limits of the Continental Shelf
CNOOC	China National Offshore Oil Corporation
COC	Code of Conduct
CPC	Communist Party of China
CPV	Communist Party of Vietnam
DOC	Declaration on the Conduct of the Parties in the South China Sea
EEZ	Exclusive Economic Zone
ICJ	International Court of Justice
JSMU	Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea
JOMSRE-SCS	Joint Oceanographic Marine Scientific Expedition in the South China Sea
MoU	Memorandum of understanding
PNOOC	Philippines National Oil Company
PCA	Permanent Court of Arbitration
PRK	People's Republic of Kampuchea
TAC	Treaty of Amity and Cooperation in Southeast Asia
UNCLOS	United Nations Convention on the Law of the Sea

Executive Summary

The report assesses the progress made in terms of dispute management in the South China Sea. This is done through an analysis of the formally settled disputes followed by an examination of the remaining challenges. The formally settled disputes are outlined through an overview of cases relating to the South China Sea proper as well as to the adjacent areas that constitutes its natural prolongations. Then different types of settlement approaches are explored. The challenges of the un-settled disputes are studied and assessed through an overview of the efforts made to manage them. The report is concluded by a broader analysis of the achievements in dispute management and of the remaining challenges in the South China Sea.

Coastal states of the South China Sea have made considerable progress in terms of dispute management resulting in both formal settlement of some disputes and peaceful management of other disputes. The formal settlement of disputes has primarily been achieved during two periods of time. The first period from the late 1960s to the late 1970s and the second period began after the end of the Cold War in Asia.

The situation in the South China Sea proper displays both progress in dispute management and incidents causing periods of tension between claimants. The bilateral interaction between China and Vietnam is characterised by both achievements in developing the Sino-Vietnamese approach to managing disputes and periods of tension due to incidents relating to their disputes in the South China Sea. Another key relationship, the one between China and the Philippines, has been characterised by incidents and tension in recent years and a lack of institutionalized mechanisms for managing tension. From the perspective of dispute management the periods of increased tension between some of the claimants in the South China Sea is a cause for concern. It is therefore essential that the Sino-Vietnamese approach is further developed and deepened in order to address the full range of disputed issues between the two countries. Meanwhile, China and the Philippines ought to actively strive to establish institutionalized

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bilateral mechanisms in order to minimise the risk of incidents causing tension and to reduce tension when incidents do occur.

The regional dispute management process through the dialogue between the Association of Southeast Asian Nations (ASEAN) and China is a positive contribution to dispute management in the South China Sea. The ASEAN-China dialogue and the 2002 Declaration on the Conduct of the Parties in the South China Sea (DOC) are welcomed steps in terms of dispute management in the South China Sea. The on-going ASEAN-China dialogue on a possible code of conduct is also a positive development.

A general observation is that dispute management approaches have been initiated at different levels including bilateral and regional. These approaches aim to maintain peace and stability, to reduce the risk of incidents causing tension, to manage tension that might occur, and to create conducive conditions for the future peaceful settlement of disputes.

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1. Purpose and Structure¹

The main purpose of the report is to assess the progress made in terms of dispute management in the South China Sea. This is done through an analysis of the formally settled disputes followed by an analysis of the remaining challenges. The progress made is outlined through an overview of formally settled disputes in the South China Sea proper and in adjacent areas that form natural prolongations of the South China Sea proper. Then the settlement approaches are presented and analysed. The challenge of the un-settled disputes is analysed and assessed by highlighting both the nature of the disputes and efforts made to manage and possibly settle them. The report is concluded by a broader assessment of progress made and remaining challenges from the perspectives of dispute management and dispute settlement.

The report is structured as follows. First, the key terminology used in the report is introduced. Second, peaceful settlement of disputes is discussed through global, regional, and relevant national dimensions. Third, the settled disputes are identified and analysed. Fourth, the remaining un-settled dispute situations are identified and approaches to management are outlined. Fifth, a broader analysis is carried out in the concluding section.

2. Defining Dispute Management and Related Terms

The term dispute is used in the context of this report instead of the term conflict since the later is at times understood as implying that the situation is more severe than a dispute. Dispute management will be used in the broadest sense of term, i.e. to include all approaches to manage disputes in the South China Sea.

Dispute management will encompass the term conflict resolution which is derived from the field of Peace and Conflict Research and implies that a conflict or dispute is formally resolved. Conflict resolution is one form or technique of the broader concept of dispute or conflict management which also encompasses prevention, avoidance, containment, transformation, and settlement of a dispute or a conflict.²

The Association of Southeast Asian Nations (ASEAN) promotes an approach and framework that can be characterised as conflict management or as dispute management in the broad sense of the terms.³ In other words dispute management and conflict management have both been used to categorise or describe the ASEAN approach. Key aspects of the ASEAN approach are outlined in Part 3.

Dispute settlement is the terminology used in International Law and it is evidently displayed in relevant provisions of the Charter of the United Nations and of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), respectively. The detailed provisions of the Charter and the UNCLOS are outlined in Part 3.

The terms dispute settlement and conflict resolution both refer to the formal settlement or resolution of an existing dispute or conflict situation. Thus, there is no inherent difference between the two terms and in practice they refer to similar developments. A conflict that has been resolved has formally been settled. The choice between the terms dispute and conflict is often defined by the value ascribed to the two terms. For example in the field of Peace and Conflict a dispute is often considered less severe than a conflict. However, in practice both disputes and conflicts can be militarised. In addition both a dispute and a conflict, respectively, can be latent or active.

In the context of this report the term dispute settlement will be used in such a way as to include also conflict resolution, i.e. implying that a dispute or conflict situation has been formally settled or resolved.

3. Peaceful Settlement of Disputes – Global, Regional and National Dimensions

Dispute settlement is a fundamental principle in the international system and it is evidently displayed in relevant provisions of the Charter of the United Nations and of the UNCLOS, respectively.⁴

The Charter is explicit in its commitment to the peaceful settlement of disputes in Article 2(3) and Chapter VI, in addition to the prohibition of the threat or use of force in Article 2(4) is of relevance.⁵

Article 2(3) reads as follows: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”⁶

Chapter VI contains six articles – 33 to 38. In the context of this report the text of the provisions relating to obligations of member states are highlighted. Article 33(1) reads:

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”⁷

Peaceful settlement is the “first of all” obligations when a state becomes a party to a dispute. Article 33(1) strongly requires the parties to any dispute to seek a solution through peaceful means by using procedures such as negotiation, enquiry, mediation, conciliation, arbitration, as well as judicial settlement.

Article 2(4) reads as follows: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.”⁸

The interpretations of the provisions of Article 2(4) have been the focal point of an extensive debate among international legal scholars. Despite the divergent interpretations of Article 2(4) there is a consensus that this Article provides a general prohibition of the threat or use of armed force in inter-state relations.⁹

As a constitutive instrument covering broad issues and protecting complex and sometimes contradictive interests, the UNCLOS needs some procedural guarantee to safeguard the balances and compromises achieved during the long negotiating process in drafting the document. The procedures of Part XV of the UNCLOS function as a referral to achieve its primary objective, for States parties to settle their disputes concerning the interpretations and applications of the UNCLOS by peaceful means.¹⁰

Part XV is divided into three sections. Section 1 provides a general obligation to settle disputes by peaceful means and preliminary steps to which all disputes are subject. It essentially requires States to settle disputes through diplomatic channels prior to referring them to compulsory procedures. Section 2 lays out the compulsory procedures entailing binding decisions. When

disputant States have not settled their differences through the various means available under Section 1, the dispute is to be submitted at the request of any party to the appropriate forum under Section 2. Compulsory procedures do not cover all issues. Section 3 spells out the limitations and optional exceptions to such compulsory procedures.

One key feature of Part XV is the emphasis on traditional consent-based modes of dispute settlement. It encourages parties to settle their disputes by the means of their mutual choice, including negotiations and voluntary conciliation. This feature is reflected all through Part XV by emphasizing settling disputes by “means of their own choices”, invoking compulsory procedures of Part XV or under other agreements to which they are parties, or carrying on conciliations unless the disputants “otherwise agree”. Even for compulsory procedures in Section 2, States are required to recourse to consent-based means in Section 1. Another feature is that State parties are given flexibility in choosing one or more of the four designated procedures with Annex VII arbitration as the default position, tending to different dispute settlement schemes for different issues ranging from formal adjudication or arbitration, to compulsory conciliation (of varying impacts), to voluntary conciliation, to diplomatic initiatives, and to negotiation. A third feature is that compulsory procedures entailing binding decisions cover subjects concerning the interests of all States. This is a divergence from traditional consent-based dispute settlement methods.

ASEAN promotes an approach and framework that can be characterised as dispute management in the broad sense of the term. ASEAN also puts strong emphasis on the non-use of force and peaceful settlement of disputes within the ASEAN framework.¹¹ This emphasis has been displayed in key ASEAN documents such as “The ASEAN Declaration” of 1967, the “Declaration of ASEAN Concord” of 1976, the “Treaty of Amity and Cooperation in Southeast Asia” (TAC) of 1976, the “Declaration of ASEAN Concord II” of 2003, and the “Charter of the Association of Southeast Asian Nations” of 2007.¹²

China’s foreign policy is still governed by the “Five Principles of Peaceful Coexistence” which were formulated for the first time in the agreement between China and India on 29 April 1954. These principles are fundamental not only to China’s overall foreign policy but also to China’s bilateral relations with several countries. The essence of the five principles have been summarised as follows by Zou Keyuan: “(1) respect for each other’s sovereignty and territorial integrity, (2) non-aggression, (3) non-interference in each other’s internal affairs, (4) equality and

mutual benefit and (5) peaceful coexistence”.¹³ Respect for sovereignty and non-interference display strong commitment to Article 2(7) of the Charter of the United Nations.¹⁴ Non-aggression is in line with the prohibition of the threat or use of force since it rules out the practice of attacking another country. Peaceful coexistence implies that a country does not threaten or use force against another country. It also implies that disputes should be handled with peaceful means.¹⁵

In addition the TAC has developed into an arrangement beyond the ten member states of ASEAN. In October 2003 China along side India became the first non-Southeast Asian countries to accede to the TAC. Consequently, the TAC is the key part of the ASEAN dispute management framework that can guide both the Southeast Asian claimants and China in maintaining peace and stability in the South China Sea. The TAC provides 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.¹⁶

From this overview it is evident that peaceful settlement is an obligation and integral part of the legal foundation of the international system as displayed in the Charter of the United Nations. In addition the UNCLOS reinforces this global dimension. Regionally ASEAN and the regional framework that it is promoting centred on the TAC fully adheres to the global principles through the emphasis on peaceful settlement of disputes. The TAC’s relevance extends beyond Southeast Asia and importantly also includes China, making it even more relevant.¹⁷ In addition China’s foreign policy guided by the “Five Principles of Peaceful Coexistence” is fully in line with the global and regional principles. Thus, basic necessary conditions for peaceful management of disputes in the South China Sea are in existence.

4. Dispute Settlement in the South China Sea Region

4.1 Introduction

The South China Sea region displays a variety of approaches which aim to contribute and promote the peaceful settlement of disputes. In the context of this report attention is devoted to the disputes in maritime areas of the South China Sea and areas that form national prolongations to the South China Sea proper, i.e. Gulf of Thailand, Gulf of Tonkin, and Sulu Sea, relating to maritime zones

and to insular features. The overview of approaches is divided into three Sections, Section 4.2 outlines the formally negotiated settlement of disputes, Section 4.3 is devoted to disputes settled through international jurisprudence, and Section 4.4 discusses unfulfilled agreements.

4.2 Formally negotiated settlement of disputes

The formally negotiated settlements of disputes are primarily bilateral ones, which involved two parties and resulted from direct negotiations between the two parties. There are a few trilateral negotiated agreements relating to tri-junction points where bilaterally agreed maritime boundaries intersect.

The formally negotiated settlement of disputes include all settlements made by coastal states of the South China Sea proper, i.e. China, Indonesia, Malaysia, Singapore, the Philippines, and Vietnam.¹⁸ Also included are all settlements reached by the coastal states of the Gulf of Thailand, i.e. Cambodia, Malaysia, Thailand, and Vietnam as well as all settlements made by the coastal states of the Gulf of Tonkin, i.e. China and Vietnam. Finally, all settlements made by the coastal states of the Sulu Sea, i.e. Malaysia and the Philippines, are included.

4.2.1 Negotiated agreements¹⁹

On 27 October 1969 Indonesia and Malaysia reached an agreement on the delimitation of their continental shelf boundary in the central and southern parts of the Straits of Malacca and in areas to the west and east of the Natuna Islands in the South China Sea.²⁰ On 17 March 1970 they signed an agreement delimiting their territorial sea boundary in the Straits of Malacca.²¹

On 18 May 1971 Indonesia and Australia signed an agreement establishing “Certain Seabed Boundaries” between the two countries.²² On 9 October 1972 the two countries signed a “Supplementary” agreement to the 1971 one, establishing “certain seabed boundaries in the Area of the Timor and Arafura Seas”.²³ On 11 December 1989 Indonesia and Australia signed a treaty relating to the “Zone of Cooperation in an Area between the Indonesia Province of East Timor and Northern Australia”.²⁴ On 14 March 1997 Indonesia and Australia signed a treaty “establishing” an Exclusive Economic Zone (EEZ) boundary and “certain seabed” boundaries between the two countries.²⁵

On 17 December 1971 an agreement was signed between Indonesia and Thailand to delimit their continental shelf in the north of the Straits of Malacca. On 17 December 1975 they agreed on a continuation of the boundary in the Andaman Sea.²⁶

On 21 December 1971 an agreement was 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 and the delimitation of their continental shelf boundaries in the northern part of the Straits of Malacca.²⁷

On 12 February 1973 Indonesia and Australia signed an agreement concerning “Certain Boundaries” between Indonesia and Papua New Guinea.²⁸ On 13 December 1980 Indonesia and Papua New Guinea sign an agreement concerning the “Maritime Boundary” between the two countries.²⁹

On 25 May 1973 Indonesia and Singapore signed a Treaty relating to the delimitation of the territorial seas of the two countries in the Strait of Singapore.³⁰ On 10 March 2009 they signed a further Treaty delimiting the territorial seas of the two countries in the western part of the Strait of Singapore.³¹

On 8 August 1974. Indonesia and India reached an agreement relating to the delimitation of their continental shelf boundary.³² On 14 January 1997 the two countries reached an agreement on the extension of their continental shelf boundary in the Andaman Sea and in the Indian Ocean.³³

On 22 June 1978 Thailand and India signed an agreement relating to the delimitation of the seabed boundary between the two countries in the Andaman Sea.³⁴

Also on 22 June 1978 an agreement was signed between Indonesia, Thailand, and India relating to the “determination of the Trijunction Point and the delimitation of the related boundaries” of the three countries in the Andaman Sea.³⁵

On 24 October 1979 Malaysia and Thailand signed a treaty relating to the delimitation of the territorial seas between the two countries in the Straits of Malacca and in the Gulf of Thailand.³⁶ On the same day, they signed a Memorandum of understanding for the partial delimitation of their continental shelves in the Gulf of Thailand.³⁷

On 25 July 1980 Thailand reached an agreement with Myanmar (then Burma) relating to the delimitation of the maritime boundary between the two countries in the Andaman Sea.³⁸

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 Tho Chu islands on the Vietnamese side and the coast of Kampot Province and Poulo Wai islands on the Cambodian side. The agreement stipulated that the two countries would hold – "at a suitable time" – negotiations 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".³⁹ On 20 July 1983 the two countries signed a treaty on the settlement of border problems and an agreement on border regulations.⁴⁰ On 27 December 1985 the "Treaty on the Delimitation of the Vietnam-Kampuchea Frontier" was signed.⁴¹ Furthermore, in 1991 the two countries agreed on a "*working arrangement*" line in the Gulf of Thailand as being equidistant from Tho Chu islands on the Vietnamese side and Poulo Wai islands on the Cambodian side.⁴² Finally, on 10 October 2005 the two countries signed a Supplementary Treaty to the 1985 Treaty.⁴³ On 24 June 2012 "Boundary Pillar No. 314" – located at the terminus of the land border between Cambodia's Kampot province and Vietnam's Kien Giang province – was inaugurated. "Boundary Pillar No. 314" can be expected to facilitate when Vietnam and Cambodia will eventually proceed to deal with the issue of maritime delimitation in the Gulf of Thailand.⁴⁴

On 27 October 1993 an agreement was signed between Myanmar, Thailand and India relating to the "determination of the Tri-junction point" between the three countries in the Andaman Sea.⁴⁵

On 9 August 1997 Thailand and Vietnam reached an agreement delimiting their continental shelf and EEZ boundaries in the Gulf of Thailand to the south-west of Vietnam and to the north-east of Thailand.⁴⁶

On 25 December 2000 China and Vietnam signed the "Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin".⁴⁷

On 18 June 2001 Cambodia and Thailand signed a "Memorandum of Understanding" relating to the areas of overlapping claims in the Gulf of Thailand.⁴⁸

On 11 June 2003 Indonesia and Vietnam signed an agreement on the delimitation of their continental shelf boundary in an area to the North of the Natuna Islands.⁴⁹

On 16 March 2009 through the Exchange of Letters signed by the Sultan of Brunei Darussalam and the Prime Minister of Malaysia, Brunei and Malaysia established the final delimitation of their maritime boundaries relating to the territorial sea, EEZ, and continental shelf in the South China Sea.⁵⁰

On 23 May 2014, Indonesia and the Philippines signed the “Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Indonesia Concerning the Delimitation of the Exclusive Economic Zone Boundary”. The Agreement includes annexed charts showing the EEZ Boundary of Indonesia and the Philippines in the Mindanao Sea and Celebes Sea off the southern Philippines and in the Philippine Sea in the southern section of the Pacific Ocean.⁵¹

4.2.2 Analysis of negotiated settlements in the post Cold War era

4.2.2.1 Thailand-Vietnam⁵²

The agreement of 9 August 1997 between Thailand and Vietnam was the first agreement in the region to use a single line for delimiting both continental shelf and EEZ between countries. It was also the first settlement of a maritime dispute in the region after the UNCLOS came into effect. It reaffirmed the tendency of using a single boundary for both continental shelf and EEZ in an area that extends less than 400 nautical miles between opposite coasts. It is also of relevance in the context of the effect of islands for international maritime delimitation. For Vietnam it was its first agreement on maritime delimitation. The agreement entered into force on 27 February 1998 following the completion of the ratification process.

4.2.2.2 Gulf of Tonkin⁵³

The maritime delimitation agreement of 2000 relating to the Gulf of Tonkin was the first maritime boundary between China and Vietnam. It was also China’s first maritime boundary agreement. The Agreement was reached through rounds of negotiations after the full normalisation of bilateral relations in late 1991. It reaffirms the Vietnamese position of using a single line for both the continental shelf and an EEZ in an area of less than 400 nautical miles between opposite and

adjacent coasts. The Agreement is also relevant from the following perspectives: the effects of coastal and outlying islands most notably Bach Long Vi, the role of low-tide elevations in delimitation, the issues of the outlet of a boundary river, and the question of a closing line for the Gulf. On 30 June 2004 maritime delimitation agreement entered into force following the completion of the ratification process.⁵⁴

4.2.2.3 Indonesia-Vietnam⁵⁵

During the 1990s there was no progress made in negotiating the maritime disputes between Indonesia and Vietnam, but stability was maintained. This state of affairs continued to prevail into the early 2000s until a breakthrough was made leading to the agreement of June 2003 settling the maritime dispute relating to overlapping continental shelf claims between the two countries. This was the first maritime boundary between the two countries. However, the EEZ boundary in the same area needs to be settled. In this process of bilateral negotiation, the continental shelf and EEZ have been treated as separate issues. After the completion of the ratification process the agreement entered into force on 29 May 2007.

4.2.2.4 Indonesia-Philippines⁵⁶

Indonesia and the Philippines are two of the largest archipelagic countries in the world. Both are initiators of the archipelagic legal principle adopted in the UNCLOS. However, while the Philippines wished to keep the rectangular line laid down in the 1898 Treaty of Paris, which ended the Spanish-American War, as its baselines, Indonesia rejected the Philippines' claim on the ground that it did not conform with the UNCLOS to which both Indonesia and the Philippines are parties. The negotiation over the issue of overlapping EEZs between the two countries lasted for twenty years. The Philippines has replaced the rectangular line with new Philippine archipelagic baselines as defined by the Philippine Archipelagic Baselines Law, Republic Act No. 9522, which was adopted on 10 March 2009. The Agreement on the EEZ Boundary on 23 May 2014 was reached on the basis of international law including the UNCLOS, on the basis of state practice, and on the basis of decisions of international tribunals on maritime boundary delimitation. It is the first maritime delimitation between the two archipelagic states and the first maritime boundary treaty of the Philippines. It reaffirms that negotiations based on international law including the UNCLOS contributes to the peaceful settlement of maritime disputes between countries in the region.

4.3 International jurisprudence

On 17 December 2002 the ICJ made its Judgement on the dispute over Sipadan Island and Ligitan Reef between Indonesia and Malaysia (Judgement of 17 December 2002).⁵⁷ On the basis of effectiveness the ICJ concluded that Malaysia had title to Ligitan and Sipadan.⁵⁸

On 23 May 2008 the ICJ made its Judgement on the dispute over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge between Malaysia and Singapore (Judgement of 23 May 2008).⁵⁹ In its judgment the ICJ concluded that sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore.⁶⁰ However, the ICJ found that title to Middle Rocks would remain with Malaysia as the successor to the Sultan of Johor.⁶¹ For South Ledge, the ICJ concluded that it belonged to the state in the territorial waters of which it was located.⁶²

4.3.1 Analysis of International jurisprudence⁶³

The two judgments pronounced by the ICJ relate to sovereignty disputes over islands and insular features between Southeast Asian countries. The first judgment was on the dispute between Indonesia and Malaysia over Sipadan Island and Ligitan Reef (Judgment of 17 December 2002).⁶⁴ The second judgment was on the dispute between Malaysia and Singapore over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Judgment of 23 May 2008).⁶⁵

The two cases and judgments display some similarities. They both concern disputes relating to sovereignty over small insular features and none of them permanently inhabited. They both also concern the original titles based on historical arguments and maps, the titles of succession through different historical periods from pre-colonial, colonial to the recent claimant states, “critical date”, and effectiveness. Both judgments were made on the basis of effectiveness.

In the case over the Sipadan Island and Ligitan Reef, the ICJ noted that the measures taken to regulate and control the collecting of turtle eggs and the establishment of a bird reserve must be seen as regulatory and administrative assertions of authority over claimed territory. These activities were:

“modest in number but that they are diverse in character and include legislative, administrative and quasi-judicial acts. They cover a considerable period of time and show a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands”.⁶⁶

The ICJ considered the fact that the Indonesian authorities did not protest against the construction of lighthouses by the British Colony of North Borneo and after 1963 by Malaysia, as unusual. On the basis of effectiveness, the ICJ concluded that Malaysia had title to Ligitan and Sipadan.⁶⁷

In the case over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, the ICJ found that original title to Pedra Branca/Pulau Batu Puteh should remain with Malaysia as the successor to the Sultan of Johor. However, in the conclusion of the ICJ, Singapore had sovereignty over Pedra Branca/Pulau Batu Puteh. Singapore had carried out activities such as investigating shipwrecks within the island's territorial waters, surveying the waters surrounding the island in 1978, and planning to reclaim areas around Pedra Branca/Pulau Batu Puteh. Malaysia and its predecessors failed to respond to the activities of Singapore and its predecessors. Even in June 2003, after the Special Agreement on submitting the dispute to the ICJ came into force, Malaysia just protested against Singapore's activities in 1980. Taking into account the conducts of the two parties, the ICJ concluded that sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore.⁶⁸ However, the ICJ found that the original title to Middle Rocks should remain with Malaysia as the successor to the Sultan of Johor.⁶⁹ In the case of South Ledge, the ICJ concluded that it would belong to the State in the territorial waters of which it was located.⁷⁰

In both cases the ICJ did not have the opportunity to address the relationship between the dispute over sovereignty of island, reefs, and low-tide elevations and maritime zones. In fact the ICJ was not asked to settle the issues relating to maritime zones around them. In the Special Agreement between Malaysia and Singapore submitted to the ICJ, the Parties asked only for a ruling on the issue of sovereignty, separately for each of the three insular features. Malaysia and Singapore did not ask the ICJ to rule on the issue of maritime delimitation. In the case between Indonesia and Malaysia the ICJ was only asked to address the question of sovereignty over Sipadan Island and Ligitan Reef and not to address the issue of maritime delimitation.

4.4 Un-fulfilled agreements

Not all agreements reached are fulfilled. One case is that between Cambodia and Vietnam. Their overlapping maritime claims in the Gulf of Thailand which remains unresolved despite the 1982 Agreement on "historic waters" and the 1991 "working arrangement" line in the Gulf of Thailand as being equidistant from Tho Chu islands on the Vietnamese side and Poulo Wai islands on the

Cambodian side.⁷¹ Some political factions and parties within Cambodia have opposed the agreements between Vietnam and Cambodia signed in the 1980s. New bilateral talks on the status of the borders between the two states have been initiated in order to reach a solution to the remaining disputed issues.⁷² The Supplementary Treaty of October 2005 relates only to the land border and not to the maritime issues between the two countries.

Another case is the 2001 “Memorandum of Understanding” relating to the areas of overlapping claims in the Gulf of Thailand between Cambodia and Thailand which has not been implemented and reports that Thailand would withdraw or terminate it led to an official protest by Cambodia in November 2009.⁷³ Thus, the two sides still have to reach a settlement relating to the overlapping claims to maritime zones in the Gulf of Thailand.⁷⁴ The tension and differences relating to the land border and the high profile dispute in the area of the temple of Preah Vihear cannot be overlooked in the context of the difficulties in managing border issues between the two countries in recent years.⁷⁵

5. Other Approaches to Dispute Management

5.1 Introduction

For disputes in which only two parties are directly involved, the parties have mainly carried out dispute management through bilateral negotiations and other bilateral arrangements. For disputes involving more than two parties both bilateral initiatives and initiatives involving three or more parties to a dispute have been implemented. Also at regional level attempts have been initiated for the purpose of containment of dispute situations by building confidence among disputants. Following an overview of the remaining unsettled disputes key initiatives bilaterally, trilaterally, and regionally will be highlighted.

In the context of this report a dispute situation is considered to exist when the claims of two or more states over insular features and/or maritime zones overlap fully or partially. Overlapping claims to insular features can be either bilateral or multilateral, i.e. three claimants or more. Overlapping claims to maritime zones can be either bilateral or multilateral, i.e. three claimants or

more. The identification of a given dispute situation does not require that the all claimants consider that there is a dispute situation.

5.1.1 China's claims

China's claims deserve special attention in the context of this process of identifying the remaining dispute situations in the South China Sea. China alongside Chinese Taipei has the most extensive claims in the South China Sea. China claims that it has "indisputable sovereignty over the islands in the South China Sea and the adjacent waters".⁷⁶ This implies sovereignty over the Paracel archipelago/islands (Xisha Quando in Chinese terminology), the Spratly archipelago/islands (Nansha Quando in Chinese terminology), the Pratas islands (Dongsha Quando in Chinese terminology) as well as Macclesfield Bank – including Scarborough Shoal – (Zhongsha Quando in Chinese terminology) and "the adjacent waters" of these insular features. In addition China claims that it "enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof",⁷⁷ presumably within the U-shaped "nine-dashed lines" which encompasses the major parts of the South China Sea in the area southwards to the east of the Vietnamese coastline, turning eastwards to the north-east of the Indonesian controlled Natuna Islands, and to the north of the Malaysian state of Sarawak, then turning north-eastwards along the coast of Brunei Darussalam and the Malaysian state of Sabah, and finally northwards to the west of the Philippines.⁷⁸

It should be noted up till now there is no official Chinese clarification of the full extent of its claims within the "nine-dashed lines". The assumption in this report is based on the text of the "Note from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations, 7 May 2009, CML/17/2009", in response to the Joint submission by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf (CLCS) as well as the "Note from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations, 7 May 2009, CML/18/2009", in response to the Submission of Vietnam to the CLCS, and the map attached to both of the notes.⁷⁹ The "nine-dashed lines" continue to attract extensive attention both from other states and within the scholarly community.⁸⁰

5.2 Dispute situations⁸¹

In the South China Sea, China's and Chinese Taipei's sovereignty claims to the Paracel archipelago overlaps with Vietnam's claim to the archipelago. China's and Chinese Taipei's sovereignty claims

to the whole Spratly archipelago is another dispute with Vietnam which is bilateral – “China-Vietnam” – for areas not claimed by other Southeast Asian countries and a multilateral dispute for those areas also claimed by Brunei, Malaysia and the Philippines, respectively. Furthermore, China’s and Chinese Taipei’s claims within the U-shaped “nine-dashed lines” in the South China Sea overlap to varying degrees with claims to EEZ and continental shelf areas made by Vietnam to the east of the Vietnamese coast, made by Indonesia to the north-east of the Natuna islands, made by Malaysia to the north of the coast of the state of Sarawak and to the north-west of the state of Sabah, made by Brunei Darussalam to north of its coast, and made by the Philippines to the west of the Filipino archipelago.

In the Gulf of Thailand there is a multilateral – trilateral – dispute relating to an area of overlapping claims between Malaysia, Thailand, and Vietnam.⁸² Also in the Gulf of Thailand the bilateral disputes between Cambodia and Thailand and between Cambodia and Vietnam, respectively, have been identified above in sub-section 4.4.

Bilaterally between Malaysia and the Philippines the maritime boundaries in the South China Sea, in the Sulu Sea as well as in the Celebes Sea have not been delimited.⁸³ In addition the dispute over Sabah, i.e. the Philippines claim to the State of Sabah in Malaysia – still impacts on maritime differences between the two countries.⁸⁴

Indonesia and Malaysia have overlapping EEZ claims in parts of the South China Sea located north of Tanjong Datu. In addition the continental shelf boundary between the two countries in the western Celebes Sea has not been delimited. Furthermore, the two countries have overlapping claims to EEZ in the Strait of Malacca and in the western Celebes Sea.⁸⁵ Malaysia and Singapore have two disputes to resolve. First, following the ICJ ruling on the case of Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge the maritime boundaries relating to jurisdictional zones in the area needs to be settled. 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.⁸⁶ Between Vietnam and Indonesia the issue of the delimitation of the EEZ between the two countries remains to be settled.

5.3 Joint Development

On 21 February 1979 Malaysia and Thailand signed a Memorandum of understanding (MoU) 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 MoU 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 boundary in the area. 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*. 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*.⁸⁷

On 5 June 1992 an agreement was reached between Malaysia and Vietnam to engage in joint development in an area of overlapping claims to continental shelves to the south west of Vietnam and to the east-north east off the east coast of Peninsular Malaysia. Malaysia and Vietnam assigned their state-owned oil companies, PETRONAS and PETROVIETNAM, respectively, to undertake petroleum exploration and exploitation in 1993, and in July 1997, oil was extracted from the Bunga Kekwa field.⁸⁸

The Malaysia-Vietnam model is more flexible than the Malaysia-Thailand model because the former is focused on facilitating petroleum exploration and exploitation at the earliest opportunity with the minimum of governmental participation or interference.⁸⁹

5.4 Other bilateral initiatives

5.4.1 China-Vietnam⁹⁰

The most extensive bilateral talks are the ones between China and Vietnam since the full normalisation of their relations in late 1991. In order to manage their territorial disputes China and Vietnam have initiated a system of talks and discussions which was both highly structured and extensive and from lower to higher-levels it is as follows: Expert-level talks; Government-level talks, i.e. Deputy/Vice-Minister; Foreign Minister-level talks, and, High-level talks, i.e. Presidents, Prime Ministers, and Secretary-Generals of the Communist Party of China (CPC) and the Communist Party of Vietnam (CPV).

Talks at the expert-level were initiated in October 1992. The talks at the government-level began in August 1993. The first achievement was the signing of an agreement on 19 October 1993 on the principles for handling the land border and Gulf of Tonkin disputes. It was further agreed to

set up joint working groups at the expert-level to deal with the two issues. The joint working group on the Gulf of Tonkin met seventeen times from March 1994 to December 2000 when of the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* was signed. Talks at the expert-level on the disputes in the South China Sea proper, the so-called “sea issues”, were initiated in November 1995.

In response to the periodic increases in the level of tensions during the period 2009-2011 relating to the disputes in the South China Sea, China and Vietnam reached an “Agreement on basic principles guiding the settlement of sea-related issues” in October 2011. The two countries have taken steps to implement the agreement in 2012, 2013, and 2014, for example “departmental level” talks on “demarcation of areas outside the mouth of” the Gulf of Tonkin as well as talks on “co-operation in less sensitive fields at sea” were initiated in 2012.

On 21-22 May 2012, the “first-round of talk at the departmental level” was held on the “demarcation of areas outside the mouth of” the Gulf of Tonkin in Hanoi. This signalled the resumption of talks relating to this area. The second round of talks was held in Beijing on 26-27 September 2012. The third round of talks was held in Hanoi on 29-30 May 2013. The fourth round of talks was held in Beijing on 7-9 October 2013.⁹¹

On 29-30 May 2012 the first round of talks on “co-operation in less sensitive fields at sea” was held in Beijing. The second round of talks was held in Hanoi on 6-8 November 2012. The third round of talks was held in Beijing on 22-24 April 2013. The fourth round of talks was held on 24-26 September 2013.⁹²

High-level meetings in 2013 highlighted the continued push for management of the South China Sea situation by the two countries. In connection with the official visit of China’s Prime Minister, Li Keqiang, to Vietnam on 13-15 October 2013 the two sides agreed to “observe the common perception reached by leaders of the two Parties and States, and stringently implement ‘the agreement on basic principles guiding the settlement of sea issues between Viet Nam and China’.”⁹³ The two sides were also:

“unanimous in efficiently employing the Government-level negotiation mechanism on Viet Nam-China boundary and territory and persistently seeking mutually acceptable fundamental and long-lasting solutions through negotiations and peaceful talks, and actively studying transitional solutions that do not

affect each side's stance and policy, which will include studies and discussions pertaining to cooperation for mutual development.”⁹⁴

Both sides also agreed to “establish a working group in charge of cooperation for mutual development at sea as part of the Governmental Negotiation Team on Viet Nam-China Boundary and Territory.”⁹⁵

In addition it was agreed to “intensify instructions to the existing consultation and negotiation mechanisms, boost the operation of the working group on the waters off the mouth of the Tonkin Gulf and the expert-level working group on cooperation on less sensitive issues at sea.”⁹⁶

At a plenary meeting of the China-Vietnam Governmental Delegation on Border Negotiation held on 6 December in Hanoi. The two sides announced the official establishment of the “China-Vietnam working group for maritime co-development and consultation”.⁹⁷

In early January 2014, the “first round of the Working Group Consultation on China-Vietnam Joint Maritime Development” was held in Beijing.⁹⁸ On 16-17 April the second round of talks was held in Hanoi.⁹⁹ On 19-20 February the fifth round of talks on the “demarcation of areas outside the mouth of” the Gulf of Tonkin was held in Hanoi. During the same days also in Hanoi the fifth round of talks on “cooperation in less sensitive sea issues” was held.¹⁰⁰

As outlined above the second half of 2013 and the first four months of 2014 were characterized by deepened bilateral co-operation and by a then seemingly successful bilateral dispute management approach relating to the disputes in the South China Sea. However, the dispatch by China National Offshore Oil Corporation (CNOOC) of the drilling rig HD-981 for operation in areas to the west of the Paracel archipelago in early May 2014, caused the deepest and longest period of tension between the two countries since the 1990s. The crisis and related tension lasted until mid-July when China announced the withdrawal of the drilling rig from the area of operation.¹⁰¹

China argued that the drilling operation was carried out “totally within waters off China's Xisha islands”, the Chinese name for the Paracel islands. China reiterated its position that the islands are Chinese territory and that there is no dispute related to them. China accused Vietnam of trying to disrupt the drilling operation and demanded that Vietnam cease such activities and withdraws its vessels from the area. In mid-May, China sought to deflect attention to the “anti-

China” riots in south and central Vietnam targeting companies operated by East Asian investors and which resulted in several Chinese casualties. In response to Vietnam’s active attempts to gain international support for its position, China eventually publicized its official stand on the drilling operation and the status of the Xisha islands on June 8.¹⁰²

Vietnam denounced the stationing of the drilling rig as illegal and demanded its withdrawal. In addition Vietnam claimed that the area of operation of the rig was within Vietnam’s EEZ and continental shelf as measured from its coastline. Vietnam also reiterated its sovereignty claim to both the Paracel and Spratly archipelagos. Vietnam further accused China of using force against its ships in the waters near the Paracel archipelago and of arresting Vietnamese fishermen. It also repeatedly requested negotiations and kept up diplomatic pressure on China through bilateral channels as well as by attempts to gain international support for its position not only on the issue of the drilling rig, but also more broadly relating to the status of the Paracel archipelago.¹⁰³

Despite attempts to ease tension the situation remained deadlocked. One key attempt was the visit to Hanoi by China’s top diplomat State Councillor Yang Jiechi in connection with a meeting of the China-Vietnam Steering Committee for Bilateral Cooperation held on June 18, he also met with Vietnamese leaders during his visit.¹⁰⁴

Eventually the crisis was defused when China announced the withdrawal of the drilling rig after the completion of its operation on 16 July.¹⁰⁵ Already the week before official media in China had highlighted that the 6th round of departmental level talks between the two countries on “low-sensitivity areas” at sea had been held in Beijing on 9-10 July.¹⁰⁶ Subsequently China also released Vietnamese fishermen that had been detained in the waters off the Paracels.¹⁰⁷ Vietnam responded positively to China’s announcement of the withdrawal and verified that the rig had been removed.¹⁰⁸ This withdrawal put an end to the incident and related tensions.

When examining the way out of the crisis it can be argued that it had gradually become apparent that a withdrawal of the drilling rig was the only way that could be presented as an acceptable development by both China and Vietnam. Both sides could claim that they achieved their goals, China by highlighting the completion of the drilling operation and Vietnam by claiming that it maintained pressure on China until the rig was eventually withdrawn.¹⁰⁹

The drilling rig crisis and related tension displayed the urgency for China and Vietnam to address all areas of overlapping claims in the South China Sea. There is the lack of mutual agreement on the scope of talks on the South China Sea. Currently only the dispute relating to the Spratly archipelago is on the agenda. China opposes the inclusion of the Paracel archipelago. Vietnam opposes the inclusion of areas to the East of the Vietnamese coast where Vietnam claims to continental shelf and EEZ areas extend beyond the limit of the “nine-dashed lines” claimed by China. The crisis and related tension also indicated that all outstanding issues have to be addressed within the framework of the Sino-Vietnamese approach to managing disputes. If this is not done incidents are likely to re-occur in areas that are not included in the agenda and hence not covered by the approach. The crisis also indicated that the two countries needed to repair their relationship and restore mutual trust.¹¹⁰

Following the end of the crisis the two countries have initiated a process aiming at rebuilding trust, normalising the overall relationship, and addressing the territorial differences. This has been reflected in bilateral interaction highlighted by the meetings between Vietnamese and Chinese leaders as well as through continued expert-level talks. The first step was the dispatch of a Special Envoy to China in late August by the Secretary-General of the CPV.¹¹¹ The Prime Ministers of the countries met on the sidelines of the Asia-Europe Meeting (ASEM) Summit held in Italy in October.¹¹² Also in October Vietnam’s Defence Minister Phung Quang Thanh headed a delegation to visit China for talks with his Chinese counterpart Chang Wanquan.¹¹³ Later the same month the Seventh meeting of the Steering Committee for Bilateral Cooperation was held in Hanoi. Notable in the latter case was that China’s top Diplomat State Councillor Yang Jiechi headed the Chinese delegation.¹¹⁴ In November China’s President met with his Vietnamese counterpart in Beijing. The Vietnamese President was in China to attend the Asia-Pacific Cooperation (APEC) Summit.¹¹⁵ In late December a delegation from the National Committee of the Chinese People’s Political Consultative Conference, headed by its Chairman Yu Zhengsheng, made a “working visit” to Vietnam. Yu met with Vietnam’s top leaders, “maritime issues” and ways to manage them featured prominently in the discussions.¹¹⁶

Expert-level talks have continued. On 9-10 October the third round of talks of the “working group for consultation on China-Viet Nam joint maritime development” was held in Nanning.¹¹⁷ On

10-12 December the sixth round of talks of the working group dealing with the “sea area beyond the mouth of” the Gulf of Tonkin was held in Beijing.¹¹⁸

The active bilateral diplomacy is aimed at re-establishing the co-operative relationship following the drilling rig crisis. The leaderships in both countries strive to build a co-operative and mutually beneficial relationship. However, neither side refrains from officially complaining about actions of the other party in or relating to the South China Sea. Vietnam officially complained about China’s expansion of a runway construction in the Paracels, land reclamation in the Spratlys, and China’s Position Paper on “the Matter of Jurisdiction in the South China Sea Arbitration initiated by the Philippines”.¹¹⁹ China officially complained about Vietnam’s statement relating to China’s position paper.¹²⁰

5.4.2 China-Philippines¹²¹

In August 1995 bilateral talks between China and the Philippines following the Misschief Reef incident resulted in an eight point code of conduct in the Joint Statement of the Republic of Philippines and the People’s Republic of China (RP-PRC) Consultations on the South China Sea and on Other Areas of Cooperation. In 1997 another incident occurred between the two countries relating to Scarborough Shoal. Despite this incident the two countries moved ahead with a bilateral dialogue and consultation relating to maritime issues. This trend prevailed during the major part of the Presidency of Gloria Macapagal-Arroyo (2001-2010).

Following several incidents that caused increased tensions between the two countries in the South China Sea, in particular relating to Scarborough Shoal in 2012, the Philippines “instituted arbitral proceedings” against China on 22 January 2013. This was done under Annex VII to the UNCLOS “with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.”¹²² On 19 February 2013, China presented a Note Verbale to the Philippines through its Embassy in Manila in which China rejected and returned the Philippines’ “Notification”.¹²³ Since China refuses to participate in the arbitral proceedings the initiative of the Philippines has become a unilateral one.

In its “Notification” the Philippines argues that China’s “nine-dashed line” is not supported by the UNCLOS and requests the Arbitral Tribunal to “issue an Award” that declares that “China’s maritime claims in the South China Sea based on its’ so-called ‘nine dash line’ are contrary to

UNCLOS and invalid.”¹²⁴ The Philippines also asks the Arbitral Tribunal to rule on the legal status of some insular features in the South China Sea occupied by China such as Mischief Reef, McKennan Reef, Gaven Reef, Subi Reef, Scarborough Shoal, Johnson South Reef, Cuarteron Reef, and Fiery Cross Reef.¹²⁵ Another request is that the Arbitral Tribunal in the “Award” should require China to “terminate its occupation and activities on Mischief Reef and McKennan Reef”¹²⁶ and to “terminate its occupation and activities on Gaven Reef and Subi Reef”.¹²⁷

Subsequent notable developments relating to the case have been that the first meeting of the Members of the Arbitral Tribunal was held at the Peace Palace in The Hague on 11 July 2013. The Arbitral Tribunal decided that the Permanent Court of Arbitration (PCA) would act as the registry in the proceedings. In the first “Procedural Order” of 27 August 2013, the Arbitral Tribunal formally adopted the Rules of Procedure and fixed 30 March 2014 as the date by which the Philippines should submit its Memorial. The Arbitral Tribunal provided each Party, i.e. China and the Philippines, the opportunity to comment on the draft Rules of Procedure. On 31 July 2013 the Philippines submitted comments on the draft and on 1 August 2013, China addressed a Note Verbale to the PCA in which it reiterated its position that “it does not accept the arbitration initiated by the Philippines” China also stated that it was not participating in the proceedings.¹²⁸ The Philippines filed its Memorial on 30 March 2014, addressing matters relating to the “jurisdiction of the Arbitral Tribunal, the admissibility of the Philippines’ claim, as well as the merits of the dispute.”

In “Procedural Order No. 2”, the Arbitral Tribunal fixed 15 December 2014 as the date for China to submit its “Counter-Memorial responding to the Philippines’ Memorial”. Prior to the adoption of Procedural Order No. 2, the Arbitral Tribunal provided both parties with the opportunity to comment on the scheduling and on a draft of the Order. On 29 May 2014, the Philippines submitted its comments while on 21 May 2014, the PCA received a Note Verbale from China reiterating China’s position that “it does not accept the arbitration initiated by the Philippines” and that the Note Verbale “shall not be regarded as China’s acceptance of or participation in the proceedings.”¹²⁹

In “Procedural Order No. 3”, the Arbitral Tribunal noted that as of 16 December 2014, China had not filed a “Counter-Memorial”. It also noted that China had reiterated that “it will neither accept nor participate in the arbitration unilaterally initiated by the Philippines.” It further noted

that although its members had been furnished with copies of the 7 December 2014 “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines,” China had via communications to the “Registry”, made it “clear that the forwarding of the aforementioned Position Paper shall not be regarded as China’s acceptance of or its participation in the arbitration.”¹³⁰

The Arbitral Tribunal also noted that Article 9 of Annex VII to the UNCLOS provides for proceedings to continue if “one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case.” Furthermore, together with Procedural Order No. 3 the Tribunal issued a “Request for Further Written Argument by the Philippines Pursuant to Article 25(2) of the Rules of Procedure”. The Philippines should address “specific issues relating to both the jurisdiction of the Arbitral Tribunal and to the merits of the Parties’ dispute.” The Philippines shall submit such a written argument by 15 March 2015 while China should provide any comments in response to the supplemental written submission of the Philippines by 16 June 2015.¹³¹

Also notably the Arbitral Tribunal is consulting with the Parties on a “Statement of the Ministry of Foreign Affairs of Viet Nam for the attention of the Tribunal in the Proceedings between the Republic of the Philippines and the People’s Republic of China”. The statement of Vietnam was received on 5 December 2014.¹³²

On 7 December 2014, China official publicised a “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” on the website of Ministry of Foreign Affairs of the People’s Republic of China.¹³³ In addition a summary of the Position Paper was publicised together with remarks made by Mr. Xu Hong, Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs.¹³⁴

Vietnam has not official publicised the text of “Statement of the Ministry of Foreign Affairs of Viet Nam for the attention of the Tribunal in the Proceedings between the Republic of the Philippines and the People’s Republic of China”. However, on 12 December 2014 in response to the question on Vietnam’s position regarding the “South China Sea Arbitration case”, Le Hai Binh, spokesperson of the Ministry of Foreign Affairs affirmed that:

“To protect its legal rights and interests in the East Sea which may be affected in the South China Sea Arbitration case, Viet Nam has expressed its position to the Tribunal regarding this case, and requested the Tribunal to pay due attention to the legal rights and interests of Viet Nam.”¹³⁵

5.4.3 Philippines-Vietnam

In November 1995 bilateral talks between the Philippines and Vietnam resulted in a nine-point code of conduct in the Joint Statement of the Fourth Annual Bilateral Consultations between the Philippines and Vietnam.¹³⁶

The Joint Oceanographic Marine Scientific Expedition in the South China Sea (JOMSRE-SCS) is an initiative that was launched through an agreement in 1994 between the Philippines and Vietnam to co-operate in marine scientific research and environmental protection of the South China Sea. Since 1996 there have been four expeditions: in April 1996, in May 2000, in April 2005, and in April 2007. The participants to the marine research expeditions have been expanded beyond Filipinos and Vietnamese, to include Chinese, American, and Canadian nationals.¹³⁷

5.5 Joint Submission to the Commission on the Limits of the Continental Shelf

On 6 May 2009, Malaysia and Vietnam made a joint submission to the CLCS relating to their extended continental shelves in a defined area in the southern part of the South China Sea.¹³⁸ The Joint Submission by Malaysia and Vietnam constitutes a negotiated agreement between the two countries and this is a positive bilateral effort in conflict management.

Malaysia and Vietnam maintained the position that the joint submission would not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts in the South China Sea. Both China – on 7 May 2009¹³⁹ – and the Philippines – on 4 August 2009¹⁴⁰ – responded with official objections. China considered that the submission infringed upon its sovereignty, sovereign rights and jurisdiction in the South China Sea. Furthermore, China reiterated its claims in the South China Sea and attached a map including the “nine-dashed lines”. The Philippines considered that the joint submission encompasses areas that are disputed since they overlap with that of the Philippines. Furthermore, the Philippines referred to “the controversy arising from the territorial claims on some of the islands in the area including North Borneo”, i.e. the Kalayan Island Group (part of the Spratly archipelago) and the Sabah conflict with Malaysia.¹⁴¹

5.6 Trilateral initiatives

In the Gulf of Thailand the initiation of trilateral talks between Vietnam, Malaysia and Thailand relating to an area of the Gulf of Thailand where the claims of the three countries overlap was made possible through the maritime boundary agreement between Vietnam and Thailand in 1997. Although the parties agree in principle on joint development in the overlapping area, the modalities for such a trilateral scheme has yet to be agreed upon.¹⁴²

On 14 March 2005 the Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea (JSMU) was signed between the national oil companies of China, the Philippines, and Vietnam – CNOOC, Philippines National Oil Company (PNOC), and PETROVIETNAM.¹⁴³ All activities in the Area had to be consulted between the concerned parties. The tripartite agreement related to seismic survey and research in a 143,000-square-kilometer area in the South China Sea, including parts of the disputed Spratly archipelago, for a period of three years up to 2008. The signing of the agreement “would not undermine the basic position held by the Government of each party on the South China Sea issue”. The parties expressed their “resolve to transform the South China Sea into an area of peace, stability, cooperation and development”.¹⁴⁴ The cooperation undertaken by the three national oil companies was within the framework of marine scientific research and it did not include any arrangements relating to the exploitation of resources in the area.

5.7 Regional initiatives

Regional initiatives have centred on ASEAN. In 1992 it adopted the “ASEAN Declaration on the South China Sea”. The Declaration emphasizes the “necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force”. It urges “all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes.”¹⁴⁵

Following the Mischief Reef incident of 1995 between China and the Philippines, The Foreign Ministers of the ASEAN member-states issued a statement – “Recent Developments in the South China Sea” – contending that all parties must apply the principles contained in the TAC¹⁴⁶ as the basis for establishing a code of conduct for the South China Sea for the purpose of creating an atmosphere of security and stability in the region.¹⁴⁷

The initial ASEAN-China dialogue relating to the South China Sea was primarily characterised by the search for mutually agreeable mechanisms to manage the situation in the South China Sea. The two sides set up the “ASEAN-China Working Group on the Regional Code of Conduct on the South China Sea”, which held its first meeting on 15 March 2000, and the issue was also addressed at various levels of the ASEAN-China Dialogue. After reconciling differences between ASEAN and China as well as within ASEAN, the ten member states of ASEAN and China signed the Declaration on the Conduct of the Parties in the South China Sea (DOC) in November 2002.¹⁴⁸ In December 2004 at the first ASEAN-China Senior Officials’ Meeting on the implementation of the DOC it was decided to establish the ASEAN-China Joint Working Group on the Implementation of the DOC (ASEAN-China JWG).¹⁴⁹ In July 2011 ASEAN and China adopted the “Guidelines for the Implementation of the DOC”.¹⁵⁰ There are also on-going discussions within ASEAN as well as between ASEAN and China relating to a possible Code of Conduct (COC) for the South China Sea, which are further positive steps.¹⁵¹

The references made to the South China Sea situation by China’s Prime Minister, Li Keqiang, in his remarks at the 17th ASEAN-China Summit in Nay Pyi Taw on 13 November 2014 are of considerable relevance in the process of implementing the DOC and in formulating a possible COC, as displayed in the following:

“As close neighbors, China and ASEAN countries have extensive common interests. In the meantime, we also have some different concerns and disagreements, which is just natural between neighbors. Though there exist disputes between China and some ASEAN countries regarding the South China Sea, this does not affect overall stability in the South China Sea, and freedom and safety of navigation in the South China Sea is guaranteed. Since the start of this year, our two sides have conducted effective communication and dialogue on the South China Sea issue and reached important and extensive common ground. We put forward a ‘dual-track’ approach, making it clear that specific disputes are to be addressed by countries directly concerned peacefully through negotiation and consultation based on historical facts, international law and the DOC and that peace and security of the South China Sea be jointly upheld by China and ASEAN countries working together. We stressed the need to actively advance practical maritime cooperation and accelerate the establishment of cooperation mechanisms in such areas as joint maritime search and rescue, scientific research, environmental protection and crackdown on transnational crimes. We agreed to engage actively in consultations and, on the basis of consensus-building, conclude a code of conduct (COC) at an early date. China stands ready to work with ASEAN countries to promote full and effective implementation of the DOC and consultation on a COC, so as to effectively boost communication and mutual trust, expand consensus and cooperation and turn the South China Sea into a “sea of peace, friendship and cooperation” for the benefit of people of all countries in the region.”¹⁵²

6 Concluding Analysis

This report has displayed that considerable progress has been made in terms of both formal settlement of disputes and conflict resolution as well as in the broader management of disputes in the South China Sea. This is in particular the case in the Gulf of Tonkin and in the Gulf of Thailand. The settlement of maritime delimitation between two parties clearly is easier than the ones dealing with more than two parties. The settlement of maritime delimitation is also easier when the sovereignty over insular features is clearly defined. Direct negotiation is the preferred model and approach for the Southeast Asian countries even though some cases have been brought to international courts or tribunals.¹⁵³

Efforts have been made to resolve maritime disputes resulting in maritime delimitation agreements. It is notable that negotiated formal settlement of disputes has primarily taken place during two periods of time, first, a decade from the late 1960s to the late 1970s and second, in the post-Cold War Era. During the latter period agreements have been reached between Thailand and Vietnam in 1997, between China and Vietnam in 2000, between Indonesia and Vietnam in 2003, between Brunei and Malaysia in 2009, and between Indonesia and the Philippines in 2014. The ICJ has been invoked for settling two cases of ownership of insular features, i.e. between Indonesia and Malaysia (ruling in 2002) and between Malaysia and Singapore (ruling in 2008).

In terms of management of the un-settled dispute situations, some countries have agreed upon joint development schemes. This has allowed them to shelve the issue of maritime delimitation for the time being to move ahead with the exploration of non-living resources, i.e. between Malaysia and Thailand and between Malaysia and Vietnam, respectively. Such experiences of joint development arrangements in the Gulf of Thailand provide alternative models for joint development arrangements involving more than two parties. Thus far the inconclusive attempt among Thailand, Malaysia, and Vietnam in the Gulf of Thailand indicates the difficulties regarding multilateral attempts at establishing joint development arrangements.

In the South China Sea proper, some relevant bilateral attempts can be noted. The expert-level talks between China and Vietnam relating to the South China Sea situation have been on-going since the mid-1990s. The South China Sea is also on the agenda for Government- and High-level talks between the two countries relating to their bilateral disputes. Other notable bilateral initiatives

were between China and the Philippines leading to the 1995 agreement on bilateral code of conduct between the Philippines and China and between the Philippines and Vietnam leading to a bilateral code of conduct later the same year. In 2009 the joint submission by Malaysia and Vietnam to the CLCS relating to the outer limits of their continental shelves in a defined part of the South China Sea was positive in the context of their bilateral relationship, but it also generated objections from both China and the Philippines. This displays the complexities of the South China Sea situation. Trilaterally the most interesting case thus far was the China-Philippine-Vietnam trilateral seismic survey between 2005 and 2008, which was not renewed due to the domestic situation in one of the parties.

The Philippines' case against China needs to be addressed. As was noted above, since China refuses to participate in the arbitral proceedings the initiative of the Philippines has become a unilateral one. In addition this case displays some differences when compared with the two cases brought to the ICJ, by Indonesia and Malaysia and between Malaysia and Singapore, respectively. First, the legal organ to be addressed in the Philippines' case against China is an Arbitral Tribunal created under Appendix VII of the UNCLOS, not the ICJ as in the other two cases. Second, there is only one party to pursue the proceedings. Third, the Philippines argue that its requests to the Tribunal are not focused on maritime delimitation and not on sovereignty dispute over insular features, while China argues in its Position Paper¹⁵⁴ that the Philippines' requests are in essence focused on such disputes.

From the perspective of dispute management and settlement it is pertinent to make some additional observations about the case. In recent years tension between the Philippines and China in the South China Sea has periodically increased due to incidents and the two sides have encountered difficulties in defusing and managing both incidents and tensions. It appears as though the two sides lack bilateral mechanisms to manage and defuse incidents causing tension. In other words the two parties in practice do not have a dispute management framework or mechanism to implement with regard to their disputes in the South China Sea. Despite this apparent situation the Philippines claims in its "Notification" that it "has complied with the requirements of Article 279 and Article 283(1)" of the UNCLOS "fully and in good faith, and has exhausted possibilities of settlement by negotiations."¹⁵⁵ This raises the question how can "possibilities of settlement by negotiations" have been "exhausted" when the two parties involved have failed to even initiate bilateral mechanisms to

manage incidents and related tension in recent years? After all, to reach any “settlement” parties to a dispute have to negotiate. In addition the Philippines explicitly states in its “Notification” to China of 22 January 2013 that it initiated “arbitral proceedings in furtherance of the friendly relations with China, mindful of its obligations under Article 279 of UNCLOS to seek a peaceful and durable resolution of the dispute in the West Philippine Sea by the means indicated in Article 33 (1) of the Charter of the United Nations.”¹⁵⁶ This seems to contradict that the case is not about a dispute. If the case is not related to disputes between the Philippines and China in the “West Philippine Sea”, i.e. the South China sea, then why does the “Notification” refer to the fact that the Philippines has “exhausted possibilities of settlement by negotiations” with China? By definition a “settlement” has to be related to a dispute.

Efforts have also been attempted at the regional level through the ASEAN-China Dialogue which led to the first regional document on the South China Sea in 2002, i.e. the DOC. It is generally acknowledged that peaceful management of the maritime disputes in the South China Sea is in the common interest of all claimants. The on-going efforts to both fully implement the DOC and to possibly agree on a “COC” are further positive developments.

The role that ASEAN can play and the challenges it faces both internally and in its foreign relations when addressing the South China Sea situation needs to be addressed.¹⁵⁷ In this report the focus will be on the intra-ASEAN dimension since it is often neglected or overlooked. The intra-ASEAN dimension demonstrates that in order to formulate an ASEAN policy toward the South China Sea, the views and interests of the member states with claims in the South China Sea have to be reconciled, i.e., not only the four claimants to all or parts of the Spratly archipelago – Brunei Darussalam, Malaysia, the Philippines, and Vietnam – but also Indonesia which claims maritime zones in the South China Sea. In addition, the views and interests of the five member states with no claims in the South China Sea have to be taken into consideration. Also at the intra-ASEAN level is the question of how the member states perceive China and its policies and actions. This was of particular relevance in the 1990s and again in recent years, when tensions relating to the South China Sea between Vietnam and China and between the Philippines and China, respectively, have caused considerable concern in the region. At the same time, Cambodia, Laos, Myanmar, and Thailand have good relations with China. Different perceptions of and relations with China within the Association complicate the process of formulating a clear-cut ASEAN policy toward China on

the South China Sea. Moreover, recent developments have again displayed how bilateral tensions with China relating to the South China Sea situation – in particular between the Philippines and China – can lead to public differences between member states of ASEAN, namely, between Cambodia and the Philippines in 2012, which had ramifications on ASEAN cohesion. Consequently, a major challenge for ASEAN is how to respond to the periods of tension between its member states and China. In such situations ASEAN solidarity calls for other member states 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 is of great importance both economically and geo-strategically. This dilemma also affects the responses and policies of the Association as a whole.¹⁵⁸

Despite positive developments a number of bilateral disputes remain to be settled. Some multilateral disputes situations are also unsettled and the situation in and around the Spratly archipelago is considered the most serious from a regional perspective. Both bilateral and trilateral efforts as well as regional initiatives such as the ASEAN-China dialogue and the DOC are positive steps in terms of conflict management, but further efforts are needed including the on-going ASEAN-China dialogue on a possible COC. A major lesson from the process leading to the DOC is that ASEAN must first co-ordinate the positions of its member states and then through negotiation with China reach an agreement on a joint COC. In other words the path to a future COC involves two processes: an intra-ASEAN one and an ASEAN external relations one¹⁵⁹

The parties to the disputes in the South China Sea region have been making efforts to implement the principles and provisions provided both in the Charter of the United Nations as well as in the UNCLOS by settling disputes through peaceful means. The formally settled disputes have been achieved through direct negotiations or through international jurisprudence. Dispute management approaches have also been initiated at different levels including at bilateral and at regional levels. These approaches aim to maintain peace and stability, to reduce the risk of incidents causing tension, to manage tension that might occur, and to create conducive conditions for the future peaceful settlement of disputes.

From the perspective of disputes management in the South China Sea a major concern is the period increased in tension between some of the claimants in the South China Sea. As displayed by tension between key claimant states in the South China Sea, i.e. between China and the Philippines and between China and Vietnam, respectively, incidents and associated tension negatively affects

efforts aiming at promoting and implementing dispute management. This indicates that greater efforts have to be made in order to minimise the risk of incidents occurring and to contain tension when incidents do occur. It is also essential that the Sino-Vietnamese approach is further developed and deepened in order to address the full range of disputed issues between the two countries. Between China and the Philippines the lack of institutionalised bilateral mechanisms to contain incidents and related tension is a cause for concern and the two parties ought to actively strive to establish such mechanisms in order to minimise the risk of incidents causing tension and to reduce tension when incidents do occur.

Endnotes

¹ This report draws on previous research on dispute and conflict management within ASEAN with specific reference to border issues. It also draws on research on the South China Sea dispute situation and more specifically studies on the Sino-Vietnamese approach to managing their disputes in the South China Sea. When relevant references are made to publications of the author both single- and co-authored studies.

² For more extensive discussions relating to conflict management see: C.R. Mitchell, *The Structure of International Conflict* (London: Macmillan, 1981), pp. 253–279, and Kamarulzaman Askandar, “ASEAN and Conflict Management: The Formative Years of 1967-1976”, *Pacifica Review*, Vol. 6, No. 2 (1994), pp. 59–62 (hereafter Askandar, *ASEAN and Conflict Management*).

³ For studies on ASEAN and conflict management see among others: Ramses Amer, “Conflict Management and Constructive Engagement in the Expansion of the Association of South-East Asian Nations”, in *The Political Economy of Regions and Regionalisms*, edited by Morten Boås, Marianne H. Marchand, and Timothy M. Shaw (Houndmills, Basingstoke, Hampshire and New York, NY: Palgrave Macmillan, 2005), pp. 90–107, Ramses Amer, “The Association of Southeast Asian Nations’ (ASEAN) Conflict Management Approach Revisited: Will the Charter Reinforce ASEAN’s Role?”, *Austrian Journal of South-East Asian Studies*, Vol. 2, No. 2 (December 2009), pp. 6–27, Ramses Amer, “The Conflict Management Framework of the Association of Southeast Asian Nations (ASEAN)”, in *Conflict Management and Dispute Settlement in East Asia*, edited by Ramses Amer and Keyuan Zou (Farnham, Surrey and Burlington, VT: Ashgate, 2011), pp. 39–62 (hereafter Amer, *The Conflict Management Framework*), Askandar, *ASEAN and Conflict Management*, pp. 59–62, Kamarulzaman Askandar, Jacob Berkovitch, and Mikio Oishi, “The ASEAN Way of Conflict Management: Old Patterns and New Trends”, *Asian Journal of Political Science*, Vol. 10, No. 2 (December 2002), pp. 21–42, and Mely Caballero-Anthony, “Mechanisms for Dispute Settlement: The ASEAN Experience”, *Contemporary Southeast Asia*, Vol. 21, No. 1 (April 1998), pp. 38–66.

⁴ For a recent survey of the relevant provisions and their interpretations including the scholarly debates see Ramses Amer and Li Jianwei, “Dispute Settlement in Practice – Assessing Progress and Challenges in the South China Sea Region,” in *30 years of the United Nations Convention on the Law of the Sea (1982-2012): Progress and Prospects*, edited by Guifang (Julia) Xue and Ashley White (Beijing: China University of Political Science and Law Press, 2013), pp. 259–271 (hereafter Amer and Li, *Dispute Settlement in Practice*).

⁵ “Charter of the United Nations”, from the website of the *United Nations* (<http://www.un.org/en/documents/charter/chapter1.shtml>) (accessed on 19 March 2012) (hereafter *The United Nations Charter*)

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ References to the discussions about Article 2(4) can be found in: Belatchew Asrat, *Prohibition of Force Under the UN Charter: A Study of Art. 2 (4)*, Studies in International Law, Vol. 10, Uppsala University, Swedish Institute of International Law (Uppsala: IUSTUS förlag, 1991), pp. 38–40 and 199–200, D. W. Bowett, “Collective Self-Defence Under the Charter of the United Nations”, *British Yearbook of International Law*, Vol. XXXII (1955-1956), 131, and Ian Brownlie, “The Use of Force in Self-Defence”, *British Yearbook of International Law*, Vol. XXXVII (1962), pp. 223–233. The continued relevance of the study of the legal regulations of the use of force in international law can be seen from more recent studies such as: Ian Brownlie, “International Law and the Use of Force by States Revisited”, *The Australian Year Book of International Law*, Vol. 21 (2001), pp. 21–37, Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester: Manchester University Press, 2005), Mary Ellen O’Connell, *International Law and the “Global War on Terror”*, Cours et travaux, Tome 10, Université Panthéon-Assas (Paris II), Institute des hautes études internationales de Paris (Paris: Editions A. Pedone, 2007), and Christian Henderson, *The Persistent Advocate and the Use of Force. The Impact of the United States upon the Jus ad Bellum in the Post-Cold War Era*, The Ashgate International Law Series (Farnham and Burlington: Ashgate, 2010), pp. 9–13. For summaries of the scholarly debate relating both specifically to Article 2(4) and more broadly to the regulation of the use of force in inter-state relations see Ramses Amer, “The United Nations’ Reactions to Foreign Military Interventions”, *Journal of Peace Research*, Vol. 31, No. 4 (November 1994), pp. 428–430, Ramses Amer, *The United Nations’ Reactions to Foreign Military Interventions – A Comparative case Study Analysis*, Umeå Working Papers in Peace and Conflict Studies, No. 2 (Umeå: Department of Political Science, Umeå University, 2007), pp. 5–7, and Patrik Johansson and Ramses Amer, “From Condemnation to Legitimization of Outcome: The United Nations and the Use of Force in Inter-State Relations”, in *The Democratization Project: Opportunities and Challenges*, edited by Ashok Swain, Ramses Amer and Joakim Öjendal (London and New York, NY: Anthem Press, 2009), pp. 40–43.

¹⁰ Studies on the UNCLOS with specific reference to dispute settlement include: Jonathan I. Charney, “The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea”, *American Journal of International Law*, Vol. 90, No. 1 (January 1996), pp. 69–75, Alan E. Boyle, “Dispute Settlement and The Law of the Sea Convention: Problems of Fragmentation and Jurisdiction”, *International and Comparative Law Quarterly*, Vol. 46, No. 1 (January 1997), pp. 34–54, ED Brown, “Dispute Settlement and the Law of the Sea: the UN Convention Regime”, *Marine Policy*, Vol. 21, No. 1 (January 1997), pp. 17–43, Rosemary Rayfuse, “The Future of Compulsory Dispute Settlement under the Law of the Sea Convention”, *Victoria University of Wellington Law Review*, Vol. 36, No 4 (2005), pp. 683–711, Christine M. Chinkin, “Dispute Resolution and the Law of the Sea”, in *The*

Law of the Sea in the Asian Pacific Region, edited by James Crawford and Donald Rothwell, (Dordrecht: Martinus Nijhoff, 1995), pp. 237–262, and Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (Cambridge: Cambridge University Press, 2005).

¹¹ For studies on ASEAN and conflict management see among others those listed in note 3.

¹² For an overview see Amer, *The Conflict Management Framework*, pp. 39–62,

¹³ Zou Keyuan, *China-ASEAN Relations and International Law* (Oxford and Cambridge: Chandos Publishing, An imprint of Woodhead Publishing Limited, 2009), p. 25.

¹⁴ Article 2(7) reads as follows: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” (*Charter of the United Nations*)

¹⁵ For an analysis of China’s foreign policy in relations to both the principle of non-interference and the prohibition of the use of force see Ramses Amer, “Non-Use of Force, Non-Interference and Security: The Case of Pacific Asia”, in *The Security-Development Nexus: Peace, Conflict and Development*, edited by Ramses Amer, Ashok Swain and Joakim Öjendal (London and New York: Anthem Press, 2012), pp. 98–99 and 104–106.

¹⁶ For a more detailed discussion see Ramses Amer, “The Dispute Management Approach of the Association of Southeast Asian Nations (ASEAN): What Relevance for the South China Sea Situation?”, in *Non-Traditional Security Issues and the South China Sea: Shaping a New Framework for Cooperation*, edited by Shicun Wu and Keyuan Zou (Farnham and Burlington: Ashgate, 2014), pp. 47–72 (hereafter Amer, *The Dispute Management Approach of the Association of Southeast Asian Nations*).

¹⁷ China’s accession to the TAC took place on 8 October 2003 see “Joint Communiqué of the 37th ASEAN Ministerial Meeting Jakarta, 29-30 June 2004”, from the website of the *Association of Southeast Asian Nations* (<http://www.asean.org/communities/asean-political-security-community/item/joint-communicue-of-the-37th-asean-ministerial-meeting-jakarta-29-30-june-2004-2>) (accessed on 20 September 2014).

¹⁸ Although Chinese Taipei/Taiwan is a major claimant in the South China Sea it is not included in this list given its international status and also given the fact that all other coastal states of the South China Sea adhere to the one-China policy, i.e. that Taiwan is a province of China.

¹⁹ The list of “Negotiated agreements” is partly derived from Amer and Li, *Dispute Settlement in Practice*, pp. 272–273, and from Ramses Amer, “Dispute Settlement and Conflict Management in the South China Sea – Assessing Progress and Challenges”, in *The South China Sea: Towards A Region of Peace, Security and Cooperation*, edited by Tran Truong Thuy (Hanoi: The Gioi Publishers and Diplomatic Academy of Vietnam, 2011), pp. 246–249 (hereafter Amer, *Dispute Settlement*). Negotiated agreements are also addressed without a specific list in Li Jianwei and Ramses Amer, “Recent Practices in Dispute

Management in the South China Sea”, in *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*, edited by Clive Schofield, Special Report, No. 37 (February 2012) (Seattle, WA: National Bureau of Asian Research), pp. 83–85 (hereafter Li and Amer, *Recent Practices*). The list of “Negotiated agreements” in this report is more extensive as it includes all negotiated agreements by coastal states of the South China Sea proper, of the Gulf of Thailand, of the Gulf of Tonkin, and of the Sulu Sea.

²⁰ “Agreement between the Government of Malaysia and the Government of Indonesia on the delimitation of the continental shelves between the two countries, 27 October 1969”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MYS-IDN1969C.S.PDF>) (accessed on 8 July 2010). See also text reproduced in Vivian Louis Forbes, *Indonesia’s Delimited Maritime Boundaries* (Berlin and Heidelberg: Springer-Verlag, 2014), pp. 183–185 (hereafter Forbes, *Indonesia’s Delimited*).

²¹ “Treaty between the Republic of Indonesia and Malaysia on Delimitation of Boundary Lines of Territorial Waters of the Two Nations at the Strait of Malacca”, from the website of the *U.S. Department of State* (<http://www.state.gov/documents/organization/61516.pdf>) (accessed on 8 July 2010). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 185–186.

²² “Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries (18 May 1971)”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1971S.B.pdf>) (accessed on 22 December 2014). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 187–189.

²³ “Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, Supplementary to the Agreement of 18 May 1971 (9 October 1972)”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1972T.A.pdf>) (accessed on 22 December 2014). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 193–196.

²⁴ “Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesia Province of East Timor and Northern Australia”, see text reproduced in Forbes, *Indonesia’s Delimited*, pp. 217–238.

²⁵ “Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an exclusive economic zone boundary and certain seabed boundaries, 14 March 1977”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1997E>

EZ.pdf) (accessed on 22 December 2014). See also text reproduced in Forbes, *Indonesia's Delimited*, pp. 239–251.

²⁶ “Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia relating to the Continental Shelf Boundary between the two Countries in the Northern Part of the Straits of Malacca and in the Andaman Sea 17 December 1971”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IDN1971CS.PDF>) (accessed on 28 September 2010), and “Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia relating to the Delimitation of the Seabed Boundary between the two Countries in the Andaman Sea 11 December 1975”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IDN1975SB.PDF>) (accessed on 29 March 2012). See also texts reproduced in Forbes, *Indonesia's Delimited*, pp. 190–191 and 204–205.

²⁷ “Agreement between the Government of the Republic of Indonesia, the Government of Malaysia and the Government of the Kingdom of Thailand relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Straits of Malacca”, from the website of the *U.S. Department of State* (<http://www.state.gov/documents/organization/59574.pdf>) (accessed on 8 July 2010). See also text reproduced in Forbes, *Indonesia's Delimited*, pp. 191–192.

²⁸ “Agreement concerning certain boundaries between Papua New Guinea and Indonesia (with chart). Signed at Jakarta 12 February 1973”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1973PNG.pdf>) (accessed on 22 December 2014). See also see text under the title “Agreement between Australia and Indonesia Concerning Certain Boundaries between Papua New Guinea and Indonesia” reproduced in Forbes, *Indonesia's Delimited*, pp. 197–200.

²⁹ “Agreement between the Government of Indonesia and the Government of Papua New Guinea Concerning the Maritime Boundary between the Republic of Indonesia and Papua New Guinea and Cooperation on Related Matters”, see text reproduced in Forbes, *Indonesia's Delimited*, pp. 210–212.

³⁰ “Delimitation of the Territorial Seas of Singapore and Indonesia in the Strait of Singapore. 25 May 1973”, *Law of the Sea Bulletin*, No. 68 (2008), pp. 17–19, from the website of the *United Nations* (http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin68e.pdf) (accessed on 8 July 2010). See also “Treaty between the Republic of Indonesia and the Republic of Singapore relating to the delimitation of the territorial seas of the two countries in the Strait of Singapore, 25 May 1973” from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/SGP.htm>) (accessed on 31 October 2013). See also text reproduced in Forbes, *Indonesia's Delimited*, pp. 200–201.

³¹ “Treaty between the Republic of Indonesia and the Republic of Singapore relating to the Delimitation of the Territorial Seas of the two countries in the Western Part of the Strait of Singapore”. Original texts in both Bahasa Indonesia and English, respectively, have been reproduced in Forbes, *Indonesia’s Delimited*, pp. 256–259.

³² “Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia on the Relating to the Delimitation of the Continental Shelf Boundary between the Two Countries 8 August 1974”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IND-IDN1974C.S.PDF>) (accessed on 12 December 2014). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 201–202.

³³ “Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia on the Extension of the 1974 Continental Shelf Boundary between the two Countries in the Andaman Sea and the Indian Ocean 14 January 1977”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IND-IDN1977C.S.PDF>) (accessed on 12 December 2014). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 205–207.

³⁴ “Agreement between the Government of the Kingdom of Thailand and the Government of the Republic of India on the Delimitation of Seabed Boundary between the two Countries in the Andaman Sea 22 June 1978”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IND1978S.B.PDF>) (accessed on 12 December 2014).

³⁵ “Agreement between the Government of the Kingdom of Thailand, the Government of the Republic of India and the Government of the Republic of Indonesia concerning the Determination of the Trijunction Point and the Delimitation of the Related Boundaries of the three Countries in the Andaman Sea 22 June 1978”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IND-IDN1978TP.PDF>) (accessed 29 March 2012). See also text reproduced in Forbes, *Indonesia’s Delimited*, pp. 207–210.

³⁶ “Treaty between the Kingdom of Thailand and Malaysia relating to the Delimitation of the Territorial Seas of the two Countries 24 October 1979”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979.TS.PDF>) (accessed on 8 July 2010). It appears as though 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 see “Figure 16. Maritime Boundaries in the Andaman Sea”, in Kriangsak Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia* (Singapore,

Oxford and New York, NY: Oxford University Press, 1987), p. 98 (hereafter Kittichaisaree, *The Law of the Sea*).

³⁷ “Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Delimitation of the Continental Shelf Boundary between the Two Countries in the Gulf of Thailand 24 October 1979”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979CS.PDF>) (accessed on 8 July 2010).

³⁸ “Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of the Union of Burma on the Delimitation of the Maritime Boundary between the two Countries in the Andaman Sea 25 July 1980”, from the website of the United Nations (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MMR1980MB.PDF>) (accessed on 22 December 2014). See also Kittichaisaree, *The Law of the Sea*, pp. 47–48, 52 and 74–75. The text of the agreement has been reproduced as “Appendix 4” in *Ibid.*, pp. 184–185. See also “Burma (Myanmar)-Thailand (1980)”, in *International Maritime Boundaries Volume II*, edited by Jonathan I. Charney and Lewis M. Alexander, (Dordrecht, Boston, MA and London: Martinus Nijhoff Publishers and the American Society of International Law, 1993), pp. 1341–1352.

³⁹ For the full text of the Agreement of 7 July 1982 see *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East, 7074 A3/7–8* (10 July 1982) (hereafter *BBC/SWB/FE*). The text of the Agreement has also been re-produced in an English language version as “Appendix 2” in Kittichaisaree, *The Law of the Sea*, pp. 180–181, and in Ted L. McDorman, “Cambodia-Vietnam”, in *International Maritime Boundaries, Vol. III*, edited by Jonathan I. Charney and Lewis M. Alexander (The Hague: Martinus Nijhoff, 1998), pp. 2364–2365 (hereafter Charney and Alexander, *Maritime Boundaries Vol. III*). In this context it can be noted that the “full text” of the Agreement transmitted by the official Cambodian news agency (SPK) on 8 July 1982 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 Vietnam News Agency and reproduced in Kittichaisaree’s study (*BBC/SWB/FE/7074 A3/8, 7076 A3/7* (13 July 1982), and Kittichaisaree, *The Law of the Sea*, pp. 180–181).

⁴⁰ *BBC/SWBFE/7393 A3/1* (23 July 1983). See also Quang Nghia, “Vietnam-Kampuchea Border Issue Settled”, *Vietnam Courier*, No. 4 (1986), pp. 8–9 (hereafter Quang, *Vietnam-Kampuchea Border*)

⁴¹ For reports from Vietnam and the PRK announcing the signing of the Treaty and for details see *BBC/SWB/FE/8143 A3/1–3* (30 December 1985). See also Quang, *Vietnam-Kampuchea Border*, pp. 8–9.

⁴² Nguyen Hong Thao, “Vietnam’s First Maritime Boundary Agreement”, *Boundary and Security Bulletin*, Vol. 5, No. 3 (1997), p. 77.

⁴³ “PM Khai holds talks with Cambodian counterpart” (11 October 2005), from the website of *Viet Nam Ministry of Foreign Affairs*

(<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051011140825>) (accessed on 6 January 2015), and “Vietnam - Cambodia joint statement” (11 October 2005), from the website of *Viet Nam Ministry of foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051011150047>) (accessed on 6 January 2015).

⁴⁴ “Viet Nam-Cambodia land border marker inaugurated” (24 June 2013), from the website of *Viet Nam Ministry of foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns120624224926>) (accessed on 31 October 2013).

⁴⁵ “Agreement between the Government of the Union of Myanmar, the Government of the Republic of India and the Government of the Kingdom of Thailand on the determination of the trijunction point between the three countries in the Andaman Sea 27 October 1993”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MMR-IND-THA1993DT.PDF>) (accessed on 29 March 2012).

⁴⁶ “Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Viet Nam on the delimitation of the maritime boundary between the two countries in the Gulf of Thailand, 9 August 1997”, from the website of the *United Nations* (<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-VNM1997MB.PDF>) (accessed on 3 October 2010). “PM Khai holds talks with Cambodian counterpart” (11 October 2005), from the website of *Viet Nam Ministry of foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051011140825>) (accessed on 6 January 2015), and “Vietnam - Cambodia joint statement” (11 October 2005), from the website of *Viet Nam Ministry of foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051011150047>) (accessed on 6 January 2015).

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⁵⁴ In order for the maritime delimitation agreement to be ratified the two countries needed to complete talks on a Supplementary protocol to the *Agreement on Fishing Cooperation in the Gulf of Tonkin* signed on 25 December 2000. The agreement on the Supplementary protocol was eventually signed in Beijing on 29 April 2004. Following a ratification process it entered into force on 30 June 2004. For details see Ramses Amer and Nguyen Hong Thao, “The Management of Vietnam’s Border Disputes: What Impact on Its Sovereignty and Regional Integration?”, *Contemporary Southeast Asia*, Vol. 27, No. 3 (December 2005), pp. 442-443, and Li and Amer, *Recent Practices*, pp. 94–95. The text of the Agreement on Fishery Cooperation has been reproduced in Nguyen, *Maritime Delimitation*, pp. 35–41.

⁵⁵ For a detailed analysis see Nguyen, *Vietnam and Maritime*, pp. 173–174 and 181–182. The agreement is also analysed in Forbes, *Indonesia’s Delimited*, pp. 59–62.

⁵⁶ For an analysis of the agreement see Arif Havas Oegroseno, “How Indonesia and the Philippines Solved Their Maritime Dispute” (14 June 2014), from the website of *The Diplomat* (<http://thediplomat.com/2014/06/how-indonesia-and-the-philippines-solved-their-maritime-dispute/>) (accessed on 6 October 2014).

⁵⁷ “Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia /Malaysia), Judgment of 17 December 2002, General List No. 102”, from the website of the *International Court of Justice* (<http://www.icj-cij.org/docket/files/102/7714.pdf>) (accessed on 22 October 2008) (hereafter *Case concerning Pulau Ligitan*).

⁵⁸ *Ibid.*, para. 149–150.

⁵⁹ “Case concerning sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment of 23 May 2008, General List No. 130”, from the website of the *International Court of Justice* (<http://www.icj-cij.org/docket/files/130/14492.pdf>) (accessed on 22 October 2008) (hereafter *Case concerning Pedra Branca*).

⁶⁰ *Ibid.*, para. 276.

⁶¹ *Ibid.*, para. 290.

⁶² *Ibid.*, para. 299.

⁶³ For a more detailed analysis see Nguyen Hong Thao and Ramses Amer, “A New Legal Arrangement For the South China Sea?”, *Ocean Development and International Law*, Vol. 40, No 4 (2009), pp. 341–342 (hereafter Nguyen and Amer, *A New Legal Arrangement*).

⁶⁴ *Case concerning Pulau Ligitan*.

⁶⁵ *Case concerning Pedra Branca*.

⁶⁶ *Case concerning Pulau Ligitan*, para. 149.

⁶⁷ *Ibid.*, para. 147–148.

⁶⁸ *Case concerning Pedra Branca*, para. 276.

⁶⁹ *Ibid.*, para. 290.

⁷⁰ *Ibid.*, para. 299.

⁷¹ Amer, *Dispute Settlement*, pp. 247–248.

⁷² During the 1990s there were periods of deep tension relating to the border issues between Cambodia and Vietnam. For details on the on-going talks and the periods of tension, see Ramses Amer, “The Border Conflicts Between Cambodia and Vietnam”, *Boundary and Security Bulletin*, Vol. 5, No. 2 (Summer 1997), pp. 80–91, Ramses Amer, “Expanding ASEAN’s Conflict Management Framework in Southeast Asia: The Border Dispute Dimension”, *Asian Journal of Political Science*, Vol. 6, No. 2 (December 1998), pp. 47–48. See also Ramses Amer, “Cambodia and Vietnam: A Troubled Relationship”, in *International Relations in Southeast Asia: Between Bilateralism and Multilateralism*, edited by N. Ganesan and Ramses Amer (Singapore: Institute of Southeast Asian Studies, 2010), pp. 99–101 and 104–107.

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⁷⁴ Victor Prescott, *The Gulf of Thailand* (Kuala Lumpur: Maritime Institute of Malaysia (MIMA), 1998) (hereafter Prescott, *The Gulf of Thailand*), and Clive Schofield, “Unlocking the Seabed Resources of the Gulf of Thailand”, *Contemporary Southeast Asia*, Vol. 29, No. 2 (August 2007), pp. 301–303 (hereafter Schofield, *Unlocking the Seabed*).

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⁷⁶ For a detailed overview of the extent and the basis of China’s claims in the South China Sea see Shicun Wu, *Solving Disputes for Regional Cooperation and Development in the South China Sea. A Chinese Perspective* (Oxford: Chandos, 2013), pp. 15–83.

⁷⁷ “Note from the Permanent Mission of the People’s Republic of China to the Secretary-General of the United Nations, 7 May 2009, CML/17/2009”, Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the

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⁷⁸ See note 77.

⁷⁹ See note 77.

⁸⁰ See for example Zhiguo Gao and Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications”, *The American Journal of International Law*, Vol. 107, No. 1 (January 2013), pp. 98–124, Masahiro Miyoshi, “China’s “U-Shaped Line” Claim in the South China Sea: Any Validity Under International Law?”, *Ocean Development and International Law*, Vol. 41, No. 1 (2012), pp. 1–17, Zou Keyuan, “China’s U-Shaped Line in the South China Sea Revisited”, *Ocean Development and International Law*, Vol. 41, No. 1 (2012), pp. 18–34, Nguyen-Dang Thang and Nguyen Hong Thao, “China’s Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes Between the Philippines and China”, *Ocean Development and International Law*, Vol. 41, No. 1 (2012), pp. 35–56, Michael Sheng-Ti Gau “The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea”, *Ocean Development and International Law*, Vol. 41, No. 1 (2012), pp. 57–69, and Li Jinming and Li Dexia, “The Dotted Line on the Chinese Map of the South China Sea: A Note”, *Ocean Development and International Law*, Vol. 31, Nos. 3-4 (2003), pp. 287–295.

⁸¹ The overview over “Dispute situations” is updated from Amer and Li, *Dispute Settlement in Practice*, pp. 279–280, from Amer, *Dispute Settlement*, pp. 256–257, and from Li and Amer, *Recent Practices*, pp. 82–83. For disputes situation involving China as well as China’s claims in the South China Sea see Ramses Amer, “China and the South China Sea: How to Manage Maritime Crisis?”, *STRATEGY 21* (Journal of Maritime Security of the Korea Institute for Maritime Strategy), Vol. 17, No. 1 (Summer 2014), pp. 223–225.

⁸² For an overview of the maritime conflicts and co-operative agreements in the Gulf of Thailand see Prescott, *The Gulf of Thailand*. The area is currently included in the joint development arrangement between Malaysia and Thailand but is recognised by the two countries as claimed by Vietnam.

⁸³ Mark J. Valencia, *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), 1991), pp. 54–66, 80–85 and 136–137 (hereafter Valencia, *Malaysia and the Law of the Sea*).

⁸⁴ On the “Sabah claim” see Ramses Amer, “Sabah claim”, in *Southeast Asia A Historical Encyclopedia, From Angkor Wat to East Timor, Vol. III: R-Z*, edited by Ooi Keat Gin (Santa Barbara, CA, Denver, CO, and London: ABC-CLIO, 2004), pp. 1163–1164.

⁸⁵ Valencia, *Malaysia and the Law of the Sea*, pp. 46–48, 80–84 and 135.

⁸⁶ *Ibid.*, pp. 31–35, 37, and 136.

⁸⁷ “Malaysia-Thailand (Gulf of Thailand Continental Shelf) (1979)”, in *International Maritime Boundaries Volume I*, edited by Jonathan I. Charney and Lewis M. Alexander (Dordrecht, Boston, MA and London: Martinus Nijhoff Publishers and the American Society of International Law, 1993), pp. 1111–1123. In this source this Agreement is presented as Annex III to the Memorandum on the delimitation of the continental shelf. See also See also Kittichaisaree, *The Law of the Sea*, pp. 100–103 and 189–194, David Ong, “Thailand/Malaysia”, *International Journal of Estuarine and Coastal Law*, Vol. 6, No. 1 (1991), pp. 57–72, and David M. Ong, “The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?”, *The International of Marine and Coastal Law*, Vol. 14, No. 2 (1999), pp. 207–246.

⁸⁸ Text of the Agreement is reproduced in Ted L. McDorman, “Malaysia-Vietnam”, in Charney and Alexander, *Maritime Boundaries Vol. III*, pp. 2341–2344. See also Nguyen Hong Thao, *Joint Development*, pp. 79–88, and Nguyen Hong Thao, “Les delimitations maritimes concernant le Vietnam: accords conclus et negociations en cours” [The Maritime Delimitations Relating to Vietnam: Agreements Reached and On-going Negotiations], in *Le Vietnam et la mer* [Vietnam and the Sea], ouvrage coordonne par Monique Chemillier-Gendreau (Travaux du colloque organise les 16 et 17 juin 2000 par l’Association d’Amitie Franco-Vietnamienne) (Paris: Les Indes Savantes, 2002), pp. 53–56.

⁸⁹ Nguyen, *Joint Development*, p. 83, and Schofield, *Unlocking the Seabed*, p. 299.

⁹⁰ For details on the Sino-Vietnam approach see Ramses Amer, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, Maritime Briefing, Vol. 3, No. 5 (Durham: International Boundaries Research Unit, University of Durham, 2002), and Ramses Amer, “Sino-Vietnamese Border Disputes”, in *Beijing’s Power and China’s Borders: Twenty Neighbors in Asia*, edited by Bruce Elleman, Stephen Kotkin and Clive Schofield (Armonk, New York and London: M.E. Sharpe, 2012), pp. 295–309. For recent developments see Ramses Amer, “China, Vietnam and the South China Sea: Disputes and Dispute Management”, *Ocean Development & International Law*, Vol. 45, No. 1 (2014), pp. 17–40 (hereafter Amer, *China, Vietnam and the South China Sea*), and Ramses Amer and Li Jianwei, “Recent Developments in the South China Sea – An Assessment of the Core Bilateral Relationship Between China and Vietnam”, in *Maritime Security Issues in the South China Sea and the Arctic: Sharpened Competition or Collaboration?*, edited by Gordon Houlden and Nong Hong (Beijing: China Democracy and Legal System Publishing House, 2012), pp. 41–75. See also relevant parts of Ramses Amer and Li Jianwei, “Recent Developments in the South China Sea – Assessing the China-Vietnam and China-Philippines Relationships”, in *Recent Developments in the South China Sea Dispute. The Prospect*

of a Joint Development Regime, edited by Shicun Wu and Nong Hong (London and New York, NY: Routledge, 2014), pp. 29–48 (hereafter Amer and Li, *Recent Developments – Assessing*), and relevant parts of Li Jianwei, *Managing Tensions in the South China Sea: Comparing the China-Philippines and the China-Vietnam Approaches*, RSIS Working Paper, No. 273 (2014) (Singapore: S. Rajaratnam School of International Studies, Nanyang Technological University) (hereafter Li, *Managing Tensions in the South China Sea*).

⁹¹ For details relating to the three first round of talks see Amer, *China, Vietnam and the South China Sea*, pp. 26–27. For the fourth round see “Viet Nam, China discuss Tonkin Gulf issues” (11 October 2013), from the website of *Viet Nam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns131011162657>) (accessed on 28 December 2014).

⁹² For details relating to the three first round of talks see Amer, *China, Vietnam and the South China Sea*, p. 27. For the fourth round see “Viet Nam, China talk cooperation on less sensitive fields at sea” (27 September 2014), from the website of *Viet Nam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns130927155020>) (accessed on 13 April 2014).

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⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ “China and Vietnam Held Plenary Meeting of the Governmental Delegation on Border Negotiation” (7 December 2013), from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2792_663578/2794_663582/t1108277.shtml) (accessed on 28 December 2014), and “Vietnam, China officials talk border, territory issues” (7 December 2013), from the website of *Nhan Dan* (<http://en.nhandan.org.vn/politics/external-relations/item/2187402-vietnam-china-officials-talk-border-territory-issues.html>) (accessed on 28 December 2014).

⁹⁸ “Vice Foreign Minister Liu Zhenmin Meets with the Vietnamese Delegation Attending the First Round of Consultation on China-Vietnam Joint Maritime Development” (9 January 2014), from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2792_663578/2794_663582/t1119588.shtml) (accessed on 13 April 2014).

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(http://news.xinhuanet.com/english/china/2014-04/17/c_133270717.htm) (accessed on 28 December 2014).

¹⁰⁰ “Viet Nam, China discuss Tonkin Gulf, sea issues” (21 February 2014), from the website of *Viet Nam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns140221210530>) (accessed on 28 December 2014), and “Vietnam, China discuss Tonkin Gulf, sea issues” (20 February 2014), from the website of *Nhan Dan* (<http://en.nhandan.org.vn/politics/external-relations/item/2322302-vietnam-china-discuss-tonkin-gulf-sea-issues.html>) (accessed on 13 April 2014).

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¹¹⁸ “Vietnam, China hold sixth round of talks on sea area off Gulf of Tonkin” (12 December 2014), from the website of *Nhan Dan* (<http://en.nhandan.org.vn/politics/external-relations/item/3003002-vietnam-china-hold-sixth-round-of-talks-on-sea-area-off-gulf-of-tonkin.html>) (accessed on 28 December 2014).

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¹²⁵ *Ibid.*, p. 17.

¹²⁶ *Ibid.*, p. 17.

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¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” (7 December 2014), from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2762_663528/2763_663530/t1217147.shtml) (accessed on 28 December 2014) (hereafter *Position Paper*).

¹³⁴ “Summary of the Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” (7 December 2014), from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2762_663528/2763_663530/t1217149.shtml) (accessed on 28 December 2014), and “Remarks by Mr. Xu Hong, Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs, on the Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” (7 December 2014), from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2762_663528/2765_663534/t1217150.shtml) (accessed on 28 December 2014).

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¹⁵⁴ *Position Paper*.

¹⁵⁵ “IV. JURISDICTION OF THE TRIBUNAL”, in *Notification and Statement of Claims*, pp. 14–15.

¹⁵⁶ See the “Cover Letter” to the *Notification and Statement of Claims*.

¹⁵⁷ For a detailed analysis of the possible relevance of ASEAN dispute management approach for the South China Sea situation see Amer, *The Dispute Management Approach of the Association of Southeast Asian Nations*, pp. 42–72. See also discussions in Amer, *The South China Sea: Challenge for ASEAN*, and Amer and Li, *ASEAN, China*.

¹⁵⁸ See discussions in relevant parts of *The Dispute Management Approach of the Association of Southeast Asian Nations*, pp. 42–72. See also discussions in Amer, *The South China Sea: Challenge for ASEAN*, and Amer and Li, *ASEAN, China*.

¹⁵⁹ This line of argumentation draws from the one in Amer, *The South China Sea: Challenge for ASEAN*, p. 2.