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## **The South China Sea: Constraints to Marine Regionalism**

**by Mark J. Valencia**

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# THE SOUTH CHINA SEA: CONSTRAINTS TO MARINE REGIONALISM

Mark J. VALENCIA

## INTRODUCTION

If all littoral nations of the South China Sea<sup>1</sup> extend their marine jurisdiction, the entire sea would become a mosaic of national control. For exclusive economic zones (EEZs) reaching to 200nm from national base lines, this control would comprise sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources whether living or non-living, of the seabed and subsoil and the superjacent waters, and jurisdiction with regard to marine scientific research and the preservation of the marine environment.<sup>2</sup> The rights of other states in a coastal state's EEZ will generally be limited to freedom of navigation and overflight and the laying of submarine cables and pipelines.<sup>3</sup>

However, extended national jurisdiction will not alter the facts that: 1) marine resources are often transnational in distribution; 2) the ocean, as a continuous fluid system, transmits environmental pollutants and impacts, and 3) maritime activities transcend the projected national marine jurisdictional boundaries.

The Informal Composite Negotiating Text (Revision 1) of the United Nations Conference on the Law of the Sea provides that states bordering

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1 For the purposes of this paper, the South China Sea is considered to extend from a southwestern boundary along the 3°00S parallel between Kalimantan and Sumatra, northeast to an imaginary line connecting the northern tip of Taiwan to the coast of Fukien, China.

2 United Nations Third Conference on the Law of the Sea, Eighth Session, Geneva, 19 March to 27 April 1979, Informal Composite Negotiating Text (Revision 1), (ICNT, Rev. 1), Article 56 (Rights, Jurisdiction and Duties of the Coastal States in the Exclusive Economic Zone)

3 *Ibid.*, Article 58 (Rights and Duties of Other States in the Exclusive Economic Zone)

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semi-enclosed seas should co-operate with each other in the exercise of their rights and duties under the Convention. Specifically, they shall endeavour directly or through an appropriate regional organization to co-ordinate 1) the management, conservation, exploration and exploitation of the living resources of the sea; 2) the preservation of the marine environment; and 3) their scientific research policies and programs.<sup>4</sup>

For the South China Sea region, issue categories which may require a multilateral, possibly regional, approach, include dispute avoidance or settlement, compensation for geographically disadvantaged entities, content of jurisdiction in relation to extraregional users, management of fisheries and the resource, the prevention of, and remedial action for, transnational pollution, and coordination of foreign access, technical assistance and indigenous efforts for marine scientific research.

However, there are numerous general and specific constraints which must be overcome to move toward functional marine regionalism or sub-regionalism. Diverse national interests based on development priorities and resource sovereignty and security concerns will affect and be affected by intraregional politics and extraregional influences. Constraint posed by diverse national interests will be exacerbated by: 1) marine areal and resource inequities; 2) boundary disputes; e.g., continental shelf, exclusive economic zones, islands, Chinese historical claims; 3) variation in type and content of jurisdictional regimes; 4) lack of mutual understanding by policy makers of transnational marine environment and resource interdependencies and the consequences of diverse national marine policies regarding resource exploitation and environmental management; and 5) insufficient indigenous technical and managerial expertise with a marine focus.

### PHYSICAL GEOGRAPHY

The South China Sea is a northeast-southwest elongated, semi-enclosed sea of  $3.5 \times 10^6$  km<sup>2</sup> area situated between the Pacific and Indian Oceans.<sup>5</sup> It separates the Asian mainland in the northwest from an archipelagic rim to the southeast; 90 percent of its circumference is occupied by land.<sup>6</sup> There are two deep embayments on its north-western margin,

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4 United Nations, *supra* n. 2, Article 123 (Cooperation of States Bordering Enclosed or Semi-enclosed Seas)

5 John C. Marr, "Fishery and Resource Management in Southeast Asia", *Resources for the Future, Paper No. 7* in a series prepared for the Program of International Studies of Fishery Arrangements (February, 1976), p. 4

6 Lewis M. Alexander, "Regional Arrangements in the Oceans", *American Journal of International Law*, v. 71, p. 91

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the Gulf of Tonkin and the Gulf of Siam. The Sea is directly connected with the Andaman Sea and the Indian Ocean to the southwest through the Singapore-Malacca Straits bordered by Indonesia, Malaysia and Singapore. The direct connection with the Pacific Ocean into the northeast is through the Straits of Formosa between China and Taiwan, Bashi Channel between Taiwan and the Philippines, and several channels in the Batan and Babuyan Islands of the Philippines. Numerous indirect inter-oceanic connections exist *via* the archipelagic rim. The Philippines, Indonesia, Singapore, Taiwan and the heavily populated area of Hong Kong are island entities. Malaysia consists of a peninsula and a portion of a large island, separated from each other by the South China Sea. Thailand consists partially of a long isthmus truncated by the international border with Malaysia. Cambodia, Vietnam, Laos and part of Thailand together comprise a peninsula.

The South China Sea can be bathymetrically divided into the deep China Sea Basin in the northeastern portion, extending over  $1,775 \times 10^6$  km<sup>2</sup> or 52 percent of the total area, and extensive continental shelf areas comprising  $1,745 \times 10^6$  km<sup>2</sup> or 48 percent of the total area.<sup>7</sup> The China Sea Basin reaches a maximum depth of 5016 m off Palawan and contains a central abyssal plain of about 4300 m average water depth.<sup>8</sup> Numerous bathymetric highs and island groups are situated on the continental slope, *e.g.*, Macclesfield (Chunsha) Bank, Pratas Reef, and the Paracels (Hsisha). The Dangerous Ground, a collection of reefs, banks and islands, including Spratly (Nansha) Island, in the southwest and Reed Bank in the northeast, is situated in the eastern center of the South China Sea. Shoals, *e.g.*, Scarborough and Truro, are also found to the north within the deep basin.

The continental shelf areas include the Mainland Shelf extending from the Formosa Strait through the Gulf of Tonkin, the Sunda Shelf underlying the southwestern South China Sea including the Gulf of Thailand, and the narrow shelves of western Palawan and Luzon. Numerous island groups and shoals are also situated on the shelves. Two major series of petroliferous Tertiary basins underlie a portion of the Gulf of Thailand and the northeastern edge of the Sunda Shelf; the latter series possibly extends from the Asian mainland to the archipelagic rim. Small petroliferous basins are also scattered through the coastal and marine areas of the archipelagoes.<sup>9</sup>

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7 Mark J. Valencia, "The South China Sea: Prospects for Marine Regionalism", *Marine Policy* (April, 1978), p. 87

8 Mark J. Valencia, "South China Sea: Present and Potential Coastal Area Resource Use Conflicts", *Ocean Management*, v. 5 (1978), p. 1-37

9 *Ibid.*, p. 4

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The South China Sea region is situated almost entirely between the Tropic of Cancer and the Equator and is under the influence of a tropical monsoonal climatic regime. North of the Equator, the dry monsoon with northeasterly winds extends from October to April and the wet monsoon with southwesterly winds lasts from May to September.<sup>10</sup> The coastal and maritime climates and hence the coastal landforms and coastal and marine biological systems, as well as the way of life of the inhabitants, are similarly tropical monsoonal throughout much of the region.

Surface currents in the South China Sea are also greatly influenced by the monsoon regime. During the southwest monsoon, northeasterly currents, intensified in the western portion of the sea, dominate the surface flow. However, a weaker southwesterly return flow develops in the central eastern portion off Borneo, producing an anticyclonic circulation pattern. These conditions are reversed during the northeast monsoon with intense southwesterly surface flow along the western border countered by a weaker northeasterly flow in the central eastern portion forming a cyclonic circulation pattern.<sup>11</sup> Since the surface flow reverses direction twice each year and there is a counter current producing a circulatory gyre even at the peak of each monsoon, flushing rates of surface layer pollutants may be quite low. Certainly in the Gulf of Thailand, water movements at all depths, and thus flushing rates, are weak throughout the year.

Primary productivity is relatively high (1.0 g C/m<sup>3</sup>/day) over the Sunda Shelf, particularly in the Gulf of Thailand, along the east coast of the Malay Peninsula and between Sumatra and Borneo, and low (less than 0.5 g C/m<sup>3</sup>/day) over the deep areas.<sup>12</sup> Production of fish, crustaceans and mollusks is thus highest in the shelf areas. Tropical marine ecosystems, such as those in the South China Sea, generally consist of large numbers of species with individuals of shorter life cycles as compared to higher latitude ecosystems. Thus, in the South China Sea, coastal fisheries are based on large numbers of short-lived species.<sup>13</sup> Some resources, *e.g.*, various species of sardines, mackerel and tuna, will be shared by a number of nations.

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10 Mark J. Valencia, "The South China Sea: Prospects for Marine Regionalism", *supra* n. 7, p. 88-89

11 Mark J. Valencia, "South China Sea: Present and Potential Coastal Area Resource Use Conflicts", *supra* n. 8, p. 7

12 *Ibid.*, p. 7-9

13 *Ibid.*

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THE CONTEXT OF CONSTRAINTS TO MARINE REGIONALISM:  
DIVERSE NATIONAL INTERESTS

There are no fundamental cohesive ocean management policies *per se* in the entities of Southeast Asia. Components of ocean management policy are derived from more fundamental considerations, *e.g.*, historical/cultural perspectives, the current political setting, development priorities, internal and external security concerns, and international relations. Therefore, such ocean management policies as do or will exist have evolved or will evolve from economic and political trade-offs within and between these domestic and international priorities.

**Historical/Cultural Perspectives**

There are several aspects of historical/cultural perspectives that may be of relevance to the evolving policy positions of countries concerned with transnational marine management issues in Southeast Asian Seas. These include: (1) intrinsic historical/cultural perspectives regarding the sea and its uses, *i.e.*, maritime traditions; (2) marine and extramarine historical/cultural relationships among countries in the region; (3) colonial history of the region, including the role of the sea, as it affects perspectives on intra- and interregional relationships; and (4) post World War II history, and the *realpolitik* of today.

Almost all countries in Southeast Asia have frontage on a Mediterranean-like sea. Man's relation to the sea in Southeast Asia is historic and human maritime activities, particularly trade, fishing and war, have historically ranged well beyond the proposed extended maritime boundaries. Also, the historically-determined distribution of cultural-linguistic groups in Southeast Asia, as well as their activities, overlap current territorial and project maritime boundaries.

Gradually over the past two millennia, foreigners, both eastern and western, became aware of the natural wealth that Southeast Asia had to offer. They initially obtained the goods of the region from indigenous intermediaries who controlled the sources of the goods. Eventually, however, the foreigners began to desire a direct contact of their own with these sources and following the shattering of the Srivijaya domain in the eleventh century, the Javanese system in the sixteenth, and the hold of the mainland capitals in the nineteenth, they were able to make good their wish. By the beginning of the twentieth century, the penetration and opening of Southeast Asia had reached a point where foreigners had

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come to dominate politically and/or economically vast portions of the region.<sup>14</sup>

World War II had a tremendous and lingering socio-cultural, economic, and political impact on the region. Most of the region's entities were under Japanese occupation, a fact which led to western development of alternative sources and substitutes for their raw materials, and thus extraregional economic competition which continues today.<sup>15</sup>

### Current Political Setting

The political entities surrounding the South China Sea include the capitalist, Western-oriented ASEAN block comprising the eastern and southern rim - - the Philippines, Indonesia, Singapore, Malaysia and Thailand; the socialist states comprising the northwestern and northern rim - - Cambodia, land-locked Laos, Vietnam and China; politically-isolated Taiwan; the British dependencies of Brunei and Hong Kong; and the Portuguese colony of Macao.

With the exception of Thailand, all the politically independent states in the region have achieved that status or have experienced society transforming movements within the last quarter century. Many of these states are still struggling with basic problems such as the creation of a sense of national identity among the populace, territorial integrity, or establishment of a viable economic and social system. Attempts to forge national unity and to sharpen territorial boundaries have led to external and internal disputes and conflict. These factors tend to introduce a nationalistic fervor into intraregional affairs.

This scene serves as a backdrop for the *realpolitik* of today - the Indochinese revolution and Vietnamese domination of Indochina, the concomitant Chinese-Soviet/Vietnamese tension, ASEAN co-operation and competition, and the strong political and economic interests and involvement of the United States and Japan in the region.

Within ASEAN itself, political-economic relations are cordial but competitive and perhaps unstable in the long-term. For example, Thailand must maintain a precarious balance between her own political-economic system and those of her socialist neighbors. The Muslim

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14 J.K. Whitmore, 1977 "The Opening of Southeast Asia: Trading Patterns Through the Centuries"; in Karl T. Hutterer, ed., *Economic Exchange and Social Interaction in Southeast Asia: Perspectives from Prehistory, History, and Ethnography* (Ann Arbor, Michigan: The University of Michigan, Center for Southeast Asian Studies, 1977) pp. 139-154

15 Donald W. Fryer, *Emerging Southeast Asia*, George Philip, London (1979, 2nd edition, forthcoming), p. 6



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irredentist movement in the south may eventually irritate relations with Malaysia. Indonesia, by virtue of her size, population, GNP, oil and military posture, is clearly the leader of the ASEAN block, although this jealously-guarded role has in the past been ignored by other ASEAN members. Indonesia attacked Singapore and Malaysia during Soekarno's *Konfrontasi*,<sup>16</sup> and her long-term potential for expansion must be considered in the light of past expansion in West Irian and Timor.<sup>17</sup> Brunei will reluctantly be given independence in 1983 and Malaysia and other nations may try to influence her political destiny.<sup>18</sup> As a sovereign enclave of successful Chinese entrepreneurship in a less developed Malay world, Singapore often projects a seige mentality and may be in a tenuous position for the long-term. Malaysia and the Philippines have not yet resolved the Sabah issue to Malaysia's satisfaction,<sup>19</sup> and the successionist Muslim movement in the Philippines probably creates tensions between the Philippines and her Muslim neighbors.<sup>20</sup> Economically, several of the ASEAN countries produce the same raw materials for their national livelihood and the resulting direct competition for credits, investment, assistance and markets will increase concomitant with development. Other more-far-fetched or longer term indigenous political changes could create instability within ASEAN, e.g., succession of Sabah or Sarawak from the Federation of Malaysia, coups or political revolutions in Thailand or the Philippines, or racial disorder in Malaysia.

In the wake of the successful Indochinese revolution, the United States, the Soviet Union and China are vying for spheres of influence within the region, thus creating or fostering instability. Indeed, the Kampuchean-Vietnamese conflict could be viewed as a proxy war of China and the Soviet Union. China, fearing encirclement by Soviet allied states on her southern flank had encouraged Kampuchea to provoke and to resist Vietnam while simultaneously bringing direct pressure to bear on Vietnam along their common border. At this juncture, Laos and Vietnam are firm allies within the Soviet sphere of influence,<sup>21</sup> and Vietnam's

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16 Donald W. Fryer, *Emerging Southeast Asia*, *supra* n. 15, p. 29

17 *Ibid.*

18 Anonymous, "The First 21 Years Show Some Success", *Far Eastern Economic Review* (September 1, 1978), p. 51-52; 'Anonymous', "Intelligence: Brunei's Bargain Offer", *Far Eastern Economic Review* (March 11, 1977), p. 5

19 Anonymous, "The First 21 Years Show Some Success", *supra*, n. 8

20 Rodney Tasker, "Rebels Shift to New Targets", *Far Eastern Economic Review*, (December 1, 1978), p. 22-24

21 David A. Andelman, "Indochina is Adjusting to Peace", *New York Times* (December 19, 1976), p. 4E

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purported goal of a Federation of Indochina has moved nearer with their conquest of the China-backed Kampuchean regime.<sup>22</sup> Open hostilities can probably continue to exist between China and Vietnam, reflecting the "cold war" situation between China and the Soviet Union. The next arena for surrogate conflict may be Thailand through various means including violent acts by rival insurgent groups.<sup>23</sup>

The ASEAN members and Brunei, can be considered economically and politically within the sphere of influence of the West, particularly the United States. The ASEAN group is wary and vigilant regarding China's intentions, particularly *vis-à-vis* the overseas Chinese within their respective socio-economic systems. The presence in almost all of the non-Communist entities of insurgencies ideologically aligned with, and supported by, the Communist Party of China reinforces this fear. However, normalization of U.S. - China relations is generally viewed positively in ASEAN capitals as it may, in their perception, provide the counter-balance to Soviet intentions to fill the power vacuum.<sup>24</sup>

The abrupt normalization of relations between China and the United States may have partially been a response to the recent gains in the region of a perceived common enemy, the Soviet Union, particularly the mutual defense agreement with Vietnam.<sup>25</sup> On the contrary, Vietnam's involvement in Kampuchea, apparently backed by the Soviet Union, has created alarm in ASEAN capitals<sup>26</sup> and may precipitate movement towards an ASEAN defense pact or at least closer military co-operation. Vietnam and China are both wooing ASEAN members in order to stave off further arenas of conflict on their southern marine flanks. However, ASEAN capitals have received these overtures coolly in a remarkable unprecedented display of high-level political co-ordination.<sup>27</sup>

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22 Rodney Tasker, "ASEAN Unites in Anger", *Far Eastern Economic Review*, (January 19, 1979), p. 12-14; Tai Tong, "Phnom Penh's Fall", *Far Eastern Economic Review*, (January 26, 1979), p. 8; Rodney Tasker, "Condemnation But No Confrontation", *Ibid.* (January 26, 1979), p. 24-26

23 John McBeth, "Communists at the Crossroads", *Far Eastern Economic Review*, (July 27, 1979), p. 30-31.

24 Melinda Liu, "The Long March to Realism", *Far Eastern Economic Review*, (December 29, 1978), p. 10-12

25 Rodney Tasker, "ASEAN Unites in Anger", *supra* n. 22

26 *Ibid.*

27 Rodney Tasker, "A Courteous Rebuff", *Far Eastern Economic Review*, (September 29, 1978), p. 8; Barry Wain, "ASEAN-Vietnam Rift Carries Risks of Political Polarization", *Asian Wall Street Journal*, (January 26, 1979), p. 9

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**Marine Components of National Interest**

*Development Priorities*

A number of factors are influencing evolving national perceptions of the ocean. Among these are: 1) technological advances in marine use and resource exploitation capabilities; 2) increased national awareness of, and expectations for, potential ocean resources; and 3) indications that a "common property" approach to ocean resources may be inefficient, and advantageous to developed countries.

The political entities of the South China Sea marine region are, in general, developing countries with a low per capita GNP and high rates of population growth. Although only three political entities produce offshore hydrocarbons, almost all have high expectations for its discovery and exploitation in their jurisdictional areas. The South China Sea countries are generally only moderately reliant on seaborne trade and petroleum compared to the rest of the world. However, this degree of reliance reflects their undeveloped economies rather than their high dependence on sea transport for export of their primary agricultural and mineral commodities and their importation of manufactured goods and, for some, petroleum products. This dependence will increase in conjunction with the development process.

As for investment in the marine sector, their merchant and tanker fleets are of moderate size. Their capability to patrol or deter unwanted entry into their potential marine areas is generally inadequate. Research expenditures, expertise, education in marine science, and technology and capital are generally insufficient for indigenous development of their potential marine resources. Thus, knowledge and technology transfer are prime marine interests of these coastal nations.<sup>28</sup>

Although anticipated economic benefits may be a prime motivation for jurisdictional extensions, such extension will produce unanticipated economic and political side effects. The zones of extended jurisdiction will bring more area and more types of activity under the control of coastal states. Coastal states will have to develop policies and efficient management designs for the space, resources and the increasing varieties of activity within these zones. However, in many nations the administrative, scientific and technical infrastructure is presently inadequate for efficient management. Therefore, management policies may be formulated without critical information or the capacity to implement them.

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<sup>28</sup> Mark J. Valencia, "Southeast Asia: National Marine Interests and Marine Regionalism", *Ocean Development and International Law Journal* v. 5 (1978), p. 422-476

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The recent trend toward extended maritime jurisdictions is building interest in the maritime environment and its potential for serving the future development needs of the region's nations. For some nations, there is a wide quality of life gap between the rich and the poor, between the urban centers and rural areas. It is perhaps a political imperative that these nations bridge that gap by providing a modest way of life for all the people. Within the constraints of internal and external national security considerations and international political-economic relations, the major influence on state ocean policy positions is thus likely to be the "value" perception of ocean resources; *i.e.*, how ocean resources can "best" contribute to "development" and to narrowing the gap between "have" and "have-nots"

Diverse development priorities may present pragmatic obstacles to regional or subregional functional marine co-ordination or co-operation. For example, the time frame for issue development is an important factor in the dynamics of national marine interest. This time frame will vary with the issue and with the perspective of each of the concerned actors. There may be a lack of synchronicity in the state of evolution of marine-relevant sectors, and thus fixed-term development plans. This diversity could inhibit co-operation/co-ordination of scientific research and of consent to specific transnational projects proposed by extraregional states. A range of perspective and conditions among coastal states in the region for granting of consent for access for scientific research by extraregional entities may foster an increase in the diversity of quantity, quality and focus of scientific research in national zones. Diversity of knowledge may lead to transnational misunderstanding and disagreement regarding national management of portions of transnational systems. Also, co-ordination of marine environmental regulations and their enforcement may not be feasible due to lack of synchronicity in perspective on environment-development trade-offs, the perceived variances of environmental vulnerability of different regions, and the concomitant variation on restrictiveness and sophistication of national regulations and their enforcement in various zones of jurisdiction.

The oft-mentioned possibility of co-operation in fisheries management is itself fraught with constraints. National objectives for fisheries management include employment, protein, profit, maintenance of cultural traditions and national pride in a modern fishing fleet. The timing of relative emphasis among these objectives may also differ from nation to nation and within nations. It is possible that for migratory or shared stocks, the same stocks may be the basis for fisheries development plans or supply strategy of more than one country within or outside the region. Also, a problem with effort on migratory species is that increased

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catch in one national zone may reduce available stocks in other national zones along the path of stock migration.

It has been suggested that a co-ordinated policy position and exchange of information *vis-à-vis* access for distant-water fishing states could lead to improved coastal state bargaining positions, increased technology transfer, and provision of information necessary for fisheries management. However, a co-ordinated policy position *vis-à-vis* distant-water fishing entities is unlikely because: (1) there are only a few buyers of access, (2) the resource varies in nature and value geographically, and (3) terms of agreements will vary with the nature and value of the resource and the incentives required for attracting distant-water exploiters. In any case, the potential for a united front is being rapidly reduced as time passes and separate arrangements with coastal states by distant-water fishing entities become *fait accompli*.

#### *Security Concerns*

The maintenance of newly acquired national sovereignty over ocean resources and jurisdiction over ocean space has underlying national security connotations and any co-ordination or co-operation cannot be perceived as jeopardizing this basic principle. Creeping sovereignty may create further tension.

Extended jurisdiction poses external security problems for the region's countries. For example, countries which are politically and/or ideologically opposed, *e.g.*, Vietnam and Indonesia, Vietnam and the Philippines, and Vietnam and China, will be brought into jurisdictional contact or overlap with each other in the South China Sea. Nations may attempt to extend their sea borders as far as possible to give them "breathing room" with regard to their new neighbors, and for insulation from conflicts involving navies of major powers. A wider jurisdictional zone may also be perceived as enhancing the prospect of defense and of arresting foreign violators of national regulations.

Initial regimes may be very strict and the undeveloped surveillance and enforcement capabilities of these nations may dictate abrupt and forceful "exemplary" measures to underline national control over ocean space and resources. On the other hand, unsophisticated navigational aids and lack of control over unorganized groups traditionally operating across the new maritime borders may create transnational tension. For example, throughout the region, fishermen of one nation who have fished in particular areas for generations will find these fishing grounds subsumed by a neighboring nation's EEZ. It is unlikely in the short-term, that these fishermen will recognize the resource sovereignty of the

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neighboring nation. On the other hand, the resource owner will attempt to exert control over its claimed resources. Conflict between fishermen and the enforcement agency will produce disputes between neighboring nations.

Southeast Asian governments have regularly faced minority political revolts, some aided materially by other nations from within and outside of the region. The archipelagic nations, *i.e.*, the Philippines and Indonesia view the archipelagic concept as a political framework for creating real national unity among widely scattered islands and subcultures. Others, *e.g.*, Malaysia, Thailand and Singapore, may view this extension of jurisdiction and its strict enforcement as the potential first step in a creeping sovereignty which will eventually transform ocean space to national territory. For Thailand and Malaysia, such action could become a perceptual wedge between national units by potentially threatening sea communication among dissimilar parts of the same country.

Similar conflicting perceptions may be particularly relevant to nations which claim various islands and their attached 200nm EEZs in the South China Sea. Other nations which have, or may become, politically isolated in the region may view extended jurisdiction in a similar fashion *vis-à-vis* material support from outside the region. Also germane is the perceived primary security interest in islands themselves along borders and in the South China Sea. This is due to their strategic location and to the present perception that land is of more national human concern than sea space.

#### *International Relations*

The security concerns of extraregional maritime powers both coincide with, and diverge from regional concerns. The maritime powers are directly concerned with keeping the sea lines of communication open through, and within, the region for communication with "friendly" nations. Thus, any move that might be considered a potential threat to "freedom of navigation" would bring the usual pressures to bear perhaps including a "showing of the flag". An outbreak of regional hostilities would also be considered a potential threat to open sealanes.

The South China Sea islands are strategically situated in regards to these sealanes and for submarine bases. It may appear that the present and future maritime users, China, the Soviet Union, Japan and the United States, have a common interest in keeping the sealanes open. However, they have and will continue to operate behind the scenes through friendly regional countries, to inhibit one another's proxies from undue control of islands or sealanes while attempting to obtain such proxy control themselves. Such maneuvers, directly concerning either territory or ocean

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space, or resource-related activities in areas of potential conflict, may only irritate relations in the region by strongly influencing the security perspectives and actions of the region's nations.

**Resource, Sovereignty and Jurisdiction Over Resource – Related Activities**

Resources and resource-related activities are to be managed. Important resources include oil and gas, fish, space, and environmental quality. Activities related to these resources include oil and gas exploration/exploitation, fishing, transportation/navigation, scientific research and waste disposal.

*a. Boundary Disputes (Figure 1)*

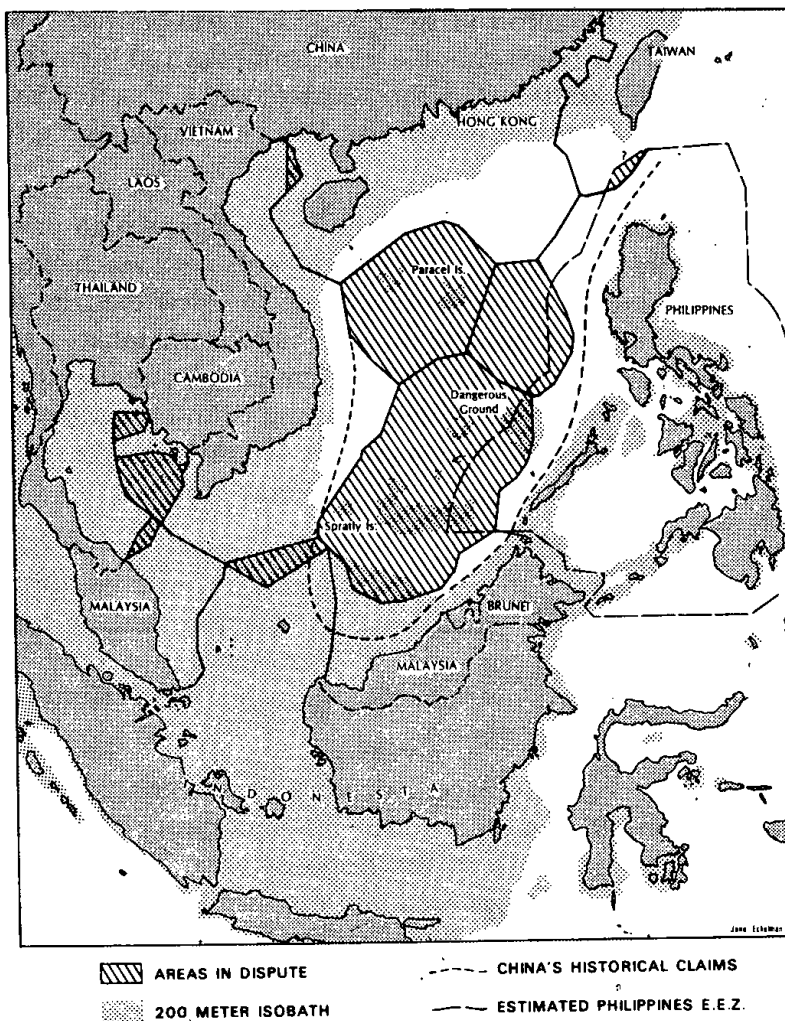
Extended jurisdiction, boundary delimitation and resolution of boundary disputes will determine who will manage the resources and activities. The content of each national jurisdictional regime and the implications for other nations will flow from these developments. Settlement of jurisdictional boundaries may thus be a prerequisite for cooperation on most other issues. There are four general types of marine boundary disputes which must be resolved: continental shelves, EEZs legal status and ownership of mid-ocean islands, and Chinese historical claims to much of the South China Sea. Elements of these disputes and the categories of the disputes themselves are interrelated.

The baseline of a coastal state's territorial sea is a foundation for the other claims. There is general agreement on the 12nm limit for the territorial sea among the coastal states and entities of the region, although Brunei, Singapore and Taiwan still retain a 3nm territorial sea for historical reasons. Nevertheless, the coastal states may disagree on the adoption of normal, or straight baselines from which the territorial sea is measured. Some, *e.g.*, China and Vietnam, have not yet specified their baselines. Also, the boundaries of the archipelagic claims of the Philippines and Indonesia, international issues in themselves, will be used as baselines for EEZ, continental shelf, and, for Indonesia, territorial sea claims. The Philippines claims her treaty boundaries as the limits of her territorial waters.

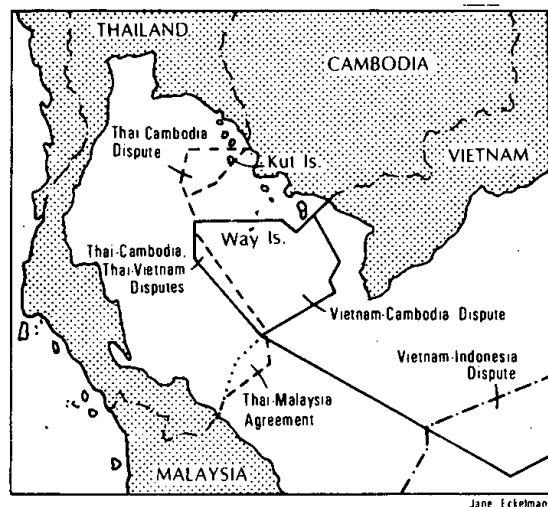
Most of the region's entities have declared jurisdiction over their continental shelves and ownership of the resources thereon and thereunder. Nine bilateral and trilateral continental shelf boundary agreements have been signed by the coastal states in the region. All of these agreements involve Indonesia and mostly concern less controversial areas outside the South China Sea proper. Over a dozen continental shelf agreements

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Disputed Areas in the South China Sea



Disputed Areas in the Gulf of Thailand





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between the various coastal states are still required.<sup>29</sup> Significant disputes with no immediate resolution in sight include those between Thailand and Vietnam, Thailand and Cambodia and Cambodia and Vietnam in the eastern Gulf of Thailand, that between Vietnam and China in the Gulf of Tonkin, and that between Indonesia and Vietnam north of the Natuna Islands (See Map).<sup>30</sup>

Continental shelf boundary settlement is no longer a high priority to Indonesia primarily because agreement has already been reached on most boundaries.<sup>31</sup> Indonesia has apparently taken the view that the need to have agreement is more important than the need to maintain a position which may be more costly in the long run. Indonesia's strategy appears to be to negotiate bilaterally with each bordering country; on the basis of these separate agreements, Indonesia and the several countries concerned will logically proceed to a multilateral common point.

Vietnam and Indonesia might have been content to undertake an economic race for regional supremacy separated by hundreds of miles of the South China Sea. With extension of jurisdiction to their respective continental shelves. Indonesia and Vietnam have not only become neighbors but actually have overlapping continental shelf claims north of the Natuna Islands.

The area of overlap may have hydrocarbon potential; in fact, both Vietnam and Indonesia have let contracts for exploratory drilling in areas immediately north and south of the disputed area. These nations are ideologically and politically opposed and the dispute thus has potential national security implications. Both nations need any oil to be discovered – Vietnam for development and independence in energy resources and for Indonesia, to contribute to the continuation of her level of lucrative exports while satisfying domestic energy demand.<sup>32</sup>

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29 Hasjim Djalal, *Conflicting Territorial and Jurisdictional Claims in South China Sea: Indonesian Quarterly*, v. III, no. 3, July, 1979

30 Stephen W. Ritterbush, "Marine Resources and the Potential for Conflict in the South China Sea", *The Fletcher Forum*, v. 2 (January, 1978); Gulf of Tonkin dispute from Anonymous; Estimated Philippines EEZ from Philippines Bureau of Coast and Geodetic Survey, personal communication.

Anonymous, "The Truth about the Sino-Vietnamese Boundary Question", *Beijing Review*, (May 25, 1979), p. 14-19; Anonymous, "How Did the Sino-Vietnamese Border Dispute Come About?" *Beijing Review*, (May 25, 1979), p. 19-23

31 Mark J. Valencia, "Southeast Asian Seas: National Marine Interests Transnational Issues and Marine Regionalism", in Chia Lin Sien and Colin McAndrews, eds., *Southeast Asian Seas: Frontiers for Development* (Pergamon Press) in press

32 Guy Sacerdoti, "Wijarso Faces Up to the Oil Ghost", *Far Eastern Economic Review*, (June 10, 1977), p. 43

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These countries must rely largely on multinational capital, technical expertise and equipment for offshore hydrocarbon development. However, multinationals or extra-regional governments are unlikely to invest in hydrocarbon development in disputed areas, particularly if the dispute is serious enough to threaten the security of their investment. Also, the conditions for exploitation and export of any oil found may differ markedly depending on which nation controls the resource. Thus, resolution or muting of boundary disputes may be a prerequisite for development of any hydrocarbon resources in this area.

Agreement in these disputes may be particularly difficult if, as indicated in the ICNT Rev. 1, any such disputes are to be resolved on the basis of equity and in the light of all relevant circumstances.<sup>33</sup> These boundaries will also be more difficult to resolve due to conflicting claims of ownership of coastal and offshore islands and the application of different principles to continental shelf boundary claims and delimitation – adjacency, exploitability, median line, prolongation of the continental margin and equity.

In the region, the Philippines, Taiwan, Vietnam and Cambodia have declared EEZs;<sup>34</sup> Malaysia and Indonesia will do so soon. The South China Sea is a semi-enclosed, largely shallow sea with a projected pattern of complex jurisdictional adjacencies which are dependent on, and in part extensions of territorial boundaries between independent nations. Littoral state extension of resource sovereignty and jurisdictional limits to 200nm will create or exacerbate existing boundary disputes implicitly involving large areas of the South China Sea. Including disputed claims to South China Sea islands, many claimants are situated within 400nm of one another, so that the extended jurisdictions of opposite claimants to 200nm will overlap in many sectors. In some instances; *e.g.*, between Indonesia and Vietnam, the EEZ boundary may not be the same as that on the continental shelf because of the application of different principals such as equidistance *vs.* prolongation of the continental margin.

The disputed ownership of numerous obscure islands in the South China Sea is another source of serious disagreement in delimiting sea boundaries in the region. Vietnam and China both continue to claim

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33 United Nations *supra* n. 2, Article 83 (Delimitation of the Continental shelf between adjacent or opposite States)

34 Raymond Yao, "Gun Law of the Sea", *Far Eastern Economic Review*, (17 June 1977) p. 25; Diane Ying, "Taiwan Declares 200nm EEZ", *Asian Wall Street Journal*, (8 September, 1979) p. 3; Nayan Chanda, "All at Sea over the Deeper Issue", *Far Eastern Economic Review*, (3 February, 1978), p. 23; See Presidential Decree No. 1599 (Establishing an Exclusive Economic Zone and for other Purposes), signed by President Ferdinand E. Marcos on 11 June, 1978

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ownership of the Paracel Islands, although China is now the sole occupant, having forcibly removed South Vietnamese forces in January 1974.<sup>35</sup> China also claims the Spratly Islands including Reed Bank at the northern extremity of the Dangerous Ground where Philippine-sanctioned exploration and drilling operations have brought strong Chinese and Vietnamese protests.<sup>36</sup> Parts of the Spratlys and the Reed Bank area are also claimed and/or occupied by forces of Taiwan and Vietnam.<sup>37</sup> Because of their negligible size, the legal status of many of these uninhabited mid-ocean islands in regards to extended jurisdictional zones would also be open to controversy.

Finally, China's historical claim to much of the South China sea poses a major constraint for regional marine activities which exclude China. With both Vietnam and China maintaining a relatively low profile regarding their claims, settlement may be some time in coming, particularly, if these unspecified claims are to be used as political leverage *vis-à-vis* ASEAN. Also, knowledge of resources may be a prerequisite to negotiations on the basis of equity, presenting, together with restrictive positions of some of the claimants on access for scientific research, a "Catch 22" situation. Finally, a country must be perceived as politically stable to negotiate a lasting agreement and this attribute is not widespread in Southeast Asia.

*b. Diversity of Jurisdictional Regimes and Content*

The variety of jurisdictional regimes and their specific content as determined by national interests will determine how the resources and resource-related activities are to be managed. Jurisdiction over ocean space is divided three ways--by function, by distance from shore, and vertically. Jurisdictional regime types in Southeast Asian Seas will include internal waters (including archipelagic waters), territorial seas, various types of straits, historic waters, sealanes, continental shelves, exclusive

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35 Hungdah Chiu and Choon-Ho Park, "Legal Status of the Paracel and Spratley Islands", *Ocean Development and International Law Journal*, v. 3, No. 1 (1975) p. 1-28; Choon-Ho Park, *supra* n. 29, p. 27-59; Hungdah Chiu, "South China Sea Islands; Implications for Delimiting the Seabed and Future Shipping Routes", *The China Quarterly*, (December, 1977) p. 743-765; Russel Spurr, "Peking's Inshore Navy", *Far Eastern Economic Review*, (June 3, 1977), p. 30-31

36 Bernard Wideman, "Manila, Hanoi at Odds Over Isle Oil", *The Sunday Star-Bulletin and Advertiser*, (June 18, 1977), p. A-14.

37 Hungdah Chiu and Choon-Ho Park, *supra* n. 34; Choon-Ho Park *supra* n. 29 p. 29; Corazon M. Siddayao, *The Offshore Petroleum Resources of Southeast Asia, Potential Conflict Situations and Related Economic Considerations*, Oxford University Press, Kuala Lumpur (1978), p. 88-90

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economic zones, security zones and airspace. Conditions of access to resources and the use of any or each of these jurisdictional zones will be determined by their specific content. The specific content of national jurisdiction, and the implementation of management and enforcement policies, as well as their transnational diversity, will be determined by national marine interests.

However, the form, substance, effectiveness and net benefit of national management designs will both influence and be influenced by the interests, activities and policies of the maritime powers and nations with adjacent jurisdictional zones. Political-economic trade-offs in national management and development of ocean space and resources are inevitable, given the reality of intra- and interregional interdependencies, extra-regional influence and interest in the region, and the indigenous gap between development hopes and capabilities. National policies for marine jurisdictional zones and their resources may thus become bargaining chips within the larger political context. Such trade-offs may involve spheres ostensibly unrelated to oceans, such as "resource diplomacy", or they may involve package bargains within the ocean policy sphere.

Diversity of management regimes for transnational resources or resource-related activities may lead to intra- and interregional compromise, or to conflict. Even if UNCLOS does not yield to multinational diversity, and in spite of treaties, legal precedents and LOS provisions, there will remain the problems of national and regional implementation of management designs. Even implementation of internationally accepted standards for activity in extended jurisdictional zones will create transnational issues because there is a wide range of national capability and will to enforce such standards.

Maritime nations within or from outside the region will have to negotiate conditions of access to coastal state resources and for use of space. Conditions of resource access and space use may, in practice, be preferentially applied, dependent on political or economic considerations in the marine or other spheres. Such preferential treatment could exacerbate coastal state relations with third countries which have been denied access. Maritime powers may choose to exploit policy diversities by shifting their activity toward areas of least resistance. Thus, diverse national policies for zones of extended jurisdiction will have interdependent implications for the protection and management of the transnational marine environment and its resources.

There is thus a need for increased bilateral and multilateral consultations, as well as a new degree of coordination to meet the challenge of these impending changes in marine use patterns and concepts. How-

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ever, states are only now beginning to perceive clearly their own national marine interests and how these differ from those of neighboring states or maritime powers. Commonalities are neglected and differences emphasized.

#### *c. Marine Areal and Resource Inequities*

With extension of jurisdiction in the South China Sea, geography dictates that there will be inequities and imbalances imposed upon an already economically and politically competitive *milieu*. The marine areal and attendant resource base of Singapore, Cambodia, Laos, and Brunei will be negligible compared to the great gains of China, Indonesia, the Philippines and Vietnam. This abrupt increase in inequities of area and potential wealth may endanger ASEAN's progress in co-operation in other spheres if compensation and accommodation for these geographically-determined disadvantages are not provided.

For example, Singapore hopes to enhance her status as the maritime center of ASEAN and the region, serving to consolidate and disperse the Europe to Southeast Asia trade and as a center for warehousing and pre- and post-marine exploitation services. In the long-term Singapore may actually benefit from the extension of jurisdiction of her neighbors and their concomitant increased marine activities.

Singapore is zone-locked and her principal marine interest and indeed her economic base is thus unrestricted transport of goods and oil in the region. Ironically, the very geographic situation of Singapore which has contributed so much to her economic well-being, may, in the new political geography of oceans, be a disadvantage. For example, the recent trilateral agreement for traffic safety standards in the Malacca Strait implies that some larger tankers will use the Lombok diversion and may have put Singapore on guard against any future schemes that would affect her entreport and transshipment status.

Another major marine interest of Singapore is compensation for her GDS status. She is shelf-locked and has the least potential offshore area in the region accruing in the event of a 200nm limit.

Singapore is a distant-water fishing nation as there are insufficient fish for her fleet in her territorial seas and the negligible area available for further jurisdictional extension.<sup>38</sup> Access to Malaysian and Indonesian

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<sup>38</sup> Chia Lin Sien, "Coastal Changes, Marine Pollution and the Fishing Industry in Singapore", paper presented at the Second Biennial Meeting of the Agricultural Economic Society of South East Asia (AESSEA) November 3-7, 1977, Iloilo, Philippines, p. 28

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territorial seas and Indonesian archipelagic waters will, with the exception of traditional fishing, probably be denied. Singapore has consistently opposed extended jurisdiction but may attempt to bargain recognition of the inevitable for compensatory measures. Such compensation might take the form of unhindered marine transit for her trading partners, and air transit over neighbor's territorial seas which surround Singapore, or even "regionalization" of fisheries.

Laos is land-locked and desires guaranteed marine access as well as compensatory access to neighboring countries' marine resources. From 1954 until the Indochinese revolution, Laos depended predominantly on Thailand for both imports (56%) and exports (65%). However, during this period and since, Thailand has used transit as a political-economic means to influence Laotian internal politics and control incursions along their long common border.<sup>39</sup> Laos has requested access to the "surplus" of living resources in the Gulf of Thailand from Thailand, but the request was denied on the basis that there was no "surplus".

Cambodia is shelf-locked and Brunei is nearly shelf-locked; both are zone-locked and have marine access only on a semi-enclosed sea. Thailand is both shelf-locked and zone-locked in the South China Sea. Moreover, the Thai distant-water fishing grounds in the South China Sea have, or will come under Malaysian, Cambodian, Vietnamese and Indonesian jurisdiction.

Indonesia's situation is a marked example in contrast. Except for China, Indonesia has the largest population and the largest land area in the region. Extension of jurisdiction, *i.e.*, archipelagic waters, continental shelf and EEZ, will provide Indonesia with marine resource sovereignty in a huge area. Indonesia will probably follow the ICNT Rev. 1 provisions for activities in her EEZ, *viz.*, a consent regime for scientific research, sovereign rights over protection of the marine environment, and access to any fish surplus on the basis of preferential treatment for regional GDS and other regional entities.

However, Indonesia's provisions for access to archipelagic (internal) waters and territorial sea are likely to be restrictive. Acceptance of the archipelagic concept and its attendant regime by neighbors and maritime powers alike is the core of Indonesian national marine interests. Aside from forging a sense of national unity, the concept is of prime security concern to Indonesia. Control over these waters would inhibit external material support to the frequent separatist movements in the archipelago,

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<sup>39</sup> David A. Andelman, "Indochina is Adjusting to Peace", *New York Times*, (December 19, 1976), p. 4E

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and facilitate interception of violators of the various jurisdictional regimes.

This concept may also underlie Indonesia's position on the Malacca Straits since these Straits can be seen as providing a route into the "internal waters" of the archipelago.<sup>40</sup> However, if Japanese tankers over 220 x 10<sup>5</sup> dwt use the Lombok-Makassar route, Indonesia may gain the economic benefits of a superport on Indonesian territory, or at least tap this mobile "oil pipeline" to enhance development projects and thus political integration of rural border areas. Indonesia may also have a long-term interest in restricting the strategic mobility of the maritime powers, thus insulating themselves from maritime power conflicts.<sup>41</sup> Indonesia already requires advance notice and permission of foreign military vessels to enter her territorial waters. Nevertheless, transit passage in designated sealanes will apparently be accepted.

Indonesia reserves all fisheries resources for herself in archipelagic waters as there is a perceived dependence on food from the sea particularly for rural folk, and there are plans to develop unexploited areas. Also, the Java Sea, the Malacca Straits and the Indonesian South China Sea are overfished and no new trawlers can be built or licensed for use there until the resource, gear-conflict and foreign fishing situation is evaluated and policy and detailed regulations developed. The present policy for under-exploited areas is to allow indigenous people to fish in order to determine the resource base through monitoring of the catch. Thailand has been seeking access for her trawlers in the same areas where additional Indonesian effort has been prohibited, thus prospects for Thai access appear low.

#### PROGNOSIS

For sometime and for most transnational marine issues, bilateral agreements and co-operation will be the rule. However, a carefully constructed web of bilateral agreements of a similar nature may eventually form the basis for multilateral negotiations and adjustments towards a common policy. For example, a particular country in the region with many common marine borders; *e.g.*, Indonesia, may take the lead in establishing bilateral agreements on EEZ jurisdictional content as she has done with her marine neighbors for her continental shelf boundaries. In

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40 Lee Yong Leng, *Southeast Asia and the Law of the Sea, Some Preliminary Observations on the Political Geography of Southeast Asian Seas*, (Singapore University Press, 1978), p. 22

41 *Ibid.*

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this way, she might eventually lead those neighbors which also share common marine borders among themselves to co-ordinate the content of their EEZ regimes. Co-ordination of policies, jurisdictional content and enforcement procedures will probably precede functional co-operation.

There are two extreme categories of marine regionalism which might short-circuit this evolutionary process: that which is relatively innocuous and does not impinge on national sovereignty, and that where there is a demonstrated urgent need, fear or commonality. The former category would include data exchange and compilation for, *e.g.*, fisheries, including biological information and possibly information on various types of co-operative ventures, limited information on hydrocarbons, and information on environmental quality and techniques of monitoring, prevention and control.

Specific national marine policies could be coordinated provided such co-ordination does not impinge on national sovereignty; this is a basic dilemma between national and international interests, with the former usually and understandably having priority in the short-term. There are several issues that contain elements of a regional – extraregional polarity that might create a common sense of urgency sufficient for regional action, while maintaining or even strengthening national sovereignty: For the extraregional nations, the interest in unimpeded transit in general or for specific vessel types in specific waters, *e.g.*, warships in “international” straits, may be a unifying factor in a maritime power approach to the region. For the region’s coastal states, the concept of a zone of “peace, freedom and neutrality” might eventually lead to the perhaps unenforceable denial of passage of all foreign warships in the South China Sea.

Such issues might also include common, perhaps dual standards for transportation of potential pollutants, *i.e.*, stricter standards for vessels transiting through the region than for cross and internal traffic by coastal state lines. Since technology transfer is high on the list of “Third World” demands, regional or subregional co-operation could be envisioned in the development and transfer of marine technology *via*, among other means, the establishment of regional marine scientific and technological research centers as described in the ICNT Rev. 1.<sup>42</sup> Finally, mechanisms for dispute avoidance/settlement may be regionalized or subregionalized to conform more closely with indigenous cultural systems for dealing with international disagreements. The ASEAN Treaty of Amity and Co-operation in Southeast Asia of 24 February 1976, provides that the con-

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42 United Nations, *supra* n. 2, Part XIV (Development and Transfer of Marine Technology)



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tracting parties shall be guided by the principle of settlement of differences or disputes by peaceful means, and thus may serve as a foundation for subregional marine dispute settlement.

In between these two extremes of innocuousness and urgency/regional-extraregional polarization lie most of the transnational issues. Most "regional issues" are general, analogous bilateral issues in the region and not truly regional in scope. Functional marine regionalism or subregionalism is incipient at best and perhaps a hopelessly idealistic goal at worst. Necessity may be the mother of co-operation. UNCLOS is really an attempt at World Government for the majority of the area of the globe and is fraught with the same imbalances, inequities and instability that have plagued such attempts in the past. It is premature to hope for its successful practical application in a region comprising increasingly nationalistic developing states, some ravaged by conflicts instigated and supported by extraregional powers. Indeed, extraregional powers with maritime interests in the region may continue attempts to influence the marine policy of developing coastal states. Coastal state control and terms of resource and sealane access may create big power tensions which could be played out through surrogate coastal state conflicts.

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