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**Resources and Regional
Cooperation in the Disputed
South China Sea**

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Ca' Foscari
Dorsoduro 3246
30123 Venezia

Relatore

Ch. Prof. Stefano Soriani

Correlatore

Ch. Prof. Renzo Riccardo Cavalieri

Laureanda

Ilaria Stella

Matricola 817477

Anno Accademico

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TABLE OF CONTENTS

Abstract

1 Introduction

1.1 Regional geography and position of the South China Sea

1.2 Disputes over the South China Sea: the sovereignty issue on territorial sea and resources

2 Maritime Boundaries and Different Levels of Jurisdiction

2.1 The case of UNCLOS in the South China Sea regional context

3 The Contended Resources of the South China Sea

3.1 Various co-management opportunities for fishery resources: RFOs, CBM, ITQs, MPAs

3.2 Examples of fisheries management in the South China Sea States

3.3 Seabed strategic resources: oil and hydrocarbons

4 Prospects of Regional Cooperation in the South China Sea

4.1 Managing potential conflicts in the disputed islands

4.2 Efforts of regional cooperation through the ASEAN forum

4.3 The key role of environmental cooperation in the South China Sea

5 Conclusion

6 References

Abstract

Nello scenario contemporaneo ormai globalizzato, dominato dalla velocità delle comunicazioni e dai progressi della tecnologia, le risorse energetiche e naturali rappresentano per le potenze nazionali la fonte primaria su cui investire le proprie forze ed estendere la propria influenza. I repentini processi di sviluppo in atto nelle aree in passato identificate con l'acronimo di 'Terzo Mondo' influiscono sugli equilibri mondiali, e pongono l'attenzione su zone in passato ininfluenti ma che potrebbero giocare un ruolo decisivo nei futuri conflitti geopolitici. È così che il Sud Est Asiatico, tormentato in passato prima da colonizzatori e in seguito soggetto al centro di strategie di influenza nell'epoca del bipolarismo della Guerra Fredda, diventa centrale nella partita riguardante le risorse energetiche e naturali, ormai bramate dalle nazioni emergenti che si collocano attorno al Mar Cinese Meridionale. Il processo di sviluppo ormai innescato genera una corsa alla conquista di atolli e isolotti rimasti per lungo tempo disabitati e poco considerati ma il cui possesso potrebbe oggi garantire una supremazia sul mare ed una esclusiva gestione di giacimenti minerari sommersi. Le diatribe politiche e gli scenari in atto sono influenzati da attriti e rancori passati che animano il dibattito tra le potenze coinvolte, che rivendicano in primis diritti e sovranità risalenti ad un passato talvolta difficile da appurare perché remoto. Rivendicazioni di sovranità che in realtà celano il bisogno e la volontà di estendere il più possibile il proprio controllo sugli spazi territoriali e marittimi. Il Mar Cinese Meridionale diventa così essenziale per lo sviluppo ed il perdurare di stati, come il Vietnam, le Filippine o la potenza cinese stessa, che negli ultimi decenni hanno registrato un alto incremento della popolazione e uno sviluppo industriale ed economico senza precedenti. Il punto focale è rappresentato perciò dalle risorse naturali ed energetiche, in particolare risorse ittiche fondamentali per il sostentamento di tutto il Sud Est Asiatico prevalentemente dedito alla pesca, e risorse minerarie quali petrolio ed idrocarburi necessari in nazioni altamente abitate e

caratterizzate da un vorace insostenibile sviluppo. Il Mar Cinese Meridionale diventa così il punto focale attorno al quale si articolano le varie dinamiche statali, che incidono inevitabilmente sugli equilibri regionali, che a loro volta si ripercuotono a livello internazionale. Analizzare dunque le potenzialità del mare in questione diventa lo scopo primario, in particolar modo le risorse ittiche e minerarie, richiamando l'attenzione anche sulle dinamiche internazionali che ivi influiscono, come le varie fasce di influenza nazionali e internazionali sul mare, per poterne assicurare la protezione e la salvaguardia contro lo sfruttamento libero ed indiscriminato. Non vanno tralasciati però i soggetti statali che lì convivono, accennando alle dispute passate e presenti, agli attriti irrisolti, ma cercando tra questi di descrivere le vie alternative finora adottate per favorire la cooperazione regionale su tematiche quali la salvaguardia dell'ambiente costiero e marino, in un ecosistema variegato e fragile qual è il Mar Cinese Meridionale.

Nella dissertazione che andrà a seguire, una iniziale presentazione della regione sud-est asiatica del Mar Cinese Meridionale ci aiuta nel comprendere la geografia e le peculiarità del luogo in merito alle quali le varie riflessioni si svilupperanno. La conformazione dell'area, tipicamente costiera e incentrata su un forte legame con l'ambiente marino ma in paesi in pieno sviluppo economico e manifatturiero, ci permette di comprendere al meglio perché pratiche come la pesca e la scoperta di bacini minerari si intrecciano con il tessuto sociale ed ambientale modificandolo anche radicalmente. Innanzitutto, il settore della pesca rappresenta da sempre una fonte primaria di sostentamento per le popolazioni costiere, caratterizzate da nuclei di piccole comunità locali, fortemente legate all'ambiente circostante e inevitabilmente a lui dipendenti. Scontri tra pescherecci sono all'ordine del giorno, soprattutto laddove la mancata risoluzione delle dispute territoriali non giova alla divisione di aree marittime rivendicate da più parti, e nelle quali molti si ritrovano ad eseguire le proprie attività. In passato vi sono stati anche ricorrenti episodi

caratterizzati da scontri militari tra pescherecci e navi avversarie, fenomeni che rischiano di essere sempre più ricorrenti a causa dell'abuso nel prelievo delle risorse in zone costiere da parte di grandi navi che, operando su larga scala con metodi il più delle volte non consoni, hanno portato ad una drastica diminuzione degli stock del pescato, costringendo quindi anche le piccole imbarcazioni, dotate di minori attrezzature, a spingersi al largo. Le voraci attività da parte della grandi compagnie di pesca, in molte occasioni maggiormente sostenute con incentivi dagli stati stessi, hanno gravemente danneggiato l'ecosistema marino del Mar Cinese Meridionale, nuocendo anche alle piccole comunità che vivono di pesca nelle zone costiere. Sarebbe auspicabile che gli stati circondanti il mare, intervenissero maggiormente con l'attuazione di politiche a favore delle piccole comunità locali, per una corretta gestione delle attività di pesca e la promulgazione di principi per la protezione dell'ecosistema marino. Un processo iniziale di dialogo è stato intrapreso, ma necessita di sforzi maggiori, soprattutto da parte di stati ancora troppo legati alle proprie rivendicazioni di sovranità nazionale sui territori contesi. Rivendicazioni che si manifestano non solo in occasione di scontri tra pescherecci, ma anche nelle operazioni di esplorazione e sfruttamento di petrolio e idrocarburi. La scoperta di potenziali giacimenti nei fondali del Mar Cinese Meridionale ha inasprito maggiormente il confronto tra gli stati coinvolti nelle rivendicazioni territoriali. Alcune esplorazioni si sono susseguite con successo, in altri casi invece, in mancanza delle tecnologie necessarie gli stati hanno attuato ricerche insoddisfacenti. Nonostante il concreto impegno da parte di alcuni nello sfruttamento dei bacini minerari, ad esempio l'incremento da parte del Vietnam nella produzione di petrolio e idrocarburi, non è ancora chiaro quali siano le stime esatte riguardanti la quantità di risorse sommerse che potrebbero fare del Mar Cinese Meridionale uno dei primi produttori di petrolio e idrocarburi al mondo. Ancora una volta, le dispute intralciano le analisi fatte dai vari stati, che appaiono distanti e talvolta contraddittorie.

Ma proprio attraverso le esplorazioni vi è stato un avvicendamento tra alcune parti inizialmente poste su posizioni divergenti, ma che non hanno esitato ad intavolare consultazioni reciproche ed accordi per lo sfruttamento delle risorse sommerse, particolarmente rilevanti in quell'area assetata di materie prime volte a mantenere stabile il trend di sviluppo. Anche in questo caso, come per il settore della pesca, uno sfruttamento indiscriminato dei giacimenti comporta dispersione di materiali inquinanti, ed influisce sulla mutabilità dell'ecosistema. La formazione di operazioni congiunte potrebbe evitare eventuali danni ambientali, aprendo gli stati ad un ulteriore avvicinamento, data l'importanza attribuita alla risorse in questione. Progetti di management congiunto delle risorse, sia quelle legate alla pesca che ai giacimenti sommersi, potrebbero incentivare gli stati ad affrontare un percorso di riavvicinamento, aprendo la strada al dialogo reciproco.

Fin dai tempi della Guerra Fredda, la regione si era trovata al centro di dinamiche internazionali. Attraverso la creazione dell'associazione rappresentate le nazioni del sud-est asiatico (ASEAN), si tentò più volte di controllare le dinamiche politiche ed ideologiche della regione, per prevenire un eventuale escalation nei conflitti asiatici. L'ASEAN fu principalmente creata con lo scopo di monitorare la regione ed assicurare alle potenze occidentali un bacino di appoggio. Ma la necessità di creare un assetto regionale unito prevalse sugli interessi extra-regionali, e una volta finito il bipolarismo, l'associazione si impegnò affinché si potessero creare dei legami stabili e duraturi tra le potenze coinvolte nel sud est asiatico ricorrendo ad incontri di dialogo volti alla formazione di legami cooperativi e di progetti regionali comuni. Purtroppo la mancata risoluzione delle frontiere marittime, e l'attenzione data dagli stati sulle isole rivendicate, frenò l'ampliamento di un sistema comune e condiviso per il management delle risorse. Le isole e gli arcipelaghi contesi rappresentano tutt'oggi grandi bacini di risorse ittiche e minerarie. Da qui la

difficoltà per gli stati di accordarsi, dal momento che le rivendicazioni avanzate dalle parti sono sostenute da dati storici, accordi fatti in passato con le potenze coloniali coinvolte, e le popolazioni che ivi abitano sentendosi appartenenti ad uno stato piuttosto che ad un altro. Il forum organizzato dall'ASEAN è stato in passato promosso e condiviso da stati come l'Indonesia che, aventi interessi nella regione, svolsero il ruolo di mediatori per garantire stabilità geopolitica. Probabilmente, troppa enfasi è stata data alla causa delle dispute.

Come seguirà nell'analisi, i vari "meetings" succedutisi non hanno portato al risultato sperato. La questione delle dispute crea ancora oggi attrito ed aumenta la tensione tra gli stati coinvolti che rendono difficile un approccio multilaterale alla questione, e che in alcuni casi preferiscono ricorrere ad accordi bilaterali sentendosi più tutelati. La mancanza di un sistema regionale basato sul reciproco rispetto e sulla fiducia mina alle basi il confronto tra gli stati, ostacolando l'attuazione di norme necessarie per prevenire il dissipamento delle risorse tutt'ora in atto. Occorre quindi operare inizialmente per favorire la nascita di fiducia reciproca, per poi poter affrontare in futuro le questioni più spinose. Il ruolo centrale nella formazione di questo sistema può essere attribuito alle risorse, e alla ricerca di sistemi per il loro management che favoriscano un approccio unificato tra le parti. Il management congiunto delle risorse, volto alla loro tutela e ad attuare sistemi che ne impediscano la completa scomparsa riducendone il trend diminutivo intrapreso, va a beneficio non solo dell'ambiente ma di tutta la regione. La tutela delle aree costiere, l'organizzazione di aree marine protette, o di management comunitari locali delle risorse può portare ad un rinvigorismento stesso delle risorse, i cui benefici si rifletterebbero poi sul miglioramento degli standard sociali delle comunità risiedenti sulle coste a beneficio dello stato stesso. Inoltre, l'esplorazione congiunta dei giacimenti potrebbe favorire la condivisione di tecnologie e di "know how" tra gli stati coinvolti, che trarrebbero così vantaggio non solo dalle

tecnologie vendute ed acquistate, ma anche da programmi esplorativi che vedano coinvolte compagnie nazionali piuttosto che straniere, e che operino tenendo conto dello stato delle risorse ittiche nel mare così da non incidere negativamente sulla loro sopravvivenza. Un'organizzazione condivisa che veda risorse ittiche e minerarie salvaguardate e gestite attraverso programmi di cooperazione multilaterale potrebbe dare inizio ad un percorso di dialogo alternativo e concreto, e per di più multilaterale dal momento che tutti gli stati della regione sono coinvolti nello sfruttamento delle risorse da cui spesso dipende la sopravvivenza delle aree costiere.

La dissertazione che seguirà nelle pagine seguenti, porterà in conclusione a sostenere la tesi che vede nell'ambiente e nelle risorse una via alternativa su cui costruire un dialogo mirando ad un riavvicinamento tra gli stati del Mar Cinese Meridionale, troppo spesso schierati gli uni contro gli altri per motivi politici, di sovranità territoriale, ed ideologici. Dalla gestione delle risorse potrebbe dipendere la perpetuazione dello sviluppo che li sta interessando. A dimostrazione dell'efficacia delle risorse e dell'ambiente, come motivo da seguire per intavolare un dialogo possibile, vi sono recenti sviluppi di legami creatisi anche grazie all'intervento del programma ambientale delle Nazioni Unite che, con l'obiettivo di sensibilizzare gli stati sull'attuazione di maggiori politiche legate all'ambiente, ha contribuito nel riavvicinarli e nel fondare le basi per future discussioni che vedano presenti tutti i soggetti della regione.

Si vedrà quindi come appare difficile accordare gli stati e le loro posizioni divergenti riguardo alla dispute, ma come invece dall'altra parte sia possibile tentare la via del dialogo su tematiche che li accomunano, e che li vedono coinvolti nel processo di cambiamento che la salvaguardia dell'ambiente e degli ecosistemi più fragili, come quello caratterizzato da alta biodiversità del Mar Cinese Meridionale, richiedono.

Parole chiave: Mar Cinese Meridionale, dispute, risorse ittiche, risorse minerarie, cooperazione regionale.



Fig. 1. Mappa sud-est asiatico (from <http://www.un.org/Depts/Cartographic/map/profile/seasia.pdf>).

1 Introduction

In the last few decades, the Asian region surrounded by the South China Sea has grown rapidly in terms of population. The excessive use of sediments and resources given by the sea has generated a rapid escalation in the relationships between the states involved. The need of more of fishing products, as fish is at the base of Asian shoreline people's diet, and the increasing in the consumption of energy caused from the '70s on the claiming of some islets and reefs, which are placed in the middle of the sea, as States' possessions. As for the presence of Western forces in the region up to that moment, as soon as the U.S. interventions in Vietnam and Philippines were revealed as disastrous and inconclusive, the withdrawal of their military forces opened a new scenario for the region and its states, which started one by one the claiming of land and territorial sea. However, as it will be discussed lately, in some cases 'the influence of external control does not necessary end with withdrawal' (Smith & Pinder, 1997, 304).

The parties involved in the so called dispute over the South China Sea, have different point of view regarding the sovereignty over the islands well-known as Spratly and Paracel. Conflicts related to territorial waters and the exploitation of resources usually deal with the right over potential offshore energy sediments and fisheries. The dispute represents the contenders' willingness of extending their control over the sea not just because of the commercial routes particularly influent in that zone, but because of the discovered seabed resources. As a matter of fact, the different claims over the South China Sea started from the moment in which there was the relevant discovery of hydrocarbon and oil sediments. In order to proceed searching for new potential sediments' banks, it is necessary to delimitate the areas of influence, as it appears being difficult even for offshore companies to act in disputed territorial waters. For instance, one of the most disputed area of the South China Sea is represented by the Spratly archipelago, partly

occupied by Philippines, Vietnam and Taiwan but whose sovereignty is claimed by China, Vietnam and Taiwan as well, while a partial claim has been made by Malaysia. Instead, the Paracel archipelago seems to be part of the bilateral claim asserted by China and Vietnam.

In front of the presence of offshore and onshore resources, it is important to act in order to preserve them and to guarantee the balance, especially where powers prove to have a certain naval capability. Because of the concern for a possible escalation of the conflict in South China Sea, Malaysia has promoted naval investment, such as the construction of a naval base in Sabah closed to the Spratly Islands. But the fear of future threats goes beyond the borders of Southeast Asia and affects also Australia, which has developed new strategies related to the Asian tensions (Smith & Pinder, 1997). The states involved in the disputes have to face the fact that dialogue is necessary in order to implement their projects. The need of resources clash into rivalry coming from the past, made of different colonial roots, declarations of sovereignty, and assertion of possessions.

However the state that will be able to impose its presence on the dynamics of the region, would probably have the best over the resources founded and an exclusive use of most part of the South China Sea. The scenario here prospected would surely break the slight balance of the region, therefore it is necessary to move forward following the path of multilateral dialogue, in order not just to prevent an escalation of the relationships into a conflict but also to proceed implementing reforms and agreements regarding the protection of the marine environment of the South China Sea, as it represents one of the world's most rich and composited ecosystem.

1.1 Regional geography and position of the South China Sea

Sometimes quoted as the 'Asian Mediterranean', the South China Sea covers an area of 3.3 million km². Into its waters flow significant rivers such as the Pearl in Guangdong Province

(China), the Red in North Vietnam, the Mekong in South Vietnam (Morton & Blackmore, 2001). It can be considered as a semi-enclosed sea due to the fact that 90% of its circumference is bordered by land. The political entities bordering the sea are Brunei, Kampuchea (Cambodia), China, Hong Kong, Indonesia, Macau, Malaysia, Philippine, Singapore, Vietnam, Thailand and Taiwan (Valencia, 1978). The basin area presents islets, reefs and submerged banks, such as the 'Macclesfield (Chungsha) and island groups, e.g., the Paracels (Hsisha) and the Dangerous Ground, including the Spratly (Nansha) Island' (Valencia, 1979, 4). As for the continental shelf areas, they include 'the Mainland Shelf extending from the Taiwan Strait through the Gulf of Tonkin, the great shallow Sunda Shelf underlying the southwestern South China Sea including the Gulf of Thailand, and the narrow shelves off western Palawan and Luzon' (Valencia, 1978, 5).

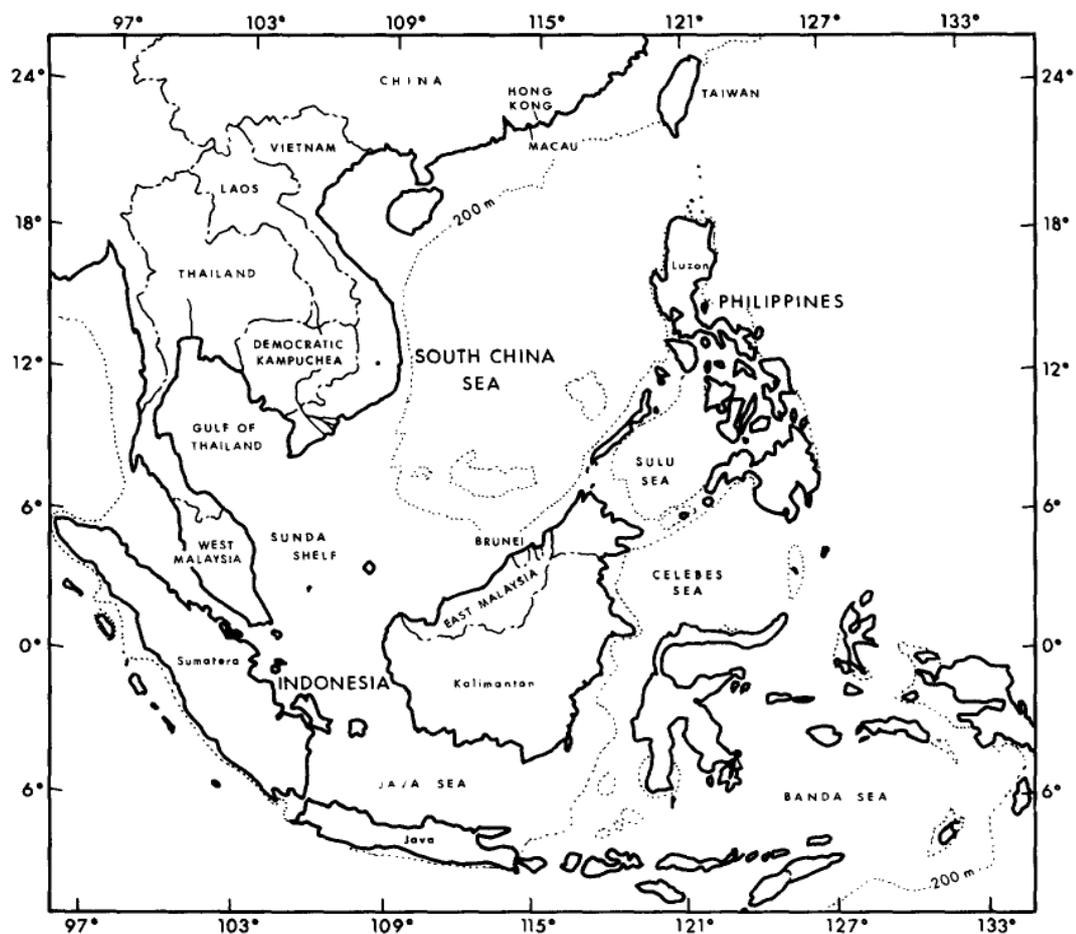


Fig. 2 The South China Sea (from Valencia, 1979, 4).

The South China Sea area is almost situated between the Equator and the Tropic of Cancer. This particular position causes the presence of a monsoonal climatic regime. Monsoons that last from October to April are affected by the northeasterly winds, while the wet monsoons appear from May to September causing the evolution of a tropical ecosystem throughout the region (Valencia, 1979). The increase in population during the last few decades is having a deep impact on such a fragile context, since the tropical environment appears to be the richest but at the same time the weakest ecosystem. The limit of the biological production in tropical zones is highly related with water and the absorption of it from vegetation, which contributes to maintain the right amount of humidity that is necessary for the biomass that lies on the soil (Faggi, 2002). The raising of human impact, especially on coastal zones, has caused the cutting down of entire banks of mangroves and trees reducing the richness of the soil.

The region is affected by a sort of 'socio-economic stress' (Morton & Blackmore, 2001, 1246), which is represented by over-exploitation of resources, such as wrong garbage disposal and the creation of built-up areas that particularly affects the coastal structure. Drain polluted waters coming from industries and urban structures flow into rivers and reach straight the coastal waters of the South China Sea. Not only the pollution previously mentioned is responsible for the deterioration of the marine ecosystem, but also the presence of irregular small and large scale fisheries and the illegal fishing methods usually used by large fishing vessels, which cause the extinction of some species and the alteration of the marine environment. Coral reefs are involved as well, as coral communities are placed around numerous islets and archipelagos of the Sea. Dynamite fishing is frequently used for the collection of coral causing the rapid destruction of reefs. It is a practice widespread throughout the South China Sea, from Indonesian coral reefs to southern China (Morton & Blackmore, 2001).

The alteration of the habitat surrounding the South China Sea is related to the high rate of human presence, which is responsible not just for the deforestation of coastal zones, but also for pollution and overfishing. Degradation becomes heavier where people increase their living standards. ‘The root cause of degradation of the South China Sea region is the growing Asian population and the concomitant demands made upon the marine environment’ (Morton & Blackmore, 2001, 1246). Since the last three decades, statistics have been showing that:

‘More than a quarter of humanity resides in the political entities bordering the South China Sea and 75% of Southeast Asia’s population lives on islands. [...] much of the population is crowded into river valleys and available coastal plains. The average national rate of population increase of 2.7% per year’ (Valencia, 1979, 1).

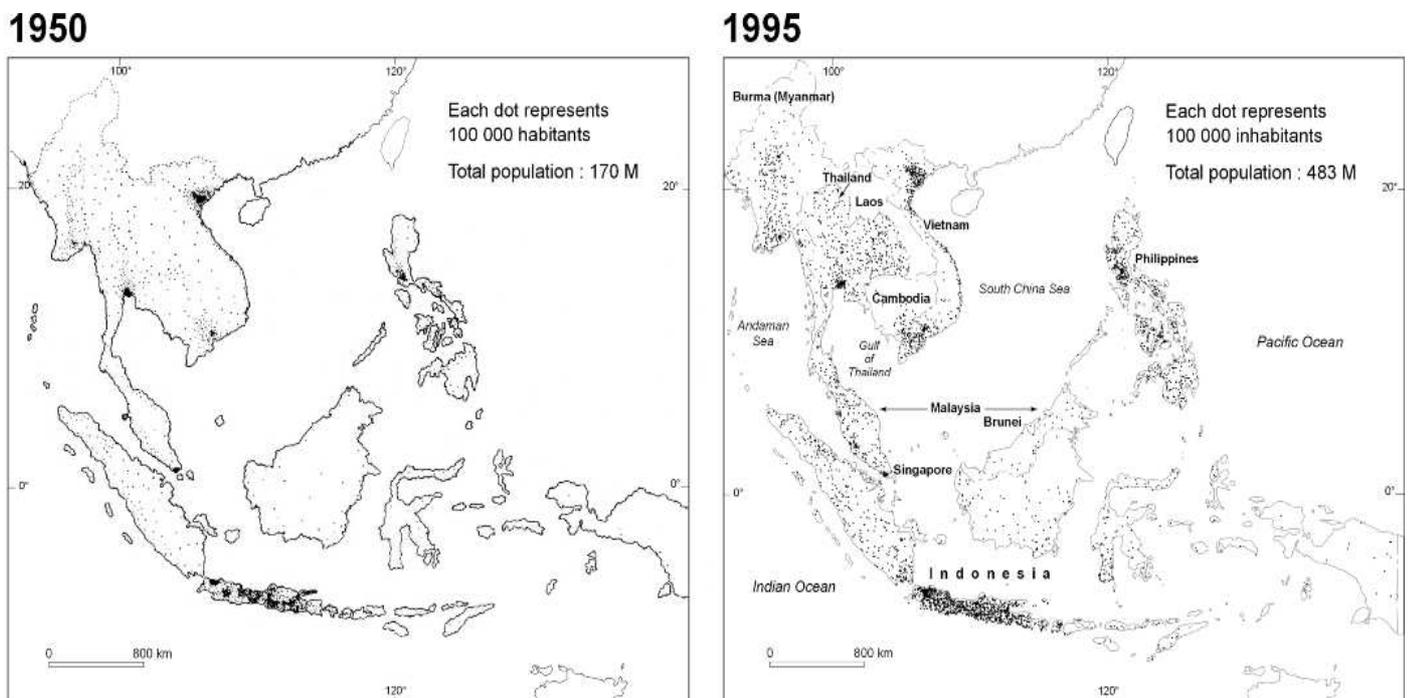


Fig. 3 Increasing in population in Southeast Asia.

(Retrieved from http://catsea1.caac.umontreal.ca/ChATSEA/en/ChATSEA_Research-SEA.html)¹

¹ChATSEA acronym for Challenge of the Agrarian Transition in Southeast Asia, under the Major Collaborative Research Initiative of the Social Science and Human Research Council of Canada.

Southeast Asia combines together different perceptions in terms of religion, colonial past and economic structures. For instance,

‘Theravada Buddhism is the dominant religion of mainland Southeast Asia, while Islam (in Indonesia and Malaysia) and Christianity (in the Philippine) have the largest followings in insular Southeast Asia. Beginning with the Portuguese naval presence in the sixteenth century, European imperialism tied its Southeast Asia dependencies into economic and cultural orbits linked to the metropolises while limiting intraregional contacts [...] Colonialism reached its peak in the late nineteenth century and the first half of the twentieth century.’ (Hirschman & Guest, 1990, 122).

The British first settled in Burma and the areas that later became Malaysia. The Dutch East Indies were based in independent Indonesia and, after revolutions, the French Indochina gave up the modern states of Vietnam, Cambodia, and Laos. The colonial presence of the Spanish in Southeast Asia was in the Philippine, but then succeeded by the United States. Despite the fact that people living in the various countries of Southeast Asia present differences in many fields, during the '80s they all got into a phase of high increase in population number and, even if the infant mortality index has not decreased, it represents in terms of social-economic and demographic growth the change that is affecting those areas (Hirschman & Guest, 1990).

Most of the population can be found in the proximity of big cities, such as Bangkok, Djakarta, Hanoi, Ho Chi Minh, Hong Kong, Manila, Singapore and Taipei. The development of urbanization is straightly connected with the progress in industrialization, above all the primary transformation of raw materials. By the way, there are few restrictions concerning industries and the way materials should be treated, especially in regard to waste disposal, e.g. fishing resources

has been facing a decline in shoreline habitats due to the presence of polluted waters and waste materials coming from factories:

‘Industrial/commercial activities compete for space with, and degrade the environment for, healthy human habitation; effluents may also adversely impact commercial fisheries and fishery resource. [...] west-coast fisheries production has declined significantly in recent years due to biological overfishing and possibly pollution of coastal spawning and nursery habitat. [...] In the Philippines, 31 rivers are reported polluted by discharge from sugar-mill distilleries, textile factories, pulp and paper mills and food-processing plants, engendering complaints from fishermen, fishponds operators, farmers and housewives.’ (Valencia, 1979, 12-14).

In terms of maritime transports and structures, South China Sea represents one of the most travelled path for oil tankers. From the '50s developed countries started projecting their naval presence on more and more oceanic routes starting the process of the organization of maritime spaces. The most important aspect was not the increasing in trade, but the growth of it in larger maritime dimensions and the strong connection between routes and industrialization. As soon as the new-industrial phase started to be spread out, transports were changed following the concept of rapid exchanges and shorter travelling time thanks to new technologies. The maritime spaces concerning the Asian and Pacific area, faced a increase in the amount of trading especially from north American routes to Japan. The development of Japan occurred during the '80s caused the crossing of 70% of exportations and 65% of importations in that area (Vallega, 1984).

The transportation of raw materials and semi processed products definitely took another modernization during the '60s, when containers first appeared and made exchanges easier. The proliferation of containers grew thanks to the ability of using them in various fields – especially for

the transportation of soft goods (Vallega, 1997). During the '70s, the exportations from Southeast Asia were almost based on primary commodities and there was the particularly growth of agricultural exports. In 1980s the total exports rose more than 25% in Malaysia, Philippine and Thailand, while Japan represents the biggest trade partner of the region.

The exported goods can be recognized in the textile sector, with clothes and textiles manufactures. By the way, some various distinctions can be found: for example, in the '70s Indonesia trade consisted of exporting oil and importing manufactures (Lee & Naya, 1988). In all 'Southeast Asia the share of manufactures in GDP rose on average from 16% in 1970 to 20% in 1984' (Lee & Naya, 1988, 140). Moreover, North East Asia represents nowadays the region having the six biggest ports in the world in terms of containers' volume, and it is the destination of a quarter of the international maritime transport. The Straits of Malacca is crossed by oil tankers coming from Middle East and going to Japan and South Korea, at least 80% of the oilers that cross the South China Sea (Limes, 2006). Data shows the strategic importance of South China Sea and its shipping routes, and it clearly represents the strategic importance of the area especially for powers there situated, which increasingly need resources in terms of energy in order to perpetrate the industrial and naval development. The fact of gaining the control over the area means the assumption of the primary role as naval power and a predominant position in reaching resources.

The South China Sea is a sort of 'maritime superhighway' and an important passage for states' supplies. Oil spills from wrecked ships are very common and represent one of the major causes of sea pollution. 'One third of the 1.6 million tones annually discharged into the sea by shipping is released accidentally' (Morton & Blackmore, 2001, 1250).

The transportation of oil and hydrocarbons can really affect the fishery operations and it can change the quality of waters and the status of shorelines. Since fisheries constitute a vital resource

for the region, in the last few decades the market increased as a response to the rise of the demand on the market.

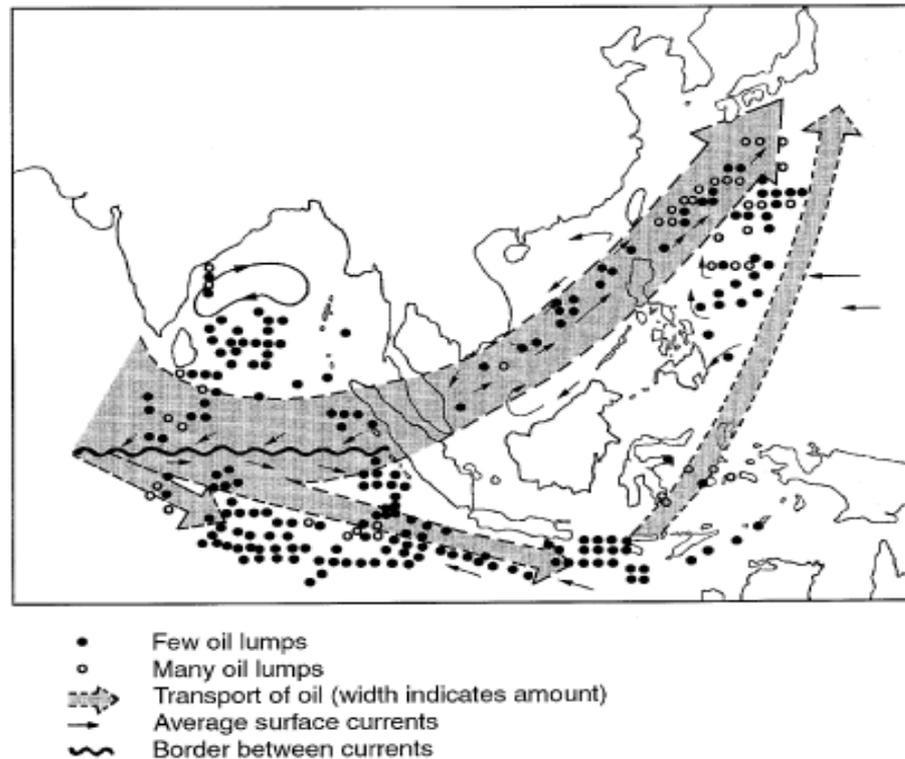


Fig. 4 Major pattern of oil tanker trajectories (Retrieved from Morton & Blackmore, 2001, 1250).

Many of the fishery zones appear over exploited and under stress therefore spill oil can have a deep impact over the species. An economic depression of fisheries would not just mean danger for marine-biological environment but also high socio-economic stress in fishing industry. In order to protect its environment and general interests, many coastal nations bordering the South China Sea have enlarged their maritime jurisdiction, causing with their declaration the claiming of high waters by various powers and the renewal of ancient contrasts related to disputed lands (Valencia, Kaul & Gault, 1983). Oil spill can represent a threat for the balance of the region, especially when it reaches coastal areas far away from the state responsible for polluting.

‘Oil spilled at BACH-HO (Mekong Delta) would mostly be contained within the extended jurisdictional zone of Vietnam. Although light traces of a spill at the height of a monsoon could reach Chinese-claimed waters. The BACH-HO well is itself located in the area of high fishing intensity, and any spill would threaten the fishery. The Mekong Delta region and the southern coast of Vietnam supports extensive mangrove forests and a related offshore fishery. Oil spilled at TAPIS site (east coast of peninsula Malaysia) during the southwest monsoon could enter Vietnamese-claimed waters [...] impacting areas of high fishing intensity. [...] Oil spilled at the TEMBUNGO site (offshore northwest Sabah, Malaysia and upper Gulf of Thailand) during the southwest monsoon could enter Philippine waters’ (Valencia et al., 1983, 348).

Tensions can highly rose especially in such a uptight context. The fact of defending the jurisdictional possessions or laying claims to other areas can be a representation of the future disputes between states all over the world, as they try to gain the possession over resources. The energy issue is becoming particularly relevant. The high increase in the demand of energy, and the correspondent decrease of energy supplies around the world, can open new complex scenarios, as for example the ‘geo-energy era’ in which the international balance will be influenced by the struggle for the control over resources. The Pacific sea bottom is one of the areas most implicated in the process of finding and managing the seabed resources. In the so called ‘Spratly and Paracel dispute’ even other powers, such as Australia and the United States, are involved. Australia is threatened by the reactions of China, which does not agree in solving the islands’ dispute following a multilateral dialog but prefers a bilateral one. The United States believe that China is trying to solve the disputes by bilateral meetings in order to prevail with its military power on the other contenders surely inferior in military supplies. On the other hand, ASEAN (Association of

Southeast Asian Nations) is a subject that China has to face and deal with, as it represents most of the states of the Southeast Asian region, which want to collaborate in a single entity in order to face together the dialogue with China (Klare, 2012).

1.2 Disputes over the South China Sea: the sovereignty issue on territorial sea and resources.

Placed right in the middle of the South China Sea, the Spratly and Paracel Islands are nowadays some of the most contended archipelagos. The disputes involve different states according to different point of views regarding the ancient right of possession of territorial sea waters.

The area involved can be divided into some geographical distinct areas: North of the sea, right in front of Hong Kong, there is the Pratas islands, which are half way from Taiwan and the Chinese island of Hainan. South from Vietnam, but southeast from Hainan, it is placed the Paracel archipelago, while the Spratly islands are placed south from Ho Chi-Minh (ex Saigon) (Hoang, 1995). Other reefs and banks can be found neighboring, such as the Macclesfield bank, Mischief Reef, and the Scarborough Reef. The most contested possession is the one of the Spratly, but even the Paracel and Mischief Reef generated a brief military intervention and contrasts in the past.

The claim to property of the islands and archipelagos becomes complex as soon as every state implicated asserts different outlooks related to passed settlements, treaties and even different names given to the islands themselves. The issue concerns questions regarding the baseline of the archipelagos, the fact of exercising the right to pass through straits and even the delimitation of states' boundaries (Valero, 1994):

‘Singapore and Malaysia are disputing ownership over Pisang Island and Pulau Batu Puitih (White Rock) [...] which supports Horsburgh Lighthouse in the strategically

important and congested waters of the Malacca and Singapore Straits. Indonesia and Vietnam are involved in a controversy over the ownership of the Natuna Islands off the north-western coast of Indonesia's Kalimantan Island [...]. China, Taiwan and Vietnam are each contesting the other's claim to sovereignty over the Paracel Island group[...] Taiwan is also disputing China's claims to Pratas Island [...] and Macclesfield Bank [...]. Finally, five countries –PR China, Malaysia, the Philippines, Taiwan and Vietnam- are presently claiming, as part of their national territories at least some of the islands in an archipelago loosely referred to as the Spratlys' (Valero, 1994, 315).

Among all these disputed areas, the Spratlys appear to be the most contested. As suggested before, with a citation from Valero (1994), various states have been claiming its possession. The positions of the claimants become controversial as soon as all of them give a different idea as regarding the location of the islands. Actually, there is not even nowadays a strong arrangement concerning the Spratly Islands. Vietnam has suggested its own map, as well China considers the Spratly islands as an extension 'up to 100 km from the shores of neighboring countries' (Dzurek, 1996, 3). Different authors proposed proper interpretations of the issue, for instance Prescott asserted that 'There is no single authoritative definition of the extent of the Spratly Islands, but they are found in the southeastern part of the South China Sea' (Dzurek, 1996, 4).

As for the names of the islands, as previously pointed out, they appear both in maps and papers having different denominations depending on the names given by the claimant states. In fact, the various places are named after Chinese, French, English, Malay, Vietnamese and Filipino. The fact of the attribution by the adjacent countries of different geographical names, due to the differences among the languages, does not help in making the precise collocation of the islands, and of the disputed lands as well.



Fig. 5 A map showing the disputed reefs and archipelagos in the South China Sea (Retrieved from Morton & Blackmore, 2001, 1244).

Tensions in the area were turned on as soon as Philippines occupied militarily ThiTu Island during the '70s. From 1974 on, the Republic of Vietnam started showing its renewed presence in the region establishing armed settlements when finally 'its forces occupied five islands in the Spratly archipelago, after loosing possession to China of the Crescent Group in the western Paracel archipelago, north of the Spratly' (Valero, 1994, 315).

China had previously imposed its presence on the area by a military intervention in March 1988, when it deprived Vietnam from the possession of eight islands in the Spratly, raising tensions by resorting to violence. Until 1983, there was no evidence that the relations between countries in the area could escalate into tensions and military clash. The problem of the claiming of land was not seeing as an urgent matter to solve until 1988, when China undertook a naval battle against Vietnam. Vietnamese ships were destroyed and foundered and all over the sea there was the spreading of fear for a possible progression of the conflict. From a baseline and jurisdictional point of view, these islands have always represented a base point for states to enlarge their exclusive competence on the waters and on the resources there placed. This aspect may be the focus of all the dispute due to the fact that if all the claimants are able to extend their jurisdictional right on waters, and therefore to occupy the islets, the South China Sea 'would be made subject to various degrees of national jurisdiction, converting what were once high seas and an international seabed into a semi-enclosed sea' (Valero, 1994, 316).

In the past, some attempts of extending the control over the waters were made by states. In 1977, Vietnam stated that Spratlys and Paracels were its own property. The Philippine on the contrary declared the accession of western Spratlys' territories and hereafter the 200 nm (nautical mile) exclusive economic zone. Even Malaysia came out with the occupation of three islands in the Spratly, assuming that they constituted an extension of Malaysian continental margin. The

issue became more relevant when in 1992 China enacted the 'Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone', in which the Spratly Islands' territories were included as Chinese possessions. Taiwan felt the declaration as a threat to its territories and prepared its own territorial waters law claiming not only the Paracels and Spratlys but also Pratas Island and Macclesfield Bank (Valero, 1994).

Among the states which are contending the disputed islands, China appears to be the one better equipped and strategically conscious in politics. In its declaration of the Law of PRC on territorial sea, China makes its case assuming that Spratlys and Paracels belong to its territories because of ancient sovereignty. The prologue states:

'On the basis of history, geography, international law and the facts, the Spratlys and Paracel Islands, Macclesfield Bank and the Pratas Islands have always been a part of the inherent territory of the Republic of China. The sovereignty of the Republic of China over them is beyond doubt.' (Kuan-Ming Sun, 1995, 403).

Even Vietnam asserted the right of possessing Spratlys and Paracels according to historic roots. Basically it means that each state 'maintains that its agents were the first to discover, develop and administer the archipelago which, as a result, became part of their respective territories' (Valero, 1994, 319).

As for the assertion of the Spratlys and Paracels as Chinese or Vietnamese territorial sea waters, there was in this moment the introduction of the concept of historic waters, which creates further disagreement. The statement was supported by a published geographic map dated 1948, in which a U-line was placed around the borders of the sea in order to indicate the jurisdiction of China over it (see fig. 6). But even nowadays the map appears unhelpful to support Chinese reasons.

China published a lot of ‘artefacts’ in order to illustrate its first presence in the area, but they are not worth to support its claim according to the international law (Kuan-Ming Sun, 1995). Not just the Spratlys and Paracels are claimed by China according to geographical and historical demonstrations. Even the contended Vanguard Bank (also known as Wan’an Bei) opened a harsh discussion between Vietnam and China, when the latter tried to show its right of possession on the area drawing a sort of ‘historic line, which also encompasses continental shelf and exclusive economic zones claimed by Malaysia, Indonesia, Brunei, and the Philippines’ (Valencia & Daojiong, 1994, 201).

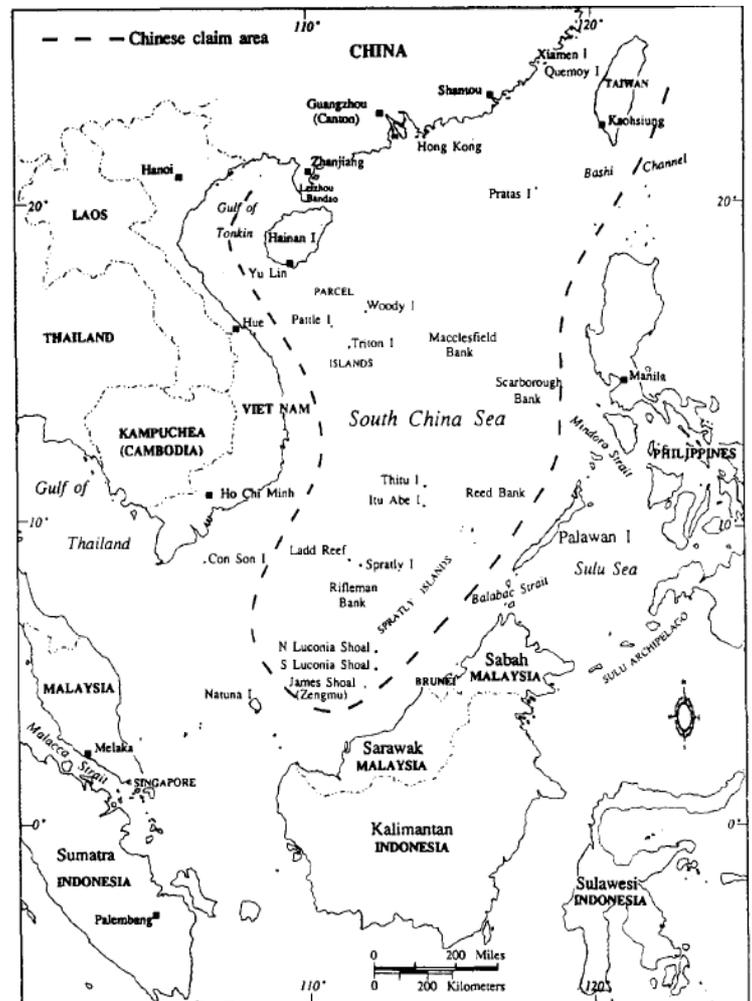


Fig. 6 Map of Chinese U-line (Retrieved from Kuan-Ming Sun, 1995, 409).

As for the other powers that overlook the South China Sea, in 1991 the other five claimants states (Brunei, Indonesia, Laos, Singapore and Thailand) met together in Bandung, and took part to a conference dealing with “managing potential conflicts” in the South China Sea. All the participants expressed the need of solving the issue related to disputed islands through peaceful means. They also agreed to implement a system of cooperation in various fields, such as

communication, shipping control even against piracy and drug trafficking. China participated to the conference as well, and declared its willingness to find a cooperative approach in order to solve the dispute, but it stated also that its sovereignty over the Spratlys, and other South China Sea islands groups, were not negotiable (Valero, 1994). The reaction of other subjects involved did not arrive late. For instance, Philippines agreed upon a treaty of mutual defense with the U.S. As for Japan, it was not involved in this controversy since the treaty of San Francisco excluded it from the claiming of possible possessions. As a matter of fact, the San Francisco Peace Treaty was signed with Japan in 1951, after its defeated in World War Two. The Treaty concentrated on 'the distinction between territories to be returned to China and those that need not necessarily be returned since it provided a separate renunciations by Japan of the Spratlys and Paracels' (Valero, 1994, 332). The Treaty contributed to facilitate Chinese position, because Japan was forced to give up all Chinese territories previously conquered. Instead, Vietnam and Philippines immediately advanced their claim on Spratlys. China was not admitted to the Peace Treaty Conference, neither Taiwan was invited. The moderators, U.S and USSR, however 'proposed an amendment that would have made the San Francisco Peace Treaty provide for a recognition of China's sovereignty over Taiwan, Pratas, the Pescadores, the Paracels, the Spratlys and Maccledfield Bank. The proposal was however overwhelmingly rejected by 46 of the 52 conference participants' (Valero, 1994, 332). Vietnam went on supporting its cause asserting that China had no right of possession on Spratly and Paracel islands. It mentioned the Cairo Declaration, which had been previously issued on the 27 November 1943 by UK, U.S and the Nationalist China of Chiang Kai-Shek. The Cairo Declaration made a resolution on the territories occupied by Japan; it clearly stated that:

'All the islands in the Pacific, which it seized or occupied since the beginning of the First World War in 1914, and that all the territories that Japan had stolen from the Chinese,

such as Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China' (Valero, 1994, 331).

According to Vietnam, missing the mention of the Spratlys and Paracels territories was the proof of the fact that they were not considered as Chinese territories. Vietnamese position was supported by assertions of own expeditions ruled in the past in order to discover the area and the groups of islands. Vietnam also claimed that the islands were previously ruled by the colonial French Indochina, which established a sort of protectorate delimited by a treaty signed with China in order to clarify the respective boundaries. Vietnam and China resorted to violence when China first entered the Spratlys area in search for basis in 1988, when it positioned some forces in Fiery Cross Reef. Immediately followed a battle, in which some Vietnamese personnel lost their lives. It was a very brief struggle but rather effective. Afterwards both were accusing the counterpart of having first opened the fire. At least Vietnam proposed a confrontation over the matter, which was rejected. On the contrary China sent more forces in order to supervise the zone and Vietnam reacted similarly. The other contending states made clear their position and their declarations of sovereignty as well (Dzurek, 1996).

Not only the Chinese and Vietnamese quarrel raised tensions in the Spratlys' dispute, but also a brief clash between China and Philippines. It started in 1995, when China occupied Mischief Reef, which was the last of Spratlys' territories to be involved in the disputes. From that moment on, the number of occupied Spratlys increased to 44: '25 by Vietnam, eight by Philippines, seven by the PRC, three by Malaysia, and one by Taiwan' (Dzurek, 1995, 65). Tensions arose as soon as China built some structures nearby Mischief Reef and jailed some Filipino fishermen. Philippines acted detaining some Chinese fishermen as well. Probably Chinese were responding to Philippines' activities, since Philippines were starting plans of explorations of the area, and making

arrangements with Vietnamese Defense Minister concerning the Spratly issue. Philippines protested against the military intervention of Chinese forces, asserting that PRC was breaking the Manila Declaration signed by six claimants states in 1992, according to which all of them agreed to maintain a peaceful perspective and self control. On the other hand, China argued that the structures built were not made on military purpose but as a shelter to its fishermen. Philippines authorities called for an international intervention, but China followed the path of bilateral dialogue. Three meeting were held but none of them solved the issue. Probably the Vietnamese forthcoming entrance to the ASEAN² was seen as the beginning of a sort of anti-Chinese coalition. As for Philippines, if compared to China, its inferior military position determined its attempt to move the struggle from a regional to an international level, assuming that China had violated its Exclusive Economic Zone (EEZ) in order to gain international support (Dzurek, 1995).

Mischief Reef is a small stripe of land, so tight that it can not be considered from a maritime jurisdictional point of view under the UNCLOS³. It is placed near the Philippines' territorial claims, but it is also claimed by Vietnam, Taiwan and China. The area represents a widely-known passage from Jakarta to Manila, however the rising of tensions in the area have never affected the shipping activities: the disputes directly involve the use of resources and its connected activities, not the navigation rights (Dzurek, 1995).

In the 1960s and beginning of '70s, the rush to resources started to affect even Southeast Asia, in particularly the South China Sea area where disputes grew rapidly due to the states' claims of continental shelves and maritime jurisdiction. Events such as the rapprochement of the Nixon's U:S government with China in 1971, the lost of the United Nations seat from Taiwan in behalf of

²Acronym for the Association of Southeast Asia Nations.

³Acronym for United Nations Convention of the Law of the Sea (1982), which delineated new ranges of jurisdiction both for national and high sea waters.

China, and the ending of the Vietnam war followed by the Paris agreements, changed the dynamics of the region causing a partial marginalization of Taiwan and a recovery of Vietnam (Dzurek, 1996). As regards the different positions of the states involved in the changing process, China went on claiming the territories according to historical records, as suggested before. It started offshore explorations: 'by 1977 a Chinese oil rig was reported operating in the Paracel Islands' (Dzurek, 1996, 19). China continued its claim over the Spratlys and protested a lot against other states' interventions: 'on July 1980 the PRC Ministry of Foreign Affairs protested an agreement between the Soviet Union and Vietnam to conduct hydrocarbon exploration activities' (Dzurek, 1996, 20). It did not impose its presence over there until 1988. As suggested from Dzurek (1996), in 1992 China started conducting scientific researches on the Spratlys' area and from the 1997 on, the Spratly islands were indicated as a part of Chinese Hainan province.

As regarding Taiwan, it was excluded from the process of dialogue and multilateral meetings because of its difficult position toward China, and the fear by the other claimant states of Chinese military supremacy in the region. It continued asserting its possession of some Spratly islets and Paracels affirming its sovereignty over them.

Because of the awareness of the presence of oil and hydrocarbons in the sea region, each state took measures. As soon as the war was ended, Vietnam started exploring the area in search of potential basin of resources. In 1973, South Vietnam had already 'incorporated ten Spratly islands [...] and sent troops to Spratly Island and Namyt Island. Eventually, Saigon forces occupied five or six islands' (Dzurek, 1996, 20). A map of the united Vietnam was published in 1975, as a result of its previously added possessions, which compromised the relationships with ancient allies – especially China.

In response to the beginning explorations, Philippines protested against Vietnamese and Taiwanese activities and occupied some islands after its declaration of EEZ in 1978.

On the opposite front, Malaysia and Brunei claimed their sovereignty as well but according to their EEZs. They did not stated the possession of the islands themselves but their jurisdictional right on sea waters according to the extension of their EEZs. Malaysia declared its EEZ in 1980, but has not delimited it yet. As for Brunei's position, it appears in contrast with Malaysia EEZ. Since the moment of its independence, Brunei 'inherited a continental shelf partially delimited by the United Kingdom' (Dzurek, 1996, 22). Unfortunately, the shelf area of Brunei appears to be in contrast with the Malaysian continental shelf claim.

As for external interventions in the different issues, U.S and Japan are rather worried about a possible future escalation in the disputes. The various positions previously delineated do not help the construction of a safe and reliable trade alliance between states. On one hand, Washington appears being more worried about its oil companies interests. In effect, there are many drilling projects to be implemented in the South China Sea, but investments in such a disputed area do not appear reliable. The possible of a future economic U.S involvement in the region deeply depend on four principles stipulated:

'1. The United States urges peaceful settlement of the issue by the states involved in a manner that enhances regional peace, prosperity, and security; 2. It strongly opposes the threat or use of military force to assert any nation's claims to the South China Sea territories [...]; 3. It takes no position on the legal merits of competing sovereignty claims and is willing to help in the peaceful resolution [...]; 4. It has a strategic interest in maintaining lines of communication in the region [...].' (Rowan, 2005, 430).

On the other hand, Japan has always been active in the past in the South China Sea area. It represents one of the most important shipping routes for supplies and trade. An interruption of the balance in the area would affect its economic interests and its provisions of oil. In fact nowadays 70% of tankers going to Japan cross the sea. But Southeast Asia represents also an important reference point for its manufactured goods, and a more stability in the Southeast Asia would create for Japan's new opportunities and markets (Rowan, 2005).

The lack of a resolution and the unyielding positions of the contending powers may be the cause of a process of instability and progressive destruction of the environment of the sea. Each contending state has been asserting its position from the beginning, and none of them seems to be prepared to do a backward step for a higher purpose, such as the balance and the protection of the region in all its various aspects, from the right of states over the waters to the protection of the entire environment. A common sense of responsibility has grown recently. Unfortunately it does not include the resolution of the disputes nor even the retreat from the dispute, but a common perception of the fact that the region presents a slight balance concerning the marine ecosystem and the resources there placed. There is a clear need to work together in order to protect and share the goods offered by the South China Sea. Fishing resources and potential oil-hydrocarbon basins must be previously certified and then regulated. By the way, the creation of the ASEAN, as a special forum in which Southeast Asian Nations can confront their positions and develop new common strategies, and a cycle of meetings on "managing potential conflicts" may help improving the dialogue between the parts turning it into a multilateral cooperative approach.

As it will be presented in the following chapters, various forms of cooperation, both bilateral and multilateral, are being discussed and even some of them implemented. The following chapters are going to deal with the various zones of national and international jurisdiction of the

sea, especially referred to the United Nations Conference on the Law of the Sea and its implementation in the South China Sea context, as focal point in the future scenarios of the disputes and also in the use of South China Sea resources.

2 Maritime Boundaries and Different Levels of Jurisdiction

The awareness regarding the ecosystem as a subject able to adapt to changes given by the human impact on the environment emerged only during the '60s when, thanks to new knowledge and external surveys, the entire ecosystem (considering the marine environment as well) was finally admitted by ecologists as being a reactive structure. The ecosystem was revealed as an organism able to oppose to degradation due to its capacity of reorganize itself. The statement was opposite to the traditional belief based on the comparison between the ecosystem, described as an “ordinary machine” which reacts in a mechanic way to external interventions, and the human society characterized by autopoiesis, which means the capacity of regenerating constantly. Considering the recognition of the ecosystem as being “autopoietic” as well, the measures for the protection of the environment had to be planned again in order to prevent any possible alteration (Vallega, 1993). From the middle of the nineteenth century the acknowledgement on the importance of the environment’s protection arose in the public opinion. Even the first images coming from the various human experiences in the space, which reported the Earth as a blue planet mostly surrounded by water, opened the debate concerning the protection of the marine environment.

The link between the human society and the sea went through different stages before turning into an international issue. In the past, four different stages underlined the increasing involvement of human uses and activities on the oceanic sphere: the mercantile stage, the paleo-, neo and the post-industrial stage (Vallega, 1992). Also the sea was implicated in the passages from one stage to another and it played its role as well.

As for the mercantile stage, it developed during the sixteenth century, and lasted until the eighteenth century, when the industrial revolution started to be implemented. During this stage, many oceanic routes were opened to trade thanks to new geographical discoveries. On the light of

this context, the sea was limited used for ‘rowing and sailing, navigation, fishing, extraction of salt and military activities on the sea surface [...] the human presence on the sea had not affected marine or coastal ecosystem’(Vallega, 1992, 50). As previously said, the industrial revolution marked the beginning of the paleo-industrial stage. It was based on a new approach in the production, and even in shipping transports. In the middle of the eighteenth century, the passage to mechanical energy changed the productive chain due to the division of labor. As Vallega reported ‘the development of the coal-fired vessel [...] gave birth to the initial consistent impact on the marine environment’ (1992, 51), and researches started since the first submarine telegraph cable was placed. People living in the coastal areas began affecting the environment, while new explorations for resources followed, and the progress reached started to diversified the world into industrialized and non-industrialized countries. The neo and post- industrialized stages were firstly affected by the conversion from thermal into electric energy. Then the rush to resources, such as oil and hydrocarbons, affected the oceanic areas; new technologies influenced the reach of resources, achievable even in deepest settlements, and the decolonization processes diffused in the so called “third world” countries increased the demand of energy for new developing nations. The request of fishing products rose and aquaculture started to be implemented. The most common activities involving the oceans increased in number: ‘submarine military activities [...], submarine navigation, offshore oil and gas installations, recreational activities, and salt extraction, [...], the sea was exposed to hazardous uses, particularly for ecosystems’ (Vallega, 1992, 51). The post-industrialized era mostly affected developed countries. Some activities, such as cultural and submarine sea uses, were highly influenced by technology.

The role of the ocean changed as soon as the control of determined shipping routes appeared to be essential in order to manage trade and control over some relevant areas. As a consequence,

the geography concerning seas and oceans turned into geo-strategy of the oceans. The whole process was strictly connected with the reach of resources and the capacity of exploiting them:

‘It is important to define, in geographical terms, what geo-strategy is. It is [...] an attempt at explaining behavior of countries with reference to their relationships with the sea. It is also an analysis and an interpretation of the various interests relating to the independence of maritime orientated countries and their people. [...], primarily economic motives and national attitudes’ (Vigarie, 2004, 77).

Nowadays, the access to natural resources appears to be the focus for developed and developing countries. Every nation depends on routes through which there is the provision of supplies. Not only the oceanic routes and sea straits represent the focus for countries that want to guarantee their presence and their supremacy, but also high sea waters and seabed hydrocarbon resources start to be involved in states’ plans ought to the high increase in population (especially concerning the developing countries). The international community has started in advance suggesting the possibility of such a dangerous scenario to come forward, when the natural resources of the sea and ocean are predated and contended by countries without suitable policies. In fact ecology, economy and geography were associated with law in order to define different models of behavior to be followed by private citizens, states and international organizations.

Since nowadays the international law formulated concerns conventions and norms that are imposed on states’ rules, in case of ratification: it specifies the presence of various levels of jurisdiction, which subdivide the uses of the sea by states and implement common policies for the protection of the marine environment.

The whole process for the creation of an international law of the sea began in 1957, when the first Conference on the law of the sea took place. It represented a recall of the previous

initiatives hold in 1930 under the control of the League of Nations. In 1958 the United Nations called the First UN Conference on the Law of the Sea (UNCLOS I). The results of the meeting were highly remarkable. The Conference approved four conventions concerning the management of marine zones, both under national jurisdiction and high sea waters, and the protection of biological resources (Convention on the High Seas; Convention on the Continental Shelf; Convention on the Territorial Sea and the Contiguous Zone; Convention on Fishing and Conservation of the Living Resources of the High Seas). Despite the progress made by the first UNCLOS, the second performed in 1966 was not so impressive. The third meeting started in 1973. It was a rather long process but it culminated in 1982 with the United Nations Convention on the Law of the Sea as a result. As a matter of fact, UNCLOS III signed a new dimension both in the relations between states, and the sea and its protection. It was finally approved in Montego Bay, the 10th December 1982 (Vallega, 1993). The Convention came into force in 1994, when the 60th national subjects signed it. Actually it has been ratified by 165 states until nowadays –according to data retrieved from the Division for Ocean Affairs and the Law of the Sea last updated: 23 January 2013⁴.

The Convention includes the main rules for the protection and governance of the whole sea and even the under seabed and airspace, as Blake suggests: ‘without UNCLOS we would be facing an anarchic scramble for state control of the oceans which would have been disastrous’ (Blake, 2004, 64).

The subdivision of the sea has constituted the coastal area, which is a large zone submitted by the state jurisdiction, and the oceanic area external to the national marine zones. The two differ even in their governance. As for the coastal area, scholars report about coastal zone management,

⁴Division for Ocean Affairs and the Law of the Sea. Last updated data concerning the number of states in which the UNCLOS has been ratified, according to the moment of the dissertation’s draft. Retrieved from http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm.

while concerning the oceanic space they refer to ocean governance or management (Vallega, 1993). Moving from the shoreline to the sea, four different belts have been settled under national jurisdiction: the territorial sea, the contiguous zone, the continental shelf and the exclusive economic zone – characterized in some cases by the presence of an exclusive fishing zone and archipelagic waters. As regarding the area under international governance, it has been subdivided into the high sea waters and the deep seabed.

According to the Convention on the Law of the Sea (1982), ‘the sovereignty of a coastal State extends, beyond its territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as territorial sea’ (part II, art. 2.1, p.27). The Convention gives to each state the control of the ‘air space over the territorial sea as well as to its bed and subsoil’ (part II, art. 2.2, p.27) but the governance of the states is under the supervision of International Law. The territorial sea can be extended to 12 nautical miles (nm). The other States maintain the right of flying over, innocent passage and scientific research, if permitted by the coastal state. After the 12 nm of territorial sea, the contiguous zone succeeds with an extension of 12 nm. It is a sea belt extended 24 nm from the shoreline, in which states maintain the right of controlling on fiscal, healthy and immigration matters. On the contrary, the other countries benefit of some activities, such as fishing, but the main state must guarantee the protection of the area and its archeological foundations.

The continental shelf follows the contiguous zone. From a jurisdictional point of view, the continental shelf must be separated from its physical meaning. As for the physical definition, it represents a part of the continental margin (where usually the effects of rivers are evident into the sea waters), while according to jurisdiction it coincides with a belt extending to sea waters that might not correspond to the physical one. The continental shelf is ruled by two different

conventions: the Convention on the Continental Shelf of 1958, and the UNCLOS of 1982. The first Convention considers the Continental Shelf as 200 nm deep or extended to the limit of possible exploitation. According to UNCLOS, it is considered as being an extension of the territorial land under sea waters until the limit of the physical continental margin, or an extension of 200 nm from the base line in case the continental margin does not extend to 200 nm. The most important advantage given by the continental shelf to the state, or archipelago is the exclusive right to exploit seabed resources and the research of new oil or hydrocarbon basins: ‘exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State’ (part VI, art. 77.2, p.54). However, it constitutes a state’s partial governance over the sea, since ‘the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedom of other States as provided for in this Convention’ (part VI, art. 78.2, p.54).

The evolution introduced by the Convention on the Law of the Sea in 1982 is represented by the exclusive economic zone (EEZ) that has been adopted by most of States around the world. The EEZ can not be extended over the 200 nm from the base line, and it must be implemented with the state’s direct proclamation of EEZ or through bilateral dialogues in cases two different EEZ coincide. The state jurisdiction is completely actualized. The coastal state has ‘sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non living, of the water superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone’ (part V, art. 56, p.43). The advantages do not concern only the exploration of the area and the management of its resources, but also the right of installing “artificial islands” and structures. In any case, there

is also the duty to preserve and protect the marine environment under proper jurisdiction. According to Blake (2004), the implementation of the EEZ has created at the same time a higher sovereignty of states over the sea but also a more awareness of the need of its protection, since 'about one-third of the world's oceans fall into coastal state sovereignty, while two thirds have been saved from national sovereignty, and are to be managed for the common benefit of humankind' (Blake, 2004, 65-66). As concerning the possibility of proclaiming an exclusive fishing zone, it empowers the state of complete fishing rights and fishery management, which does not mean the same rights as an EEZ. In some cases, states have declared both exclusive fishing and exclusive economic zone.

Nowadays, the 20% of the oceanic surface is covered by national jurisdictions, while the remaining is under the control of international regime (Vallega, 1993). As previously said, the first Conference on the High Seas took place in 1958, and it defined the high sea as the whole marine space not included in territorial waters. Although when UNCLOS occurred in 1982, the high sea have been representing the following extension from the 200 nm. Even land-locked countries have the right of access over the high sea. According to the Convention, the exploitation of the high sea seabed and resources should be perpetuated under the creation of an international authority as a result of a process of global cooperation. The Convention considers 'the area and its resources' as 'the common heritage of mankind' (part XI, section 2, art. 136, p.70). The benefits coming from the exploitation have to be shared as 'the Authority shall provide for the equitable sharing of financial and economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis' (part XI, section 2, art. 140.2, p.71). The project assigns the task of governing to the International Seabed Authority (ISA), while an agency is called to operate the concessions and the possible exploitations of minerals for humankind's benefit. Actually, the

arrangements regarding the existence of a super partes authority have not been clarified yet, since the United States, and even Britain and Japan do not approve it (Blake, 2004).

Even if the Convention on the Law of the Sea brought considerable improvements especially concerning the uses of the sea and the governance of states over it, the delimitation of boundaries still represents an obstacle to states' relations since territorial disputes for the ownership of islands or sea belts contribute to destabilize the global balance. As a matter of fact, many states that differs in politic views, find it difficult to arrange their positions when talking about marine sovereignty. In some cases bilateral or multilateral dialogues might help the contenders to reach an agreement, but in others, especially those in which the contenders are more in number, the situation does not appear so easily solvable. The UNCLOS of 1982 brought some principles of equity, since the declaration of an EEZ or continental shelf seems to be the most crucial passage for states' relations, 'the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, [...] in order to achieve an equitable solution' (part V, art. 74.1/83.1, p.52), therefore:

'[...] the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation' (part V, art. 74.3/83.3, p.52).

Maritime boundaries agreements between states appear to be the most relevant issue in marine field related to UNCLOS. Nowadays, there is a rather high percentage of marine disputes around the world. Actually, it has been estimated that at the beginning of the XXI century there were at least two dozen of disputes worldwide and, if it is considered together with the various

island claims, the total number increases to approximately eighty (Blake, 2004). Despite the fact that they happen to be high in number, most of them have a nonbelligerent nature, but some relevant specificities exist and recall the international attention. During the last three decades, the contrasts between states have been harsher especially where the islands and archipelagos contended were hiding seabed strategic resources under the waters. The Spratly and Paracels islands previously discussed are part of the scenario of the maritime boundaries disputes since they are contended by various nations that officially recall historic or ancient possession but in reality aim at controlling the waters and basins of those sea areas considering the possibility of exploiting the resources. The application of the UNCLOS rules in such a troubled scenario is determinant not only for solving those disputes, but above all for the implementation of norms in order to protect the marine environment of South China Sea and avoid the over exploitation of its resources.

2.1 The case of the UNCLOS in the South China Sea regional context.

In the South China Sea framework, the ratification of UNCLOS by the all six Spratlys' claimants is the only one measure shared by states that could represent an helpful device to solve the disputes or at least to start a cooperative approach toward the sea. Needless to say, UNCLOS was not thought to be a solution for all disputes regarding sea boundaries, but it is intended to be a sort of reference on which different opinions can be evaluated (Furtado, 1999).

As formerly said in the first chapter of the dissertation, the nature of the Spratlys' dispute has to be referred to the colonial past that intensively influenced the geo-political order of Southeast Asia. The area started to gain international attention at the beginning of the nineteen century, as soon as some colonies reached independence and others started to struggle for more space in the South China Sea. As the whole has been previously mentioned, it is not worth saying

how the disputes developed since nowadays. UNCLOS is incorporated in the scene as an advantageous instrument that provides ‘common criteria and norms’ (Furtado, 1999, 388): for instance ‘Brunei, Malaysia, and the Philippines base their respective claims on the stipulation of the continental shelves outlined in UNCLOS’ (Furtado, 1999, 388). UNCLOS may represent in the Spratly and Paracels’ issue a source of useful item for a mediation between the counter parts.

As Furtado suggests, the main point of the argument is strictly linked with the resolution of the claims based on historical motivations, such as the one supported by China. Actually, Chinese government is not the single one in asserting its ancient dominance on the mentioned territories, but also Vietnam states its administrative pre and post colonial role over them. Philippines claim the territorial waters and the possibility of the application of the EEZ over the Sea. Nevertheless, the Malaysian situation is mostly connected with the continental shelf issue, which if declared, it will be extended until the contended archipelago guaranteeing to Malaysia –as approved by the Convention according to the continental shelf criterion– the control over living and non-living resources there placed, laying the archipelago under its jurisdiction.

Even if the Convention was signed by the claimants all, they specified the unchanging of their respective positions concerning the owning of territories and territorial waters. The recounted outcomes clearly illustrate that the application of UNCLOS norms in the South China Sea milieu has been complex and almost stuck from the beginning. Some of the most crucial issues related to the implementation of UNCLOS in the South China Sea regional context concern the right of passage in territorial sea waters, the continental shelf and the declaration of EEZs.

As for the right of passage, the Convention on the Law of the Sea of 1982 states that ‘ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea’ (section 3, subsection A, art. 17, p.30). The matter becomes crucial when it concerns

the passage through straits that are used for shipping supplies. The Convention clearly states that 'in straits [...] all ships and aircraft enjoy the right of passage, which shall not be impeded' (part III, section 2, art.38, p.37). The state bordering the strait must guarantee the transit passage, regulate the maritime traffic and assure the safety of navigation, the prevention of fishing and the spilling of oil, and other unsafe substances into the sea waters. In the Southeast Asia scenario, the Straits of Malacca and Singapore are the most involved in the controversies owing to their role as 'thoroughfare between the Indian Ocean and the South China Sea' (Tangsubkul & Lai Fung-wai, 1983, 863). As a matter of fact, the area represents the second most crowded sea route in the whole world. The supplies and oil tankers coming from the Middle East and going to Japan and Northeast Asia cross it everyday, therefore it is easy to understand the high importance of respecting the right of transit passage articulated by the Convention. Despite Convention's norms, coastal states are rather reluctant towards guaranteeing freedom of navigation. In fact, as for Chinese behavior, it appears quite strict in view of the fact that foreign vessels must receive Chinese government's authorization before passing into its waters, even when non-military vessels are involved (Carr, 1983). 'China denial of innocent passage to warships is absolute' (Carr, 1983, 37), even if according to the Convention 'the coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea' (section 3, subsection A, art. 21.1, p.31). By the way, the permission for transit is not the only one requested by the Chinese government: foreign states have to afford the same process as regarding scientific research. As well as China, Burma, and Vietnam maintain their military warning settlements 24 nm wide, instead Cambodia and Indonesia support their positions building alerting zones 12 nm wide (Valencia, 1997) increasing tensions in the area.

The possibility for states to declare the continental shelf is advantageous and meaningful at the same time. In a complex geo-political situation, as the one in which states of Southeast Asia found themselves, the possibility for them to expand their influence can destabilize the slight balance of the region. The declaration of the continental shelf gives to the country that proclaim it the opportunity of exploring and exploiting both living and nonliving resources. In particularly cases, such as the one of the South China Sea where the sea shape is usually defined as semi-enclosed, declarations of continental shelf can overlap with each others creating tensions among states. Due to its physical features, the continental shelves differ one from the other, in some cases being deeper or in others more extended since the continental slope vary from place to place (Tangsubkul & Lai Fung-wai, 1983). In cases the sea does not present a sufficient subsoil depth, states prefer to extend their continental shelf at the maximum permitted by the Convention (350 nm), which is really unaffordable in such a closed environment as the one of the South China Sea. Actually, as for the boundaries' disputes regarding the declaration of continental shelf, China, Vietnam, Malaysia, Burma, Philippines and Taiwan are facing unresolved claiming, as far as the problem for the proclamation of the continental shelf matches with the claiming of Spratly and Paracel Islands, which have become a valuable treasure thanks to their natural resources and strategic location (Carr, 1983). As a matter of fact, China asserts that the definition of the continental shelf, according to the Convention's principles, acts in favor of Chinese claim for the property of the islands opposing to Vietnamese position, since it states that the article 76 of the Convention agrees with Chinese stance describing the continental shelf including 'the seabed and subsoil of the submarine areas that extend beyond its territorial sea through the natural prolongation of its land and territory to the outer edge of the continental margin' (part VI, art. 76.1, p.53).

The Convention does not enunciate about the acquisition of territories or the resolution of claims; but it contains some determinant principles, such as the status of archipelagic waters and the definition of island according to the international law, which can determine if an islet possess features necessary for states to put forward economic and geographic pretensions. For instance, as regards the Spratly archipelago, some submerged characteristics are required for a territory in order to be considered an island and consequently to assure the status of EEZ in the area (Furtado, 1999).

Regarding the implementation of EEZs, the same problems that affects the declaration of continental shelf come out over again. Since the EEZ is strictly connected with the exploitation of fisheries and hydrocarbons, the proclamation of it plays a critical role adding more pressure to such a fragile milieu. In the world's marine environment, the EEZ embodies the greater call for human jurisdiction. In line with the meaning of its initials, it defines the jurisdiction from an economic point of view that might differ from the physical one. The declaration of EEZ originates from the need of resources strictly connected with human interests. The EEZ gives to the state a huge power if compared with the declaration of fishing zone, which is strictly limited only to fishing resources (Nadelson, 1992). As said before, the position of land-locked states does not change in case of coastal states' declaration of EEZ: they have the right to participate as well through bilateral or multilateral dialogues depending on the coastal state involved. Although, they maintain their rights on the high sea waters that extends at the ending line of the EEZ.

In relation to the realization of EEZs in the South China Sea framework, states have different attitudes (see fig.7). As for China, its point of view is obviously the same as the one related to the application of a continental shelf. In addition, China does not take part in any meeting related to Taiwan and Taiwanese marine position, since it refuses to consider Taiwan as an autonomous entity (Valencia, 1978).



Fig. 7. Map showing the possible implementation of EEZ in the South China Sea regional context in comparison to States' territorial claims (Retrieved from <http://www.affarinternazionali.it/articolo.asp?ID=2070>).

China recognizes the efficiency of the EEZ, and the continental shelf as well, but considering the fact that in Southeast Asia context most states are in proximity to each others, a proper claim could represent a domino effect making the claims to rise in number. China would probably have to face directly not only the Spratly and Paracels issue, which is related to the control over the sea and resources, but also the East China Sea dispute that involves South Korea and mostly Japan. China does not want to compromise its position, and it could probably decide to act as a moderator of a regional dialogue process becoming the leader of the region, safeguarding in this way its interests.

As for Hong Kong, its primary focus is on transports and distant-waters fisheries. As a result, it might cooperate in regional agreements, maintaining its status of semi land-locked state but contributing in sea management affair.

As regards Indonesia, its participation to a regional alliance would improve its position even if it would be forced to reduce its efforts in developing a proper offshore plan in favor of a regional one.

On the other hand, the standpoints of Cambodia, Malaysia, Laos and Singapore are strictly linked to their respective economic positions in controlling fisheries resources, aiming at maintaining a connection with the sea, Philippines appears to be unmovable in the Spratly matter, since it claims the property of the archipelago, and had already faced in the past a harsh clash with China (Valencia, 1978). The implementation of a regional exclusive economic zone system might develop some marine regional cooperative relations. Besides the supervision of the created system by an authority such as the ASEAN (Association of Southeast Asian Nations) could even help to solve the Spratly and Paracels' issue, building a regional framework which can assure impartial fisheries and shipping transports rights and an unambiguous management of offshore resources.

In specific cases of disputes and claims, the implementation of the EEZ might help solving the issues or at least accelerating the process of multilateral dialogue, since all the claimants wish to put it and its connected rights into effect. By the way, multinationals or foreign companies appear rather reluctant in financing hazardous projects, since the lack of a close solution frighten the investors. The knowledge of the presence of fishing resources and the potential exploitation of hydrocarbon basins can motivate states to undertake the path of *détente* (Valencia, 1978). The implementation of exclusive economic zones in South China Sea requires the approval of various

political and geographical entities, since it represents a diversified reality in which some states are partially locked or necessitate of a direct link with the sea:

‘[...] entities in the region which may claim a geographically disadvantaged status include self-locked Kampuchea, Hong Kong, and Singapore. Brunei is nearly shelf-locked, and Thailand is self-locked in the South China Sea. Brunei, Kampuchea, Hong Kong and Vietnam also have maritime access only on the semi-enclosed South China Sea. In order to avoid unresolved claims and lingering acrimony, a regional consideration of cooperation, compensation and/or modified jurisdiction may be necessary’ (Valencia, 1978, 93).

The objectives of a cooperative policy related to EEZ in the specific case of South China Sea, must relate on fishing and fisheries jurisdiction, distributing the fisheries impartially in order to prevent overfishing. This is also the right application of EEZ, in view of the fact that, in its formulation, it was thought to be useful not only in preserving fishing resources improving their management, but also in preventing overexploitation of basins putting them under states’ control – whether states approve and adopt correct behavior in respect to the Convention and the marine environment remains to be seen (Birnie, 1981).

3 The Contended Resources of the South China Sea

As previously suggested, the disputes evolving in the South China Sea region are strictly connected with the natural specificity of the area that makes it one of the most rich in fishing and energy supplies. In a milieu such as the one of Southeast Asia, where countries are expanding rapidly in terms of growth in population and production, resources can represent the only way to assure the perpetuating of development. For this reason, the struggle for resources becomes the first cause of hostility. The most contended fields are the ones related to fishery production and hydrocarbon consumption. Southeast Asian population deeply depend on fishery provisions, especially people that are living on shoreline, which highly increased in number in the last few decades due to the migration from central rural locations to the coast. This movement is the principal cause of the rise in number of fishermen and small fishing vessels, specially situated on Chinese coasts, even if one of the major cause of overfishing is represented by large commercial vessels, which act usually improperly. The claims for territorial waters and EEZs rights have made the struggles between states harsher than before, in particularly where two or more states are operating over the same area or claim its property. The whole situation weights negatively on the marine environment and the resources there placed, especially when norms are neglected and fishing companies act on their own, employing certain fishing methods that cause fishing mortality and overfishing as well. Incidentally, fishery is not the only one cause of the ecosystem's damage, but pollution has increased as well and above all the one concerned with the oil spill and shipping trajectories. The specificity of the shape of the South China Sea as being semi-enclosed, highlights the risk of pollution which can be rapidly extended to neighboring countries. The resources once damaged by a single state, due to oil spill or unmoral fishing practices, can extend themselves to the other countries surrounding the sea, having a deep impact over the entire ecosystem, and

influencing states' relations if considering that 'unchecked transnational oil spill and resultant real or alleged environmental damage may become a significant political issue' (Valencia et al., 1983, 350).

The status of resources of South China Sea can be easily compared to the various similar situations around the world. The fear for the lack of resources is rapidly affecting most of countries, opening a future scenario of political and environmental conflicts. The necessity of limiting the abuse over resources appears to be affecting Western countries only by words. Effectively, the most polluting and consuming countries do not reduce neither the redundant consumptions, accusing developing countries for the predation of resources and environmental damages. A balance policy, consisting in reducing the wastefulness of western countries, developing and sharing new technologies and 'know how' with emerging countries, might be the real and unique solution to decrease the exhaustion of resources, giving to developing countries advanced instruments to reduce the impact of their improving process. By the way, until the real desire of sharing information, and a common spirit of solidarity and protection towards people and the environment would not be at the base of human future projects, the progressive destruction of the entire ecosystem will continue affecting human activities and lives. Natural resources can not be predated without assuming the responsibility of actions and consequences, contrary form what is highly believed in future projects, such as the one related to 'Owing the Weather in 2025'⁵ (Mini, 2012).

In this world's future portrait are allocated even the resources of South China Sea. If fisheries are the primary source of endurance for poor local inhabitants and a unique form of livelihood, the case of hydrocarbons is highly distant form the role of fishery. Oil, gas and

⁵'Owing the Weather in 2025' represents a military project according to which by 2025 the technological development will give to humans the capacity of controlling the climate changes in order to improve military interventions and govern nature.

hypothetic mineral basins represent for states a perspective of future income and source consumption. The South China Sea is considered be hosting significant seabed energy resources that are frequently pointed out as the major cause for frictions in the region. Actually, the enlarged industrial production in Southeast Asia has underlined the raised in the level of energy expenditure and consequently the demand for fuel and gas. As a matter of fact, countries placed in that areas are looking for nearer solutions, and have realized that South China Sea could represent a trustful anchor to be hold on: '[...] countries with claims in the South China Sea primarily value associated hydrocarbons reserves for their potential to improve energy security, with the opportunity to generate revenue from exports being of secondary importance' (Owen & Schofield, 2011, 809).

Besides, states such as China, Philippines and Taiwan are intensive importers of petroleum, while Malaysia and Vietnam in the last few years have increased their needs. The necessity of alternative solutions to growing imports must be found sooner. Many countries have already agreed with oil and gas companies, not only national but also coming form abroad, even if the lack of a resolution to disputes does not attract many investors. Therefore modest explorations have been carried on and at the present time precise data concerning the amount of oil and gas estimated seem to be little reliable.

States surrounding the sea must find a way to agree with each other, in order to avoid policy issues or military struggles as it happened in the past. They have inevitably to implement real measures which would assure a cooperative and reasonable utilization of resources preventing their overexploitation.

The United Nations Convention on the Law of the Sea has already established a path that can be followed. The division of the sea into various jurisdictional zones, both national and

international, affects even fishery and hydrocarbon resources. The link between the Convention on the Law of the Sea and fishery management in the South China Sea is very closed.

Regarding the fragmented situation involving the South China Sea, a comparison between the role of UNCLOS over fishery policies and the real application of it by states is necessary in order to realize what has been done but most of all what must be done in future, going through some examples of management of fishery resources implemented by some South China Sea countries in order to find a possibility for them to apply a sort of co-management.

3.1 Various co-management opportunities for fishery resources: RFOs, CBM, ITQs MPAs.

Developed countries have been owning the supremacy of fishing and travelling over the sea for ages. Nowadays thanks to the relatively recent independence of new developing states, not only in policy but also in the larger capacity of moving and reaching resources, seas and oceans are mostly crowded by highly populated countries. In the last three decades, they have assumed the head role of the fishing sector, as it represents a consistent livelihood for small-scale fisheries that are very diffused in developing societies. The growth in population has been quite incisive side by side with the growing of fishing efforts and supported also by industrialization. 'China, India, Indonesia, Philippines along with Peru and Chile, now account for nearly half the world's catch (44.3%) whereas in 1955 they accounted for only 15% of the catch' (Pontecorvo & Schrank, 2012, 1180).

The global dimension of the market has contributed to facilitate local entities even in the distributive sector. Aquaculture sector has grown as well, most of all in China where the 70% of the total world's production takes place. Even though, the aquaculture production can not afford the entire demand, and can not stop overfishing practices around the world (Suárez et al., 2004).

At the present time, the entire marine resources are overexploited and under pressure. According to FAO statistic, it reported that 'in 2007, 52% of global fish stocks were fully exploited, 28% were overexploited or depleted, 20% were moderately exploited, and only 1% showed signs of recovery' (Anticamara et al. 2010, 131), and all results are an expression of the growth in fishing force that have started in the '70s, even if for many countries data are unavailable or even inconsistent. All along, fishing has been representing a cultural, economical but basically food source for shoreline communities.

Nowadays, the most common problems on fishery sector are related with the big amount of population and consequently the increasing in the demand. Accordingly to these parameters there has been an encouragement of workers in fishery field. The diffusion of many small vessels, most of time of private property, makes it difficult to control the real amount of fishing resources that are exploited. On the other hand, with the birth of big fishing commercial companies, illegal fishing methods have spread out, and the negligence and massive catches are usually responsible of overfishing and the entrapment of protected species. For instance, the 'marine fishes nei', which stands for 'not elsewhere indicated', is a frequently used acronym when speaking about 'data that can not be distinguished among closely related species', meaning that nothing is declared about the species captured. In the whole 2009, marine fishing 'nei' was estimated representing the 12.5% of the world's fished amount, and it is significant to notice that the 86% of this amount was fished by Asian nations (Pontecorvo & Schrank, 2012).

As for the distribution of resources, various international measures have been taken by the United Nations. The adoption of and EEZ for example, gives to the declaring state the possibility of reaching easily fishing resources, but at the same time it imposes a number of rules that must be followed. This way prevents states from abusing of resources, from moving in other neighboring

waters and at the same time it promotes the application of norms for the protection of the marine environment in order to safeguard resources:

‘Certainly the objective of the negotiators and draftsmen in giving coastal states exclusive jurisdiction over fisheries in 200 mile zones was to eliminate the overfishing by distant-water fleets that had been a prime cause of reducing many stocks and species, as well as enabling a more equitable allocation of fisheries’ (Birnie, 1981, 2).

Parenthetically, it was a cautious extension of the rights of coastal states but it submitted the acceptance by states of a series of precise duties, which

‘requires that conservation and management measures be designed to maintain populations as maximum sustainable yield levels, as qualified by environmental as well as economic factors, including the interdependence of stocks and any minimum standards generally recommended at an international level’ (Birnie, 1981, 2).

If countries apply the norms correctly and act according to their duty respecting the environment without exceeding remain to be seen, since in reality various factors, which are coming from external entities most of times, influence the ecosystem (as previously reported: pollution, shipping trajectories, illegal fishing companies or underpaid workers not aware of effective norms).

Regarding UNCLOS and disputes concerning fishery exploitation, the law that came into force and the extension of the national jurisdiction over the sea put additional pressure on states’ already damaged relations. One of the most disputed issue is related with the fish species, especially the ones most valuable for the market. Despite states’ declarations of jurisdiction, fish does not distinguish national boundaries. Many fish stocks appears to be overfished and fishermen are forced to cross other waters far from their own, and thus regularly incidents occurs. For

instance, in Southeast Asian waters it frequently happens that Chinese fishermen are detained because of having been fishing illegally in other countries' waters. Chinese fishermen are the most high in number, but also Vietnamese or Filipino are generally involved (Valencia, 1997). The brief military conflict that happened in the past between China and Philippines, initially started due to the mutual arrest of fishermen while fishing in contended and respectively claimed waters.

States seems to be rather reluctant in accepting the correct application of norms especially if considering the passed open access regime to resources –as Hugo Grotius put into words the doctrine of 'mare liberum', giving a good reason to the use of resources since the territorial sea was limited to 3 nm (Sydnes, 2002). But in a particular context, such as the one in which South China states are involved, a free access regime can not be perpetuated considering the contemporary struggle for resources and the necessity of governance over them. The South China Sea's states should adopt some forms of cooperation, and try to put into practice the various policies supported by the international community for the management of the seas and oceans. Special attention must be given not only to the United Nations Convention on the Law of the Sea (in particular UNCLOS 1982), but also to the FAO Code of Conduct and the United Nations Fish Stock Agreement.

As regards the FAO Code of Conduct, it was adopted during a Conference of the United Nations Food and Agriculture Organization occurred in 1995. The Conference, and the Code itself, intended to integrate the principles supported by the UNCLOS of 1982. It was thought mostly for fisheries in order to 'provide principles and standards applicable to the conservation, management and development of all fisheries [...] to promote the rational and sustainable development and exploitation of world fisheries through responsible management and conservation' (Hosch et al., 2010, 189). The Code is constituted by twelve articles, half of which appears to be technical in nature. The majority of articles deal with the marine capture fisheries but there are some concerning

the aquaculture field. As for the main topics, they handle fisheries management and operations, aquaculture enhancement, fisheries management concerning coastal areas and trade. The Code was also integrated with four instruments called International Plans of Action, which deal with the conservation and management of sharks and fishing capacity, incidental catches, and last but not least, the prevention and elimination of illegal unreported unregulated fishing (IUU). There are annual investigations with the intention of verifying the respect of the Code, in particular aiming at preventing IUU fishing (Hosch, 2010). The Code should support and encourage states, and many other subjects, in conserving and maintaining the fishery resources through the execution of specific legal policies, as its general principle states that ‘the right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources’ (Parker et al., 2009, 139).

Among states around the South China Sea, a greater part of them affirm of having fishery policies almost entirely or partially reliable to the Code. Vietnam appears to be the exception, as it declares of having fishing policies mainly contradictory with the code, and does not plan to change them.

The Fish Stocks Agreement, the other useful instrument studied and presented by the United Nations, was approved in 1995 and became effective from the 2001 on. It was specifically addressed to countries involved in regional contrasts or conflicts. Despite the large consensus moved from developing states, the chief role was played by Asian coastal States and certain Latin American states. It tends to give the input of regional trend to international fisheries making more strong the obligation for states to cooperate in managing the highly migratory stocks, which usually represent a reason of quarrels between neighboring states. A possible form of cooperation promoted by the UN through the Fish Stocks Agreement is the Regional Fishery Organization system (RFO).

The Regional Fishery Organization system, as the name suggests, is a form of organization for solving collective problems through cooperation. It includes principles and procedures for cooperative approaches concerning fisheries research, the coordination of marine information and counsels. The RFOs systems are applicable only in regional contexts, where it is necessary to coordinate the different powers and to share scientific data in order to enforce the system. They basically focus on:

‘[...] development of the regional fishing industry and harmonization of national policies. They are, most often, based on the common interests of the member-countries and achieve their goal through policy coordination and joint programs. Regional fisheries management organizations, manage regional fisheries in the traditional sense by collecting and asserting scientific data, setting regulatory measures and establishing enforcement measures’ (Sydnes, 2002, 374).

RFOs are very useful in environmental weak or less regulated situations, but only when they are put into action correctly, since ‘the effectiveness relies on the ability of the member-countries to decide upon and implement regulatory measures regarding the jointly managed fisheries’ (Sydnes, 2002, 374), and most of the work must be done by states following bilateral or multilateral strategies. Despite some cases in which organizational matters make it difficult to show its positive effects, the typology suggested can be a useful base for an analysis. Until the middle of the nineties, the RFOs had not brought a lot of efficiency in the fisheries sector. But after the introduction of the EEZs system under the provision of UNCLOS 1982, they started a new process of development. However, the construction of a system of various entities cooperating at a regional level has not been simple to afford. The interested countries, the majority of them poor or still in the developing process, have not significant conditions nor the right means to sustain such a long

changing process, therefore the achievement of RFOs remains nowadays unaccomplished in many areas. In fact, due to limited human and technological devices many countries are static and still managing the creation of national and domestic fishing activities in their EEZs (Sydnes, 2002).

The fisheries' private management sector has been suspected of being the cause of the decline of fishing resources. In the last few years, the conviction of the importance of a co-management approach toward fishery has been prevailing. The fact that fishery management should progress to co-management represents a shift in governments policy toward coastal communities and the whole fisheries segments. A close collaboration between communities, or even at a higher level between states, would mean a collective sharing of knowledge and responsibilities in the decisions' making process.

As regards the opportunity of states to be unified in a co-administrative approach over the use of resources, there are two different positions in contrast to each other: there are those supporting the idea of fishery as being at the basis of the coastal communities' economy, thus they tend to have a sort of slow approach because of safeguarding the interests of people living on shoreline, to which most of times fishery represents the unique source of income. Then there is a second diverging current, aiming at considering fishing industries as subjects detaining individual quotas, arguing that fisheries should be managed according to their interests. The two different point of view can be summarized into: community-based management and market-based individual transferable quota (ITQ) management (Copes & Charles, 2004).

The community-based fishery management has in its foundation the recognition of fishermen as primary participants, that must be involved in the renovate process being aware of the fact that generally the fishing sector is for them the unique way to survive or to restore from an indigent unfortunate condition. In a community-based organization:

Firstly 'local community representatives will share in management responsibilities through a community board representing stakeholders in the local fishery and in the coastal community at large'. Secondly '[...] the various roles will be defined by each local community through consultation among the representatives'. Thirdly 'the government will introduce the legislation necessary to delegate the requisite authority to the community boards so that they may implement the policies decided by them' (Copes & Charles, 2004, 172).

Following this path of organization, the community-based management might be able to pursue new projects and objectives not only in supervising the fishing subjects, but also applying policies preventing incidents on the marine environment as well. The governing policies would assume a more regional approach, local rather than global and possibly more effective in results for the economy of local communities, which inevitably act in a more supportive approach even to social policies. The system related to Individual Transferable Quotas is connected with the Total Allowable Catch (TAC), which is the total amount of fish that can be caught every year. Usually the Total Allowable Catch is split into pieces because divided between the different subjects that operate in the fisheries field. Its attribution to a community or a private company depends on the type of gear and vessel, giving in this way to each quota holder the right to catch a specific percentage of TAC per year. The percentages permitted are decided taking in account the passed fish catch data, it means that subjects have the right over the correspondent amount they used to fish. Therefore, each fisher own a personal amount of possible catch, the so called Individual Transferable Quotas, and he is allowed to grab the exact quantity of product that corresponds to his amount (Copes & Charles, 2004). For instance:

‘If a fisher holds an ITQ equal to, say, 0.1% of the TAC for haddock in a given area, than the fisher would have the right to catch whatever quantity of haddock this value amounts to, over the course of the year. [...] if the total TAC in the area was 10,000 tons, the right would be to catch 10 tons’ (Copes & Charles, 2004, 172).

The Individual Quotas are Transferable because the fishers can transfer their quotas or a part of them, to others interested subjects. In this way, fishery companies or corporations can buy or sell their respective quotas, and are even allowed to do it with few restrictions. Parenthetically, it is also possible for individual quotas not to be permanently transferable, so that at the beginning of each year, quotas go back to the right owner –according to TAC– for new negotiations.

Both systems, the community based management and the ITQs, are supported, but the last one seems to be the one more promoted. It is important to realize these two different methods combined together with economic, social and biological issues, in order to see the one that is most linked to the idea of fisheries for the sustainability of communities, the conservation of resources, the employment and the distribution of the income and its level. It appears that community based management is more focused on a local organization of fishery, while ITQs concern more about the possibility of grabbing resources, basing the amount of quotas on the passed fishing capacity. The community based management put more attention on the community sustainability and interests, which usually mean job security, welfare and happiness. The ITQs system counts on the trade process of making decisions, and does not seem of having any interest toward the benefits for the communities, nor are they neither in its plans. There it comes a reflective approach aiming at arguing which one of the two fits better in a community context, such as for example the one characterizing the coastal community systems on the coasts of Southeast Asia. Both methods can be applied, there can be a division of the allowable caught amount and a repartition of quotas

between companies or corporations, but the ITQs system promoted in the last decade, is most of time, especially in emerging countries such as the ones of Southeast Asia, committed to big companies, almost private, which have fishing policies distant from the local communities management. They practice commercial fishery, where workers are frequently exploited as much as the big amount of resources grabbed. Besides, a consequence related to ITQs is the capitalization of quotas in investors hands, which changes the location of fisheries as well creating a geographical concentration near ports where the title-holder of quotas have facilities. As Copes and Charles (2004) state in their article, in which they give a clarified a comparison between the ITQs and the CBM systems, the two systems diverge because they are basically two different ideological approaches:

‘ITQ management is driven directly by market forces with a goal of maximizing profits going to those corporations or individuals who own the access rights to the fishery in form of quotas [...] objectives are confined to narrow economic considerations of the market’ (Copes & Charles, 2004, 173).

On the contrary, the community based management system deeply contrasts with the ideological priority over market, which is at the base of ITQs as it ‘contrasts with the “pure economics” in the interest of quota owners [...] Instead it opens to consideration of a wide range of human needs in the community’ (Copes & Charles, 2004, 173). However, the economic aspects are not completely irrelevant even in the CBM, but they are usually submitted to the objectives that are directly chosen by the community, ‘in a community based management, markets are made to serve human needs, which contrasts with the ITQ scheme in which fate and fortune of humans are ruled by market forces’ (Copes & Charles, 2004, 173). The basic distinction between the CBM and ITQs resides in the distribution of fishing permissions or allowable catch quotas. The principles of a

CBM organization are focused on an equal allocation of the access to resources, a shared right for local fishermen to reach the common-property resources. On the contrary, an ITQs system tends to privatize the sector, giving more advantages to efficiency of individual ownership, and usually ITQ fishers take on working methods that can cause great injury to stocks or to the ecosystem in order to assure their individual interests, according to the norm 'the larger the catch history, the larger the quota' (Copes & Charles, 2004, 177).

As regards the analysis previously made comparing the CBM and the ITQ fisheries organizations, it is not worth saying that these reflections are scholars' point of view regarding the implementation of those methods in developing regions, where coastal communities have always been prevailing in the fisheries sector, and only in the last decades there has been the trend of diffusion of big fisheries companies and corporations, due to the fast development that has brought a constant growth in population and consequently a higher need of products on the market. As a matter of fact, the ITQs applied in other contexts, such as for example the Mediterranean Sea, appears to be a good solution for preventing overfishing and implementing a common policy for the management of resources. The European supervision for the implementation of norms in force is at the base of the functional fishery system that is prevailing in European Seas. On the contrary, in Southeast Asia and mostly South China Sea, the lack of solid relations between states make it difficult to afford a common fishery policy, and due to the lack of connections neither a common path for the management of other resources, such as hydrocarbons, can be followed.

Another form of regional co-management that might be useful to apply in critical contexts, is the Marine Protected Area. Marine Protected Areas (MPAs) are a prompt answer to all questions related to the impact of human activities over the resources and the entire ecosystem as well. The realization of MPAs has increased in recent decades. However, the oceanic space covered by

regimes of protection is still irrelevant if compared to the terrestrial protected areas. As a matter of fact, MPAs are protecting only 1.17% of the complete oceanic surface, while the terrestrial space under protected jurisdiction is 12% of the Earth' surface. Moreover, the distribution of MPAs varies from place to place, and it is easier to realize where it is difficult to implement it (Fox et al., 2012). As for the fishery resources and their management, fishermen and local organizations may help to increase MPAs in number. MPAs can be a solution for fish stocks' problems and related issues. They may be useful to 'rebuild fish stocks, and reduce conflicts between fishers and other industries such as tourism' Fox et al., 2012, 1132). On the contrary, fishermen usually contrast the creation of protected areas because of the real, but most of times only perceived threat of reducing the access to fish.

Marine Protected Areas, where applied to the environment, have achieved a great number of results in terms of conservation, the protection of biological diversity, development of fisheries and the support to scientific researches. Studies have also been showing the positive conservation impacts on the communities living on MPAs' shorelines thanks to the marine conservation. They include a large variety of protections' stages: there is the basically protection of the coastline – where not protected, signs of degradation have been noticed– in some cases, the entrance is forbidden or it is permitted only in case of scientific research, but generally it allows also the removal of resources but according to specific methods (Al-Abdulrazzak & Trombulak, 2012).

As examples of possible forms of co-management, the various methods quoted are useful to better understand the various possibilities that local and regional governments have in order to afford the use of resources in a more sustainable form, and may represent even a chance for states to create links consenting to local communities to survive with their activities and imposing to companies an equitable use of oceanic and sea space. In the fragile milieu of the South China Sea,

where the use of resources represents the core of the claims of property of the waters, the implementation of such organizations might help improving the relations between states. Even if some of them have unmovable positions concerning the disputes, a cooperative approach over the ecosystem would probably mean a way toward détente and a possible future co-management of the area, which reflects itself even on the relationship among states. For this purpose, the fact of having some examples of nowadays fishery management made by states in the South China Sea region can be an access to reflections on possible solutions and applicable co-management approaches.

3.2 Examples of fishery management in the South China Sea States

In the specific case of Southeast Asia, as referring to the states surrounding the disputed South China Sea, the overexploitation of resources and the lack of a cooperative management are at the base of impoverishment of coastal communities and on the other hand the enrichment of big companies, which practice fishing according to industrial levels. As previously said, the high increase in number of population has created an increase in the fishing demand as well. It has caused rivalry between communities and corruption of big companies, which are usually responsible of overfishing and damages to the marine environment. It probably seems recurring, but it is important to notice that the high amount of population is the main cause of depletion of resources, not only in the South China Sea case, but even in the whole environmental contexts in which human impact over the ecosystems is deep and sometimes so durable to be unrecoverable. The fact of looking for diverse prospects in the relation among humans and the environment is essential nowadays and it represents also a vastly discussed area of interest. The fact of knowing the effects that human behavior has brought over the different backgrounds facilitates the

rethinking of strategies, which might not be the whole solution but can avoid the persistence of this damaging process that affects the environment at first, but then it turns to people as well.

The clash between small scale fisheries and large scale fisheries represents one of the issues that must be solved in the South China Sea milieu. By the way, it is not the only one damaging the resources and the marine milieu. Also the overexploitation of the various states' exclusive economic zones has caused a shift in states' fisheries locations, which are increasingly repositioned in distant waters because of the shortage of resources in their respective jurisdictional waters. This deficit carries continuous struggles among neighboring states. In fact the incursion of fishermen in foreign waters are frequent, and states react imprisoning them. Such behaviors harm the delicate states' bonds causing always the interventions of the two opposing positions, which respectively resume questions of sovereignty and rights of possessions.

As regards the fishing resources, they appears to be the most intricate issue to solve, especially when speaking about migratory fish stocks. As a matter of fact, fish does not recognize national borders since there are no physical divisions into the sea, and in a monsoonal place such as the South China Sea, fish stocks tend to move from one place to another. Usually the migratory stocks are even the most required, and the fact of detaining the right over strategic positioned waters enlarges the concern for territorial waters' claims around the archipelagos.

As concerning the applying of a co-management system to the sphere of fisheries, it is important to analyze the major aspects that characterize a fisheries co-management system. Some of the measures previously presented have been already proved or implemented in Southeast Asia. As Nielsen et al. (2004) suggest in their article:

‘the increasing in populations in coastal and freshwater environments impose pressures leading to overexploitation of resources. In South East Asia and Southern Africa

there are conflicts concerning access to resources, space, market within the fishing communities. Current fisheries management approaches based on centralized government intervention have proven inadequate to deal with these issues and meet almost any reasonable set of objectives including preventing of stock depletion, resolving user-group conflicts, increasing profitability and preventing social disruption' (Nielsen et al., 2004, 151).

The main focus of the discourse is based on the fact that centralized institutions can not cope with the regulation and implementation of fishery management as localized or regional institutions would be able to. The communities are more and more 'disempowered', because of the coming forward of big and detached stakeholders. There is the need of new institutions dealing with local communities. Worldwide there are many cases of cooperation between different subjects, such as governments, institutions and fishermen, that have proved strengthening the management with good results (Nielsen et al, 2004).

Due to the globalization and the spreading out of new markets, the fishing communities have no more the control over the resources, in some cases even the access to resources is denied. Usually the international agreements on fishing, or more generally concerning resources, have a positive attention over the protection of resources and the aquatic ecosystem, but do not refer to the status of local communities:

'The objectives of such arrangements may be in long-term interest of fishing communities, but may not address or may even be considered counterproductive in relation to their immediate concerns such as meeting daily requirements for food and income' (Nielsen et al., 2004, 152).

Fisheries communities are negatively involved in the various use of the coastal milieu: aquaculture, hydropower development, industrial development as well, and many other changes operated on the environment contribute to destabilize their physical and social settlement, having at the same time a bad impact on fishery resources impeding the reproduction of stocks. For instance, the development of aquaculture field in Thailand has reflected itself in injury to mangroves habitats, determinant for the reproduction of fish stocks (Nielsen et al., 2004). All the transformations act over the relations between communities, which on a higher level contributes to exacerbate the dialogue between states.

As fisheries represent the primary earning source for local communities, overexploitation brings inevitably to a clash between the community members. Moreover the new methods, such as aquaculture used in order to increase the production because of the high level in the demand, forbid the access to resources. The governance of fisheries should be attributed directly by the government to properly interested institutions, based on the involvement of private citizens since they discuss about their livelihood: 'empowerment of fishing communities is a mechanism to give people within fishing communities a chance to influence their own future in order to cope with the impact from globalization' (Nielsen et al., 2004, 155). The attribution of power from governments to institutions and from institutions to communities is called 'cross-scale linkage' (Wilson et al., 2006, 526). It proposes a multiple large scale system based on the already known structure of management 'with subsidiarity and representation, wherein decisions are taken at the lowest competent lever and higher decisions are taken by people accountable to the lower levels' (Wilson et al., 2006, 526). As Wilson et al. (2006) put forward, co-management specifically means that the government pass on responsibilities and authority to the social group involved but still visioning constantly the whole process and progresses made.

On the other hand, Pomeroy et al. (2001) underline the various aspects of a co-management partnership, which according to them has to come from a reciprocal sense of responsibility between the partners. Multiple joins must make objects, proposals and goals clear. If correctly used, co-management could be very effective in rural and coastal poverty decrease. This objectives give the reason for assuring an active participation of population to managing activities and an easier access to resources. In view of the fact that it may redeem people from a situation of indigence and lack of social guarantees, a community based management (CBM) would be the right solution for Southeast Asian developing countries.

The proposed management should be directed according to democracy and efficiency, while most of times various forms of institutions are present on the shoreline but are inadequate to the task assigned. The result, as also Nielsen et al. (2004) point out, is that the fisheries management is not successful in solving all the communities' concerns. According to Nielsen et al., a new approach must be based on a governance aiming at solving communities' problems at first. The main points they found out that must be solved in order to implement a correct approach over communities are:

'The risk of exclusion from the resources and markets due to globalization, competing use of freshwater and coastal environment and other activities which may lead to reduces resource productivity. [...] resolve questions of distribution of access between fishers. Reverting overexploitation to sustainable exploitation of the living aquatic resources [...]. Reconciling the immediate needs of fishing communities with international agreements [...]' (Nielsen et al., 2004, 153).

The active participation of fishermen in the decision making process, posing their issues and needs to institutions and then to government, might be the unique solution to afford a process of

management firstly on a regional level, then gaining the support of governing institutions. The system approved would represent also a path for the resolution of the geostrategic conflicts that have been involving states on the South China Sea. The fishery co-management, combined with a solution over the hydrocarbons issue as well, is seen by scholars as the only dialogical path affordable by South China Sea states together. A shared scale fishery approach shared by states might be the right choice both for states and for the benefits of the marine ecosystem as well. The creation of 'large marine ecosystems' (LMEs) is still possible even also coinciding 'trans-boundary management initiatives for marine system' and 'large scale units' for its management (Ablan, 2006, 162).

Regarding fisheries management characterizing the states bordering the South China Sea, it must be analyzed considering the presence of small-scale and large scale fisheries as the main sectors dealing with fishery and acting together in its waters. Small-scale fisheries are typical of local communities, usually non-motorized vessels, which share traditions and use to grab fish next to the shoreline, in the territorial waters or at least in the EEZs also because of the simple nature of their vessels. On the contrary, large-scale fisheries are usually big motorized vessels linked with industries, and they use to practice fishing mostly for commercial purposes. The procedures of the capture for fisheries is carried out firstly in the coastal waters, continental shelves, which are potentially the most well-provided (Stobutzki et al., 2006). The lack of fish in territorial waters, and in some cases even in EEZs, force them to grab in distant waters or to go for in other states' jurisdictional waters thanks to bilateral agreements that often occur among states. The fact of going in distant or oceanic waters causes an overexploitation and abuse of resources. As a matter of fact, EEZs appear to be overfished due to the large-scale fisheries' grab in bulk. In fact, many conflicts occurring among fishermen depend on the various type of gear. The conflict between small-scale

artisanal fisheries and large-scale industrial fisheries is becoming even harsher and sometimes resulting into fishing wars. Artisanal fishermen might be looking for more protection from institutions. In such a difficult situation a commonly peaceful line of attack might be represented by co-management. The attitude of cooperation can be developed and applied in conflicting situations for searching of resolution (Nielsen et al., 2004).

In the South China Sea, the presence of small-scale vessels are more frequent, because of the majority of the shorelines' population dependence of fish as the unique protein at the base of their diet. It is useful to know that in Asia it is grabbed more than a half of the total amount of world's caught fish. The fisheries field occupies a relevant position in the economic sphere of the region since it is not just a source of food but also an exported asset. It clearly explains why it is often a cause of tensions among states due to its economical and consequently political value. For instance, it might frequently happen to fishing vessels to be accompanied by military ships during fishing procedures, causing sometimes acts of confrontation between naval vessels coming from opposite countries.

Among the problems observed in the fisheries actualized by states in the South China Sea background, there is the overexploitation of products, the degradation of shorelines, which is happening faster than in the past, the pollution coming from oil dispersion but also from industries that turn all their residues directly into the sea with significant implications for a possible sustainable development of fisheries. Fishing practices appear to be controversial, since many of them used in large-scale fisheries are harmful for the marine environment, for example the cutting of mangroves to set aquaculture activities, the exploitation of corals and the use of dynamite (Bateman, 1998). There are many other illegal fishing practices not mentioned here but similarly serious. Because of these unmoral methods, the capacity of renewability of fish stocks is

diminishing. Most of times scientific data are unavailable because of the contrasts among states that obstruct concrete researches: in the past many projects failed because of the lack of data concerning the level of fishing.

Ought to the absence of property rights people do not care for government norms nor international agreements. As there is no time left for biological renewability, the effects caused on resources having the peculiarity of being limited reflect over the population causing the loss of job opportunities. The resources are not able to keep up with the raised level of fishing effort. Probably the establishment of a property rights' system, such as ITQs previously presented, would restrict the access to resources. But in a context such as the one of the South China Sea, in which the portrait of the community fishing member prevail, subdividing the resources into quotas will probably deny its use to communities for the benefit of rich commercial companies, most of times operating for foreign markets: 'licensing systems, quotas or exclusive territorial use rights are practical solutions to the open access problem. Such schemes, however, tend to stir tensions and conflicts among various user groups on the question of distributional equity'(Bailey & Jentoft, 1990, 335).

The fisheries operating in the South China Sea, are mostly divided into small community groups, as said before, and big companies. The small-scale fisheries do not necessitate of technological devices, they are very simple in techniques and furniture. On the contrary, large-scale vessels are well equipped, and the fact of using technology for fishing operations give to large-scale fisheries a major range of action, entailing a 'disproportionate share of the total catch'. It is a total dissimilar way of acting that shows an imbalanced rivalry. As Bailey and Jentoft (1990) affirm, this powerful capacity of industrial fisheries cause a serious threat of resource depletion. Although the fact that fisheries are not controlled nor submitted to rules, central authorities appears to be rather

reluctant in affording the problem and thinking of new solutions. The problem becomes more complex as soon as international authorities act over fishing resources with policies distant from the local communities, which can not solve the problem of depletion but increase it. For instance, it is the case of the intervention of international agencies, such as the World Bank and the Asian Development Bank, which both are detaining the debt of the Asian countries. In the past, both institutions, through development assistance, tried to increase the exportation amount of fishing products from Asian countries. The so called export-oriented policy aimed at distinguishing the third world debt and relative crisis expanding fishing exports. The export-oriented policy contributed to generate an increasing in fishing grab, causing a raise of fishing consumption all over the world and opened new markets, which put more pressure on fishing resources. The result of this policy was inconclusive for local fishermen and resources. As a matter of fact there was a spreading of small vessels along the coast lines that badly affected resources and the ecosystem (Bailey & Jentoft, 1990).

The policies implemented to increment the Asian fishing exports has brought to a consistently development of the fishery sector, which counts today the production of over 81 million tones that corresponds to the 60% of the entire world's catch more or less. But the interesting data is the percentage of exported fishing products within Asia 50%, while 38% to North America, 49% Oceanic imports and more then 10% is represented by Europe and African fishing imports. Despite these big amounts of Asian fishing products crossing the borders, most of the countries involved in the production are low-income and food-deficit countries (Stobutzki et al., 2006).

As compared with the large fishing units, small-scale fisheries have limited production, limited income and are not labor intensive. In a context of insufficient resources, they seems to be

the more sustainable economic realities. As a matter of fact, the FAO Code of Conduct for Responsible Fisheries has particularly attention for small-scale fisheries. It has specifications that protect them from conflicts with industrial fisheries:

‘provides the necessary framework for maintaining or enlarging small-scale fisherfolks’ action space. Many of its other provisions related to use of non-destructive fishing gear, withdrawal of subsidies for commercial fisheries etc. are also supportive of the sustainability of small scale fisheries’ (Allison & Ellis, 2001, 387).

As referred in the article by Lawson (1977), even in the past small-scale fisheries were suggested as the possible source of income. It is reported that in many cases, big companies tried to persuade small-scale fishermen to join larger vessels. The most strong competitors were large fishing enterprisers and small-scale fishermen had few possibilities of surviving to them.

As for the income provided, small-scale fisheries guarantee less income to institutions but are more determinant socially speaking. In countries that are involved in the development process and the increase in population they can embody relevant social advantages. An example of a South China Sea state exemplified by the diffusion of small-scale fisheries is Vietnam. Vietnamese fisheries are mostly concentrated along the shoreline, and the majority of the boats act in inshore areas since inshore waters ‘serve as the source of living and food for approximately 88% of the total capture fisheries labor force’ (Pomeroy et al., 2009, 420). However, a series of factors have brought to the exploitation of Vietnamese inshore fisheries. Due to the overexploitation of coastal fisheries, incomes deriving from fishing activities have decreased and in some cases they cannot cover the entire amount of costs. Due to the scarcity of resources, Vietnam has started experimenting clashes between small-scale and large-scale vessels, and their struggles are being reflected also on the marine environment as soon as they are both trying to overtake the counterpart

in captured stocks using illegal fishing methods (Pomeroy et al., 2009). Vietnam is probably the right example of the situation fisheries are facing nowadays in Southeast Asia, and clearly expresses the need of a regulation of resources and of their use. From the middle of the '90s on, Vietnamese fishery saw a change in the approach toward fisheries management, moving from a small scale structure to a export production-oriented industry. The fisheries development that occurred in Vietnam from the 1945 to 1954 was aiming at evolving the small-scale parts, in order to provide for food. While the country was divided into North and South Vietnam, the two sides took different choices. While in the South the policy was looking for a market-based industry, following the path of modernization and openness to foreign markets, the North was characterized by collectivization and development of state industrial enterprises (Pomeroy et al., 2009). After the country had worked over reunification, from the '80s on there was the establishment of fishing cooperatives, which were afterwards liberalized. The creation of private structures destabilized the small-scale fishery field, which saw a decrease in states' support. The whole process brought to a fast raise in fishing effort both from inshore and offshore point of view. In conclusion, there was more attention on business, trade and exports rather than resources management and community benefits. The main results were the loss of job and consequently the increase in poverty of coastal communities, lack of protection of the marine and shoreline environment and the private division of the access to resources, which is the major responsible of the absence of fisheries management policies nowadays. However, from '90s on, some tests for possible fisheries management solutions have been attempted. In 1962 Vietnam established its first marine protected area. The MPAs have been chosen by the government for experiments in various Vietnamese regions, and also today they are receiving support and funds from the government. A settlement of 15 MPAs with an unique one as network's reference had been planned by the Vietnamese Ministry of Fisheries. The goal

they were supporting consisted in the protection of 2% of the sea area of the country in 2010. If the project correctly succeeded is up to know, but in 2009 four of the fifteen sites were founded (Pomeroy et al., 2009).

When the scarcity of resources occurs, inevitably poverty is likely to get worse and overfishing appears. As a result, social and economic issues reflects over the marine environment and are the principal cause of depletion of resources, especially in those contexts in which people and resources are firmly linked (Stobutzki et al., 2006). Since the coastal setting appears to be vital both for resources and for the people that depend on it, Vietnamese government should proceed rebuilding and restoring the shoreline. It is necessary to go back to social issues, solving the problem of the lack of social policies for fishermen might help in building a network of new realities interested in protecting resources and applying a sustainable use of them. The policies over small-scale fisheries must be linked with the fact of 'resolving poverty and the socio-economic problem of fishing communities' (Pomeroy et al., 2009, 426).

As Pomeroy et al. (2009) suggest in their article, the solutions concerning the high amount of fisheries operating into Vietnamese territorial waters is strictly connected with the fact that after the application of the export production-oriented policy, fishery has become the most spread out source of income in the coastline regions. A new approach over fisheries management must keep in mind that many fishermen working on small fishing vessels must have alternative options of non-fishery livelihood. The main problem consists in the scarcity of others possibilities in jobs different from the ones of the fishing branch. Not only Vietnamese fisheries are typified by small-scale assets, but also in Bangladesh, Indonesia and Philippines more than 80% of fishing vessels are of small-sale (Stobutzki et al, 2006).

The first determinant action that should be taken into account is the diminishing of pressure over resources. As a matter of fact, giving to fish stocks the possibility of regenerating is fundamental for the benefits of the stocks, which increasing will solve many social issues, if there is at the same time a correctly co-management organization applied by institutions.

The subdivision into various fishing zones, such as for example the creation of the EEZs for limiting the access to fish, has not been so effective in South China Sea. Again, quarrels among states make it difficult to apply co-management policies, also considering the fact that borders are not delineated at the time, nor states show the intention of opening dialogue with the respective counterparts: 'so while the zones geographically separated different sectors they may still be competing for the same resources. Managing access to resources and the level of fishing pressure require a better understanding of the spatial structure of fisheries resources within countries and the region' (Stobutzki et al., 2006, 115). The contemporary presence of small-scale and large-scale fisheries has to be checked to facilitate the coexistence of the two systems, balancing their respective property rights so as to reduce their fishing capacity. During the last decade there has been the inclination to converge management strategies over industrial fisheries, leaving the small-scale communities fisheries uncontrolled. In order to reduce small-scale fisheries impact over resources, overcapacity must be reduced. Overcapacity differentiates from excess capacity. If the last one is a short-term issue, as an effect for example of decreasing in prices or costs, on the contrary overcapacity is a long term process referring as the presence of many fisheries dealing with fewer resources (Pomeroy, 2012). The regulation of overcapacity in small-scale fisheries appears to be difficult to put into operation since small-scale fisheries are rather fugitive and variably allocated.

In order to regulate and propose forms of controls over small-scale fisheries sector, it has been thought to decentralize management through ‘co-management approaches and the implementation of group-user rights’. An example of co-management regional tentative is the ‘ASEAN-SEAFDEC⁶ [...] to develop guidelines for “Group-user rights in co-management of small-scale fisheries” and to implement these in member countries’ (Stobutzki et al., 2006, 115).

As regards other examples of management of fisheries coming from other countries surrounding the South China Sea, Cambodia adopts catch limitation as a sort of regulation. But fishermen are rather restrictive in accepting this measure, since they view it as a threat to their income and argues that limiting the total amount of catch would surely reduce not only their capacity of finding food but also their role in the local market. Moreover, since also on Cambodian coastlines industrial fisheries are the major responsible for overfishing they should be regulated at first. In the Philippines fishermen are also complaining about the fact of limiting fish catch, also because aware of the fact that their fish catch volume has declined in the last few years. But experts attribute the decrease in fish catch to the high number of vessels and also to water pollution, which has diminished the fish stocks as well. Thailand reported decline of fish catch as well, but here accredited to the use of illegal fishing devices (Salayo et al., 2008).

The role of fishing as a source of income is shared by most of the states in the South China Sea region. Vietnam, Cambodia, Thailand and Philippines have local communities that depend on fishery resources for survival. Their livelihoods are strictly connected to environment and resources, and a management approach must be developed but considering at the same time the importance of the resources for inhabitants. As these states share the same problems related to

⁶ASEAN-SEAFDEC acronyms for Association of Southeast Asian Nations–Southeast Asian Fisheries Development Centre.

fisheries, it would be useful for them to support and implement a regional co-management involving local communities. In the Philippines and in Thailand some experiments have been followed based on the creation of MPAs both for the conservation and sustainability of fish stocks. By the way, they have not undertaken a cooperative bilateral path. Despite the positive results occurred in Thailand and Philippines after the creation of MPAs, Cambodia is still averse to converting some fishing grounds into conservation areas (Salayo et al, 2008).

As for Malaysia fisheries' policy, also its sector is characterized by the dualism of small-scale and large-scale fisheries. In the same way as the other countries previously mentioned, Malaysian small-scale fishermen make inshore fishing procedures, and have a high poverty rate and limited market. In contrast large-scale fisheries deal with big operations and are deeply involved in the market and highly motivated to create profit (Omar et al., 1992). The Malaysian coastline and waters present the same problems of the other states' shoreline. Due to the lack of guide norms for the fulfillment of fisheries activities to limit the overcapacity of resources, the Malaysian peninsula appears in a status of degradation and mostly unprotected. As regards the inshore fishery, which involves the operations occurring in the 12 nm from the coastline, its resources have been overexploited. On the other hand, as regarding the offshore fishery, there is the wish for government to expand its products to the market. The Malaysian government has been suggesting a plan for fisheries management that is similarly to the one already proposed for agriculture. It is called NAP (National Agricultural Policy), which include also fisheries related policies. It is based on five principal elements: 'The inshore fishery, the offshore fishery, aquaculture, development support, and social and institutional development' (Omar et al., 1992, 439). The program has been involving also the EEZs' areas in order to strengthen researches for the localization of new

potential resources. The main problem affecting Malaysia is related with the migratory fish stocks, a problem concerning also China, whose situation will be finally discussed.

The specificity of migratory fish stocks, which are swimming across the waters from border to border, opens a harsh quarrel among states debating on the use of limited resources. This issue is strongly perceived in the South China Sea context, where states are very closed and fisheries little regulated. Inevitably the management of fish stocks becomes the crucial aspect from which the entire industrial fishery organization depend on: 'a fundamental principle of renewable resource management is the fact that the sustainable yield will depend on the stock level of resource. Whenever the harvest rate exceeds the natural growth rate population level will decline' (Omar et al., 1992, 442). It is easy to realize that the excessive use of resources nowadays will cause a shortfall for future resources, and Malaysia is not excluded from the negative future prospects if it will not act in perpetuating fishing policies even if it means limiting large-scale industrial vessels' benefits.

Malaysia is experimenting aquaculture with the aim of creating food supplies without excessive grab in territorial waters. Aquaculture may represent a good option in guaranteeing food supplies to the constantly increasing Asian population, but it should be properly managed as well, considering the destruction of mangroves and the distortion of the coast habitat that occurred in many occasions while building aquaculture settings.

Even if it is not considered in this analysis, which is mostly based on marine resources, it is good to know that also aquaculture can provide incomes for inhabitants, job opportunities, and can complete the demand of fishing products. The aquaculture field requires attention and deep studies that are not affordable at the moment, because distant from the main argument's topic related more on the natural resources present in the South China Sea, which make critical the relationships

among states, rather than alternative production of resources. But to be knowledgeable about it, despite the good initial presumes, the aquaculture field has not been submitted under measures for the protection of the environment, and management solutions should be found especially concerning the polluted waters and waste disposal.

While the Vietnamese, Cambodian, Filipino and Malaysian situations can be compared as the all states are facing similar problems and share the same approaches toward resources, the Chinese case seems to be more complex, since China has lost the majority of its local fishing communities and practices predominantly large-scale industrial fishery.

China has been experimenting a high increase in population since when the process of development started to affect positively the economy, but having undoubtedly a negative impact over resources. Marine resources have been involved into the negative trend reporting overcapitalization and reduction of fishing stocks' reproduction. The productivity started to increase from the 1950s on, showing immediately its destructive effects over the environment. Mariculture and the diffusion of new programs have brought also conflicts between communities and then among states. Moreover, the enlargement of industries practicing offshore fisheries has been the direct responsible of the pollution of marine environment ought to waste dispersal not only into the sea waters but also into rivers contaminated by organic substances and petroleum (Wang & Zhan, 1992).

In 1980s the overexploitation of Chinese fishing resources became clear even to the International Community. As the UN Convention on the Law of the Sea (UNCLOS) came into force worldwide, it set limits to the Chinese domestic fishing. These restrictions contributes to generate unemployment, and they reflect even on Chinese fisheries nowadays, which operate for employment and profitable interests rather than for the need of food supplies (Mallory, 2013).

Some new management approaches have been introduced in order to cope with the overexploitation in Chinese seas. It has been suggested also a system of quotas that is similar to the ITQs applied by Western countries. However, Chinese quotas system aims at giving economic incentives to the owners of fishing vessels decreasing the labor and capital investment, limiting in this way the 'race for fish' (Yu & Yu, 2008, 353).

The Chinese fishery sector is ruled by the Chinese Fishery Law and other regulations concerning the use of marine resources and the environmental protection. According to it, Chinese marine areas are divided into three zones: 'trawler-prohibited, offshore and far-offshore' (Wang & Zhan, 1992, 200). Into the trawler-prohibited zones species are selected and protected, while in offshore and far-offshore zones they are under the management of the central government. According to Chinese authorities, fishing vessels requires a fishing permit that allows them to fish in certain areas, and indicates the appropriate fishing method. There are three fishing categories divided into general, special and temporary, which necessitate to be annually renewed. The special permit lasts less than the temporary or the general, and all of them designate the allowable fishing quota. As for foreign vessels fishing in Chinese waters, they necessitate of the approval of Chinese authorities and must follow Chinese norms.

As for some of the policies approved by Chinese government relating fisheries management, there was the so called "summer moratorium" described by the authorities as 'a concrete and effective measure for China to manage fishing effort and to achieve sustainable development' (Yu & Yu, 2008, 354). However, the summer moratorium did not have a positive impact, in fact the measures implemented did not limit the catches of protected species, which were grabbed even in other seasons of the year. There is still nowadays a permanent threat over fish stocks. The policy was inconclusive and costly. The other measure China undertook was the "zero-

growth” policy, which aimed at controlling the ‘irrational increase of fishing capacity’ (Yu & Yu, 2008, 354). The goal was in limiting the catch to the level of 1998. Despite the bad results occurred with the summer moratorium, the zero-growth policy then changed into a “minus-growth policy”, sending to fishing enterprises the first warning sign on the importance of the control and conservation of resources. The protection of the marine environment connected to fishery jurisdiction might be the right response by Chinese government to the struggles and tensions going on into its boarding seas.

From the last two decades on, as reported by Song (1989), policy makers have been aware of the fact that problems related to the ecosystem, such as pollution, must be attenuated and solved at least. Polluted waters are increasingly affecting Chinese shorelines, ‘polluted waters are washed into Chinese near shore areas annually from coastal cities such as Shanghai, Hangzhou and Ningbo [...] Ocean policy makers now realize the seriousness of this threat to marine fisheries’ (Song, 1989, 998). Nowadays, since the economic improvement has intensified, China has to provide a signal of its engagement in solving environmental issues, not only to improve the relations with the neighboring countries but also internationally with the intention of being determinant in the management of strategic resources globally.

As China has increasingly developed industrial fisheries in the last decades, it has been working on making agreements with other states for moving its fisheries into waters under foreign jurisdiction: agreements have occurred with Japan –China and Japan signed a series of non-governmental fishing agreements in 1955 and 1963– Vietnam and North Korea (Wang & Zhan, 1992). The relationship with neighboring states in the South China Sea region has become ruthless since the claims of territorial waters and land have raised tensions that culminated into attacks to opposite fishery vessels. As a matter of fact, the clash with Philippines in 1999 emerged from a

contrasts between fishermen detained by the counterparts. In 2012, the frictions among the two states were repeated even most severely, forcing Chinese vessels to open new fisheries trajectories. China started a distant water fishing (DWF) policy outward for Chinese waters, as Mallory (2013) reports in his article:

‘today China has the largest DWF fleet in the world in terms of quantity of vessels, although China’s production capacity and industrial scale is much smaller than the developed countries. China has a number of fisheries access agreements in the form of state-to-state bilateral agreements that allow its distant waters fleets access to resources in the EEZs of other nations’ (Mallory, 2013, 101).

China has started posing its attention on distant waters moving its large vessels in African waters. The African fisheries are similar to the ones of Southeast Asian countries since they are also made of local communities strictly depending on fish as food protein and a source of income. Currently, China is present in West African fisheries such as the Liberian coastal waters or Senegal where products coming from the ocean become export goods to China, and many are starting to arguing about illegal fishing methods applied by Chinese vessels. At the moment China has signed ‘bilateral agreements with South Africa (1978), Guinea-Bissau (1984), Guinea (1985), Senegal (1985), Sierra Leone (1985), and Mauritania (1991) to allow Chinese companies to fish in the offshore waters of these countries’ (Mallory, 2013, 103). The effects of these procedures over African countries can be recognized in the deterioration of the habitats: the DWF has reduced the fisheries resources and introduced water pollution in uncontaminated oceanic areas. The Fish stocks have drastically reduced in number, causing difficulties to local communities when searching for food, and consequently generating social issues to the population. On the contrary,

DWF has improved industrial and big companies profits to the detriment of the lack of employment and food security.

The distant water fishing is used by Chinese authorities also to consolidate the relations with states rich or potentially rich in resources in order to assure connections of economic cooperation. Despite the Chinese attractive appeal for African countries, because of its apparently result in economic development, it can be overturned if Chinese fisheries will not follow essential rules for the respect of marine areas loosing the authorization to fish there. Despite Chinese government has approved various international regulations even connected with UNCLOS, it has no more the control over the fishing companies as it did once, and it is more and more difficult to monitor the DWF companies' operations (Mallory, 2013).

Another national power highly dependent on DWF is Taiwan. As related to China, Taiwan has been sharing the same fisheries resources in the South China Sea. Despite their slight balance related to reciprocal political relations, in the fishery sector they are both aware of the fact that in order to share the same areas of interest having both profits, some agreements must be found. However, many issues remains unsolved among the two counterparts, such as the co-management of shared marine resources, the South China Sea territorial waters disputes where China does not let Taiwan into the dialogue process, and the question of employment deriving from the fishing industry (Tseng & Ou, 2010).

Taiwan is not allowed to take part to many of the discussion forums related to the solving of disputes or finding co-management solutions to the depletion of resources. Even in the Asian and Pacific forum for Economic Cooperation (APEC) Taiwan is recognized as Chinese Taipei and cannot appear as a single national authority. But as regards fishery management, Taiwan has a greater experience if compared to China. Taiwan has always implemented more improved

technologies, but the fact of being in a isolated position does not help her. On the other side, China detains the jurisdiction of a larger fishing area, but it needs to import technologies especially to apply to distant water fisheries. The fact of being more competitive represents for Taiwan the key to gain more involvement in the management of the area. Taiwanese fishermen were found to be fishing in Chinese waters, and it created a lot of friction among the two states. The possibility of implementing together a cooperative organization related to fisheries might be for China an improvement in the equipment, while from the Taiwanese point of view it may represent an open window on international matters. They should find sustainable measures to prevent marine pollution and to stop overcapacity in fishing grounds. As Tseng and Ou (2010) report in their article on Taiwanese and Chinese fishery relationship:

‘Only by collaborating together, on a basis of trust, can Taiwan and China achieve effective management of their shared marine resources use. [...] disputes between fishermen from the two sides can be better resolved and the shared fishing grounds will have better management arrangements. [...] Taiwan possesses provide good references for China to develop. With a greater level of cooperation and information exchange, Taiwan and China will be able to make up their shortfalls and help achieve sustainable development for their fishing industries’ (Tseng & Ou, 2010, 1161).

According to Goldstein (2013), Chinese fisheries policy might be the decisive for the resolution of the persisting disputes. In addition, the fact that China represents the largest fishing industry of Asia as soon as it will accept to apply the global fisheries practices probably most of the Asian states will follow its example making a step forward for the protection of the oceanic environment. As a matter of fact, Chinese government does not focus its attention on illegal unregulated, unreported (IUU) fishing, and it may increase tensions on the area since ‘IUU activity

often seeks to exploit the enforcement seams in and around international maritime boundaries' (Goldstein, 2013, 191).

Among the various issues concerning China that can destabilize the regional situation in the South China Sea, there is the quick development of China not only from the economic point of view, but also relating to its improvement of naval army, its rush to resources, the fact of being uncaring of the environmental norms and the multiple claims over archipelagos for the right of their possession. Fisheries become crucial, since each country present in the region has applied its own fishery management, and despite the fact that it appears corrected or uncorrected, it amplifies the 'fishing nationalism' (Goldstein, 2013, 192) causing considerable incidents in the range of disputed areas. However, fisheries can evolve into a positive and magic weapon, bringing a new prospective of reciprocal involvement between states, since all the reported issues relating the fishery sector in that area might turn positively and converging the various states' points of view into a sustainable management ruled by a multilateral cooperative approach by states:

'Even as fisheries disputes may form the "leading edge" of intensifying struggles for resources in the Asia-Pacific region, it is a alternatively possible to consider how fisheries might simultaneously form one of the most pioneering and innovative aspects of bilateral and multilateral maritime cooperation in this volatile region' (Goldstein, 2013, 192).

Cooperation between states seems to be the right path to follow not only concerning the fisheries management, but also many other resources already exploited or potentially in danger. As referring to the South China Sea resources, also its basins appear to be rich in minerals, hydrocarbons and oil. They represent a potential and determinant resource for the states involved, since all of them are facing the process to development. It is useful to look at the South China Sea

potential hydrocarbons, and its future utilization, from a regional co-management prospective, and analyzing possible useful future scenarios to solve the disputes.

3.3 Seabed strategic resources: oil and hydrocarbons

In reality, the disputes between states based on claiming ancestral possessions of the Spratly and Paracel archipelagos imply the purpose of states to gain extended control over the area. Their aim is principally connected with the presence of rich basins, which could represent a high source of income contributing to develop oil and hydrocarbons production useful for the economic improvement of Asian nations. According to general data, the South China Sea, and most specifically the area concerning the Spratly Islands, is potentially recognized as being the fourth most extended basin in the whole world. I suggest “potentially recognized” because, as it will be better discussed in the chapter, data and estimates as regarding the amount of oil and hydrocarbons are extremely confused, since each counterpart presents proper data according to isolated researches, most of times not reliable. Incidentally, China appears to be the first country to have a positive estimates of the total amount hidden underwater. The map produced by Chinese authorities, which shows a U-line boarding the South China Sea—the so called nine dotted line (Limes, 2012) –, indicates the Chinese intentions of gaining control over the Spratly archipelago, extending its jurisdiction over the waters thus forbidding the passage and the possibility of exploration to the other regional states. As a matter of fact, the state that will expand its control over the archipelago, will be allowed to extend its exclusive economic zone gaining therefore the control over 200 nm from the shoreline, that means from the islands’ baseline.

As for the contended islands, the most crucial part is the one related with the Spratly archipelago. The total amount of its surface corresponds to ten kilometers at least, but its

geopolitical value is uncountable. Apart from hiding potential resources in the sea basins, the islands have also a strategic location. The majority of the oil cargos coming from the Middle East and going to Asia use to pass through their waters, since they can connect the Indian Ocean with the Pacific Ocean. Then, as concerning the fishery field, as reported in the preceding chapter, Spratlys are one of the most productive fishing basins in the whole world. By the way, it is useful to analyze the various states' perspectives as regarding the estimates they are giving, and their projects concerning the possibility of exploiting the basins' resources.

The South China Sea basins are hiding an unclear amount of hydrocarbons and oil reserves. The Spratly and Paracel archipelagos appear to be the rich in mineral resources. Since new discoveries were made, states became more aggressive in sustaining their proper positions as regarding the issue of sovereignty of the islands and reefs in the South China Sea. The clash between countries has become even harsher as soon as some of them have started giving concessions for the explorations beyond occupied waters to foreign or national companies. Oil and hydrocarbon sediments appear to be critical for the stability of the region. As a matter of fact, as previously suggested, energy consumption has been arising in the last two decades due to the rapid industrial improvement of Southeast Asian states, and the high level of required energy supplies has moved the attention of states over the South China Sea basins, which are considered a necessary source in order to maintain the present levels of economic development in the whole region. According to achieved data by the EIA⁷, until 2025 the oil consumption by Asian countries is presumed to rise by 3.0 percent regularly per year (EIA, 2008). Therefore, the South China Sea basins are considered vital to perpetuate the process to modernization, and all these aspects

⁷EIA acronym for U.S. Energy Information Administration.

motivate states in claiming the disputed islands, which according to the continental shelf principles would give to states the supremacy not only over the waters but also the seabed basins.

However, a not-insignificant issue is represented by the estimates given by states surrounding the South China Sea. Because of the lack of regional cooperation among states, owing to their different positions, there are not specified data as regarding the amount of resources hidden underwater. Some states have estimates more positive than others, while some of them do not detain the required technologies to afford a precise account of the reserves there placed. The fact of believing that the South China Sea hides a high quantity of oil and hydrocarbon reserves has not helped the dialogue process for a peaceful resolution of the disputes. Moreover, the fact of states sustaining different data concerning the reserves increases the regional tensions.

Despite the fact that states have decided to look for peaceful ways to resolve the disputes, there are no agreements or potential decisive approaches yet. Besides, as it will be lately discussed in the last chapter of the dissertation, there are no multilateral approaches implemented at the time, since China avoids multilateral dialogue and prefers a bilateral approach with the parts involved –in fact in a multilateral dialogue it would have to face Taiwan as well and China does not want to recognize Taiwanese regional and consequently international role. Many countries of Southeast Asia involved in the disputes have joined a regional forum for the cooperation and the possible management of the area despite the unresolved disputes, such as the ASEAN Regional Forum, but China does not take part in the process of dialogue.

In order to go back to the estimates regarding seabed basins under the South China Sea, it is useful to look at the process followed by states to prove the potential amount of existing resources. From 1978 on, the South China Sea Institute of Oceanology accomplished a research under the Spratlys' basins giving the evidence of commercial oilfields. Various estimates have been collected

during the decades, but they appear to be distant from each others. The Chinese press has been repeating many times its data, affirming that:

‘the South China Sea as a whole has 10 times more oil and seven times more natural gas than China’s current onshore reserves [...] the Spratly Islands are hiding underwater 73 billions barrels of oil reserves and 1 trillion cubic meters of natural gas’ (Wang, 1997, 173-174).

Regarding the information given by Wang (1997) in his article, it means that the reserves discovered in the Spratly area correspond to more than 40% of current Chinese onshore reserves. The operations for the production of oil have started and have increased the production of crude oil every year, contributing to accelerate the process of development in the region. In fact, the high demand in energy supplies increasingly raised in the 1990s due to the rapid economic development that affected the Southeast Asian states in the last two decades, but which is still nowadays on its move.

China, which in the past was recognized as an oil exporter country, turned into an oil importer one. Chinese oil fields started to be affected by oil depletion, while new discoveries were appearing on stage. As a matter of fact, ‘China’s growth in crude output averaged only 2.8% annually, far below the demand growth of 5.8% per year’ (Wang, 1997, 174). Due to the imminent necessity of oil and gas, the Spratly Islands were thought to be a vital reserve to solve Chinese future needs. The importance of having a guarantee of oil for the future has been seen as one of the reasons of Chinese claims over the Spratlys, since they are at least five hundred miles distant from China’s territories (Wang, 1997), more distant than the other claiming counterparts. Therefore this remote position might not favor the Chinese claim over the Islands, which is perceived as an interference by the other claimants.

As Snyder (1997) reports in his article, China started the exploration of the occupied area, which is very close to Vietnamese jurisdiction and surely claimed by Vietnam as well. On the other hand, Vietnam started exploring two fields, the so called Bach Ho and Rong, near Ho Chi Minh City. After Vietnamese discoveries, it has been valued the presence of '3-5 billion barrels' on Vietnamese continental shelf. The offshore fields that it detains in the South China Sea as produced an 'annual growth of 50% since 1990', which has been recognized as the most rapid growth of crude supply in the whole region. The production of oil by Vietnam represented a step toward economic independence of the country, since oil exports counted more than a quarter of its total export amount (Wang, 1997).

Philippines made some discoveries as well, but very limited if compared to the Vietnamese or the Chinese. But it shares the belief that the Spratly and Paracel represent a way toward economic progress.

On the other hand, Malaysia has increased its crude oil production, which has a growing raise of 3.6% annually (Wang, 1997). Moreover, Malaysia has created a sort of consortium with foreign countries for the development of oil production, and it appears reluctant to joint the countries of the region for a cooperative management of oil, which on the contrary would be a useful starting point to implement the dialogue among the parts.

As for Taiwan, the Taiwanese state-owned oil company –the Chinese Petroleum Corporation– has reported having conducting some researches in the Spratlys' area under its control. However, Taiwan appears to be more attentive and cautious, since the critical situation that it is facing with China might become harsher, especially considering the Chinese interests and claim over the Spratly Islands (Wang, 1997).

The last state involved in the scenario is Brunei. It has also proceeded in developing offshore activities, but they are restricted and nearby the shore (Snyder, 1997). In any case, oil has been found in the majority of South China Sea’s seaboard countries (Fig 8), but data are in many cases in contrast to each others, and some values, such as the Chinese, are considered overestimated, and do not contribute in sorting out the scenario here presented.

As soon as countries announced the various discoveries of oil, joint strategies were settled between states and oil companies. China and Vietnam started the negotiations for the concessions in their respective waters.

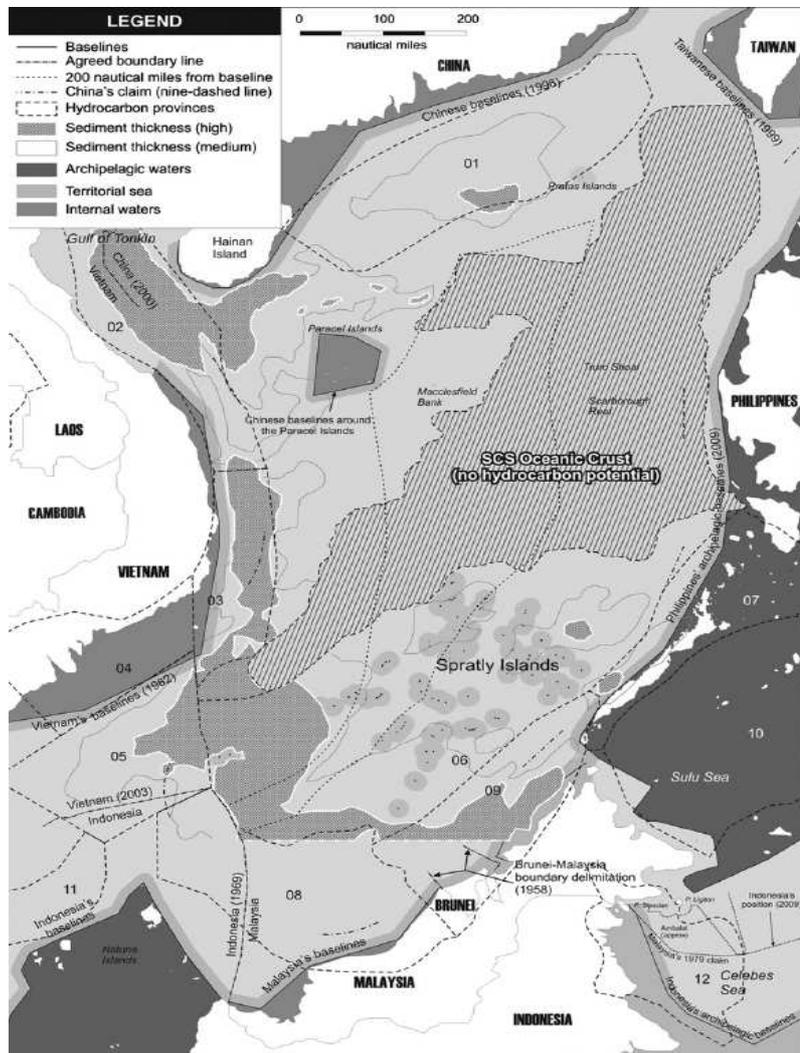


Fig 8. Map showing the hydrocarbon provinces and territorial claims in the South China Sea (from Owen & Schofield, 2012, 814).

For instance in the middle of the '70s, Vietnam signed an agreement with U.S. firms. In the same way, China started giving oil concessions to various U.S. petroleum consortia. The two sides, the

Chinese and the Vietnamese, were confronting each other and the effects resulted into incidents among military vessels and boats training companies' supplies. The contrasts threatened the enterprises involved, and did not benefit to the continuation of the explorations. However, the Vietnamese petroleum agency, called Petro-Vietnam, gave new concessions to a western Germany company (Deminex), a Canadian (Bow Valley) and to an Italian one (ENI), for the exploration in the Spratly area. Finally, in 1977, in order not to hinder proper plans, China and Vietnam came to an agreement based on the division of the Gulf of Tonkin into two different zones of interest (Earney, 1981).

The clashes between different parties occurred not only in the past. More recently in 2009, the tensions proposed again when Vietnam and Malaysia decided to joint submission for the claiming of Continental shelf. According to the United Nation Convention on the Law of the Sea (UNCLOS), whose aspects have been already discussed in the second chapter of this dissertation, a state can submit some technical information to the Committee on the limits of the continental shelf. Malaysia and Vietnam submitted their request after having reached some agreements, but there was a strong reaction from China. As a matter of fact, Chinese government contested the positions of Vietnam and Malaysia, asserting that it was a tentative for gaining more control over the resources, moreover the application of the continental shelf principles were not permitted since the area was – and it is still nowadays– affected by disputes.

The implementation of a continental shelf is an UNCLOS measure strictly related on the exploitation of seabed resources, and its declaration in the regional context of the South China Sea risks causing new frictions among states, such as the correspondent effects concerning fisheries that occur with the declaration or extension of the exclusive economic zone. Another topic related to UNCLOS and decisive in this context is the recognition of the contended atolls and reefs as islands

according to the Convention. In fact, the possession of the contended archipelagos is irrelevant if they are not recognized having the status of islands according to UNCLOS principles. Only islands can apply all the norms related to the UNCLOS' marine jurisdiction. According to the Convention on the Law of the Sea, an island is recognized having the characteristic of a 'naturally formed area of land, surrounded by water, which is above water at high tide' (Owen & Schofield, 2012, 810). Their natural conformity has a significant role in determining their capacity of generating marine jurisdiction, and of course the relative states' claims. As a matter of fact, considering the Spratly contented archipelago:

'only 48 features among the Spratly group are known to rise above water at high tide. Consequently, only these above high tide features qualify as islands in accordance with LOSC with the reminder of the insular features making up the Spratly "Islands", comprising either low tide elevations or entirely subsurface features' (Owen & Schofield, 2012, 810).

This has an enormous repercussion on the islands' capacity to be base point for marine jurisdiction allowing thus marine jurisdictional claims. In fact, as stated by UNCLOS (1982) 'where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own' (part II, section 2, art. 13.2, p. 29). Also the article 121 of the Convention classifies a category of islands considered as 'rock' and which 'cannot sustain human habitation or economic life of their own', and therefore 'shall no have exclusive economic zone or continental shelf' (part VIII, art.121.3, p. 66). However, as soon as states extended their sovereignty over islands and reefs, they rapidly occupied the island building structures. Most of times there were structures of military configuration, they were not built just to show their control on the land, but mostly to set a sort of human habitat, demonstrating the capability of the islands of sustaining the human presence.

Nevertheless, the Law of the Sea Convention if applied, would solve the claims according to its principles, allowing littoral states to expand their jurisdiction over the sea, but opposite to Chinese interests in the region, since coastal states would be able to extend over the territorial waters, whose Chinese are convinced of having exclusive right of access. As a matter of fact, the San Francisco Conference of September 1951, after the end of World War Two, announced the renunciation by Japan of the islands it was occupying, opening a 'legal and political vacuum' (Buszynski & Sazlan, 2007, 144). In fact, the article 2 of the San Francisco Treaty stated that 'Japan renounces all right, title, and claim to the Spratly Islands and to the Paracel Islands' (Buszynski & Sazlan, 2007, 144), causing the claims of littoral states over the mentioned islands.

Parenthetically, as oil reserves were being found on the South China Sea basins, states' attitudes started changing. In particularly Chinese reaction was principally focused on the potential resources' basins and the better way to exploit them. The possibility of explorations and exploitations were related to the states' relationships and cooperative agreements. China moved a step forward in the dialogue with the Association of Southeast Asian Nations (ASEAN), in order to have open access to the oil resources. Both the ASEAN states and China have common interests on the oil reserves, and the maritime claims are an obstacle to their exploitation. The most important issue to keep in mind is that a continuous rivalry approach by states ruins the good proposal of foreign companies toward the exploitation of South China Sea reserves, and at the same time impedes the energy cooperation among states and oil enterprises. Even if states have not worked out their positions as regards the disputes, an initial energy cooperation has been implemented and seems to be pursued in the future. In fact, the Chinese National Oil Company and the PetroChina are both attracted by possible enlarging operations in the South China Sea through arrangements with ASEAN. The energy companies involved in the process mourn the lack of a resolution for the

disputes and are afraid of the fact that future catastrophic development of the issue could harm to their economic interests, especially concerning the high amount of financial investments directed to the area. However, if there will be agreements as regarding the oil reserves exploiting processes, the benefits deriving from them would comprehend also the increasing of trust among the counterparts, as an anticipation for future resolutions among disputants. As Buszynski and Sazlan suggest, 'the exploitation of the energy resources there proceeds to everyone's benefit the risk of conflict may be reduced significantly in preparation for a future time when it would be possible to resolve the maritime claims' (2007, 157).

As for the major oil producer in the area, Vietnam is the most prolific in offshore oil production, and it has involved a lot of partners preferring foreign companies rather than national, in order to reinforce its claims against the Chinese ones. The involvement of enterprises coming from abroad, especially from U.S., has increased the tensions among the two states that are claiming the sovereignty over the same Spratlys' territories. Some incidents occurred among Chinese and Vietnamese vessels, for instance in April 1994, when Vietnam decided to involve Mobil for the exploitation of the Blue Dragon field, and lately in 1997 as ConocoPhillips was hired for a production-sharing project in a nearer area. In this specific case, Vietnamese vessels hunted a Chinese exploration boat, and subsequently a Vietnamese oil rig was stuck by Chinese vessels while operating in the Crestone concession area (Buszynski and Sazlan, 2007). The struggle was barely avoided. The ASEAN call on for avoiding incidents in the region, but Vietnam proceeded in creating four more explorative agreements with foreign partners. Joint ventures were made up with the national company 'PetroVietnam, the Conoco of United Kingdom, the Korean National Oil company, and Geopetro of France' (Buszynski and Sazlan, 2007, 158). There was consequently the discoveries of new fields, and from the 2003 on there was the beginning of large scale production.

Despite the fact that the attention is mostly focused on the hydrocarbons in general and on oil in particular, it is important to keep in mind that the area is not only rich in oil and gas, but also in ‘tin, manganese, copper, cobalt, nickel and other materials’, without leaving behind also the fact that the area around the Spratlys is very rich in fish stocks as analyzed in the preceding chapter. The rich peculiarity of the basins is due to the presence of some geological elements, such as a ‘porous and permeable sedimentary reservoir, organic rich source rock, and a low permeability seal or capping rock’ (Owen & Schofield, 2012, 813). Opposite to the declarations made by states involved in the disputes and consequently interested in developing oil production in their areas of concern, there are scholars asserting that the resources there placed are not going to satisfy the future energy demand of Asian states, and cannot be considered a solution for the dissolution of states’ energy concerns:

‘The wide range of estimates made has led some commentators to speculate that there may not be enough oil in the Spratly Island region to justify commercial exploitation, and for this reason the “oil factor” may (or should) not be a key, much less the dominant, issue in the South China Sea territorial and maritime jurisdictional disputes. Other estimates that circulate in the media cannot be traced to reputable sources and therefore should be regarded as hearsay only’ (Owen & Schofield, 2012, 815).

The same uncertainty regarding estimates is affecting gas production as well. A large amount of gas is predicted to be placed in the South China Sea basins, but gas production is highly different from the one of oil, but the value of potential gas reserves is less important than oil in the struggle for sovereignty. However, the potential gas reserves should not be ignored. According to Owen and Schofield (2012), despite the strategic importance represented by hydrocarbons and oil presence underwater, they cannot cope with the progressive demand of energy, and will not be

enough satisfactory for the countries involved, nor will determine their independence from the exportation of oil and gas supplies.

By the way, affirming that the various countries have interest in the region only because of potential oil and hydrocarbons reserves is rather reductive. As also Valencia (1997) states in his article,

‘the disputes are fuelled not only by perceived petroleum potential but also by the perceived strategic significance of the islands and the resurgent nationalism reinforcing the symbolic claims of sovereignty over them. Furthermore, the claimants are countries, not oil companies. [...] It is thus doubtful that the claimants’ interests in this area will abate simply because oil potential may turn out to be modest’ (Valencia, 1997, 270).

The cooperation as regarding the energetic field can help in increasing the confidence in states’ relations. Moreover, the various agreements that might come from the energy policies put into practice by states can represent a sort of norms concerning right behaviors and guidelines to prevent conflicts. The need of energy supplies of states may be decisive for the beginning of a process of mutual cooperation preparing in this way claimants in facing the biggest issues related to sovereignty in future. As a matter of fact, China’s raise of energy demand has moved it closer to the ASEAN states, and the participation of Chinese oil companies in the explorations and production might reinforce Chinese potential attention in additional cooperative stages (Buszynski & Sazlan, 2007).

Energy cooperation can embody a solution for starting a process of reconciliation among states boarding the South China Sea. However, the presence of foreign companies has contributed in many occasions in rising tensions among the parts. In addition, oil reserves have a prominent role in the economic and industrial development of Southeast Asian countries, and the fact of being

a strategic and limited resource, despite they have been barely discovered and seem to be potentially abundant, makes them more relevant. Hydrocarbons and oil could be the right subject for implementing a process towards agreements and common policies, but the interests shared by the various sides of the sea appears to overtake the good proposals. If a common policy can represent the beginning of dialogue among states in order to build a system based on confidence and trust, oil and hydrocarbons reserves give the impression that states' proper interests would be conducted in spite of the resolution process.

Although oil and hydrocarbons have reached a high grade of importance for the economies worldwide, the main issues affecting the South China Sea disputes have to be found in the fisheries sector and in the sea-line security. If associated with nationalism and maritime claims over territories for ancestral rights of possessions, fisheries represent the main cause on which it is necessary to invest in order to look for possible solutions to states' struggles. Nowadays, oil and hydrocarbons appear to be more relevant in the proceeding disputes, but since they will not represent a determinant and continuous source, it is important to focus the attention on cooperative approaches to manage fisheries resources, before thinking of developing a joint hydrocarbon management, furthermore since states prefer to conclude joint development projects with foreign international companies rather than regional. Fisheries would give a deeper regional dimension to states' cooperation, creating a system based on renewable resources that could assure a certain cooperative endurance. By the way, oil and hydrocarbon sediments are playing a determinant role in the regional dynamics at the moment, and their correct joint management might be at the core of the regional equilibrium as well.

However, a joint development could represent the right way to face the regional instability that oil explorations have brought in the region. The establishment of a joint development

agreements (JDAs) system, or the application of a multilateral cooperative regime, might be a non-military alternative resolution for the disputes. By the way, the whole procedure would mean a goodwill by states to come to terms with each other. In any case, as Snyder (1997) suggested in his article, the willingness to expand oil and hydrocarbon explorations should go beyond the boundary rivalry among states. The adoption of JDAs would rely on trust, and the opportunity of having closer relationships. Moreover, the states detaining better equipment could take advantage of the opportunity of selling their technologies. In fact, in front of a joint development agreement, each counterpart must accept the fact of sharing the resources with the other states, despite the agreement can be cancelled any time is needed. The principles of the agreement must be accepted and respected by each part, and the states have to keep in mind that the agreement is primarily focused on the resources and the development of them in the area. The participation to a JDA is determined by the respective rights of each state over the area involved, in this way 'those with the largest claims to the area would be granted full participation in the JDA while those with partial claims to the multiple claim area would be granted only limited rights' (Snyder, 1997, 153). Thus, the claims for sovereignty are still influencing the management of the South China Sea's resources. China and also Taiwan would be keen on applying a joint development agreement but after the recognition of their positions as regarding the claimed territories. On the other hand, Malaysia and Vietnam have signed in 1992 a 'memorandum of understanding over oil exploitation and production in their overlapping territorial claims in the Gulf of Thailand' (Snyder, 1997, 154). Also Thailand and Malaysia have reached a JDA for the territories that both of them are disputing, but they have preferred to follow the path of dialogue implementing cooperative practices.

The joint development agreements have been already successfully implemented in various contexts around the world, where territories, waters and resources were contended such as in the

South China Sea milieu. For example in the Falkland Islands/Islas Malvinas, once scenario of a harsh military struggle among Great Britain and Argentina, a joint development agreement has been productively implemented by the two counterparts, which have still nowadays loose ends, but have decided to cooperate in the management and protection of the marine environment. In addition, also Indonesia and Australia have chosen the way through dialogue to solve their rivalry in order to put into effect the Timor Gap agreement (Snyder, 1997).

The creation of JDAs in the South China Sea might be useful to provide a collection of more precise data as regards the estimates of the presence of oil in the region. The agreement could promote a more efficient scientific approach, because as Valencia (1986) suggests, it is only due to successful activities coming from the various disputed areas converging together that the questions regarding data can be answered. By the way, even UNCLOS provides some obligations for the signing countries embracing also the establishment of centers in the developing countries based on guiding programs on the study of the marine biology, the exploration of seabed basins, the implementation of new technologies and also the organization of educational programs for the safeguard of the environment, especially in avoiding pollution, and promoting the acquisition of marine scientific information.

As for the disputes involving the majority of countries boarding the South China Sea, it is difficult to figure out how oil and hydrocarbons would be useful to harmonize states, since they appear to be the real focus of the disputes. Since data concerning the real situation of basins is rather confused, and besides the characteristic of oil and hydrocarbons of being a resource under depletion in most of offshore sites in the world, it is necessary to reflect over the consequences that will derive from various exploiting projects implemented in the area with different methods and corporations involved. Therefore, since fishery is nowadays the first overexploited resource in the

region, and it appears to be essential for the survival of local communities, it is necessary to work out some solutions for the creation of a cooperative management among states as regards the fishery sector on first. If corrected norms are applied, fish stocks can be renewed and at the same time the entire marine environment can be protected. States working together for a better use of the resources can facilitate the dialogue among the parts, assuring that an essential good for the people living in the region can be preserved. Oil and hydrocarbons do not seem to be the right solution. They have increased frictions in the whole area as soon as there was evidence of the discoveries. Furthermore, the entrance of new subjects in the region, such as foreign oil companies, especially U.S firms or Western countries ones, has added more pressure on the slight balance, and it has intensified the passed hostilities among the parties. For example, the presence of U.S enterprises is not well perceived by China, which see it as an intervention in the region by the American government in order to gain control over the area, especially in refer to the Pacific scenario. On the other hand, states such as Philippines or Vietnam are threatened by the military and economic position reached by China in the last two decades. Despite all the political and strategic struggles that differentiate the South China Sea from the other resources' contexts worldwide, resources are not to be forget as being the central theme around which states are turning. According to this point of view that places resources at the centre non only of the struggle but also as a key to solve disputes, it is important to better understand the point reached by the process of dialogue, both bilaterally or multilaterally, in order to presume in the end if a possible regional cooperative management of the South China Sea's resources is possible for creating both a sort of equilibrium in states' relations and a major sensitivity and consideration of the marine resources and environment.

4 Prospects of Regional Cooperation in the South China Sea

After the creation of a new Law of the Sea Convention in 1982, and consequently the spreading of exclusive economic zones and continental shelf declarations, states were supposed applying their control over large areas of sea and ocean. The fact of building regional settings in order to solve marine environmental issues became up to date. It affected mostly states surrounding enclosed or semi-enclosed seas, such as the South China Sea (Morgan, 1984). The growing of various overlapping claims opened discussions as regards the creation of regional frameworks to manage sea and oceanic resources. The Southeast Asian countries were involved in the scholars debates as well. The regional approach needed in the various regions changes according to the specificities that the region itself presents. Marine regions have distinct features if confronted to territorial ones. For instance, a regional corpse might be helpful in fighting against matters such as pollution dispersal, safeguard of shipping sea-lines, living and non-living marine environmental features. Some topics highly related with the marine ecosystem may collide with the economic sphere if not properly handled. As a matter of fact, the regulation of fisheries affects the presence of available fish stocks, which if not correctly managed might influence the economic fields related with them. Regional boundaries as well have to be accurately analyzed and perpetuated taking into account their relevance not only on avoiding states' clashes but also in guaranteeing the preservation of resources.

As for the management of regions, there are many different aspects determining the classification of a region. Regions can be recognized as having same features concerning their physical shape, economic ground, cultural or political traits, management, and geostrategic aspects (Morgan, 1984).

The South China Sea region can be considered from a management and geostrategic point of view. Nowadays the region is classified into the “geostrategic regions” due to its physical positions and the enormous power detained by littoral states (Morgan, 1984). First of all, it differentiates for the presence of strategic straits and the influence states have over them. As initially reported in this dissertation, the Singapore and Malacca straits are two of the most crossed and busy passages in the whole world, having a deep impact on the South and East Asian economies as being the primary access for the importation and exportation of raw and manufactured materials. Moreover, in the last three decades, the area has shown a raising of its strategic importance due to its reserves, which are characterized by fishery and hydrocarbon production.

By the way, the shift from a geostrategic regional consideration to a management one can be performed through agreements and states’ partnership. The “management regions” are made up of procedures that are employed by countries to rule for example the fisheries activities, to regulate pollution, and to institute special governments for the management of boundary disputes. The fact of actualizing this kind of “management region” might provide positive challenges that a single state would not be able to apply, while a new regional order more linked to local sustain and development can be generated in accordance with the other regional entities (Morgan, 1984).

Despite of the fact that Morgan (1984), when defining the various types of regions in its article, asserted its negative impression as regarding the possibility of creating a cooperative system in the South China Sea region, if we consider the environmental context in which the states’ boarding the sea find themselves, the South China Sea “geostrategic region” could turn into a “management region”, if an alternative way will be followed in the process of dialogue. In the past, states have been concentrating themselves over the territorial disputes, while in the last few years

the environmental cause as reached global attention due to the necessity of preserving resources necessary to shoreline communities.

The South China Sea represents the test bench for future relations of Asian countries, and the development of the Asia-Pacific region. The various disputes involving some Southeast Asian states, such as Brunei, Cambodia, China, Malaysia, Philippines, Vietnam, and Taiwan, have been focused on the strategic geopolitical role that the South China Sea's waters have gained in the last twenty years more or less. The resources there placed, and the ancient rivalry among states have been prevailing over the dialogue and the possibility of finding a cooperative approach to solve the quarrels peacefully. Moreover, the excessive and rapid economic and military development, which has been affecting some countries in the last decades, has increased tensions among states, mostly in regard to their various positions and projects concerning the claimed territories.

The intervention of other national subjects in the existing scenario has both raised the international attention over the area, but harming at the same time the states' weak relations. The majority of the counterparts do not renounce to their respective claimed rights over the islands, and consequently the deriving privileges –in refer to the extensions of proper marine jurisdiction. However, they all agree on the fact that despite disputes are not easily to be solved, it is important to undertake a multilateral, or in some cases bilateral, dialogue with each other in order to assure the preservation of some vital activities in the region, such as sea-lines and fishery practices.

Various attempts were followed in the past, and probably new approaches will be applied in the future. As for nowadays, it is necessary to focus the attention on the path followed since now, in order to grasp some possible decisive ways that could be pursued to motivate states in putting into

practice a common plan made of collaborative attitudes for the benefits of the region in terms of environment, social organization for local communities and maybe an initial positive standpoint for the resolution of disputes.

4.1 Managing potential conflicts in the disputed islands

From the 1990 on, a cycle of meeting and forum took place in various locations, in order to deal with the issues connected with Asian states and their disputes. It was specifically referred to the states surrounding the South China Sea. Most of them have been following also the succeeding meetings in order to affirm their positions or to work out some solutions as regarding regional matters, such as fishery policies or economic agreements.

The first series of meetings were promoted by Indonesia. Since Jakarta did not advance any claim on the Spratly archipelago, it was seen as a fair-minded and trustful moderator. The unique Indonesian interest was based on preventing any conflict in the South China Sea region, since potential struggles did not favor trade activities. Thus in 1990 Indonesia supported an annual 'Workshop on Managing Potential Conflicts in the South China Sea'. China participated as well with others claimants states, which discussed on 'non-sovereignty issues informally and privately' (Whiting, 1997, 305).

The "managing potential conflicts" meeting was thought to be a way for states to confront with each other presenting their positions in a sort of neutral milieu, where there was not evidence of the prevarication of a single standpoint. It was firstly addressed to cooperation for the protection of the environment and the guarantee of the access to sea-lines. Besides, it started considering that the South China Sea was representing one of the major fragile political setting in the whole world, and basing on the assumption that a cooperative approach on some specific matters would be necessary in any area of the world. In fact, since a state accepts the United Nations Convention on

the Law of the Sea (1982), it has to adopt all the principles it states, even the article 123 concerning the status of semi-enclosed seas, in which the Convention attributes to states the responsibility of undertaking cooperative practices to deal with some issues without regional boundaries, such as oil pollution incident or depletion of fish stocks (Stormont, 1994). In fact the article clearly states that:

‘States bordering and enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through and appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.’ (part IX, art. 123, p.67).

As regards the “managing potential conflicts” meetings specifically, they did not deal only with the issues of disputes in the South China Sea, but were explicitly concentrated on the management of the Sea. The process of dialogue involved also the ASEAN as an active speaker charged by the states to support their interests in the cause. By the way, the process built by the ASEAN is going to be discussed lately. For now it is useful to know that the ASEAN represents

still nowadays the Association of Southeast Asian Nations, and it plays a determinant role in the management of the South China Sea, as it works for the creation of a cooperative system involving the states bordering the Sea.

The first meeting on “managing potential conflicts” occurred in Bali in January 1990. All the members of the ASEAN were called to mediate their own part as regarding the various issues analyzed. The first meeting was attended by the majority of the countries’ representatives: People’s Republic of China, Laos, Taiwan and Vietnam. The absence of Cambodia was due to the uncertainty of its political situation at that time. In June 1991, another meeting took place. It was held in Bandung, and all the South China Sea countries sent their delegates. They were all hoping to start discussing about potential forms of cooperation. At the end of the meeting, the drafted agenda was containing various items, such as ‘resources management, shipping, navigation and communication; environment, ecology and scientific research; political and security issues; territorial and jurisdictional issues; institutional mechanism for cooperation; and Spratly and Paracel issues’ (Stormont, 1994, 354).

The discussion was mostly based on the possibility for participants to share information concerning their ocean and law policies, but most important, they all agreed to solve the disputes issue through dialogue and peaceful means, renouncing to the use of force. The good intentions of self-restraint gave to the counterparts, or at least to the moderators, the suggestion that cooperation would have overtake the preconceptions based on territorial claims:

‘At the Bandung meeting one speaker from each national group was invited to make a statement of the position of its government on the Spratly/Paracel issue. The resulting Workshop Statement reflected the desire for a peaceful resolution of the dispute and a call for cessation of militarization’ (Stormont, 1994, 354).

In 1993, the meetings were characterized by finding common solutions as regards scientific researches, resource assessments and the ways of development, and last but not least the potential conflicts in the South China Sea. As for scientific researches, the topics discussed included fishery research, meteorology, non conventional energy, phenomenon affecting the environment, the preservation of biodiversity, and the reciprocal exchange of information in a sort of joint research. The aim was to encourage surveys and cooperation among states in order to have a more specific idea of the biodiversity affecting the South China Sea. As regards the assessment of resources, there was the project of creating a marine park jointly administered by the claimants states, so as to go beyond the boundaries' rivalries in favor of cooperation mostly for the preservation of fish stocks.

Concerning the supervision of the potential conflicts that can affect the Southeast Asian region, despite the fact that the meetings were called "managing potential conflicts", in reality they did not face directly the territorial disputes or the various claims advanced by states. Their intentions were focused on a different approach to the issue performed by states, not from a military or politically challenging point of view but in order to plan a joint collaboration among states. The partnership thought in the past is still pursued nowadays through new forum and meetings, most of them supported by the ASEAN, which is doing a hard work to change states' perspectives towards the management of resources.

The "managing potential conflicts" meetings went on also during the 1994/95 to strengthen the dialogue among the claiming states. New approaches were brought during the 1995, when China stated that it would have followed the UNCLOS norms especially as regarding the disputes, since the Law of the Sea Convention was well accepted by the greater part of Southeast Asian leaders. There were additional discussions related with navigation and communication, in

particularly rescue of refugees, piracy, and the necessary efforts against the traffic of illegal goods, such as drugs. Moreover, there was the signing of a multiple “code of conduct” among the parties, which was forced by the intensification of shipping traffics around the contended islands (Hearn & Stormont, 1996). For the whole process of dialogue, some of the counterparts denied extra-regional subjects to participate in the dialogical process, for instance China refused the entrance of U.S as moderator in the debates.

However, despite states tried to implement a form of dialogue to create an asset ready to solve some critical issues, time was not ready, and states were not enough prepared to support a cooperative organization. In fact, states’ interests were still in place and a nationalist approach was predominating. As a matter of fact, in 1995 there was the reaction by Philippines for the Chinese occupation of Mischief Reef. In spite of the fact that the process of dialogue was being carried on, the disputing states have never renounced to their claims. All the parties involved, but China most of all, specified continuously that they would have not given up to the claimed territories. The whole meetings’ difficult procedure and work done were perceived as a sort of failure by the supporters of the dialogue.

Until nowadays, the context has developed without harsh military struggles if compared to the events occurred in the past, except some cases involving fishermen or fishing vessels, and military waters’ visioning ships. But tensions have not decreased despite the ASEAN association has been continuously working for new solutions. In spite of the fact that the regional quarrels do not comprehend foreign nations, the equilibrium of the South China Sea region is still perceived as an international issue that must be resolved through dialogue in order to prevent an escalation into conflict.

The rapid growth of the countries involved, especially of China, has caught the attention of U.S, which especially with the Obama administration have been focusing their interests on the Asia-Pacific region. President Obama defines himself as the “first president of the Pacific”, not only because of its origins, but ought to the shift of the American foreign policy to Southeast Asia, since he is aware of the strategic importance of the area not only from a commercial point of view, but also in building a controlled system in the Pacific Ocean. This political policy and military strategy is called “pivot to Asia”, and it aims at concentrating the efforts on the Pacific match (Freeman, 2012). As a matter of fact, within the 2020, the American defense department will have transferred the sixty per cent of its naval equipment in the Pacific. From the North to the South of the region, the U.S are building a sort of circle, or better an arch, made up of the Southeast Asian nations sharing hostilities with China. For instance, South Korea is hosting American installations, Philippines have reached a sort of treaty of defense with U.S, while Australia is giving its military and territorial support. As for Japan, the struggled occurred in 1945, which declared the end of the second world war on the Pacific front, has been progressively forgotten in favor of a the American support for the Senkaku/Diaoyu dispute that it is facing with China in the East China Sea (Fabbri, 2012). In fact states having struggles with China, and being afraid of Chinese recent military improvement, look at the United States for gaining support on their reasons. Even Vietnam has moved forward for a partnership with the U.S. making available some military basis for Chinese containment, despite the violent war occurred in a rather recent past that saw the direct involvement of U.S in Vietnam (Rampini, 2012).

The South China Sea represents also a notably amount of interests for U.S. companies. Apart from the various agreements made by states with foreign oil companies, the majority of which appear to be American enterprises. The total amount of the U.S. business in the South China

Sea corresponds to 1,2 billions per year, since $\frac{1}{4}$ of the worldwide oil production and the half of the commercial traffics worldwide cross its waters (Fabbri, 2012, 135).

Even if the United States have always appeared neutral and never gave the impression of active intervention, they have been quietly collecting agreements with the states involved, as if they aspire to create a sort of influence around China in order to contain its economic and influential expansion in the area. As a matter of fact, in such a difficult financial crisis affecting most of Western countries, China seems to be the unique superpower detaining high amount of wealth that is being invested in neighboring countries in the form of infrastructural works, such as railways, ports, and monetary funds for local communities (Fabbri, 2012).

According to U.S, the Chinese intentions over the area are aiming at turning the high sea waters of the South China Sea into a Chinese territorial waters. In fact, if China's pretensions find solid soil, more than the half of the Sea's waters will be submitted under Chinese control and jurisdiction, compromising the right of passage for ships and the use of resources for the other countries boarding the sea.

In the last three years the situation has evolved and tensions have raised in various moments. Firstly the participation of the U.S. Secretary of State, Hillary Clinton, to a forum organized by the Association of Southeast Asian Nations (ASEAN) generated some frictions concerning the presence of a U.S. delegate in a meeting for promoting the dialogue. The American State's Secretary underlined in her intervention the necessity of finding a regional collective solution proposing the U.S. as moderator of the dialogue. The Chinese reaction did not arrive late. China interpreted the presence of the U.S. delegate at the ASEAN forum as a public stand of USA with the states represented by ASEAN, in which China does not take part to. According to Chinese point of view the support that the U.S were giving to ASEAN corresponded to an opposition to

Chinese claims. Moreover, China expressed its dissent over the participation of extra-regional subjects in the discussion. From that moment on, the situation worsened. In 2002, the Filipino government placed military vessels around the Scarborough atoll, which is claimed also by China, and Beijing reacted as a consequence sending military apparatus too. However, also Vietnam helped in increasing tensions: Hanoi government promoted a law that set forth Vietnamese sovereignty over the Spratly and Paracel Islands. China acted in response affirming that Chinese army have always been ready to defend the territorial sovereignty, to protect Chinese rights and marine interests at any time (Carpenter, 2012). It seems that the U.S. intervention in the disputes undermines the stability of the region, causing new frictions among the parts involved, which are opposite to the proposals of the contribution for the creation of a collaborative attitudes among the parts for a future joint cooperation as regarding decisive issues that must be solved, issues are not just characterized by a political shape, but mostly connected to the environment and related to the depletion of resources. The international subjects and the parts directly involved in the disputes should leave apart the political and territorial quarrels in order to try a different approach over the territorial issues, concentrating more over the resources and starting a process of dialogue based on regional cooperation for the benefits of local communities and the marine environment, which then might reflect itself positively on the countries' social and economic spheres. Nor in the "managing potential conflicts" meetings, neither in the various approaches tented to solve the disputes, a decisive solution was figured out. The disputes and territorial claims appear to be too difficult to solve even nowadays, since none of the states involved accepts to renounce to its positions. However, focusing on common policies and resources in favor of the preservation of them, the management of fisheries, the sharing of know how and technologies, and the preventing of cross

bordering pollution, might be the right solution to open a new process of dialogue including all the countries involved in the region, thus leaving behind the territorial disputes.

As a matter of fact, in the last few years, there have been some rapprochements among opposite parties, which have dissimilar points of view as regarding the sovereignty issues over territories and waters. It is the case of the Taiwan/China's new positions as regards the oil explorations in the region. They have formed a sort of united front for a joint venture exploration firstly in regard to the East China Sea, but that can be applied in the future to the Spratly archipelago as well. By the way, there were also in the past signings for the possible formation of a Taiwanese and Chinese united front in order to manage Spratlys' resources,

'The first sign that China and Taiwan might form a common ground on these issues surfaced during the March 1988 clash in the South China Sea between China and Vietnam, when Taiwan's Defense Minister stated that Taiwan would help China defend the island group from third party if asked to do so' (Valencia & Daojiong, 1994, 202).

From the beginning on, there was also the evidence that China and Taiwan were claiming the possession of the islands according to the same historical foundation. Moreover, Taiwan has also restated its claims over the South China Sea supported by China, arguing that a multilateral cooperation should be implemented in the whole sea. A united China-Taiwan front in the dispute might represent a new chance for dialogue, because their separated positions have always been perceived as fragile for the political regional balance, and even for the possibilities of alliances with the ASEAN states. China and Taiwan have probably agreed on the development of joint oil explorations due to the fact that both of them are not ASEAN's subjects, and their unique front might represent a strong reality ASEAN states have to face. A common Chinese and Taiwanese path could make dialogue easier, since previously countries were stuck by the rivalry among the

two parts, because threatened by the effects that would have been originated in choosing to support China instead of Taiwan or contrary.

The Taiwanese position in Southeast Asia has been limited by the predominant growing of the Chinese presence. There were some links with Thailand and Philippines once, as well as with the Republic of (south) Vietnam, but in all circumstances the fact of being lined up for the U.S. has always been perceived as a crucial issue. However, the missing of cooperative tides has not meant the lack of economic ties among the various countries, neither for Taiwan. Taiwanese representatives were involved in the workshops organized by Indonesia and Canada, which spoke as moderators, in order to look for a preventive diplomatic strategy, but there were no results at all. Actually, for Taiwan the fact of being without a recognized diplomatic status means the exclusion from the process of negotiation over the disputed territories. Moreover Taiwan has not sufficient facilities to face a harsh struggle for the endorsement of its historical claims (Leifer, 2001).

Another approach that is being developed is China-Vietnam common line. The Vietnamese position became more relevant as soon as Vietnam jointed the ASEAN association as a member state in 1995. The rising of Vietnamese position in the region was mostly related to the fact that Vietnamese explorations of the South China Sea basins were revealing profitable. Vietnam had discovered high quantity of oil and hydrocarbon reserves and their exploitations made the country one of the biggest oil producer in the region. Since Vietnam was exploiting basins close to China, the possibility of creating a joint cooperation among oil companies became more concrete. In addition, China was aware of the fact that Vietnam represented a base point for American geopolitical strategy on Chinese containment. On the other hand, Vietnam is far from undertaking a rapprochement with Taiwan, since the Taiwanese position of being one of the islands' claimants and an ancient rival of the Chinese government. Disputes have opposed Vietnam and China as well.

In the past, many critical episodes occurred between the two counterparts, and they contributed at destabilizing the regional balance. Despite the fact of being both claiming the Spratly and Paracel sovereignty, China and Vietnam have been working on reconciliation. From 1988 to 2000, the relationship between the two states faced many step forward. They have not constituted a declared alliance yet, but various agreements occurred. For instance, the dividing line of the Tonkin Gulf was completed in 2008, while agreement as regarding the fishery management were undertaken in 2000 and 2004. Besides, joint operations among PetroVietnam and China National Offshore Oil Corporation have started in the Gulf (Locatelli, 2008).

As for Vietnamese position, from the middle of the '80s on, it has been developing a market-economy and applying many changes in the foreign policy. The same ideology shared by the two parts make them closer, besides Chinese economic advancement has become a sort of model to follow for the Vietnamese leaders. The fact of being in a prominent position helps China in being attractive for foreign investors, and gaining more power and international role increase the threat of potential adversaries. The topic that mostly affected the process of making their relationship closer was the dispute concerning the Paracel and Spratly archipelagos. The states' relationship was going through a critical moment when both parties claimed the sovereignty of the islands. However, the two counterparts realizes the potential interests they were both sharing, and decided to afford the path of distension and cooperation. Since 1993, they have been committed in various negotiations related to maritime boundaries. Finally the two succeeded in the agreement of the Gulf of Tonkin, which was based on the division of the Gulf into two areas of interests. Conversely, the stated line of division arose many discussions and protests. Overseas Vietnamese dissidents were accusing Vietnam of transferring Vietnamese possessions to China. Despite the debates, Chinese and Vietnamese governments were able to come up with an Agreement on Fishing

Cooperation in the Tonkin in 2000 (Tønnesson, 2003). The presence of Chinese fisheries in the Gulf of Tonkin is major than the Vietnamese. Since many incidents happened in the past, involving Chinese fishermen, China looked for a pact that would have allowed Chinese fisheries to operate into the Vietnamese exclusive economic zone. A series of negotiations and the reached agreement put an end to quarrels. The main quarrel the two are still sharing is related to the Parcel issue of sovereignty. When in 1999 the ASEAN suggested a Code of Conduct among the parties involved as regarding the Spratlys dispute, Vietnam immediately asked for the inclusion of the Paracels' matter as well, but China promptly refused (Tønnesson, 2003). The lack of an accord among the two parts in the past put in danger the fisheries operations. For example, the prohibition to Chinese fishermen of having proper fishing quotas in the Gulf of Tonkin by Vietnamese government make it more difficult to suggests possible future positive prospects of resolution. In spite of the hesitancy of states in moving forward, other arrangements might be considered in order to move a step forward in the process of cooperation concerning also the exploitation of offshore oil and gas field, and a major affection for the environment.

The Chinese attempts of getting closer to both Taiwan and Vietnam show the willingness of facing the territorial disputes toward bilateral dialogues. China has always declared of preferring bilateral talks rather than multilateral. In fact, in bilateral interchange Chinese position might better come out, especially thanks to the apprehension that Chinese economic and military power arises on the counterparts. China is aware of its superior position and is trying to take advantage of it as much as it can. According to scholars, China is using a sort of strategic policy putting slowly its control over the region thanks to bilateral rapprochements with various states involved in the disputes. By the way, it is difficult to guess if bilateral agreements will prevaricate on multilateral ones, or if the bilateral path undertaken by China can be the right solution for the stability of the

region. As Tønnesson (2003) states, since the regional balance depends on declarations of continental shelves, exclusive economic zones and resource interests shared by various states, it seems that only a multilateral approach might be successful in such a multilateral disputed milieu. However, some multilateral agreements occurred after bilateral consultations, for instance in the Gulf of Thailand there were four claiming states (Cambodia, Malaysia, Thailand and Vietnam) and three of them went through bilateral agreements on first, then a trilateral subdivision and establishment of joint management zones occurred. Only Cambodia remained out of the multilateral dialogue, but joining some agreements bilaterally as well.

In order to go back to the various processes followed to find possible solutions for the disputes, the series of meeting regarding the management of potential conflicts in the South China Sea have not succeeded in creating a decisive milieu for possible programs of joint cooperation among states. The territorial sovereignty issue appears very difficult to deal with. States do not seem ready to afford a multilateral approach regarding the disputes. None of them is interested in renouncing to proper positions for the stability of the region. By the way, as the Sino-Vietnamese rapprochement suggests, when various interests are undercut, states try to find agreements. The willingness of safeguarding proper interests is profound. China and Vietnam have not hesitated in creating the conditions for assuring a safe fisheries management, nor China and Taiwan have showed uncertainty in building a joint development cooperation for the production of oil and the explorations of the commonly claimed basins.

In the south China Sea context, resources seem to represent the only way to force states in approaching with each other. The disputes have not been overtaken yet, but improvements have been successfully achieved in the fishery and oil sectors.

When dealing with issues related with the political or historical states' backgrounds, countries tend to abuse of their authority in insisting on their positions, making the process of dialogue not easily facing, and causing the clash of one against the other. The ASEAN association tried in the past –and it is still doing it nowadays– to solve the disputes building a confident relationship among states trough multilateral dialogue. However, as the next chapter is going to present, the ASEAN history is surrounded by accomplishments but also failures, active participation of some states to the meetings, but also the lack of recognition of its status as interlocutor by others. Moreover, some interferences in its operations, that characterized the passed background of ASEAN association, has harmed to its credibility as being a regional speaker, and not a mean for external subjects to use for its proper interests in the region. As previously reported, the participations of some extra-regional characters is not perceived by some states as a way to help improving the regional stability. On the contrary, it is considered as a line of attack to assure a relevant role in the area, which is recognized as being one of the most significant geopolitically.

4.2 Efforts of regional cooperation through the ASEAN forum

The debate concerning the possibility of realizing a regional organization in the South China Sea is widely spread. The so called “new regionalism” debate is dealing with the difference in the meaning of regionalism and regionalization. The passage from regionalism to regionalization implies the evidence of the creation of a cooperative organization in a specific area. According to Öjendal (2004), the term regionalism submits the idea of sharing a regional dynamic, while regionalization properly indicates a process of state-to-state relations going on with the results of cooperation in various fields. Therefore, Southeast Asian states should be able to pass from a regional dimension to the regionalization of their interests, aiming at cooperating in determinant

topics. The Association of Southeast Asian nations (ASEAN) seems to represent the tactic tented by Southeast Asian states to shift into a common regionalized organization. As he suggests,

‘although the South-East Asian region has been in some turmoil since (and indeed before) the initiation of institutionalized regional cooperation in 1967, ASEAN (the Association of South-East Asian nations) has nevertheless constituted the most diplomatically advanced, politically successful and comprehensively institutionalized attempt at regionalization outside Europe’ (Öjendal, 2004, 520).

The creation of the ASEAN association occurred in the middle of the bipolar subdivision of the world, as a consequence of the two opposite sides that were confronting with each other, not only militarily but mostly ideologically, during the so called Cold War. The Association was born with the intent of representing the unique regional organization of “southern” countries aiming at solving regional disputes, and pursuing countries’ common objectives, such as the regional security, a common path in foreign policy and economy. At the beginning of its creation, in 1967, the ASEAN counted six participants (Brunei, Indonesia, Malaysia, Philippines and Singapore), and it was perceived by Western countries as a mean for containing the expansion of communist ideology in Asia. As a matter of fact, being founded in the middle of the Cold War, it became immediately a ‘product of coincidence in global politics owing its success as much, if not more, to the fact that its interests converged with those of the West’ (Öjendal, 2004, 523). It was basically based on the need of multilateral negotiations, owing to the fact that ASEAN members always supported the non-intervention policy. Previous attempts were tried but unsuccessfully. Organizations such as the SEATO (South-East Asia Treaty Organization), ASA (Association of South-East Asia), ASPAC (Asia Pacific Council) and MAPHILINDO (Malaysia–Philippines–Indonesia)’ (Öjendal, 2004, 524), fell short because they were mostly directed to representing

Western interests over the area. However, as regarding ASEAN efficiency, a number of declarations occurred: in 1967 there were the ASEAN statues, in occasion of the Bangkok Declaration, which were improved by the Treaty on Amity and Cooperation (TAC) endorsed in Bali in 1976, and thus remembered also as the Bali Treaty. The TAC resembled basically principles for managing conflicts. It was based on:

‘a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; b. The right of every State to lead its national existence free from external interference, subversion or coercion; c. Non-interference in the internal affairs of one another; d. Settlement of differences or disputes by peaceful means; e. Renunciation of the threat or use of force; f. Effective co-operation among themselves’ (Amer, 1999, 1034).

Nowadays, the TAC is still in force and put the bases for the creation of the principles of the Asia Regional Forum for cooperation. Further improvements happened during the '90s, when other states started joining the association. Burma, Laos, Vietnam and Cambodia entered in the Association making possible the accomplishment of the ASEAN Free Trade Agreement (AFTA) (Öjendal, 2004, 524). In fact, as regarding the enlargement of the Association, Vietnam agreed to the TAC –or Bali Treaty– in 1992, and it became an ASEAN member in 1995. Laos took part at the Bali Treaty in the same year as Vietnam, it became an ASEAN Observer and it succeeded in joining the Association in 1997. As for Burma, it accepted the TAC Treaty in 1995, while it entered ASEAN in 1997, after having been an Observer too. The case of Cambodia was more intricate, since there was the formal resolution of the Cambodian conflict in 1991. Finally also Cambodia gained the access in 1998, when it became the 10th ASEAN state member (Amer, 1999). The aim at managing the possible conflicts in the Southeast Asian region opened the Association to further

members. It can be also seen as an attempt to expand the ASEAN influence in the region for guaranteeing stability and peace. For example, the engagement of some countries, such as Burma, can be interpreted as the willingness to create a system involving all the various regional entities in order to put them under a supranational control; it seems as if there is the will of creating 'One Southeast Asia'. By the way, the entrance in the ASEAN favored also states because, thanks to its efforts in creating a secure setting, it has helped to attract foreign investments (Amer, 1999).

Malaysia, Philippines and Thailand were recognized as being the states constituting the initial "core" of ASEAN. Brunei had less influence due to its limited shape, but at the same time strategic and wealthy. On the other hand, Indonesian purpose in joining the Association was not based on the territorial disputes, since the main dispute dealt with was the Spratlys and Indonesia did not advance any claims over them. Instead Indonesian involvement was principally connected to the desire of guaranteeing balance and stability in the region, avoiding conflicts and finding possible ways of cooperation among states to assure a certain level of prosperity. As a matter of fact, Indonesia became the regional moderator of the ASEAN meetings, both when dealing with the states of the Association or the other regional entities. Despite the fact that ASEAN promoted the TAC agreement based on the nonviolent resolution of conflicts in the region, the Association promoted also military cooperation based on joint military exercises and the sharing of know how as concerning technology (Stubbs, 1992).

The interests of extra-regional subjects, such as the United States that were involved in the Cold War against USSR at the time of the creation of the ASEAN association, was responsible for the rising of tensions in the region. Even the war against terror performed by U.S. in the last two decades influenced the military and security dealing ASEAN agenda.

Despite interests far from the regional issues, from 1997 on the ASEAN started to dialogue with the other regional entities that had not joined the association. China, South Korea and Japan were involved in the talks, and there was the constitution of the ASEAN plus Three. The latter success the Association gained was the signing by China of the TAC, as a sort of acceptance of working for respecting the non-aggression policy in order to solve possible quarrels peacefully.

As for the situation concerning China, Chinese government has always been skeptical when talking about the formation of a regional entity, assuming that the region appears too much assorted therefore the impossibility of finding unity among single states. In addition, the Spratlys' issue and the Chinese declarations of sovereignty over the islands make it difficult to find a compromise among the parts. In spite of the Sino-Taiwanese rapprochement, which occurred because of oil and hydrocarbons joint explorations, China has always been avoiding Taiwanese presence in the process of dialogue and has never accepted to confront with its position as regarding disputes. By the way, a common regional organization would surely expand the capacity of states to decide on common behaviors as interests converge. A possible process might be based on the creation of a CBM⁸ system, concentrated on forms of joint cooperation in various sectors, encouraged by a 'preventive diplomacy' and finally the 'elaboration of approaches to the conflict' (Foot, 1998). In order to achieve important results in the relationship with China, the ASEAN has declared itself out of the questions of inner states' policies, promoting a non-interference policy in domestic affairs.

Some important meetings took place between the ASEAN states and China in order to discuss about the elaboration of a regional code of conduct in the South China Sea. The main reason for the elaboration of a code of conduct among the parties was based on the necessity of creating a system of confidence and trust among the states, 'the aim was to restore the ASEAN

⁸CBM states for confidence building measures.

united front to deal with sovereignty and maritime jurisdictional disputes in the South China Sea [...], therefore, the strategy to constrain China's "creeping assertive" activities in the disputed areas in the South China Sea' (Song, 2000, 449).

Taiwan has never been included in the various passages of the dialogue happened in the past. Neither was recalled when ASEAN and China moved on in search of an agreements as regarding the creation of a code of conduct in Southeast Asia. Parenthetically, various codes were drafted during bilateral consultations. The way trough the acceptance by China of a code of conduct in the region has been plenty of obstacles. In spite of the proposal of the constitution of a regional code of conduct, two different codes were drafted by regional states. They both resembled the Chinese propensity of going trough bilateral dialogue rather than multilateral. In fact, in 1995 Chinese and Filipino delegations gathered in Manila for a discussing session on the South China Sea and possibilities of cooperation. The Chinese – Filipino Code of Conduct presented norms concerning the territorial disputes, Law of the Sea, and prospects of bilateral cooperation. As regarding the disputes, states declared their commitment in confronting each others in 'peaceful and friendly manners' following 'consultations based on mutual respect' (Song, 2000, 452). Moreover the two sides engaged in operations to build a system based on 'confidence and trust' (Song, 2000, 452). As for the Law of the Sea, China and Philippines assured their respect to the Convention and the recognition of all its principles. Finally, the two parts recognized the necessity of forming initiatives based on regional cooperation, and sharing an 'open-minded attitude on the constructive initiatives and proposals of regional states to pursue multilateral cooperation', emphasizing the promotion of environmental cooperation 'in fields such as the protection of the marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology and marine pollution, [...],

protection and conservation of the marine resources' (Song, 2000, 451-452). This represented an important step forward in the states' promotion of efforts for the adoption of norms dealing with the marine environmental protection of the regional ecosystem. It was also a determinant step forward for China as well.

In the same year Philippines met also with Vietnam, and the two sides agreed on a bilateral Code of Conduct. This one reflects the previous agreed with China. The principles stated are the same, focused on the following of a nonviolent approach in discussing disputes, the resolution of claims according to the UN Convention on the Law of the Sea, and the task of developing multilateral cooperation in the region in order to avoid environmental damages and to protect the marine ecosystem. Philippines felt important to act sustaining the creation of a code of conduct also in the entire region:

'it was hoped that the adoption of the code would help to govern relations between the claimant countries in the disputed areas. The Code of Conduct was threatened as a unique diplomatic instrument for confidence-building, preventive diplomacy, and political and security cooperation in the area'(Song, 2000, 452).

The discussions concerning a bilateral code of conduct between ASEAN (that means the states the association represents) and China started in 1992, but China did not seem so interested in the project. The Association of Southeast Asian Nations worked very hard for convincing China in taking part to the agreement. As a matter of fact, in the past Chinese representatives did not approve it, since according to them there were enough bilateral agreements among states, including principles coming from the United Nations or other organizations, thus the code was worthless (Song, 2000).

By the way, Philippines worked on the creation of a code that could involve all the regional entities, the so called ASEAN Code of Conduct. In 1999 a proof copy was drafted containing some principles immediately accepted by Brunei, but denied by a certain number of ASEAN states embracing also Malaysia and Vietnam. The Filipino code reported basically the same principles formulated in the codes stated with China and Vietnam. It proposes again the diplomatic and peaceful means for solving disputes, the acceptance of norms according to the Law of the Sea for determining the marine jurisdiction, and the effort to build multilateral cooperation in order to face various issues in relation to the regional setting. China did not admit such agreement and went on preparing its proper version of a code of conduct. By the way, the Chinese variant of the code has never been shown. Regardless, China has expressed its support to some principles. China gives its support to the nonviolent resolution of the disputes, without using force. Moreover, it agrees on self-restraint in doing activities in the claimed areas. It recognizes the UN Law of the Sea Convention's principles and it opened to prospects of future cooperation. On the other hand, it has shown disagreements as regarding the extension of the code over the claimed waters. Chinese opened position is related only to the Spratlys' issue, where a compromise can be worked out, while the ASEAN wants to apply the code both over the Spratlys and Paracels' areas. This position clashes with the Chinese willingness of solving the disputes through bilateral negotiations, though ASEAN prefers a multilateral rather than bilateral dialogue.

As regarding the measures in favor of the environment's protection, ASEAN is looking for controlling and avoiding illegal fisheries activities, which deeply affects the South China Sea fishery resources. It promotes the implementation of substantial policies in order to benefit on distressed or overexploited areas. But since the majority of the illegal fisheries appears to be Chinese, China does not report about the matter. In opposition, ASEAN does not give details about

the fact of limiting military activities and exercises in the South China Sea area, while China has been asking about the restriction of military patrols operations (Song, 2000).

The discussions on a code of conduct are going on still nowadays. Its adoption would be decisive in the process of enlarging trust and mutual confidence among states. In addition, it presents also relevant topics that states must face in order to solve issues that could have a negative impact for the future of the region. The insertion of the environmental matter demonstrates the awareness of states as regarding the mistreat of resources, and the necessity of a joint system to preserve both the environmental and political stability in the South China Sea. Nevertheless, the creation of such a combined system requires the participation of the all entities related to the topics presented. In this way, Taiwan cannot be excluded from the process of dialogue, since it has a role both in the territorial sovereignty issue and in the exploitation of sea's resources. If ASEAN and China efforts are addressed to carry out confidence building measures, at the same time all the parties should be contributors. A bilateral code of conduct, such as the Sino-Filipino or the Filipino-Vietnamese ones, is worthless in a context of numerous subjects implicated. As Song states,

‘the possibility of taking unilateral actions to explore and exploit the resources in the South China Sea can never be ruled out if any cooperative programmes are undertaken by other claimants without Taiwan’s participation and the consent of its government’ (Song, 2000, 458).

Other agreements succeeded the code of conduct discussions. In 1999, China and Vietnam signed for bilateral cooperation in the marine areas aiming at the protection of the environment. In 2000, China provided also for a common implementation of activities with Indonesia. Moreover, there was the endorsement of some determinant legal and political papers, such as

‘(1) the Declaration on the Conduct of Parties in the South China Sea (SCSCOP Declaration); (2) The Framework Agreement on ASEAN-China Comprehensive Economic Cooperation; (3) The Memorandum of Understanding on Agricultural Cooperation between the Chinese Ministry of Agriculture and the ASEAN Secretariat; (4) The Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues; (5) The Joint Declaration of the Leaders of the ASEAN and Japan on the Comprehensive Economic Partnership’ (Song, 2005, 268).

China took part in some of the reached agreements, but most of all, it granted the Treaty of Amity and Cooperation in Southeast Asia in 2003, joining with the ASEAN a ‘declaration on strategic partnership for peace and prosperity’ (Song, 2005, 268). In fact, China accepted to improving cooperation in the South China Sea, especially as regarding the management of the resources, but did not change its positions concerning the sovereignty, and the disputes it is still involved into. The necessity of exploring the South China Sea hydrocarbons’ basins, due to the raise in consumption of energy supplies, has enhanced the Chinese approach to the ASEAN association and consequently its relations with the states ASEAN is representing. However, the process of rapprochement is still on move, and many variables can influence the dialogue. It has been very hard to find possible solutions for the states’ disagreements in order to make them to agree on cooperative attitudes. Despite the fact that countries are rather dubious on the peaceful resolution of disputes, agreements concerning the environment and the management of the regional activities might help in building the confidence measures they are looking for.

The ASEAN has been trying to make states getting closer trough security matters as well. The main point is to create a joint organization as regarding also the security issue, emphasizing inter-state relations. The prerequisites that motivated the creation of the association were, as

previously reported, based on the formation of a unique entity reflecting the Southeast Asian states. However, the original purpose of acting for the maintenance of the political and military order in the area tends to limit the activities of the region, since states are more focused on managing disputes and avoiding conflicts. According to Jones and Smith (2007), 'it only succeeded in creating not a community but an illusion' (Jones & Smith, 2007, 149). According to them, the association cannot be complete since it cares too much about not interfering in the states dynamics making its process worthless because not entirely implemented. Disputes and the resolute behavior of some states involved make difficult the process of cohesion and unification of states under a number of norms that require to be realized. For instance, leaving out the issue of disputes, the lack of entrance in states policies fail to actualize important common plans also dealing with security, since the noninterference norm forbids to the association to concur in a same regional definition and reaction against the threat of terrorism (Jones & Smith, 2007). Despite the hard work employed to find agreements on cooperation, there is not a clear projects of joining cooperative activities, especially as regarding disputes. Clearly influenced by the states it is representing and the ones it is trying to have a dialogue with, it seems as if the ASEAN association 'looks long on rhetoric and short on implementation' (Jones & Smith, 2007, 175).

The issue of disputes have always ruined the relations among states and avoided possible new approaches. The main cause has to be found in the San Francisco Peace Treaty of 1951, when the islands were declared out of Japanese control but were not attributed to any regional entity. Moreover, the discovery of resources made states to advance demands over the land and waters, worsening the divergences, and causing the birth of new tensions (Jones & Smith, 2007).

The ASEAN association has not been able to surpass the contradictions concerning the various claims, showing the limitation of the ASEAN regional forum as well. Several meetings has

been ruled, all of them sharing good proposals but insufficient results. Only bilateral approaches have been successfully managed. China appears to be following the right path of dialogue, at least as regarding its conditions and its aims, but in a multilateral context, where various positions oppose, bilateral dialogues cannot assure stability of the region. As previously suggested, a multilateral context needs a multilateral approach to be implemented, otherwise there would be an abuse of power by some parts over the others, thus being a possible cause of conflicts' bursts. For instance, even if China has signed the Declaration on the South China Sea, it has been preventing the adoption of a legal forced code, and it has not joined the multilateral discussions as regarding the resolution of disputes, preferring a proper bilateral way. Despite China has been evolving its attitude from a 'hard to a soft line', it has not given up to its purpose of extending its control over the South China Sea yet. It has just 'adjusted the means' (Jones & Smith, 2007, 179).

The ASEAN deals primarily on economic and trade issues, which are highly influenced by 'intense bilateral antipathies, a lack of economic cohesion, and since 1997, conspicuous distrust' (Jones & Smith, 2007, 182). Moreover, stronger states are in advantage than weaker states, and even ASEAN policies are shaped over relevant states' necessities and interests:

'What is revealed in the case of the Spratlys and ASEAN plus Three is that ASEAN norms facilitate the transformation of weaker states by stronger ones. Norms advanced by an association of weak states in such circumstances can only be what stronger states make of them' (Jones & Smith, 2007, 184).

The security issue, and the cooperative-economic one, may be representing two different periods of the ASEAN association. The first one can be associated with an old regionalism strategy, which was born principally as a sort of outcome of the Cold War. In fact, it was made up by governments under western influence in order to have an exclusive overview of the political

regional dynamics. It was considered having a diplomatic shape for coordinating the events occurring in Southeast Asia, such as the Vietnamese conflict and resolution, and Cambodian crisis. The old regionalism is considered as a 'inward-looking', while on the contrary new regionalism figures out the connection among states having a multifaceted structure that makes ASEAN a compounded regional character. The end of the Cold War brought various requests of change and prospects of regionalism enlargement. The new regionalism has represented a step forward, after the bipolar ideologies of the Cold War, and it has links with economic subject or for instance NGOs, which require correlations out of states' sovereignty. Although ASEAN inclination in acting for the fulfillment of security bonds, it has been developing also innovative partnerships in the business and economic fields (Buszynski, 1998). Thanks to the process of expansion, it has involved more and more entities, aiming at founding 'a united Southeast Asia community that would prevent great power penetration of the region' (Buszynski, 1998, 557).

Nevertheless, states do not share the same making process, and had faced harsh struggles and deep clashes of ideologies in the past. As a matter of fact, various experiences have modeled states causing disagreements on internal and external policies. ASEAN has been facing a long process, which is still not completed. Despite some scholars have been criticizing its noninterference behavior in states' internal issues, ASEAN has never focuses its attention on critical matters, such as the lack of human rights in some states' policies, due to the fact that an intervention in critical matter would probably destabilize the fragile equilibrium it has reached after a long process of confrontation. The South China Sea represents also a grave issue, not only regionally but mostly as regarding inter-states relations. By the way, ASEAN has felt necessary to intervene because of the regional activities involved, such as fisheries, oil explorations, sea lines, that have to be protected and regulated since the stability of the region depends on them. Above all,

the Spratlys' issue appears to be the most discussed, since in the past escalations to brief conflicts occurred. The ASEAN put in a word also in strongly rebuking Vietnam after its aggressive expansionist reaction over Cambodian conflict. But the rapid rapprochement among ASEAN and Vietnam showed the association's firm belief on its regional project (Buszynski, 1998).

The new economic expansion and rapid development of states in the area emphasized more the need of regionalism. It has also helped in encouraging economic cooperation with China, opening also a future possibility of negotiation as regarding the Spratlys as well.

The ASEAN constitution has been determinant for starting a mediated process among states of Southeast Asia. It has been a long and slow path, mostly characterized by the fact of all countries confronting each others avoiding dangerous inclinations and preferring informal meetings at the ASEAN Regional Forum. However, in spite of the numerous attempts adopted, bilateral consultations have been prevailing over multilateral ones. By the way, the territorial disputes and more important the application of common policies in the management of resources require a multilateral intervention. Perhaps, ASEAN has not fully succeeded in building enough confidence measures to make states to starts concretely cooperating together. Moreover, ASEAN has been giving too much space to external entities, such as for example the U:S: interventions in the forum, restraining the process of regional states to get closer.

As for the management of resources, except the principles stated in the discussions for the creation of a code of conduct among the parties, some references to environmental issues and to the management of fisheries and oil explorations were made, but only from a rhetorical point of view. Nowadays there are only sporadic interventions applied by states for a cooperative management of resources and the protection of the environment. The only concrete cases of cooperation among states concerning resources and environmental issues were created after bilateral conversations ad

agreements. The ASEAN Regional Forum appears to be again under the influence of extra regional entities, which want to assure their freedom of passage and sea lines traffics, maintaining a certain control over the area. Instead, states should be left alone facing with self-restraint the issues they are involved into, favoring the building of a regional system based on confidence and trust. Only the creation of mutual respect can help the process of rapprochement of state-to-state and states-to-ASEAN. The fact of basing the process of dialogue on the resources' topic, and the necessity of implementing a common policy for the protection of the environment, might improving the talks among states, since critical subjects such as disputes or marine boundaries are left behind.

It is necessary to keep in mind that a possible pacific confrontation on the disputes' matters might come up only if states will previously take together other decisions regarding the issues that are affecting the whole region, and consequently all of them. Therefore, it is useful to look at possible subject matters on which the dialogue might be focused for making states to face issues together and thus getting closer. The guarantee of resources and their management can represent a good issue to be discussed at first. Then as a result, the protection of the marine environment might improve the discussion, opening the possibility of joint cooperation for the application of common policies.

4.3 The key role of environmental cooperation in the South China Sea

According to the reported data in the introduction of this dissertation on the South China Sea's geographical and natural shape, the ecosystem we are dealing with is one of the most composed and rich in species. Both the South China Sea and the Gulf of Tonkin are characterized by a specific biological environment that is at the base of many incisive activities of Southeast Asian economies. The resources given by the sea represent a critical source of income and the unique

livelihood for coastal communities. The adoption of collective interventions appears to be determinant in Southeast Asian coastal habitats. The estimates report that 5% of the global population is depending on the South China Sea (Vo et al., 2013). The problems the environment is facing in those areas are related with the scarcity of fishery resources, the dispersal of polluting agents that acts on shorelines raising the risk not only for the living resources but for the population as well. Moreover, since the South China Sea and the Gulf of Tonkin are composed of tropical ecosystems, in which biodiversity prevails, some species are progressively disappearing due to the human impact over them. Mangroves, seagrass, coral reefs are experiencing extinction. It is useful to know that 50 of 70 species of the world's coral, 20 of 50 seagrass species, and 1/3 of the world's total amount of coral reefs are placed there (Vo et al., 2013). These data give a general idea of the variegated features settled there and the importance of taking action for preventing damages. In some contexts Marine Protected Areas and parks have been created in order to prevent a possible escalation of the estimate. For instance, in Cambodia 19% of mangroves are under protected areas. By the way, it represents a low percentage if compared with their presence high in number. The adoption of Marine Protected Areas, or similar, requires a joint effort for being truly effective. It is fundamental to support national and regional coordinated projects, based on the spreading of information as regarding the coastal environmental trends. The fact of sharing information might be useful for the constitution of an amplified collective organization, which would be supported by national governments and extra regional entities at the same time.

The importance of applying a common policy concerning the environment in the South China Sea region emerged with the Manila Declaration on the Environment, which recognized the role of the environment in the dynamics of the region. By the way, despite the involvement of ASEAN in the environmental issue, its bureaucracy and its administrative restraint have never

allowed the good proposals to be executed. Unfortunately, there has been the attitude by scholars, even western ones, and by various academics analyzing the South China Sea setting, of ignoring the environmental issue when dealing with the complex milieu of the South China Sea, but preferring to focus over the dynamics of territorial disputes (McDowell, 1989).

Sometimes the environmental problems are thought to be a new ideology, promoted by developed states, which comes out as soon as countries that have been considered poor start their own process to development and industrialization. Thus is perceived as a way to stop their emancipation or their route to independency. As McDowell stated in its article,

‘these suspicious are, to an extent, justifies, since environmental standards have at times been used to exclude less developed countries’ goods from first world markets, while the quarter of the world’s population that lives in developed countries continues to use three-quarters of the world’s resources. For third world countries at the time of independence, development was the overriding priority and an environmental fallout was unfortunate, but comparatively insignificant, side effect’ (McDowell, 1984, 309).

The states surrounding the South China Sea are facing difficulties concerning the environment. The lack of intervention and the emerging of a dominant position for thinking of possible solutions increase the environmental degradation and states’ vulnerability. In the past, the ASEAN association tried to face the environmental question as well. The ASEAN Environmental Program was created in 1977. It can be retraced in the UN Conference on the Environment that took place in Stockholm in 1972. The affection showed for the specific cases of the regional seas signed the beginning of reflections on the possibility of applying environmental cooperation in order to classify this fragile milieus. As for the South China Sea regional context, the issue of

pollution coming from industrialized centers was the starting point for the evaluation of possible policies to slow down the rising negative trends (McDowell, 1984).

The environmental cause assumed a deeper impact in the regional ASEAN forum discussions from the 1979 on, when it was thought that despite the cultural and political differences among the states, a common law of the environment had to be formulated. The environmental matter became one of the central topics of ASEAN consultations, as the ministers promised to strengthen the efforts for unifying the various environmental policies in creating a common ground. They affirmed their will of sharing a general management as regarding nature, in order

‘to ensure the protection of the ASEAN environment and the sustainability of its natural resources so that it can sustain continued development with the aim at eradicating poverty and attaining the highest possible quality of life’ (McDowell, 1984, 324).

However, despite many declarations made by the ASEAN association as regarding the implementation of reforms and initiatives, there were not concrete results. As McDowell (1984) stated, this declaration and the whole meeting indeed seemed a symbol rather than an achievement.

In the last few decades, due to the birth of metropolis and the fast improvement of industrial neighborhoods, which outcomes have reached also the coastal zones due to waste discharge, the protection of the environment has grown in importance, and the possible constitution of an unified front made up of Southeast Asia countries has become an option more discussed.

The profound changes in the resources availability, which are increasingly insufficient, and the progressive deterioration of the coastal habitat, have suggested to states the possibility of working together and breaking the fences for the establishment of a regional cooperation. It is not an easy process, since states are still involved in territorial disputes and rivalry, but there is the need to intervene in defense of the region. Since the regional entities appears being affected by the same

issues, they all understand the inevitability of surpassing contentions and cooperating for the benefits of the region. As a matter of fact, from the 1990s on, the South China Sea has been dealing with the raising of efforts in the environmental cooperation. Thanks to the United Nations Environment Program (UNEP) and the Global Environment Facility (GEF), there was the configuration of a project named “*Reversing Environmental Degradation Trends in the South China Sea and Gulf of Tonkin*”. It represents the first serious task taken by states and international organizations as regarding the environment, since previous efforts were irregular and mostly personal (Chen, 2013). The reported project was approved by seven of the nine states boarding the South China Sea, to be precise Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Vietnam (Paterson & Pernetta, 2013). The project’s consultations occurred a phase of five years, after which the task started being implemented in 2002 and successfully completed in 2008 (Tuan & Pernetta, 2010).

The participation of the various parties is useful in the creation of the confidence and mutual trust necessary for a cooperative approach to succeed. The fact that states, but most of all China, decided to join the program, and agreed to its principles, means that they have a great confidence on the institutions involved (Chen, 2013). There is a high respect toward the UNEP, since the United Nations Environmental Department is viewed as an external subject without proper interests in the region but mostly focused on the protection of the environment, with no references to the political or historical disputes going on.

Although the divergences among the parties, the signatories of the project have demonstrated in this occasion their preference for getting through multilateral dialogue. The countries were mostly concerned for the Chinese position in the project. By the way, since China signed it, the rapprochement with the other states appeared possible. It is believed that China

probably agreed ought to its reluctance in making the South China Sea environmental issues an international matter. However, China had to be involved since a huge part of the environmental damages are recognized on Chinese shorelines, and a certain amount of the badly effects affecting fisheries or coral reefs are cause by the illegal activities of Chinese large-scale fisheries. On the other hand, China has proper interests in appearing cooperative with the neighboring states, limiting its threatening behavior, and playing in this way a determinant role in the success of the project. China has taken personal responsibility, gaining at the same time the leadership and the international attention. The unique discordant position undertaken by Chinese government is related with fisheries management, since China has always preferred bilateral agreements on fisheries and on correlated issues. In spite the Chinese final positive attitude, the involvement of China in the project required a long and articulated phase of mediation and discussions. In September 2000, China gave its definitive consent becoming a real partner (Chen, 2013).

The role played by the UNEP was based on monetary sustain, the support for the development of strategies, and active promotion for joint cooperation among states, making possible a system of reliance. It contributes in reducing the states' doubts, and building a system based on transparency. A system founded on confidence contributes in increasing the states' efforts in reaching collective agreements, and it also opens for future consultations as concerning the boundary disputes. The approach followed by UN and Southeast Asian states is constructivist, for the promotion of regional sustainability. As Chen (2013) suggests,

'environmental cooperation in the South China Sea was also a process in which UNEP was successful in teaching officials from the countries bordering the SCS that marine environmental cooperation is possible and important for sustainable economic development without necessarily addressing political and jurisdictional problems' (Chen, 2013, 16)

Since the negotiation among the South China Sea states has always required a sensitive method, due to the numerous positions involved and the enmity on states' relations, the fact of choosing the UN as moderator in this occasion has shown that states are secretive in assuming collective decisions only when their positions are not reflected in the process of dialogue. In this specific case, the UNEP claims to being neutral in the states' confrontation, and demonstrates the concrete will of achieving a result in states' common interests. As Chen reports 'UNEP [...] is deemed more neutral and non-political than other UN agencies or offices such as the UN Commission on Human Rights or the International Court that are both heavily politically sensitive and involve value judgments' (Chen, 2013, 16). In fact, the countries boarding the sea have always affirmed, with both speeches and actions, the desire of maintaining their independency, their right of taking decisions and evading from external influences, especially the one of western powers. On the contrary the participation of the UNEP in the discussion on regional issues is based on the 'potential legitimization of future territorial claims, foreign domestic allies, fostering the regional scientific community, and confidence and trust building' (Chen, 2013, 17). The fact of refusing hard power in favor of soft power, helps in increasing the states' confidence not only among them but also on the project as well, making the principles it states easily achievable. It represents an important step forward in the constitution of a common environmental program. The tented approach is resulting positively in efficiency, in gaining states' attention, and in improving even if passively the states' relations in view of future rapprochement on heavier issues. As a matter of fact, 'UNEP's involvement created a situation in which countries were afraid that non-participation in regional environmental cooperation might endanger their future territorial claims to disputed areas' (Chen, 2013, 18).

Trough their efforts in participating to the project, the boarding countries have successfully turned the environmental issue and its possible solving ways into a trust building instrument, increasing the possibility of reaching the established goals. Moreover, the intervention of UNEP, as an external entity but not engaged in territorial disputes, clearly demonstrated that it is possible to create cooperative initiatives among states apart form the territorial and boundary issues.

The process of confidence building must be perpetuated without interference in states' internal affairs. Moreover, external subjects, such as international agencies or NGOs, might realize the importance of staying initially out of critical matters, in order to strengthen links on topics that are affecting the entire region, and thus can see the participation of the majority of the counterparts. Secondly, if some results are needed to be achieved, such as the measures on the protection of the environment and the prevention of resources' dissipation, a soft line must be followed, concentrating on common and basic goals rather than arguing on states' positions and divisions. Moreover, the UNEP project has shown the concrete possibility of creating a cooperative relationship among states, despite the negative impressions and positions stated by some scholars. In fact, despite the Chinese unfriendly behavior, finally it has been involved in the UNEP project successfully, because there was not the intention of dealing with disputes or contesting its historic claims. China did not feel threaten or contrasted in its positions. Besides, it was decisive the atmosphere created while planning the project, in which all the members felt determinant, as Paterson et al. affirmed 'in fostering a sense of unity and group identity such that by the end of the Project all participants were proud to be considered a member of the South China Sea "family" ' (Paterson et al., 2013, 11).

The degradation involving Southeast Asian countries derives from constant risks depending on the development of new infrastructures, the pollution coming from both industrial and

aquaculture garbage. In addition fishery activities operations, through damaging fishing gear and the concrete warning to coral reefs and seagrass are increasingly affecting the high sea waters and the marine environment at all.

Priorities and problem solving for environmental critical conditions depends on states attitudes toward the problem and their effective will of applying policies of intervention. General speaking at worldwide level, apart from the climate changing threat, the marine environment is injured by damages and modifications of the habitats, the overfishing practices and large scale fisheries impact on fish stocks, the dispersal of chemical pollutants and the changes in hydrology and sediments (Huber et al., 2003). The human impact is the most relevant factor for damage and pollution on coastal and marine environment. Littoral states have to focus principally on reducing alterations, and in building coordinated management of high seas and coastal areas. The fact of fisheries to be not regulated, allows them to have open access to resources indiscriminately, and the capitalization of big companies or fishing enterprises takes advantage. Instead it would be useful to act in adapting the fishing trends to the available fishing stocks. The redistribution of fishing capacities might help in selecting the appropriate fishing methods, and in pointing out restrictions (Huber et al., 2003).

Southeast Asian coastal habitats appears to be overexploited and seriously injured, in particularly as regarding the tendency of diminishing biodiversity, which requires local interventions. The fact of affirming protected areas might be useful for the preservation of the shorelines' surroundings. An integrated coastal zone management (ICZM) would be a valuable solution for preserving coastal environment, and preventing risks of exposure to contaminated background that is affecting the water and seafood as well. Probably the fact of being the most expanded country in Southeast Asia and encompassing at the same time one of the biggest

processes of economic and industrial development ever happened, deeply influences the Chinese shorelines, which appears to be affected by serious problems of ecosystem's degradation. For instance, data shows that due to the outburst of industrialization and moreover urbanization Chinese mangroves forests reduced of 68.7% just from the 1950 to 1990s (Chen et al., 2012). As Lau (2003) reports, 'integrated coastal zone management aims to solve worldwide-perceived problems of the coastal zone. Especially population growth and urbanization trends pose a long-term threat to a sustainable development' (Lau, 2003, 2). The central topics can be subdivided into categories including the environmental protection, the multi-use conflicts, the task of the allocation of resources, especially determinant in the South China Sea shorelines' context, disaster prevention and all possible objectives concerning a sustainable development.

The ICZM is not intended to focus on a specific sector, instead to combine 'economic and ecological needs to guarantee sustainability' (Lau, 2003, 2). The Chinese government has been applying ICZM projects on shorelines, building a legislative system. The ICZM is supported by a law for the regulation of coastal habitats. For instance as regarding the Chinese experiment,

'the law of the PRC on the Territorial Sea and Contiguous Zone (1992) and the law of the Exclusive Economic Zone and Continental Shelf of the PRC (1998). The law of the PRC on the Use and Management of Sea Areas (2001) holds a special importance as it is the only law explicitly relating the management of newly defined areas to certain activities undertaken there' (Lau, 2003, 19).

Parenthetically, the system is established by the government at first, but then it is rather independent and coordinated in autonomy, also with the support of a certain public participation. As a matter of fact, there are different levels of coastal administration. The system starts from the local level and then, passing through the national one, it arrives at global level. The local and the

national levels are mostly related with the building of a integrated management for the country as a whole. The level of developments China aspire to reach is connected primary with fishery sector, but also with the expansion of a sustainable aquaculture, the management of marine mineral resources. Then the attention is secondly focused on activities connected with tourism, maritime transport, but also sea salt production and marine medicine (Lau, 2003).

The project on integrated coastal zone management has involved China, but it is not excluded that in a nearer future, neighboring states will follow the Chinese example in applying a similar administration.

As it is possible to figure out, there are various methods that can be applied for pursuing a management organization in coastal and marine areas. However, all of them are related to the same policies of intervention, such as regional arrangements, the coordination of law with the needed policies, and joint activities concerning fisheries, hydrocarbon explorations and exploitations, and adjustments on states' norms. In addition, the common sharing of issues might favor states in creating joint administrative agencies for the regional support of cooperative policies, which permits also to break ideological and political barriers. The support of international subjects, such as the United Nations Environmental Program, the Food and Agricultural Organization of the United Nations or the Intergovernmental Oceanographic Commission, to regional joint organizations can make the goals achievable, since in many cases states do not requires mediators during the dialogue process but most of all financial support for the implementation of projects that reveal costly (Valencia, 2000).

Many factors bear on the successful adoption of joint regimes, even when dealing with strategies based on environmental issues' prevention. The process that states need to follow, and to which the dissertation looks at, is based on the definition given also by Valencia, that is:

‘(1) the interplay with forces of integration and disintegration within a regional system; (2) the growth or decline of the organization; (3) the establishment of links between one regional system and others within the same geographic location; (4) the impact of organizations on the nature and use of the ocean space over the which their activities extend’ (Valencia, 2000, 232).

In addition, Valencia (2000) has clarified also the presence of regional ‘integrative’ or ‘disintegrative’ forces that might sustain or collide with possible plans of joint cooperation in certain regional areas. For instance, among the ‘integrative forces’, there is the recognition of

‘(1) the existence of other international agreements among the members states that could contribute to the regional consciousness of the participants; (2) ethnic, cultural, historical, or other ties among the regions’ countries; and (3) clear indicator of economic benefits or other advantages to be gained through regional actions, or clear indicators of common costs that might be avoided through regional cooperation’ (Valencia, 2000, 233).

On the other hand, possible ‘disintegrative forces’ are identifiable in states and regional features, many of which can be easily remarked on the South China Sea regional context, that have to be undertaken by states so as to build reciprocal confidence and joint agreements. They are basically ‘(1) political, territorial, ideological, or other differences among the countries of the region; (2) competition for positions of leadership among two or more regional or outsider powers’ (Valencia 2000, 233). It is worth saying that external agencies operating in the region for the creation of a common organization for the implementation of a collective management of resources, have to pay attention to various factors, and have to act out of ideologies, underlying the advantages that a cooperative management of resources can bring to the region as a whole.

In the specific case of the South China Sea, as the project undertaken by UNEP has demonstrated, the environmental cooperation can be reached. The environment might represent the focus on which states have to concentrate in order to find solutions both for environmental issues and the upgrading of multilateral relations. The use of the environment for diplomacy can help the enlargement of regional projects, and joint operations that can turn into a multilateral level rather than the bilateral of present days. The process of dialogue concentrated on concrete and necessary reforms for solving regional issues, which in this specific case are affecting marine and coastal environment, can make progress in the process of dialogue. The attempts made in the past concerning the resolution of boundary disputes and maritime claims failed, or did not bring improvements at regional level, due to the differences in states' positions as regarding the proper rights of possessions. In addition, the process of dialogue was not easily affordable since extra regional entities were participating as well, because detaining proper interests in the sea waters. Instead, the project proposed and sustained by the United Nations Environmental Program was recognized by the majority of the subjects involved as being above suspicion, and directed to the benefit of the Southeast Asian region and the South China Sea, despite the states surrounding the area.

The environmental cooperation, and a shared equal management of the resources can be the right solution for the rapprochement not only of states boarding the South China Sea but, once recognized having positive effects, the system can be applied to different contexts where a cooperative interventions by states is required in order to solve determinant issues. As a matter of fact, the environmental concern is affecting many areas globally, and in many cases it necessitates a direct and brief intervention for limiting the damages. Therefore, it is important to plan real interventions, out of rhetoric but more concerned on tangible solutions, especially referring to those

areas, such as the South China Sea shorelines and high waters, where a certain amount of population depend on the ecosystem for food supplies and livelihood. In such a fragile milieu, from a brief intervention is highly required. The cause must be perpetuated by the whole region at all, it means that all the parts involved have to take part to the process of implementation of reforms that are necessary in order to invert the course to degradation. Only a sustainable and responsible use of resources can change positively the dynamics of the region, helping states to afford those policies, most of times costly and difficult to afford, but inevitable for the endorsement of the environmental, social and political balance of the region.

5 Conclusion

The situation the states surrounding the South China Sea are facing is both complicated and affected by relevant questions. From the past until nowadays, the various claims stated by the counterparts have been perpetuating a negative impact on the dynamics of the region. Without a regional background, the bad use of resources in the last three decades has deteriorated the entire ecosystem. Moreover, since the communities involved in the activities perpetuated on the South China Sea are high in number, the marine ecosystem appears to be the most damaged. The raising of negative trend as regarding the physical condition of the South China Sea, has focused the attention on the resources there placed, and their exploitation by the regional population. In fact, the increasing in population due to the economic development of most of the Southeast Asian countries, has raised at the same time the amount of resources consumed. In addition, the creation of new urban centers, especially big metropolis on the shorelines, and the spreading of industries have amplified the human impact on the environment. In fact, manufactories are most of times settled in proximity of rivers that flow directly into the sea, bringing chemical pollutants on the shorelines surface and into the high sea waters.

The South China Sea represents one of the major crowded sea-lines, due to the primary supplies needed not only by emerging countries but also for example Japan, to which the straits of Malacca and Singapore are essential for the arrival of oil and food supplies. From a geopolitical point of view, the determinant position of the South China Sea has made it one of the world's most strategically important sea. The littoral states, perfectly aware of the importance of it, have been claiming the rights of possessions over various archipelagos due to their relevant role in the possible extension of the states' marine jurisdiction. The disputes involving the counterparts, most of times varying from bilateral, trilateral to multilateral level, have a negative impact on the

activities going on in the region. Most of them are vital for people living in the coastal habitats, since the majority of them are living in local communities, and highly dependent on fisheries supplies. As a matter of fact, the South China Sea is recognized as being very rich in fishery resources, oil and hydrocarbon sediments. These resources are effectively at the base of the states' territorial claims, even if some parts sustain having precedence over territories for historical or political reasons.

The whole scenario becomes increasingly complex, as soon as marine resources show degradation effects due to the lack of a regulated management both in fisheries, oil and hydrocarbon explorations. The South China Sea requires a system based on norms for the protection of existing resources and a practical intervention on the negative impact that the states' operations are having on the whole sea. Both fisheries and mineral sediments are overexploited, in many cases the conditions for the reproduction of resources are not assured. The results of damaging techniques and processes implemented outcome in deep reduction of fish stocks, which effects directly involve the local communities that depend on them, the dispersal of oil pollutants, and continuous clashed among states' vessels due to the lack of a resolution in the disputes, which prevent states from having their exclusive economic zones and the division of boundaries.

The United Nations Convention on the Law of the Sea was initially thought to be decisive for contexts characterized by disputes. In many cases it has been correctly implemented, guaranteeing the rights of states over the resources but at the same time giving to them the responsibility of managing the resources correctly and assuring the protection of the marine environment as well. Parenthetically, as for the South China Sea context, disputes do not permit a correct application and, despite states might apply it in the future since the majority of them has ratified it, the extension of the proper jurisdiction in a semi-enclosed sea, such as the South China

Sea, will restrict the sea's high waters, impeding the procedures of freedom in transit passage to external states. In spite of the fact that the Convention dedicates also on issue affecting semi-enclosed seas, a possible resolution of the disputes through the application of UNCLOS is nowadays difficult to reach since states appear reluctant in giving up their claims.

Various attempts on discussions and processes of dialogue occurred. A range of meetings succeeded in the past, such as the workshop's debates on "managing potential conflicts in the South China Sea", but since states' positions as regarding disputes were unmovable, the summits did not bring to concrete solutions. By the way, the workshop and also the forum of the Association of Southeast Asian Nations (ASEAN) worked out some proposals for the creation of joint cooperation among states, but there were not concrete acknowledgements. They were both characterized by a long and intricate process in order to convince the parts to join the discussion. Some results were achieved, such as the recognition by states of mutual respect, and the will of solving territorial boundaries through self-restraint, without military conflicts. Despite the good proposals, the majority of ASEAN principles stated are still nowadays more rhetoric than in action.

However, effective or not, the dialogues played an essential role in making the states to face one other, knowing the respective positions and realizing which path would be possible to follow. The ASEAN forum opposed the Chinese vision to the one of the ASEAN states. The tried approach was aiming at forming a multilateral states' rapprochement rather than bilateral. But the states' rivalries arose the spectrum of ancient struggles linked to ideological contrasts among the parts making the confrontation difficult.

In analyzing the various attempts that followed in the past, and even in recent years, there was the recognition of the most complex topics to look toward, and which ones on the contrary were the most easy to discuss. The fact of South China Sea states sharing the use of resources

coming from the same sea increased the possibility of approving joint development agreements. Due to the lack of resources, because of the damages occurred to the marine ecosystem and the degradation of shoreline habitats, the states should operate some interventions in favor of the creation of a common managing policy as regarding resources. The states involved are all facing a determinant process of development, in particularly China and Vietnam have been raising economically in the last decade. By the way, fishery and oil resources could determine the continuation of their development or its arrest. As a matter of fact, they are both involved in planning oil explorations, and looking for oil companies as partners in joint operations. In many cases, the lack of technologies and capacity of affording scientific surveys forces states to undertake bilateral agreements for the possible exploitation of the hidden resources. Moreover, the unresolved claims affect often the basins as well, especially when they represent the border line between two or more counterparts.

If the dialogue of states as regarding disputes and marine jurisdiction has not prefigured a potential conclusion yet, the improvements made on the environmental and resources' fields might be anticipating the future regional scenario. In fact, if in the past countries did not deliberately participate to the meetings for the promotion of a dialogue among the conflicting parts, the recent rapprochement due to the importance of the management of resources opens to new developments. States have agreed in many cases to joint exploitations of oil and hydrocarbon resources, both with national and foreign enterprises. For instance, there are several meaningful rapprochements, such as the Sino-Vietnamese or the Chinese-Taiwanese. Even ASEAN and China signed agreements as regarding the commitment in achieving future projects of regional cooperation, in particular concerning the protection of the environment.

The South China Sea states reveal a good attitude in reaching their goals as regarding the environment. However, the efforts that have followed until now are not adequate. The rapid disappearance of some species harms to the rich biodiversity of the region, and the illegal fishing methods and the discharge of pollutants into the sea waters impede the conservation of fish stocks. Thus it is necessary to adopt policies as regarding the prevention of pollution and the protection of the entire marine environment. But a unilateral initiative is not enough in a region such as the one of the South China Sea where states are influenced by the same problems. Thus decisions must be taken multilaterally because single interventions are not successful. The shape of the sea, typically semi-enclosed, causes the spreading out of problems to every littoral country.

According to Djalal (2004), the situation of the South China Sea can be improved by national legislation, but as demonstrated before, the implementation of a national approach is not enough since this disputes and moreover this environmental problems have a multilateral compliance. Then, he proposes a bilateral or regional arrangements, but the benefits deriving from a regional approach would be greater than the ones coming from bilateral consultations. But the most important and attractive option is represented by the creation of a states' related system based on confidence and reciprocal trust in order to solve or at least to lay the foundations for an hypothetical resolution.

The confidence building measures are necessary in order to create a positive background for states to reach common agreements, once self-confident and open-minded. The Process of dialogue started in the past and supported by the workshop on "managing potential conflicts" and the ASEAN had tried to avoid struggles but concentrating always on the resolution of territorial disputes, or at least their management. Since states have always been reciprocally avoiding the counterparts positions, because too much involved in affirming theirs, it seems difficult that they

will be discussing about disputes in the future as well. The lack of a multilateral dialogue as regarding the question of the disputes shows clearly the unwillingness of states to face counterparts' positions because deeply rooted in their claims. Therefore, there is a remote possibility that states will come to terms as regarding marine boundaries and territorial rights over both Spratlys and Paracels.

The unique topic that has been involving states in planning common measures is the environment. As previously reported, the resources are being intensively depleted and the ecosystem is facing degradation. The need of protecting coastal habitats and preventing overexploitation of fishery resources is common. Moreover, countries realizes that the intervention against the deterioration of the ecosystem would be much more successful if approved and applied by every part involved. Thus, states have been affirming their wish of creating a system of intervention based on regional cooperation. Regional cooperation means not only the implementation of the same policies as regarding the management of the resources, but it requires also states to share proper know how, to undertake joint scientific researches, to spread out collected data and most of all the intervention against national subjects, such as large scale fisheries or oil companies, in case they do not respect the parameters multilaterally stipulated.

As for the acceptance by states of such an organizing cooperative management, and then consequently its application, it is not an immediate procedure to apply. It requires a long process of dialogue. States have to be completely trustful in the projects they are sustaining.

Unfortunately, even in a rather recent past the South China Sea region has been affected by harsh struggles, made of western colonialists dominance, clash of ideologies, conflicts for independence that ruined the regional common feeling, or at least never allowed its creation. A long process of dialogue must be followed, but in spite of focusing on historic roots, it is necessary

to arouse in states the unified awareness as a regional entity before being individual states. Cohesion can be reached through concrete approaches to the issues states need to solve. As they all necessitate of putting into action new policies as regarding the environmental issue, the environment itself might represent the keystone for starting a different process of dialogue.

As the project “*Reversing Environmental Degradation Trends in the South China Sea and Gulf of Tonkin*” (Chen, 2013), realized and supported by the United Nations Environmental Program and the Global Environment Facility was able to create a starting point for South China Sea states to cooperate together on regional issues, demonstrating that if the topic represents collective concern, and the moderator is not interfering in the states’ dynamics, even the counterparts of the South China Sea disputes can collaborate together especially when the discussion is based on topics of common interest.

In any case, the situation and the regional dynamics are very changeable. In fact, the accounts frequently report of clashes that occur among fishermen and military vessels because the boundary uncertainty and the importance of resources make it difficult to operate in the sea waters. Besides, states’ claims are not retreated. Their positions as regarding the territorial rights over the Spratly and Paracel archipelagos are still in force, and there are also various disputes going on for smaller reefs and islets. The situation could evolve positively or negatively at any time, but if considering the urgency of addressing the dialogue to common objectives, the necessity of cooperating and managing the use of resources might prevail over single interests, since single interests are highly connected with resources. In conclusion, a new dialogue based on a common topic, without sustaining single positions, might upgrade the relationships among states and giving a decisive contribution on confidence and trust building that are essential for further debates.

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