Preventive Diplomacy: Charting a Course for the ASEAN Regional Forum

A Council for Security Cooperation in the Asia Pacific (CSCAP) Confidence and Security Building Measures (CSBM) International Working Group Report

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Pacific Forum CSIS

Based in Honolulu, Pacific Forum CSIS operates as the autonomous Asia-Pacific arm of the Center for Strategic and International Studies in Washington, D.C. The Forum's programs encompass current and emerging political, security, economic/business, and oceans policy issues through analysis and dialogue undertaken with the region's leaders in the academic, government, and corporate areas. Founded in 1975, it collaborates with a broad network of research institutes from around the Pacific Rim, drawing on Asian perspectives and disseminating project findings and recommendations to opinion leaders, governments, and members of the public throughout the region.

Council for Security Cooperation in the Asia Pacific (CSCAP)

The Pacific Forum joined with nine other institutes in July 1993 in Kuala Lumpur to establish CSCAP as a forum for non-governmental "track-two" multilateral security dialogue. Founding members represent institutes in Australia, Canada, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and the U.S. Newer members include China, Mongolia, New Zealand, North Korea, Russia, Vietnam, the European Union, India, Cambodia, and Papua New Guinea. CSCAP members seek to enhance regional security and stability through dialogue, consultation, and cooperation on concrete policy issues and problems of mutual concern. The Council's research and analyses support and complement the efforts of regional governments and official multilateral dialogue mechanisms such as the ASEAN Regional Forum (ARF). The Pacific Forum manages the U.S. committee (USCSCAP).

Confidence and Security Building Measures (CSBMs) International Working Group

The U.S., Singapore, and Republic of Korea CSCAP member committees co-sponsor the CSBM Working Group. In biannual meetings since 1994, this working group has examined basic principles for regional confidence building while conducting dialogue and research on military transparency (including the feasibility of developing an Asian arms registry and a generic defense "white" paper). It has also stimulated discussion and debate on the ARF's possible future preventive diplomacy role, including the development of a working definition and statement of principles of preventive diplomacy, in a series of PD Workshops co-sponsored with the United States Institute of Peace. Through its Nuclear Energy Experts Group, it has also performed ground-breaking work on the development of multilateral approaches to nuclear safety and non-proliferation in the Asia Pacific region.

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Foreword

by Ambassador Richard Solomon
President, United States Institute of Peace

The United States Institute of Peace was pleased to join with the Pacific Forum CSIS, and through it, the Council for Security Cooperation in the Asia Pacific (CSCAP) to help promote a better understanding of the principles and practice of Preventive Diplomacy (PD) in the Asia Pacific region.

The Institute was created by the U.S. Congress to strengthen U.S. capabilities to promote the peaceful resolution of international conflicts. To achieve that objective, the Institute mobilizes talent from all over the world to provide original and creative assessments of how to deal with international conflicts by political and other non-military means. That effort includes both "track-one" programs for officials and "track-two" activities involving a broader range of participants, including scholars and representatives of non-governmental organization.

In pursuit of its mission, the Institute has collaborated with the U.S. Committee of CSCAP (USCSCAP), managed by the Pacific Forum CSIS, in conducting three preventive diplomacy workshops involving CSCAP members as well as regional foreign ministry and defense officials associated with the ASEAN Regional Forum (ARF) Inter-sessional Support Group on confidence building measures. These workshops have had an important influence on regional discussions of preventive diplomacy.

For example, at the first PD Workshop, in February 1999 in Bangkok, participants developed a working definition and statement of principles regarding preventive diplomacy which formed the basis of the ARF's subsequent discussion on this topic. At their July 2001 meeting in Hanoi, Vietnam, ARF foreign ministers presented their own PD statement, which the ARF acknowledged drew heavily on the earlier CSCAP effort. In addition to the three workshops conducted with CSCAP, the Institute, with the support of the U.S. Department of State and the government of Brunei, has also twice led PD workshops for defense and foreign affairs officials in ARF countries.

This volume represents the fruits of the joint CSCAP/USIP effort to date in examining and promoting the concept and tools of preventive diplomacy, with particular focus on the results of the third PD Workshop that was held in Hanoi, Vietnam on April 24-28, 2002. Over 40 individuals attended the Hanoi workshop, including ARF officials who had attended the ARF Inter-sessional Support Group meeting that preceded the workshop, plus representatives from 18 CSCAP member committees. This close coordination of track one and track two activities has been a hallmark of the PD series and has contributed significantly to its success.

This report begins with a review of the major findings and recommendations emanating from the three workshops by Pacific Forum CSIS President Ralph A. Cossa, who

co-hosted the workshops in his capacity as co-chair of CSCAP's International Working Group on Confidence and Security Building Measures. He provides background information regarding all three workshops while outlining the various recommendations emanating from them; many of which have already been placed on the ARF agenda. Mr. Cossa pays particular attention to future needs, including the development of early warning capabilities to permit the ARF to transition into an effective preventive diplomacy practitioner in the future.

In chapter two, Raymund Jose G. Quilop, assistant professor at the Department of Political Science at the University of the Philippines, contributes an examination of the challenges and prospects for the ARF as it moves toward preventive diplomacy. Mr. Quilop's comments outline the difficulties that the ARF faces as it examines its relationship with PD. Most significantly, Mr. Quilop believes there is no consensus on how the ARF should promote PD. This inability to agree on key terms blocks progress, as do questions about the ultimate geographic scope of any PD regime. The ARF's institutional capacity (or lack thereof) is another important obstacle. This situation reflects a more deep-rooted debate over the continued viability of "the ASEAN way" and the operational principles of the ARF. Mr. Quilop argues that this, along with an emphasis on process rather than product, constitutes the biggest challenge for the ARF.

In chapter three, Ding Kuisong, vice chairman of the China Reform Forum, discusses the relevance of PD for regional security. He examines the history of the debate over PD within the ARF and then moves on to future measures to be implemented, such as expanding the role of the Chair, assembly of a register of experts and eminent persons, annual security reports, and annual background briefings on security issues. Dr. Ding emphasizes that trust and confidence-building measures have to be the foundation of any PD effort; unfortunately there is a long way to go in promoting such concepts in Asia.

In chapter four, Ian Townsend-Gault, associate professor of law at the University of British Columbia and from CSCAP-Canada, provides an international lawyer's perspective in his discussion of how implementing obligations and eliminating obstacles are key components of any PD regime. Townsend-Gault notes several basic working principles for successful PD (or any dispute resolution regime), including knowledge of the facts of the dispute, of the rule of law, and subsequent state rights and obligations, as well as how to use and apply international law. Townsend-Gault concludes with some guiding principles. He recommends that countries that intervene in disputes be seen as neutral by the disputants and calls for participants to focus on current issues and on items where progress can be made. Given the contentious nature of the PD debate, countries should expect progress to be slow at the track-one level. Consensus building is critical, and there is no consensus yet.

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discussions are available in this monograph and will no doubt be the subject of future deliberations in both the CSCAP context and in the ARF. It is worth noting that each of the working groups called for broadly similar measures: movement toward more institutionalization of the ARF and a closer, more formal relationship between the ARF and track-two organizations, particularly CSCAP.

The United States Institute of Peace is pleased and honored to be able to collaborate with CSCAP and the ARF. We look forward to future workshops and continued collaboration in our mutual efforts to help the ARF examine and eventual develop its preventive diplomacy capabilities.

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Chapter I

Promoting Preventive Diplomacy in the Asia Pacific Region

by Ralph A. Cossa

The Council for Security Cooperation in the Asia Pacific (CSCAP) has been working, through its International Working Group on Confidence and Security Building Measures (CSBMs) to develop a better understanding of preventive diplomacy (PD) as it relates to the Asia Pacific region in general and to the ASEAN Regional Forum (ARF) in particular. This effort began at the fifth CSBM Working Group meeting in Singapore in October 1996 and has been most vigorously pursued since 1999 at three CSCAP Preventive Diplomacy (PD) Workshops held in conjunction with the United States Institute of Peace (USIP). The PD Workshops were conducted either just prior to or immediately after ARF Inter-sessional Support Group (ISG) meetings on Confidence Building Measures (CBMs). ISG participants were invited and encouraged, in their private capacities, to attend the CSCAP Workshops.

This opening chapter provides a brief summary of CSCAP's efforts and findings to date on PD-related issues. It also offers some advice on how preventive diplomacy efforts can enhance the ARF's mission of promoting greater confidence, understanding, and peace among the nations of the Asia Pacific, while laying out a step-by-step approach for the ARF to move toward the development of PD capabilities.

The views expressed are solely the author's; this is not intended to be a Working Group consensus product. It, and the chapters that follow, are aimed at stimulating thinking and, hopefully, prompting subsequent action by the ARF as it moves toward the development of preventive diplomacy mechanisms (as called for in the 1995 ARF Concept Paper).

The Definition Debate. Definitions are important to provide a common point of reference. In this regard, the CSBM Working Group, prior to the spring 1999 PD Workshop, had examined the following definition which draws from, and expands upon, a definition offered by former UN Secretary General Boutrous Boutrous-Ghali:

Preventive Diplomacy. Non-coercive actions taken, by individuals, governments, multilateral organizations, and/or international agencies, and through the invitation or voluntary consent of all parties directly involved, to prevent disputes from arising between or among parties, to prevent existing disputes from escalating into conflicts, and to limit the spread or recurrence of the latter if they occur. Preventive Diplomacy could involve both intra- and inter-state conflicts, governmental and non-governmental actors, conventional as well as non-traditional security challenges, and a whole range of diplomatic, economic, and political instruments. As a general rule, military instruments are excluded, although the

employment of neutral peacekeeping forces is not ruled out, especially for humanitarian purposes.

Many traditional definitions of preventive diplomacy do not include a "voluntary consent" or "by invitation" clause. While adding this caveat could preclude a significant number of potentially destructive conflicts from even being considered, it appears to be an essential precondition within an East Asian context, given the ARF's reliance on consensus decision-making and continuing concerns among its members over interference in one another's internal affairs.

As the ARF has itself been quick to point out, some overlap clearly exists between preventive diplomacy and confidence building measures, especially at the lower end of the PD spectrum, i.e., the "prevent disputes from occurring" phase. This overlap is accepted as natural and both PD and CBMs are seen as mutually supportive. As the 1999 Bangkok PD Workshop concluded, there appears little to be gained by trying to precisely define where CBMs stop and PD begins. Suffice it to say that PD goes well beyond traditional CBMs in attempting to prevent conflicts and/or limit their escalation, spread, or recurrence.

Working Definition and Statement of Principles. PD Workshop participants nonetheless agreed that a widely acceptable working definition of preventive diplomacy would be useful both to create greater understanding and to alleviate concerns and suspicions about the nature and intent of the process. Workshop participants reviewed and debated numerous definitions of PD (including the one spelled out above), both as a general concept and with respect to its potential application in an Asia Pacific setting, while also agreeing that it was important not to be held captive to overly specific definitions.

The following definition was developed and broadly endorsed as a useful working definition at the 1999 Bangkok PD Workshop:

As a general rule, preventive diplomacy is consensual diplomatic and political action with the aim of:

- *preventing severe disputes and conflicts from arising between States which pose a serious threat to regional peace and stability;*

- *preventing such disputes and conflicts from escalating into armed confrontation; and,*

- *limiting the intensity of violence and humanitarian problems resulting from such conflicts and preventing them from spreading geographically.*

Workshop participants also outlined the following general principles of PD:

- *It is about <u>diplomacy</u>. It relies upon diplomatic and peaceful methods such as persuasion, negotiation, enquiry, mediation, and conciliation.*

- *It is <u>voluntary</u>. Preventive diplomacy practices are to be employed only at the request of the parties or with their consent.*

- *It is <u>non-coercive activity</u>. Acts that require military action or the use of force, or other coercive practices, such as sanctions, are outside the scope of preventive diplomacy.*

- *It requires <u>trust and confidence</u>. The facilitator or mediator in the dispute must be seen as trustworthy and as an impartial honest broker by all involved parties.*

- *It rests upon <u>international law</u>. Any action should be in accordance with the basic principles of international law.*

- *It is based on respect for <u>sovereignty</u> and <u>non-interference</u> in the internal affairs of a State. This includes the principles of sovereign equality and territorial integrity.*

- *It requires <u>timeliness</u>. Action is to be preventive, rather than curative. Preventive Diplomacy methods are most effectively employed at an early stage of a dispute or crisis.*

The above text comprised the general statement of "Preventive Diplomacy: Definition and Principles" [Appendix A] which was generally endorsed by Workshop participants as a useful vehicle for promoting greater understanding of the process within the Asia Pacific context. This statement was subsequently offered to the ARF ISG on Confidence Building Measures, where it was tabled and endorsed in principle. After two years of discussion and debate, a similarly-worded Definition and Principles of PD was incorporated into the July 2001 ARF Chairman's Statement [Appendix B].

Track-One/Two Interaction. This effort provided a useful example of how tracks one and two can be mutually supportive. At the official or track-one level, ARF ministers first identified preventive diplomacy as a potential future role of the ARF and then called for an independent track-two assessment as to how to bring this about. CSCAP track-two participants, not being bound by current government positions, had the license to pursue more innovative and forward-leaning approaches and solutions. Their recommendations were tempered, however, by their close association and familiarity with government thinking. This may make their advice less bold and imaginative than one might expect from a purely academic exercise. But, it also increases the likelihood that their recommendations would be implemented or at least seriously considered by regional policymakers.

This interactive process was very much in evidence at the Bangkok PD Workshop, where politically sensitive issues relating to preventive diplomacy applications, principles, and definitions were debated by both independent security specialists and government officials (acting in their private capacity) in off-the-record plenary sessions. Once general opinions began to emerge, a select group of non-governmental specialists was convened to draft a working definition and statement of principles based on the earlier presentations and debate. Their effort was then reviewed by the group at large (including government officials in their private capacities) and, with minor adjustments, was subsequently forwarded to the

co-chairs of the ARF ISG on Confidence Building Measures for their consideration. Since many of the ARF track-one participants had been informally involved in the drafting of the CSCAP statement, they were more inclined to give it serious (and favorable) attention when it was placed on the ARF agenda. This helped facilitate the track-one debate, which subsequently led to the July 2001 ARF Statement.

CSCAP's continuing challenge – one that previous PD conferences (inside and outside of the ARF structure) have not always met – is to move beyond a debate over definitions to a discussion of practical applications. The bottom line is simply stated: nothing will convince policymakers more of the irrelevance of the track-two process than its inability to engage in substantive debate aimed at the development of practical suggestions as to how the concept of preventive diplomacy can be applied within the ARF. The PD Workshops continue to rise to this challenge, by identifying and examining the various tools of preventive diplomacy that the ARF could employ.

Summary of PD Workshop Discussions. The first PD Workshop featured detailed discussion of actual case studies and participants agreed that this was an effective way of deepening understanding. Participants at the first Workshop reviewed the ASEAN Troika experience in Cambodia, Indonesia's role as a facilitator in the dispute between the Philippine government and Moro National Liberation Front (MNLF), the Thai/Malaysia Joint Development Area (aimed at preventing conflict by promoting joint development in disputed territory), the Aitutaki Declaration on Regional Security Cooperation among the South Pacific states, and the Organization for Security Cooperation in Europe (OSCE) and its institutionalized mechanism for dealing with protection of minority issues.

Some common points to emerge from the review of these diverse cases included the need for patience and perseverance and a willingness to devote time and energy to the process, potentially over an extended period of time. Quick fixes are unlikely to succeed. There is normally a requirement to establish "win-win" circumstances for the parties concerned, who in turn must have a genuine desire or need to limit or settle the conflict. While PD approaches are "context-bound," lessons learned in one case can be helpful in other cases if one takes an "adapt not adopt" approach. Consent and cooperation were also central themes.

There was also considerable debate at the first Workshop as to the applicability of preventive diplomacy to intra-state as well as inter-state conflict. As Indonesia's facilitator role in the Philippine government/MNLF dispute demonstrated, PD has successfully been applied in Asia in an intra-state context; the key in this case being outside participation at the request and with the consent of all parties involved. However, regional sensitivities in the Asia Pacific, as with other regions, point to such intra-state applications being more the exception than the general rule.

The role of non-governmental organizations (NGOs) as PD actors was also discussed. While the Indonesian-hosted series of Workshops on the South China Sea was pointed to as one important and generally successful non-governmental PD initiative, some cautioned that diplomacy was traditionally and more appropriately practiced between states.

Concerns were also expressed about the neutrality of some NGOs and, as a general rule, it was observed that PD was most likely to succeed if all parties viewed the mediator or facilitator as neutral and trustworthy.

Step-By-Step Approach. Some have said that the ARF is not quite ready to take on a PD role and I would agree. But I would also agree with the 1995 ARF Chairman's Statement which, while stressing the ARF's current focus on confidence building measures, also notes that PD would be "a natural follow-on" for the ARF.

If the ARF is to live up to its potential, it must be prepared to take on a preventive diplomacy role eventually. In order to assist in this transition, PD Workshop participants reviewed the various steps that the ARF might consider as it prepares, eventually, to take on a PD role. Such steps would, of course, build upon the following suggestions contained in the 1995 ARF Concept Paper regarding ways to proceed with preventive diplomacy:

- develop a set of guidelines for the peaceful settlement of disputes;

- seek the endorsement by other counties of the 1992 ASEAN Declaration on the South China Sea;

- explore new ways of preventing conflicts (including fact-finding missions by "special representatives"); and,

- explore the idea of establishing a Regional Risk Reduction Center.

To this initial list of suggestions PD Workshop participants at the Bangkok (1999) and Singapore (2000) meetings, both in their prepared papers and subsequent commentary, added the following steps that could be considered in order to allow the ARF to play a constructive role in regional preventive diplomacy. This is neither an all-conclusive list nor a listing of Workshop-endorsed measures. Many have been raised at previous CSCAP CSBM Working Group meetings and some are already under discussion by the ARF. (Summaries of the 1999 and 2000 PD Workshops can be found in Appendices C and D, respectively.)

Form an ARF Eminent Persons' Group. Such a group, comprised of former senior officials and respected scholars, would not only be available for fact-finding missions but could also play a more active role by mediating disputes and offering practical solutions.

Enlarge the ARF Chairman's Role. At present the ARF Chairman position is a rotating one, filled by the host of the coming year's ASEAN Minister's and Post-Ministerial Meetings that coincide with the annual ARF meeting. A separate ARF Chairman, serving for an extended, but still rotating, term (perhaps three years), could focus his or her efforts more exclusively on building and extending the ARF's agenda. Another approach would be to employ the European Community triumvirate model, where leadership is shared by the current, immediate past, and prospective incoming chairmen. (The creation of an ARF Secretariat could also facilitate this effort but is not a prerequisite.)

Establish a System of Self-Reporting. ARF member states would report on their own perception of existing or potential security concerns, with each list subject to requests for clarification or amplification from other member states. This would be achieved through the creation of Annual Security Outlooks (ASOs) and voluntary security briefings by ARF participants. This would help identify areas where PD may be effectively applied.

Create an ARF Information and Research Center. This Center would collect, collate, and disseminate the above-mentioned reports and serve as a focal point for handling requests for additional information. It could initially serve as an "early warning system" aimed at identifying danger points and emerging crisis and could evolve into the Regional Risk Reduction Center envisioned in the ARF Concept Paper.

Develop Links to Other Institutions. The ARF should more clearly define its links to other regional and global institutions, such as Asia Pacific Economic Cooperation (APEC) grouping or the United Nations, and to various non-governmental organizations (including, but not limited to CSCAP), in order to avoid duplication of effort and maximize available assets and talents. Links to organizations specializing in "non-traditional" security issues, such as environmental issues, nuclear safety, and human rights, would also be helpful in enhancing the ARF's preventive diplomacy role.

Identify the Limits of Preventive Diplomacy. As noted at the onset, for PD to work, all parties to a potential dispute must see clear benefit in the effort—or at least be convinced that the anticipated value outweighs any potential risks. In a region where "interference in internal affairs" is a paramount concern, the ground rules and other limits of the ARF's role in PD must be clearly articulated in advance. The perception, rightly or wrongly, that PD represents an effort to legitimize international scrutiny in the domestic affairs of member states will ensure the quick death of any effort, given the ARF requirement for consensus. This is why Bangkok PD Workshop participants developed the "Definition and Statement of Principles of Preventive Diplomacy" in order to better define the limits of PD in an Asia Pacific context.

Case Studies/Simulations. The PD Workshop demonstrated the utility of case studies on past and on-going examples of Preventive Diplomacy within and outside the Asia Pacific region, in order to identify common elements, differences, and challenges in implementation. The examination of actual cases and the conducting of simulation exercises based both on actual and on theoretical scenarios can serve as useful vehicles for better understanding how preventive diplomacy works (or fails to work) in practice. Future case study reviews and simulation exercises could usefully focus on the tools of PD and how they can be successfully applied.

Additional Interim Steps. Understanding that some of these recommendations might be a bit too ambitious or premature, the CSBM Working Group has also looked at interim, less ambitious steps that could be taken to move the ARF in the right direction. Next steps could include increasing trust among ARF members by further delimiting the scope of PD, by continuing confidence building measures, by widening perspectives and participation in the exercise of preventive diplomacy, and by garnering knowledge by surveying existing

early warning systems. The potential role of CSCAP in monitoring and assessing the progress of ARF efforts at adopting and implementing confidence building measures recommended by the ARF, CSCAP, and others also seems worthy of further consideration.

Building on Recent Progress. The ARF is now seriously examining the first two suggestions – an EEPG has, in fact, been formed – and has been disseminating ASO's submitted voluntarily by members over the past two years. Little effort has been directed toward the establishment of either an ARF Information and Research Center or an RRRC, however, and the development of early warning capabilities has been addressed only peripherally.

To further assist the ARF in its examination of preventive diplomacy, the third CSCAP PD Workshop, in Hanoi in April 2002, conducted a more detailed examination of the EEPG, the expanded role of the ARF Chair, and the creation of an RRRC, in addition to conducting a deeper analysis of PD in general. Appendix E provides a summary of the Hanoi Workshop. The remaining chapters in this volume are derived from papers that were initially vetted at the PD Workshop. As in the past, the PD Workshop also provided hands-on training and additional insights regarding the application of PD tools, under the guidance of specialists from the U.S. Institute of Peace.

The following comments and recommendations are drawn from three specific task-oriented informal working groups formed among PD Workshop participants. They are this author's general summation of group findings, which are laid out in more detail in Appendices F, G, and H. Both this text and the associated appendices summarize very rich, not-for-specific-attribution discussions and should not be viewed as portraying a group consensus or formal CSCAP recommendations. (The introductory remarks of Vietnamese Assistant Foreign Minister Le Kinh Tai to the PD Workshop are included as Appendix I.)

Experts and Eminent Persons. The informal working group on experts and eminent persons applauded the ARF's decision to establish and EEPG and focused its analysis on the scope and future role of such a group. It debated first, whether there should be a permanent group to deal with various security issues in the region and, second, whether it is better to organize such a group on the basis of themes or particular issues and subregions. Participants stressed that attention should be paid to cataloguing qualifications of EEPs. These individuals should be available to both members and to the organization as a whole, to allow this resource to be used multilaterally and bilaterally.

A distinction was made between experts and eminent persons. The latter, having political weight, are capable of playing a political role, while experts appear better suited working behind the scenes on particular issues. Experts could brief the ARF and the eminent persons. They should be familiar with the ARF and the role it is expected to play.

The ARF was urged to draw on track-two expertise, and to use those groups to identify and catalog experts. It was recommended that the ARF and CSCAP institutionalize their linkage by holding meetings between the ARF and CSCAP at the senior officials' level.

Finally, the PD Workshop's informal EEP working group called on the ARF to establish an Advisory Council or vision group, consisting of 23 eminent persons (one from each member committee) for a two-year term. This group would deal with questions such as the ARF's future agenda, including the presentation of options. This group would meet semi-annually and present an interim report to ARF senior officials after one year. At the end of the group's mandate, it would present a final report and recommendations to a special meeting of senior officials. The idea of holding a joint CSCAP-ARF/EEPG Preventive Diplomacy Workshop was also discussed. EEPs not currently affiliated with CSCAP should be invited to join their respective member committees and should regularly be provided with CSCAP products.

Expanded Role of the ARF Chair. The second informal working group on the future roles of the ARF chair, endorsed the Japanese study on the roles and mechanisms of the ARF Chair (identified in Annex B of the 2001 ARF statement). Participants also generally agreed that it was premature to recommend changes in who would hold the ARF Chair (i.e., splitting it between ASEAN and non-ASEAN states), since the ARF is still a young institution and it is too early to fully evaluate its progress. The question could be revisited in the future, however.

This informal working group had four suggestions to enhance the role of the ARF Chair:

- *create a nucleus in the ASEAN Secretariat to assist the Chair;*

- *make the Chair responsible for periodic updates on the progress of the ARF every six months;*

- *hold a regular dinner between the ARF Chair and the co-Chairs of CSCAP, to ensure a better flow of information between tracks one and two; and,*

- *create an ARF Institute of Peace.*

As regards the last suggestion, the ARF Institute of Peace was described as a free-standing "knowledge resource" that could be accessed by the Chair, by the part of the ASEAN Secretariat that deals with ARF issues, or by the EEPG, to provide timely information on matters of concern. It could also draft position papers, or legal instruments, and the like. It would also support ARF-related studies and training and education services in ARF member countries, in collaboration with existing institutions, not unlike the USIP, which serves as a rough model for the ARF-IP.

Regional Risk Reduction Center. The final informal working group, on developing an early warning mechanism, noted that an RRRC is an essential component of any PD program. Its roles would include: gathering, storing, and disseminating information; analyzing information; flagging issues that require the attention of the ARF or individual member states; cultivating public awareness; and promoting ARF action on potential or emerging crises. The RRRC would gather information from official and unofficial sources. This institution should not serve as a mere clearinghouse for information, but should also become actively involved in disseminating information through public awareness campaigns. It is also important to draw the attention of ARF leaders to urgent issues and promote ARF action on them. In addition, the RRRC should work closely with the EEPG.

Participants noted that an RRRC is contingent upon institutionalization of the ARF or, at a minimum, a more enhanced role of the ARF Chair. In the interim, it was suggested that CSCAP's work could be enhanced if a formal relationship between CSCAP and the ARF would be established; the CSCAP co-Chairs could attend the ARF annual meeting as observers or report to the ARF-SOM. Pending establishment of the ARF Secretariat and the RRRC, it was suggested that the RRRC might be established as part of CSCAP, which would sidestep the need for intergovernmental agreement, but would also require CSCAP to enhance its own institutional capacity.

Developing an Early Warning Capability. A few additional words appear in order on the topic of early warning, given that it is the least examined aspect of PD in ARF deliberations to date. This portion draws heavily from discussions on early warning at the October 2001 CSBM Working Group meeting in Washington and again at the CSCAP General Meeting in Canberra in December 2001. Specialists at both meetings argued that early warning was crucial to the success of any preventive diplomacy effort.

The ARF Statement of Principles (and earlier CSCAP Statement) notes that PD "should be timely. Action is to be preventive, rather than curative. Preventive diplomacy methods are most effectively employed at an early stage of a dispute or crisis." The creation of early warning mechanisms could help facilitate preventive diplomacy actions by the ARF or other bodies – provided there is a willingness to act upon the information once received.

Early warning and preventive diplomacy mechanisms go hand in hand. PD action mechanisms, like an EEPG or more proactive, involved ARF Chair, can be most effective if and when advanced warning allows them to take preventative action well in advance of a crisis. One can argue that the reverse is also true; that without a willingness and ability to act, there is little value in early warning. However, institutionalized early warning also helps to prod action by making it difficult, if not impossible, to ignore formal notices of impending crisis.

In examining the concept of early warning, it must be recognized that a basic tension exists between the logic of early warning – which calls for as much information as possible as early as possible, followed by early decisive action to nip the crisis in the bud – and the policymaking processes employed by most, if not all, governments, which tends to resist early involvement, even when asked, in hopes that the parties involved can avoid or defuse a

conflict on their own. Concerns about interference in another country's internal affairs or possible threats to national sovereignty further complicate the issue, especially when the troubled states (or internal elements within a state) resist a helping hand (or try to deny that a problem even exists). This is where a neutral, objective early warning mechanism can be potentially the most helpful, in highlighting a problem that might otherwise be ignored or denied until conflict erupts.

National sovereignty is still protected, however, since, by agreed upon definition, PD actions remain voluntary; i.e., "PD practices are to be employed only at the request of the parties directly involved in the dispute and with their clear consent." Early warning mechanisms can only call attention to the potential problems; it would remain a consensus decision on the part of the ARF to offer its good services and a separate decision of the involved parties to accept this offer.

In developing an early warning mechanism, attention must be given to the various components of early warning. The first component, of course, is information. Here the challenge is separating good information from bad information, i.e., separating actual facts from perceived facts/myths, and then putting the good information into proper perspective. This requires objectivity and, preferably, verification by neutral observers. Once information has been collected and verified, it must then be communicated to policymakers who are hopefully empowered to act upon the information. Timeliness and accuracy are both keys, as are the willingness and ability to respond once the problem is duly recognized and transmitted.

The action itself may be nothing more than a proposal to place the issue on the ARF agenda or to submit the issue to the EEPG for follow-up investigation. The most that can be expected initially would be an offer, on the part of the ARF Chair or some other emissary, to seek further information (a fact-finding mission) or to offer ARF good offices to negotiate or mediate, if all the parties involved are willing to engage in the preventive diplomacy process.

As Raymund Quilop notes in chapter two, early warning is practiced at many levels: the level of the ordinary citizen, at the experts and eminent persons level, by states, as well as by the ARF or other regional and global organizations. Efforts by the ARF to develop early warning mechanisms must incorporate all these levels in order to be most effective.

Utilizing the ASOs. As noted above, for preventive actions to take place, there is a need for information on potential crises. Then there is a need to analyze this information and to build consensus about the need for a response. The various Annual Security Outlook statements and voluntary security briefings are one method of providing the initial information. But the ARF, to date, has done little beyond suggesting that members voluntarily produce such statements, which are then made available to other members, without comment or additional analysis. No mechanism or procedures exist for comparing the various reports or discussing their implications. Nor does a common format exist, to ensure that each contains similar items of information.

This has prompted the CSCAP CSBM Working Group to do some initial investigation as to the advisability and feasibility of developing a generic ASO outline to provide a standard model that ARF members might then choose to follow (similar to its earlier effort at developing a generic defense policy paper or "white paper" that has aided several states in the region in the creation or refinement of their individual reports). The CSBM Working Group has also expressed its willingness to serve as a venue for the discussion of national reports, in the absence of any ARF attempt to establish a dialogue on the content of the individual reports. This should be seen as an interim move, however, to help set the stage for more official dialogue once ARF members become more comfortable with such an early warning review process.

ARF Institutionalization. At some point in the future, institutionalized early warning will almost assuredly require some further institutionalization of the ARF itself. Many serious scholars and government officials have been calling for greater institutionalization of the ARF, irrespective of the early warning issue; CSCAP has contributed to this debate, through the efforts of current CSCAP co-chair, Ambassador Barry Desker (CSCAP-Singapore) among others. At the Hanoi PD Workshop, all three informal working groups called for more institutionalization of the ARF as an essential part of its transition toward PD. They also encouraged a closer, more formal relationship between the ARF and track-two organizations, particularly CSCAP.

Institutionalization also seems necessary for the creation of early warning support mechanisms, such as an ARF Information and Research Center, that could initially serve as an "early warning system" aimed at identifying danger points and emerging crises prior to the creation of a Regional Risk Reduction Center. Most would agree that the establishment of a formal ARF Information and Research Center or RRRC with an early warning mission would be premature today. However, it is not too early to begin talking about how such a mission could be accomplished when and if greater ARF institutionalization occurs.

Conclusion. I recognize that some of the suggestions may be out in front of where the ARF is currently prepared to go. But, that is the purpose and value of the track-two debate – to push the envelope and explore ideas and offer suggestions that, while perhaps not immediately attainable, at least appear achievable over time. This should be the goal of future CSCAP and ARF examinations of preventive diplomacy, just as earlier CSCAP efforts have tried to advance the debate and promote greater understanding regarding the ARF's future PD role and how to get there from here. This is the intended aim of this volume as well.

Chapter 2

Moving toward Preventive Diplomacy: Challenges and Prospects for the ARF

by Raymund Jose G. Quilop

Introduction

With the possibility of conflict arising in the Asia-Pacific region, given the many potential sources of conflict in the area, the practice of preventive diplomacy (PD) is a crucial step in promoting regional peace and stability. Regional institutions, particularly the ASEAN Regional Forum (ARF), play an important role, something the UN itself has acknowledged in Chapter VIII of its charter.[1]

Regional institutions are in a better position to undertake preventive measures (particularly with regard to regional issues) because they are more familiar with the "specific political, strategic, and normative conditions" of their respective regions, thereby putting them in a better position to know better what may or may not work.[2]

Parties involved in a dispute also regard regional institutions as third parties that are better able to undertake preventive diplomacy measures. The participation of other states could help regional institutions be considered as unbiased brokers even by members who are involved in the dispute in question. Furthermore, regional institutions are usually multilateral in membership and approach, which contributes to their ability to undertake preventive diplomacy measures.

The ARF, which brings together the members of ASEAN and 12 other Asia Pacific states plus the European Union, serves as a forum for security dialogue in the region. As a forum, it is intended, as conceived in the 1995 Concept Paper prepared by ASEAN, to evolve along three stages: the promotion of confidence building measures (CBMs), the promotion of preventive diplomacy measures, and an elaboration of approaches to conflict. While ASEAN points out that the ARF should not be seen as evolving along these stages in a sequential manner, some believe otherwise. Furthermore, the ability of the ARF to move to a so-called preventive diplomacy stage is being used as a yardstick for assessing the effectiveness and progress of the forum.

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1. Simon S.C. Tay, *Preventive Diplomacy and the ASEAN Regional Forum: Principles and Possibilities* (Singapore: Institute of Defense and Strategic Studies, 1997), p. 128.
2. Amitav Acharya, "Preventive Diplomacy: A Concept Paper," (Paper prepared for the Workshop on Confidence-Building Measures in the Asia-Pacific Region, Council for Security Cooperation in the Asia Pacific, Singapore, Oct. 30-31, 1996), p. 5.

Thus, regional policymakers and security analysts argue that it is time for the ARF to move forward toward promoting preventive diplomacy measures, given that the forum has been convening for eight years since its first meeting in 1994. For example, a network of security thinktanks in the ASEAN region, the ASEAN-Institute of Strategic and International Studies (ISIS), presented a "Memorandum on the Future of the ASEAN Regional Forum" to the senior officials of ASEAN when these officials held a retreat in Brunei in March 2002. This memorandum contained recommendations on the future development of the ARF, with a great number of recommendations pertaining to the ARF's evolution toward a preventive diplomacy stage. Similarly, the Council for Security Cooperation in the Asia Pacific (CSCAP)[3] through the initiative of the Singapore Member Committee is working on a paper titled, "The ARF into the 21st Century," which also contains suggestions on how the ARF could move forward, particularly toward the stage of preventive diplomacy.

At this point, the ARF is still focused on the promotion of confidence building measures, although it has already adopted a working definition and principles of preventive diplomacy. However, it must be noted that confidence building measures may also be considered preventive diplomacy measures because they also contribute toward the prevention of conflict among parties. It is also argued that "the ARF could make a tangible contribution to preventive efforts in the region via the promotion of confidence building measures that participant governments are in a position to implement."[4] Thus, while the ARF is generally seen to evolve along the three stages of development outlined above, with preventive diplomacy being undertaken after the promotion of confidence building measures, it is also widely acknowledged that CBMs and preventive diplomacy overlap. It is therefore not pragmatic for the ARF to wait for confidence building measures to be exhausted before it promotes preventive diplomacy measures.

The overlap between CBMs and preventive diplomacy was the subject of a CSCAP-sponsored Workshop on Preventive Diplomacy held in Singapore in April 2000. It was pointed out during this workshop that in the four proposals on preventive diplomacy measures that the ARF could undertake, all have elements of CBMs and preventive diplomacy. These proposals include: (1) enhancement of the ARF chair's role, (2) creation of a Register of Experts/Eminent Persons Group, (3) publication of an Annual Security Outlook, and (4) provision of voluntary background briefings.[5]

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3. CSCAP is a nongovernmental organization established for the promotion of security dialogue and cooperation among regional countries and territories. It provides an informal mechanism by which scholars and government officials in their private capacities discuss political and security issues. See Raymund Jose Quilop, "The Council for Security Cooperation in the Asia Pacific," *CSCAP-Philippines Newsletter*, July-December 1998, p. 2.
4. See the Chairman's Summary on the ARF Seminar on Preventive Diplomacy held in Seoul, Republic of Korea, May 1995.
5. The following discussion is based on the author's notes taken during the workshop on Preventive Diplomacy organized by the Council for Security Cooperation in the Asia Pacific and the United States Institute of Peace held in Singapore on April 2-5, 2000.

Reviewing the Concept of Preventive Diplomacy

The concept of preventive diplomacy suggests pro-active rather than reactive responses to international crises. While the United Nations, as declared in its Charter, had the goal of taking "effective collective measures for the prevention and removal of threats to peace" and has undertaken various actions that can be considered as constituting preventive diplomacy, it was only in the 1960s that the first and consistent usage of the term arose.[6] This was mainly attributed to the then-UN Secretary General Dag Hammarskjold, who argued that the goal of preventive diplomacy was "to keep local conflicts from being entangled in superpower rivalry."[7] According to Hammarskjold, the twin objectives of preventive diplomacy were to keep "newly arising conflicts outside of bloc differences and in the case of conflict on the margin of, or inside the sphere of bloc differences… to bring such conflicts out of this sphere through solutions…[aimed at]… their strict localization."[8] Preventive diplomacy then included the following instruments: hotlines, risk-reduction centers, and transparency measures. These instruments were intended to help recognize and fill any power vacuum in order to prevent the United States or the Soviet Union from taking actions that could escalate conflicts and lead to nuclear confrontation.[9]

While the end of competition between the U.S. and the Soviet Union as the Cold War came to a close appears to have rendered Hammarskjold's conceptualization of preventive diplomacy less relevant, the concept was given a broader meaning by a more recent UN Secretary General, Boutros-Boutros Ghali, when he published his *Agenda for Peace* in 1992. In this book, he conceptualized preventive diplomacy as "action to prevent disputes from arising between the parties, to prevent existing disputes from escalating into conflicts, and to limit the spread of the latter when they occur."[10]

Since then, academics, security analysts, and even government officials in their private capacities have attempted to refine the concept and identify possible tools of preventive diplomacy, particularly as it applies to the Asia Pacific region. Various conferences and workshops were organized for this purpose. These include the ARF-sponsored seminars on preventive diplomacy held in Seoul, Korea in May 1995, in Paris in November 1996, and in Singapore in September 1997. There were also CSCAP-sponsored workshops on preventive diplomacy held in Singapore in October 1996, in Bangkok in February 1999, in Singapore in April 2000, and in Hanoi in 2002.

In the February 1999 Workshop on Preventive Diplomacy sponsored by CSCAP through the support of the United States Institute of Peace (USIP), the participants

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6. Amitav Acharya, "Preventive Diplomacy: Background and Application to the Asia-Pacific Region," in Desmond Ball and Amitav Acharya, eds., *The Next Stage* (Canberra: Strategic and Defense Studies Centre, 1999), p. 16.

7. Simon S.C. Tay with Obood Talib, "The ASEAN Regional Forum: Preparing for Preventive Diplomacy," *Contemporary Southeast Asia*, Vol. 19, No. 3 (December 1997), 236.

8. Andrew W. Cordier and Wilder Foote, editors, *Public Papers of the Secretaries-General of the United Nations*, Vol. 5, Dag Dammarskjold (New York: Columbia University Press, 1975), p. 131 as cited in Acharya, "Preventive Diplomacy: Background and Application," pp. 16-17.

9. Acharya, "Preventive Diplomacy: Background and Application," p. 17.

10. See Boutros-Boutros Gali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping* (New York: United Nations, 1992), p.11.

developed a working definition and a statement of principles of preventive diplomacy.[11] This definition including the principles was eventually adopted by the foreign ministers of the ARF participants at their meeting in Hanoi, Vietnam in July 2001.

According to the paper on *Concept and Principles of Preventive Diplomacy* adopted by the ministers of the ARF participant-states, preventive diplomacy is:

> consensual diplomatic and political action taken by sovereign states with the consent of all directly involved parties: to help prevent disputes and conflicts from arising between states that could potentially pose a threat to regional peace and stability; to help prevent such disputes and conflicts from escalating into armed confrontation; and to help minimize the impact of such disputes and conflicts on the region.[12]

The document further states that preventive diplomacy could be viewed "along a time-line in keeping with the objectives to prevent disputes/conflicts between states from emerging, … escalating into armed confrontation, and … spreading."[13]

According to this document, the following are the principles of preventive diplomacy. It is about diplomacy. It is non-coercive. It should be timely. It requires trust and confidence. It operates on the basis of consultation and consensus. It is voluntary. It applies to conflicts between and among states. It is conducted in accordance with universally recognized basic principles of international law and inter-state relations embodied, *inter alia*, in the UN Charter, the Five Principles of Peaceful Coexistence and the Treaty of Amity and Cooperation, which include respect for sovereign equality, territorial integrity, and non-interference in the internal affairs of a state.[14] These principles with the exception of the last one were the principles developed by the participants in the 1999 CSCAP Workshop on Preventive Diplomacy in Thailand.

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11. According to this workshop, preventive diplomacy as a general rule is "consensual diplomatic and political action with the aim of preventing severe disputes and conflicts from arising between states that pose a serious threat to regional peace and stability; preventing such disputes and conflicts from escalating into armed confrontation; and limiting the intensity of violence and humanitarian problems resulting from such conflicts and preventing them from spreading geographically." The following are the principles of preventive diplomacy. First, it is about diplomacy. It relies upon "diplomatic and peaceful methods/tools such as persuasion, negotiation, enquiry, mediation, and conciliation." Second, it is voluntary. Preventive diplomacy measures should only be employed "at the request of the parties concerned or with their consent." Third, it is a non-coercive activity. Military action, use of force, and other coercive practices are outside its scope. Fourth, it requires trust and confidence. All involved parties must see facilitators or mediators in a dispute as trustworthy and as impartial honest brokers. Fifth, it rests on international law. Any preventive diplomacy action should be in accordance with the basic principles of international law such as sovereignty and non-interference in the internal affairs of a state, and upholding of sovereign equality and territorial integrity of states. Sixth, it requires timeliness. It is supposed to be preventive rather than reactive or curative. It is most effectively employed at an early stage of a dispute or crisis. See "Chairmen's Summary, Workshop on Preventive Diplomacy," organized by CSCAP's Working Group on Confidence and Security Building Measures, U.S. Institute of Peace and CSCAP-Thailand, Feb. 28-March 2, 1999, Bangkok, Thailand (unpublished).
12. See Annex D of the "Chairman's Statement, The Eighth Meeting of the ASEAN Regional Forum," Hanoi, July 25, 2001.
13. See *ibid.*
14. *Ibid.*

Also in this document, the ministers acknowledged that "[a]greement on the definition and … common understanding of the concept of preventive diplomacy and the principles governing the practice of preventive diplomacy would be useful for further progress on the development of preventive diplomacy within the ARF."[15] However, it is important to note that the definition and principles of preventive diplomacy adopted in the ARF meeting are only a working definition and principles. The Chairman's statement clearly addresses this by specifying that "[t]he ministers agreed to adopt the preventive diplomacy paper as a snapshot of the state on current discussion on preventive diplomacy in the ARF and that ISG[16] would continue to discuss preventive diplomacy in the next inter-sessional year and focus on those issues when there remain divergence of views."[17]

Preventive diplomacy measures can be classified as (1) pre-crisis or peacetime measures and (2) crisis-time measures. Pre-crisis or peacetime measures are undertaken before the onset of a conflict. These include confidence building measures, institution building, norm-building, early warning, and preventive humanitarian action.[18]

Broadly, CBMs include "both formal and informal measures, whether unilateral, bilateral, or multilateral that address, prevent, or resolve uncertainties among states, including both military and political elements."[19] In a more narrow sense, CBMs can be seen as "attempts to make clear to concerned states, through the use of a variety of measures, the true nature of potentially threatening military activities."[20] CBMs aim to provide "reassurance by reducing uncertainties and by constraining opportunities for exerting pressure through military activity."[21] They contribute to the reduction of misperception and suspicion and thereby help lessen the probability of armed confrontation.[22]

CBMs are considered as preventive diplomacy measures even while they have also played a key role in promoting regional security. The ARF, for example, has set its evolution along three stages starting with the promotion of CBMs, to the development of preventive diplomacy measures, and to the elaboration of approaches to conflict resolution.

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15. *Ibid.*
16. ISG refers to the Inter-sessional Support Group on Confidence Building Measures (ISG on CBMs) that holds meetings between the annual meeting of the foreign ministers of the ARF participants. The other inter-sessional activities are the Inter-sessional Meetings (ISMs) on Disaster Relief, on Search and Rescue Cooperation, and on Peacekeeping Operations.
17. See ARF Chairman's Statement, 2001.
18. See Acharya, "Preventive Diplomacy: Background and Application," pp. 20-21 and Tay, *Preventive Diplomacy and the ASEAN Regional Forum,* pp. 7-8.
19. Ralph A. Cossa, "Asia-Pacific Confidence and Security Building Measures," in Thangam Ramnath, ed., *The Emerging Regional Security Architecture in the Asia-Pacific Region* (Kuala Lumpur, Malaysia: Institute for Strategic and International Studies, 1996), p. 428.
20. James Macintosh, "Confidence-Building: Its Contribution to Peacekeeping," (Toronto: York Center for International and Strategic Studies, [1990]), p. 2 as cited in Department of Foreign Affairs and International Trade, Canada, *The ASEAN Regional Forum: Confidence Building* (1997), p. 1.
21. M. Susan Pederson and Stanley Weeks, "A Survey of Confidence and Security Building Measures," in Ralph A. Cossa, ed., *Asia-Pacific Confidence and Security Building Measures* (Washington, D.C.: The Center for Strategic and International Studies, 1995), p. 82.
22. J. Soedjati Djiwandono, "Confidence-Building Measures and Preventive Diplomacy: A Southeast Asian Perspective," *CSCAP Newsletter*, October 1996, p. 4.

It is generally acknowledged, however, that there is a great deal of overlap between CBMs and preventive diplomacy, as will be further discussed below.

Institution building pertains to "formal or informal ways of organizing attention, expertise, and resources in pursuit of a common set of interests or objectives."[23] While scholars generally consider institution building as a preventive diplomacy measure, it is also instructive to note that institutions promote or undertake preventive diplomacy measures. This is so because "institutions develop principles of conduct, generate regularized consultations, and build trust" and "constrain unilateral preferences and actions of actors and promote cooperation" in the long run.[24]

Related to institution building is norm-building, which refers to "inducing rule-governed behavior" among actors involved, particularly encouraging parties to a dispute to refrain from actions that may worsen the situation and instead seek the peaceful resolution of issues. It is a key aspect of institution building.[25]

Early warning involves "monitoring of developments in political, military, ecological, and other areas (such as natural disasters, refugee flows, threat of famine, and the spread of disease) that may, unless mitigated, lead to outbreak of violence or major humanitarian disasters."[26]

Preventive humanitarian action is primarily concerned "with preventing and managing the humanitarian costs of political conflicts" and "the political and humanitarian consequences of naturally occurring phenomena."[27]

Preventive diplomacy measures during the onset of a conflict or crisis would include fact-finding missions, goodwill missions, good offices of a third party or mediation, and crisis management.[28]

Fact-finding refers to the reliable and timely collection and analysis of information regarding a potential conflict situation.[29] Although fact-finding is related to early warning and may be undertaken during peace-time, it is usually specific to a given crisis situation. In order to be effective, it must be "comprehensive, covering domestic, regional, and global aspects of a conflict and investigating the social, economic, strategic, and political factors underlying it."[30]

Goodwill missions and good offices are closely related. The former refers to a "visit by an envoy to express concern of the regional or international community" while the latter

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23. Acharya, "Preventive Diplomacy: Background and Application," p. 20.
24. *Ibid*., pp. 20-21.
25. *Ibid*.
26. *Ibid*., p. 21.
27. *Ibid*.
28. See *ibid*., p. 22 and Tay, *Preventive Diplomacy and the ASEAN Regional Forum*, p. 8.
29. *Ibid.,* p. 8.
30. Acharya, "Preventive Diplomacy: Background and Application," p. 22.

refers to the presence of a neutral third party that facilitates "negotiation between disputing parties" or manages the crisis between the parties if it is given a mediation role.[31]

Crisis management attempts to reduce the "immediate possibility of violent action in a conflict situation and may require measures such as reconciliation, mediation, and arbitration that would help defuse tensions between or among the parties involved."[32]

Moving toward the Preventive Diplomacy Stage

The quest to have the ARF move toward a preventive diplomacy stage encounters several challenges that need to be addressed. First, the ARF participants are still to arrive at a consensus whether the ARF at this point should attempt to move toward the "stage" of promoting preventive diplomacy measures. As will be noted below, several participants have reservations that the practice of preventive diplomacy by the ARF would pave the way for the ARF or the other participant-states to intervene in their internal affairs.

Second, the hesitance of some participant-states for the ARF to move to the promotion of preventive diplomacy could be partly a consequence of the seeming asymmetry between the ARF's membership and its geographical footprint. "While membership extends to states that stand outside Asia, only issues within the ARF's geographical area or 'footprint' are its proper concern."[33] The number of states that might exercise preventive diplomacy is larger than those over which preventive diplomacy may be undertaken.[34] For example, ARF participants in North America or Europe may suggest that preventive diplomacy be undertaken over a border dispute between two Asian states but the reverse is beyond the focus of the forum.

Third, the ARF participants have still not arrived at a consensus regarding how to define preventive diplomacy as well as identify its principles. As previously pointed out, while the ARF foreign ministers have adopted a paper on the "Concept and Principles of Preventive Diplomacy" in their Hanoi meeting in July 2001, the Chairman's Statement implies that such definition and principles are merely working definitions.

Fourth, some of the principles of preventive diplomacy, which the ministers considered in the 2001 ARF meeting, appear to be in conflict with the practice of preventive diplomacy. For example, the principle of noninterference in the internal affairs of a state, if adopted as a principle of preventive diplomacy, would limit the capacity of the ARF to undertake preventive diplomacy. With this principle, the ARF would find it difficult to address issues considered as domestic affairs of states even if these issues cause conflict and instability in the region. Furthermore, because preventive diplomacy is voluntary (in the sense that it is only employed at the request of the parties concerned or with their consent), measures undertaken by the ARF that are supposedly preventive in nature would be merely

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31. Tay, *Preventive Diplomacy and the ASEAN Regional Forum*, p. 8.
32. Acharya, "Preventive Diplomacy: Background and Application," p. 22.
33. Simon S.C. Tay, "Preventive Diplomacy and the ASEAN Regional Forum: Principles and Possibilities," in Desmond Ball and Amitav Acharya, eds., *The Next Stage* (Canberra: Strategic and Defense Studies Centre, 1999), p. 144.
34. *Ibid.*

reactive responses. The forum cannot act without the request or consent of the parties involved.[35]

Fifth, moving to the preventive diplomacy stage even while continuing to promote confidence building measures necessitates developing the ARF's institutional capacity to do so. This brings forth two important areas for consideration by the ARF, as well as by the individual participant-states. The first pertains to the continued viability of the "ASEAN way" being adopted and practiced in a more diverse forum – that is the ARF. The second relates to the structures available to the ARF.

Rethinking the ASEAN Way in the ARF [36]

The so-called "ASEAN way" has been adopted *de facto* in the ARF possibly due to the fact that ASEAN initiated the ARF and holds exclusively its chairmanship, primarily because ASEAN was and remains the only accepted interlocutor among the participants. However, some observe that while the features of the "ASEAN way" allowed the ARF process to take off, these same features may have to be rethought if the ARF process is going to be sustained. The "ASEAN way" as it is may not suffice or may not be appropriate for the ARF that involves more diverse states. As Acharya argues, there may be a need for the ARF to develop from the "ASEAN way" its own "Asia Pacific way" with the leaders and policymakers of the participant-states considering the development of a unique identity for the ARF.[37]

Foremost among the many features of the "ASEAN way" is the practice of dialogues and consultations to arrive at a consensus.[38] Dialogues and consultations toward consensus can "bring a meeting of minds," foster a willingness to understand diverse positions, cultivate patience and perseverance, constrain some states from unduly exercising influence or coercion over the others, and allow smaller states to articulate their position.[39] Thus, dialogues can increase the "incidence of cooperation" because they can alter preferences, create a feeling of shared identity, encourage norms, or facilitate promising behavior.[40]

However, the search for consensus makes things overly tedious as the process involves "a myriad list of new positions, proposals, and initiatives on a single issue being floated for extensive consultations … to ensure … consensus."[41] It therefore means moving

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35. This point was raised during the meeting of the CSCAP Working Group on Confidence and Security Building Measures held in Washington, D.C., on Oct. 29-31, 2001.
36. This section draws heavily from the author's "ASEAN Multilateralism and the ARF: Prospects and Challenges," *Philippine Political Science Journal*, Vol. 21, No. 44 (2000), p. 127-158.
37. See Amitav Acharya, "Ideas, Identity and Institution-Building: From the 'ASEAN Way' to the 'Asia-Pacific Way'?", *The Pacific Review*, Vol. 10, No. 3 (1997), p. 319-340.
38. *Ibid*., p. 330.
39. Hussin Mutalib, "At Thirty, ASEAN Looks to Challenges in the New Millenium," *Contemporary Southeast Asia,* Vol. 19, No. 1 (June 1997), p. 79 and Mely Caballero-Anthony, "Mechanisms of Dispute Settlement: The ASEAN Experience," *Contemporary Southeast Asia* Vol. 20, No. 1 (April 1998), p. 59.
40. James A. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations," in Helen Milner and John Gerard Ruggie (eds.), *Multilateralism Matters* (New York: Columbia University Press, 1993), pp. 66-67.
41. Caballero-Anthony, "Mechanisms of Dispute Settlement," p. 58.

at the speed of the slowest common denominator and therefore possibly making the process "hostage to the imperatives of national interest" as each participant-state has a *de facto* veto.[42]

> In this regard, it has been suggested to adopt a majority rule decision-making approach. However, a more pragmatic approach could be the so-called "coalition of the willing" moving away from consensus. As Tay aptly puts it,

…there is an increased need to emphasize the legitimacy of some states to pioneer new initiatives and/or proceed at a faster pace than others. This is necessary given the divergence among [ARF participants] in their capacity and their inclinations. These "coalitions of the willing" should not be a source of disagreement in [the ARF] provided that the general direction of such initiatives is welcome and the coalitions remain open [for] all to join.[43]

A second feature of the "ASEAN way" that needs to be re-examined is the shelving of controversial issues in order to cooperate on less contentious issues or compartmentalizing issues so that only non-contentious aspects of sensitive issues are discussed.[44] This practice ensures that potential areas of cooperation may be pursued.[45] This may also create enough goodwill among those involved that may encourage "restrained political and military behaviour," primarily by building confidence and enhancing the comfort level among the parties.[46]

However, non-discussion of sensitive issues can also keep the process from moving forward and can be perceived as an excuse for doing nothing. For example, considering that PD measures are often exercised in relation to sensitive issues, how could the ARF undertake preventive diplomacy if sensitive issues are merely shelved so as not to destroy superficial harmony among the participants? Consequently, there has arisen perceptions that ASEAN officials and ARF participants are more predisposed to maintain and project a façade of solidarity rather than deal with contentious issues.

A third feature is the emphasis on interpersonalism, particularly among ASEAN bureaucrats, something that ARF bureaucrats may have begun to imitate.[47] The long tenures of ASEAN's authoritarian rulers who have met regularly through the summits, helped boost interpersonalism in ASEAN, resulting in what is called "telephone diplomacy" where ASEAN leaders call each other at crucial periods.[48] Moreover, because senior ministers and officials of ASEAN members regularly meet, they have come to know each other and have

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42. Acharya, "Ideas, Identity, and Institution-building," p. 332.
43. Simon S.C. Tay, "Institutions and Processes: Dilemmas and Possibilities," in Simon S.C. Tay, Jesus Estanislao, and Hadi Soesastro (eds.) *A New ASEAN in a New Millennium* (Jakarta: Centre for Strategic and International Studies, 2000), p. 185.
44. Bilson Kurus, "The ASEAN Triad: National Interest, Consensus-Seeking, and Economic Cooperation," *Contemporary Southeast Asia,* Vol. 16, No. 4 (March 1995), p. 406.
45. Caballero-Anthony, "Mechanisms of Dispute Settlement," p. 54.
46. Acharya, "Ideas, Identity, and Institution-building," p. 332.
47. Shaun Narine, "ASEAN and the ARF: The Limits of the ASEAN Way," *Asian Survey,* Vol. XXXVII, No. 10 (October 1997), p. 968.
48. Caballero-Anthony, "Mechanisms of Dispute Settlement," p. 60.

developed a sense of camaraderie. They have also provided a continuing link among their states. Unfortunately, leadership changes.

Related to interpersonalism is informality, or what is seen as "avoiding the establishment of institutions and procedures that are too formal and legalistic and that require a degree of transparency and commitment that could deter a meaningful exchange of views."[49] ASEAN cooperation, particularly on security and political issues, is "unstructured with no clear format for decision-making or implementation, often lacks a formal agenda, [and] issues are negotiated on an *ad hoc* basis as and when they arise."[50]

Informality could also lead to the inability to enforce commitments. As problems that states face increase and become more complex, there may be a need to have more formal mechanisms to effectively address such problems. Besides, a strengthened bureaucratic apparatus could also promote cooperation by making interactions among those involved more durable and more frequent.[51]

Closely linked with the preference for informality is the focus on process that is evident in ASEAN and also in the ARF. It is "not so much about the substance or structure" but about "the process through which interactions are carried out."[52] ASEAN and consequently the ARF are far from being organizations with formal bureaucratic machinery that have decision-making and decision-implementing functions.

Consequently, the emphasis on the process rather than the product has resulted in a preference for gradual, methodical approaches.[53] Such a "step-by-step approach" could make the parties involved comfortable with each other, which is a necessary precondition for future cooperation. Furthermore, taking numerous small steps can better facilitate cooperation among those involved by increasing the chances of future meetings. Small steps result from breaking the issues down into manageable pieces. Moreover, the approach of agreeing on principles first and allowing things to evolve and grow gradually spares ASEAN from incurring the costs associated with immediately creating bureaucracies/structures or adopting programs that may not work in the future. While bureaucracies can help facilitate cooperation, it is more practical to test the viability of cooperation first. However, while the process may be as important as the product, all

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49. Amitav Acharya, "ASEAN and Asia-Pacific Multilateralism: Managing Regional Security," in Amitav Acharya and Richard Stubbs (eds.), *New Challenges for ASEAN: Emerging Policy Issues* (Vancouver: UBC Press, 1995), p. 188.

50. Acharya, "Ideas, Identity, and Institution-building," p. 329.

51. See Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984).

52. Acharya, "Ideas, Identity, and Institution-building," p. 329.

53. Ralph A. Cossa, "Asia Pacific Confidence and Security Building Measures," in Ralph A. Cossa, ed., *Asia-Pacific Confidence and Security Building Measures* (Washington, D.C.: The Center for Strategic and International Studies, [1995]), p. 8 and Michael Haas, *The Asian Way to Peace: A Story of Regional Cooperation* (New York: Praeger, 1989) as cited in Kwa Chong Guan, "Reflections on Prospects for Asia-Pacific Multilateralism," in Michael W. Everett and Mary A. Sommerville (eds.), *Multilateral Activities In Southeast Asia* (Washington, D.C.: National Defense University Press, 1995), p. 167.

process and no product and the lack of an "ability to measure progress, to take stock, and to develop new initiatives" can make it difficult to sustain momentum.[54]

Finally, the principle of noninterference or nonintervention in the internal affairs of other states, a sacred principle in ASEAN, may need to be re-examined if the ARF is going to move toward preventive diplomacy. In the practice of PD, it becomes "difficult and unrealistic to insist that the principle of nonintervention in the domestic affairs of other states be sustained if domestic instability in one country spills beyond its borders and undermines the security of its neighbors," possibly creating bigger conflicts.[55]

In fact, one key challenge as the ARF moves toward the practice of PD is to convince the participants that it is not going to be used by ARF participants to "intervene" in the internal affairs of other participants. Consequently, these states continue to have reservations regarding the ARF taking a more proactive role in promoting preventive diplomacy measures.

Re-engineering the ARF Structure

The ARF's attempt to undertake preventive diplomacy measures could become more effective if such measures are underpinned by institutional infrastructure.

Summits for the ARF. The foreign ministers participate in the annual meeting of the ARF, which is preceded by a Senior Officials Meeting (ARF-SOM) as well as various meetings during the inter-sessional year. However, it may be more appropriate to institutionalize a formal annual Heads of States/Governments meeting as a working meeting, similar to the practice in the Asia Pacific Economic Cooperation (APEC).

An Enhanced Role for the ARF Chair. In the Asian context, leaders play a major role in the effectiveness of institutions. In the case of the ARF, therefore, there is a need to further enhance the role of the ARF chair.

The ARF has already approved an enhanced role for the ARF chair, particularly with regard to his liaison role with external partners for exchanging information. In their July 2001 Hanoi meeting, the ministers acknowledged that the role of the ARF chair includes "encouraging exchange of information and highlighting issues that can impact on regional security for consideration by the ARF by serving as a conduit for information sharing in-between ARF meetings." They also acknowledged that the ARF chair could serve as a "focal point for consultations among ARF members." The ARF chair, with the consent of

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54. Desmond Ball, "Re-examining the Global and Regional Mechanism for Crisis-Management and Crisis-Prevention," Paper presented at the Asia-Pacific Security Forum on *The Security Implications of the East Asian Financial Crisis*, sponsored by the Institute for Strategic and Development Studies (Manila), Institute for National Policy Research (Taipei), Pacific Forum CSIS (Honolulu) and IFRI (Paris) held at the EDSA Shangri-la Hotel, Philippines, Dec. 19-20, 1998, p. 12.
55. Carolina G. Hernandez, "The Future Role of ASEAN: A View from an ASEAN-ISIS Member," paper based on a draft presentation prepared for the "Workshop on East Asia at a Crossroads: Challenges for ASEAN," organized by the Institute of International Relations, Hanoi, Sept. 24-25, 1998, p. 11.

states involved may also "convene an *ad hoc* meeting of all members at an appropriate level."[56]

The ASEAN-ISIS "Memorandum on the Future of the ARF" acknowledges that the ability of the ARF to "respond more quickly and effectively can be significantly improved by enhancing the role of the chair."[57] In addition, the document also spells out several tasks that the ARF chair could undertake in an enhanced capacity. These would include providing "periodic up-dates (sic) of regional security situation," early warning and "periodic report on the progress of work in the ARF and its subordinate bodies," as well as consulting regularly with participants, facilitating discussions on potential areas of cooperation, and strengthening "liaison with other organizations such as the UN and OSCE."[58]

Enhancing the role of the ARF chair, however, raises the issue of whether ASEAN should share the chairmanship with the non-ASEAN participants in the ARF. There are several proposals to this end: the ARF should have co-chairs – one from an ASEAN state and another from a non-ASEAN state; or, the ARF should have a triumvirate for the ARF chair composed of the present, the immediate past, and next chairman.[59] The triumvirate would also ensure the continuity of agenda. A third formula is to have a combination of these proposals: a triumvirate as in the second proposal with the present chairmanship alternating between an ASEAN and a non-ASEAN participant. This would make the ARF more relevant to the other participants.

In its enhanced role, the ARF chair needs greater assistance from the other ARF participants. In this regard, the ARF could also "adopt the UN practice of having states with interest and influence on a particular issue serve as 'friends of the chair.'"[60]

Greater Role for Defense Officials. In addition to the chair playing a greater role in the ARF, defense and security officials should also be given a bigger role in the ARF process. In the annual ARF meetings, the foreign ministers have the primary role. Defense officials could participate in a *de facto* secondary status in spite of the ARF being a forum for regional security dialogue.

Thus, it would be proper that defense officials, whose primary concerns are security issues, be given a bigger role in the overall ARF process, both at the Senior Officials Meeting and the ARF annual meeting. In this regard, the proposal to finally institute a defense or security meeting among the ARF participants is timely and appropriate. The

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56. See Annex B of "Chairman's Statement, The Eighth Meeting of the ASEAN Regional Forum," Hanoi, July 25, 2001.
57. See "Supporting Paper to the ASEAN-ISIS Memorandum on the Future of the ASEAN Regional Forum" (unpublished), p. 4.
58. *Ibid.*, pp. 4-5.
59. Amitav Acharya, "What Preventive Diplomacy Is (Or Ought Not to Be), and What It Is Not (Or Must Not Be): Reviewing the Preventive Diplomacy Concept and Agenda in the Asia-Pacific," A Report Prepared by CSCAP-Singapore for the Workshop on Preventive Diplomacy organized by the Council for Security Cooperation in the Asia Pacific International Working Group on Confidence and Security Building Measures, United States Institute of Peace, and CSCAP-Thailand held in Bangkok, Thailand, Feb. 28-Mar. 1, 1999, p. 8.
60. See "Supporting Paper to the ASEAN-ISIS Memorandum on the Future of the ASEAN Regional Forum," p. 5.

regular luncheon meeting among defense officials that had been held in the past is no longer sufficient. Instead, a separate meeting of defense officials properly called the ARF-Defense Officials Meeting (ARF-DOM) could be more useful. In addition, defense ministers should finally be allowed to sit side-by-side with their foreign ministry counterparts at ARF meetings. This would pave the way for a sense of "equality" between the foreign ministers and defense ministers.

These suggested measures – in particular the holding of a separate meeting for defense officials and providing them with the opportunity to sit alongside their foreign ministry counterparts in the annual ARF meeting – are simple measures to make the ARF truly a forum for security dialogue. More important, these measures could also help revitalize the ARF and assist it in moving forward toward the stage of promoting preventive diplomacy measures.

An ISG on Preventive Diplomacy. The Inter-sessional Support Group on Confidence Building Measures (ISG on CBMs) proved useful for the ARF in promoting confidence among its participants. Thus, an ISG on PD may also prove useful for the ARF as it prepares for promoting and eventually undertaking preventive diplomacy measures. This group could examine "how preventive diplomacy could be undertaken in both nontraditional/nonconventional as well as conventional areas of security."[61]

An ARF Secretariat. It may be necessary at this stage for the ARF to develop and maintain a separate secretariat or a secretary general to support the activities of the ARF between the ministerial meetings held each year. As an initial step, an ARF unit could be "constituted within the ASEAN secretariat" with resources and expertise being drawn from the non-ASEAN participants as well to give them a stake in such a structure.[62] The draft CSCAP paper titled "The ARF into the 21st Century," however, suggests a separate secretariat that is collocated initially with the ASEAN Secretariat.[63] This draft CSCAP paper also suggests, as an alternative, a "virtual secretariat that leverages on information and communications technology to enable coordination of ARF plans and decisions to be effected via cyberspace."[64] The paper also suggests that the secretariat be chaired alternately by an ASEAN and non-ASEAN participant and that APEC's practice of having the incoming secretary general serve as deputy secretary general in the preceding year be adopted in the ARF secretariat.

An Early Warning System. As preventive diplomacy is supposed to be pro-active and timely, the concept of "early warning" becomes an integral component of PD. An early warning mechanism, however, hinges on the availability of information that could be provided by citizens of participant-states and that policymakers could use at a relatively early stage in making crucial decisions.

Ordinary citizens could serve as useful sources of information regarding the situation on the ground. The value of human-based information should not be overlooked. For example, it was a Filipino fisherman who reported to the Philippine Navy the presence of

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61. *Ibid.,* p. 6.
62. *Ibid.,* p. 4.
63. See "The ARF in the 21st Century" (unpublished), p. 4.
64. *Ibid.*

Chinese-constructed structures in Mischief Reef in 1995. Thus, given appropriate training, ordinary citizens could serve as effective eyes and ears for their governments.

The value of human sources of information is also highlighted by the terrorist attacks on the U.S. in September 2001. As the attacks showed, technical sophistication in gathering information, which the U.S. apparently has an edge, is not sufficient. In fact, some commentators think that the decreasing reliance of the U.S. government on its network of human informants deprived it of early warning of the terrorist attacks. Human sources of information, therefore, remain important.

Political leaders also play an important role in the development of a regional early warning system. They could identify areas and issues where conflict may arise in the immediate future and thus undertake the necessary steps to prevent a military conflict from developing. Thus, the establishment of a network of hotlines among the ARF's top political leaders, is an indispensable tool in developing an early warning system.

In this context, particularly useful are the annual ARF meetings attended by the foreign ministers as well as the various inter-sessional meetings attended by middle-level bureaucrats that are held between the annual ARF meetings. These meetings allow the foreign ministers and the mid-level officials of the various ARF participants to interact with each other and cultivate their own personal network. However, a meeting of the heads of governments/states of the ARF participants could also prove useful in the development of such a personal network and the establishment of a functional hotline among them. Thus, a summit of these heads, in addition to the annual meetings of the foreign ministers, may be helpful.

Besides, political leaders and policymakers decide whether to act on information that is made available to them. However, political leaders tend to refrain from acting in spite of early warning indicators. Either they hope that "the problem will just go away on its own," are "reluctant to act for fear of appearing to be alarmist or naïve to their critics," or are simply "preoccupied with so many proven crises that they find it difficult to focus on brewing crises."[65]

Thus, it would be useful for the ARF to establish a Regional Risk Reduction Center (RRC) that could "effectively gather information and provide analysis to map out danger points and assess [the possibility of conflict] before a crisis results."[66] With the warning provided by the center, political leaders could avoid appearing alarmist to their critics. The warning coming from the RRC could also pressure political leaders into giving needed attention to brewing crises.

A Role for Experts and Eminent Persons. Experts and eminent persons could also play a useful role in assisting the ARF in the practice of PD, particularly in institutionalizing an early warning system. Experts on security issues and areas of conflict abound in the region and could enable states and the ARF to identify areas where conflicts are brewing.

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65. Joseph V. Montville, "Strategic Planning in Preventive Diplomacy," (paper presented at the CSCAP Working Group on CSBMs held in Washington, D.C., Oct. 29-31, 2001) p. 6.
66. See Tay, *Preventive Diplomacy and the ASEAN Regional Forum*, p. 21.

They could advise the ARF and their respective states, conduct fact-finding missions, and play a more "far-reaching early warning role by drawing attention" to regional security problems.[67] Their expertise therefore needs to be harnessed, primarily by institutionalizing their links with their governments and possibly the ARF.

The ARF through its ISG on CBMs has been seriously considering the creation of a Register of Experts/Eminent Persons Group. Finally, in the ARF meeting in July 2001, the ministers adopted the *Terms of Reference for a Register of Experts/Eminent Persons (EEPs)*.[68] In this document, the ministers acknowledged that the group of EEPs could provide professional (although non-binding) advice and conduct in-depth studies regarding regional security issues. They can also serve as resource persons in ARF meetings on issues of their expertise. The activation of the EEPs for the above-mentioned tasks may be proposed either by the ARF chair or any ARF participant and subsequently undertaken if there are no objections from any other participant.

The ARF participants will nominate EEPs, after obtaining their consent. Each participant can nominate up to five persons to be included in the register but may nominate only its own nationals. No ARF participant can veto the nominees of other participants. Eminent persons could also serve as special representatives who can build trust in the skill and impartiality of the ARF in its practice of preventive diplomacy, which could as offer good offices and mediation before the onset of conflict or after conflict has erupted in order to prevent escalation of the conflict.

A Role for Track-Two/Nongovernmental Organizations (NGOs). Experts in the region themselves have established their own thinktanks and other nongovernmental organizations as well as networks of these research institutes. Notable examples are the ASEAN-ISIS group and Council for Security Cooperation in the Asia Pacific (CSCAP). As track-two institutions, they push the envelope forward by examining issues that governments may hesitate to discuss at the official level.

In the practice of preventive diplomacy, the collaboration between government and track-two organizations could "begin to ease the difficulties for governments by analyzing both proximate and root causes of a conflict and then developing intervention strategies that could address the factors that generate the threat in the first place."[69]

In this context, while track-two lies outside the ambit of track-one institutions like the ARF, the linkage between track-two and track-one is important in the effective practice of preventive diplomacy by the ARF. For example, there have been proposals to institutionalize the linkage between the ARF and CSCAP, such as having ARF invite the co-chairs of CSCAP to sit as observers in the annual ARF meeting; similarly it has been proposed that CSCAP invite the ARF chair to attend its semi-annual Steering Committee Meetings.

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67. See Draft "Chairmen's Statement, Workshop on Preventive Diplomacy," organized by the Council for Security Cooperation in the Asia Pacific and the United States Institute of Peace, Singapore, April 2-5, 2000.
68. See Annex C of "Chairman's Statement, The Eighth Meeting of the ASEAN Regional Forum," Hanoi, July 25, 2001.
69. Montville, "Strategic Planning in Preventive Diplomacy," p. 7.

In the meantime, CSCAP, particularly its working group on Confidence and Security Building Measures, has adopted the practice of holding meetings immediately prior to or after the meetings of the ARF-ISG on CBMs. This provides an opportunity for the ISG participants to participate in the CSCAP working group meetings and workshops.

An intermediate step would be to have a formal meeting between senior officials of the ARF and the co-chairs of CSCAP working groups on CSBMs, Maritime Cooperation, Comprehensive and Cooperative Security, North Pacific Cooperation, and Transnational Crime. This is already being practiced in ASEAN, with the senior officials of ASEAN having a formal dialogue with the heads of ASEAN-ISIS, although these occur only occasionally.

Conclusion

As conceived in the 1995 concept paper prepared by ASEAN, the ARF is expected to evolve along three stages: the promotion of confidence building measures, the promotion of preventive diplomacy measures, and the elaboration of approaches to conflict. While ASEAN points out that the ARF should not be seen as evolving along these stages in a sequential manner, some think otherwise. Furthermore, the ability of the ARF to move to a preventive diplomacy stage is being used as a yardstick for assessing the effectiveness and progress of the forum. Thus, there is an emerging view particularly among policymakers of some regional states and security analysts that it is time for the ARF to move forward toward promoting preventive diplomacy measures, even while it continues to promote confidence building measures.

The quest to have the ARF move toward a preventive diplomacy stage faces several challenges that must be addressed. There is no consensus yet whether the ARF should move to a "preventive diplomacy stage" because of the apprehension by some participant-states that this would constitute interference in their internal affairs. This could also result from the seeming asymmetry between the ARF's membership and its geographical footprint, as the number of states exercising preventive diplomacy would be larger than those over which preventive diplomacy may be undertaken. A consensus on how to define preventive diplomacy as well as its principles has yet to be agreed upon, while some of the principles being considered would limit the capacity of the ARF to undertake preventive diplomacy measures.

Finally, moving to the preventive diplomacy stage even while continuing to promote confidence building measures will require the development of the ARF's institutional capacity. Such capacity-building involves two major issues. The first pertains to the viability of the "ASEAN way" in a more diverse forum of the ARF and the second relates to the structures available to the ARF. It appears that while the "ASEAN way" may have been instrumental in allowing the ARF process to take off, it may not be sufficient to sustain it. Thus, the ARF may need to develop its own "Asia Pacific way" that considers the greater number and diversity of states involved. Furthermore, there appears to be an urgent need to strengthen the institutional capacity of the ARF through the establishment of certain structures that could assist the forum as it prepares to promote and undertake preventive diplomacy measures.

<center>**Chapter 3**</center>

<center>**Preventive Diplomacy:
Its Relevance to the Asia Pacific**</center>

<center>**by Ding Kuisong**</center>

Since the tragedy of Sept. 11 in the United States, countries throughout the world have been calling for unity against global terrorism. In Asia, the need for concerted efforts to prevent crises seems more prominent due to the fact that terrorist networks appear more aggressive, and the consequences of unexpected contingencies are more devastating. How, then, should we cope with potential crises through diplomatic efforts? This is a question many countries in the region have been pondering for quite some time.

Preventive diplomacy (PD), the second stage for the ASEAN Regional Forum (ARF), appears to some countries to be the most relevant and attractive way to prevent crises through active diplomacy. At the July 2001 ARF ministerial meeting, foreign ministers "agreed to adopt the PD paper as a snapshot of the state of current discussion on PD in the ARF and that the ISG [Inter-sessional Support Group] would continue to discuss PD in the next inter-sessional year and focus on those issues where there remain divergence of views. … Noting with satisfaction the remarkable progress in the discussion and eventual adoption of the above-mentioned progress in the discussion and eventual adoption of the above-mentioned papers, the Ministers recognized that these developments represent a significant step forward in the ARF process in the last inter-sessional year."[1]

A Brief Review of Discussions of Preventive Diplomacy

Let me review briefly the development of discussions about PD since 1999. The Council for Security Cooperation in the Asia Pacific (CSCAP) Confidence and Security Building Measures (CSBM) Working Group meeting discussed the concept and principles of PD Feb. 28 – March 2, 1999, and contributed a concept paper to the concurrent ARF-ISG meeting.[2] In the same year, the ARF Ministerial Meeting began to touch upon this topic and encourage further discussions of PD in the region. In early April 2000, another CSCAP CSBM Working Group meeting was held in Singapore to further discuss PD and measure its implementation. Divergent views were expressed by regional countries, which focused mainly on how to understand the relevance of PD and its measures to the Asia Pacific, especially when regional countries were obviously still lacking confidence and trust with

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1. Chairman's Statement of the Eighth ASEAN Regional Forum, Hanoi, Vietnam, July 25, 2001.
2. The concept paper includes a working definition and principles. The definition indicates that PD can play a role in preventing severe disputes and conflicts from arising between states which pose a serious threat to regional peace and stability; preventing such disputes and conflicts from escalating into armed confrontation; and limiting the intensity of violence and humanitarian problems resulting from such conflicts and preventing them from spreading geographically. The principles consists of the following: diplomacy, persuasion, voluntary, noncoercive activity, international law, sovereignty, noninterference, and timeliness.

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regard to many security problems. Singapore drafted a concept paper for the ARF and circulated the paper among all ARF participants. Last year, the ARF ministers adopted three documents regarding PD, the ARF chair's role, and an ARF experts/eminent persons group. In the meantime, various discussions on PD were held in different countries, which naturally added a lot of input to the concept of PD.

The current ARF Concept Paper of PD retains most of the document forwarded by CSCAP in 1999. It indicates that PD is consensual and diplomatic, and suggests that political action taken by sovereign states is done so with the consent of all directly involved parties:

- *to help prevent disputes and conflicts from arising between states that could potentially pose a threat to regional peace and stability;*

- *to help prevent such disputes and conflicts from escalating into armed confrontation; and,*

- *to help minimize the impact of such disputes and conflicts on the region.*

The eight principles of PD are mainly drawn from discussions in CSCAP and assert that PD:

- *is diplomatic;*

- *is non-coercive;*

- *should be timely;*

- *requires trust and confidence;*

- *operates on the basis of consultation and consensus;*

- *is voluntary;*

- *applies to conflicts between and among states; and,*

- *is conducted in accordance with universally recognized basic principles of international law and interstate relations.*

The paper takes a more active approach toward PD by elaborating measures regarding implementation of PD in the future. Four approaches were addressed in 2001: confidence building efforts, norm building, enhancing channels of communication, and the role of the ARF chair.

Relevance of PD Measures to the Asia Pacific

During past ARF discussions of the relationship between CBMs and PD, four overlapping areas were defined: an enhanced role for the ARF chair, a register of

experts/eminent persons (EEPs), annual security outlook reports, and voluntary background briefings on regional security issues. The ARF can proudly boast that remarkable progress has been made. The paper, "The Enhanced Role of ARF Chair" was adopted at the Eighth Meeting of ARF; EEPs were appointed by each participant following the eighth meeting; Defense white papers have been regularly published by most of the ARF participants; and frank and candid discussions and briefings on regional security issues have been underway for quite some time by officials of each state.

How do we proceed from this basis? As these four areas were called the overlapping areas between CBMs and PD, one certainly can understand the progress as the solid foundation of PD. At this juncture, regional countries need to further explore approaches to PD, given the recent changes in the Asia-Pacific security environment.

First, enhance confidence and trust in the Asia Pacific. Our past experiences prove that the region can never achieve peace and tranquility without trust and confidence between nations. Although ARF is itself a confidence building measure by its very existence, its members need to further explore effective ways of building confidence in the region. In the first eight years of the ARF's existence, the regional situation was often interrupted by certain contingencies despite regional countries' efforts to develop a web of CBM measures. While some ARF participants try to push this forum toward the direction of a conflict resolution mechanism, others are troubled by the development of military coalitions in the Asia-Pacific and feel less confident about how to safeguard their own security in the years to come. In this regard, we may need to give serious consideration to other CBMs besides the ones regional countries have adopted since the establishment of the ARF. For example, concerned countries should clarify their purpose and target when they are holding regional military exercises that may exert clear pressure on others' security interests. Countries concerned should also try to work out better understandings with regard to reconnaissance flights along another's border and countermeasures for this kind of activity.

Second, initiate cooperative and constructive discussions of traditional and nontraditional regional security issues. It is important to note that the ARF itself was established with the purpose of attracting regional countries to engage in meaningful discussions on security issues. In this regard, the forum has succeeded in relaxing tensions between nations through dialogue and has enhanced peace and stability. However, while pushing forward dialogues, we should focus on the cooperative and constructive nature of the discussions so as to avoid misperceptions. When a crisis between nations arises, ARF participants should try to act in a timely and cooperative fashion to discuss the problem and work out reconciliation with both parties. In the meantime, ARF members should explore cooperation on issues concerning nontraditional security issues, such as terrorism, transnational crimes, drug trafficking, piracy, and human trafficking.

Third, consistent support for ASEAN as ARF chair. As the ARF was established by ASEAN with the consent of all the major powers in the Asia Pacific, it is natural and understandable for ASEAN members to take the lead and play the chair's role in and between different sessions of the ARF. The past eight years have proven that ASEAN countries can manage this role reasonably well, although one can always find fault with

them on different issues. With the adoption of the "Paper on the Enhanced Role of the ARF Chair," one can be confident that ASEAN members will continue to manage the chair's role in a responsible way. Of course, while consistently supporting ASEAN's role as chair, others certainly expect new initiatives from ASEAN and hope to share some responsibility when the time is right. However, this goal can only be achieved with a consensus among the participants to establish an Asia-Pacific-wide forum. To this end, I do not necessarily object to the idea of a non-ASEAN chair as long as ASEAN is willing to share the responsibility with others and change the nature of the ARF into an Asia-Pacific Regional Forum.

Fourth, explore concrete measures to implement preventive diplomacy. Having mentioned the above measures concerning PD, I believe that the following specific measures are worth considering.

The ARF chair can try to establish closer connections with ARF EEPs to seek timely and constructive advice from them. At this stage, EEPs mainly rely on their home state's resources to provide suggestions to the chair, and workshops for EEPs may be needed to exchange views in due time.

Military officers are an inseparable part of assuring security in the Asia Pacific. Therefore, a sub-group consisting of defense officers should be a proper forum to encourage a security dialogue in the ARF. In the meantime, the ARF should encourage closer cooperation among diplomats, officers, and scholars. At the moment, these three groups of people have been working on certain security issues. Although the issues remain more or less the same, they do not necessarily have the same appreciation of PD due to the different backgrounds and perspectives of the group participants. Training courses for these people would allow them to study and exchange experiences and lessons of PD in other areas, and consider the possibility of applying certain models of PD to Asia.

The ARF should try to exchange information and experiences with other regional institutions so as to make concerted efforts to safeguard peace and stability in the Asia Pacific.

In conclusion, PD is both an opportunity and challenge not only to the ARF, but to all its participants. Therefore, it is necessary to keep in mind that a cautious approach, coupled with CBMs, should be the prerequisite for implementing PD in the Asia Pacific. Preventive Diplomacy should not become a convenient tool to intervene in another country's internal affairs and should not be targeted against any particular country; rather, it must help to provide assurance for security and stability in the region.

Chapter 4

Can International Law Contribute to
Preventive Diplomacy in Southeast Asia?

by Ian Townsend-Gault

Introduction

How can preventative diplomacy be advocated or facilitated in Southeast Asia? My perspective on this topic has been greatly influenced by assisting Ambassador Hashim Djalal of Indonesia in our jointly directed activity "Managing Potential Conflicts in the South China Sea."[1] This initiative is informal, track-two preventive diplomacy (PD), involving all the countries of what might loosely be termed the "South China Sea region," in a search for opportunities for the promotion of maritime cooperation between them. The initiative has examined possible avenues for joint activities over a wide range of ocean-related areas and activities, including marine scientific research, the protection of the marine environment, navigation and communications, living and non-living resource management, and others.

The lessons learned have been extremely practical, but I think that some general conclusions can be drawn from them in such a way as to contribute to the literature and dialogue relating to PD. I am by training an international lawyer, and so in what follows, I want to suggest ways in which trust and confidence can be advanced by considering the possible role of international law and its contribution to preventive diplomacy. I will do this by way of four main points, and then advance a number of conclusions, including a consideration of the pros and cons of using international law. Before addressing the first point, some general marks about the South China Sea initiative are perhaps in order.

Summary of the Managing Potential Conflicts Project

From the outset, it was Dr. Djalal who was convinced of a possible role for preventive diplomacy in the South China Sea. As law of the sea experts and those who deal with ocean affairs will be only too aware, Ambassador Djalal was one of the architects of the 1982 *United Nations Convention on the Law of the Sea*[2], and played a crucial role in the establishment of the International Seabed Authority in Kingston, Jamaica, as well as the elections for the first bench of judges of the International Tribunal for the Law of the Sea. A

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1. Hasjim Djalal and Ian Townsend-Gault, "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention," in Crocker, Hampson and Aall, eds., *Herding Cats: Multiparty Mediation in a Complex World*, Washington, D.C., United States Institute of Peace Press, 1999, pp. 107-134.
2. United Nations Convention on the Law of the Sea, Montego Bay, Dec. 10, 1982, in force Nov. 16, 1994, in UN Doc. A/CONF.62/122.

professional diplomat of many years standing, respected in the region and around the world, Dr. Djalal had the experience and authority so that, when he suggested that preventive diplomacy be given a try, the governments of the region listened and agreed. My role, at least at first, was to flesh out his original idea, and obtain funding for the initiative, which was provided for more than a decade by the government of Canada.

Dr. Djalal and I had slightly different but totally complimentary aims. His was to use the workshop process as a means of building confidence between the parties. This was an absolute necessity, because in 1989 when we started, contact between some of the governments of the South China Sea region were either nebulous or nonexistent. Vietnam was slowly emerging from a long period of isolation, and Cambodia and Laos were further behind in this regard. The then six members of ASEAN did not regard the countries of Indo-China as fully part of the region. This changed with a rapidity that startled many observers, but when the project began, it can not be said that we were building on an established network of connections at the political and professional levels among the jurisdictions of the region.

The basic thrust of our initiative was not to introduce new ideas and concepts to an unwilling region, but rather to point to the fact that various approaches and strategies had been agreed by the relevant authorities, this agreement being signified by the ratification or acceptance of relevant legal instruments. As the 1990s wore on, and more countries ratified, and the two conventions entered into force, it was easier to make this point: you have accepted the obligations, including obligations to cooperate, now let us see how such obligations can be implemented in the South China Sea.

In abstract terms, this goal is unobjectionable. But it was pursued in the context of an increasingly acrimonious dispute concerning sovereignty over the islands in the southern part of the South China Sea, usually referred to collectively as the Spratly Islands, and ocean space around them. A great deal of high-voltage rhetoric had been expended on the issue, and experts in the littoral states had been busy for some time publishing articles explaining why their respective country's claim to these islands was irrefutable and beyond doubt. In other words, the dispute had led to a degree of acrimony among the parties, and this was fuelled by the fact that the relevant facts were sometimes obscured – deliberately so, on occasion – as the parties made their respective points. The first task, therefore, was to separate fact from fiction.

"Clearing the Undergrowth"-Establishing Facts and Banishing Myths

Until quite recently, many commentators assured their readers or listeners that the South China Sea dispute was "about" oil – the vast resources of hydrocarbons that are supposed to lie in the subsoil of the central part of the South China Sea, and particularly in the vicinity of the Spratly Islands. The story of the "oil rich Spratlys" has been repeated so many times that its veracity is simply assumed. It comes as a great surprise, therefore, when people are told that there are no independent verifiable data on the prospective nature of petroleum operations in the southern part of the South China Sea, apart from coastal areas off the coast of Vietnam, Indonesia, Malaysia, Brunei, and the Philippines. But these are not areas which are, in any sense, adjacent to the Spratly Islands.

If the South China Sea were indeed rich in hydrocarbons, if it were the marine equivalent of the Caspian, or indeed another Arabian Gulf, one would of course have to factor that into any calculations concerning a possible role for preventive diplomacy. But where national positions are founded on the basis of myth, as opposed to the reality, the first task for those wishing to promote diplomacy is to destroy the myths, and try to persuade the parties to focus on what is actually is at stake. In the South China Sea, there is plenty of hard and fast evidence to suggest what the real stakes might be. Approximately 500 million people live in the coastal zone of the South China Sea, and they depend upon it for between 75 percent to 85 percent of their daily protein needs. A serious collapse in the South China Sea fishery, or a rapid deterioration in marine environmental quality, would have the most horrendous consequences in humanitarian, social political and economic terms.

Awareness of Rights and Obligations

In his remarks at the beginning of the Hanoi PD workshop, Ambassador George Ward made reference to importance of knowing what is "inside or outside the box." What is available to the parties, and what is not? From my perspective, that question is asked with respect to international law. Does international law have anything to say on the subject at hand? Is that "something" reasonably clear and authoritative, meaning, more or less universally accepted? And will the parties concerned use international law as one of the means at their disposal for conflict prevention and promoting dispute resolution?

International law is only one of the mechanisms available to states in establishing and governing their relations with each other. But over the last half century, the scope of international law has expanded to a degree which few could have foreseen in the years before World War II. The proliferation of multilateral "law making" treaties, regional arrangements, sub-regional agreements, bilateral treaties, the development of the rules of customary international law and the jurisprudence of the International Court of Justice and other international tribunals have contributed to the development of a substantial body of norms. Some rules or regimes are extremely detailed, others much less so. However, basic concepts as to how states should deal with one another, as well as principles of the international responsibility of states, are becoming settled. The main contributor to the former is of the course the *Charter of the United Nations*, amplified by instruments such as the *Declaration On Friendly Relations Between States*.[3] In the field of state responsibility, the International Law Commission continues to refine its Draft Articles on this topic[4], many of which represent customary international law and are rules of long-standing duration.

By in large, the Council for Security Cooperation in the Asia Pacific (CSCAP) countries are continuing to place an increased emphasis on the rule of law not only as a means for ordering their domestic legal systems, but also in their dealings with each other. This process has been going on for many years in some regions, as witnessed in the 1923

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3. Declaration On Principles Of International Law Concerning Friendly Relations And Co-operation Among States In Accordance With The Charter Of The United Nations, Adopted by the U.N. General Assembly, Oct. 24, 1970. G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No.28, at 121, U.N. Doc. A/8028 (1971); reprinted in 9 I.L.M. 1292 (1970).
4. Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted at the 53rd Meeting of the International Law Commission.

Convention on the Rights and Duties of States drafted under the auspices of the Organization of American States. In Southeast Asia, the declarations and treaties that form the core of the principles of ASEAN are clearly based on the *Charter of the United Nations* and include specific obligations between member states, *inter alia*, to foreswear the use of force in their dealings with each other and to promote peaceful resolution of disputes and cooperation.[5]

There is a common law dictum to the effect that "ignorance of the law is no excuse." But ignorance of the law can come in many forms, not least of which is where states are simply unaware of their rights as well as obligations. In my work with countries inside and outside the CSCAP region, cases have been encountered where:

- *A state has regarded the refusal of a neighboring state to begin negotiations on a maritime boundary as being something within the right of that other state, unaware of the fact that such a refusal runs contrary to general principles of good faith and neighborliness, not to mention Articles 74 and 83 of the United Nations Convention on the Law of the Sea of 1982, to which both are parties.*

- *Lack of awareness of what is meant by the obligation to negotiate "in good faith."*

- *Lack of awareness of basic concepts of law that limit the unilateral exercise of state rights, e.g. the dictum that one cannot exercise one's rights in such a way as to detract from the rights of others.*

Coupled with this is a lack of finesse in the use of international instruments, and a lack of understanding of their substantive content, and an understanding as to how they may, or may not, be interpreted.

The Use and Abuse of International Law

The point immediately above brings the discussion to a problematic topic that might best be summarized: "how to use and avoid abusing international law." The provisions of the *Vienna Convention on the Law of Treaties* of 1969 (broadly taken to represent current international law regarding written agreements between states) suggests that, when a country becomes a full party to an international legal instrument, it is entitled to all the rights and must perform all the obligations specified therein. If the treaty requires implementation in domestic law, then the state is under an international obligation to its fellow state parties to do precisely that - take the necessary domestic measures to ensure implementation. It is trite to say that the implementation of many multilateral agreements is in a somewhat sorry state, and the Law of the Sea Convention itself provides a ready example. A glance at the roster of states party to the agreement suggests an overwhelming vote of approval on the part of the international community. Even a cursory analysis of the extent to which the convention is being implemented in total by these same states shows a rather different picture. This is because implementation of many multilateral instruments places extraordinary demands on

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5. See, for example, *Treaty of Amity and Cooperation in Southeast Asia*, Denpasar, Bali, Feb. 24, 1976, Articles 2(d) and (f), as well as Chapter III – Co-operation, and Chapter IV – Pacific Settlement of Disputes.

the human, technological and financial capacity of a number of states. But rather than determine that such countries should withhold ratification until they are in a position to implement fully, the international community seems to be willing to allow countries to ratify first and implement later, as and when circumstances permit.

This approach can not be taken with all treaties. It is inconceivable, for instance, that member states of the World Trade Organization (WTO) will permit new members to derogate from the obligations contained in the agreements pertaining thereto. Similarly the existing states of the European Union may be lenient in terms of timing, but made it clear that they would insist on the full implementation of all aspects of the EU law on the part of new members. For organizations like the WTO and the EU, first- and second-class membership is simply not acceptable.[6]

Discussions to which I have been party among international lawyers in some CSCAP countries show a worrying divergence of approach to treaty interpretation and application. A favorite example is the question of hydrographic surveying in a foreign exclusive economic zone (EEZ). Can the coastal state control hydrographic surveying by foreign entities within its EEZ? Within the territorial sea, the 1982 Convention is explicit – such rights are wholly vested in the coastal state. Marine scientific research is similarly subject to the jurisdiction of the coastal state within the EEZ, but the treaty says nothing about hydrographic surveying within this area. From this, one must conclude that the Law of the Sea Convention has nothing whatever to say about hydrographic surveying inside the EEZ. The pre-Convention position was that such surveying was lawful, and the Convention has done nothing to disturb this. Thus, unless a rule of customary international law arises, it is open to any entity to conduct hydrographic surveying in any part of the seabed beyond the limits of the territorial sea. There are limits to this right – hydrographic surveyors cannot undertake marine scientific research, nor engage in the exploration for natural resources. Those who argue in favor of a rule stipulating coastal state jurisdiction over hydrographic surveying hold that the right may be abused by those who are clandestinely conducting research or exploration for resources. There is nothing to stop the coastal state from taking action to ensure that its rights are not violated, but the mere fact that they might be is scarcely reason for reading into the Convention something which its drafters did not see fit to include.

The modern law of the sea furnishes other examples of the problem. Article 121 of the Law of the Sea Convention stipulates that an island must be:

- *an area of land, and*

- *naturally formed, and*

- *surrounded by water, and*

- *above water at high tide.*

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6. It is for this reason that the member states of the EU will not admit new members until they have demonstrated the capacity to implement the full range of European law: that derived from the treaties, as well as regulations and directives, and that they have a governmental and judicial system capable of administering and adjudicating European legal issues.

It follows that any feature that does not meet all four criteria is not an "island" for the purposes of the Law of the Sea Convention and states party to it. This has not prevented some from maintaining that, if the state were to permit construction on a reef so that the resulting feature breaks water at high tide, this is sufficient to "convert" the feature into an island, and thereby allowing it to generate the usual zones of maritime jurisdiction. This is quite clearly contrary to the purpose and intent of the Convention which stipulates, first, that the feature be land, and second, that it be naturally formed. There are those who consider that such debates have more to do with creative interpretation of international law. I think that they have more to do with the lack of understanding of how to interpret international instruments.[7]

The last point to be made here is that international law is dynamic and not a static body of rules. While stability is desirable, inflexibility is not. The Law of the Sea Convention of 1982 set out to codify and develop the rules of the law of the sea, and to a very great extent it did precisely that. But it did not cover everything. The conference debated and then rejected the notion of "mid-ocean archipelagoes." Can they prevent the development of a rule of customary international law on this subject? If such a rule was to contravene the purpose and intent of the convention, then state parties should not promote it. But if it does not, then hands of parties and nonparties alike are completely free. As treaties have proliferated to an extraordinary extent some believe that they cover virtually everything. This is not the case.

Perhaps one of the most dynamic, if not dramatic, examples of changes in modern international law concerns the question of what constitutes a matter that is wholly within the domestic jurisdiction of a state. For some countries, the threshold of domestic inviolability is high; for others, it is becoming lower. In today's increasingly globalized and interconnected world, countries and their citizens know more about the rest of the world than ever before (assuming they choose to avail themselves of this information). It seems impossible today for one country to argue that it has a free hand with respect to, say, the diversion of an international river, or the use of the waters of a lake connected to such a feature. At any given time, a country may be operating wholly within the area of its sovereign jurisdiction. But if there are adverse consequences, and if these consequences are transnational, then the international responsibility of the state in question might be an issue. To say that an individual or a state is limited in the use of its rights by the extent such use impacts negatively on the exercise of the rights of others is a general principle of law, but one the application of which is becoming more readily understood and appreciated. In areas such as international environmental law, the "domestic jurisdiction" threshold appears to be coming down all the time. In areas such as human rights, it remains as high as ever for some countries, but much lower for others.

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7. Article 31(1) of the Vienna Convention on the Law of Treaties states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." This suggests that elaborate textual gymnastics are to be avoided when interpreting a treaty.

Appreciating the Position of the Other Side

International law obliges states party to disputes to negotiate in good faith to seek a just and equitable resolution. But this can not mean that each and every negotiation must be based four-square on the position of each of the parties. Some countries, either by ignorance or design, come to the table with positions that are patently insupportable as international law. And it can happen that countries can come to the table with incompatible positions both based on international law where the development of the law was less than clear. One of the best examples of the former is a claim propounded by Cambodia concerning maritime jurisdiction of the Gulf of Thailand, which takes as its northern point of departure the point where the Cambodia-Thailand boundary meets the Gulf of Thailand, and proceeds due west, through the Thai island of Ko Kut. It is difficult to see how such a claim could be supported at international law. As an example of the latter, Canada and the United States submitted their maritime boundary dispute in the Gulf of Maine to the International Court of Justice in 1982, each country maintaining a claim based on radically different principles of international law as developed by state practice, and the international court and tribunals of arbitration. The difference between the two states was not one of degree – the two claims were posited on radically different legal principles.

It is also possible, of course, that the position of the other side is based on considerations other than law, or where law is only one of the applicable factors. Cambodia's sizable claim to maritime jurisdiction in the Gulf of Thailand, which was equally problematic for Vietnam, was justified by government officials on the grounds that Cambodia is an extremely poor country, and one with a tragic history. It is of course open to its neighbors to take this into account in negotiating with Cambodia, and it may be that the strict application of international law may be felt to be inappropriate. There are many examples in international practice where states have taken non-legal issues into account. This appears to have been a factor in persuading Japan to enter into an offshore petroleum joint development agreement with South Korea in 1976.[8] The need to bolster good relations and repair the damage done by Japan's prewar and wartime occupation of Korea appears to have been a factor in persuading that country's government and legislature to consent to the arrangement. Similarly, an otherwise insignificant joint development between Spain and France in the Bay of Biscay appears to have been motivated by the desire on the part of France to begin to build relations with Spain following the death of the dictator Franco, and to assist Spanish transition to democracy, and membership in the European Union.[9]

Preventive Diplomacy at Work-Managing Potential Conflicts in the South China Sea

The workshop process is an exercise in track-two preventive diplomacy. Briefly, the initiative provides a forum for all the countries in the South China Sea region to meet to discuss not sovereignty over the Spratly and other islands in dispute between them, but

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8. Agreement between Japan and the Republic of Korea Concerning the Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, Seoul, Feb. 5, 1974.
9. Convention between the Government of the French Republic and of the Spanish State on the delimitation of the continental shelves of the two states in the Bay of Biscay, Paris, Jan. 29, 1974, in force Dec. 12, 1975,

cooperation: first, as a means of building confidence, and second to encourage the countries to work together in areas where such cooperation is functionally and legally required. The areas for cooperation that have been discussed include environmental protection (including the protection of fish habitat), environmental monitoring, search and rescue at sea, the interdiction of illegal acts at sea, the compilation of a database of nonhydrocarbon minerals, the promotion of zones of cooperation, and others. The workshop process has close connections with track-one and inter-state discussions (for instance, work done by the Technical Working Group on Legal Matters was taken up by government officials in the region in their attempt to formulate a regional code of conduct). The fact that the code has not yet materialized hardly calls into question the value the work of the initiative in laying the foundation for a suggestion that was under serious consideration by the relevant governments. And the stumbling blocks to the code appear to have been matters that went well beyond the remit of the workshop process, e.g. references to the Paracel Islands.

It should be emphasized that the workshop process is not designed to resolve sovereignty disputes over the Spratly and other islands. Even placing such items on the agenda would be pointless – participants would either not come, or if they did, they would simply repeat positions that are well known to all, and are entrenched to the point of inflexibility as it is.

The workshop process is some 12 years old, and it has been credited with bringing about greater understanding between not just the countries concerned, but also their experts and officials. This is a process that might be termed reverse demonization – realizing that all parties have more or less the same items on their respective agendas, and are able to hold and maintain their positions with equal passion and tenacity. So far as those responsible for the workshop process were concerned, the fact that countries permitted senior officials to attend – in their personal capacities – suggests that the initiative is being taken seriously. One could also point to the way in which different positions were maintained and argued at the meetings. If the process did not matter, it is difficult to see why senior officials would be permitted to attend, or why positions would be defended with such vigor. Assuming, then, that this is an example of preventive diplomacy that is making a contribution, what lessons can be learned from it?

Getting Everyone around the Table. The first workshop was convened in January 1990. Individuals from the (then six) ASEAN countries alone were invited to attend: this was very much a trial run, and it was thought that, if the meeting ended in failure between these six allies, then there would be little point in trying to extend the process to China, Vietnam, etc. The second workshop in 1991 included participants from China including Taiwan, Vietnam, and Laos. The situation in Cambodia at the time was such that it was thought that it was best to wait until after the UN-sponsored elections before inviting participation. But even at the second workshop, it is noteworthy that there was participation from Taipei (to which Beijing agreed readily) and land-locked Laos. When Cambodian participants were included, the process could genuinely claim to be representative of the South China Sea region as a whole.

Considering An Appropriate Role for Outsiders. Canadians, such as me, were involved in the workshop process from its inception for a number of reasons. First, some of

us played a role in establishing the process *ab initio*. Second, core funding for the initiative was provided by the government of Canada from 1989-2001. This was a role not all outside countries could have played. First, Canada has a significant track record in cooperation in ocean and maritime affairs with East and Southeast Asian countries. As a senior Malaysian scholar put it when the workshop process was getting underway, it was no surprise to find that Canada was involved. Second, as well as providing expertise (or so I sincerely hope), Canada is broadly perceived as neutral in regional affairs. It does not have a significant naval presence in the Asia Pacific, nor has it been a colonial power. Such factors would have ruled out the involvement of the United States, Australia, and Russia in helping to develop the workshop process in its early days.

Measuring Progress. After the third workshop in 1992, a member of the media approached me to ask if we had now "resolved" the Spratly dispute, and everyone could go home happy. It was explained that such disputes are not capable of resolution overnight, and that progress in a dispute where the parties have very publicly declared their totally divergent and diametrically opposed views on sovereignty and jurisdiction, fueled by limitless rhetoric, is not going to be easy. Progress is not to be measured by yardsticks provided by the popular media, but rather the international diplomatic community.[10] Workshop participants have always understood this, although some have wished that the pace of deliberations be accelerated, and others quite clearly did not. Having said this, the measure of progress in an international issue must be that commonly used in international practice.

Preventative Diplomacy as a Talking Shop. It has been said that the workshop process is in danger of becoming, or even has become, a "talking shop." A senior North American diplomat once observed that he could not understand why anyone would think that merely enabling countries to talk about an issue of such sensitivity and complexity should be regarded as some sort of "put down." Here again, the appropriate measure of success or progress is not that of an academic conference, but the world of international relations and international practice. In international terms, the situation in the South China Sea is a potentially serious threat to regional peace and stability. Progress in such an environment will never be instantaneous, but it must be recognized and acknowledged when it does occur. Thus, so far as the workshop process is concerned, it is necessary to sift through the verbiage and attempt to identify benchmarks that indicate where regional consensus advanced on a particular issues.

Going to Court. The international law textbooks tell us that when diplomacy of one sort or another has failed, states can have recourse to arbitration or judicial settlement. Is this an option in the South China Sea? I do not believe so. First, the International Court of Justice is precisely what it says it is – a court. The statute of the court directs the judges to apply international law, although it can decide a case on equitable grounds if the parties so desire.[11] Assuming the countries do not desire an equitable settlement, but one based on international law, the problem in the South China Sea is that the law has not been developed

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10. Nor funding agencies, and their quick results. I have attended more than one meeting where diplomats have had to urge a somewhat longer time horizon on their colleagues from the foreign aid sector as regards the workshop process.
11. Statute of the International Court of Justice, Article 38.

overmuch as regards sovereignty over uninhabitable islands because such cases do not arise very often. When they do, issues such as evidence of possession or use arise. This brings us to the historical record, and even the most cursory glance at the literature on the competing claims over the South China Sea islands suggests that the record is a tortuous one. How is a group of judges to sift through all this? How is a group of arbitrators to sift through all this? The Vietnamese record conflicts with the Chinese record which conflicts with the Filipino record which conflicts with the Malaysian record, so which is to be preferred, and why?

There is also the inevitability that, if cases, are submitted to a court on an island-by-island basis, there will be a winner in each case, and there will be at least two, possibly three losers. How many times will a country lose before domestic pressures force it to withdraw from the process? This is not to say that arbitration and judicial settlement do not have a role. They do, but the ultimate question of sovereignty is perhaps not the one to be submitted to such processes. Rather, a court might be asked to determine the appropriate interpretation of Article 121(1) of the Law of the Sea Convention, or even paragraph (3) of Article 121, which holds that "rocks" which can not sustain a human population or economic life of their own shall not be entitled to an exclusive economic zone or continental shelf. What is an "rock"? What does it mean "can not sustain human habitation" or "an economic life of their own"? These are questions that could well be submitted to a court or tribunal for interpretation and amplification in the light of state practice in these matters.

Conclusions

The South China Sea Workshop Process provides a forum whereby the different strategies in preventive diplomacy can be deployed. These include the discussion forum, the means whereby ideas generated among the parties of dispute can be floated without prejudice to national positions, the means whereby ideas from outside the region can be introduced in a non-threatening manner, and the means whereby the individuals concerned in foreign ministries, armed forces, research institutes, universities, and the media, can possibly get to know each other as men and women. Underlying the workshop process, however, is the fact that, Cambodia and Thailand apart, all states concerned are party to the Law of the Sea Convention of 1982. Cambodia and Thailand have indicated that they have no quarrel with the Convention, and intend to ratify it. The Convention, as well as the general and specific rules of international law, provides a solid foundation upon which initiatives and preventive diplomacy such as the workshop process can rest firmly. The Convention repeats and amplifies rules on exclusive right and use that have formed the basis of the Law of the Sea for centuries. But it also introduced new concepts, such as the exclusive economic zone itself, qualifying the "exclusive" nature of some the rights by requirements to cooperate with maritime neighbors, or other countries in the same maritime region.[12]

These requirements on cooperation – which can take many and various forms – are proving problematic in some parts of the world. They seem to run contrary to the established notion that a state is free to act within its maritime boundaries more or less as it

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12. This is the case especially where the countries border on enclosed or semi-enclosed sea – see Article 123 of the Convention.

pleased, provided it did not inflict obvious harm on a neighbor. In the South China Sea context, the problem is exacerbated by the jurisdictional dispute and the extremist rhetoric it has generated in support of national positions. It seems to me that this is precisely where preventive diplomacy − track-one, but preferably track-two – has an essential role to play. Countries need help in understanding their rights and obligations, and how to interpret them and how to apply them. They also require assistance in understanding the positions of others. So far as the South China Sea is concerned, the international law of the sea serves as a workable foundation for dealing with these issues; a foundation, moreover, freely accepted by the majority of the states concerned.

Much has been made in this paper of the increasing reach of modern international law. Even in areas where the rules are not yet explicit, such as aspects in the regulation of the Internet, basic principles of international law can be adapted and applied to meet new situations. It is difficult to believe that the same reliance on fundamental norms can not be applied in other areas where preventive diplomacy initiatives are undertaken.

Appendix A

CSCAP Preventive Diplomacy Statement:
Definition and Principles

Countries of the Asia Pacific region, committed to the idea of cooperative security, seek to promote Preventive Diplomacy. The conduct of Preventive Diplomacy should fully respect the principles of sovereign equality, political independence of States, territorial integrity, and non-interference in matters which are essentially within the domestic jurisdiction of any State.

Working Definition

As a general rule, Preventive Diplomacy is consensual diplomatic and political action with the aim of:

- *preventing severe disputes and conflicts from arising between States which pose a serious threat to regional peace and stability;*
- *preventing such disputes and conflicts from escalating into armed confrontation; and,*
- *limiting the intensity of violence and humanitarian problems resulting from such conflicts and preventing them from spreading geographically.*

Principles of Preventive Diplomacy

The key principles of Preventive Diplomacy are as follows:

- *It is about <u>diplomacy</u>. It relies upon diplomatic and peaceful methods such as quiet diplomacy, persuasion, negotiation, enquiry, mediation, and conciliation.*

- *It is <u>voluntary</u>. Preventive Diplomacy practices are to be employed only at the request of the parties directly involved in the dispute or with their consent.*

- *It is <u>non-coercive activity</u>. Acts that require military action or the use of force, or other coercive practices, such as sanctions, are outside the scope of Preventive Diplomacy.*

- *It requires <u>trust and confidence</u>. The facilitator or mediator in the dispute must be seen as trustworthy and as an impartial honest broker by all involved parties.*

- *It rests upon <u>international law</u>. Any action should be in accordance with the basic principles of international law.*

- *It is based on respect for <u>sovereignty</u> and <u>non-interference</u> in the internal affairs of a State. This includes the principles of sovereign equality and territorial integrity.*

- *It requires <u>timeliness</u>. Action is to be preventive, rather than curative. Preventive Diplomacy methods are most effectively employed at an early stage of a dispute or crisis.*

Prepared by the Council for Security Cooperation in the Asia Pacific (CSCAP) International Working Group on Confidence and Security Building Measures.

March 1, 1999, Bangkok, Thailand.

Appendix B

ASEAN REGIONAL FORUM (ARF)
Concept and Principles of Preventive Diplomacy

Introduction

1. The ASEAN Regional Forum (ARF) was established by ASEAN in 1994 to maintain peace and stability in the region and to promote regional development and prosperity. It was recognized that rapid development in the regional and global environment had impacted on the security and strategic concerns of countries in the region. It was also acknowledged that the region was remarkably diverse, and that there remained challenges to regional peace and prosperity.

2. The ARF sought to meet these challenges by putting into place a three-stage process – Stage 1 on promotion of Confidence Building Measures, Stage 2 on development of Preventive Diplomacy, and Stage 3 on Elaboration of Approaches to Conflicts. It was generally recognized that the ARF would have to establish "itself, over time, as a meaningful forum to enhance the peace and prosperity of the region. To do so, the ARF process would have to adopt a gradual evolutionary approach, decision-making by consensus and move" at a pace comfortable to all its members in order to achieve its long-term objectives. Discussions should be aimed at enhancing mutual understanding and trust among the Asia Pacific countries, furthering their dialogue and cooperation, and promoting peace, stability and prosperity in the region.

3. Much progress has been made over the past six years, a relative short time in the life of regional organisations. Constant interaction among Ministers and senior officials of the ARF members, and confidence building measures that have been initiated, have helped to build up comfort levels. This has allowed for discussions among ARF members to be candid and frank, thereby encouraging greater transparency, mutual trust and understanding of each others concerns and positions. It was stressed that the confidence building would continue to be the main thrust of the whole ARF process, since it is impossible to move the ARF forward without a high degree of mutual understanding and trust among ARF participants.

4. Hence, at the 4th ARF, the Ministers instructed the ARF Inter-sessional Support Group on Confidence Building Measures (ISG on CBMs) to identify areas in the overlap between CBMs and Preventive Diplomacy, and ways and means of addressing them while maintaining the focus on CBMs. In addressing the issue of overlap, a common understanding on a working concept of Preventive Diplomacy (PD) and the principles governing its practice is necessary to provide a common basis on which to explore this overlap and to enhance confidence in the process. Pursuant to this, the Ministers at the 6th ARF in Singapore instructed the ISG on CBMs to further explore the overlap between CBMs and PD, focusing inter alia on the development of the concepts and principles of PD.

Definition, Concept, and Principles of PD by the ARF

5. Agreement on the definition and, more importantly, a common understanding of the concept of PD and the principles governing the practice of PD, would be useful for further progress on the development of PD within the ARF. The definition of PD by the ARF sets out very broad objectives, and the concept would serve as a guide as to the approach to take, while the principles would serve as a guide as to fundamental parameters for the practice of PD in the ARF.

6. The definition, concept and principles of PD as agreed by ARF members are not legal obligations. They are shared perspectives that would apply only to the ARF and should be understood as representing the current status of an evolving consensus in the ARF as discussions continue. These discussions should be aimed at enhancing mutual understanding and trust among ARF members, take into account the actual conditions of the region and be consistent with basic principles of international law and established ARF processes.

Definition of PD

7. The definition of PD has proven to be controversial. However, there appears to be general consensus that PD is consensual diplomatic and political action taken by sovereign states with the consent of all directly involved parties:

- *to help prevent disputes and conflicts from arising between States that could potentially pose a threat to regional peace and stability:*

- *to help prevent such disputes and conflicts from escalating into armed confrontation; and,*

- *to help minimize the impact of such disputes and conflicts on the region.*

Concept of PD

8. Much academic work has been done within this broad definition of PD, and various concepts have been suggested. We can view PD along a time-line in keeping with the objectives; to prevent disputes/conflicts between states from emerging, to prevent such disputes/conflicts from escalating into armed confrontation, and to prevent such disputes and conflicts from spreading. Some measures could be taken even before a crisis has actually arisen.

9. PD measures could include the following:

a. *Confidence Building Efforts* i.e. efforts to build mutual trust and confidence between states. The successful application of PD has to be built upon continuous efforts to maintain and enhance trust and confidence. Without a high degree of trust among ARF participants, it is unlikely that PD in the later stages of any conflict can be carried out. While the ARF has succeeded in fostering dialogue among ARF members over the past

few years, it is now time to look into strengthening the habit of cooperation. Cooperation among ARF members can preempt disputes as well as prevent disputes from developing into conflicts by enhancing trust and understanding.

b. *Norms-building* i.e. nurturing of accepted codes or norms of behaviour guiding the relationships among states in the Asia Pacific region. To the extent that the codes enhance predictability and strengthen cooperative behaviour in ensuring regional peace, norms building enhances trust between and among states in the region. The ARF could consider measures in this area, such as developing a code of conduct governing relations among ARF members which is consistent with existing codes such as the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the UN Charter.

c. *Enhancing Channels of Communication* open, easy and direct communications or channels among ARF participants which serve to promote transparency with a view to avoid misperception or misunderstanding. Such channels would advance information-sharing, provide early warning and facilitate dialogue.

d. *Role of the ARF Chair* The ARF Chair could play a role as determined by ARF members.

10. At the onset of a crisis, further measures could be considered as appropriate. The ARF should continue to consider possible further measures with a view to reaching consensus on them.

Principles of PD

11. Principles to guide the practice of PD are necessary to increase understanding of the scope and mechanisms of PD and to provide consistency and reasonable expectations of the process. In formulating and applying these principles, it would be useful to draw on the approach that has contributed to ASEAN's success and resilience. This includes the non-use of force in inter-state relations, the peaceful settlement of disputes, non-interference in the internal affairs of members, pragmatism, flexibility and consensus, consultation accommodation.

12. The following are eight key principles of PD, drawn mainly from discussions in CSCAP:

- *It is about diplomacy. It relies on diplomatic and peaceful methods such as diplomacy, negotiation, enquiry, mediation, and conciliation.*

- *It is non-coercive. Military action or the use of force are not part of PD.*

- *It should be timely. Action is to be preventive, rather than curative. PD methods are most effectively employed at an early stage of a dispute or crisis.*

- *It requires trust and confidence. PD can only be exercised successfully where there is a strong foundation of trust and confidence among the parties involved and when it is*

conducted on the basis of neutrality, justice, and impartiality.

- *It operates on the basis of consultation and consensus. Any PD effort can only be carried out through consensus after careful and extensive consultation among ARF members, with due consideration for the need for timeliness.*

- *It is voluntary, PD practices are to be employed only at the request of all the parties directly involved in the dispute and with their clear consent.*

- *It applies to conflicts between and among States.*

- *It is conducted in accordance with universally recognised basic principles of international law and inter-state relations embodied, inter alia, in the UN Charter the Five Principles of Peaceful Co-existence and the TAC. These include respect for sovereign equality, territorial integrity, and non-interference in the internal affairs of a State.*

Conclusion

13. The ARF's process should progress at a pace comfortable to all members on the basis of consensus. A step-by-step approach is needed to ensure consensual progress in order to secure the maintenance and continuing enhancement of commitment of all participants in the ARF process. We should seek to proceed with the possible while keeping an eye on what can be done in the longer term. For the ARF to further develop, it is important to achieve a common understanding and consensus on the concept, definition and principles of PD.

Appendix C

First CSCAP Workshop on Preventive Diplomacy
28 February-2 March, 1999, Bangkok, Thailand

<u>**Chairmen's Summary**</u>

The Council for Security Cooperation in the Asia Pacific (CSCAP), in cooperation with the United States Institute of Peace (USIP), conducted a Workshop on Preventive Diplomacy from 28 February to 2 March 1999 in Bangkok, Thailand. The Workshop was conducted under the auspices of CSCAP's International Working Group on Confidence and Security Building Measures (CSBMs). The Workshop was conducted immediately prior to the ASEAN Regional Forum (ARF) Inter-sessional Support Group (ISG) meeting on Confidence Building Measures. All ISG participants were invited and encouraged, in their private capacities, to attend the CSCAP Workshop. All told, about 80 individuals participated in all or part of the Workshop, including representatives from 15 of CSCAP's 18 member/associate member committees and 19 of the ARF's 22 members.

The two and one-half day Workshop included a review of past analysis and recommendations regarding the ASEAN Regional Forum's development of Preventive Diplomacy mechanisms (as called for in the 1995 ARF Concept Paper) as well as discussions on creating a Statement of Principles of Preventive Diplomacy to better define the parameters and limits of the process in the Asia Pacific context. Also included were case studies examining previous examples of preventive diplomacy both from within and beyond the region and a USIP-conducted simulation exercise aimed at providing hands-on experience in how the process works.

What follows are general impressions of the Workshop chairmen. This summary is neither intended nor designed to be a consensus statement of participant views. Incorporated below is a general statement of 'Preventive Diplomacy: Definition and Principles' which was generally endorsed by Workshop participants as a useful vehicle for promoting greater understanding of the process within the Asia Pacific context. This statement will be offered to the impending ARF ISG on Confidence Building Measures for its consideration. A copy of this Chairmen's Summary will also be provided for informational purposes.

Definition and Principles

The Workshop reviewed and debated numerous definitions of Preventive Diplomacy, both as a general concept and with respect to its potential application in an Asia Pacific setting. Workshop participants generally agreed that it was important not to be held captive to overly-specific definitions but that a basic agreed-upon general definition would be useful in helping to move the process forward. The following definition was offered and broadly endorsed as a useful working definition:

As a general rule, Preventive Diplomacy is consensual diplomatic and political action with the aim of:

- *preventing severe disputes and conflicts from arising between States which pose a serious threat to regional peace and stability;*

- *preventing such disputes and conflicts from escalating into armed confrontation; and,*

- *limiting the intensity of violence and humanitarian problems resulting from such conflicts and preventing them from spreading geographically.*

As the attached Statement for the ARF indicates, Workshop participants also outlined the following general Principles of Preventive Diplomacy:

- *It is about diplomacy. It relies upon diplomatic and peaceful methods such as persuasion, negotiation, enquiry, mediation, and conciliation.*

- *It is voluntary. Preventive Diplomacy practices are to be employed only at the request of the parties or with their consent.*

- *It is non-coercive activity. Acts that require military action or the use of force, or other coercive practices, such as sanctions, are outside the scope of Preventive Diplomacy.*

- *It requires trust and confidence. The facilitator or mediator in the dispute must be seen as trustworthy and as an impartial honest broker by all involved parties.*

- *It rests upon international law. Any action should be in accordance with the basic principles of international law.*

- *It is based on respect for sovereignty and non-interference in the internal affairs of a State. This includes the principles of sovereign equality and territorial integrity.*

- *It requires timeliness. Action is to be preventive, rather than curative. Preventive Diplomacy methods are most effectively employed at an early stage of a dispute or crisis.*

Summary of Discussions

The role of non-governmental organizations (NGOs) as actors in Preventive Diplomacy was also discussed. While the Indonesian-hosted series of Workshops on the South China Sea was pointed to as one important and generally successful non-governmental Preventive Diplomacy initiative, some cautioned that diplomacy was traditionally and more appropriately practiced between states. Concerns were also expressed about the neutrality of some NGOs and, as a general rule, it was observed that preventive diplomacy was most likely to succeed if all parties viewed the mediator or facilitator as neutral and trustworthy.

Participants also recognized that there is some overlap between Preventive Diplomacy and Confidence Building Measures (CBMs), especially as when dealing with efforts to prevent disputes from arising.

This overlap was generally accepted as natural and both Preventive Diplomacy and CBMs were seen as mutually supportive. There appears little to be gained by trying to precisely define where CBMs stop and Preventive Diplomacy begins. Suffice it to say that Preventive Diplomacy goes well beyond traditional CBMs in attempting to prevent conflicts and/or to limit their escalation, spread, or recurrence.

There was also considerable debate at the Workshop as to the applicability of Preventive Diplomacy to intra-state as well as inter-state conflict. As one case study (Indonesia's role as a facilitator in the dispute between the Philippine government and Moro National Liberation Front) demonstrated, Preventive Diplomacy has successfully been applied in Asia in an intra-state context, the key in this case being outside participation at the request and with the consent of all parties involved. However, regional sensitivities in the asia pacific, as with other regions, point to such intra-state applications as being more the exception than the general rule.

A discussion of actual case studies was also seen as an effective way of deepening understanding of the Preventive Diplomacy concept. In addition to the previously-mentioned Indonesia/Philippine/MNLF case, participants also reviewed the ASEAN Troika experience in Cambodia, the Thai/Malaysia Joint Development Area (aimed at preventing conflict by promoting joint development in disputed territory), the Aitutaki Declaration on Regional Security Cooperation among the South Pacific states, and the Organization for Security Cooperation in Europe (OSCE) and its institutionalized mechanism for dealing with protection of minority issues.

Some common points to emerge from the review of these diverse cases included the need for patience and perseverance and a willingness to devote time and energy to the process, potentially over an extended period of time. Quick fixes are unlikely to succeed. There is normally a requirement to establish 'win-win' circumstances for the parties concerned, who in turn must have a genuine desire or need to limit or settle the conflict. While Preventive Diplomacy approaches are 'context-bound,' lessons learned in one case can be helpful in other cases if one takes an 'adapt not adopt' approach. Consent and cooperation were also central themes.

During the USIP-led simulation exercise, participants were taken back in time to Vienna in 1995 and asked to play specified roles as national delegates or members of the secretariat at a meeting of the Permanent Council of the OSCE, to deal with a growing crisis involving Crimea's attempts to declare independence from Ukraine. Participants were broken into three groups with each group tasked to develop a consensus view on how the OSCE should deal with the process. The exercise demonstrated the complexities involved in the process of Preventive Diplomacy and the possibility of different outcomes.

Ideas for Future Exploration

During the course of Workshop discussion and debate, participants also reviewed the various steps that the ARF might consider as it prepares, eventually, to take on a preventive diplomacy role. Such steps would, of course, build upon the following suggestions contained in the 1995 ARF Concept Paper regarding ways to proceed with preventive diplomacy:

- *developing a set of guidelines for the peaceful settlement of disputes;*

- *seeking the endorsement by other counties of the 1992 ASEAN Declaration on the South China Sea;*

- *exploring new ways of preventing conflicts (including fact finding missions by 'Special Representatives'); and,*

- *exploring the idea of establishing a Regional Risk Reduction Center.*

To this initial list of suggestions the Workshop participants, both in their prepared papers and subsequent commentary, added the following steps that could be considered in order to allow the ARF to play a constructive role in regional preventive diplomacy. This is neither an all-conclusive list nor a listing of Workshop-endorsed measures. Many have been raised at previous CSCAP CSBM Working Group meetings and some are already under discussion by the ARF.

Establish a system of Self-reporting. ARF member states would report on their own perception of existing or potential security concerns, with each list subject to requests for clarification or amplification from other member states. This will help identify areas where preventive diplomacy may be effectively applied.

Create an ARF Information and Research Centre. This Centre would collect, collate, and disseminate the above-mentioned reports and serve as a focal point for handling requests for additional information. It could initially serve as an 'early warning system' aimed at identifying danger points and emerging crisis and could evolve into the Regional Risk Reduction Centre envisioned in the ARF Concept Paper.

Form an ARF Eminent Persons Group. Such a group, comprised for example of former senior officials and respected scholars, would not only be available for fact-finding missions but could also play a more active 'good offices' Preventive Diplomacy role by assisting in mediating disputes and offering practical solutions.

Enlarge the ARF Chairman's Role. At present the ARF Chairman position is a rotating one. Consideration should be given to appointing a separate ARF Chairman for an extended, but still rotating, term (perhaps three years), who could then focus his or her efforts more exclusively on building and extending the ARF's agenda. Another approach would be to employ a triumvirate model, where leadership is shared by the current, immediate past, and prospective incoming chairmen. The creation of an ARF Secretariat could also facilitate this effort but is not a prerequisite and appears premature.

Develop Links to Other Institutions. The ARF should more clearly define its links to other regional and global institutions, such as APEC or the United Nations, and to various non-governmental organizations (including, but not limited to CSCAP), in order to avoid duplication of effort and maximize available assets and talents. Links to organizations specializing in 'non-traditional' security issues, such as environmental issues, nuclear safety, and human rights, would also be helpful in

enhancing the ARF's preventive diplomacy role.

Identify the Limits of Preventive Diplomacy. As noted at the outset, for preventive diplomacy to work, all parties to a potential dispute must see clear benefit in the effort – or at least be convinced that the anticipated value outweighs any potential risks. In a region where 'interference in internal affairs' is a paramount concern, the ground rules and other limits of the ARF's role in Preventive Diplomacy must be clearly articulated in advance. The perception, rightly or wrongly, that Preventive Diplomacy represents an effort to legitimize international scrutiny in the domestic affairs of member states will ensure the quick death of any effort, given the ARF requirement for consensus. This is why this Workshop has prepared a statement on 'Preventive Diplomacy: Definition and Principles,' in order to better define its limits in an Asia Pacific context.

Understanding that some of these recommendations may be a bit too ambitious or premature, the CSBM Working Group has also looked at interim, less ambitious steps that could be taken to move the ARF in the right direction. Next steps could include increasing trust among ARF members by delimiting the scope of preventive diplomacy beforehand, by continuing confidence building measures, by widening perspectives and participation in the exercise of preventive diplomacy, and by establishing a consensus view regarding both a working definition of Preventive Diplomacy and a Statement of Principles. We are hopeful that the ARF, through its ISG on Confidence Building Measures, will seriously consider the attached CSBM Working Group draft 'Preventive Diplomacy: Definition and Principles' Statement'.

The Workshop has also demonstrated the utility of case studies on past and on-going examples of Preventive Diplomacy within and outside the Asia Pacific region, in order to identify common elements, differences, and challenges in implementation. The examination of actual cases and the conducting of simulation exercises based both on actual and on theoretical scenarios can serve as useful vehicles for better understanding how Preventive Diplomacy works (or fails to work) in practice. Future case study reviews and simulation exercises could usefully focus on the tools of Preventive Diplomacy and how they can be successfully applied. The co-chairs welcome and encourage the continued participation of the U.S. Institute of Peace in the CSBM Working Group's deliberations on Preventive Diplomacy. Conclusion

The co-chairs recognize that some of the Working Group's suggestions may be out in front of where the ARF is currently prepared to go. But, that is the purpose and value of the track-two debate: to push the envelope and explore ideas and offer suggestions that, while perhaps not immediately attainable, at least appear achievable over time. This should be the goal of future CSCAP and ARF examinations of preventive diplomacy, just as this Workshop tried to advance the debate and promote greater understanding regarding the ARF's future Preventive Diplomacy role and how we get there from here.

Ralph A. Cossa   Kwa Chong Guan   Suchit Bunbongkarn
(USCSCAP)   (CSCAP-Singapore)   (CSCAP-Thailand)

Appendix D

Second CSCAP Workshop on Preventive Diplomacy
April 3-5, 2000, Singapore

Chairmen's Summary

The Council for Security Cooperation in the Asia Pacific (CSCAP), in cooperation with the United States Institute of Peace (USIP), conducted a Workshop on Preventive Diplomacy from April 3-5, 2000 in Singapore. The Workshop was conducted under the auspices of CSCAP's International Working Group on Confidence and Security Building Measures (CSBMs). The Workshop was conducted immediately prior to an ASEAN Regional Forum (ARF) Inter-sessional Support Group (ISG) meeting on Confidence Building Measures (CBMs). ISG participants were invited and encouraged, in their private capacities, to attend the CSCAP Workshop. Over 70 individuals participated in all or part of the Workshop, including representatives from 15 of CSCAP's 18 member/associate member committees and 18 of the ARF's 22 members.

This two and one-half day Workshop built upon CSCAP's earlier efforts to examine preventive diplomacy (PD) concepts and practices, including the 1999 CSCAP PD Workshop in Bangkok, which was likewise open to ISG participants. That Workshop resulted in the development of a "Working Definition and Statement of Principles of Preventive Diplomacy." Using this Statement as a guide, the Singapore Workshop conducted a review of past efforts, analysis, and recommendations both within CSCAP and by the ARF regarding the development of preventive diplomacy mechanisms (as called for in the 1995 ARF Concept Paper). Also included were case studies examining previous examples of preventive diplomacy both from within and beyond the region and a USIP-conducted simulation exercise aimed at providing hands-on experience in how the process works. The Workshop focus was on the identification of prospective PD tools that could be employed by the ARF in the development of PD mechanisms.

Workshop participants were also updated on the efforts of the CSCAP Working Group on Comprehensive and Cooperative Security (December 1999 in Seoul) and the (non-CSCAP) Symposium on Northeast Asia Security (March 2000 in Beijing) to examine the principle of non-interference, given the changing nature of the international environment, the impact of globalization, and the increased significance of the concept of human security. The CSCAP definition of preventive diplomacy stresses its voluntary nature in recognition of non-interference concerns.

It was duly noted that the ARF, in its own review of preventive diplomacy, has already taken up many of the suggestions put forth by earlier CSCAP efforts. In particular, the ARF has focused on the area of overlap between confidence building measures and preventive diplomacy. Four areas of ARF concentration were highlighted to guide future CSCAP preventive diplomacy efforts: the enhanced role of the ARF Chair, the role of an Experts and Eminent Persons Group (EEPG), the production of an annual Security Outlook, and the presentation of voluntary briefings on security issues. While CSCAP's analytical efforts are not limited to these topics, it was generally agreed that the CSBM Working Group should build upon and help fill in the gaps identified in the ongoing ARF review in

order to provide added value to the ARF's continuing examination of PD tools and mechanisms. Also under examination were methods to better integrate track-one and track-two efforts.

This is not to imply that basic confidence building should be ignored or overlooked. It was noted that, despite growing trends of cooperation, a number of developments had transpired over the past year that have raised tensions and impacted on the prospects of broader cooperation. Such challenges should not and will not be ignored. They underscore the continued need for greater mutual trust, cooperation, and confidence building. The CSBM Working Group's ongoing dialogue on CBMs and preventive diplomacy is aimed at addressing these critical needs.

The following ideas relating to the development of ARF preventive diplomacy mechanisms emanated from the Workshop papers and discussions or evolved from the case study examinations or simulation exercise lessons learned. They are briefly summarized below to help stimulate discussion within both CSCAP and the ARF. They do not constitute Workshop conclusions or recommendations but are offered merely as food for thought.

The Role of the ARF Chair. The ARF has already explored an enhanced liaison role for the ARF Chair with individuals, states, and both regional and global governmental and track-two institutions; i.e., the UN Secretary General, CSCAP, OSCE, etc. The "good offices" role of the ARF Chair has been highlighted as an area for greater examination. Future efforts could focus on examining principles and procedures governing the good offices role, including a clear definition of the type of duties that might be undertaken, ranging from simple liaison to discussion facilitator to more extensive mediator duties. The value of mediation efforts was clearly highlighted during Workshop discussions, although concerns were expressed that the Chair's role should focus on confidence building and should not be intervention-oriented. A more pro-active Chair could also attempt to draw attention to potential emerging problems or areas in need of increased attention or mediation. Alternatives to the annual rotation of leadership could also be discussed to provide greater continuity. These could include shared leadership through a 'troika' formula involving past, current and next scheduled chairs; the creation of co-chairs or deputy chairs (perhaps to include non-ASEAN members); the creation of an ARF Desk within the ASEAN Secretariat; or the establishment of an ARF Secretariat (or even an ARF Secretary General).

Experts and Eminent Persons Group. The creation of an Experts and Eminent Persons Group (EEPG) has been discussed at earlier CSCAP meetings and is being seriously considered by the ARF ISG. The role and responsibilities of the EEPG need to be better defined, however. At a minimum, this group could provide advice to the Chair and respective ARF member states. EEPG members could also conduct fact finding missions on behalf of the ARF and would serve as a ready pool of mediators or facilitators when and if called upon. An EEPG would be a useful sounding board for examining and commenting upon recommendations coming from CSCAP and other track-two efforts, such as the effort to develop a Pacific Concord. An EEPG could also play a more far-reaching "early warning" role, by drawing attention to prospective problems where preventive diplomacy might be appropriate.

Security Outlook/Voluntary Background Briefing. ARF members have been asked to voluntarily prepare an annual Security Outlook which would then be compiled and distributed (without additional commentary or editing) and have also been asked to provide voluntary briefings on security issues to encourage dialogue, strengthen CBMs, and avoid misconceptions. One possible way to enhance this effort would be to develop a generic Security Outlook outline (along the lines of the earlier CSCAP Defense White Paper outline) to help promote continuity of reporting among the ARF members. The ISG and/or CSCAP could also undertake an analysis of the various submissions in order to highlight common and differing perceptions; either or both could also serve as a forum for further examining pressing issues identified in the voluntary briefings. The EEPG could also provide some of these functions and otherwise review the reports and briefing to identify areas where preventive diplomacy might be successfully applied. The EEPG could also perform a de facto Secretariat function, especially if a small support office was created.

Track-One/Two Integration. The first two CSCAP PD Workshops represent a prime example of track-one/two integration in action. Conducting track-two workshops immediately before ISG discussions can provide an added dimension of insight into selected topics and provide a forum for examining different and even potentially contentious ideas. This will require close consultation between ISG and CSCAP Working Group co-chairs, to include a mutual exchange of information. The expanded liaison role of the ARF Chair includes consultation with CSCAP and this can be further enhanced by inviting the ARF to send a representative to CSCAP Steering Committee meetings – the ARF Chair can be identified as a CSCAP Affiliate/Observer – and CSCAP can be recognized as an official NGO in support of the ARF, perhaps with CSCAP co-chairs being granted ARF observer status as well. While such formal associations are desirable, informal linkages and close working level ties are equally important, as is close association between individual CSCAP member committees and their respective governments.

Other Suggestions/Ideas. Several other suggestions or ideas worthy of consideration by the ARF and CSCAP also came out of this and earlier discussions and are briefly summarized below.

Identify New CBM/PD Initiatives. Efforts should also be made to identify new initiatives that will enhance confidence building and help set the stage for the creation of preventive diplomacy mechanisms. These could include the following (as contained in the 1995 ARF Concept Paper regarding ways to proceed with preventive diplomacy): developing a set of guidelines for the peaceful settlement of disputes; seeking the endorsement by other counties of the 1992 ASEAN Declaration on the South China Sea; exploring new ways of preventing conflicts (including fact finding missions by "Special Representatives"); and exploring the idea of establishing a Regional Risk Reduction Center. To this we would add the examination of PD mechanisms and early warning systems in other regions. The use of "Special Representatives" and the "Group of Friends" of the UN Secretary General also provide examples with some relevance to the ARF.

ARF Information and Research Center. At earlier meetings, CSCAP Working Group participants discussed the creation of an ARF Information and Research Center to collect, collate, and disseminate reports such as the annual Security Outlook. This Center could also serve as a focal point for handling requests for additional information prompted by the reports or voluntary briefings. It could initially serve as an "early warning system" aimed at identifying danger points and emerging crisis and could

evolve into the Regional Risk Reduction Center envisioned in the ARF Concept Paper. This Center could also provide a Secretariat function and could also provide administrative support for the EEPG. It should also establish an ARF web site and ensure all relevant products including the annual Security Outlines are readily available on line.

Coalition of the Willing. If the ARF is not ready to proceed with developing preventive diplomacy mechanisms, perhaps a "coalition of the willing" from within the ARF could attempt to proceed with such an effort in order to set the example and serve as a test case. The most obvious group would be the ASEAN states, since they have already well-established habits of cooperation and a permanent Secretariat mechanism to facilitate this effort. ASEAN may want to expand the role of the ASEAN Chair and Secretariat or establish an ASEAN-EEPG to test the process within ASEAN and then open up participation to the broader ARF membership either individually or collectively. This could demonstrate ASEAN leadership in a key area.

Other Observations. While the above suggestions have been couched in terms of developing PD mechanisms, an expansion of the role of the ARF Chair, the establishment of an EEPG, and many of the other above ideas are valuable confidence building measures in their own right, even if they did not proceed to the preventive diplomacy stage. The Workshop also underscored the importance of proper timing and open, clear lines of communication. Preventive diplomacy is most useful if it can be applied in advance of or at an early stage of a conflict. Unfortunately, parties in dispute appear less likely to seek or accept PD until conflict is imminent or in progress. This underscores the need for greater public awareness of the potential value and utility of preventive diplomacy and for greater familiarity and comfort within government circles for the process.

Conclusion. Some of the above suggestions may be out in front of where the ARF is currently prepared to go. But, that is the purpose and value of the track-two debate – to push the envelope and explore ideas and offer suggestions that, while perhaps not immediately attainable, at least appear achievable over time. This has been one of the goals of this Workshop.

As was the case in Bangkok, this second PD Workshop (and eleventh overall CSBM Working Group meeting) has again demonstrated the utility of case studies in order to identify common elements, differences, and challenges in preventive diplomacy implementation. The examination of actual cases and the conducting of a simulation exercise based on a theoretical scenario both served as useful vehicles for better understanding how preventive diplomacy works (or fails to work) in practice. One possible future approach would be an examination of historical cases aimed at determining if the existence of preventive diplomacy mechanisms would have made a difference. We will continue to employ such methods in our future work and will seek the continued collaboration of USIP, whose assistance in the first two Workshops was instrumental to their success.

The CSBM Working Group will continue to seek opportunities to interact more closely with the ARF ISG on CBMs as we jointly work to advance the debate and promote greater understanding regarding the ARF's future Preventive Diplomacy role and how we get there from here.

Appendix E

Third CSCAP Workshop on Preventive Diplomacy
Hanoi, Vietnam – April 24 - 28, 2002

<u>Chairman's Summary</u>

On April 24-28, 2002, the Confidence and Security Building Measures (CSBM) International Working Group of the Council for Security Cooperation in the Asia Pacific (CSCAP), along with the United States Institute of Peace (USIP) and CSCAP-Vietnam, co-hosted the third Preventive Diplomacy (PD) Workshop in Hanoi, Vietnam. The PD workshop immediately followed an ASEAN Regional Forum Inter-sessional Support Group (ISG) meeting and over 40 CSCAP and ISG representatives participated, representing 18 CSCAP member committees and/or ARF member states. ISG participants took part in their private capacities. The workshop began with greetings and introductory remarks by Mr. Le Kinh Tai, Vietnam's assistant foreign minister, who praised CSCAP's contribution to regional confidence building and the CSBM Working Group's continuing support to the ARF.

Working Group deliberations started with a panel discussion on the state of Preventive Diplomacy within the Asia Pacific. Ding Kuisong of CSCAP-China began the discussion with an assessment of the relevance of PD for regional security. First, he examined the history of the debate over PD within the ASEAN Regional Forum, which culminated in the statement by the chair at the Eighth Meeting of the ASEAN Region Forum, in Hanoi, July 25, 2001, in which "the ministers agreed to adopt the preventive diplomacy paper as a snapshot of the state on current discussion on preventive diplomacy in the ARF and the ISG would continue to discuss preventive diplomacy in the next inter-sessional year and focus on those issues when there remain divergence of views."

He also discussed the future measures to be implemented, such as expanding the role of the chair, a register of experts and eminent persons (EEPs), annual security reports, and annual background briefings on security issues. Ding stressed that trust and confidence building measures had to be the foundation of any PD effort, yet he noted that there was a long way to go on that score. He expressed support for expanding the role of the chair, as well as allowing non-ASEAN countries to take that position, if ASEAN itself agreed. He called for the use of EEPs, encouraged meetings of military officials to discuss security, and endorsed information sharing among diplomats, academics, and military officials both within individual countries as well as between the ARF and other regional institutions. Ding cautioned, however, that PD is not a means for intervention in the internal affairs of states; rather, it should be a means of assurance for security and stability.

Raymund Quilop from CSCAP-Philippines followed with an examination of the challenges and prospects for the ARF as it moves toward PD. First, he pointed out that the ARF's evolution toward PD is being used as one yardstick to measure the forum's progress. He

noted that the ARF was still focused on CBMs, and had merely adopted a working definition and principles of PD, not "the" definition.

His comments outlined the difficulties that the ARF faces as it thinks about its relationship with PD. Most significantly, there is no consensus on whether the ARF should promote PD, given the fears of intervention that Ding mentioned. The inability to agree on key terms was a hindrance to progress, as is the ultimate geographic scope of any PD regime. The ARF's institutional capacity – or lack thereof – is another important obstacle. This situation reflects a more deep rooted debate over the continued viability of "the ASEAN way" and the operational principles of the ARF. Quilop argued that this, along with an emphasis on process rather than product, constitutes the biggest challenge for the ARF.

Quilop also called for track-two organizations such as CSCAP to play an important role. He noted that collaboration with track-one is essential, and said that the groups could aid ARF institutional capacity building.

Finally, Ian Townsend-Gault from CSCAP-Canada provided an international lawyer's perspective in his discussion of "implementing obligations and eliminating obstacles," a key component of any PD regime. He began by asking why there were calls to move the PD debate from track-two to track-one. His concern was that impatience, rather than a genuinely mature discussion, was the primary driving force. He insisted that points of contention had to be narrowed if track-one discussions were to be successful.

Townsend-Gault noted several basic working principles for successful PD (or any dispute resolution regime). First, participants must know the difference between facts and "myths" (widely shared beliefs that are not true, such as the claim that there are substantial proven oil reserves in the South China Sea). Second, they should know the rule of law, and their rights and obligations. Third, there is a need to understand how to use and apply international law. Finally, he called on participants to appreciate the position of the other side, including all legal, political, economic, and historic considerations. After all, the parties have to coexist after the dispute is settled.

He concluded with some guiding principles. First, countries that intervene must be seen as neutral by the disputants. Second, given the contentious nature of the PD debate, expect slow progress at the track-one level. Consensus building is critical, and there is no consensus yet. Finally, he called for participants to focus on "here and now issues" and on items where progress can be made.

The discussion raised more questions than answers. For example, there was no agreement on the geographic scope of ARF PD concerns. While some thought the proper focus was Southeast Asia, it was noted that previous ARF statements had mentioned nonproliferation and developments on the Korean Peninsula. Another key issue was the focus of PD. Would traditional security matters be the chief concern or should it expand to cover nontraditional security issues? Is state conflict the chief issue or, for example, are economic matters also to be on the table? The answers will have profound implications for all dimensions of the discussion.

There was general agreement that progress will continue to be slow, and that the "comfort level" of member states will be a key determinant. As one participant reminded the group, ARF evolution is a "political process" and a "political decision" but track-two can push that along.

After those discussions, Ambassador George Ward, from the U.S. Institute of Peace, began discussions on the identification of interests, tools for negotiators, and the Beagle Channel negotiations, the case study for the workshop.

The Beagle Channel dispute was a disagreement between Chile and Argentina that had festered for nearly a century, and which almost brought the two countries to war in the 1980s. Although the two governments had conceded that they needed to resolve the question peacefully, an arbitration proceeding failed to conclude the dispute. (The Argentine government was overthrown after the process was set in motion and the junta was unwilling to accept a ruling that gave territory to Chile.) The pope dispatched a special envoy to conduct shuttle preventive diplomacy between the two countries, and he eventually managed to fashion a compromise.

Throughout the discussions, Greg Noone, also from the USIP, led problem-solving exercises that identified negotiating styles and focused on third-party skills.

Finally, participants broke out into three groups to discuss the future role of experts and eminent persons, the future role of the ARF Chair, and the development of early warning mechanisms for the ARF.

The working group on experts and eminent persons focused on the scope of EEPs and asked, first, whether there should be a permanent group to deal with various security issues in the region and, second, whether it is better to organize them on the basis of themes or particular issues and subregions. The group stressed that attention should be paid to cataloguing qualifications of EEPs, and these individuals should be available to both members and the organization itself, to allow these resources to be used multilaterally and bilaterally.

The working group distinguished between experts and eminent persons, the latter having political weight and capable of playing a political role, while experts work on particular issues. Experts should brief the ARF and be familiar with the ARF and the role it is expected to play.

The working group urged the ARF to draw on track-two expertise, and use those groups to identify and catalog experts. It was recommended that the ARF and CSCAP institutionalize their linkage by holding meetings between the ARF and CSCAP at the senior official level.

Finally, the EEP working group called on the ARF to establish an Advisory Council or vision group, consisting of 23 Eminent Persons for a two-year term. This group would deal with questions such as the ARF's future agenda, including the presentation of options. This group would meet semi-annually and present an interim report to the SOM after one year. At the end of the group's mandate, it would present a final report and recommendations to a special meeting of senior officials.

During general discussion of this group's findings, the idea of holding a joint CSCAP-ARF/EEP Preventive Diplomacy workshop was also discussed. EEPs not currently affiliated with CSCAP member committees should be invited to join and be provided with CSCAP products.

The second working group on the future roles of the ARF chair, endorsed the roles and mechanisms of the ARF Chair identified in Annex B of the 2001 ARF statement by the Chair that was prepared by the Japanese representatives.

The working group noted that the ARF is a young institution, and it is too early to evaluate its progress. Members agreed that it is premature to recommend changes in who would hold the ARF Chair (i.e., splitting it between ASEAN and non-ASEAN states) but said the question could be revisited in the future. The working group had four suggestions to enhance the role of the Chair.

- Create a nucleus in the ASEAN secretariat to assist the chair.

- Make the chair responsible for periodic updates on the progress of the ARF every six months.

- Hold a regular dinner between the ARF Chair and the co-Chairs of CSCAP, to ensure a better flow of information between CSCAP and the ARF Chair. In addition to calling for more integration between the two groups, it encouraged other track-two organizations to make similar efforts.

- Create an ARF Institute of Peace. This institution would be a free-standing "knowledge resource," which can be accessed by the Chair, the part of the ASEAN Secretariat that deals with ARF issues, or the EEPs, to provide timely information on matters of concern. It can also draft position papers, or legal instruments, and the like. It will also support ARF-related studies and training and education services in ARF member countries, in collaboration with existing institutions. The rough model was that of the USIP.

The final working group, on developing an early warning mechanism, noted that a Regional Risk Reduction Center (RRRC) is an essential component of any program. Its roles would include (1) gathering, storing, and disseminating information, (2) analyzing information, (3) flagging issues which require the attention of the ARF or individual member states, (4) cultivating public awareness, and (5) promoting ARF action on potential or emerging crises.

The RRRC would get information from official and unofficial sources. This institution should not serve as a mere clearinghouse for information, but become actively involved in disseminating information through public awareness campaigns. It is also important to draw the attention of ARF leaders to urgent issues and promote ARF action on them. In addition, the RRRC should work closely with EEPs.

Participants noted that an RRRC is contingent upon institutionalization of the ARF or, at a minimum, a more enhanced role of the ARF Chair. In the interim, it was suggested that

CSCAP's work could be enhanced if a formal relationship between CSCAP and the ARF would be established; the CSCAP co-Chairs could attend the ARF annual meeting as observers or report to the ARF-SOM. Pending establishment of the ARF Secretariat and the RRRC, it was suggested that the RRRC be established as part of CSCAP, which would sidestep the need for intergovernmental agreement, but would also require CSCAP to enhance its own institutional capacity.

It is worth noting that each of the working groups called for broadly similar measures: movement toward more institutionalization of the ARF and a closer, more formal relationship between the ARF and track-two organizations, particularly CSCAP.

The above comments reflect the observations of the Chair and do not necessary represent the views of all the participants. Likewise, the working group reports were not consensus statements but rather a summary of varying views and perspectives. They are offered to stimulate debate within CSCAP and the ARF on preventive diplomacy.

The CSBM Working Group remains indebted to the U.S. Institute of Peace for its continued collaboration, guidance, and support in our preventive diplomacy analytical and educational effort and looks forward to future opportunities to collaborate. A summary of this PD workshop including the papers presented during the opening panel and the full working group reports will be published by USCSCAP and available both in hard copy and on line.

Submitted by: Ralph A. Cossa
               Co-Chair
               CSBM Working Group

Appendix F

Experts and Eminent Persons
Report of the PD Working Group

The eighth meeting of the ARF in Hanoi in July 2001 agreed to establish an Experts and Eminent Persons (EEPs) Group. As stated in its Chairman's Statement, EEPs could provide advice and conduct studies on regional security issues or serve as resource persons in ARF meetings on issues of relevance to their expertise. They could also serve as representatives who could contribute to the promotion of preventive diplomacy through the ARF, such as mediation and good offices. At this point, EEPs could contribute significantly to the progress and development of the ARF.

It should be noted, however, that ARF documents and discussions on EEPs remain unclear about issues regarding terms of reference for the EEPs such as their scope, the distinction between experts and eminent persons, their roles and functions. This report addresses those issues and offers some recommendations regarding the ARF Experts and Eminent Persons.

1. *On the scope of EEPs*

Taking into account the complexity of security issues in Asia Pacific, the establishment of EEPs should consider two issues. First, should there be one permanent group dealing with various security issues in the region; or secondly, would it be better organised on the basis of themes or particular issues and sub-regions with their specific characteristics?

While the options are still open, particular attention should be given to the need for cataloguing the qualifications of EEPs in a register. Such a register could be used and called upon by the ARF Chair or participants. For example, in this connection, ARF could learn from OAS experience in using experts in ways in which the OAS had never considered. Experts could be used both by members and the organisation itself. The register thus would provide information about resources that can be used by ARF multilaterally or by participants invidually in the context of their bilateral relations.

2. *On the distinction between experts and eminent persons*

There should be a distinction between experts and eminent persons. The essence of eminent persons is that they carry political weight, giving them the capacity to play a political role in the form of mediation, good offices, and political advice. Eminent persons can use studies conducted by experts to make recommendations for future activities that the ARF should be working on. Experts would work on particular issues, conducting studies on specific aspects of regional security.

For experts to function, it is important thet they brief the ARF, particularly the ISG, on specific issues. In line with this measure, experts should also be briefed on ARF history and progress and contribution the ARF is expected to provide to regional security.

On the issue of resources, the ARF could use expertise available in track-two. Specifically, track-two organizations could be used to identify and catalogue experts. CSCAP Working Groups have done various research and activities on CBMs, Maritime Cooperation, Comprehensive and Cooperative Security, North Pacific Cooperation, and Transnational Crimes. In this regard, the ARF and CSCAP need to institutionalize their linkage by holding meetings between the ARF and CSCAP at senior official level.

3. On the future of the ARF

Looking toward the future, the Forum should establish an Advisory Council or vision group consisting of 23 Eminent Persons for a two-year term. This group would deal with questions such as the ARFs future agenda, including presentation of options. The establishment of the Advisory Council or vision group could help overcome limitations facing government officials.

The eminent persons group would meet semi-annually and present an interim report to the SOM after one year. At the end of the group's mandate, it would present its final report and recommendations to a special meeting of senior officials.

Appendix G

**Enhanced Role of the ARF Chair
Report of the PD Working Group**

A. Our working group discussed future roles of the ARF Chair. We began with a review of the current role of the Chair, the processes by which the ASEAN Regional Forum operates and then moved on to a discussion of various options.

B. Currently, the Chair is an ASEAN member and:

- *provides facilities for the annual meeting;*
- *provides liaison among the members; and,*
- *communicates views and ideas among members.*

       The Chair issues a statement at the end of the annual meeting in July that reflects a "sense of the meeting." It is not a binding statement.

C. We endorsed the roles of the ARF Chair identified in Annex B of the 2001 ARF statement by the Chair that was prepared by the Japanese representatives. Those roles include:

- *promoting confidence building among ARF members by facilitating information exchange and dialogue between and among ARF members, such as holding conferences and workshops;*

- *fostering cooperation between ARF members by facilitating discussion on potential areas of cooperation;*

- *facilitating discussion on norms building in the ARF to enhance mutual trust and understanding;*

- *encouraging exchange of information and highlighting issues that can impact on regional security for consideration by the ARF by serving as a conduit for information sharing in between ARF meetings;*

- *serving as a focal point for consultations among ARF members on the basis of consensus of all the ARF members. Upon prior consent of directly involved states and the consensus of all ARF members, the ARF Chair may convene an ad hoc meeting of all ARF members at an appropriate level; and,*

- *liaising with external parties, such as heads of international organizations, and track-two organizations on an informal basis and with prior consultation with all ARF members and their consent.*

We also endorsed the mechanisms identified in that report, which include:

- *the use of a country's own resources;*
- *the expertise and resources of other countries;*
- *the use of EEPs; and,*
- *the expertise and resources of external parties and track-two organizations, as far as done informally with the consent of ARF members.*

D. We agreed that the ARF is a young institution, and it is too early to evaluate its progress. In these circumstances, it is premature to recommend changes in who would hold the ARF Chair. We also agreed that the question could be revisited in the future.

E. Nevertheless, we also agreed that there should be efforts to strengthen the ARF Chair. To that end, we have <u>four</u> suggestions:

1) Create a small dedicated staff in the ASEAN secretariat to assist the ARF Chair.

2) Make the Chair responsible for periodic updates on the progress of ARF every six months.

3) Hold an annual meeting by the co-Chairs of CSCAP with the ARF Chair, to ensure a better flow of information between CSCAP and the ARF Chair and encourage more integration between the two. We encourage other track-two organizations to take similar steps to…

4) Create an ARF Institute of Peace. This institution would be a free-standing "knowledge resource," which can be accessed by the Chair, the part of the ASEAN Secretariat that deals with ARF issues, or the EEPs, to provide timely information on matters of concern. It can also draft position papers, or legal instruments, and the like. It will also support ARF-related studies and training and education services in ARF member countries, in collaboration with existing institutions.

Appendix H

A Regional Risk Reduction Center
Report of the PD Working Group

In the development of an early warning system, a Regional Risk Reduction Center (RRRC) is an essential component. Important roles that an RRRC could play include (1) gathering, storing, and disseminating information, (2) analyzing information, (3) flagging issues which require the attention of the ARF and individual members, (4) cultivating public awareness, (5) promoting or highlighting ARF action on potential or emerging crises, and (6) responding to requests from the EEPG or the ARF Chair and from particular ARF participants through the ARF Chair.

Information is a key element of an early warning system. Thus, it is important for the RRRC to tap various sources of information to include both official sources and unofficial sources. Official sources would include but not be limited to the ARF Chairmen's Statement, reports from the Senior Officials Meeting (ARF-SOM) and Inter-sessional Support Group (ISG), and annual security outlooks from the participants. Unofficial sources would include reports and memoranda from CSCAP, the Internet, and others.

Members of the working group recognized that the RRRC should go beyond merely serving as a clearinghouse for information and data regarding issues of urgent concern. It is also important for the Center to be involved in disseminating information through public awareness campaigns.

The RRRC may also be involved in analyzing information, mapping out differences in the perceptions of participants as well as identifying points of convergence or agreement. This is an important consideration if the RRRC is going to be effective in calling the attention of the political leaders of the ARF regarding urgent and emerging issues and thereby promoting ARF action on emerging issues.

The RRRC should work closely with the Experts and Eminent Persons Group (EEPG). The RRRC should respond to requests from the EEPG for support in providing the group with relevant information. In return, the EEPG could provide the RRRC with more in-depth study and analysis of certain issues. However it is important for the RRRC to have a "mandate" in asking the EEPG to perform such tasks for the Center. Thus, requests from the Center for the EEPG to study or examine an issue should be channeled through the ARF Chair.

The establishment of the RRRC appears contingent upon greater institutionalization of the ARF. In the interim, the work of CSCAP would be enhanced if a formal relationship could be established between CSCAP and the ARF particularly at its annual meeting with the co-Chairs of CSCAP being invited to attend the ARF as observers or having a reporting session with the ARF-SOM.

Pending the establishment of an RRRC, it is suggested that the RRRC function could be fulfilled by CSCAP. This would not require inter-governmental agreement and would strengthen the capability of the CSCAP to contribute to the work of the ARF, while institutionalizing the CSCAP-ARF relationship.

For CSCAP to effectively do so, however, it needs to enhance its own institutional capacity which would mean strengthening the CSCAP Secretariat, possibly transforming it into something more than an administrative body for the repository of CSCAP documents and materials.

The members of the working group also acknowledged that the establishment of an RRRC and its effective operation hinges on the establishment of a secretariat for the ARF or at a minimum, an enhanced role for the ARF Chair. In addition, a secretariat with a strong secretary-general could help enhance the RRRC's ability both to provide early warning of potential problems and to stimulate or promote an ARF preventive diplomacy response.

Appendix I

CSCAP CSBM Working Group
Third Workshop on Preventive Diplomacy
April 24-28, 2002 – Hanoi, Vietnam

Remarks by
Le Kinh Tai
Assistant Foreign Minister
Socialist Republic of Vietnam

Good morning, distinguished participants, ladies, and gentle men.

On behalf of the Vietnamese Ministry of Foreign Affairs, I would like to officially welcome all of you to Vietnam and to the Third Preventive Diplomacy (PD) Workshop co-organized by the CSCAP Working Group on Confidence and Security Building Measures, Vietnam's Institute for International Relations, and the United States Institute of Peace. It is taking place just after the Second Meeting of the ASEAN Regional Forum (ARF) Inter-sessional Support Group on Confidence Building Measures (the second ISG-CBM meeting) held in Hanoi on April 22-24, 2002. Thus, I am strongly convinced that this workshop will make an important contribution to cooperation between CSCAP and the ARF in building mutual confidence and constructing a peaceful security environment in the Asia Pacific.

The second ISG-CBM meeting reiterated the ARF Ministerial Meeting's adoption of the paper on the "Concept and Principles of Preventive Diplomacy" as a snapshot of the state of current discussions on PD within the ARF. The meeting participants also took note of this workshop and held the strong belief that input from track two activities could be a good source of reference for ISG-CBM's deliberation on PD in the future.

We all share the view that stability in the region is further guaranteed by positive developments in the relations of major powers. The process of cooperation and regional economic integration has given significant momentum to efforts to resolve disputes and defuse tensions. We welcome the positive developments in the Korean Peninsula, particularly the recent agreement to resume dialogue between the Democratic People's Republic of Korea (DPRK) and the Republic of Korea (ROK) following the recent visit to DPRK by the Special Envoy of the President of the ROK Lim Dong-won. We are encouraged by the determination of all parties concerned in the South China Sea toward the early adoption of the Code of Conduct. We support the restored peace in Afghanistan and the establishment of the Afghanistan Interim Administration as an encouraging initial step toward building a durable peace in Afghanistan, thus contributing to peace and stability in South Asia and the world-at-large.

However, the region continues to face many challenges and uncertainties. Since the events of Sept. 11, terrorism has become an immediate, direct, and long-term threat to the peace and stability of every country and region around the world. However, in giving priority to

counterterrorism cooperation, we cannot underestimate the equally serious threat posed by intensified transnational crimes. Other non-traditional security issues such as poverty and the widening development gap are worsening. Meanwhile separatism and unresolved territorial disputes in the region remain potentially disruptive at any time. Within this context, the ARF has placed more emphasis on PD on its agenda.

The ARF has taken substantial steps toward the adoption of the paper "Concept and Principles of Preventive Diplomacy." Nevertheless, the participants have different views about how the ARF should proceed with its implementation. I believe that CSCAP should explore the areas where divergence of views persist and consider the ways to implement PD.

I expect the third CSCAP workshop on PD to continue to discuss PD as mandated by the ARF. It will examine previous examples of PD both within and outside the region and will set up practical exercises and case studies designed to find appropriate PD tools and techniques to enhance regional security. The workshop will also focus on developing an early warning mechanism for the ARF as causes of conflicts have to be mandated sooner before they become fulminating infections that range beyond rational control or political containment.

Due to the quality of the participants gathered here today, I am confident that the workshop will provide new and interesting ideas for the ISG regarding PD. In addition, the workshop will make a contribution not only to the ARF but also to the promotion of academic exchanges among Asia Pacific countries.

Let me conclude my speech here by wishing the workshop success and all foreign participants a pleasant stay in Hanoi.

Thank you.