This paper would like to invite the workshop to reflect on an approach for future initiatives in cooperative activities in the South China Sea region to avoid negative consequences and enhance their effectiveness. This approach is proposed based on the general knowledge relating to marine regional cooperation with consideration of the particularities of the South China Sea’s situation.

Abstract

Although the South China Sea dispute seems to get more complicated recently and the perspective for a definitive resolution is still very far away; many initiatives for cooperation have been undertaken by surrounding countries. Most famous examples of such initiatives can include joint expeditions of marine scientific research by the Philippines and Vietnam, the joint undertaking of seismic survey by petroleum companies from China, Philippines and Vietnam, and the continuing South China Sea Workshops. It is widely recognised that these activities have played an important role in decreasing the tension, enhancing cooperation and encouraging dialogue between participants.

For this reason, it is strongly believed that countries surrounding the South China Sea, especially claimants in the South China Sea disputes should develop and implement more cooperative activities. However, if those activities are not conducted in a suitable manner they can raise serious suspicions and lead to strong protestations both from inside the participating country and other concerning states. Examples of such reverse effects are the reaction of China to the Filipino-Vietnamese expeditions during its first phase (from 1996 to 2007) or the severe protestations occurring inside the Philippines and critics from other countries with regard to above the tripartite surveys.
There may be many reasons that can explain the reverse effects caused by these two arrangements but the most important one should be that the activities were undertaken in sensitive areas. It is particularly true in the case of the tripartite agreement where the most important rationale for protestations from inside the Philippines was that the government had made “breathtaking concessions in agreeing to the area for study, including parts of its own continental shelf not even claimed by China and Vietnam”

From this perspective, this paper would like to invite the workshop to reflect on an approach for future initiatives in cooperative activities in the South China Sea region to avoid such negative consequences and enhance their effectiveness. This approach is proposed based on the general knowledge relating to marine regional cooperation with consideration of the particularities of the South China Sea’s situation.

Parameters of marine regional cooperation

This part of the paper will provide a brief review of the concept of marine regional cooperation. It is of the opinion of the author that this concept provides very important guidelines about conditions of establishing a regional marine arrangement. Those guidelines are a helpful framework for the adoption of future regional cooperative initiatives in the South China Sea.

Marine regional cooperation or marine regionalism is generally understood as to include two concepts: marine region and marine regional arrangement. For the former concept, there are three types of marine regions: physical marine regions, management regions and institutional regions.

Physical marine regions correspond to the geographic configuration of the coastal area that borders the mass of water. Provided the geographical diversity of the world oceans, it is difficult to have a unique system of grouping physical regions that can be suitable for all uses. Two units of classification of oceans and seas most commonly used are ocean basins and semi-enclosed seas. As such, the world oceans can be divided into nine ocean basins which are North and
South Atlantic; Indian Ocean, Arctic, Antarctic; North, South, East and West Pacific. [7] Article 122 of the United Nations Convention on the Law of the Sea (UNCLOS) defined an enclosed or semi-enclosed sea as “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more States”. [8]

More recently, the National Administration on Ocean and Atmosphere of the United States has developed the concept of large marine ecosystem which is understood as large regions of the world oceans with distinct hydrographic, topographic and biological characteristics. [9]

A total number of 64 large marine ecosystems have also been designated worldwide as a level for implementing management and conservation activities. [10]

Management or functional regions correspond to the determination of a management issue that can be considered as separate and needs to be dealt with under a particular regional action. Management regions exist because there is a problem or a group of problems that deserve an administrative arrangement for action. Management regions may not coincide with existing geographic regions nor with other management regions themselves. Finally, a region can be operational or institutional when it is the site where exists one or many official regional arrangements whether it is a treaty or just a political framework (both of them can be referred to commonly by the term “arrangement”). An operational region starts to exist as soon as a marine regional arrangement that applies to it enters into force.

The second concept of marine arrangement includes multilateral treaties, conventions, accords of joint research and others arrangements relating to ocean issues and their associated mechanisms. [11] The most important component of a marine arrangement is its scope of activities, its membership and its structure. A marine arrangement can be established for a wide variety of activities: fisheries, protection of marine environment, marine scientific research, exploitation of offshore petroleum resources, shipping or resolution of dispute. The number of participants to the arrangement can be free or restricted; some marine arrangements are limited to coastal states while many regional fisheries convention do allow fishing States to participate. Some authors argue that to be considered “regional”, the arrangement must include at least three states, otherwise it is considered a bilateral one. [12] Others state that this distinction is simply not necessary. [13]

In the framework of this paper, both bilateral and multilateral arrangements will be considered as regional. Finally, a regional arrangement can have different levels of institutionalization. It can be a temporary, ad hoc arrangement which does not have any associated administrative mechanism or it can be a regional regime with the adoption of commonly agreed principles, norms, rules and
Based on the marine regionalism concept, parameters for the establishment of a marine regional cooperative framework have been proposed by different authors. Their wording may be different but basically they refer to the same thing. For instance, four important parameters that need to be considered for the undertaking of joint development or joint cooperation at the regional level were summarized by Professor, Ambassador Hasjim Djalal, the “father” of the South China Sea workshops as following:

- The geographic location where the cooperative activity will take place;

- The nature of the activity of cooperation in question;

- The institutional framework to undertake the activity; and

- The relevant participants to the implementation of the activity.

Each one of these four parameters will be studied in details in the context of the South China Sea region.

**Conditions for Undertaking Cooperative Activities in the South China Sea**

**Location of Cooperation**

In principle, the whole South China Sea itself or any portion of it can be a location for regional cooperation. Pursuant to the International Hydrological Organization, the limits of the South China Sea are defined as extending North to South from the Strait of Taiwan to Singapore and
The biggest issue to be considered while choosing an area for cooperative regional activity is certainly the famous “South China Sea dispute”. People often refer to the “South China Sea dispute” as those disputes relating to the Spratly and Paracel Islands between China, Philippines, Malaysia, Brunei, Vietnam and the territory of Taiwan because of its complexity and seriousness. However, there are other places where overlapping claims exist in the region as well, such as the sea areas located at the opening of the Bay of Tonkin (claimed by China and Vietnam), the Scarbourough Reef (claimed by China and Philippines) or certain areas in the Gulf of Thailand (with claims from Malaysia, Thailand, Cambodia and Vietnam). It is also noteworthy to mention the Chinese U-shaped map that claims about 80 percent of the South China Sea as historic waters.

At this point, one can easily argue that to avoid complications, cooperative activities would only need to be implemented outside the disputed areas. However, this approach poses two problems:

Firstly, it seems that the exact location of the “disputed areas” in the South China Sea is sometimes already an object of disagreement. For instance, the Chinese official position does not recognize the Paracels as a disputed area with Vietnam. Pursuant to the Chinese claim, the areas of Blue Dragon Bank and Vanguard /WAB-21 off the coast of Vietnam and a portion the Natuna Sea northern of Indonesia are considered as disputed areas. However, this position has been refused by Vietnam and Indonesia which have considered those areas indisputable part of their exclusive economic zones.
Secondly, not all the disputed areas in the South China Sea are hotspots. For instance, the territorial dispute in the Gulf of Thailand is also a very complex one but apparently does not cause as much hostilities between claimants as in the cases of the Spratlys and Paracels. For this reason, engaging cooperative initiatives in the Gulf of Thailand can be much more feasible than in the two former ones.

From this analysis, it may be more suitable to distinguish between two kinds of areas for the sake of determining the geographical location to undertake cooperative initiatives in the South China Sea. They are “difficult areas” where regional cooperative activities would be very difficult and “manageable areas” where regional cooperation is easier. These latter ones would include the coastal and near-shore area of the South China Sea and sub-regions of Gulfs of Tonkin and Thailand. If the coastal and near-shore area is chosen, agreements between participants may be needed to determine what the limits of this area are. The criteria for reference may depend on the concrete cooperative activity to be undertaken. For instance, if South China Sea countries choose to cooperate in the elimination of marine pollution from sewage, the area concerned would be more coastal land regions. Meanwhile, if they want to cooperate in the management of coastal fisheries, the territorial sea can be a good area for cooperation.

This approach is quite different from the other proposals such as the joint development options relating to the Spratlys and the Paracels suggested by Mark Valencia [23] or the Indonesian “Doughnut Formula” which put more emphasis in the cooperation in disputed area. [24] It is not the purpose of this paper to give any evaluation of these suggestions so the only comment it would provide is that they can be hardly implemented due to the unclarity of the claims and again, the disagreement relating to where the “disputed areas” really lie.

**Nature of cooperative activities**

In general, any activity undertaken relating to the sea should be conducted in a way that respects the legitimate rights and interests of relevant States (except when implemented in the High Sea or Area) pursuant to international law, in particular the UNCLOS. As for areas still under dispute, the UNCLOS states that “States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation”. [25]
Article 123 of the UNCLOS lists the concrete activities that States bordering an enclosed or a semi-enclosed sea shall coordinate regionally to implement as following: management, conservation, exploration and exploitation of the living resources; protection and preservation of the marine environment and marine scientific research. [26] The Declaration of Conduct of Parties in the South China Sea (DOC) also provides an enumeration of concrete cooperative activities that relevant countries may explore or undertake. They include marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation and combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms. [27]

Despite all the existing disputes, a variety of cooperative arrangements has been implemented by South China Sea coastal states in fields such as oil and gas exploration and exploitation, fisheries, marine scientific research, maritime security and protection of the marine environment. These arrangements can take different forms, ranging from simple joint activities to the conclusion of treaties between relevant countries. Examples of these arrangements can include:

- The Memorandum of Understanding between Malaysia and Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, 1979 and the Agreement between Malaysia and Thailand on the Constitution and other Matters Relating to the Establishment of the Malaysia Thailand Joint Authority, 1990; [28]

- Memorandum of Understanding between Malaysia and the Republic Socialist of Vietnam for the Exploration and Exploitation of Petroleum in the Defined Area of the Continental Shelf Involving the Two Countries, 1992; [29]


- Joint Oceanographic and Marine Scientific Research Expeditions in the South China Sea between Philippines and Vietnam (JOMSRE) from 1996 to 2007; [32]

- The GEF/UNEP Project “Reversing the Environmental Degradation Trend in the South China Sea and Gulf of Thailand“ (South China Sea Project); [33]

- Different projects implemented under the Indonesian Workshops on Managing Potential Conflicts in the South China Sea (the South China Sea Workshops) including the Anambas Expedition (done in 2002), [34] Marine Database Information Exchange and Networking, Study of Tides and Sea Level Rising and the Coastal Environment in the South China Sea Affected by Potential Climate Change; [35]

- The Cooperative Mechanism for the Straits of Malacca and Singapore established by Indonesia, Malaysia and Singapore in 2007; [36] and

- Different joint patrols between coastal countries such as those realised by Vietnam and China in the Gulf of Tonkin [37] or by Indonesia, Malaysia and Singapore in the Malacca and Singapore Straits [38].

Among those above-mentioned initiatives, those relating to the activities of exploiting the marine resources seem to draw more attention of South China Sea states so far. While this is understandable as South China Sea’s countries are having a very high demand for natural resources, it is of the opinion of the author of this paper that more efforts should be spent to preserve and protect the South China Sea’s environment. An enhanced cooperation for the preservation and protection of the marine environment in the region should be encouraged for all practical, political and legal reasons:
Approach for the implementation of regional cooperative activities in the South China Sea: An analysis, by Vu Hai Dang

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