FUNCTIONAL CO-OPERATIVE MANAGEMENT FOR THE SOUTH CHINA SEA

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OVERVIEW

• Rationale to co-operate
• Where can co-operative measures be undertaken
• Regional functional co-operation
• Drawbacks: political will and trust
• Summary
Article 122

Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means 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 coastal States.

South China Sea: a semi-enclosed sea!

To be managed for the common good of the region and international community.
South China Sea

- Relatively calm but unstable state of play
- Near term-diplomatic efforts may alter status
- Long-term developments and resource competition will change the dynamics of the dispute
- Dispute resolution beyond the horizon
- Claimant States should work to resolve the dispute and effectively manage the sea.

Source of Maps in this presentation: Asia Maritime Transparency Initiative, CSIS June 2014 to September 2017
DOMESTIC POLITICS UNDERMINE PROJECTS PROPOSED FOR FUNCTIONAL COOPERATION IN THE SOUTH CHINA SEA; OPPORTUNITIES IDENTIFIED

The dispute: historical claim within 9-Dash line Map not in accord with the provisions of the 1982 Convention. How do we compromise? Claimed maritime space in East Asian seas.
States bordering an enclosed or semi-enclosed sea should cooperate with each other…they shall endeavour, directly or through an appropriate regional organization:

(a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

(d) to invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.
AGENDA 21: FUNCTIONAL CO-OPERATION AND
ARTICLE 118 OF THE 1982 CONVENTION

• 17.10 The role of international co-operation and coordination on a regional basis and, where applicable, within a sub-regional, inter-regional, regional or global framework, is to support and supplement national efforts of coastal States to promote integrated management and sustainable development of coastal and maritime areas.

• 17.11 States should co-operate, as appropriate, in the preparation of national guidelines for integrated coastal zone management and development, drawing on existing experience…

• Article 118 of the 1982 Convention declares:
  • “States shall co-operate with each other in the conservation and management of living resources in the area of the high seas...”
ZONE 1: TERRITORIAL SEA
The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

ZONE 2 CONTIGUOUS ZONE
In this zone, the coastal State may exercise the control necessary to:

ZONE 3 EXCLUSIVE ECONOMIC ZONE
In this zone the coastal State may exercise the control necessary to:

ZONE 4 THE AREA
Common Heritage of Mankind
Art. 136
The Area and its resources are the common heritage of mankind
Co-operative management/measures undertaken

- China and Vietnam – fisheries
- Malaysia and Thailand – JDA
- Malaysia and Vietnam – ACA
- Malaysia and Brunei – co-operative mode
- Malaysia/Indonesia/Philippines - maritime security
- China and Philippines – maritime security
- China and Malaysia – joint military agreement
- Malaysia and Vietnam – CLCS joint

Map source: Arsana and Schofield, 2015
DUTY TO COOPERATE: FAILING; HOWEVER, HOPE FOR FUTURE

• COBSEA (Coordinating Body on the Seas of East Asia)
• GEF (Global Environment Facility)
• PEMSEA (Partnerships in Environmental Management for the Sea of East Asia)
• UNEP (United Nations Environmental Programme) Regional Seas Programme
• SEAFDEC (South East Asian Fishery Development Centre)
• ASEAN and CHINA, PRC
• IMO (International Maritime Organisation)
• IHO (International Hydrographic Organisation)
• WMO (World Meteorological Organisation)
AREAS FOR FUNCTIONAL CO-OPERATIVE MANAGEMENT

- FISHERIES MANAGEMENT
- SUSTAINABLE DEVELOPMENT –
  - NATURAL RESOURCES, COASTAL AND OFFSHORE FEATURES
- HYDROCARBON EXPLORATION AND EXPLOITATION
- MARITIME SECURITY
- MARINE ENVIRONMENT
- AERONAUTICAL NAVIGATION (Commercial and Military)
- MARINE NAVIGATION (Surface and sub-surface)
  - SAFETY AT SEA, AIDS TO NAVIGATION,
  - SEARCH AND RESCUE
AVENUES FOR FUNCTIONAL CO-OPERATION IN THE SOUTH CHINA SEA

• PROTECTION OF THE MARINE ENVIRONMENT

• SAFETY OF NAVIGATION AND COMMUNICATION AT SEA

• CODE FOR UNPLANNED ENCOUNTERS AT SEA (CUES)

• MARINE SCIENTIFIC RESEARCH

• SEARCH AND RESCUE OPERATION

• HUMANE TREATMENT OF ALL PERSONS IN DANGER OR DISTRESS AT SEA

• FIGHT AGAINST TRANSGANATIONAL CRIMES

• JOINT DEVELOPMENT
  • MARINE BIOTIC AND MINERAL RESOURCES
IS THERE AN IDEALIST APPROACH TO FUNCTIONAL CO-OPERATION?
COULD THESE PHRASES BE APPLIED IN THE SOUTH CHINA SEA SOVEREIGNTY DISPUTE?

SPECIAL CIRCUMSTANCES
特别情况 特殊事情

RELEVANT CIRCUMSTANCE
相关情况 関連事情

EQUITABLE SOLUTION
公平的解决方案 公正

JUST AND EQUITABLE
公正与公平 公平及び公正
Joint Development & Other Co-operative Agreements

To what extent are States obliged to enter into JDAs with respect to disputed-boundary deposits/resources?

- Increasingly accepted that, under customary international law, States (i) have an obligation to cooperate in seeking to reach agreement, and (ii) in the absence of such agreement, have an obligation to exercise mutual restraint

However, also generally agreed, there is no obligation under customary international law specifically to enter into a JDA (due to lack of settled State practice and the opinions offered in arbitral and judicial Cases)
ASSESSING THE RISKS IN THE ABSENCE OF A BOUNDARY

- Risks to the host State if:
  - Exploitation of natural resources may be delayed or not developed (e.g., Australia and Indonesia – lapsed; 1997 to 2017; Australia and Timor-Leste, 2002-2017)
  - There are uncertainties over sovereign right (as in the instance of the South China Sea and other marine areas)
  - Potential tensions existed with neighbouring State(s), as was the case between Iraq and Kuwait till mid-1990s.
WATER SPACE MANAGEMENT (WSM)

- SUBMARINE ACCIDENT
- PREVENTION OF MUTUAL INTERFERENCE (PMI)
- WHAT IS IN THE NAME OF A SEA?
- WHAT ARE THE LIMITING LINES?
- SOUTH CHINA SEA - NAN HAI
- WEST PHILIPPINE SEA
- EAST (VIETNAM) SEA
- NATUNA SEA
- SELANTAN CINA LAUT

Map of military forces of littoral States
INTER-REGIONAL COORDINATING COMMITTEE (IRCC)

- MARITIME SAFETY INFORMATION (MSI) INFRASTRUCTURE
- NATIONAL HYDROGRAPHIC COORDINATING COMMITTEES (NHCC)
- MARINE SPATIAL DATA INFRASTRUCTURES (MSDI)

- SOUTH CHINA SEA ELECTRONIC NAUTICAL CHART (SCS ENC)
  - (Work suspended due to some naming issues – nomenclature – August 2017)
  - Capacity building in hydrographic surveying and charting
  - Not easy to obtain hydrographic charts
  - Not easy to obtain spatial data
  - Veil of secrecy
  - Notice to Mariners – potential for fake news
PERCEIVED OBSTACLES AND PROBLEMS

- JOINT DEVELOPMENT
- OPERATIONAL DEFINITION
- SPECIFIC ASPECTS OF IMPLEMENTATION
- TRUST AND TRANSPARENCY
- PROCEDURAL CONCERNS
- ETHNOCENTRIC CONCEPTS
- IRREDENTIST OUTLOOK
- PRIMORDIALIST OR PERENNIALISM
- DIFFERENCES OF CLAIMANTS
- LACK OF POLITICAL WILL
SUMMARY

• Many examples from various regions of functional co-operation exist

• No one single comprehensive solution for a complex situation

• Dialogue on functional co-operation is less confrontational

• Set backs due to technicalities or simply lack of political will

• Domestic politics are often a negative factor

• National rhetoric may be difficult to withdraw in order to achieve a resolution.

• THANK YOU FOR YOUR ATTENTION

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