Co-operate and Share: A Way to Peace in the South China Sea

By Andrew Billo

IN THE HISTORY of contemporary Asia, there has been plenty of optimism with regard to the prospect of co-operation. This year, for example, Singapore’s Prime Minister Lee Hsien Loong said during a visit to the White House that Singapore would “help America engage in the region, constructively, productively and in a way that fosters stability and prosperity of all the countries.” And little more than a decade ago, China’s Foreign Ministry reiterated the earlier sentiment of Deng Xiaoping on resolving contested areas by “setting aside dispute, and pursuing joint development.”

But both the setting aside of disputes and productive co-operation have become scarcer recently, particularly after 2011, when the US announced its “strategic pivot” to Asia, which was perceived as an attempt to encircle China. Indeed, China’s concerns are understandable, as US Secretary of Defense Chuck Hagel announced in late August 2013 a forthcoming agreement with Manila for a rotational troop presence in the Philippines, similar to agreements put in place during the last two years with Australia and Singapore.

Productive co-operation depends largely on the interaction between the US and China as the region’s great powers, as well as their interactions with smaller littoral states. At present, selective US and Chinese support for governments in the region has caused a rift, impeding co-operation. Yet while the behavior of the US and China is central to the direction of the dispute, the 10 members of the Association of Southeast Asian Nations (ASEAN) also hold significant responsibility to prevent escalation of tensions. Malaysia’s Defense Minister, Hishammuddin Hussein, showed unusual restraint in discussing Chinese vessels patrolling off its coast when he said, “I think we have enough level of trust that we will not be moved by day-to-day politics or emotions.” But such statements have been rare, and the long-term view is often eclipsed by fervent nationalism among ASEAN members.

Therefore, recognizing the need to look beyond “emotions,” I will examine areas most affected by the dispute — chiefly fishing, energy and freedom of navigation — in an effort to cut through the harmful rhetoric, understand the stakes and foster the possibility of cross-border co-operation.

ORIGINS, LAW AND HISTORY

A March 2013 conference at the Asia Society in New York looked at different facets of the dispute and mechanisms for moving forward. Topics included an examination of the origins of the dispute, the US-China relationship, the role of law, ASEAN’s position and options for management and resolution. Despite the aim of the conference, chiefly to find a peaceful resolution to the present disputes, the participants agreed that the most optimistic outcome might be found in more effective management of relations.

No single approach has been sufficient thus far to manage the dispute. For example, while international law provides mechanisms and guidelines for discussing barriers to co-operation, it is insufficient on its own to enforce egalitarian behavior because it fails to acknowledge the political, economic and military realities that allow rules to be circumvented. In practice, the effectiveness of the UN Convention on the Law of the Seas (UNCLOS) is hampered by China’s unwillingness to submit disputes to arbitration, as in the current Philippines case against China, as well as the fact that the US has yet to ratify the treaty, thus undermining its legitimacy.

Similarly, ASEAN’s Declaration on the Code of Conduct (DOC) in the South China Sea is a regional guideline that the 10 ASEAN members plus China have all signed. However, the “declaration” is just that, and while its aim is to foster greater co-operation and ultimately lead to a formal Code of Conduct (COC), it includes fairly vague and aspirational rhetoric such as “handle their differences in a constructive manner” and “the parties agree to work on the basis of consensus.” Claimant states have thus far been unable to move toward a full-fledged code of conduct. Indeed, some might argue against doing so, given the seeming unwillingness of China to agree to multilateral solutions. Cynics argue that an eventual COC will be a toothless document.

ASEAN’s success was further hampered in July 2012 when the annual ASEAN foreign ministers summit failed to issue a joint communique for the first time in the association’s 45-year history. The reason was the pressure that China placed on the chair, Cambodia, to leave the South China Sea issue off the agenda. “The non-issuance of a communiqué was due to a bilateral conflict between some ASEAN member states and a neighboring country,” Reuters reported. A Chinese government statement, meanwhile, said that discussions on the South China Sea and the COC could continue when “conditions are ripe.”

But some countries aren’t willing to wait for conditions to ripen. The Philippines, which submitted its claim in the South China Sea for UNCLOS arbitration, allegedly blindsided other ASEAN states that were not expecting such a direct and bold move against China, given the co-operative and collaborative sentiments that have typically guided ASEAN’s work. The Philippines press reported that Singapore supported the action by Manila, a claim that Singapore vehemently denied. The latest manifestation of the disagreement was an embarrassing snub of President Aquino of the Philippines in late August.
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Regional governments, now free from colonial clutches and relatively wealthy after decades of political and economic transformation, are also more engaged with the global community, somewhat paradoxically looking to former enemies or colonizers for support.

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Clearly, a new mode of discussion is needed, given the shared outcome that Southeast Asian states and the global community desire — namely “stability” and “prosperity.” Stakeholders need to manage the dispute in a way that minimally disrupts overall economic and political co-operation. But beyond the barbs being leveled by countries in the region, especially those coming from and directed at China, governments must not lose sight of the fact that effective management of the dispute matters greatly to the livelihoods of individuals. The impact is very real on those working in the fishery industry in South China Sea region, and indeed, they are extremely difficult to verify, given the limited records and artifacts available. So China uses a mix of historical claims and contemporary legal mechanisms to validate its position. Many scholars find this approach problematic. For example, Robert Beckman, the Director of the Centre for International Law in Singapore, wrote recently, “Most international law experts would agree that there is no basis for historical claims of this nature in UNCLOS or in customary international law.”

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But other aspects of the region’s history also matter. Spain, for example, has sent historical maps showing that some of the disputed areas actually belong to the Philippines. The International Crisis Group, in its report Stirring Up the South China Sea (I), points out that in 1947, when China released its “U-shaped line” map, the Philippines was the only other claimant that was already an independent country. Since

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then, Brunei, Vietnam, Malaysia and Indonesia have all gained independence, but in 1947, the region lacked the sovereign governments to issue a claim over some areas.

More recently, particularly in 2009, Vietnam and Malaysia submitted claims to the UN pursuing the extension of their territorial claims beyond the 200-nautical-mile Exclusive Economic Zone (EEZ). China quickly followed that action by filing its own claim, asserting “historical claims” over “relevant waters.”

Supporters of China’s handling of South China Sea issues contend that there is little in dispute with the territorial claims. “Before the 1960s, all countries accepted that the South China Sea was part of China,” a senior Chinese academic at the Asia Society conference asserted, adding that recent statements by the governments of the Philippines and Vietnam indicate that the territory belongs to China, despite a contention on the part of Vietnam that China’s position on the dispute has changed.

From an objective and legal standpoint, it is difficult to support China’s claims, given the size of its “U-shaped line,” or “9-dashed line,” maps, the huge geographic distance between China’s mainland and the disputed islands, the relative proximity of other states to the disputed territory and China’s infringement upon territorial boundaries claimed by several countries. China’s claim to several islets may have more legitimacy — but not to areas within the EEZs of other states or within open waters. However, even those “islands” may not qualify as such under UNCLOS rules, which maintain that to be an island, the rocks must be above the water at high tide and able to sustain human and economic life on their own.

Chinese scholars have also outlined different principles for determining territorial ownership, chiefly: who discovered the territory, named it, explored it and first exercised jurisdiction and management. There are, however, contradictions between these views and what is espoused by international law.

Needless to say, for any of the littoral states involved in the disputes, adhering to these principles would be challenging. Determining who discovered a given territory is open to interpretation. It is also possible that different seafarers, fishermen and other explorers named the same islands without subsequently communicating this among states and regions.

Of the principles listed above, jurisdiction and management may present the most legitimate case for ownership. Operationally, we now see China scrambling to plant its flag and develop an administrative region in the Paracel Islands.

Clearly, however, establishing ownership in this fashion, in the midst of unresolved territorial disputes, would prove irksome for the other claimant states and does not create a climate for further cooperation. The means by which ownership has been claimed — sometimes by way of building a structure around a partially submerged feature — also bents the rules.

In sum, much has changed in the region since 1947, when China issued its “U-Shaped line” map. The perceived value of the area because of increased demand for resources is far greater than it was at the time. Regional governments, now free from colonial clutches and relatively wealthy after decades of political and economic transformation, are also more engaged with the global community, somewhat paradoxically looking toward former enemies or colonizers — Europe and the US — for support. The rules of international law also changed greatly in the second half of the 20th century, and states in the region, including China, now have obligations within the international legal system to figure out mechanisms for resource sharing.

**FISHERIES: ASSESSING THEIR VALUE, FINDING AREAS FOR COLLABORATION**

Fishing is an important component part of most littoral-state economies, and this is true of the South China Sea. To that end, most fishing economies in East and Southeast Asia are comprised of several different sectors near-shore or offshore fishing, small scale or commercial, aquaculture and fish processing. Taken collectively, 10 percent of the global fish catch is found in these waters. But how much of that catch is at sea and in disputed territories?

Vietnam’s overall fishing economy incorporates several different areas, including aquaculture, brackish water and sea fishing, as well as the processing of fish. A report released by the UN Food and Agriculture Organization (FAO) states that production in the fisheries sector grew from 1991 to 2010, reaching 5.2 million tons, earning more than $5 billion from export revenue. The most recent reports indicate that Vietnam values its seafood exports at $6.5 billion in 2013, about 5 percent of the country’s GDP.

Yet, while the FAO reports that Vietnam has 20,000 boats dedicated to offshore fishing, only about 100 are capable of deepwater fishing. Almost all of the fisheries are “near-shore,” meaning within four to five nautical miles of the coastline, and in depths of less than 50 meters. Truong Dinh Hoe, the general secretary of the Vietnam Association of Seafood Exporters and Producers (VASEP) was reported as saying, “Vietnamese fishermen prefer to fish in national waters. There is no tradition in Vietnam to fish in distant waters; also, a bigger investment would be needed.” However, because fisheries close to the shore are being depleted, ships have to travel further to find a catch, thereby increasing the threat of coming into contact with patrol vessels from various regional neighbors. This is what happened in March 2013, when a Chinese patrol vessel fired flares at a Vietnamese fishing boat near the Paracel Islands. The fishing boat subsequently caught fire and limped back to Ly Son Island, off Vietnam’s central coast.

China is also looking to catch fish further afield. “China has the largest number of fishing vessels and fishers in the world, reflecting the use of extensive and spoliate fishing methods over a long period,” resulting in “increasing decline of traditional high quality fishery resources and leading to catches comprising immature, small-sized and low value organisms, and fishing efficiency and economic benefit have obviously decreased.”

While the Chinese government has policies to encourage redevelopment of its fisheries, the country is employing factory-fishing vessels to mechanize fish harvest. It is difficult for fishermen from the smaller claimant nations, like Vietnam, to compete with such large-scale operations.

China’s per capita internal demand for seafood is still relatively low compared to other countries, but it is only likely to rise in coming years as the consumer class continues to grow. The market for fish is therefore valuable, and despite plans to better manage co-operative with regional neighbors over fishing, there are economic pressures to continue producing seafood.

Keeping in mind the small value of current fisheries in the disputed territories, there could be further opportunity for states to co-operate in sharing resources. Vietnam and China agreed to co-operate under a Joint Fishery Agreement in 2004, although coming to agreement took nearly three decades of negotiation. Once the agreement was signed, though, rapid progress was made in conducting joint patrols, research and management and conservation decisions.

It will be important for the littoral states to comprehensively assess the value of their fishing industries, and separate offshore claims from near-shore claims in stating the value of fisher-
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31 http://thediplomat.com/2012/02/04/beijings-south-china-sea-gamble/
33 EIA. “Contested areas of South China Sea likely have few conventional oil and gas resources,” www.eia.gov/todayinenergy/ detail.cfm?id=10651.

EnerGy: How Much and at What Value?
The South China Sea energy claims are also significant, as well as the ever-increasing levels of consumption among states in the region. However, because of the territorial disputes, the exact resource quantities are unknown, and estimates vary greatly. In spite of this, hydrocarbons have been extracted in the South China Sea, and Vietnam and the Philippines have both announced plans to further expand co-operation with international energy firms. 30

Energy demand in Southeast and East Asia is increasing rapidly. According to a report published this year by the US Energy Information Administration (EIA), “total liquid fuels consumption in Asian countries outside the Organization for Economic Co-operation and Development (OECD) [is set] to rise at an annual growth rate of 2.6 percent, growing from around 20 percent of world consumption in 2008 to over 30 percent of world consumption by 2035.” The EIA expects that China alone will account for 43 percent of that growth.

The region’s demand for energy — particularly in an unsettled global economic environment where export markets in the US and Europe remain weak — places additional pressures on governments to secure the energy necessary for sustaining longer-term economic growth.

The amount of oil and natural gas available to be secured is less clear. The Diplomat, a Tokyo-based online news journal, reports:

“The Chinese government… estimates that the South China Sea region contains nearly 200 billion barrels of oil, or enough to meet global oil consumption for more than 6.5 years. Analysts tend to agree that China’s estimates are wildly optimistic. These disparate estimates need to be resolved, yet recent efforts to survey fossil fuels reserves by states like Vietnam have been stalled by the China Maritime Safety Administration, which has taken to cutting survey cables of vessels chartered to provide better information.”31

But it is not just China’s reports that vary greatly with those of other governments. The US Geological Survey (USGS) reported in 2010 that an estimated 21.6 billion barrels of oil exist in the South China Sea Platform — an area that lies at the heart of the disputed Spratly Islands — is estimated to contain the largest quantities at 2.5 billion (see Figure 1). 32 In February, however, the US Energy Information Agency (EIA) released an apparently contradictory report stating that “EIA’s analysis shows that most fields containing discovered oil and gas are clustered in uncontested parts of the South China Sea, close to shorelines of the coastal countries, and not near the contested islands.”33

Perhaps the contradictory reports are simply the result of differing methodologies by two separate US government agencies, but the emphasis on the resources being predominantly located in “uncontested” areas suggests an attempt by the EIA to convince regional stakeholders that the disputed territory may not hold the strategic importance for energy security as is largely believed.

Whatever the reality may be, growing energy demand will certainly make the South China Sea appealing as a potential source of energy in the coming decades. To counter the existing competition, reliance on hydrocarbons should be reduced, while an accurate assessment of resources in the

FIGURE 1 WHERE THE MONEY IS: USGS ESTIMATES OF OIL AND GAS IN SOUTHEAST ASIA

The US Geological Survey (USGS) in 2010 assessed the potential for undiscovered conventional oil and gas fields within geologic provinces of Southeast Asia as part of the USGS World Petroleum Resources Assessment Project. Using a geology-based assessment methodology, a mean of 21.6 billion barrels of oil and 299 trillion cubic feet of undiscovered natural gas were estimated across the 23 provinces assessed. The figures for oil and gas shown here are fully-risked probabilistic estimates. They represent the mean of estimates of the volumes of oil and gas present with a 95 percent, 50 percent and 5 percent probability. Undiscovered gas resources are the sum of nonassociated and associated gas.

Key
- Assessed provinces
- Oil (barrels)
- Gas (cubic feet)
South China Sea is also needed. To that end, the midst of 2005, when steps were actively being taken to foster co-operation between China’s state-owned energy firm, CNOOC, and other state firms in the region, must be rekindled.

Generically, examples of co-operation exist, even in disputed waters. For example, Australia and Timor-Leste came to an agreement regarding the sharing of resources in the Timor Sea.24 In the South China Sea, Vietnam has successfully co-operated with India, Russia, and several US firms to jointly develop energy resources, but that has never been undertaken in a disputed area. The numerous overlapping claims in the South China Sea make bilateral co-operation very challenging. One analyst has suggested creating a “South China Sea Exploration Company.”30 This would require, however, recognition of equal legitimacy among all of the claimants, a prospect that China has so far rejected, given what it calls its “indisputable sovereignty” over the area.30

FREEDOM OF NAVIGATION

Finally, there are the critical regional sea-lanes that ensure the free passage of goods and commerce from north to south and east to west. This is probably the most important aspect of the dispute, and a blockade here would pose the greatest threat to the global economy. “Freedom of navigation is a universal concern,”37 and finding solutions to ensuring free passage through the South China Sea, bound for Japan, South Korea and China.39

According to the World Trade Organization (WTO), eight of the world’s top 10 container ports are in Asia: five in China, and one each in Hong Kong, South Korea and Singapore.40 Together, they account for 38 percent of the world’s container port traffic. According to former US Ambassador to China J. Stapleton Roy, “Each year over $5 trillion of trade passes through the South China Sea, with US trade accounting for around a fifth of the total.”41 Global Security reports that “more than half of the world’s annual merchant fleet tonnage passes through the Straits of Malacca, Sunda and Lombok, with the majority continuing on into the South China Sea.”42 Maintaining freedom of navigation is therefore at the core of US interests and that of most other countries. For Australia, for example, up to 57 percent of its merchandise exports pass through the South China Sea.43

China also has the most to gain from the maintenance of open shipping lanes. If a conflict, or a naval presence, were to successfully shut down these lanes, the result would be a chokehold on global commerce. This outcome would also damage China’s export-led economy, lead to a reduction in jobs and ultimately undermine the ruling government’s grip on power.

This outcome is in nobody’s interest, and would only further raise the temperature, interest and participation of the global community in the present dispute, thus making it more complicated to resolve. At that stage, unraveling the tensions would be far more challenging than at present. Restoring the confidence-building measures that took place between China and Vietnam in 2011, as well as encouraging recognition of the $400 billion-plus trade between China and ASEAN,44 could provide some basis for hope that a more co-operation-minded stance will return.

ADDRESSING NATIONALISM

Asia’s economies were initially less damaged by the 2008 global financial crisis than those of North America and Europe, but the ripple effects of economic change are increasingly being felt in the region. While better co-operation is needed in fisheries and energy, and ultimately between militaries responsible for protecting sea-lanes, states can and should do more to address perceptions of the dispute at a domestic level. Most important, it would be helpful if the claimant countries, and particularly their media, moved away from discourse that motivates fiery headlines like “China to set up illegal village on Vietnamese island; more illegal patrols,”45 or “Monk Move in Nansha Island a New Ploy by Vietnam.”46

It is time to bring maturity to the way this issue is handled. China, in particular, with its capacity to be a leader in the Asian region, and eventually the world, can address co-operation over the disputed territories more effectively. Domestic diplomatic resources are being squandered on shaping a dispute that ultimately will not lead to any significant gain for any of the involved parties.

The US can help by continuing to engage with the region transparently, and to the greatest extent possible call on China to take a leadership role on this issue. Rivalries and bilateral alliances are inevitable, but cooperation should be a priority over self-interested behavior and strong political rhetoric geared at shoring up domestic support. Helping to facilitate this end would be a constructive way for the US to ensure that its interests are secure, but developing this level of trust among all of the parties involved will take time. Nevertheless, it should be realized as a diplomatic priority on every suitable occasion.

CONCLUSION

The South China Sea disputes are complex, both from a historical and legal perspective. The region would benefit from addressing the tensions through appropriate legal channels, rather than attempting to make sense of confusing and biased interpretations of history that ultimately will never be fully agreed upon. All parties involved — particularly the US, which calls for respecting the rule of law, and China, by virtue of its economic power and growing military strength — need to be responsible players and role models. Forming legal rules at present will undermine the effectiveness of international law across a range of other sectors and issues.

Nevertheless, despite the dangerous precedent in allowing some aspects of international law to slide, other realities must also be taken into account. Pursuing a purely legal approach, while fair, is unrealistic given the competing interests involved. China’s military and economic might trumps that of its neighbors, and increasingly compares with that of the US. Acknowledging this reality is critical.

The US military, the only force capable of taking on China’s military on a protracted basis, should more aggressively pursue opportunities to foster co-operation with China. Military conflict makes little sense for any of the parties, and a minor altercation could escalate rapidly.

As discussed, addressing nationalist tendencies in the claimant states could reduce some of the tensions. Governments need to be careful not to rally public sentiment too strongly around this issue, because negative personal sentiments can interfere with people-to-people relations, particularly in the business sector. Journalists in the region should treat the issue constructively and objectively, and regional governments should encourage coverage of the positive aspects of their relations with neighbors, despite the challenge.
Challenges of doing so in the context of the South China Sea disputes.

China also needs to engage responsibly, as it emerges onto the global stage as a great power. Its “9-dashed line map” is unhelpful, and while it is perhaps no longer politically feasible for China to back away from its claims altogether, reverting to its policy of achieving a “peaceful rise” would aid the country in forging ahead with productive cooperation.

China has also claimed to be a “status quo” power, but simultaneously it needs to be specific as to what constitutes a “core interest,” whether the South China Sea is such an interest, and the lengths to which it is willing to go to pursue these interests. China may, like the US and other great powers before, seek to manipulate the rules of the road in its favor. At the same time, transparency in its actions will lead to improved relations with its neighbors.

The US should also tread carefully in its military relations with the Philippines, Vietnam, and even Singapore and Australia. While it is perhaps a stretch to call US policy one of “encirclement” of China, as the Chinese have claimed, it would be helpful to clarify what action the US might take in defense of an ally such as the Philippines, given their mutual defense agreement. Military co-operation with allies is not necessarily a negative for the region as a whole, but the US should keep open channels with the Chinese military as well. Indeed, one of the foremost concerns in the US-China military relationship is a lack of procedures for addressing any minor spats that may occur in the region.

Finally, strategic ambiguity on the part of China and the US has led the smaller littoral states to hedge their support between China and the US. Consideration needs to be given to whether the US and China are both willing fully to uphold international law. The case in the International Court of Justice of Nicaragua vs. the United States from 1984 provides a useful lesson. The US blocked the Court’s decision to award Nicaragua reparations in the UN Security Council, thus setting a precedent for how great powers might circumvent international rules and procedures.

ASEAN could also play a bigger role, but like any multilateral institution, it’s only as powerful as its member states allow it to be. ASEAN’s long-held principle of non-interference in the affairs of member countries has, on the one hand, led to cooperation in a number of areas despite significant differences, while at the same time, prevented member states from applying enough pressure on one another with regard to sensitive matters such as the South China Sea. If the present situation remains, then overall progress on economic cooperation—necessary for the region’s integration—will be deeply affected.

International law provides a meaningful system for establishing the rules of the road, and history, although subject to interpretation, can provide lessons for the future. But history and the law will only be helpful in resolving the South China Sea disputes if the most powerful claimants are also willing to adhere to the same rules as the rest of the global community.

This is a vital task for all involved. Asia is seen as the driver of global economic growth and there is an opportunity here to shape the future, so that when the history of this challenging period is written, we might find a lesson on the value of cooperation.

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