Managing Boundaries in the South China Sea

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In November 1994, the 1982 United Nations Convention on the Law of the Sea will come into force, following the deposition of the 60th ratification of the Convention in 1993 by Guyana. One of the aims of the Convention is to encourage the peaceful management of marine resources, and to provide a framework for resolving maritime territorial disputes between coastal states. All the coastal states surrounding the South China Sea, except for Taiwan, have signed the Convention (Indonesia and Philippines have ratified it), and it is of importance in developing a legal framework for managing international relations in the region.

Part IX of the Convention requires states bordering an enclosed or semi-enclosed sea such as the South China Sea, to cooperate with each other, either directly or through regional organisations, to coordinate the management of the living resources of the sea. However, this part of the Convention does not mention specifically non-living resources such as hydrocarbons. The development of non-living resources in disputed maritime areas in the South China Sea is one of the major political problems facing the region; much of the South China Sea has been the subject of disputes between the coastal states for many years, and a series of overlapping claims to jurisdiction exists.

During the 1980s, the rapid increase in military activity on and around islands making up the Spratly archipelago encouraged some commentators to predict that the issue of control of these waters, if not resolved, could lead to open conflict between states in a sea that is of great importance to global sea traffic, as well as to the states in the region. Though a major conflict has not occurred, and there is a recognised duty for states to resolve disputes peacefully, there is a need to develop mechanisms for dividing these resources in the South China Sea between states.

The lifting of US trade sanctions on Vietnam in 1994 is the latest in a series of developments that has encouraged speculation that oil and gas exploration activity in the South China Sea will increase. The Vietnamese offshore hydrocarbon resources may be considerable. However, Vietnam has a long-standing disagreement with China over jurisdiction both in the Gulf of Tonkin, and further south in areas close to existing oil fields where future exploration is possible. The opening up of Cambodian offshore frontier exploration areas provides other opportunities, but this has forced Vietnam, Cambodia and Thailand to consider their jurisdiction over offshore maritime areas in the Gulf of Thailand. In addition the issue of the Spratly Islands and surrounding waters is unresolved, and involves many more states.

Various models have been proposed to try and resolve these problems. A Spratly Island Authority to develop the resources on and around the islands, which would be controlled by all the states with interests in the islands, has been suggested. However, such an idea has not been realised, in part because it is very ambitious, and states in the region are unwilling to make such a major commitment. There is also a growing realisation that major hydrocarbon resources are less likely to be found in the deep waters around the Spratly Islands compared to the shallower waters at the margins of the South China Sea. Bilateral Joint Development Zones have proved a successful means of managing offshore resources in these peripheral areas; such zones have been established between Thailand and Malaysia, Malaysia and Vietnam, and Indonesia and Australia, and such systems may prove to be very useful in the administering of other disputed areas.

At the Third International Boundaries Research Unit Conference on *The Peaceful Management of Transboundary Resources*, held in Durham, England in April 1994, papers were presented examining ways in which states might cooperate to achieve peaceful management of the resources in the South China Sea. Though delegates were conscious that the 1982 Convention has provided general rules for managing resources, it was agreed that each case needs to be resolved individually, and that no single model could be used. States in the region are unlikely to take disputes to independent arbitration, or to the International Court of Justice, even though many other maritime disputes in the world have been resolved using such methods; the ICJ's largest area of work involves international boundary disputes. Though states must recognise international law regarding maritime areas, the conference examined methods of resolving these issues other than arbitration or judicial settlement.

One important means of improving bilateral international relations over maritime areas has been the development of regional organisations designed to manage maritime *living* resources; control of living resources is often less closely related to territorial control, but can help to encourage cooperation over the management of maritime areas. Examples include the Fisheries Task Force of the Pacific Economic Cooperation Committee (PECC) linking South-East Asia, the South Pacific and Pacific Latin America, and agreements between states over the use of specific fish stocks (for example tuna fish in the Pacific).

Multilateral meetings between professionals from the various riparian states around the South China Sea, encouraged by Indonesia, which began in 1990, have also proved very useful in developing links between rival states. These multilateral discussions, and the working groups that have been developed as a result of the meetings, have examined a wide range of issues including resource use, navigation and safety at sea, and combating piracy. Such informal meetings of representatives from states in the region have helped to defuse the regional political tensions over the South China Sea which had developed during the 1980s. Such meetings have proved a very useful means of managing international relations at a relatively informal level, without requiring formal commitments by any states, and helped to avoid disputes over control of maritime areas.

The issue of Joint Development Zones has received considerable analysis. Though the establishment of maritime joint development zones between certain states in the region (Malaysia-Thailand, Indonesia-Australia and Malaysia-Vietnam), does not mean that a duty now exists on other states to cooperate in a similar manner, it is a process which should encourage cooperation between neighbouring states over maritime resources. Each 'joint zone' regime must be developed to fit the particular circumstances; there must be close liaison between governments and commercial interests wishing to develop such areas, particularly over issues regarding concessions granted by states prior to the establishment of such a zone. Oil and gas companies might easily be deterred from investing in 'joint zones' if the institutions controlling development in the zone are not well organised and supported by both governments.

Cooperation over maritime environmental issues between states is another means of encouraging cooperation between states. Multinational programmes to monitor environmental conditions, including oceanographical research, and meteorological and pollution monitoring could be carried out; a database and atlas of the South China Sea created by states in the region was proposed by one delegate at the Durham Conference in April. One way of encouraging cooperation might be to establish an international natural park over the Spratly Islands.

Whereas during the late 1980s, there was considerable international concern that military activity in the South China Sea could lead to open conflict between states in the region, the prospects for international cooperation now seem better. This is in part due to the informal initiatives taken by Indonesia, and by regional organisations such as ASEAN, providing fora for discussion. However, though various bilateral agreements have been reached by coastal states, including establishing various joint development zones around the periphery of the South China Sea, there is still considerable tension in the region caused by overlapping territorial claims.

Though the coming into force of the 1982 Convention strengthens international law regarding the management of the sea, and is supported by states in the region, it is clear that the various problems in the region need to be tackled individually, so that management regimes can be tailored to the specific problems of each case. There is no clear duty for states to agree joint development zones in disputed border regions, though these may provide a useful means of exploiting resources in politically sensitive areas. The increase in exploration for resources, particularly hydrocarbons, as well as the problems of piracy, pollution and navigation in the South China Sea, provide both incentives and opportunities for international cooperation. It is to be hoped that the existing regional initiatives, supported by developing international law and institutions such as the International Maritime Organisation, will encourage the peaceful development of the region.

Clifford Chance is a major international law firm with 20 offices worldwide, including Hanoi, Hong Kong, Shanghai and Singapore. The Public International Law Group is involved in work on international sovereignty disputes, territorial issues and questions of maritime delimitation and the Law of the Sea.

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